

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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UNITED STATES OF AMERICA, )  
 )  
Plaintiff, )  
 )  
v. ) Civ. No. 99-1888 (HHK) (DAR)  
 )  
TOYOTA MOTOR CORPORATION, *et al.*, )  
 )  
Defendants. )  
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**CONSENT DECREE**

WHEREAS, plaintiff, the 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 herein against defendants Toyota Motor Corporation, Toyota Motor Sales U.S.A., Inc. and Toyota Technical Center, U.S.A., Inc. (“Toyota”) alleging violations of the Clean Air Act, as amended (“Act”), 42 U.S.C. §§ 7521, *et seq.*, in connection with the evaporative emissions control monitoring function of the on-board diagnostic (“OBD”) system in certain vehicles introduced into commerce by Toyota (“Affected Vehicles”), and seeking injunctive relief and civil penalties under the Act;

WHEREAS, the complaint, as amended (“Complaint”), alleges, *inter alia*, that Toyota, in certain certification applications submitted to EPA, did not disclose certain conditions that enable OBD monitoring of the evaporative emissions control system to occur and that

the on-board computers installed in Toyota's model year 1997 Paseo and Tercel models contain software which prevents the "Readiness/Function Code" from being stored in the on-board computer's memory upon completion of a full diagnostic check of the evaporative emission control system;

WHEREAS, the Complaint does not allege that such non-compliance materially affects the level of emissions from the Affected Vehicles;

WHEREAS, Toyota has denied and continues to deny the alleged non-compliance with applicable law;

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

NOW THEREFORE, without adjudication of any issue of fact or law, and without any admission by Toyota of liability for the violations alleged in the Complaint, and upon consent and agreement of the parties to this Consent Decree, it is hereby ORDERED AND DECREED as follows:

#### I. JURISDICTION AND VENUE

1. This Court has jurisdiction of the subject matter of this action and the Parties hereto pursuant to 28 U.S.C. §§ 1331, 1345, 1355, and Title II of the Clean Air Act, 42 U.S.C. §§ 7521-7590. Venue in this District is proper.

## II. DEFINITIONS

2. Whenever the terms listed below are used in this Consent Decree, including any attachment, the following definitions shall apply:

a. “Accelerated Compliance Letter” means the letter dated February 4, 2003 from Takeshi Matsuda of Toyota to David Alexander of EPA and incorporated herein as Attachment A filed under seal pursuant to Toyota’s claim that the letter contains confidential business information.

b. “Act” means the Clean Air Act, as amended, 42 U.S.C. §§ 7401, *et seq.*

c. “Affected Vehicles” means the vehicles included in the vehicle families identified in Attachment B.

d. “ARB” means the State of California Air Resources Board.

e. “California Settlement” means the agreement entered into between Toyota and ARB and dated February 6, 2002.

f. “Complaint” means the Amended Complaint filed on or about November 19, 1999.

g. “Consent Decree” or “Decree” means this Consent Decree, including the attachments identified herein, and any modifications hereto.

h. “Day” means a calendar day. In computing any period of time under this 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 working day.

i. “Dealer” means an individual or entity having a written agreement with Toyota authorizing the individual or entity to make retail sales of, and to provide warranty service to, vehicles distributed by Toyota.

j. “Effective Date” means the date that this Decree is entered by the Court.

k. “Evaporative Emissions Control System” means any part or component between the fuel cap and the intake manifold (but not including the intake manifold) designed to contain or conduct fuel vapor, including the fuel tank, fuel tank filler neck, fuel cap, tank vapor vent line, evaporative storage canister, three-way valve, evaporative system pressure sensor and purge valve.

l. “EPA” means the United States Environmental Protection Agency.

m. “Owner” means an owner or lessee of an Affected Vehicle.

n. “Paragraph” means a portion of this Decree identified by an arabic numeral.

o. “Parties” means the United States and Toyota, each of which is a “Party.”

p. “Section” means a portion of this Decree identified by a roman numeral.

q. “Toyota” means Toyota Motor Corporation, and its subsidiary corporations, including, but not limited to, Toyota Motor Sales U.S.A., Inc. and Toyota Technical Center U.S.A., Inc.

r. “United States” means the United States of America, acting on behalf of EPA.

### III. APPLICABILITY

3. This Decree applies to and is binding upon the United States and upon Toyota and its agents, successors and assigns. Any change in Toyota’s ownership or corporate status shall in no way alter Toyota’s responsibilities under this Decree. Except as provided in Subparagraph 25.d, in any action to enforce this Decree, Toyota shall not raise as a defense the failure of its officers, directors, agents, servants, contractors, or employees to take actions necessary to comply with the provisions hereof.

### IV. EXTENDED WARRANTY

4. Toyota shall extend the U.S. Vehicle emissions warranty (“Extended Warranty”) on the components and assemblies comprising the Evaporative Emission Control System on the Affected Vehicles in accordance with the following terms:

a. The Warranty shall be extended to a period of 14 years from the start date of the normal warranty applicable to the vehicle or 150,000 miles of use of the vehicle, whichever comes first. In order to benefit from the Extended Warranty, the Owner must present a covered vehicle to a Dealer for possible inspection or repair of the Evaporative Emission Control System before expiration of the Extended Warranty. Toyota shall insure that warranty coverage is not denied if the Owner can demonstrate that he would have presented his vehicle to a Dealer prior to expiration of the Extended Warranty if he had received notification of the Extended Warranty as of the Effective Date.

b. The Owners shall be able to obtain the necessary inspection and repair or replacement services, free of charge, from any Dealer. Toyota shall provide for the reimbursement of the Dealer's costs of inspection and repair or replacement as necessary. Toyota is not required to reimburse parties other than Dealers, including Owners, for the cost of inspecting or repairing the Evaporative Emissions Control System. Toyota is not required to pay incentives, or to reimburse any Dealer for expenses incurred as incentives, to encourage Owners to seek inspection or repair of the Affected Vehicles' Evaporative Emissions Control Systems.

c. The Extended Warranty shall include repair of any Affected Vehicle whose Evaporative Emissions Control System is malfunctioning. The Extended Warranty shall not cover: (i) items described in the "What Is Not Covered" section of the covered vehicle's warranty booklet; (ii) any vehicle that has experienced intentional tampering which has caused a malfunction in the Evaporative Emissions Control System; (iii) any vehicle that has been equipped with a non-Toyota-manufactured part that is proved to have caused a malfunction in the Evaporative Emissions Control System; (iv) any non-Toyota-manufactured part; or (v) any item or part that is malfunctioning due to a failure by the Owner or a previous owner to comply with the written instructions for proper maintenance and use provided to the original vehicle owner. The Extended Warranty shall not require the replacement of components or systems discarded or lost by the Owner, such as fuel caps.

d. Toyota shall maintain (i) records of vehicles for which warranty claims have been made by Dealers to Toyota for repair of Affected Vehicles under the

Extended Warranty, (ii) a toll-free number that Owners may call to report to Toyota any failure by a Dealer to make repairs under the Extended Warranty, and (iii) records of actions taken by Toyota, if any, in response to any such calls received by Toyota on vehicles covered by the Extended Warranty.

e. Notwithstanding any other provision of this Paragraph, where Toyota provides for an extended warranty of an Affected Vehicle registered in the State of California as required under Paragraph II(A) of the California Settlement, the requirements of this Paragraph shall be deemed to be satisfied with respect to such vehicle.

f. The Extended Warranty shall not apply to Affected Vehicles sold or distributed to the original owner by manufacturers other than Toyota.

5. Owner Notification Letter. Toyota shall notify all Owners of the Extended Warranty by sending an owner notification letter, to the Owner of each Affected Vehicle, provided that Toyota is not required to send the notification to any Owner who received a notification under Paragraph II(A) of the California Settlement. The owner notification letter shall be in a form agreed to by the Parties, and shall inform the Owner, *inter alia*, of the terms of the Extended Warranty, and of the availability of the toll-free number required by Subparagraph 4.d. The name and address of the Owner shall be identified by use of records kept by R.L. Polk Company or Toyota shall use other customary practices in the industry to locate vehicle Owners. The owner notification letter shall be sent through the United States mail, first class, within twelve months after the Effective Date.

6. Dealer Notification. Toyota shall notify each Dealer in the United States, other than Dealers located in the State of California, of the requirements of Paragraph 4.

The dealer notification shall be in a form agreed to by the Parties and shall be sent at least 30 days before the first mailing of the owner notification letter as described in Paragraph 5.

7. Maintenance of Records. Toyota shall maintain records in a form suitable for inspection, such as computer information storage devices or card files, regarding the implementation of the Extended Warranty, including the records specified in Subparagraph 4.d, and a listing of the Owners to whom notification was given under Paragraph 5 and the date(s) of such Owner notifications. Each record shall include the name and address of the Owner and the date of the action, as appropriate. The records shall be made available to the United States within 30 days of receipt by Toyota of a request by the United States to inspect such records. The records shall be retained for a period of at least three years following the termination of this Decree.

8. Reports. Toyota shall submit to the United States, on an annual basis and continuing for each year through the termination date of this Decree, a written report regarding Toyota's implementation of the Extended Warranty. The first report shall include confirmation of sending of the dealer notification and owner notification letter. Each report shall include the following information: (a) a sample of any correspondence to Owners or Dealers regarding the evaporative emissions control systems; (b) the number of the vehicles repaired under the Extended Warranty (reported by model); and (c) a description of other efforts, if any, by Toyota during the year to implement the Extended Warranty. Each such report shall be submitted by Toyota to the United States by June 30<sup>th</sup> of each year. Each report shall contain data for the annual reporting period and cumulative data for reporting periods since the Effective Date.

## V. ACCELERATED COMPLIANCE PLAN

9. Toyota shall accelerate the timetable on which it will certify to EPA and introduce vehicle models of light duty vehicles, light duty trucks and heavy light duty trucks in the United States that comply with the EPA near-zero evaporative emissions standards specified in 40 C.F.R. § 86.1811-04(e) (“Accelerated Compliance Plan”). The specific models and model year timetable for the Accelerated Compliance Plan are specified in the Accelerated Compliance Letter (“Letter”). The Parties may hereafter agree in writing to modifications to the Letter, provided that any modification will not result in a reduction in the projected number of vehicles that will be subject to this Paragraph.

10. With respect to the vehicles subject to the Accelerated Compliance Plan, including any modification thereto, (a) EPA may exercise any authority under its regulations or the Act, including certification, warranty, selective enforcement auditing under Section 206(b) of the Act, 42 U.S.C. § 7525(b), administrative recall under Section 207(c) of the Act, 42 U.S.C. § 7541(c), and taking enforcement actions under Sections 204 and 205 of the Act, 42 U.S.C. §§ 7523 and 7524, relating to the failure of the vehicles to comply with the applicable emissions standards and procedures adopted under Sections 202(a)(1) and 206 of the Act, 42 U.S.C. §§ 7521(a)(1) and 7525, including the EPA near-zero emission standard specified in Paragraph 9, as if the standard were applicable to the vehicles under EPA’s regulations; and (b) Toyota may assert any defenses to such exercise of authority provided by law. Any exercise by EPA of its authority under the preceding sentence shall not be subject to Dispute Resolution pursuant to Section X.

11. Within 120 days after completion of the Accelerated Compliance Plan, Toyota shall send the United States a report certifying the number and models of vehicles affected by the Accelerated Compliance Plan.

#### VI. SUPPLEMENTAL ENVIRONMENTAL PROJECT

12. Toyota shall implement a supplemental environmental project (“SEP”) in accordance with the criteria, terms and procedures specified in this Section and in Attachment C. The SEP shall be designed to reduce diesel emissions from in-service fleet vehicles, including enhancement of the availability of ultra low-sulfur diesel fuel (“ULSD”) for such fleets. Toyota may carry out its responsibilities on the SEP directly or through contractors selected by Toyota. Toyota may consult EPA on selection of a contractor or contractors, but the decision to select any contractor will be Toyota’s right and responsibility, and is not subject to EPA approval.

13. Toyota shall spend a total of \$20 million to implement the SEP provided in Paragraph 12. If Toyota does not receive acceptable proposals for the SEP sufficient to achieve that total amount, Toyota shall consult with the United States on an alternative SEP or SEPs for the remaining amount.

14. Toyota shall take steps reasonably calculated to inform interested parties of Toyota’s intentions to develop and perform the SEP, and shall submit any proposals that Toyota Motor Corporation or its SEP contractor receives to EPA.

15. Within 180 days after the Effective Date, Toyota shall submit for approval by the United States a plan for conducting the SEP (“Proposed Plan”).

a. The Proposed Plan shall include the following information: (i) a description of the SEP, including its locations; (ii) a description of how the SEP satisfies the criteria set forth in Attachment C; (iii) the estimated cost of the SEP; (iv) a list of milestones in the performance of the SEP; (v) a schedule for performing the SEP, including a schedule for each milestone; and (vi) a description of the benefits that will result from the SEP, including an estimate of any emissions reductions and/or public health benefits likely to be achieved.

b. The Proposed Plan also shall include a certification that: (i) as of the date of the Proposed Plan, Toyota is not required to perform or develop the SEP by any federal, state, or local law or regulation, nor is Toyota required to perform or develop the SEP by agreement, grant, or as injunctive relief awarded in any other action in any forum; (ii) the SEP is not a project that Toyota was planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this Decree; (iii) Toyota has not received, and is not negotiating to receive, credit for the SEP in any other enforcement action; and (iv) Toyota will not receive any reimbursement for any portion of the SEP from any other person.

16. The United States may approve or disapprove the Proposed Plan submitted pursuant to the previous Paragraph. The United States may disapprove the Proposed Plan if it determines that the SEP does not achieve the criteria set forth in Attachment C, or does not satisfy EPA's *Supplemental Environmental Projects Policy* (May 1, 1998). If the United States disapproves the Proposed Plan, the United States shall provide Toyota with the reason(s) for such disapproval. Toyota shall have 60 days to submit a revised Proposed

Plan. Informal dispute resolution under Section X is not available with respect to the United States' disapproval of the Proposed Plan.

17. Toyota shall commence the SEP in accordance with the schedule set forth in the approved Proposed Plan. Toyota shall complete the SEP no later than five years after the date of approval by the United States under the preceding Paragraph.

18. SEP Reports. Toyota shall submit to the United States, on an annual basis and continuing until completion of the SEP, written reports regarding Toyota's performance of the SEP. Each annual report shall include a summary of Toyota's activities in performing the SEP, and a description of any problems encountered, including durability, maintenance and repair problems, and the resolution of such problems. The annual reports shall be due by June 30<sup>th</sup> of each year. Within 90 days after completion of the SEP, Toyota shall submit a final SEP Report that includes the above information; a certification that the SEP has been implemented in accordance with the Proposed Plan, including any modifications thereto under Paragraph 20; a summary of Toyota's costs; documentation of Toyota's costs; an explanation and estimate of the benefits (including any emission reductions and/or public health benefits) resulting from the SEP.

19. Costs incurred for internal Toyota personnel, or by entities in which Toyota has a financial interest, in the development and oversight of the SEP may not be credited against the \$20 million spending requirement. Parts and equipment provided by entities in which Toyota has a financial interest may be credited against the \$20 million spending requirement, provided that such parts and equipment are valued at their actual cost. Toyota

shall insure that all contractor administrative costs, including development and oversight costs, related to the SEP are reasonable and necessary for the completion of the SEP.

20. Modification of Proposed Plan.

a. The Proposed Plan submitted by Toyota may include procedures for modifications or adjustments to the expenditure levels regarding the SEP, upon approval by the United States, in order to achieve the spending criteria specified in Paragraph 13. The Parties recognize that projected expenditures in the Proposed Plan for the SEP may require adjustment as the SEP is implemented, and the Parties contemplate that reasonable modification of the Proposed Plan will be required and agreed to.

b. If Toyota has reason to believe that its eligible expenditures upon completion of the SEP in accordance with the approved Proposed Plan will total less than \$20 million, then Toyota shall propose a modification to the Proposed Plan such that Toyota's eligible expenses will total at least \$20 million. If Toyota has reason to believe that its eligible expenditures upon completion of the SEP in accordance with approved Proposed Plan will total more than \$20 million, it may propose a modification to the Proposed Plan such that Toyota's eligible expenses will total \$20 million.

c. Modifications under this Paragraph may be proposed according to the procedures, if any, agreed to in the Proposed Plan as provided in Subparagraph 20.a, or if no such procedures have been agreed upon, may be submitted to the Court for resolution under Section X.

21. Toyota shall arrange for EPA to have access, at reasonable times and with reasonable advance notice, to any facilities where a SEP is being implemented.

22. Any public statement, oral or recorded, in print, film, or other media, made by Toyota making reference to any of the projects included in the SEP shall include the following language, “This project was undertaken in connection with the settlement of an enforcement action, United States v. Toyota Motor Corporation, brought on behalf of the U.S. Environmental Protection Agency under the Clean Air Act.”

#### VII. PAYMENT

23. Within 30 days after the Effective Date, Toyota shall pay to the United States \$500,000 plus interest, without admission by Toyota of any liability, to resolve the United States' claims alleged in the Complaint for civil penalties under the Clean Air Act. Interest shall accrue from the date of filing of this Decree to the date of payment, at the rate set forth in 28 U.S.C. § 1961. Payment shall be made to the Treasury of the United States, and shall be made by electronic funds transfer, in accordance with written instructions to be provided by the United States after filing of this Decree.

#### VIII. STIPULATED PENALTIES

24. Toyota shall be liable for Stipulated Penalties to the United States for violations of this Decree as specified in this Section, unless excused under Section IX (Force Majeure).

a. For failure to mail each owner notification letter as required by Paragraph 5 or each dealer notification as required by Paragraph 6 by the date specified in this Decree, \$5 per day per notification for the first 30 days of delay, and \$10 per day per notification for any delay beyond 30 days.

b. For failure to maintain records regarding the Extended Warranty or to make such records available to the United States, as required by Paragraph 7, \$50 per day of non-compliance for the first 30 days of non-compliance, and \$100 per day for any non-compliance beyond 30 days.

c. For failure to submit, or failure to resolve an inadequacy in, a report pursuant to Paragraphs 8, 11 or 18 within the time specified by this Decree, \$200 per day for the first 30 days of delay, and \$500 per day for any delay beyond 30 days. Should EPA determine, and notify Toyota in writing that, a report submitted by Toyota is inadequate, stipulated penalties shall run only upon Toyota's failure to resolve such inadequacy within 45 days of receipt of such notice.

d. For failure to comply with the terms and conditions of the Extended Warranty, in accordance with Subparagraphs 4.a through 4.c with respect to any Affected Vehicle, \$200 or 1.5 times Toyota's cost associated with performing the subject work, whichever is greater, up to a maximum of \$5,000 per Affected Vehicle.

e. In the event the number of vehicles sold by Toyota that are manufactured to comply with the EPA near-zero evaporative emissions standards specified in 40 C.F.R. § 86.1811-04(e) in accordance with Paragraph 9, falls short of the number projected in the Accelerated Compliance Letter, including any modification thereto, Toyota shall pay a penalty of \$10 multiplied by the number of vehicles comprising the shortfall.

25. SEP Compliance.

a. If Toyota does not complete the SEP in accordance with the approved Proposed Plan, including any modification thereto, and including the schedule set forth in the approved Proposed Plan, as modified, Toyota shall pay Stipulated Penalties, as follows: For each day of delay, \$500 per SEP for the 1<sup>st</sup> through the 30<sup>th</sup> day, and \$1,000 per SEP for the 31<sup>st</sup> day and beyond, until Toyota cures all deficiencies or until Toyota completes the SEP.

b. If Toyota halts or abandons completion of the SEP, then Toyota shall pay a Stipulated Penalty of \$500,000 plus additional Stipulated Penalties at the rate of one dollar (\$1.00) for every one dollar (\$1.00) that Toyota's total eligible costs are less than \$20 million.

c. If Toyota completes the SEP in accordance with the approved Proposed Plan, including any modification thereto, and Toyota's eligible expenditures in performing that SEP total less than the amount specified for that SEP under the approved Proposed Plan and any modifications thereof, Toyota shall pay Stipulated Penalties at the rate of one dollar (\$1.00) for every one dollar (\$1.00) that Toyota's total eligible costs are less than \$20 million.

d. If Toyota does not complete a SEP as provided in the approved Proposed Plan, including any modification thereto, but made good faith and timely efforts to complete the SEP, and the eligible expenditures in performing the SEP total at least the amount specified for that SEP in the approved Proposed Plan, including any modifications thereto, then Toyota shall not be liable for Stipulated Penalties in connection with that SEP, provided that, within 60 days of the deadline for completing the SEP, Toyota certifies, and

provides supporting documentation regarding, its good faith and timely efforts to complete the SEP and the amount of its eligible expenditures in performing the SEP.

26. Toyota shall pay stipulated penalties upon written demand by the United States within 45 days after Toyota receives such demand. If Toyota halts or abandons completion of the SEP, the penalties related to such action shall be assessed as of the date set for completing the SEP or the date of abandonment, whichever is earlier, and shall be immediately payable. If the Dispute Resolution provisions of Section X are invoked and Toyota is determined to be liable for stipulated penalties at the conclusion of that process, Toyota shall pay stipulated penalties within 45 days after completion of the Dispute Resolution process.

27. Stipulated penalties shall be paid by wire transfer in accordance with instructions provided by the Office of the United States Attorney for the District of Columbia.

28. Stipulated penalties shall continue to accrue during any Dispute Resolution process. Should Toyota dispute its obligation to pay part or all of a stipulated penalty, it may, instead of paying the amount demanded by the United States, place the disputed amount demanded by the United States in a commercial escrow account pending resolution of the matter and request that the matter be resolved pursuant to the Dispute Resolution provisions of Section X. In the event that the dispute is resolved in favor of Toyota, the escrowed amount plus accrued interest shall be returned to Toyota. In the event that the dispute is resolved in favor of the United States, the escrowed amount plus accrued interest shall be paid to the United States.

29. Notwithstanding any other provision of this Decree, the United States may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Decree.

#### IX. FORCE MAJEURE

30. A “force majeure event” is any event beyond the control of Toyota, its contractors, or any entity controlled by Toyota that delays the performance of any obligation under this Decree despite all reasonable efforts by Toyota to fulfill the obligation. “Reasonable efforts” includes anticipating any potential force majeure event and addressing 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 Toyota’s financial inability to perform any obligation under this Decree.

31. Toyota shall provide notice orally or by electronic or facsimile transmission as soon as possible, but not later than five days after the time Toyota first knew of, or by the exercise of due diligence should have known of, a claimed force majeure event. Toyota shall also provide written notice, as provided in Paragraph 45, within 30 days of the time Toyota first knew of, or by the exercise of due diligence should have known of, the event. The United States may, in its unreviewable discretion, modify in writing the foregoing notice requirements. The written notice shall state the anticipated duration of any delay; its cause(s); Toyota’s past and proposed actions to prevent or minimize any delay; a schedule for carrying out those actions; and Toyota’s rationale for attributing any delay to a force

majeure event. Failure to give such notice shall preclude Toyota from asserting any claim of force majeure.

32. The United States shall notify Toyota in writing of its agreement or disagreement with Toyota's force majeure claim within 60 days of receipt of the written notice. Toyota may extend the period for this notice at the United States' request. If the United States agrees that a force majeure event has occurred, the United States may agree to extend the time for Toyota to perform the affected requirements for the time necessary to complete those obligations. An extension of time to perform the obligations affected by a force majeure event shall not, by itself, extend the time to perform any other obligation. Where the United States agrees to an extension of time, the appropriate modification shall be made pursuant to Paragraph 47.

33. If the United States does not agree that a force majeure event has occurred, or does not agree to the extension of time for performance sought by Toyota, the United States' position shall be binding, unless Toyota invokes Dispute Resolution under Section X. In any such dispute, Toyota bears the burden of proving, by a preponderance of the evidence, that each claimed force majeure event is a force majeure event; that Toyota gave the notice required by Paragraph 31; that the force majeure event caused any delay Toyota claims was attributable to that event; and that Toyota exercised all reasonable efforts to prevent or minimize any delay caused by the event.

#### X. DISPUTE RESOLUTION

34. Except as expressly provided for in this Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising

under or with respect to this Decree. However, such procedures shall not apply to actions by the United States to enforce obligations of Toyota that have not been disputed in accordance with this Section.

35. Any dispute subject to dispute resolution that arises under or with respect to this Decree shall first be the subject of informal negotiations between the Parties. The dispute shall be considered to have arisen when Toyota sends the United States a written Notice of Dispute in accordance with Paragraph 45. The Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed 30 days from the date of the Notice of Dispute unless that period is modified by written agreement. If the Parties cannot resolve the dispute by informal negotiations, then the position advanced by the United States shall be considered binding unless Toyota initiates formal dispute resolution pursuant to the following Paragraph.

36. Formal Dispute Resolution.

a. Toyota may invoke formal dispute resolution by serving on the United States a written Statement of Position regarding the matter in dispute. The Statement of Position must be filed within 45 days after the conclusion of the informal negotiation period. The Statement of Position shall include, but may not be limited to, any factual data, analysis or opinion supporting Toyota's position and any supporting documentation relied upon by Toyota.

b. The United States shall serve its Statement of Position on Toyota within 45 days of receipt Toyota's Statement of Position. The United States' Statement of Position shall include, but may not be limited to, any factual data, analysis, or opinion

supporting that position and all supporting documentation relied upon by the United States. The United States' Statement of Position shall be binding on Toyota, unless Toyota files a motion for judicial review in accordance with the next Subparagraph.

c. Toyota may initiate Court review of the dispute by filing with the Court and serving on the United States a motion for judicial review of the dispute. The motion for review must be filed within 45 days of the date of receipt of the United States' Statement of Position pursuant to the preceding Subparagraph. Toyota's motion for review shall set forth the matter in dispute, the efforts made by the Parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly and timely implementation of the Decree.

d. The United States may file a response to Toyota's motion for review within 30 days of receipt of Toyota's motion for review, unless the Parties stipulate otherwise. Toyota may file a reply memorandum, to the extent permitted by the local rules of the Court or by stipulation of the Parties, as applicable.

37. In any dispute under this Section, Toyota shall bear the burden of demonstrating that its position complies with this Decree and the Clean Air Act, and that Toyota is entitled to relief under applicable law.

38. The invocation of dispute resolution procedures under this Section shall not extend, postpone, or affect in any way any obligation of Toyota under this Decree, not directly in dispute, unless the United States or the Court (upon timely application pursuant to this Paragraph) agrees otherwise. 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 Paragraphs 26 and 28. If Toyota does not prevail on the disputed issue, Stipulated Penalties shall be assessed and paid as provided in Section VIII (Stipulated Penalties).

#### XI. EFFECT OF DECREE

39. This Decree resolves the claims of the United States for administrative and judicial civil liability for the violations alleged in the Complaint through the date of filing of this Decree.

40. This Decree shall not be construed to prevent or limit the rights of the United States to obtain penalties or injunctive relief under the Act, or under other federal or state laws, regulations, or permit conditions, except as expressly specified herein.

41. Toyota is responsible for achieving and maintaining complete compliance with all applicable federal, State and local laws, regulations, and permits; and Toyota's compliance with this Decree shall be no defense to any action commenced pursuant to said laws, regulations, or permits.

42. This Decree does not limit or affect the rights of Toyota or of the United States against any third parties, not party to this Decree, nor does it limit the rights of third parties, not party to this Decree, against Toyota, except as otherwise provided by law.

43. Except as provided in Section IV, this Decree shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Decree.

44. The United States reserves any and all legal and equitable remedies available to enforce the provisions of this Decree, except as expressly stated herein.

## XII. GENERAL PROVISIONS

45. Notices, reports, and other written communications related to this Decree shall be provided to each party as follows:

As to the United States:

Section Chief  
U.S. Department of Justice  
Environmental Enforcement Section  
P.O. Box 7611  
Washington, D.C. 20044-7611

As to EPA:

Director, Air Enforcement Division  
U.S. Environmental Protection Agency  
1200 Pennsylvania Ave. NW, Mail Code 2242A  
Washington, D.C. 20460-0001

As to Toyota:

General Manager  
Quality Division  
Toyota Motor Corporation  
1, Toyota, Toyota City, Aichi Prefecture  
471-8571, Japan

with a copy to:

Hamilton Loeb  
Paul, Hastings, Janofsky & Walker LLP  
1299 Pennsylvania Ave. NW, 10th Floor  
Washington, D.C. 20004

Any party may change the address for providing notices and reports by serving a written change of address notification to all addressees identified above. Modification of this Decree is not required in order to effectuate a change of address.

46. Each report required by this Decree shall be accompanied by a transmittal letter referencing the appropriate paragraph of this Decree. Toyota shall, through a duly authorized representative having knowledge of the report's contents, sign and certify under 28 U.S.C. § 1746, in the following form that: "I certify under penalty of perjury under the

laws of the United States that the information contained in or accompanying this submission is true and correct.” Toyota shall not object to the admissibility in evidence of any such reports in any proceeding to enforce this Decree. All information and documents submitted by Toyota to the United States pursuant to this Decree shall be subject to public inspection, unless the information or documents are accompanied by a business confidentiality claim in accordance with 40 C.F.R. § 2.203(b).

47. Unless otherwise provided herein, this Decree may be materially modified only by order of this Court upon written agreement between the United States and Toyota. Unless otherwise provided herein, non-material modifications may be made by written agreement between the United States and Toyota with a notice to the Court.

48. Each Party agrees to bear its own fees, costs, and expenses incurred in connection with this matter, including, but not limited to, attorney or consultant fees, compliance costs, and oversight costs.

49. This Decree and its Attachments constitute the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Decree and supersede all prior agreements and understandings, whether oral or written. Other than the Attachments, which are attached to and incorporated in 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.

50. This Court retains jurisdiction of this case after entry of this Decree to enforce compliance with the terms and conditions of this Decree and to take any action

necessary or appropriate for its interpretation, construction, implementation, or modification until termination of the Decree. Any party may apply to the Court for any relief necessary to effectuate this Decree.

51. Each signatory to this Decree represents that he or she has authority to enter into this Decree on behalf of the United States or Toyota, as the case may be.

52. This Decree will terminate upon further order of this Court after: (i) the United States and Toyota jointly request termination; or (ii) Toyota certifies to the United States that all requirements of the Decree have been completed. If the United States does not dispute Toyota's certification within 60 days of its submission, Toyota may petition for termination. If the United States disputes Toyota's certification, the Parties shall submit the dispute to Dispute Resolution under the procedures specified in Section X.

53. The Parties agree and acknowledge that final approval of the United States and entry of this Decree are subject to the requirements of 28 C.F.R. § 50.7, which requires that notice of this proposed Decree be published in the Federal Register and the public be given an opportunity to comment thereon and have comments considered by the United States before a proposed Decree is entered. The United States reserves the right to withdraw or withhold its consent on the basis of such comments. Toyota consents to the entry of this Decree without further notice.

SO ORDERED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2002.

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

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. Toyota Motor Corporation, et al.*, Civ No. 99-1888 (D.D.C.)

**FOR THE UNITED STATES OF AMERICA:**

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Date

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THOMAS L. SANSONETTI  
Assistant Attorney General  
U.S. Department of Justice  
Environment and Natural Resources Division

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Date

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MARK A. GALLAGHER, D.C. Bar #400620  
U.S. Department of Justice  
Environmental Enforcement Section  
P.O. Box 7611  
Washington, D.C. 20044-7611

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Date

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ROSCOE C. HOWARD, JR., D.C. Bar #246470  
United States Attorney  
For the District of Columbia

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Date

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MARK E. NAGLE, D.C. Bar #416364  
Assistant United States Attorney

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Date

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LYDIA KAY GRIGGSBY, D.C. Bar #465744  
Assistant United States Attorney  
United States Attorney's Office  
Judiciary Center Building  
555 Fourth Street, N.W., Suite 10808  
Washington, D.C. 20001

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. Toyota Motor Corporation, et al.*, Civ No. 99-1888 (D.D.C.)

**FOR THE U.S. ENVIRONMENTAL  
PROTECTION AGENCY:**

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Date

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JOHN PETER SUAREZ  
Assistant Administrator  
Office of Enforcement and Compliance

Assurance

U.S. Environmental Protection Agency  
1200 Pennsylvania Ave. NW  
Washington, D.C. 20460

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Date

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DAVID E. ALEXANDER, DC Bar #362288  
Attorney-Advisor  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. Toyota Motor Corporation, et al.*, Civ No. 99-1888 (D.D.C.)

**FOR TOYOTA MOTOR CORPORATION, TOYOTA  
MOTOR SALES U.S.A., INC., AND TOYOTA  
TECHNICAL CENTER U.S.A., INC.:**

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Date

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AKIO MATSUBARA  
Managing Director  
Toyota Motor Corporation  
1, Toyota, Toyota City, Aichi Prefecture  
471-8571, Japan

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Date

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HAMILTON LOEB, DC Bar #323618  
Paul, Hastings, Janofsky & Walker, L.L.P.  
1299 Pennsylvania Avenue, N.W., 10th Floor  
Washington, D.C. 20004-2400.

Attachment A

(This attachment is business confidential and filed under seal)

**ATTACHMENT B**  
**LIST OF AFFECTED VEHICLES**

MY	Engine Family	Cert to	Evap Family	Cert #	Model Name	R/C Date
1996	TTY2.2VJGKFK	Fed	TTY1095AYME0	V02	Camry, Camry Wagon	
	TTY2.01JG2GK	Cal	TTY1095AYME1	T15	RAV4 2WD/4WD	
	TTY2.01JGKFK	Fed	TTY1095AYME1	T14	RAV4 2WD/4WD	
	TTY2.2VJG2GK	Cal	TTY1095AYME0	V04	Camry, Camry Wagon	
	TTY2.71HGKEK	USA	TTY1095AYME0	T02	Tacoma 4WD, 4Runner 2WD	
	TTY2.72HGKEK	USA	TTY1095AYME0	T16	4Runner 4WD	
	TTY3.0VJG1GK	Cal	TTY1095AYME0	V13	ES300, Avalon	
	TTY3.0VJGFFK	Fed	TTY1095AYME0	V11	ES300, Avalon	
	TTY3.41JGFEK	USA	TTY1095AYME0	T05	Tacoma 4WD	
	TTY3.42JG1GK	Cal	TTY1095AYME0	T10	Tacoma 4WD, 4Runner 2/4WD	
	TTY3.42JGFFK	Fed	TTY1095AYME0	T08	Tacoma 4WD, 4Runner 2/4WD	
TTY4.0VJGKHK	USA	TTY1115AYME0	V05	LS400		
1997	VTY1.5VJGKEK	USA	VTY1065AYME1	V13	Tercel, Paseo, Paseo C/V	
	VTY2.01JG2GK	Cal	VTY1095AYME1	T15	RAV4 2WD/4WD	
	VTY2.01JGKFK	Fed	VTY1095AYME1	T14	RAV4 2WD/4WD	
	VTY2.2VJG3GK	Cal	VTY1095AYME1	V11	Camry	
	VTY2.2VJGKFK	Fed	VTY1095AYME1	V09	Camry	
	VTY2.71JG2GK	Cal	VTY1095AYME0	T03	Tacoma 4WD	
	VTY2.71JGKEK	USA	VTY1095AYME0	T02	Tacoma 4WD, 4Runner 2WD	
	VTY2.72JGKEK	USA	VTY1095AYME0	T04	4Runner 4WD	
	VTY3.0VJGKFK	USA	VTY1095AYME1	V05	Camry, ES300, Avalon	
	VTY3.41JGKEK	USA	VTY1115AYME0	T06	T100 2WD	
	VTY3.41JGKEK	USA	VTY1095AYME0	T05	Tacoma 2/4WD	
	VTY3.42JG2GK	Cal	VTY1095AYME0	T09	4Runner 2/4WD, Tacoma 4WD	
	VTY3.42JG2GK	Cal	VTY1115AYME0	T10	T100 2/4WD	
	VTY3.42JGKFK	Fed	VTY1095AYME0	T07	4Runner 2/4WD, Tacoma 4WD	
	VTY3.42JGKFK	Fed	VTY1115AYME0	T08	T100 2/4WD	
VTY4.0VJGKEK	USA	VTY1115AYME0	V15	SC400		
VTY4.0VJGKHK	USA	VTY1115AYME0	V16	LS400		
1998	WTYXV01.5BBA	USA	WTYXE0065AE1	V10	Tercel, Paseo, Paseo C/V	03/05/98
	WTYXT02.0GXJ	Cal	WTYXE0095AE1	T12	RAV4 2/4WD, RAV4 2/4WD C/V	02/27/98
	WTYXT02.0XBH	Fed	WTYXE0095AE1	T11	RAV4 2/4WD, RAV4 2/4WD C/V	02/27/98
	WTYXT02.7BBP	USA	WTYXE0095AE0	T04	4Runner 4WD	03/02/98
	WTYXT02.7DXH	Cal	WTYXE0095AE0	T05	Tacoma 4WD	03/06/98
	WTYXT03.0BBP	USA	WTYXE0115AE1	T10	Sienna 2WD	02/26/98
	WTYXV01.8DXB	Cal	WTYXR0115AK1	V06	Corolla	02/12/98
	WTYXV01.8XBA	Fed	WTYXR0115AK1	V05	Corolla	02/12/98
	WTYXV02.2GXB	Cal	WTYXR0135AK1	V02	Camry	02/25/98
	WTYXV02.2XBA	Fed	WTYXR0135AK1	V01	Camry	02/25/98
	WTYXV03.0BBA	USA	WTYXE0095AE1	V03	Camry, ES300, Avalon	02/26/98
	WTYXV03.0BBC	USA	WTYXE0135AE1	V13	GS300	02/23/98
	WTYXV03.0BBC	USA	WTYXE0115AE1	V11	SC300	03/10/98
	WTYXV03.0BBC	USA	WTYXE0115PE1	V12	Supra	02/23/98
	WTYXV03.0GXB	Cal	WTYXE0095AE1	V04	Camry, ES300, Avalon	02/26/98
	WTYXV04.0DBB	USA	WTYXE0115AE1	V07	LS400, SC400	03/05/98
	WTYXV04.0DBB	USA	WTYXE0135AE1	V08	GS400	02/20/98
	WTYXY02.4BBH	USA	WTYXE0095AE0	T01	Tacoma 2WD	03/06/98
	WTYXY02.7BBH	USA	WTYXE0095AE0	T02	4Runner 2WD, Tacoma 4WD	03/02/98
	WTYXY02.7BBH	USA	WTYXE0115AE0	T03	T100 2WD	02/27/98
	WTYXY03.4BBH	USA	WTYXE0095AE0	T06	Tacoma 2WD	03/06/98
	WTYXY03.4BBH	USA	WTYXE0115AE0	T07	T100 2WD	03/25/98
	WTYXY03.4DBP	USA	WTYXE0095AE0	T08	4Runner 2/4WD, Tacoma 4WD	02/28/98
	WTYXY03.4DBP	USA	WTYXE0115AE0	T09	T100 2/4WD	03/25/98
	WNTXV01.8XBA	Fed	WNTXR0115AK1	V01	Prizm	02/12/98
	WNTXV01.8DXB	Cal	WNTXR0115AK1	V02	Prizm	02/12/98

\*Affected Vehicles do not include MY 1998 vehicles manufactured after the date in right hand column.

## ATTACHMENT C

### SUPPLEMENTAL ENVIRONMENTAL PROJECT

Diesel Engine SEP Criteria. The Diesel Engine SEP shall satisfy each of the following criteria:

. It shall involve the retrofit of high-emitting, in-service heavy duty diesel vehicles with emissions control equipment or the replacement of their engines in order to reduce emissions of particulates and ozone precursors.

. It shall benefit sensitive populations, including children, that are otherwise exposed to particulate emissions and ozone precursors from such vehicles. This criterion may be met, for example, with a project involving the retrofit or replacement of diesel engines in school buses and/or municipal fleets.

. Primarily it shall involve fleets of vehicles that are operated in non-attainment areas.

. It shall involve fleets located in geographically diverse areas.

. It shall cover the hardware and installation costs, and may provide also for incremental maintenance costs and/or costs of repairs on such hardware for a period of up to four years after installation.

. It shall cover fleets for which the affected municipality, school district or similar local governmental entity has committed: (i) to maintain any equipment installed in connection with the SEP during and after completion of the SEP; (ii) to use ultra low-sulfur diesel fuel with the affected vehicles during and after completion of the SEP; and (iii) to the extent feasible, to take steps to achieve additional emissions reduction benefits in connection with the project, such as by implementing an idle control program.

. It shall involve vehicles that are operated an average of at least four days per week. For vehicles operated on a seasonal basis, the four-day-per-week minimum threshold under the previous sentence shall apply during the season(s) in which the vehicles are operated.

. It shall involve vehicles that are located in areas in which ultra low-sulfur diesel fuel (“ULSD”) is already available, is scheduled to become available, or will become available as a result of Toyota’s implementation of the ULSD-related actions described below.

. An affected municipality, school district or similar local government entity whose fleet will be retrofitted using SEP funds may also propose the use of additional SEP funds for (a) the procurement of tanks or other infrastructure required to enable that fleet to obtain and use ULSD and (b) offset of higher fuel costs incurred by that entity that result from the requirement to use ULSD by the retrofitted fleet. Use of SEP

funds for these ULSD-related purposes may be permissible up to June 1, 2006. Priority shall be given to proposals for which additional funding for ULSD-related costs is provided by other sources.