

SETTLEMENT AGREEMENT

This Settlement Agreement is entered into between the California Air Resources Board (CARB), with its principal location at 1001 I Street, Sacramento, California 95814; and Detroit Diesel Corporation, with its principal location at 13400 Outer Drive W, Detroit, Michigan 48239 (collectively, the "Parties," or individually, "Party").

LEGAL BACKGROUND

- (1) **Purpose.** The California Health and Safety Code mandates implementation of emission standards for new motor vehicle and motor vehicle engines to control emissions; allows CARB to certify these vehicles; and prohibits any person from selling, introducing into commerce, importing, delivering, purchasing, renting, leasing, acquiring, or receiving a new motor vehicle or new motor vehicle engine for use, registration, or resale unless it is certified and meets warranty requirements. (Health & Saf. Code §§ 43100, 43101, 43102, 43104, 43105.)
- (2) **Statute and Regulation.** The Health and Safety Code requires manufacturers of motor vehicles and motor vehicle engines to provide a warranty to the purchaser and each subsequent purchasers of these vehicles. (Health & Saf. Code § 43204, 43205, 43205.5.) CARB adopted the "*Procedures for Reporting Failures of Emission-Related Components*" Regulation (Warranty Reporting Requirements) (Cal. Code Regs., tit. 13, §§ 2141, et seq.) to monitor unscreened and screened vehicle and engine warranty claims of specific emission-related components in order to ensure that vehicle and engine emission control components are working as required, and to evaluate the need for recalls.
- (3) **Requirements.** Manufacturers of motor vehicles or motor vehicle engines must warrant to the ultimate purchaser and each subsequent purchaser that each motor vehicle or motor vehicle engine is designed, built, and equipped to conform with the applicable emission standards; and is free from defects in materials and workmanship that would cause the vehicle or engine to fail to conform with applicable requirements for three years or 50,000 miles, whichever occurs first. (Health & Saf. Code §§ 43204, 43205, 43205.5, 43206.) This means that new California-certified vehicles and engines must come with a warranty that covers specified emission control system components (Cal. Code Regs., tit. 13, §§ 2037-2038, 2046) and both vehicle and engine manufacturers must file emission warranty information reports (EWIR), field information reports (FIR), and emissions information reports (EIR) for a given class or category of vehicles or engines during its warranty period, not to exceed the useful-life period of the vehicles or engines. (Cal. Code Regs., tit. 13, §§ 2141, 2144-2146.)

- (4) Penalty Provisions. Failure to comply with the Warranty Reporting Requirements is a violation of State law that may result in penalties up to thirty-seven thousand, five hundred dollars (\$37,500) for each violation. (Health & Saf. Code, § 43016.)

CASE BACKGROUND

- (5) Corporate Entity. At all relevant times, Detroit Diesel Corporation was organized under the laws of Delaware as a corporation and conducted business in the State of California.
- (6) Allegations. This Settlement Agreement resolves Notice of Violation (NOV) EPES-2021-C00267, which was issued on November 3, 2021. CARB alleges that Detroit Diesel Corporation violated the Warranty Reporting Requirements by submitting three late emission warranty information reports, two of which were subsequently dropped from CARB's list of allegations, resulting in one violation, as outlined in Notice of Violation EPES-2021-C00267.
- (7) Acknowledgment. Detroit Diesel Corporation admits to paragraphs 1 through 6, but denies any liability resulting from said allegations.
- (8) Consideration. In consideration of the foregoing, and of the promises and facts set forth herein, the Parties desire to settle and resolve all assertions, claims, disputes, and obligations relating to the above-listed alleged violations and CARB's investigation, including the two dropped claims, and voluntarily agree to resolve this matter by means of this Settlement Agreement. In order to resolve the violations described herein, Detroit Diesel Corporation has taken, or agrees to take, the actions enumerated below in the Terms and Conditions section. Further, CARB accepts this Settlement Agreement in termination and full settlement of the allegations herein.

TERMS AND CONDITIONS

In consideration of CARB not filing a legal action against Detroit Diesel Corporation for the alleged violations referred to above in the Legal Background and Case Background sections, and of Detroit Diesel Corporation's agreement to complete all terms and conditions set forth below, CARB and Detroit Diesel Corporation agree as follows:

- (9) Settlement Amount. Detroit Diesel Corporation shall pay a civil penalty of five thousand, six-hundred and twenty-five dollars (\$5,625.00 USD). Detroit Diesel Corporation shall make all payments within 30 calendar days from the date CARB notifies Detroit Diesel Corporation of the full execution of the Settlement Agreement.

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- (10) Civil Penalty Payment Method. Detroit Diesel Corporation shall pay the civil penalty by check, credit card, wire transfer, or portal, payable to CARB, using instructions provided separately by CARB in a Payment Transmittal Form. Detroit Diesel Corporation is responsible for all payment processing fees. Payments shall be accompanied by the Payment Transmittal Form to ensure proper application. CARB shall deposit the civil penalty amount into the Air Pollution Control Fund for the purpose of carrying out CARB's duties and functions to ensure the integrity of its air pollution control programs. Should payment instructions change, CARB will provide notice to Detroit Diesel Corporation in accordance with Paragraph 12 (Notices).
- (11) Documents. Detroit Diesel Corporation shall promptly sign and date this Settlement Agreement, and email or mail the signed and dated Settlement Agreement, with a copy of the proof of payment of the penalty and a copy of the Payment Transmittal Form, to the address or email in Paragraph 12 (Notices).
- (12) Notices. Unless otherwise specified in this Settlement Agreement, whenever notifications, submissions, or communications are required by this Settlement Agreement, they shall be submitted in writing to the following address or email of the applicable Party:

As to CARB:

California Air Resources Board
Enforcement Division / Settlement Agreements
Vehicle, Parts & Consumer Products Enforcement Branch / Engine and
Parts Enforcement Section
P.O. Box 2815
Sacramento, California 95812-2815
Settlement_Agreement@arb.ca.gov

As to Detroit Diesel Corporation:

Detroit Diesel Corporation
13400 Outer Drive W
Detroit, Michigan 48239
francis.seymour_jr@daimler.com

Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address provided above, without the need to modify this Settlement Agreement. Notices submitted pursuant to this section shall be deemed submitted upon emailing or mailing.

- (13) Recovery of Costs. If the Attorney General files a civil action to enforce this Settlement Agreement, the Companies shall pay all costs of investigating and prosecuting the action, including expert fees, reasonable attorneys' fees, and costs.
- (14) Repeat Violations. Detroit Diesel Corporation agrees to comply with all regulatory requirements, and acknowledges that repeat violations could result in increased penalties in the future.
- (15) Entirety. This Settlement Agreement constitutes the entire agreement and understanding between the Parties concerning the Case Background, and supersedes and replaces any and all prior negotiations and agreements of any kind, whether written or oral, between the Parties concerning the Case Background hereof. This Settlement Agreement consists of 7 pages and 33 paragraphs.
- (16) Binding Effect. This Settlement Agreement binds Detroit Diesel Corporation, and any principals, officers, receivers, trustees, successors and assignees, and subsidiary and parent corporations, and CARB and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Settlement Agreement.
- (17) Effective Date. The effective date shall be the date upon which this Settlement Agreement is fully executed.
- (18) Modification and Termination. No agreement to modify, amend, extend, supersede, terminate, or discharge this Settlement Agreement, or any portion thereof, is valid or enforceable unless it is in writing and signed by all Parties to this Settlement Agreement.
- (19) Severability. Each provision of this Settlement Agreement is severable, and in the event that any provision of this Settlement Agreement is held to be illegal, invalid or unenforceable in any jurisdiction, the remainder of this Settlement Agreement remains in full force and effect.
- (20) Choice of Law. This Settlement 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.
- (21) Non-Discharge. It is further agreed that the penalties described in this Settlement Agreement are non-dischargeable under United States Code, title 11, section 523(a)(7), which provides an exception from discharge for any debt to the extent such debt is for a fine, penalty, or forfeiture payable to and for the benefit of a governmental unit.

- (22) Not Tax Deductible. For purposes of this Settlement Agreement, Detroit Diesel Corporation shall not deduct any monies spent to comply with any provision of this Settlement Agreement in calculating and submitting its federal, State, or local income tax.
- (23) Rules of Construction. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be applied in interpreting this Settlement Agreement.
- (24) Non-Waiver. The failure to enforce any provision of this Settlement Agreement shall not be construed as a waiver of any such provision, nor prevent such Party thereafter from enforcing such provision or any other provision of this Settlement Agreement. The rights and remedies granted all Parties herein are cumulative, and the election of one right or remedy by a Party shall not constitute a waiver of such Party's right to assert all other legal remedies available under this Settlement Agreement, or otherwise provided by law.
- (25) Intent to be Bound. The Parties represent that: They have participated fully in the review and drafting of this Settlement Agreement; understand and accept all terms; enter into this Settlement Agreement freely and voluntarily; have had an opportunity to consult with legal counsel; are fully informed of the terms and effect of this Settlement Agreement; have agreed to this Settlement Agreement after independent investigation and agree it was not arrived at through fraud, duress, or undue influence; and knowingly and voluntarily intend to be legally bound by this Settlement Agreement.
- (26) Venue. The Superior Court of California, located in the County of Sacramento, shall hear any dispute between the Parties arising from this Settlement Agreement.
- (27) Counterparts and Electronic Signatures. This Settlement Agreement may be executed in counterparts. Electronic, facsimile, or photocopied signatures shall be considered valid signatures.
- (28) Release. In consideration of the full completion of payment of the civil penalty and all other undertakings above, CARB hereby releases Detroit Diesel Corporation and its principals, officers, receivers, trustees, successors and assignees, and subsidiary and parent corporations from any claims CARB may have based on the circumstances described in all paragraphs contained in the Case Background section above.
- (29) Authority. The undersigned represent that he or she has full authority to enter into this Settlement Agreement.

PENALTY BASIS

- (30) Per Unit Penalty. The per-unit penalty in this case is a maximum of thirty-seven thousand, five hundred dollars (\$37,500) for each violation of the Warranty Reporting Requirements. (Cal. Code Regs., tit.13, §§ 2141 et seq.) The penalty of five thousand, six-hundred and twenty-five dollars (\$5,625.00 USD) over an unspecified number of days of violation is for one late warranty report. The per-unit penalty in this case is approximately five thousand, six-hundred and twenty-five dollars (\$5,625.00 USD) per late warranty report.
- (31) Emissions. The provisions cited above do not prohibit emissions above a specified level. Without information on engine usage and emission rates, it is not practicable to quantify the excess emissions. However, since CARB has alleged that the product did not meet the regulatory requirements, all of the emissions from the violation were excess and illegal.
- (32) Aggravating and Mitigating Factors. The penalties in this matter were determined by considering all relevant circumstances, including statutory factors, as described in CARB's Enforcement Policy. CARB considered whether the violator came into compliance quickly and cooperated with the investigation; the extent of harm to public health, safety and welfare; the nature and persistence of the violation, including the magnitude of the excess emissions; compliance history; preventative efforts taken; the innovative nature and magnitude of the effort required to comply, and the accuracy, reproducibility, and repeatability of the available test methods; efforts to attain, or provide for, compliance prior to violation; action taken to mitigate the violation; financial burden to the violator; and voluntary disclosure. The penalties are set at levels sufficient to deter violations, to remove any economic benefit or unfair advantage from noncompliance, to obtain swift compliance, and with consideration of the potential costs, risks, and uncertainty associated with litigation. Penalties in future cases might be smaller or larger, depending on the unique circumstances of the case.
- (33) Confidential Business Information. CARB may have based this penalty, in part, on confidential business information provided by Detroit Diesel Corporation and confidential settlement communications.

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ACKNOWLEDGED AND ACCEPTED BY:

California Air Resources Board

Signature: /S/

Name: Todd P. Sax, D.Env.

Title: Chief, Enforcement Division

Date: January 14, 2022

Detroit Diesel Corporation

Signature: /S/

Name: Sean Waters

Title: V.P. Compliance

Date: January 12, 2022