

SETTLEMENT AGREEMENT

This Settlement Agreement is entered into between the State of California Air Resources Board (CARB), with its principal location at 1001 I Street, Sacramento, California 95814; and Cummins, Inc. (Cummins), with its principal location at 500 Jackson St., Columbus, IN 47201 (collectively, the Parties).

LEGAL BACKGROUND

1. The California Health and Safety Code mandates the reduction of emissions of air pollution from motor vehicles. (Health & Saf. Code §§ 43000; 43000.5, 43011.)
2. A "Diesel Particulate Filter" (DPF) means an emission control technology that reduces diesel particulate matter emissions by directing the exhaust through a filter that physically captures particles but permits gases to flow through. Periodically, the collected particles are either physically removed or oxidized (burned off) in a process called regeneration. (Cal. Code Regs., tit. 13, § 2025.)
3. California statute prohibits anyone from selling a device that "alters the original design or performance" of a DPF system. (Cal. Vehicle Code § 27156(c).)
4. CARB regulation, interpreting California Vehicle Code section 27156, defines a "replacement part" to mean a part that is functionally identical to the original. (Cal. Code Regs., tit. 13, § 1900(b)(20).) CARB regulation defines modified parts to be those that cannot be considered replacement parts, because the part "is not functionally identical to the original equipment part in all respects which in any way affect emissions." (Cal. Code Regs., tit. 13, § 1900(b)(14).)
5. CARB adopted the Add-On Parts and Modified Parts Regulation (Cal. Code Regs., tit. 13, §§ 2220-2225) (hereinafter "Aftermarket Parts Regulation") to ensure that vehicle add-on and modified parts have been evaluated by CARB and do not increase vehicle emissions.
6. Under the Aftermarket Parts Regulation, CARB may exempt certain add-on, modified parts, and new aftermarket diesel particulate filters. (Cal. Code Regs., tit. 13, §§ 2222.)
7. The Aftermarket Parts Regulation and Vehicle Code prohibit any person or company doing business in California from advertising, offering for sale, selling, or installing any device, apparatus, or mechanisms that alters or modifies the original design or performance of a motor vehicle air pollution control device, unless it is exempted from Vehicle Code section 27156. (Cal. Code Regs., tit. 13, § 2220; Vehicle Code § 27156.)
8. The Executive Officer may issue a cease and desist order and enjoin the sale, import, installation, advertising, supply, distribution, or installation in California

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of any aftermarket part that does not comply with the Aftermarket Parts Regulation. (Cal. Code Regs., tit.13, § 2225; Health & Saf. Code 43017.)

9. Failure to comply with any requirement of the Aftermarket Parts Regulation is a violation of state law that may result in penalties up to one thousand five hundred dollars (\$1,500) for each violation of the Vehicle Code and thirty-seven thousand, five hundred dollars (\$37,500) per action. (Health & Saf. Code, §§ 43008.6, 43016; Vehicle Code § 27156.)

CASE BACKGROUND

10. At all relevant times, Cummins was incorporated in and organized under the laws of the State of Indiana.
11. At all relevant times Cummins conducted business in California.
12. In 2017, CARB learned that Cummins was advertising and offering for sale in California non-new DPFs, labeled as "Cummins ReCon DPF" (referred to herein as "ReCon DPFs"). Cummins had not sought an exemption for the advertisement or sale of these ReCon DPFs under the Aftermarket Parts Regulation based on its understanding that the ReCon DPFs were replacement parts. On September 1, 2017, CARB requested that Cummins cease and desist advertising or sale of the ReCon DPFs (Cease & Desist Letter) based on CARB's conclusion that the ReCon DPFs were remanufactured DPFs. Cummins alleges that it did stop all advertisement and sale of the ReCon DPFs, as requested by CARB.
13. Cummins alleges that it has developed a proprietary process by which it collects from customers DPFs that require cleaning, takes the DPFs to a separate facility to undergo a Proprietary Cleaning Procedure described in the confidential Attachment A, and then re-sells the cleaned DPFs as ReCon DPFs. As a result of this Proprietary Cleaning Procedure, Cummins is able to offer for sale ReCon DPFs at a lower price than new DPFs.
14. Cummins has provided to CARB documentation that allegedly, in Cummins' view, demonstrates that a ReCon DPF is functionally identical to a new DPF. CARB takes no position on whether a ReCon DPF is in fact functionally identical to a new DPF. CARB acknowledges that—based solely on Cummins' in-house testing—the Proprietary Cleaning Procedure appears to be an effective cleaning process that results in a better emissions profile for heavy-duty diesel vehicles than would otherwise be the case if the DPF did not undergo the Proprietary Cleaning Procedure.
15. CARB has an interest in promoting innovative technologies that prevent emissions while reducing costs to consumers, but also needs to ensure that such technologies are not misleading or ineffective in practice.

TERMS AND CONDITIONS

As a full and final resolution of the matters described herein, CARB and Cummins agree as follows:

16. Cummins agrees to follow the Proprietary Cleaning Procedures described in the confidential Attachment A ("Proprietary Cleaning Procedure") for all ReCon DPFs advertised or sold in California. Cummins agrees to maintain a record of any substantive modifications to the Proprietary Cleaning Procedures for no less than five years from the date of the modification. Cummins agrees to provide these records to CARB upon request.
17. Cummins agrees to develop a system by which it can readily identify any DPF that has undergone the Proprietary Cleaning Procedure before advertising or selling any ReCon DPFs in California. Cummins agrees to keep a record of each DPF that has undergone its Proprietary Cleaning Procedures along with the date the Proprietary Cleaning Procedure is applied to the DPF. This record will be kept by marking the ReCon DPF as shown on Attachment A. Cummins will keep a record for a given ReCon DPF for no less than five years after the ReCon DPF undergoes the Proprietary Cleaning Procedure. Cummins agrees to provide these records to CARB upon request.
18. Upon the sale of a ReCon DPF, Cummins agrees to process through the Proprietary Cleaning Procedure all DPF cores collected from Cummins' customers as part of Cummins core exchange program for used DPFs. Cummins agrees to permit customers to purchase a ReCon DPF only accompanying an exchange of the old DPF on the spot or through a core charge to be refunded upon return of the old DPF. Cummins agrees to keep a record of each sale of a ReCon DPF for no less than five years from the date of sale. Cummins agrees to provide these records to CARB upon request.
19. CARB agrees that its September 1, 2017 Cease & Desist Letter is no longer in force as of the Effective Date of this Settlement Agreement.
20. **Confidentiality Provision.** CARB agrees to protect and keep confidential the Proprietary Cleaning Procedures described in the confidential Attachment A and related documentation according to CARB's regulations (Cal. Code Regs., tit. 17, §§ 91000 to 91022) and the California Public Records Act (Gov. Code § 6250 et seq.). CARB takes no position, however, on whether information so marked is in fact confidential. In the event CARB determines, upon advice of legal counsel, that it is required by law, including the Public Records Act, to disclose or make available the contents of the Confidential Information to other governmental agencies or to the public, CARB agrees not to do so without first notifying Cummins promptly in writing of its intent and the reason for the

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requested disclosure. CARB further agrees that such notice shall be given at least 10 business days prior to the planned disclosure in order that Cummins may take further action, at its own expense, to protect its Confidential Information, if Cummins so desires. The Parties agree that a breach of this Confidentiality Provision by CARB may cause irreparable harm to Cummins and therefore agree that injunctive relief is the appropriate means to enforce this Confidentiality Provision. CARB shall not be subject to any claim for damages as a result of a breach of this Confidentiality Provision.

21. 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.
22. This Settlement Agreement binds Cummins, and any principals, officers, receivers, trustees, successors and assignees, subsidiary and parent corporations and upon CARB and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Agreement.
23. The Effective Date of this Settlement Agreement is the date of the last signatory.
24. 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.
25. 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 Agreement remains in full force and effect.
26. 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.
27. Each party has participated fully in the review and drafting of this Settlement Agreement, has had the opportunity to consult with counsel, is fully informed of the terms and effect of this Settlement Agreement, and has not relied in any way on any inducement, representation, or advice of any other Party in deciding to enter into this Settlement Agreement. 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.
28. 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

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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.

29. The Parties represent that they understand and accept all terms of this Settlement Agreement; that they enter into this Settlement Agreement freely and voluntarily; have had an opportunity to consult with legal counsel; that they have agreed to this Settlement Agreement after independent investigation and agree it was not arrived at through fraud, duress, or undue influence; and that they knowingly and voluntarily intend to be legally bound by this Settlement Agreement.
30. Any dispute between the Parties arising from this Settlement Agreement shall be heard before the Superior Court of California located in the County of Sacramento.
31. This Settlement Agreement may be executed in counterparts. Facsimile or photocopied signatures shall be considered as valid signatures as of the date hereof, although the original signature pages shall thereafter be appended to this Settlement Agreement.
32. The undersigned represents that he or she has full authority to enter into this Settlement Agreement.

California Air Resources Board

Cummins Inc.

By: _____ /S/
Name: Todd P. Sax, D.Env.
Title: Chief, Enforcement Division

By: _____ /S/
Name: Robert Enright
Title: GM New + Recon Parts

Date: _____ 3/18/2020

Date: _____ 2/14/2020