

SETTLEMENT AGREEMENT AND RELEASE

This SETTLEMENT AGREEMENT AND RELEASE (hereinafter "AGREEMENT") is entered into by and between the CALIFORNIA AIR RESOURCES BOARD (hereinafter "CARB"), with its principal office located at 1001 I Street, Sacramento, California 95814, and Navistar, Inc. (hereinafter "NAVISTAR"), with its principal place of business located at 2601 Navistar Drive, Lisle, Illinois 60532 (collectively, the "PARTIES" or, individually, a "PARTY").

RECITALS

1. Health and Safety Code section 43106 allows manufacturers to make changes to new motor vehicles or engines CARB previously certified if such changes do not increase emissions above the standards to which those motor vehicles or engines were certified, and if the changes are made in accordance with CARB procedures.
2. Before January 1, 2017, Health and Safety Code section 43153 prohibited persons engaged in California in the business of selling, renting, or leasing new motor vehicles or new motor vehicle engines from intentionally or negligently selling, offering to sell, leasing, offering to lease, renting, or offering to rent a new motor vehicles or new motor vehicle engine that has not been certified by CARB. Health and Safety Code section 43154 provided that a person who sells, offers to sell, leases, offers to lease, rents, or offers to rent a new motor vehicle or new motor vehicle engine that has not been certified by CARB is subject to a civil penalty of five thousand dollars (\$5,000) for each such action.
3. Before January 1, 2017, Health and Safety Code section 43212 provided that a manufacturer or distributor who did not comply with the emission standards or the test procedures adopted by CARB should be subject to a civil penalty of fifty dollars (\$50) for each vehicle that did not comply with the standards or procedures and that was first sold in California.
4. The test procedure for determining compliance with standards applicable to 1985 and subsequent model heavy-duty diesel engines and vehicles are set forth in the "California Exhaust Emission Standards and Test Procedures for 2004 and Subsequent Model Heavy-Duty Diesel-Engines and Vehicles," incorporated by reference in 13 Cal Code Reg. § 1956.8(b). Section I.33 of the test procedure, titled "Changes to a vehicle or engine covered by certification," provided that the manufacturer shall notify CARB of any change in production vehicles (or production engines) in respect to any of the parameters listed in §86.079-24(a)(3), §86.079-24(b)(1)(iii), §86.079-24(b)(2) (iii) or §86.079-24(b)(3)(iii) as applicable, giving a full description of the change. Such notification shall be in advance of the change unless the manufacturer elects to follow the procedure described in §86.079-34. (40 Fed Code Reg. § 86.079-33).

5. At meetings with CARB on September 16, 2015, and October 15, 2015, NAVISTAR representatives revealed that NAVISTAR modified the Selective Catalytic Reduction (SCR) diagnostic calibrations on some of its heavy-duty diesel vehicles from their certified design through a running change that was not documented as required by CARB procedures (hereinafter "SUBJECT UNITS"). The affected NAVISTAR engine families were DNVXH07570SB, ENVXH05700SA, ENVXH07570SB, FNVXH05700SA, and FNVXH07570SB.
6. NAVISTAR subsequently reported one thousand three hundred eighty-five (1,385) sales of the SUBJECT UNITS in California.
7. Based upon the information NAVISTAR submitted to CARB, CARB alleges that the SUBJECT UNITS were modified from their certified configuration through running changes that were not reported to CARB, in violation of CARB procedures. NAVISTAR sold seven hundred ninety-nine (799) new production SUBJECT UNITS with the undocumented running change. NAVISTAR field-fixed five hundred eighty-six (586) post-production SUBJECT UNITS with the undocumented running change.
8. NAVISTAR fully cooperated with CARB in the investigation of this subject matter.
9. NAVISTAR is a Delaware corporation doing business in interstate commerce.
10. This is NAVISTAR's first undocumented running change enforcement record with CARB.
11. CARB alleges that if the allegations described in recital paragraphs 1 through 7 were proven, civil penalties could be imposed against NAVISTAR as provided in pre-January 1, 2017, version of Health and Safety Code sections 43154 and/or 43212.
12. NAVISTAR does not dispute the facts in recital paragraphs 1 through 7, but denies any liability arising thereunder.
13. 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 of the Parties relating to the above-listed alleged violations and voluntarily agree to resolve this matter by means of this AGREEMENT, without the need for formal litigation. NAVISTAR has taken or agrees to take the actions enumerated below within the Terms and Release section for the purpose of settlement and resolution of this matter with CARB. CARB accepts this AGREEMENT in termination and settlement of this matter.

TERMS AND RELEASE

In settlement of any and all claims that CARB has against NAVISTAR for the violations alleged above, and in consideration of CARB not filing a legal action, as well as of the other terms set out below, CARB and NAVISTAR agree as follows:

1. NAVISTAR agrees to pay a total sum of **two million twenty-six thousand eight hundred dollars (\$2,026,800)**.
2. NAVISTAR shall pay **one million thirteen thousand four hundred dollars (\$1,013,400)** to the **Air Pollution Control Fund**, as described in Attachment A-1.

If payment is by check, NAVISTAR's check shall be accompanied by the attached "Settlement Agreement Payment Transmittal Form" (Attachment A-1) and sent to:

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

If payment is by wire, upon NAVISTAR's wire transfer, the attached "Settlement Agreement Payment Transmittal Form" (Attachment A-1) shall be sent to:

State of California Air Resources Board
c/o Bank of America, Inter Branch to 0148
Routing No. 0260-0959-3 Account No. 01482-80005
Notice of Transfer: Edna Murphy Fax: (916) 322-9612
Reference: CARB Case #C00042

Wire Transfer Fee: Vendor is responsible for any bank charges incurred for processing wire transfers.

3. NAVISTAR agrees to fund a Supplemental Environmental Project (SEP), as described in Attachment B, to offset a portion of the settlement amount, consistent with CARB's SEP Policy. NAVISTAR agrees that by funding the SEP described in Attachment B, NAVISTAR will not receive a financial benefit.
4. NAVISTAR shall pay **one million thirteen thousand four hundred dollars (\$1,013,400)** as a penalty by check to the SEP Recipient, **South Coast Air Quality Management District**, as described in Attachment A-2. For payment to the SEP Recipient, NAVISTAR will send the payment to:

Patricia Kwon
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, CA 91765

5. NAVISTAR shall send the original signed and dated AGREEMENT, copies of payments, the Payment Transmittal Forms (Attachment A-1 and Attachment A-2), and any future mailings or documents required per the terms of this AGREEMENT to:
Allen Pham
Air Resources Engineer
California Air Resources Board
Enforcement Division
9480 Telstar Avenue, Suite 4
El Monte, California 91731
6. The PARTIES agree that this AGREEMENT may be executed by facsimile and in counterparts by the PARTIES and their representatives, and that the counterparts shall collectively constitute a single, original document, notwithstanding the fact that the signatures may not appear on the same page.
7. NAVISTAR represents that it understands the legal requirements applicable to running changes as required by applicable CARB statutory and regulatory law for heavy-duty diesel vehicles in California, and agrees that it will not perform recalls, running changes, or field fixes on vehicles it sells, attempt to sell, or offers for sale into commerce in California, or on vehicles that are already in California, without following the requirements of California law.
8. The PARTIES agree that the penalty described in Terms and Release paragraph 1 is not compensatory in nature. Furthermore, the penalty is intended to deter violations of California environmental statutes, and this penalty is payable to and for the benefit of CARB, a governmental unit. Therefore, it is agreed that this penalty imposed on NAVISTAR by CARB arising from the facts described in recital paragraphs 1-7 are nondischargeable under 11 U.S.C § 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 benefit of governmental unit, and is not compensation for actual pecuniary loss, other than certain types of tax penalties.
9. This AGREEMENT shall apply to and be binding upon NAVISTAR and its principals, officers, directors, agents, receivers, trustees, employees, successors and assignees, subsidiary and parent corporations, predecessors, and upon CARB and any successor agency that may have responsibility for and jurisdiction over the subject matter of this AGREEMENT.
10. Now, therefore, in consideration of the payment by NAVISTAR to the as specified in Terms and Release paragraphs 2, 3, and 5 above, CARB hereby releases NAVISTAR and its shareholders, principals, officers, directors, agents, receivers, trustees, employees, successors and assignees, subsidiary and parent corporations, and predecessors from any and all claims that CARB may have relating to the SUBJECT UNITS and based on the allegations described in recital paragraphs 1-7.

11. This AGREEMENT constitutes the entire agreement and understanding between CARB and NAVISTAR 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 CARB and NAVISTAR concerning these claims.
12. The effective date of this AGREEMENT shall be the date upon which it is fully executed.
13. 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.
14. 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.
15. 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.
16. Each provision of this AGREEMENT is severable, and in the event that any provision of this AGREEMENT is held to be invalid or unenforceable in any jurisdiction, the remainder of this AGREEMENT remains in full force and effect.
17. 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.
18. 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.
19. This AGREEMENT shall further serve to toll any statute of limitations until all terms and conditions of this AGREEMENT have been fulfilled. Any and all other existing tolling agreements entered into by the PARTIES related to the subject of this AGREEMENT are, by the express terms of this paragraph and paragraph 12, above, hereby terminated and replaced by the terms of this paragraph.

20. Penalty Determination

Below is the basis for the assessed penalties (Health & Saf. Code § 39619.7.), which is also provided throughout this AGREEMENT.

The manner in which the penalty amount was determined, including aggravating and mitigating factors and per unit basis for the penalty.

The per unit penalties for NAVISTAR in this case are twenty-five thousand dollars (\$2,500.00) per unit for seven hundred ninety-nine (799) new production SUBJECT UNITS with the undocumented running change, and fifty dollars (\$50.00) per unit for five hundred eighty-six (586) post-production field-fixed SUBJECT UNITS with the undocumented running change. The penalties in this matter reflect the fact that NAVISTAR fully cooperated with the investigation, there were no emission impacts in excess of any applicable law or regulation, and the violation was corrected in a timely manner.

The penalties in this matter were determined in consideration of all relevant circumstances, including the eight statutory factors, (Health & Saf. Code § 42403), such as 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 case negotiation, and CARB's assessment of the relative strength of its case against NAVISTAR, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that NAVISTAR may have secured from its alleged actions. Penalties in other cases may be smaller or larger, depending on the unique circumstances of the case.

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

The penalty provisions being applied in this case are Health and Safety Code sections 43154 and/or 43212, because NAVISTAR modified SCR diagnostic calibrations on some of its heavy-duty diesel vehicles from their certified design through a running change on either production vehicles or vehicles in the field, and that running change was not documented per CARB procedures and violated Health and Safety Code section 43106 by changing the vehicles from their originally-certified configuration without following CARB procedures.

Whether the penalty is 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 prohibit the emission of pollution at a specified level. However, it is not practicable to quantify the emissions attributable to the affected

heavy-duty diesel vehicles, because the information necessary to do so, such as emission rates and time of use, is not available.

21. NAVISTAR acknowledges that CARB has complied with Health and Safety Code section 39619.7, and considered the relevant factors in Health and Safety Code sections 42403 and 43024.

22. The penalty in this case was based in part on confidential business information provided by NAVISTAR that is not retained by CARB in the ordinary course of business. The penalty in this case was also based on confidential settlement communications between CARB and NAVISTAR that CARB does not retain in the ordinary course of business either.

23. Each of the undersigned represents that he or she has full power and authority to enter this AGREEMENT.

ACKNOWLEDGED AND ACCEPTED BY:

California Air Resources Board

By: _____/S/
Name: Richard W. Corey
Title: Executive Officer

Date: 3/16/2020

Navistar, Inc.

By: _____/S/
Name: Christopher Perzan
Title: Director of Environmental and
Energy Affairs and Senior Counsel

Date: 12/19/2019