

## 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 VOLVO CONSTRUCTION EQUIPMENT, AB (hereinafter "VCE") with its principal place of business in Gothenburg, Sweden.

### I. RECITALS

1. VCE manufactures nonroad diesel engines for sale in California, elsewhere in the United States, and in other countries.
2. The United States and VCE are parties to a 1999 Consent Decree entered by the United States District Court for the District of Columbia in *United States v. Volvo Powertrain Corp.*, Civil Action 98-02547 ("Consent Decree"). On October 21, 1998, ARB and Volvo Truck Corporation ("VTC") entered into a Settlement Agreement with terms essentially identical to the Consent Decree ("VTC Settlement Agreement").
3. On August 24, 2012, the United States of America, acting at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), commenced a Civil Action against VCE by filing a Complaint ("Complaint"), alleging violations by VCE of the Clean Air Act (the "Act"), 42 U.S.C. §§ 7522, 7524, 7547 arising out the sale, offering for sale, introduction into commerce and importation into the United States of non-road compression ignition engines ("the Subject Engines") in violation of Sections 203 and 213 of the Act, 42 U.S.C. §§7522 and 7547;
4. ARB asserted that the same Subject Engines and associated conduct by VCE that gave rise to the Complaint also constituted violations of the VTC Settlement Agreement, and that ARB was therefore entitled to stipulated penalties pursuant to the VTC Settlement Agreement.
5. On October 15, 2012, the United States and ARB served on VCE a joint demand for stipulated penalties under the Consent Decree (the "Stipulated Penalties Demand") and VTC Settlement Agreement, asserting that VCE had violated the requirements of Paragraph 60 of the Consent Decree and VTC Settlement Agreement with respect to certain engines including some also identified in the Complaint;

6. On August 20, 2013, the United States, in the United States District Court for the District of Columbia, fully executed a Stipulation of Settlement and Judgment in *United States v. Volvo Construction Equipment AB*, Civil Action 12-1402 in settlement of a subset of the total population of the Subject Engines identified in the Stipulated Penalties Demand.
7. On September 25, 2013, ARB fully executed a Settlement Agreement with VCE to settle the same subset of the Subject Engines identified and settled by the United States in the Stipulation of Settlement and Judgment in Civil Action 12-1402.
8. On October 31, 2013, the United States and ARB served on VCE and VTC a revised joint demand for stipulated penalties under the Consent Decree (the "Revised Stipulated Penalties Demand") and VTC Settlement Agreement, asserting that VCE had violated the requirements of Paragraph 60 of the Consent Decree and VTC Settlement Agreement with respect to the remaining unresolved 175 engines of the total population of Subject Engines identified in the Stipulated Penalties Demand.
9. VCE and ARB agree that it is in the public interest to resolve this matter without litigation and have negotiated this Stipulation in good faith to avoid expensive and protracted litigation. Therefore VCE and ARB agree to resolve this matter completely by means of this Agreement, without the need for formal litigation or dispute resolution under the VTC Settlement Agreement;
10. VCE, VTC and their successors and assigns do not admit any issue of law or fact, and deny liability to ARB arising out of the transactions or occurrences alleged in the underlying Complaint and Stipulated Penalties Demand;
11. This Agreement addresses ARB's claims under the VTC Settlement Agreement related to the Engines listed on Appendix A hereto (which are also listed in Appendix A to the Revised Stipulated Penalties Demand); as well as any claims relating to such engines under California law.
12. For purposes of this Agreement, "VCE" shall include Volvo Construction Equipment AB, Volvo Truck Corporation, and all of their successors, assignees, subsidiaries, and parent corporations.

## II. TERMS AND RELEASE

ARB and VCE agree as follows:

1. VCE shall pay the total sum of \$65,000 as a penalty payable to the "California Air Pollution Control Fund," subject to the following terms.

Payment shall be made by check payable as described above and addressed to:

Jeremiah Bearden  
Air Resources Board, Enforcement Division  
PO Box 2815  
Sacramento, CA 95812

2. In the event that VCE does not comply with the payment obligations of Paragraph II.1 above, it shall be in violation of this Agreement and shall pay a stipulated penalty to ARB in the amount of two hundred and fifty dollars (\$250) per day for each day, beginning thirty days after VCE signs this document, that the civil penalty remains unpaid. ARB shall promptly notify VCE of any demand for stipulated penalties made pursuant to Paragraph II.2. Stipulated penalties shall begin to accrue upon notification of VCE that it is in violation of this Agreement. Stipulated penalties shall be paid in the same manner as that provided for in Paragraph II.1 above for payment of the civil penalty.
3. VCE's payment of the civil penalty identified in Paragraph II.1 above and any stipulated penalties required by Paragraph II.2 above shall resolve any and all liability of VCE to ARB with regard to the engines listed in Appendix A to this Agreement, arising under California law or under the VTC Settlement Agreement as alleged in the Stipulated Penalties Demand.
4. This Agreement shall not be construed as any admission by VCE as to the applicability of the VTC Settlement Agreement to VCE, nor does VCE waive or otherwise forego its right to challenge the applicability of the VTC Settlement Agreement in any future proceeding.
5. This Agreement shall be the final resolution of ARB claims regarding the alleged violations of the VTC Settlement Agreement as described above, as well as any claims relating to such engines under California law, and shall have the same res judicata effect as a judgment in terms of acting as bar to any civil action by ARB against VCE, VTC, their officers, directors, receivers, trustees, employees, successors and assignees,

subsidiary and parent corporations. This Agreement shall be deemed the recovery of civil penalties for purposes of precluding subsequent criminal action as provided in Health and Safety Code section 42400.7(a).

6. This Agreement shall apply to and be binding upon VCE and its principals, officers, directors, receivers, trustees, employees, successors and assignees, subsidiary and parent corporations, dealers, distributors, and upon ARB and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Agreement.
7. This Agreement constitutes the entire agreement and understanding between ARB and VCE concerning the claims and settlement in this Agreement, and this Agreement fully supersedes and replaces any and all prior negotiations and agreement of any kind or nature, whether written or oral, between ARB and VCE concerning these claims.
8. No agreement to modify, amend, extend, supersede, terminate, or discharge this Agreement, or any portion thereof, shall be valid or enforceable unless it is in writing and signed by all parties to this Agreement.
9. Advice of Counsel. Each Party to this Agreement has reviewed the Agreement independently, has had the opportunity to consult counsel, is fully informed of the terms and effect of this Agreement, and has not relied in any way on any inducement, representation, or advice of any other Party in deciding to enter into this Agreement.
10. 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.
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. Waiver. The failure of any Party to enforce any provision of this 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 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 Agreement or otherwise provided by law.

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.

**For Volvo Construction Equipment, AB:**

  
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Jörgen Svenningsson  
President Operations Europe  
Volvo Construction Equipment AB

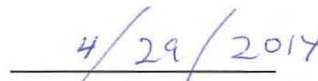
  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Lars Lewin  
Vice President Finance Operations Europe  
Volvo Construction Equipment AB

  
\_\_\_\_\_  
Date

**For California Air Resources Board:**

  
\_\_\_\_\_  
Ellen M. Peter  
Chief Counsel  
California Air Resources Board

  
\_\_\_\_\_  
Date

**APPENDIX A TO SETTLEMENT AGREEMENT AND RELEASE**

<b>No.</b>	<b>Engine Serial No.</b>
1	110479
2	111174
3	111179
4	111376
5	111379
6	111382
7	111388
8	111391
9	111395
10	111401
11	111405
12	111408
13	111414
14	111418
15	111469
16	111472
17	111498
18	111622
19	111626
20	111639
21	111643
22	111653
23	111657
24	111685
25	111686
26	111694
27	111700
28	111823
29	111827
30	111831
31	112212
32	112218
33	112240
34	112244
35	112254
36	112257

<b>No.</b>	<b>Engine Serial No.</b>
37	112325
38	112412
39	112423
40	112425
41	112434
42	112436
43	112456
44	112460
45	112472
46	112474
47	112484
48	112518
49	112521
50	112533
51	112539
52	112550
53	112639
54	112642
55	112646
56	112865
57	112878
58	112881
59	112897
60	112902
61	112916
62	112925
63	112930
64	112981
65	113003
66	113010
67	113014
68	113020
69	113043
70	113141
71	113266
72	113273

<b>No.</b>	<b>Engine Serial No.</b>
73	113280
74	113287
75	113310
76	113314
77	113331
78	113341
79	113344
80	113472
81	113478
82	113502
83	113521
84	113528
85	113698
86	113702
87	113744
88	113748
89	113803
90	113821
91	113841
92	114082
93	114094
94	114099
95	114104
96	114109
97	114128
98	114200
99	114233
100	114395
101	114396
102	114572
103	114621
104	114674
105	114692
106	114705
107	114718
108	114741

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No.	Engine Serial No.
109	114748
110	114752
111	114756
112	114828
113	114835
114	114839
115	114847
116	114950
117	114958
118	114966
119	115028
120	115032
121	115036
122	115072
123	115079
124	115190
125	115202
126	115260
127	115381
128	115399
129	115411
130	115462
131	115466
132	115469
133	115537
134	115544
135	115564
136	115600
137	115606
138	115709
139	115714
140	115740
141	115746
142	115809
143	115816
144	115893

No.	Engine Serial No.
145	115899
146	115910
147	115976
148	116103
149	116110
150	116138
151	116173
152	116178
153	116278
154	116284
155	116289
156	116316
157	116356
158	116359
159	116425
160	116433
161	116441
162	116542
163	116636
164	116648
165	117964
166	118150
167	118484
168	118927
169	120424
170	120426
171	120430
172	120436
173	120881
174	120893
175	121503