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WHEREAS, Plaintiff United States of America, at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), and by authority of the Attorney General, filed a Complaint against defendant Edge Products, L.L.C. ("Edge") alleging violations of Title II of the Clean Air Act (the "Act"), as amended, 42 U.S.C. § 7401 *et seq.*, for manufacturing, offering to sell, and selling motor vehicle parts or components, specifically Electronic Tuning Devices (as defined herein), the effect of which is to bypass, defeat, or render inoperative a motor vehicle emission control device or element of design;

WHEREAS, Section 203(a)(3)(B) of the Clean Air Act, 42 U.S.C. § 7522(a)(3)(B), prohibits any person from manufacturing, selling, offering for sale, or installing, any part or component intended for use with, or as part of, any motor vehicle or motor vehicle engine, where a principal effect of the part or component is to bypass, defeat, or render inoperative any device or element of design installed on or in a motor vehicle or motor vehicle engine in compliance with regulations under this subchapter, and where the person knows or should know that such part or component is being offered for sale or installed for such use or put to such use;

WHEREAS, the Complaint alleges that Edge manufactured and sold Electronic Tuning Devices, the effect of which is to bypass, defeat, or render inoperative a device or element of design installed in motor vehicles to control the emission of pollutants. The total number of such Electronic Tuning Devices manufactured is 13,286 and the total number sold is 9,465;

WHEREAS, EPA has estimated that Edge's sale of the Electronic Tuning Devices resulted in an additional 158 tons of emissions of particulate matter than would have occurred if the devices had not been sold;

WHEREAS, the United States' Complaint seeks injunctive relief and the assessment of civil penalties;

WHEREAS, on July 13, 2011, Edge represented to EPA that Edge had stopped manufacturing and selling the Electronic Tuning Devices;

WHEREAS, the United States has reviewed Financial Information submitted by Edge and has determined that Edge has demonstrated a limited ability to pay a civil penalty in this matter;

WHEREAS, the United States and Edge have consented to entry of this Consent Decree without trial of any issues; and

WHEREAS, the United States and Edge recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the United States and Edge in good faith, that implementation of this Consent Decree will avoid prolonged and complicated litigation between the United States and Edge, and that this Consent Decree is fair, reasonable, and in the public interest;

NOW, THEREFORE, before the taking of any testimony, without the adjudication or admission of any issue of fact or law except as provided in Section I, below, of this Consent Decree, and with the consent of the parties, it is hereby ADJUDGED, ORDERED, AND DECREED as follows:

#### **I. JURISDICTION AND VENUE**

1. The Court has jurisdiction over the subject matter of this action and the Parties pursuant to 28 U.S.C. §§ 1331, 1345, 1355, and Sections 204 and 205 of the Act, 42 U.S.C. §§ 7523 and 7524.

2. Venue in this Court is proper pursuant to Sections 204 and 205 of the Act, 42 U.S.C. §§ 7523 and 7524. For purposes of this Decree, or any action to enforce this Decree, Edge consents to the Court's jurisdiction over this Decree or such action and over Edge, and

consents to venue in this judicial district. For purposes of this Consent Decree, Edge agrees that the Complaint states claims upon which relief may be granted pursuant to Sections 203, 204, and 205 of the Act, 42 U.S.C. §§ 7522, 7523, and 7524.

## II. DEFINITIONS

3. Unless specifically defined in this Section or elsewhere in this Consent Decree, terms used herein shall have the meanings currently set forth in Sections 202, 216, and 302 of the Act, 42 U.S.C. §§ 7521, 7550, and 7602, and the regulations promulgated under Title II of the Act, 42 U.S.C. §§ 7521-7590.

a. "Act" means the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.

b. "Day" shall mean a calendar day unless expressly stated to be a business day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next business day;

c. "Defeat Device" means a motor vehicle part or component, including Electronic Tuning Devices, whose principal effect is to bypass, defeat, or render inoperative a motor vehicle emission control device or element of design, including such emission control devices or elements of design required by 40 C.F.R. §§ 86.007-17 or 86.1806-05.

d. "Effective Date" means the date the Consent Decree is entered by the Court or a motion to enter the Consent Decree is granted, whichever occurs first, as recorded on the Court's docket.

e. "Electronic Tuning Device" or "Device" means any of the following products marketed by Edge under the Edge Racing brand name:

<b>Part No.</b>	<b>Description</b>
15500	Edge Racing Evolution
25500	Edge Racing Evolution
30908	Edge Racing Juice with Attitude
31205	Edge Racing Juice/Attitude CS
31206	Edge Racing Juice/Attitude CS
31305	Edge Racing Juice/Attitude CTS
31306	Edge Racing Juice/Attitude CTS
85600	Edge Racing Evolution CS
85700	Edge Racing Evolution CTS

f. "EPA" means the United States Environmental Protection Agency and any of its successor departments or agencies.

g. "E-Stewards Certified Recycler" shall mean an electronics recycler certified pursuant to the E-Stewards program of the Basel Action Network, <http://e-stewards.org>.

h. "Financial Information" means the financial documents and information identified in the Declaration attached hereto as Appendix C.

i. "Interest" means interest at the rate allowed on money judgments pursuant to 28 U.S.C. § 1961.

j. "Parties" means the United States and Edge Products, L.L.C.

k. "Purchaser" means any person or business entity who previously purchased an Electronic Tuning Device (as defined herein) from Edge or elsewhere, or who returns to Edge an Electronic Tuning Device.

l. "United States" means the United States of America, acting on behalf of EPA.

### **III. APPLICABILITY**

4. This Consent Decree applies to and is binding upon the United States and upon Edge, its successors, and assigns, and those otherwise bound by operation of law. Unless agreed to by all Parties in writing, any change in Edge's ownership or corporate status shall in no way alter Edge's responsibilities under this Consent Decree. In any action to enforce this Consent Decree, Edge shall not raise as a defense the failure of its officers, directors, agents, servants, contractors, or employees or their successors to take actions necessary to comply with the provisions hereof.

5. Edge shall provide a copy of this Consent Decree to any contractor retained to perform work required under this Consent Decree.

### **IV. INJUNCTIVE RELIEF**

#### **A. Prohibition on Manufacturing, Selling, or Transferring Defeat Devices**

6. Edge shall not manufacture, offer for sale, sell, convey or otherwise transfer any Defeat Device, including but not limited to Electronic Tuning Devices. Edge shall not activate any Electronic Tuning Devices previously manufactured or sold.

7. Edge shall not offer for sale, sell, convey or otherwise transfer in any way the design, technology or manufacturing processes or techniques used to manufacture any Defeat Device, including Electronic Tuning Devices, to any other individual or entity, including but not limited to business entities.

8. Within thirty (30) Days of the Effective Date of this Consent Decree, Edge shall provide a copy of this Consent Decree and its Appendices to each of its officers, directors, and employees notifying them that it is a violation of the Clean Air Act for any of them to be involved in the manufacture, sale, or offering for sale of any Defeat Device including, but not limited to, Electronic Tuning Devices. Edge shall require each officer, director, and employee to sign and return the copy of Appendix A to Edge acknowledging that the officer, director, or employee has received and reviewed this Consent Decree, including its Appendices. Edge shall require that the signed copies of Appendix A be returned to Edge within fourteen (14) Days of the date of the officer, director, or employee's receipt of Appendix A. Edge shall not assert as a defense to any action to enforce this Consent Decree the failure of any Edge officer, employee, or agent to have received a copy of this Consent Decree.

**B. Recall and Repurchase Program**

9. Edge shall implement the Electronic Tuning Device Recall and Repurchase Program required by this Section IV.B of this Consent Decree.

10. Within sixty (60) Days of the Effective Date, Edge shall send by first class mail or email a letter containing the text included in Appendix B of this Decree to all known Purchasers of Edge's Electronic Tuning Devices or individuals or entities to whom Edge transferred possession of any Electronic Tuning Devices, including any direct purchasers, as well as any third party resellers or distributors.

11. Before sending the letter or email required by Paragraph 10 of this Consent Decree, Edge shall perform all of the following tasks to identify persons who purchased Electronic Tuning Devices:

a) within thirty (30) Days of the Effective Date of this Decree, Edge shall request in writing from all third-party resellers or distributors of Electronic Tuning Devices all records showing contact information (telephone number, email, or street address) for anyone who purchased an Electronic Tuning Device. In the event that any such reseller or distributor fails to provide Edge the requested information within sixty (60) Days of Edge's request, Edge shall provide the reseller or distributor with the letter or email required by Paragraph 10 of this Decree and request the reseller or distributor to provide the letter or email directly to the person or entity that purchased an Electronic Tuning Device;

b) review all records that Edge maintained, and all records that Edge obtains from third-party resellers or distributors, regarding any individuals or entities that purchased Electronic Tuning Devices;

c) review all registration and activation requests submitted to Edge for Electronic Tuning Devices; and

d) review any other documents and records within Edge's custody or control that may have contact information for persons who purchased Electronic Tuning Devices.

12. Edge shall enclose with the letter or email required by Paragraph 10 of this Consent Decree written instructions to the Purchaser for removal of the Electronic Tuning Device and for reprogramming the vehicle to its original factory settings, including re-installation of the Diesel Particulate Filter in the event that it has been removed. In addition, Edge shall prominently display copies of the aforementioned letter and instructions on Edge's public website and Facebook page(s).

13. Edge shall not issue any refund to a Purchaser as part of the Recall and Repurchase Program required by this Section IV.B until Edge has performed a validation test to

ensure that the vehicle from which the Electronic Tuning Device was removed was properly programmed back to its original factory settings before removal of the Device. Edge shall perform the validation test within fifteen (15) Days of receipt of the Electronic Tuning Device. A Purchaser shall not be eligible for a refund as part of this Recall and Repurchase Program unless the validation test performed by Edge demonstrates that the Purchaser reprogrammed the vehicle from which the Device was removed to its original factory settings prior to removal of the Device.

14. Edge's Electronic Tuning Device Recall and Repurchase Program shall remain in effect for eighteen (18) months following the date the notice in Appendix B is distributed to all Purchasers. Edge shall provide refunds for all qualifying returns received within the 18 month period.

15. Within thirty (30) Days of the Effective Date of this Consent Decree, Edge shall require each of Edge's current officers, directors, agents, servants, and employees to return any Electronic Tuning Devices in their possession or installed on any motor vehicle owned or operated by them or under their control.

16. Upon receipt of any Electronic Tuning Device returned under the Recall and Repurchase Program required by this Consent Decree, Edge shall perform the validation test required by Paragraph 13, above, on any Device that Edge had previously activated for use on a vehicle. If the test shows that the vehicle from which the Device was removed has been reprogrammed to its factory settings, Edge shall issue a refund to the Purchaser within thirty (30) Days of Edge's receipt of the returned Device. The amount of the refund issued to any Purchaser, other than those identified in Appendix D to this Consent Decree, shall be the amount of the original retail list price for the model of the Electronic Tuning Device returned, as

identified in Appendix B to this Consent Decree. The amount of the refund issued to any Purchasers identified in Appendix D to this Consent Decree who return Devices to Edge shall be the wholesale price for the model of the Electronic Tuning Device, as identified in Appendix B to this Consent Decree. Edge shall issue the required refunds regardless of whether the person returning the Electronic Tuning Device is the original purchaser of the Device.

17. Edge shall maintain a written record of the following:

a) the identity of any Purchaser who returns one or more Electronic Tuning Devices to Edge under this Recall and Repurchase Program;

b) the number of Electronic Tuning Devices returned from each Purchaser;

c) the serial number of each Electronic Tuning Device returned;

d) the amount paid to each Purchaser in accordance with Paragraph

16, above, as well as the date and method of each such payment;

e) a description of the process used by Edge to verify that the vehicle from which each Electronic Tuning Device was removed has been returned to its original factory settings; and

f) records documenting Edge's verification that the vehicle from which the Electronic Tuning Device was removed has been returned to its original factory settings.

**C. Erasure, Reuse, and Recycling of Electronic Tuning Devices**

18. Within thirty (30) Days of the Effective Date of this Consent Decree or within thirty (30) Days of receipt of any returned Electronic Tuning Device, as applicable, Edge shall completely erase all programming and information from all Electronic Tuning Devices in its possession or returned to it. Edge may reuse any Device (or component thereof) that has been completely erased. Such reuse shall be limited to use only for digital read-out devices that do not

affect vehicle emissions controls or vehicle performance in any way. Any Electronic Tuning Devices that are not reused by Edge in accordance with the terms of this Paragraph 18 and within six (6) months of Edge's receipt of the Device shall be disassembled and provided to an E-Stewards Certified Electronics Recycler for recycling in accordance with the E-Stewards industry standard for electronic recycling. Edge shall keep a written record of the serial number of each Electronic Tuning Device that is erased, the date each Device was erased, a description of the purpose (if any) for which Edge reused the Device, and the date on which each erased and disassembled Device (if any) was sent to an E-Stewards Certified Recycler. Edge shall take adequate measures to safeguard any Electronic Tuning Devices awaiting erasure, reuse, and recycling from theft or loss.

**D. Excess Emissions Mitigation Project**

19. Edge shall implement an Excess Emissions Mitigation Project ("Project") to retrofit or change-out at least 197 wood-burning appliances in accordance with the requirements of this Section IV.D of this Consent Decree, upon EPA approval of the plan required by Paragraph 23, below. The purpose of the Project is for Edge to mitigate the environmental harm resulting from the violations alleged in the Complaint by funding at least 197 wood burning appliance change-outs or retrofits and spending at least \$157,600 on the Project. The \$157,600 represents EPA's estimate of the minimum amount required to fund 197 wood-burning appliance change-outs and/or retrofits.

20. Within sixty (60) Days of the Effective Date of this Consent Decree, Edge shall enter into an agreement with a state, local, or tribal agency or non-profit organization ("Implementing Entity") that has prior experience implementing a wood burning appliance change-out or retrofit program in the United States and that, at the time the agreement is

executed, has the staff expertise and organizational capacity to implement the Project required by this Consent Decree. The agreement between Edge and the Implementing Entity shall require Edge to fund at least \$157,600 for the Project and shall not allocate greater than 10% of the \$157,600 for project administration and outreach. The agreement required by this Paragraph 20 shall include all of the Project elements described in Paragraph 21, below, and shall include: a) a description of the incentives (e.g. rebates for EPA-certified wood burning appliances) that will be provided to homeowners to retrofit, replace, or upgrade inefficient, higher polluting wood-burning appliances (e.g. wood stoves that are not EPA-certified, old technology outdoor wood-fired hydronic heaters) with EPA-certified wood stoves or cleaner burning, more energy efficient retrofits/appliances (e.g. Energy Star natural gas furnaces, wood pellet, gas, or propane stoves) or Phase II EPA-qualified hydronic heaters; and b) a description of how the Project meets the requirements of this Consent Decree. Edge shall remain responsible for compliance with all terms of this Consent Decree, including but not limited to the requirements of Paragraph 21, below, regardless of the terms of the agreement Edge makes with the Implementing Entity to implement the Project and regardless of the cost of each replacement or retrofit.

21. The Project must be consistent with the materials available on EPA's website at <http://www.epa.gov/burnwise> and with the requirements of this Consent Decree, and shall include, at a minimum, the following:

a) Edge shall provide to the Implementing Entity the funding necessary to implement the Project within thirty (30) Days after execution of the agreement with the Implementing Entity;

b) Edge shall implement the Project in a geographical area of the United States that is, as of the Effective Date of this Consent Decree, designated by EPA as nonattainment for PM<sub>10</sub> and/or PM<sub>2.5</sub> and where the amount of funding required by this Consent Decree is sufficient to achieve the reduction of 158 tons of particulate matter. The requirement to implement the Project in a PM<sub>10</sub> and/or PM<sub>2.5</sub> nonattainment area may be waived by EPA if Edge can demonstrate to EPA that after a reasonable search Edge has been unable to locate a state, local, or tribal government agency or non-profit organization that otherwise meets the criteria specified in this Consent Decree to implement the project in such an area;

c) all change-outs/retrofits shall be completed within twenty-four (24) months of EPA's approval of the Project plan required by Paragraph 23, below;

d) all of the old wood burning stoves/appliances shall be disposed properly or recycled such that the stoves/appliances cannot be resold or reused; and

e) EPA's Burn Wise information regarding the benefits of cleaner burning heating appliances, use of dry, seasoned wood, and proper stove operation be provided to the person receiving the change-out/retrofit. EPA's Burn Wise information is available on EPA's website at <http://www.epa.gov/burnwise>.

22. Within thirty (30) Days after entering into the agreement required by Paragraph 20 of this Consent Decree, Edge shall submit to EPA:

a) a written description of the Implementing Entity's prior experience implementing a wood burning appliance replacement or retrofit program, staff expertise, and organizational capacity; and

b) a copy of the final agreement between Edge and the Implementing Entity.

23. Within thirty (30) Days after entering into the agreement required by Paragraph 20 of this Consent Decree, Edge shall submit to EPA for approval a written plan describing in detail how the Project will meet the requirements of this Consent Decree within the time period set forth in Paragraph 21.c, above, including a series of milestones leading to completion of the Project.

24. After review of the Project plan required to be submitted to EPA pursuant to Paragraph 23 of this Consent Decree, EPA shall, in writing: a) approve the Project plan; b) approve the Project plan upon specified conditions; c) approve part of the Project plan and disapprove the remainder; or d) disapprove the Project plan.

25. If EPA disapproves the Project plan in whole or in part, or approves the Project plan upon specified conditions, Edge shall, within forty-five (45) Days or such other time as the Parties agree to in writing, correct all deficiencies in the Project plan and resubmit it to EPA for approval. Any stipulated penalties applicable to the original submission, as provided in Section VII (Stipulated Penalties) shall accrue during the 45-Day period or other specified time period, but shall not be payable unless the resubmission is untimely or is disapproved in whole or in part; provided that, if the original submission is so deficient as to constitute a material breach of Edge's obligations under this Consent Decree, the stipulated penalties applicable to the original submission shall be due and payable notwithstanding any subsequent submission.

#### **V. RECORDKEEPING AND REPORTING**

26. Within sixty (60) Days of completion of the Project required by Section IV.D of this Consent Decree, Edge shall submit to EPA an Excess Emissions Mitigation Report containing the following information, which, as applicable, may be based on information provided by the entity implementing the wood stove change-out or retrofit project:

- a. A summary description of the project as implemented;
- b. The number of cleaner burning appliances installed;
- c. The street address of each location where each appliance was installed;
- d. A copy of Edge's check(s) to the Implementing Entity showing that Edge funded a minimum of \$157,600 for the project, and the date on which the check was provided to the Implementing Entity;
- e. Documentation that new EPA-certified wood stoves, retrofits/appliances replaced the old, non-EPA-certified wood stoves and that the old stoves were disposed properly or recycled such that the stoves can never be resold or reused; and
- f. The report required by this Paragraph shall be signed in accordance with the requirements of Paragraph 28, below.

27. In addition to the report required by Paragraph 26, above, Edge shall submit quarterly Compliance Reports to EPA containing the information described below. The information described below shall be included in each Compliance Report unless otherwise noted. The first such Compliance Report shall be submitted no later than ninety (90) Days after the Effective Date of this Consent Decree, and each subsequent report shall be submitted to EPA ninety (90) Days after the date of the previous report. Edge's Compliance Reports shall include the following information:

- a. Edge shall report whether it, or any of its officers, directors, agents, servants, or employees, offered for sale, sold, conveyed, or otherwise transferred in any way the design, technology, or manufacturing process or techniques used to manufacture any Defeat Devices, including Electronic Tuning Devices to any other entity at any time until the date of the Compliance Report. If such a transfer occurred, Edge shall report the name and contact

information, including address, of any individual or entity to which such process or technique was transferred;

b. Edge shall report whether it provided Appendix A to all of its current officers, directors, or employees and the name and last known address of any person who has not returned a signed copy of the statement stating that he or she has reviewed Appendix A;

c. Edge shall report the total number of Electronic Tuning Devices that it received in response to the Recall and Repurchase Program required by this Decree for the reporting period;

d. Edge shall report the total number of Electronic Tuning Devices that it erased during the reporting period, the total number of Devices being held for reuse during the reporting period, the total number of Devices that it reused during the reporting period, and the total number of Devices that were returned to Edge but are missing or unaccounted for. For each Electronic Tuning Device that was reused during the reporting period, Edge shall include a description of the purpose for which each Device was reused;

e. Edge shall report the total number of Electronic Tuning Devices that it erased, disassembled, and provided to an E-Stewards Certified Recycler during the reporting period;

f. Edge shall report the identity of the individuals or entities to whom it mailed the notice included in Appendix B to this Consent Decree, and the date of such mailing;

g. For the first Compliance Report only, Edge shall report the name and contact information, including address, of any individual or entity that purchased or otherwise acquired from Edge ten or more Electronic Tuning Devices. Subsequent reports shall state whether any

such devices have been returned as part of the Recall and Repurchase Program required by this Consent Decree during the reporting period;

h. For the first Compliance Report only, Edge shall report the date upon which it posted a copy of the materials distributed to Purchasers under the Recall and Repurchase Program on its website, along with the URL for such materials.

28. Each report or other notice required by this Consent Decree shall be accompanied by a transmittal letter referencing the appropriate Paragraph or Appendix of this Consent Decree. Edge shall, through a duly authorized representative having knowledge of the contents of the notice, submission, or report, sign and certify the contents of the report as follows:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that this document and its attachments were prepared either by me personally or under my direction or supervision in a manner designed to ensure that qualified and knowledgeable personnel properly gathered and presented the information contained therein. I further certify, based on my personal knowledge or on my inquiry of those individuals immediately responsible for obtaining the information, that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing and willful submission of a materially false statement.

29. Edge shall not object to the admissibility in evidence of any such reports in a proceeding to enforce this Consent Decree.

30. Compliance with the reporting and notification requirements of this Consent Decree shall not relieve Edge of its obligation to comply with any other reporting or notification requirements imposed by any applicable federal, state, or local laws, regulations, or permits.

31. All reports, notifications to, or communications with the United States shall include the Civil Action Number of this case and the DOJ case number 90-5-2-1-10425.

## VI. NOTICES

32. Unless otherwise provided herein, reports, notifications to, or communications with the United States or Edge shall be deemed submitted on the date they are postmarked and sent by first class mail, overnight receipt mail service, or by certified or registered mail, return receipt requested. Except as otherwise specifically provided herein, when written notification to or communication with the United States, EPA, or Edge is required by the terms of this Consent Decree, it shall be addressed as follows:

### As to the United States:

Chief  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611, Ben Franklin Station  
Washington, D.C. 20044-7611  
Re: DOJ No. 90-5-2-1-10425

### For EPA:

Director  
Air Enforcement Division (2242A)  
Office of Civil Enforcement  
Office of Enforcement and Compliance Assurance  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Ariel Rios Building South  
Washington, D.C. 20004

### With copies to:

David Kim  
U.S. Environmental Protection Agency  
Office of Regional Counsel (ORC-3)  
75 Hawthorne Street  
San Francisco, CA 94105

Joseph Lapka  
U.S. Environmental Protection Agency  
Air Enforcement Office (Air-5)  
75 Hawthorne Street  
San Francisco, CA 94105

As to Edge:

David Martinez  
President  
Edge Products, L.L.C  
1080 S. Depot Drive  
Ogden, UT 84404

With a copy to:

John Russell Deane III, Esq.  
1317 F Street, Suite 350, NW  
Washington, DC 20004

Any Party to this Consent Decree may change the address for providing notices to it by serving all other addressees identified above with a written notice setting forth the new address.

**VII. CIVIL PENALTIES**

33. Within thirty (30) Days of the Effective Date of this Consent Decree, Edge shall pay to the United States the sum of \$500,000, as a civil penalty. Payment shall be made by Electronic Funds Transfer ("EFT") to the U.S. Department of Justice ("DOJ") in accordance with instructions to be provided to Edge following lodging of the Consent Decree by the Financial Litigation Unit of the U.S. Attorney's Office. Any EFT received at the DOJ lockbox bank after 3 pm Eastern Time will be credited on the next business day. Notice of the EFT shall simultaneously be mailed to the contacts for the United States and EPA listed in the Notices Section above.

34. Edge shall not deduct the civil penalty required by this Decree in calculating its federal income tax.

35. The United States shall be deemed a judgment creditor for purposes of collection of the civil penalty required by this Decree.

#### **VIII. STIPULATED PENALTIES**

36. Edge shall be liable for stipulated penalties to the United States for violations of this Consent Decree as specified below. A violation includes failing to perform any obligation required by the terms of this Decree within the specified time schedules established by or approved under this Decree.

37. Edge shall be liable for the following stipulated penalties, which shall accrue per violation per Day for each violation of a requirement identified as follows:

a. For failure to make the payment required by Paragraph 33 of this Consent Decree when due: \$1,000 per Day for the first thirty (30) Days that a payment is late, \$2,000 per Day for any delay beyond thirty (30) Days.

b. For manufacturing any Defeat Device, including but not limited to Electronic Tuning Devices, after the date of lodging of this Consent Decree: \$2,000 per each such device.

c. For offering for sale, selling, conveying or otherwise transferring any Defeat Device, including but not limited to Electronic Tuning Devices, after the date of lodging of this Consent Decree: \$2,500 per each device.

d. For activating any Defeat Device, including but not limited to Electronic Tuning Devices, after the date of lodging of this Consent Decree: \$2,500 per each Device.

e. For selling, giving, conveying or otherwise transferring in any way the process or techniques used to manufacture Defeat Devices, including Electronic Tuning Devices, to any other entity, including but not limited to individuals or business entities, after the date of lodging of this Consent Decree: \$10,000 for each such sale, gift, or transfer.

f. For failure to comply with the requirements of Paragraph 8 of this Consent Decree: \$500 per each such individual or entity per Day of violation.

g. For failure to comply with any requirements of Paragraphs 9, 10, 11, 12, 13, 14, and 15 of this Consent Decree: \$500 per Day per violation for the first thirty (30) Days of the violation; \$1,000 per Day per violation for any violations beyond thirty (30) Days.

h. For failing or refusing to accept an Electronic Tuning Device from, or provide reimbursement to, an individual or entity who returns an Electronic Tuning Device in accordance with the requirements of Paragraph 13 of this Consent Decree; \$2,000 per each such individual or entity.

i. For failing to keep the written records required by Paragraph 17 of this Consent Decree: \$1,000 per each Electronic Tuning Device.

j. For failure to record or report, in any Compliance Report required by this Decree, the number of Electronic Tuning Devices received in response to the Recall and Repurchase Program, the number of Electronic Tuning Devices erased, the number of Devices reused and the description of the reuse, and the number of Devices disassembled and recycled: \$1,000 per each such failure.

k. For failure to erase, or to erase, disassemble and provide to an E-Stewards Certified Recycler, as required by Section IV.C, above, any Electronic Tuning Device in its possession: \$1,500 per each failure per each device.

l. For failure to achieve the change-out and/or retrofit of at least 197 wood burning appliances, as required by Section IV.D of this Consent Decree: \$1,500 per each such failure per each Day of violation.

m. For failure to meet any other requirement of Section IV.D. of this Consent Decree Edge: \$1,500 per Day per violation for the first thirty (30) Days; \$2,000 per Day per violation for any violation longer than thirty (30) Days.

n. For failure to record or maintain information necessary for the preparation of any report required by this Decree, other than the information required pursuant to Paragraph 17 of this Consent Decree: \$500 per Day for the first thirty (30) Days that a report is overdue, \$1,000 per Day for any delay beyond thirty (30) Days.

o. For failure to submit copies of any records or reports as required by this Consent Decree: \$500 per Day for the first thirty (30) Days of delay; \$1,000 per Day for the next thirty (30) Days of delay; and \$1,500 per Day for any delay beyond sixty (60) Days.

38. Stipulated penalties shall continue to accrue as provided below during any Dispute Resolution, but need not be paid until the following:

a. If the dispute is resolved by agreement of the parties or by a decision of EPA that is not appealed to the Court, Edge shall pay accrued penalties determined to be owing, together with Interest, to the United States within thirty (30) Days of the Effective Date of the agreement or the receipt of EPA's decision or order.

b. If the dispute is appealed to the Court and the United States prevails in whole or in part, Edge shall pay all accrued penalties determined by the Court to be owing, together with Interest, within sixty (60) Days of receiving the Court's decision or order, except as provided in subparagraph c, below.

c. If any Party appeals the District Court's decision, Edge shall pay all accrued penalties determined to be owing, together with Interest, within fifteen (15) Days of receiving the final appellate court decision.

39. The stipulated penalties provided for in this Consent Decree shall be in addition to any other rights, remedies, or sanctions available to the United States for Edge's violation of this Consent Decree or applicable law.

40. Stipulated penalties shall automatically begin to accrue on the first Day Edge fails to satisfy any obligation or requirement of this Consent Decree and shall continue to accrue until the violation or deficiency is corrected. Stipulated penalties shall continue to accrue throughout any dispute resolution process.

41. Stipulated penalties shall be paid no later than thirty (30) Days following the first Day in which EPA sends to Edge a demand for payment of the stipulated penalties which have accrued to date together with an explanation for the basis(es) for the demand. Edge shall pay stipulated penalties owing to the United States by EFT in accordance with the Civil Penalty Section of this Consent Decree.

42. Edge shall not deduct stipulated penalties paid under this Section in calculating its federal income tax.

43. If Edge fails to pay any stipulated penalty according to the terms of this Consent Decree, Edge shall be liable for Interest on such penalty accruing as of the date payment became due.

44. Notwithstanding any other provision of this Decree, the United States may, in its unreviewable discretion, waive any portion of a stipulated penalty that has accrued pursuant to this Decree.

## **IX. FORCE MAJEURE**

45. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of Edge, of any entity controlled by Edge, or of Edge's contractors, that delays or prevents the performance of any obligation under this Consent Decree despite Edge's best efforts to fulfill the obligation. The requirement that Edge exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any such event (a) as it is occurring and (b) after it has occurred to prevent or minimize any resulting delay to the greatest extent possible. "Force Majeure" does not include Edge's financial inability to perform any obligation under this Consent Decree.

46. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, Edge shall provide notice orally or by electronic or facsimile transmission to the EPA Region IX Air Enforcement Office at 415-947-3539 within 72 hours of when Edge first knew that the event might cause a delay. Within seven (7) Days thereafter, Edge shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Edge's rationale for attributing such delay to a force majeure event if it intends to assert such a claim; and a statement as to whether, in Edge's opinion, such event may cause or contribute to an endangerment to public health, welfare or the environment. Edge shall include with any notice all available documentation supporting the claim that the delay was attributable to a force majeure event. If Edge fails to comply with the above requirements, Edge shall be precluded

from asserting any claim of force majeure for that event for the period of time of such failure to comply and for any additional delay caused by such failure. Edge shall be deemed to know of any circumstance of which Edge, any entity controlled by Edge, or Edge's contractors knew or should have known.

47. If EPA agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. EPA will notify Edge in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

48. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify Edge in writing of its decision.

49. If Edge elects to invoke the dispute resolution procedures set forth in Section IX (Dispute Resolution), it shall do so no later than fifteen (15) Days after receipt of EPA's notice. In any such proceeding, Edge shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Edge complied with the requirements of Paragraphs 45 and 46, above. If Edge carries this burden, the delay at issue shall be deemed not to be a violation by Edge of the affected obligation of this Consent Decree identified to EPA and the Court.

## **X. DISPUTE RESOLUTION**

50. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. Edge's failure to seek resolution of a dispute under this Section shall preclude Edge from raising any such issue as a defense to an action by the United States to enforce any obligation of Edge arising under this Decree.

51. Informal Dispute Resolution. Any dispute subject to Dispute Resolution under this Consent Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when Edge sends the United States a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed twenty (20) Days from the date the dispute arises, unless that period is modified by written agreement. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States shall be considered binding unless, within twenty (20) Days after the conclusion of the informal negotiation period, Edge invokes formal dispute resolution procedures as set forth below.

52. Formal Dispute Resolution. Defendant shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by serving on the United States a written Statement of Position regarding the matter in dispute. The Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting Edge's position and any supporting documentation relied upon by Edge.

53. The United States shall serve its Statement of Position within forty-five (45) Days of receipt of Edge's Statement of Position. The United States' Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting that position

and any supporting documentation relied upon by the United States. The United States' Statement of Position shall be binding on Edge, unless Edge files a motion for judicial review of the dispute in accordance with the following Paragraph.

54. Edge may seek judicial review of the dispute by filing with the Court and serving on the United States, in accordance with Section VI of this Consent Decree (Notices), a motion requesting judicial resolution of the dispute. The motion must be filed within ten (10) Days of receipt of the United States' Statement of Position pursuant to the preceding Paragraph. The motion shall contain a written statement of Edge's position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree.

55. The United States shall respond to Edge's motion within the time period allowed by the Local Rules of this Court. Edge may file a reply memorandum, to the extent permitted by the Local Rules.

56. In any dispute brought before the Court, Edge shall bear the burden of proving that its actions were in compliance with this Consent Decree; or, if the dispute concerns the interpretation of the Consent Decree, Edge shall bear the burden of demonstrating that its interpretation better furthers the objectives of the Consent Decree. The United States reserves the right to argue that its position is reviewable only on the administrative record and must be upheld unless arbitrary and capricious or otherwise not in accordance with law, in which case such standard and scope of review shall control.

57. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of Edge under this Consent Decree,

unless and until final resolution of the dispute so provides. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first Day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 38. If Edge does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section VIII (Stipulated Penalties) of this Consent Decree.

#### **XI. RIGHT OF ENTRY/RECORDS RETENTION**

58. EPA and its authorized representatives and contractors are authorized, upon presentation of appropriate credentials:

- a. to enter, at reasonable times, the premises of Edge for the purposes of inspecting or observing any activity conducted pursuant to this Consent Decree; and
- b. to inspect and review any record required to be kept under the terms and conditions of this Consent Decree.

59. Edge shall maintain the following records:

- a. Any documents reflecting or constituting communications with any individual or entity to whom a letter was sent under the Recall and Repurchase Program or who was a part of any voluntary recall program prior to this Decree.
- b. Any documents upon which Edge relied in making any report required pursuant to this Consent Decree.

60. Edge shall make these records available to EPA upon request. Edge shall retain all such records for a period of five (5) years after termination of this Consent Decree. All information and documents submitted by Edge to the United States pursuant to this Consent Decree shall be subject to public inspection, unless identified and supported as Confidential Business Information by Edge in accordance with the requirements of 40 C.F.R. Part 2. As to

any information that Edge seeks to protect as Confidential Business Information, Edge shall follow the procedures set forth in 40 C.F.R. Part 2.

61. At the conclusion of the information-retention period required by Paragraph 59 of this Consent Decree, Edge shall notify EPA at least ninety (90) Days prior to the destruction of any documents, records, or other information subject to the requirements of Paragraph 59 of this Consent Decree and, upon request by EPA, Edge shall deliver any such documents, records or other information to EPA. Edge may assert that certain documents, records or other information is privileged under the attorney-client privilege or any other privilege recognized by federal law. If Edge asserts such a privilege, it shall provide the following to EPA: a) the title of the document, record, or information; b) the date of the document, record, or information; c) the name and title of each author of the document, record, or information; d) the name and title of each addressee and recipient; f) a description of the subject of the document, record, or information; and g) the privilege asserted by Edge. However, no documents, records, or other information created or generated pursuant to the requirements of this Consent Decree shall be withheld on grounds of privilege.

62. This Consent Decree in no way limits or affects any right of entry and inspection, or any right to obtain information, held by EPA pursuant to applicable federal laws, regulations, or permits, nor does it limit or affect any duty or obligation of Edge to maintain documents, records, or other information imposed by applicable federal or state laws, regulations, or permits.

## **XII. EFFECT OF DECREE**

63. This Consent Decree resolves the United States' civil claims for penalties and injunctive relief under Sections 203, 204, and 205 of the Act, 42 U.S.C. §§ 7522, 7523, and 7524 with respect to the violations alleged in the Complaint through the date of lodging of this Decree.

64. This Consent Decree does not limit or affect the rights of Edge or of the United States against any third parties not party to this Consent Decree, nor does it limit the rights of third parties not party to this Consent Decree, against Edge, except as otherwise provided by law. This Consent Decree shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Consent Decree.

### **XIII. NON-WAIVER PROVISIONS**

65. This Consent Decree in no way affects or relieves Edge of any responsibility to comply with any federal, state, or local laws or regulations.

66. Edge is responsible for achieving and maintaining complete compliance with all applicable federal and state laws and regulations, and compliance with this Consent Decree shall be no defense to any actions commenced pursuant to said laws and regulations, except as otherwise expressly specified in the Consent Decree.

67. The United States reserves any and all legal and equitable remedies available to enforce the provisions of this Consent Decree.

68. This Consent Decree shall not limit any authority of EPA under the Clean Air Act or any applicable statute, including the authority to seek information from Edge or to seek access to the property of Edge. The United States reserves all remedies available to it for violations of the Clean Air Act by Edge that are not alleged in the Complaint as well as for violations of the Clean Air Act by Edge that occur after the date of lodging of this Consent Decree.

69. The United States' agreement to the amount of the civil penalty required by Paragraph 33 of this Consent Decree is based on the Financial Information identified in the Declaration attached hereto as Appendix C. Edge certifies that the Financial Information identified in the Declaration attached as Appendix C is true, accurate, and complete and that

there has been no material change in Edge's financial condition between the time the Financial Information was submitted and the date of Edge's execution of this Consent Decree.

Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to reinstitute or reopen this action, or to commence a new action seeking relief other than as provided in this Consent Decree, if Edge's Financial Information is false, or in any material respect, inaccurate, or incomplete. This right shall be in addition to all other rights and causes of action, civil or criminal, that the United States may have under law or equity in such event.

70. This Consent Decree does not resolve criminal liability, if any, that any person might have for violations of the Clean Air Act.

71. Nothing in this Consent Decree shall be construed to limit the authority of the United States to undertake any action against any person, including Edge, in response to conditions that may present an imminent and substantial endangerment to the environment or to the public health or welfare.

#### **XIV. COSTS OF SUIT**

72. The Parties shall bear their own costs of this action, including attorneys' fees, except that the United States shall be entitled to collect the costs (including attorneys' fees) incurred in any action necessary to collect any portion of the civil penalty or any stipulated penalties due but not paid by Edge.

#### **XV. EFFECTIVE DATE**

73. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court or a motion to enter the Consent Decree is granted, whichever occurs first, as recorded on the Court's docket.

## **XVI. MODIFICATION**

74. The terms of this Consent Decree may be modified only by a subsequent written agreement signed by all of the Parties. Where the modification constitutes a material change to any term of this Decree, it shall be effective only upon approval by the Court. Any disputes concerning modification of this Consent Decree shall be resolved pursuant to Section X (Dispute Resolution) of this Consent Decree, provided, however, that, instead of the burden of proof provided by Paragraph 56, the Party seeking the modification bears the burden of demonstrating that it is entitled to the requested modification in accordance with Federal Rule of Civil Procedure 60(b).

## **XVII. PUBLIC COMMENT AND ENTRY OF CONSENT DECREE**

75. The Parties agree and acknowledge that final approval by the United States and entry of this Consent Decree is subject to the requirements of 28 C.F.R. § 50.7, which provides for notice of the lodging of this Consent Decree in the Federal Register, an opportunity for public comment, and consideration by the United States of any comments. The United States reserves the right to withdraw or withhold its consent on the basis of such comments. This Paragraph does not create any rights exercisable by Edge. Edge consents to the entry of this Consent Decree without further notice and agrees not to withdraw from or oppose entry of this Consent Decree by the Court or to challenge any provision of this Decree, unless the United States has notified Edge in writing that the United States no longer supports entry of this Decree.

## **XVII. TERMINATION**

76. Edge may seek termination of this Consent Decree in accordance with the requirements of this Section XIII (Termination) after Edge has completed all of the requirements of Section IV of this Consent Decree (Injunctive Relief), has paid all penalties, both civil and

stipulated, and including any Interest, and has maintained satisfactory compliance with all provisions of this Consent Decree, including but not limited to Section V (Reporting) for a period of two (2) years from the Effective Date. Edge may serve upon the United States a Request for Termination, stating that Edge has satisfied the requirements of this Paragraph, together with all necessary supporting documentation.

77. Following receipt by the United States of Edge's Request for Termination, the Parties shall confer informally concerning the Request and any disagreement that the Parties may have as to whether Edge has satisfactorily complied with the requirements for termination of this Consent Decree. If the United States agrees that the Decree may be terminated, the United States shall submit, for the Court's approval, a motion to terminate the Consent Decree.

78. If the United States does not agree that the Decree may be terminated, Edge may invoke Dispute Resolution under Section X of this Decree. However, Edge shall not seek Dispute Resolution of any dispute regarding termination until at least 120 Days after service of its Request for Termination.

#### **XIX. SIGNATORIES/SERVICE**

79. Each undersigned representative of Edge, and the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice, certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party he or she represents to this document. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis.

80. Edge agrees to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree, including service of the Complaint, and to waive the

formal service requirements set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons.

#### **XX. INTEGRATION**

81. This Consent Decree, including the Appendices identified, constitutes the final, complete, and exclusive agreement and understanding between the Parties with respect to the settlement embodied in the Decree and supersedes all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. Other than the Appendices, which are attached to and incorporated in this Decree, and submittals that are subsequently submitted and approved pursuant to this Decree, no other document, nor any representation, inducement, agreement, understanding, or promise, constitutes any part of this Decree or the settlement it represents, nor shall it be used in construing the terms of this Decree.

#### **XXII. FINAL JUDGMENT**

82. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court as to the United States and Edge.

#### **XXIII. RETENTION OF JURISDICTION**

83. This Court shall retain jurisdiction of this matter for the purposes of implementing and enforcing the terms and conditions of this Consent Decree and for the purpose of adjudicating all disputes among the Parties that may arise under the provisions of this Consent Decree, to the extent that this Consent Decree provides for resolution of disputes by the Court.

#### **XXIV. APPENDICES**

84. The following appendices are attached to and incorporated into this Consent Decree:

“Appendix A” is the notification to Edge’s officers, directors, and employees regarding the manufacture, sale, or transfer in any way any Electronic Tuning Device or the process or techniques they or Edge used to manufacture Defeat Devices, including Electronic Tuning Devices;

“Appendix B” is the text of the Electronic Tuning Device Recall and Repurchase Program letter.

“Appendix C” is the Financial Information Declaration

“Appendix D” is the list of Purchasers identified by Edge

SO ORDERED AND APPROVED in accordance with the foregoing this \_\_\_\_ day of \_\_\_\_\_, 2012

\_\_\_\_\_  
United States District Judge

FOR PLAINTIFF, UNITED STATES OF AMERICA

1/15/10  
DATE

  
IGNACIA S. MORENO  
Assistant Attorney General  
Environment and Natural Resources Division  
U.S. Department of Justice

Signature Page - United States v. Edge Products, L.L.C.

January 16, 2013  
DATE



DONNA D. DUER  
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Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
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Washington, D.C. 20044  
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DAVID B. BARLOW  
UNITED STATES ATTORNEY  
DISTRICT OF UTAH

JOHN K. MANGUM  
Assistant United States Attorney  
District of Utah  
185 South State Street, Suite 300  
Salt Lake City, UT 84111  
Telephone: 801-325-3216

**Signature Page - United States v. Edge Products, L.L.C.**

FOR UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

12/19/12  
DATE



JARED BLUMENFELD  
Regional Administrator  
U.S. Environmental Protection Agency  
Region IX  
75 Hawthorne Street  
San Francisco, CA 94105

1/9/13  
DATE



CYNTHIA J. GILES  
Assistant Administrator  
Office of Enforcement and Compliance Assurance  
U.S. Environmental Protection Agency  
Washington, DC

OF COUNSEL:  
David H. Kim  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region IX  
75 Hawthorne Street (ORC-3)  
San Francisco, CA 94105  
(415) 972-3882

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FOR DEFENDANT EDGE PRODUCTS, L.L.C.

12-10-12

DATE



DAVID MARTINEZ  
President  
Edge Products, L.L.C.  
1080 S. Depot Drive  
Ogden, UT 84404

12-10-12

DATE



Agent for Service of Process  
Edge Products, L.L.C.

**United States v. Edge Products, L.L.C.**

**APPENDIX A**

TO: ALL OFFICERS, DIRECTORS, AND  
EMPLOYEES OF EDGE PRODUCTS, L.L.C.

Edge Products, L.L.C. (Edge) has been involved in litigation with the federal government regarding the manufacture and sale of the Edge Racing brand electronic tuning devices identified as follows:

<b><u>Part No.</u></b>	<b><u>Description</u></b>
<b>15500</b>	<b>Edge Racing Evolution</b>
<b>25500</b>	<b>Edge Racing Evolution</b>
<b>30908</b>	<b>Edge Racing Juice with Attitude</b>
<b>31205</b>	<b>Edge Racing Juice/Attitude CS</b>
<b>31206</b>	<b>Edge Racing Juice/Attitude CS</b>
<b>31305</b>	<b>Edge Racing Juice/Attitude CTS</b>
<b>31306</b>	<b>Edge Racing Juice/Attitude CTS</b>
<b>85600</b>	<b>Edge Racing Evolution CS</b>
<b>85700</b>	<b>Edge Racing Evolution CTS</b>

The United States Environmental Protection Agency ("EPA") has alleged that the sale of the devices violates the Clean Air Act provision at 42 U.S.C. § 7522(a)(3)(B), which prohibits the manufacture, sale, or installation of any motor vehicle part or component intended for use with a motor vehicle or motor vehicle engine where a principal effect of the part or component is to bypass, defeat or render inoperative emission control devices or elements of design, such as the diesel particulate filter, exhaust gas re-circulation system, or onboard diagnostic systems.

Edge no longer manufactures, sells, or transfers the electronic tuning devices identified above and has resolved the lawsuit filed against Edge by the United States through a Consent Decree lodged with the United States District Court, which you must review before signing below.

Any individual who undertakes any of the actions prohibited by Section 7522(a)(3)(B) of the Clean Air Act, or who offers for sale, sells, conveys, or otherwise transfers in any way the

design, technology, or manufacturing processes or techniques used to manufacture the products identified above to any other individual or entity may be subject to a civil action under the Clean Air Act.

I acknowledge receipt of this notification provided to me pursuant to the Consent Decree between the United States and Edge.

\_\_\_\_\_  
[signature]

\_\_\_\_\_  
[print name]

\_\_\_\_\_  
[title]

\_\_\_\_\_  
[date]

United States v. Edge Products, L.L.C.

APPENDIX B

**ATTENTION! CURRENT OWNERS OF HEAVY DUTY DIESEL TRUCK  
ELECTRONIC TUNING DEVICES**

**If you have an “Edge Racing” electronic tuning device, you may be entitled to return the device for a full refund of the Manufacturer’s Suggested Retail Price. Please read the following notice for further information, including the identification of the models eligible for return and reimbursement.**

Dear Customer:

Edge Products, L.L.C. (“Edge”) is recalling and repurchasing all electronic tuning devices sold under the Edge Racing brand name. **Until [date (18 months from date of notice)], you may return any of the devices identified in Table 1 below for a full refund of the corresponding Manufacturer’s Suggested Retail Price. In order to receive a refund, you must return the vehicle from which the device was removed to its original factory settings, including reinstallation of the diesel particulate filter in the event it was removed.**

Edge has been involved in litigation with the federal government regarding the manufacture and sale of our Edge Racing brand of products. The United States Environmental Protection Agency (“EPA”) has alleged that these products are illegal “defeat devices” that violate the Clean Air Act’s prohibition against the installation of equipment on a motor vehicle that defeats or renders inoperative its emission controls. Under the terms of a Consent Decree lodged with the United States District Court for the District of Utah to settle the claims brought by EPA, Edge has agreed to cease the manufacture and sale of the devices. Edge has also agreed to recall and repurchase the devices that were previously sold.

This recall and repurchase program extends to anyone who currently owns an Edge Racing brand electronic tuning device including, but not limited to, anyone who purchased a device directly from Edge, anyone who purchased a device from one of our distributors, and any of our distributors that have unsold inventory. Within thirty (30) days of receipt of any devices you return to us, we will send you a refund check for the corresponding Manufacturer’s Suggested Retail price shown in Table 1 below, plus the cost of shipping as shown on the packaging used by you to return the device(s) to us. **In order to receive a refund, you must return the vehicle from which the device was removed to its original factory settings, including reinstallation of the diesel particulate filter in accordance with the written instructions that accompany this letter.**

There is no limit on the number of devices that you may return.

<b>Table 1</b>			
<b>Edge Racing Brand Products Subject to Recall and Repurchase Program</b>			
<b>Part Number</b>	<b>Description</b>	<b>Manufacturer's Suggested Retail Price</b>	<b>Wholesale Price (for wholesale customers)</b>
15500	Edge Racing Evolution	679.20	454.64
25500	Edge Racing Evolution	679.20	454.64
30908	Edge Racing Juice with Attitude	999.00	668.71
31205	Edge Racing Juice/Attitude CS	1029.00	688.79
31206	Edge Racing Juice/Attitude CS	1029.00	688.79
31305	Edge Racing Juice/Attitude CTS	1179.00	789.19
31306	Edge Racing Juice/Attitude CTS	1179.00	789.19
85600	Edge Racing Evolution CS	699.00	467.89
85700	Edge Racing Evolution CTS	849.00	568.30

If you wish to accept this offer by sending us any of the identified electronic tuning devices, please send the device(s) to the following address with the enclosed form:

Edge Racing Product Recall  
[address]

If you have any questions about this offer, you may call us at \_\_\_\_\_.  
If you send us an Electronic Tuning Device and do not receive a refund check within forty-five (45) days of the date you shipped the Device to us, you may contact the United States Environmental Protection Agency at [insert phone and email addresses].

Sincerely,

Edge Products, LLC  
**[DATE OF ISSUANCE OF THE NOTICE]**

**Edge Racing Product Recall and Repurchase Program  
Customer Contact Information Form**

Please provide your contact information below so that we may mail you your refund check. Please print clearly.

Name:

---

Return Address:

---

---

---

Telephone Number

---

---

IGNACIA MORENO  
 Assistant Attorney General  
 Environment and Natural Resources Division  
 U.S. Department of Justice  
 DONNA D. DUER  
 Trial Attorney  
 Environmental Enforcement Section  
 Environment and Natural Resources Division  
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DAVID B. BARLOW, United States Attorney (#13117)  
 JOHN K. MANGUM, Assistant United States Attorney (#2072)  
 District of Utah  
 185 South State Street, Suite 300  
 Salt Lake City, UT 84111  
 Telephone: 801-325-3216

ATTORNEYS FOR THE UNITED STATES OF AMERICA

---

IN THE UNITED STATES DISTRICT COURT  
 FOR THE DISTRICT OF UTAH – NORTHERN DIVISION

_____	)	
UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	Civil Action No.
	)	
v.	)	
	)	Consent Decree
EDGE PRODUCTS, L.L.C.	)	
	)	
Defendant	)	
_____	)	

**DECLARATION**

I, David Martinez, on behalf of Edge Products, L.L.C. ("Edge"), hereby certify to the best of my knowledge after reasonable inquiry that the following documents contain information that shows the complete and accurate financial condition of Edge Products, L.L.C. for the period

*April 1, 2006* through *July 31, 2012*

1. "Financial Statement of Corporate Debtor" and all attachments thereto, signed by Reed Neubert and dated August 27, 2012;
2. Email from Russ Deane, counsel for Edge, dated March 5, 2012, 8:25 pm, to Donna Duer, Department of Justice, and attached "Response Memo" dated February 5, 2012;
3. Email from Russ Deane, counsel for Edge, dated June 4, 2012, 2:44 pm, to Donna Duer, Department of Justice, and attached "Response to Further DOJ Inquiries" dated May 10, 2012;
4. Email from Russ Deane, counsel for Edge, dated July 1, 2012, 12:08 pm, to Donna Duer, Department of Justice, and attached "Edge Financial Answers to Justice;"
5. Email from Russ Deane, counsel for Edge, dated July 1, 2012, 9:11 pm, to Donna Duer, Department of Justice, and attached "DOJ Attachments" and "Revised Edits of Edge Financial Answers to Justice w/edits;"
6. Email from Russ Deane, counsel for Edge, dated July 7, 2012, 4:58 pm, to Donna Duer, Department of Justice, and attached "Edge Calculation of Goodwill;"
7. Email from David Martinez, President of Edge, dated July 19, 2012, 5:41 pm, to Donna Duer, Department of Justice, and attached "Edge Financial Summary" and "Balance Sheets Cash Flows and Income Statements 2006-2011;"

8. Email from David Martinez, President of Edge, dated July 23, 2012, 12:41 am, to Donna Duer, Department of Justice, and attached "Third Amended and Restated Credit Agreement;"

9. Email from David Martinez, President of Edge, dated August 1, 2012, 3:27 pm, to Donna Duer, Department of Justice, and attached "MSDP Maximum Cash Calculations FY09-FY11;" and

9. Email from Russ Deane, counsel for Edge, dated August 10, 2012, 9:46 am, to Donna Duer, Department of Justice, and attached "DOJ Excess Cash Flow Follow-up Questions 8/8/12" and "MSDP Maximum Cash Flow Calculation F09" and "Third Amended and Restated Credit Agreement, dated August 26, 2009, page 96."

10. Email from Dave Martinez, President of Edge, dated September 4, 2012, 6:15 pm, to Donna Duer, Department of Justice, and attached "DOJ Attachments \_ Response 82112.zip; DOJ Excess Cash Flow questions 8212012.doc."

11. Email from Dave Martinez, President of Edge, dated September 4, 2012, 11:28 pm, to Donna Duer, Department of Justice, and attached "MSDP Maximum Cash Calculations & Interest FY09 - YTD 72113.xlsx."

12. Email from Dennis Gerrard, Managing Director, Aurora Management Partners, dated September 10, 2012, 2:50 pm, to Donna Duer, Department of Justice, and attached "Excerpt Third Amended and Restated Credit agreement (2).pdf."

I further certify that the financial condition of Edge Products, L.L.C. has not changed materially since *July 31, 2012*.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 12-14-12

  
David Martinez  
President, Edge Products, L.L.C.

## United States v. Edge Products, L.L.C.

### APPENDIX D

Cust#	CustomerName	AddressLine 1	City	Sta	ZipCo
1ST001	1st Performance Warehouse	207 N. Scott Street	Joliet	IL	60432
A1D001	A-1 Distributing / DKPI	1015 W. 3160 S.	Salt Lake City	UT	84119
ALAO01	Alamo Auto Supply	5923 Gateway West	El Paso	TX	79925
ALL001	Allied Exhaust Systems	PO Box 2004	Benicia	CA	94510
STY001	ASAP, Inc.	765 Progress Parkway	La Salle	IL	61301
ATE001	Atech Motorsports	P.O Box 909	Akron	OH	44309-0909
AUT004	Autero Aftermarket Products	2013 Wells Branch Parkway #304	Austin	TX	78728
AUT001	Auto Anything	9210 Sky Park Court Suite 100	San Diego	CA	92123
AUT003	Auto Zone	123 S. Front Street	Memphis	TN	38103
ALUT002	Automotive Distributing Co.	189 East Tioga Street	Tunkhannock	PA	18657
BAL001	Balkamp Indiana	1601 Whitaker Road	Plainfield	IN	46168
BAL003	Balkamp Mississippi	1601 Whitaker Road	Plainfield	IN	46168
BUC001	Buckeye Sales	101 Jegs Place	Delaware	OH	43015
COM001	Competition Specialties	2402 West Valley Hwy. N.	Auburn	WA	98001
CLSO01	Custom Truck	254 West Kathleen Avenue	Coeur D Alene	ID	83815
CYCO01	Cyclone Manufacturing, Inc.	4046 CR 1125	Farmersville	TX	75442
DAV001	Dave's Diesel	3720 E. McGalliard Rd.	Muncie	IN	47303
DAV002	Dave's Diesel, Inc - Angola	1201 Wohlert St	Angola	IN	46703
DIE004	Diesel Injection Service	4710 Allmond Avenue	Louisville	KY	40209
DIE003	Diesel Performance Parts, Inc.	411 Allied Drive	Nashville	TN	37211
DSIO02	DSI of Texas	6025 Corridor Parkway	Schertz	TX	78154
EAR001	Earl Owens	334 N Hall	Dallas	TX	75226
EAS001	East Texas Truck Equipment	P.O. Box 5308	Longview	TX	75608
FRA001	Frank Supply Company	3647 Willowbend Suite, Suite 820	Houston	TX	77054
FRA002	Frank Supply Company - Schul	P.O. Box 55	Schulenburg	TX	78956
FUL001	Full Line Exhaust	150 Tinker Ct.	Dothan	AL	36304
GAT001	Gator Products	160 Boulder Industrial Drive	Bridgeton	MO	63044
GIL001	Gillett Diesel Service, Inc.	14812 So. Heritage Crest Way	Riverton	UT	84065
GOS001	GOS Performance LLC	306 South 12th Street	Livingston	MT	59047
KEY001	Keystone Automotive Warehouse	44 Tunkhannock Ave.	Pittston	PA	18643
MEY001	Meyer Distribution	560 E. 25th St.	Jasper	IN	47546
MID001	Midstates Inc.	1774 W. Wesley Ave.	Englewood	CO	80110
MOT001	Motor State Warehouse	8300 Lane Drive	Watervliet	MI	49098
NAT002	National Performance Warehouse	11150 NW 32 Avenue	Miami	FL	33167
NIC001	Nickels-PineyFlats	293 Industrial Park Rd.	Piney Flats	TN	37686
NOR002	North Central Truck Acc.	575 15th Ave. NE	Saint Joseph	MN	56374
P&E001	P&E Distributing	709 Rivergate Parkway	Goodlettsville	TN	37072
PDX001	PDQ Performance	251 Central Park Dr.	Sanford	FL	32771
PER004	Performance Warehouse	9440 N. Whitaker Road	Portland	OR	97217
PRE001	Premier Performance, Inc.	278 E. Dividend Dr.	Rexburg	ID	83440
QUA001	Quality S Distributing	PO Box 23910	Phoenix	AZ	85063
RAC001	Racers Equipment Warehouse	111 Commerce Drive	Warwick	RI	02886
RAC002	Racing Products Warehouse	2511 Fulton Avenue	Sacramento	CA	95821
SCH001	Scheid Diesel Service	4960 N. 13th Street	Terre Haute	IN	47805
SOU002	South Central Diesel	115 South East Avenue	Holdrege	NE	68949
SPE004	Speed & Custom Warehouse	15781 NW 7th Ave.	Miami	FL	33169
SPE001	Speed Unlimited, Inc.	4771 Allentown Road	Suitland	MD	20746
SPE003	Speed Warehouse Distribution	411 West A. St.	Hayward	CA	94541
TIM001	Time Auto Distributing	106 W. 36th Street	Boise	ID	83714
TIR001	Tire Discounters	7525 Wooster Pike	Cincinnati	OH	45240
TIT001	Titan Truck	605 N. Fancher Rd.	Spokane	WA	99212
TOX001	Toxic Diesel, LLC	1030 E. Commerce Drive #400	Saint George	UT	84790
TRA001	Transamerican/4Wheel Parts	300 W. Artesia Blvd.	Compton	CA	90220
TRI001	Tri-State Enterprises Inc.	1216 South Jackson	Fort Smith	AR	72901
TRO001	Troyer Performance	980 Valley Ridge Road	Covington	VA	24426
TRU002	Truck It Inc.	8273 South Federal Hwy	Port Saint Lucie	FL	34952
TRU001	Trucks Unique	8300 Pan American Freeway NE	Albuquerque	NM	87113
VEF001	Vehicle Specialties, Inc.	7940 New Jersey Avenue	Hammond	IN	46323
WLD001	Wild Diesel, LLC	1847 W. 2100 S.	Ogden	UT	84401
WYN001	Wynne Exhaust Distributors	P.O. Box 816	Wynne	AR	72396
XTR001	Xtreme Diesel Performance	1758 State Route 34	Farmingdale	NJ	07727