

SETTLEMENT AGREEMENT

This Settlement Agreement is entered into between the State of California Air Resources Board (CARB), with its principal location at 1001 I Street, Sacramento, California 95814; and Detroit Diesel Corporation (Detroit Diesel), with its principal location at 13400 Outer Drive West, Detroit, Michigan 48239-4001 (collectively, the Parties).

LEGAL BACKGROUND

1. The California Health and Safety Code mandates the reduction of emissions of air pollution from motor vehicles. (Health & Saf. Code §§ 43000; 43000.5, 43011.)
2. A "Diesel Particulate Filter" (DPF) means "an emission control technology that reduces diesel particulate matter emissions by directing the exhaust through a filter that physically captures particles but permits gases to flow through. Periodically, the collected particles are either physically removed or oxidized (burned off) in a process called regeneration." (Cal. Code Regs., tit. 13, § 2025(d)(17).)
3. California statute prohibits anyone from selling a device that "alters or modifies the original design or performance" of a DPF. (Cal. Vehicle Code § 27156(c).)
4. CARB regulations, interpreting California Vehicle Code section 27156, define a "replacement part" to mean "any aftermarket part intended to replace an original equipment emissions-related part and which is functionally identical to the original equipment part in all respects which in any way affect emissions (including durability)." (Cal. Code Regs., tit. 13, § 1900(b)(20).) CARB regulations define modified parts to be those that cannot be considered replacement parts, because the part "is not functionally identical to the original equipment part in all respects which in any way affect emissions." (Cal. Code Regs., tit. 13, § 1900(b)(14).)
5. CARB adopted the Add-On Parts and Modified Parts Regulation (Cal. Code Regs., tit. 13, §§ 2220-2225) (hereinafter "Aftermarket Parts Regulation") to ensure that vehicle add-on and modified parts have been evaluated by CARB and do not increase vehicle emissions.
6. Under the Aftermarket Parts Regulation, CARB may exempt certain add-on and modified parts, and new aftermarket diesel particulate filters. (Cal. Code Regs., tit. 13, §§ 2222.)
7. The Aftermarket Parts Regulation and Vehicle Code prohibit any person or company doing business in California from advertising, offering for sale, selling,

or installing any device, apparatus, or mechanism that alters or modifies the original design or performance of a motor vehicle air pollution control device, unless it is exempted from Vehicle Code section 27156. (Cal. Code Regs., tit. 13, § 2220; Vehicle Code § 27156.)

8. The Executive Officer may issue a cease and desist order and enjoin the sale, import, advertising, supply, distribution, or installation in California of any aftermarket part that does not comply with the Aftermarket Parts Regulation. (Cal. Code Regs., tit.13, § 2225; Health & Saf. Code 43017.)
9. Failure to comply with any requirement of the Aftermarket Parts Regulation is a violation of state law that may result in penalties up to one thousand five hundred dollars (\$1,500) for each violation of Vehicle Code section 27156 and thirty-seven thousand, five hundred dollars (\$37,500) per action in violating California vehicular air pollution control provisions. (Health & Saf. Code, §§ 43008.6, 43016; Vehicle Code § 27156.)

CASE BACKGROUND

10. At all relevant times, Detroit Diesel was incorporated in and organized under the laws of the State of Delaware.
11. At all relevant times Detroit Diesel conducted business in California.
12. In 2017, CARB learned that Detroit Diesel was advertising and offering for sale in California, non-new DPFs as “remanufactured Detroit genuine parts DPFs” that had undergone its proprietary liquid cleaning process (referred to herein as “Cleaned DPFs”). Detroit Diesel had not sought an exemption for the advertisement or sale of these Cleaned DPFs under the Aftermarket Parts Regulation. On September 1, 2017, CARB requested that Detroit Diesel cease and desist advertising or sale of the Cleaned DPFs (Cease & Desist Letter). Detroit Diesel alleges that it did stop all advertisement and sale of the Cleaned DPFs in California, as requested by CARB.
13. Detroit Diesel has developed a proprietary process by which it collects from customers DPFs that require cleaning, takes the DPFs to a separate facility to undergo a Proprietary Cleaning Procedure described in the confidential Attachment A, and then re-sells the cleaned DPFs as Cleaned DPFs. As a result of this Proprietary Cleaning Procedure, Detroit Diesel is able to offer for sale Cleaned DPFs at a lower price than new DPFs.
14. Detroit Diesel has provided to CARB documentation that allegedly, in Detroit Diesel’s view, demonstrates that a Cleaned DPF is functionally identical to a new DPF. CARB takes no position on whether a Cleaned DPF is in fact functionally identical to a new DPF. CARB acknowledges that—based solely on Detroit Diesel’s in-house testing—the Proprietary Cleaning Procedure appears

to be an effective cleaning process that results in a better emissions profile for heavy-duty diesel vehicles than would otherwise be the case if the DPF did not undergo the Proprietary Cleaning Procedure.

15. CARB has an interest in promoting innovative technologies that prevent emissions of certain regulated pollutants while reducing costs to consumers, but also needs to ensure that such technologies are not misleading or ineffective in practice.

TERMS AND CONDITIONS

CARB and Detroit Diesel agree as follows:

16. Detroit Diesel agrees to follow the Proprietary Cleaning Procedure described in the confidential Attachment A for all Cleaned DPFs advertised or sold in California. Detroit Diesel agrees to maintain a record of any substantive modifications to the Proprietary Cleaning Procedure for no less than five years from the date of the modification. Detroit Diesel agrees to provide these records to CARB upon request to the Detroit Diesel Compliance Contact.
17. Detroit Diesel agrees to develop a system by which it can readily identify any DPF that has undergone its Proprietary Cleaning Procedure before advertising or selling any Cleaned DPFs in California. Detroit Diesel agrees to keep a record of each DPF that has undergone its Proprietary Cleaning Procedure along with the date or dates of each time the Procedure is applied to the DPF. Detroit Diesel will keep a record for a given Cleaned DPF for no less than five years after the last Proprietary Cleaning Procedure for that Cleaned DPF. Detroit Diesel agrees to provide these records to CARB upon request to the Detroit Diesel Compliance Contact.
18. Detroit Diesel agrees to offer the Cleaned DPFs to customers in California only as part of a DPF core exchange process, by which a refundable "core charge" incentivizes distributors to collect a used DPF for every Cleaned DPF that is sold. Failure to collect the used DPF results in the forfeiture of the core charge by the distributor, and thereby incentivizes the distributors to collect a used DPF for every Cleaned DPF sold. Detroit Diesel agrees to keep a record of each sale of a Cleaned DPF through this exchange process for no less than five years from the date of sale. Detroit Diesel agrees to provide these records to CARB upon request to the Detroit Diesel Compliance Contact.
19. CARB agrees that its September 1, 2017 Cease & Desist Letter is no longer in force as of the Effective Date of this Settlement Agreement.
20. **Confidentiality Provision.** CARB agrees to protect and keep confidential, as trade secret or otherwise exempt from disclosure, the Proprietary Cleaning

Procedure described in the confidential Attachment A and related documentation ("Confidential Information") according to CARB's regulations (Cal. Code Regs., tit. 17, §§ 91000 to 91022) and the California Public Records Act (Gov. Code § 6250 et seq.). In the event CARB receives a request for the release of the Confidential Information, CARB shall immediately notify Detroit Diesel and shall not make its determination as to whether or not the Confidential Information is to be released before 30 days following the notification of Detroit Diesel. In the event CARB determines, upon advice of legal counsel, that it is required by law, including the Public Records Act, to disclose or make available the contents of the Confidential Information to other governmental agencies or to the public, CARB agrees not to do so without first notifying Detroit Diesel promptly in writing of its intent and the reason for the requested disclosure. CARB further agrees that such notice shall be given at least 21 business days prior to the planned disclosure in order that Detroit Diesel may take further action, at its own expense, to protect its Confidential Information, if Detroit Diesel so desires. Notifications under this paragraph shall be made to the Detroit Diesel Legal Contacts. The Parties agree that a breach of this Confidentiality Provision by CARB may cause irreparable harm to Detroit Diesel and therefore agree that injunctive relief is the appropriate means to enforce this Confidentiality Provision.

21. Notifications to Detroit Diesel shall be made by email, with follow-up hard copy by mail, to:

Detroit Diesel Compliance Contact:

Frank Seymour (or successor)
Manager, Compliance and Regulatory Affairs
Detroit Diesel Corporation
13400 Outer Drive West
Detroit, MI 48239-4001
francis.seymour_jr@daimler.com
(313) 592-7090

Detroit Diesel Legal Contacts:

Brian Burton (or successor)
General Counsel, DTNA/DDC
4555 N. Channel Avenue
Portland, OR 97217
brian.burton@daimler.com
(503) 745-8000

and

R. Latane Montague
Hogan Lovells US LLP

555 Thirteenth Street NW
Washington, DC 20004
latane.montague@hoganlovells.com
(202) 637-6567

22. If the Attorney General files a civil action to enforce this Settlement Agreement and prevails, Detroit Diesel shall pay all costs of investigating and prosecuting the action, including expert fees, reasonable attorney's fees, and costs.
23. 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.
24. This Settlement Agreement binds Detroit Diesel, and any principals, officers, receivers, trustees, successors and assignees, subsidiary and parent corporations and upon CARB and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Agreement.
25. The Effective Date of this Settlement Agreement is the date of the last signatory.
26. 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.
27. 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 Agreement remains in full force and effect.
28. 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.
29. 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.
30. The Parties represent that they understand and accept all terms of this Settlement Agreement; that they enter into this Settlement Agreement freely

and voluntarily; have had an opportunity to consult with legal counsel; that they have agreed to this Settlement Agreement after independent investigation and agree it was not arrived at through fraud, duress, or undue influence; and that they knowingly and voluntarily intend to be legally bound by this Settlement Agreement.

31. Any dispute between the Parties arising from this Settlement Agreement shall be heard before the Superior Court of California located in the County of Sacramento.
32. This Settlement Agreement may be executed in counterparts. Electronically scanned or photocopied signatures shall be considered as valid signatures as of the date hereof, although the original signature pages shall thereafter be appended to this Settlement Agreement.
33. The undersigned represents that he or she has full authority to enter into this Settlement Agreement.

California Air Resources Board

Detroit Diesel Corporation

By: _____ /S/ _____

By: _____ /S/ _____

Name: Todd Sax
Title: Division Chief, Enforcement Division
Date: 2/24/2020

Name: Brian Burton
Title: Secretary
Date: 2/4/2020