



# Air Resources Board



Linda S. Adams  
Acting Secretary for  
Environmental Protection

Mary D. Nichols, Chairman  
1001 I Street • P.O. Box 2815  
Sacramento, California 95812 • [www.arb.ca.gov](http://www.arb.ca.gov)

Edmund G. Brown Jr.  
Governor

April 5, 2011

Mr. Robert A. Jorgensen  
Compliance Representative  
Cummins, Inc.  
500 Jackson Street  
Columbus, Indiana 47201

Ms. Marya M. Rose  
Vice President - General Counsel and Corporate Secretary  
Cummins, Inc.  
500 Jackson Street,  
Columbus, Indiana 47201

Mr. Timothy K. Webster  
Sidley Austin LLP  
1501 K Street, NW  
Washington, District of Columbia 20005

Dear Mr. Jorgensen, Ms. Rose, and Mr. Webster:

Subject: California Settlement Agreement and United States v. Cummins, Inc., Civil  
Action No. 98-2546.

This notice and demand for payment of \$125,000 in stipulated penalties is provided to Cummins, Inc. (Cummins), pursuant to section VIII.B, and paragraph 116 of the above-referenced Settlement Agreement between Cummins and the California Air Resources Board (CARB) entered in October 1998 (Agreement). Cummins must pay stipulated penalties for failure to properly complete the testing required by the in-use testing requirements of the Agreement section VIII.B.

Specifically, Cummins failed to test at least four engines in selected engine families, completed tests after the deadline in the approved scope of work, reported test results later than thirty days after the completion of testing, and tested ten vehicles at less than the maximum weight rating as required by the Agreement. Paragraph 116 (e) of the Agreement imposes a penalty for failure to complete the required testing in the amount of \$100 per day for the first 30 days, \$250 per day for the 31<sup>st</sup> to 60<sup>th</sup> day, and \$500 per day for each day more than 60 days. Given the passage of time since the in-use testing was required to be completed, under the 1998 stipulation's penalty formula, the

*The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption.  
For a list of simple ways you can reduce demand and cut your energy costs, see our website: <http://www.arb.ca.gov>.*

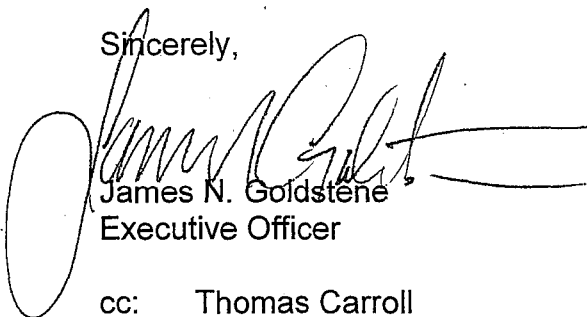
California Environmental Protection Agency

Mr. Robert A. Jorgenson  
Ms. Marya M. Rose  
Mr. Timothy K. Webster  
April 5, 2011  
Page 2

accumulated penalty is significant. While CARB has determined that Cummins has satisfied the intent of the in-use testing provisions, Cummins failed to exercise sufficient diligence to ensure that all settlement provisions have been met. As a result, CARB will accept a \$125,000 stipulated penalty for the above breaches of the in-use testing requirements. On November 8, 2010, the United States Environmental Protection Agency sent a parallel demand to Cummins for \$375,000 pursuant to the Consent Decree entered in the subject Civil Action No. 98-2546.

Cummins must pay \$125,000, in accordance with paragraph 119 of the Agreement, within thirty days of this notice. If you have any questions regarding this matter, please contact Senior Staff Counsel David Aron Livingston at 916-327-8406.

Sincerely,



James N. Goldstone  
Executive Officer

cc: Thomas Carroll  
Environmental Enforcement Section  
United States Department of Justice  
P.O. Box 7611, Ben Franklin Station  
Washington, D.C. 20044

Lori Jonas  
Environmental Enforcement Section  
United States Department of Justice  
P.O. Box 7611, Ben Franklin Station  
Washington, D.C. 20044

David Aron Livingston  
Senior Staff Counsel  
Office of Legal Affairs  
California Air Resources Board