

SETTLEMENT AGREEMENT AND RELEASE

This SETTLEMENT AGREEMENT AND RELEASE (hereinafter "Agreement") is entered into between the STATE OF CALIFORNIA AIR RESOURCES BOARD (hereinafter "ARB") 1001 I Street, Sacramento, California 95814, and Navistar, Inc. f/k/a International Truck & Engine Corporation (hereinafter "International"), 2701 Navistar Lane, Lisle, Illinois 60532

I. RECITALS

- (1) The Verification Procedure for, Warranty and In-Use Compliance Requirements for In-Use Strategies to Control Emissions from Diesel Engines ("Verification Procedure," California Code of Regulations (CCR), title 13, sections 2700-2711) provides at section 2702 that if the Executive Officer of the ARB grants verification of a diesel emission control strategy (DECS), he or she will issue an Executive Order (EO) to the strategy's applicant identifying the verified emission reduction level and any conditions that must be met for the DECS to function properly. The Verification Procedure itself also places conditions on applicants and diesel emissions control strategies.
- (2) The Verification Procedure at section 2709 details in-use compliance requirements that apply to all DECS for on-road, off-road, and stationary applications. In-use compliance testing must be conducted per an approved in-use compliance testing proposal at two different phases for each DECS family. Results of these tests must be submitted to the Executive Officer after each phase of testing in the form of an In-Use Compliance Report. The Phase 1 In-Use Compliance Report must be submitted within 18 months of selling or leasing the 50th unit in the California market, and the Phase 2 report must be submitted within three years after that.
- (3) The EOs DE-05-005 and DE-05-005-01 issued by ARB to International for the DPXTM Catalyzed Soot Filter System explicitly state that International is responsible for honoring warranty (CCR, title 13, section 2707) and conducting in-use compliance testing (CCR, title 13, section 2709).
- (4) Terms and Release of the prior Settlement Agreement requires International to comply with the Verification Procedure.
- (5) The ARB Enforcement Division staff, with the cooperation of International, has alleged certain violations of the Verification Procedure and the applicable EOs with respect to International's DECS in California that do not conform to the conditions specified in the Verification Procedure and the applicable EOs. In particular, these alleged violations involve non-compliance with the in-use compliance requirements of the Verification Procedure for the DPXTM Catalyzed Soot Filter System.
- (6) Health and Safety Code (HSC), sections 39674 (a) and (b) authorize civil penalties for the violation of the programs for the regulation of toxic air contaminants not to

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exceed one thousand dollars (\$1,000) or not to exceed ten thousand dollars (\$10,000) respectively, for each day in which the violation occurs.

- (7) In order to resolve the violations described herein, International has taken, or agreed to take, the actions enumerated below under "TERMS AND CONDITIONS." International, however, neither admits nor denies the allegations contained in this Agreement. Further, the ARB accepts this Agreement in termination and settlement of this matter.
- (8) In consideration of the foregoing, and of the promises and facts set forth herein, the parties desire to settle and resolve all claims, disputes, and obligations relating to the above-listed violations, and voluntarily agree to resolve this matter by means of this Agreement. Specifically, the ARB and International agree as follows:

II. TERMS AND CONDITIONS

In consideration of the ARB not filing a legal action against International for the violations referred to above, the ARB and International agree as follows:

- (1) Within 30 days of execution of this Agreement, the sum of two hundred fifty thousand dollars (\$250,000.00) shall be paid on behalf of International as follows:

\$187,500.00 to the **California Air Pollution Control Fund.**

\$62,500.00 to the **San Joaquin Valley Air Pollution Control District**, with the following notation in the memo line of the check: "**For the School Bus and Diesel Emission Reduction SEP**"

Please submit payment with the attached "Settlement Agreement Payment Transmittal Form" (Attachment A) to:

Air Resources Board
Accounting Office
P.O. Box 1436
Sacramento, California 95812-1436.

- (2) If the Attorney General files a civil action to enforce this settlement agreement, International shall pay all costs of investigating and prosecuting the action, including expert fees, reasonable attorney's fees, and costs.
- (3) International shall not violate any provision of the California Vehicle Code section 27156.

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- (4) International shall not violate Aftermarket parts exemption procedures established in CCR, title 13, sections 1900 et seq., 2030-2031, 2047-2048, 2200-2207 and 2220-2225.
- (5) International shall not violate the Verification Procedure (CCR, title 13, sections 2700-2711) or any EOs issued by ARB.
- (6) International shall not violate the system labeling requirements set forth in CCR, title 13, section 2706 (j).
- (7) International shall comply with the DECS warranty requirements set forth in the CCR, title 13, section 2707.
- (8) Within 12 months of the execution of this Agreement, International must comply with the in-use compliance requirements of the Verification Procedure (CCR, title 13, section 2709) as set out in the October 30, 2014 "Binding Agreement and Release" incorporating the "Navistar DPX Voluntary Interim Compliance Process Test Plan", including any amendments by the parties ("Test Plan").
- (9) Other than the Test Plan, this Agreement constitutes the entire agreement and understanding between ARB and International concerning the subject matter hereof, and supersedes and replaces all prior negotiations and agreements between ARB and International concerning the subject matter hereof.
- (10) No agreement to modify, amend, extend, supersede, terminate, or discharge this Agreement, or any portion thereof, is valid or enforceable unless it is in writing and signed by all parties to this Agreement.
- (11) Severability. Each provision of this Agreement is severable, and in the event that any provision of this Agreement is held to be invalid or unenforceable, the remainder of this Agreement remains in full force and effect.
- (12) This Agreement shall be interpreted and enforced in accordance with the laws of the State of California, without regard to California's choice-of-law rules.
- (13) This Agreement is deemed to have been drafted equally by the Parties; it will not be interpreted for or against either party on the ground that said party drafted it.
- (14) SB 1402 Statement

Senate Bill 1402 (Dutton, Chapter 413, statutes of 2010) requires the ARB to provide information on the basis for the penalties it seeks (*see HSC section 39619.7*). This information, which is provided throughout this settlement agreement, is summarized here.

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The manner in which the penalty amount was determined, including a per unit or per vehicle penalty.

Penalties must be set at levels sufficient to discourage violations. The penalties in this matter were determined in consideration of all relevant circumstances, including the eight factors specified in §43024.

The per unit penalty in this case is a maximum of \$1,000 per day for strict liability violations and \$10,000 per day for negligent or intentional violations. The penalty of \$250,000 is for an undetermined number of violations extending over an unspecified number of days. This penalty was calculated by considering all factors specified in HSC sections 42403 and 43024.

The provision of law the penalty is being assessed under and why that provision is most appropriate for that violation.

The penalty provision being applied in this case is HSC section 39674 because International failed to comply with the Air Toxic Control Measure for In-Use Strategies to Control Emissions from Diesel Engines, title 13, CCR, sections 2700-2711, which was adopted under authority of HSC section 39600, et seq.

Is the penalty being assessed under a provision of law that prohibits the emission of pollution at a specified level, and, if so a quantification of excess emissions, if it is practicable to do so.

The provisions cited above do prohibit emissions above a specified level. However, since the hours of operation of the non-compliant units involved and their individual emission rates are not known, it is not practicable to quantify the excess emissions.

- (15) International acknowledges that ARB has complied with SB 1402 in prosecuting or settling this case. Specifically, ARB has considered all relevant facts, including those listed at HSC section 43024, has explained the manner in which the penalty amount was calculated (including a per unit or per vehicle penalty, if appropriate), has identified the provision of law under which the penalty is being assessed and has considered and determined that this penalty is being assessed under a provision of law that prohibits the emission of pollutants at a specified level. However, since the hours of operation of the non-compliant units involved and their individual emission rates are not known, it is not practical for ARB to quantify the excess emissions.
- (16) Penalties were determined based on the unique circumstances of this matter, considered together with the need to remove any economic benefit from noncompliance, the goal of deterring future violations and obtaining swift compliance, the consideration of past penalties in similar cases negotiation, and

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the potential costs and risk associated with litigating these particular violations. The penalty reflects violations extending over a number of days considered together with the complete circumstances of this case. Penalties in future cases might be smaller or larger on a per unit basis.

- (17) The penalty in this case was based in part on confidential financial and business information provided by International that is not retained by ARB in the ordinary course of business. The penalty in this case was also based on confidential settlement communications between ARB and International that ARB does not retain in the ordinary course of business either. The penalty also reflects ARB's assessment of the relative strength of its case against International, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that International may have secured from its actions.
- (18) Now therefore, in consideration of the payment on behalf of International to the California Air Pollution Control Fund and the San Joaquin Valley Air Pollution Control District, the ARB hereby releases International and their principals, officers, directors, employees, agents, assignees, predecessor and successor corporations, and subsidiary and parent corporations, from any and all claims for past violations of the Verification Procedure and the applicable EOs alleged in recital paragraph 5. The undersigned represent that they have the authority to enter into this Agreement.

California Air Resources Board

Navistar, Inc. f/k/a International Truck & Engine Corporation

Signature: 

Signature: 

Print Name: Richard W. Corey

Print Name: Christopher P. Pezani

Title: Executive Officer

Title: Vic. Enrol Energy Affairs/Sr. Counsel

Date: 5/26/2015

Date: 4/29/15