

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 Wabash National Corporation (Wabash), with its principal location at 1000 Sagamore Parkway South (P.O. Box 6129), Lafayette, Indiana 47905 (collectively, the "Parties," or individually, "Party").

LEGAL BACKGROUND

- (1) Purpose. The Global Warming Solutions Act of 2006 mandates CARB to adopt regulations to reduce greenhouse gas emissions and to enforce those regulations. (Health & Saf. Code §§ 38560, 38562, and 38580). CARB is mandated to reduce hydrofluorocarbon (HFC) emissions by 40 percent below 2013 levels by 2030. (Health & Saf. Code § 39730.5.)
- (2) Regulation. CARB adopted the regulation, *Prohibitions on Use of Certain Hydrofluorocarbons in Stationary Refrigeration, Chillers, Aerosols-Propellants, and Foam End-Uses* (CA SNAP Regulation) to reduce HFC emissions from certain end-uses. (Cal. Code Regs., tit.17, §§ 95371-95378; Health & Saf. Code § 39734.)
- (3) Regulatory Provisions. Any person who sells, installs, leases, rents, uses, enters, or otherwise causes any equipment or product to enter into commerce in the State of California, any HFC substance identified in certain refrigeration and foam end-uses in the CA SNAP Regulation must ensure their products do not contain prohibited substances by the effective date, keep records, and provide a disclaimer to buyers of the product. (Cal. Code Regs., tit.17, § 95375, 95376, 95378.)
- (4) Penalty Provisions. Failure to comply with the regulatory requirements in paragraph 3 is a violation of state law that may result in penalties up to ten thousand dollars (\$10,000) for violations, respectively, for each day in which the violation occurs. (Cal. Code Regs., tit.17, § 95380 et seq.; Health & Saf. Code §§ 38580, 42400 et seq., 42402 et seq., and 42410.)

CASE BACKGROUND

- (5) Corporate Entities. At all relevant times, Wabash was organized under the laws of Delaware, as a corporation, and conducted business in the State of California.
- (6) Allegations. CARB alleges Wabash violated the CA SNAP Regulation by selling, leasing, renting, installing, using, or entering into commerce in the State of California, HFC-134a foam blowing agent in the end-use category of

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“Rigid Polyurethane: Commercial Refrigeration and Sandwich Panels.” Wabash sells semi-trailer and tank trailers using molded structural composite (MSC) called “Prisma Composite Preforms” (MSC PCP) that contains HFC-134a foam blowing agent. (Cal. Code Regs., tit.17, § 95371 et seq.) CARB alleges that if the allegations described in paragraph 6 were proven, civil penalties could be imposed against Wabash for each and every day. As of the date of this Settlement Agreement, despite best efforts by Wabash and its suppliers, there are no suitable alternative foam blowing agents that would work in these MSC trailers.

- (7) Acknowledgment. Wabash acknowledges paragraphs 1 through 5 and admits to the facts in paragraph 6, but denies any liability resulting from the foregoing paragraphs.
- (8) Consideration. 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 relating to the above-listed alleged violations and voluntarily agree to resolve this matter by means of this Settlement Agreement. In order to resolve the alleged violations described herein, Wabash has taken, or agrees to take, the actions enumerated below within the Terms and Conditions. Further, CARB accepts this Settlement Agreement in termination and full settlement of this matter.

TERMS AND CONDITIONS

In consideration of CARB not filing a legal action against Wabash for the alleged violations set forth in paragraph 6, of CARB suspending the penalties, and of Wabash complying with the Compliance Plan and conditions set forth below, CARB and Wabash agree as follows:

- (9) Suspended Penalties. CARB will suspend the penalties as long as Wabash complies with all conditions set forth in this Settlement Agreement. If Wabash fails to comply with each and every requirement set out in this Settlement Agreement within the timeframe specified for each action, the Parties agree that Wabash shall pay the suspended portion of this penalty of ten thousand **(\$10,000.00)** per day, beginning on the date the Settlement Agreement is fully executed, to CARB for deposit into the Air Pollution Control Fund for the purpose of carrying out CARB’s functions and duties. Wabash shall make payment within thirty (30) calendar days of the notice by CARB to Wabash of the Settlement Agreement violation.

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(10) Wabash Compliance Plan. Wabash shall implement the following compliance requirements:

- a. Measures. Wabash shall comply with the following:
 - i. Lack of Alternatives. Wabash certifies that for Wabash's semi-trailer and tank trailers using molded structural composite MSC PCP that contains HFC-134a foam blowing agent, there are no viable alternatives on the market.
 - ii. Emissions Calculations. Wabash determined that the estimated excess emissions from blowing compound to be about 128,000 metric tonnes of carbon dioxide equivalent per year (MTCO₂e/yr).
 - iii. Mitigation. Wabash shall mitigate all HFC-134a emissions associated with the use of the trailers entering into California. Wabash certifies that the total reduction in greenhouse gas emissions is a total of about 276,000 MTCO₂e/yr in indirect benefits and about 148,000 MTCO₂e/yr in net benefits.
 - iv. Solutions. Wabash shall work with all of its suppliers of HFC134a for its MSC PCP to find an alternative foam blowing agent and once a viable alternative is available, make all modifications necessary to use the available alternatives within sixty (60) calendar days.
 - v. Surplus. These mitigation measures shall be surplus to requirements of any federal, state, or local laws and may not be used to receive credit under these laws.
- b. Reporting. Wabash shall submit quarterly reports to CARB identifying all semi-trailer and tank trailers using "Prisma Composite Preforms" containing HFC-134a foam blowing agents that were sold, leased, rented, installed, used, or entered into commerce in the State of California for each quarter. The quarterly reports shall also summarize the actions Wabash's suppliers have taken to formulate alternatives for each quarter. The first report shall be submitted within thirty (30) calendar days from the date of full execution of the Settlement Agreement. All reports shall be submitted in accordance with paragraph 12 (Notices).

(11) Document(s). Wabash shall promptly email or mail the signed and dated Settlement Agreement, with copy of proof of payment of the penalty (if applicable), mitigation (if applicable), and SEP (if applicable), a copy of the Payment Transmittal Form(s), and the original signed and dated Compliance Plan (if applicable) to the address or email in paragraph 12 (Notices).

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- (12) Notice(s). 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 address or email below:

As to CARB:

California Air Resources Board
Enforcement Division / Settlement Agreements
Stationary Source Enforcement Branch
Short Lived Climate Pollutant Section
P.O. Box 2815
Sacramento, CA 95812-2815
Settlement_Agreement@arb.ca.gov

As to Wabash:

Wabash National Corporation
1000 Sagamore Parkway South
Lafayette IN 47905

As to Wabash's Representation:

John D. Dunlap, III
Dunlap Group
690 Market Street, Unit 202
San Francisco, CA 94104
john@dunlapgrp.com

Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address provided above. 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, Wabash shall pay all costs of investigating and prosecuting the action, including expert fees, reasonable attorneys' fees, and costs.
- (14) Repeat Violations. Except as otherwise allowed by this Settlement Agreement, Wabash 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 facts in 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 facts in the Case Background hereof. This Settlement Agreement consists of 7 pages and 34 paragraphs.

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- (16) Binding Effect. This Settlement Agreement binds Wabash, and its principals, officers, receivers, trustees, successors and assignees, 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, Wabash 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 the 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.

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- (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. Facsimile, electronic, or photocopied signatures shall be considered as valid signatures.
- (28) Release. In consideration of the full completion of penalty payment, and all undertakings above, CARB hereby releases Wabash and its principals, officers, receivers, trustees, successors and assignees, subsidiary and parent corporations, from any claims CARB may have based on the circumstances described in all paragraphs contained in the Case Background above.
- (29) Authority. The undersigned represents that he or she has full authority to enter into this Settlement Agreement.
- (30) Sunset. The Terms and Conditions of this Settlement Agreement shall cease to apply on July 1, 2021.

PENALTY BASIS

- (31) Per Unit Penalty. The per unit penalty in this case is a maximum of ten thousand dollars (\$10,000.00) per day under Health and Safety Code section 38580 for violations of the CA SNAP Regulation. (Cal. Code Regs., tit.17, § 95371 et seq.) The penalty is suspended due to the unavailability of a viable alternative and actions to be taken in the Compliance Plans. The suspended penalty is \$10,000.00 over an unspecified number of days of violation.
- (32) Emissions. The provisions cited above do not prohibit emissions above a specified level but prohibit HFC-134a altogether in certain end-use categories after January 1, 2020. HFC 134a has a global warming potential of 1,430. Without more information, it is not practicable to quantify the excess emissions. Since CARB has alleged that the end-use did not meet the regulatory requirements, any emissions of HFC-134a in this end-use category would be excess and illegal.

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(33) Aggravating and Mitigating Factors. The penalties in this matter were determined in consideration of 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; nature and persistence of the violation, including the magnitude of the excess emissions; compliance history; preventative efforts taken; innovative nature and the 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 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.

(34) Confidential Business Information. CARB based this penalty in part on confidential business information provided by Wabash and confidential settlement communications, neither of which are retained by CARB in the ordinary course of business.

ACKNOWLEDGED AND ACCEPTED BY:

California Air Resources Board

Signature: _____ /S/

Name: Todd P. Sax, D.Env.

Title: Chief, Enforcement Division

Date: 6/17/2020

Wabash National Corporation

Signature: _____ /S/

Name: Robert Lane

Title: VP of Product Innovation

Date: 6/11/2020