

## 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 Schnitzer Steel Industries, Inc. and Pick-N-Pull Auto Dismantlers, LLC (SCHNITZER), with its principal location at 1101 Embarcadero West, Oakland, California 94607 (collectively, the "Parties," or individually, "Party").

### **LEGAL BACKGROUND**

(1) Purpose.

- a. The California Health and Safety Code mandates the reduction of emission of air pollution from motor vehicles, creates the Motor Vehicle Inspection Program, and requires CARB to adopt regulations that require owners and operators of heavy-duty vehicles to perform regular inspections of their vehicles for excess emissions. (Health & Saf. Code §§ 43013, 43018, 43701, 44011.6.)
- b. The California Health and Safety Code mandates the reduction of the emission of toxic air contaminants (TAC), oxides of nitrogen (NOx), and diesel particulate matter (PM). (Health & Saf. Code, §§ 39002, et seq., 39650-39675.) In-use off-road diesel fueled vehicles are powered by diesel fueled engines that emit toxic PM.

(2) Regulation.

- a. CARB adopted the "*Periodic Smoke Inspections of Heavy-Duty Diesel-Powered Vehicles*" Regulation (Cal. Code Regs., tit. 13, §§ 2190 et seq.) (PSIP Regulation) to reduce excess smoke opacity emissions from heavy-duty vehicles.
- b. CARB adopted the *In-Use Off-Road Diesel-Fueled Fleet Regulation* (Off-Road Regulation) to reduce diesel PM and criteria pollutant emissions from in-use off-road diesel-fueled vehicles. (Cal. Code Regs., tit.13, § 2449 et seq.)

(3) Regulatory Provisions.

- a. The PSIP Regulation requires owners and operators of heavy-duty diesel vehicles with gross vehicle weight ratings greater than 6,000 pounds that operate within the State of California to conduct annual smoke opacity inspections (or on-board diagnostic review for model year 2013 engines or newer) of their vehicles by a CARB-approved trained smoke tester, using smoke test equipment and procedures that comply with the Society of Automotive Engineers (SAE) procedures J1667, "Snap Acceleration Smoke Test Procedure for Heavy-Duty Powered Vehicles.

Owners and Operators must also keep records of this data and provide to CARB upon request. (Cal. Code Regs., tit. 13, §§ 2190-2194.)

- b. Any person, business, or government agency who owns or operates an off-road vehicle with a diesel-fueled or alternative diesel-fueled off-road compression-ignition engine with a maximum power of 25 horsepower or greater or other specified off-road equipment, in California must meet the requirements of the Off-Road Regulation. (Cal. Code Regs., tit.13, § 2449, subd. (a).) These requirements include performance standards, a requirement to label each piece of equipment with a CARB-issued Equipment Identification Number (EIN), reporting requirements, the latter of which includes a requirement to notify CARB of the sale of a piece of equipment within 30 days, a requirement to disclose to the purchaser that the equipment is subject to the Off-Road Regulation, and a requirement to maintain records. (Cal. Code Regs., tit.13, § 2449, et seq.)

(4) Penalty Provisions.

- a. Failure to comply with the regulatory requirements is a violation of state law that may result in penalties up to forty thousand, seven hundred twenty-five dollars (\$40,725.00 USD) for each strict liability violation of the PSIP Regulation. (Health & Saf. Code, § 43016; Cal. Code Regs., tit.13, § 2190 et seq.)
- b. Failure to comply with the regulatory requirements is a violation of state law that may result in penalties up to ten thousand nine hundred ten dollars (\$10,910.00 USD) for strict liability violations; twenty-seven thousand two hundred seventy-five dollars (\$27,275.00 USD) for negligent violations; and forty-three thousand six hundred forty dollars (\$43,640.00 USD) for failing to take corrective action, and eighty-one thousand eight hundred twenty-five dollars (\$81,825.00 USD) for willful and intentional violations, respectively, for each day in which the violation occurs. (Cal. Code Regs., tit.13, § 2449; Health & Saf. Code §§ 39674, 39675, 42400 et seq., 42402 et seq., [42400.1, 42400.2, 42402.3], and 42410, 43016.)

### **CASE BACKGROUND**

- (5) Corporate Entity. At all relevant times, Schnitzer Steel Industries, Inc. was an Oregon corporation, registered to do business in the state of California, and Pick-N-Pull Auto Dismantlers, LLC, was a California limited liability company authorized to do business in the State of California.

- (6) Allegations.
- a. This Settlement Agreement resolves Notice of Violation (NOV) 00438, which was issued on September 16, 2021. CARB alleges SCHNITZER violated the PSIP Regulation by owning or operating heavy-duty vehicles with gross vehicle weight greater than 6,000 pounds in California and failing to keep records specified in Cal. Code Regs., tit. 13, § 2194 for two years after the date of inspection resulting in 13 violations in 2018 and two violations in 2019, as outlined in NOV 00438. CARB alleges that if the allegations described in the underlined headings 1 through 6 were proven, civil penalties could be imposed against SCHNITZER for each and every vehicle involved in the violations and each day.
  - b. This Settlement Agreement resolves NOV 00438 which was issued on September 16, 2021. CARB alleges SCHNITZER violated the Off-Road Regulation by failing to comply with the reporting requirements (Cal. Code Regs., tit. 13, § 2449(g)) and recordkeeping requirements (Cal. Code Regs., tit. 13, § 2449(h)), resulting in four violations, as outlined in NOV 00438. CARB alleges that if the allegations described in the underlined headings 1 through 6 were proven, civil penalties could be imposed against SCHNITZER for each and every Off-Road vehicle in violation, for each day of the violation.
- (7) Acknowledgment. SCHNITZER admits to the facts in the underlined headings 1 through 6, but denies any liability resulting from said allegations.
- (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 violations described herein, SCHNITZER 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 SCHNITZER for the alleged violations referred to above in the Legal Background and Case Background, and SCHNITZER's agreement to complete all terms and conditions set forth below, CARB and SCHNITZER agree as follows:

- (9) Settlement Amount. SCHNITZER shall pay a civil penalty of nine thousand five hundred dollars (\$9,500.00 USD). SCHNITZER shall make payment within 30 calendar days from the date CARB notifies SCHNITZER of the full execution of the Settlement Agreement.

- (10) Civil Penalty and Mitigation Payment Method. SCHNITZER shall pay the civil penalty and mitigation by check, credit card, wire transfer, or portal, payable to CARB, using instructions provided separately by CARB in a Payment Transmittal Form. SCHNITZER is responsible for all payment processing fees. Payments shall be accompanied by the Payment Transmittal Form to ensure proper application. CARB shall deposit the civil penalty and mitigation amount into the Air Pollution Control Fund for the purpose of carrying out CARB's duties and functions to ensure the integrity of its air pollution control programs. Should payment instructions change, CARB will provide notice to SCHNITZER in accordance with the underlined heading 15 (Notices).
- (11) Other Relief. SCHNITZER shall comply with one of the following options: attend the California Council on Diesel Education and Technology (CCDET I) class, (SAE J1667 Snap Acceleration Smoke Test Procedure for Heavy-Duty Diesel Powered Vehicles) as described on the CCDET webpage [www.ccdet.org/class-schedule/](http://www.ccdet.org/class-schedule/), or CARB's Online Training for Fleet Owners/Employees (MS529 Online Smoke-Test Training) at <https://ww2.arb.ca.gov/our-work/programs/heavy-duty-diesel-inspection-periodic-smoke-inspection-program/hdvp-psip>.
- a. SCHNITZER shall have the fleet maintenance manager (or equivalent) attend the CCDET I class or the CARB Online Training for Fleet Owners/Employees (MS529 Online Smoke-Test Training). Proof of completion of either course shall be submitted to CARB within six months of the date of this Settlement Agreement and be maintained in each applicable employee's file for the term of his or her employment.
  - b. SCHNITZER uses a contractor to perform the annual smoke opacity testing required under the PSIP Regulation, in addition to having the fleet maintenance manager (or equivalent) attend the CCDET I or CARB course, SCHNITZER shall obtain proof that the contractor's staff conducting the smoke opacity tests completed the CCDET I course within the past four years. This proof of CCDET I completion shall be provided to CARB with PSIP Regulation records as required by this Settlement Agreement and be maintained with the annual PSIP Regulation records.
- (12) Other Relief. SCHNITZER shall provide copies of all PSIP compliance records for the years 2022 and 2023 to CARB by January 31st of the following year.
- (13) Other Relief. SCHNITZER shall provide copies of their Responsible Official Affirmation of Reporting (ROAR) 2022 and 2023 to CARB by March 31<sup>st</sup> of the compliance year.
- (14) Documents. SCHNITZER shall promptly email or mail the signed and dated Settlement Agreement, with copy of proof of payment of the penalty, mitigation,

and/or SEP (if applicable), a copy of the Payment Transmittal Form(s) (if applicable), and the signed and dated Compliance Plan (if applicable) to the address or email in the underlined heading 15 (Notices).

- (15) Notices. 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  
Diesel Programs Enforcement Branch  
P.O. Box 2815  
Sacramento, California 95812-2815  
Settlement\_Agreement@arb.ca.gov

As to SCHNITZER:

Schnitzer Steel Industries, Inc.  
Pick-N-Pull Auto Dismantlers, LLC  
Mr. John Hebert  
1101 Embarcadero West  
Oakland, California, 94607  
Jhebert@picknpull.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.

- (16) Recovery of Costs. If the Attorney General files a civil action to enforce this Settlement Agreement, SCHNITZER shall pay all costs of investigating and prosecuting the action, including expert fees, reasonable attorneys' fees, and costs.
- (17) Repeat Violations. SCHNITZER agrees to comply with all regulatory requirements and acknowledges that repeat violations could result in increased penalties in the future.
- (18) Entirety. 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. This Settlement Agreement consists of 10 pages and 36 underlined headings.

- (19) Binding Effect. This Settlement Agreement binds SCHNITZER, and any 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.
- (20) Effective Date. The effective date shall be the date upon which this Settlement Agreement is fully executed.
- (21) 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.
- (22) 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.
- (23) 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.
- (24) 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.
- (25) 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.
- (26) 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 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 Settlement Agreement or otherwise provided by law.
- (27) 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.

- (28) Venue. The Superior Court of California, located in the County of Sacramento, shall hear any dispute between the Parties arising from this Settlement Agreement.
- (29) Counterparts and Electronic Signatures. This Settlement Agreement may be executed in counterparts. Electronic, facsimile or photocopied signatures shall be considered as valid signatures.
- (30) Release. In consideration of the full completion of civil penalty and all other undertakings above, CARB hereby releases SCHNITZER 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 underlined headings contained in the Case Background above.
- (31) Authority. The undersigned represents that he or she has full authority to enter into this Settlement Agreement.

#### **PENALTY BASIS**

- (32) Per Unit Penalty.
  - a. PSIP Penalty. The per unit or per vehicle penalty in this case is a maximum of forty thousand seven hundred twenty-five dollars (\$40,725.00 USD) per vehicle that is in violation of the Health and Safety Code, section 43016 and PSIP Regulation (Cal. Code Regs., tit.13, § 2190 et seq.) The penalty of seven thousand five hundred dollars (\$7,500.00 USD) over an unspecified number of days of violation is for 13 violations in 2018 and two violations in 2019. The per unit penalty in this case is approximately five hundred dollars (\$500.00 USD) per violation.
  - b. Off-Road Regulation Penalty. The per unit or per vehicle penalty in this case is a maximum of ten thousand dollars (\$10,000) per day under Health and Safety Code section 39674, for violations of the Off-Road Regulation (Cal. Code Regs., tit.13, § 2449 et seq.) The penalty of two thousand dollars (\$2,000.00 USD) over an unspecified number of days of violation is for four off-road diesel-fueled vehicles in violation of reporting and recordkeeping requirements. The per unit penalty in this case is approximately five hundred dollars (\$500.00 USD) per violation.
- (33) Emissions. The provisions cited above do prohibit emissions above a specified level. Without information on usage and emission rates, it is not practicable to quantify the excess emissions. However, since CARB has alleged that the vehicles did not meet the regulatory requirements, all of the emissions from it were excess and illegal.

- (34) 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.
- (35) Confidential Business Information. CARB based this penalty in part on confidential business information provided by SCHNITZER and confidential settlement communications, neither of which are retained by CARB in the ordinary course of business.
- (36) Effect of Settlement/Reservation of Rights. The following shall apply:
- (a) This Settlement Agreement resolves the civil claims of CARB for the violations alleged in this Settlement Agreement.
  - (b) CARB reserves, and this Settlement Agreement is without prejudice to, all claims, rights, and remedies against SCHNITZER with respect to all matters not expressly resolved in this Settlement Agreement. Notwithstanding any other provision of the Settlement Agreement, CARB reserves all claims, rights, and remedies, whether in law or equity, against SCHNITZER with respect to:
    - (i) Noncompliance with or enforcement of any provision of this Settlement Agreement.
    - (ii) Facts that were not disclosed by SCHNITZER to CARB.
    - (iii) Violation of the California Health and Safety Code and its implementing regulations, or other State laws, regulations, or permit condition(s) not expressly resolved in this Settlement Agreement.
    - (iv) Any imminent and substantial endangerment to the public health, welfare, or the environment in California, whether related to the violations addressed in this Settlement Agreement or otherwise.



- (v) Any criminal liability.
- (vi) Any claim(s) of any officer or agency of the United States or California, other than CARB.
- (c) In any subsequent administrative or judicial proceeding initiated by CARB for injunctive relief, civil penalties, or other appropriate relief relating to enforcement of the Settlement Agreement, SCHNITZER shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by CARB in the subsequent proceeding were or should have been brought in the instant case.
- (d) This Settlement Agreement does not limit or affect the rights of SCHNITZER or of CARB against any third parties not covered by this Settlement Agreement, nor does it limit the rights of third parties not covered by this Settlement Agreement against SCHNITZER, except as otherwise provided by law. This Settlement Agreement shall not be construed to create rights in, or grant any cause of action to, any third party not covered by this Settlement Agreement.
- (e) This Settlement Agreement is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. SCHNITZER is responsible for achieving and maintaining compliance with all applicable federal, State, and local laws, regulations, and permits; SCHNITZER's compliance with this Settlement Agreement shall not be a defense to any action commenced pursuant to any such laws, regulations, or permits. CARB does not, by its execution of this Settlement Agreement, warrant or aver in any manner that SCHNITZER's compliance with any aspect of this Settlement Agreement will result in compliance with any provisions of federal, State, or local laws, regulations, or permits.

ACKNOWLEDGED AND ACCEPTED BY:

**California Air Resources Board**

Signature: /S/

Name: Todd P. Sax, D.Env.

Title: Chief, Enforcement Division

Date: July 8, 2022

**Schnitzer Steel Industries, Inc. and  
Pick-N-Pull Auto Dismantlers, LLC**

Signature: /S/

Name: John B. Hebert

Title: Vice President

Date: June 15, 2022