IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

DETROIT DIESEL CORPORATION,
13400 Outer Drive West
Detroit, MI 48239

Defendant.

Civil Action No. 16-1982

CONSENT DECREE

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Plaintiff United States of America, on behalf of the United States Environmental Protection Agency ("EPA"), has filed a Complaint in this action concurrently with this Consent Decree alleging that Defendant Detroit Diesel Corporation ("Defendant") violated Section 203(a)(1) of the Clean Air Act ("CAA"), 42 U.S.C. § 7522(a)(1) by introducing 7,786 heavy-duty diesel engines ("HDDEs" (collectively "Subject Engines") into commerce without certificates of conformity ("COC") required under Section 203(a)(1) of the CAA, 42 U.S.C. § 7522(a)(1). The United States alleges that in 2009, Defendant completed the installation of the crankshafts in the engine blocks in the Subject Engines, and that Defendant completed the other, remaining manufacturing and assembling processes for the Subject Engines in 2010, which included the installation of cylinder heads, fuel systems, and full emission control systems. The United States alleges that because Defendant completed all manufacturing and assembling processes for the Subject Engines in 2010, the Subject Engines were produced in 2010 and are model year 2010 engines. The United States alleges that the time the Subject Engines were sold in 2010, or otherwise offered for sale, or introduced, or delivered for introduction into commerce by DDC in 2010, the Subject Engines did not conform to emission standards applicable to model year 2010 engines, and that the Subject Engines were not covered by Defendant's 2009 and 2010 certificates of conformity.

Defendant denies the violations alleged in the Complaint, and does not admit to any liability arising out of the transactions or occurrences alleged in the Complaint.

The Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and will avoid litigation between the Parties and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, before the taking of any testimony, without the adjudication or admission of any issue of fact or law except as provided in Section I, and with the consent of the Parties, IT IS HEREBY ADJUDGED, ORDERED, AND DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action, pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and Section 204 and 205 of the CAA, 42 U.S.C. §§ 7523 and 7524, and over the parties. Venue lies in this District pursuant to Section 204 and 205 of the Act, 42 U.S.C. §§ 7523 and 7524, 40 C.F.R. §§ 89.1006(b)(1) and 94.1106(b)(1), because, pursuant to Section 205(b), 42 U.S.C. § 7542(b), this District is the location of the "Administrator's principal place of business." For purposes of this Decree, or any action to enforce this Decree, Defendant consents to the Court's jurisdiction over this Decree and any such action and over Defendant and consents to venue in this judicial district.

2. For purposes of this Consent Decree, Defendant agrees that the Complaint states claims upon which relief may be granted pursuant to Section 204(a) and 205(a)(1) of the CAA, 42 U.S.C. §§ 7523(a) and 7524(a)(1).

II. APPLICABILITY

3. The obligations of this Consent Decree apply to and are binding upon the United States and upon Defendant and any successors, assigns, or other entities or persons otherwise bound by law.

4. Defendant shall provide a copy of this Consent Decree to all officers, employees, and agents whose duties include compliance with any provision of this Decree, as well as to any contractor retained to perform work required under this Consent Decree. A contractor's failure to perform the work in conformity with the terms of this Decree shall not excuse Defendant's obligations under this Decree.

5. In any action to enforce this Consent Decree, Defendant shall not raise as a defense the failure by any of its officers, directors, employees, agents, or contractors to take any actions necessary to comply with the provisions of this Consent Decree.

III. DEFINITIONS

6. Terms used in this Consent Decree that are defined in the CAA or in regulations promulgated pursuant to Title II of the CAA shall have the meanings assigned to them in the CAA or such regulations, unless otherwise provided in this Decree. Whenever the terms set forth below are used in this Consent Decree, the following definitions shall apply:

a. "Affiliate" means any entity that as of the Effective Date, directly or indirectly or through one or more intermediaries, owns or controls, is owned or controlled by, or is under common ownership or control with Defendant;

b. "Business" shall mean Defendant's engine manufacturing business subject to the emissions standards established pursuant to 42 U.S.C. § 7521(a)(1), including, without limitation, any manufacturing facility, testing facility, laboratory, warehouse, distribution center, or other inventory storage location that is owned, leased or operated by Defendant;

c. "Certificate of Conformity" or "COC" shall mean the document issued by EPA for a motor vehicle engine or a non-road engine under Sections 206 and 213 of the Clean Air Act, respectively, 42 U.S.C. §§ 7525 and 7547, to indicate that an engine conforms to the requirements thereof, and regulations issued thereunder;

d. "Complaint" shall mean the complaint filed by the United States in this action;

e. "Consent Decree" or "Decree" shall mean this Decree, including its appendices;

f. "Date of Lodging" shall mean the day that this Consent Decree is lodged with the Court for public comment as provided in Section XIX;

g. "Day" shall mean a calendar day unless expressly stated to be a business day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next business day;

h. "Defendant" shall mean Detroit Diesel Corporation;

i. "Effective Date" shall have the definition provided in Section XV;

j. "EPA" shall mean the United States Environmental Protection Agency and any of its successor departments or agencies;

k. "Metropolitan Statistical Area" means a core based statistical area associated with at least one urbanized area that has a population of at least 50,000. A metropolitan statistical area comprises a central county or counties containing the urbanized area, plus adjacent outlying counties having a high degree of social and economic integration with the central county as measured by commuting as defined in the Office of Management and Budget Standards for Delineating Metropolitan and Micropolitan Statistical Areas, 75 Fed. Reg. 37,246 (June 28, 2010);

l. "Model Year" shall mean model year as defined in 40 C.F.R. Part 85 for heavy duty diesel engines and vehicles, and 40 C.F.R. Part 1039 for non-road diesel engines, 40 C.F.R. Part 1033 for locomotives and 40 C.F.R. Parts 1039 and 1042 for marine engines, as appropriate;

m. "Non-Attainment Area" shall mean any area deemed to be in non-attainment by EPA as set forth in 40 C.F.R. Part 81 as of the Effective Date;

n. "Paragraph" shall mean a portion of this Decree identified by an Arabic numeral;

o. "Parties" shall mean the United States and Defendant;

p. "Permanently Destroy" (or "Permanent Destruction") means to destroy a vehicle or engine using one the following methods.

(1) (a) Remove (and dispose of appropriately) the engine oil from the crankcase, replace the oil with a 40 percent solution of sodium silicate (SiO_2/Na_2O with a weight ratio of 3.0 or greater); (b) Run the engine at a low speed (approximately 2,000 rpm) until the engine stops; (c) After allowing the engine to cool for an hour, try to start the engine; if the vehicle or engine contains a battery and that battery is charged and the engine will not operate at idle, the procedure is complete; (d) If the engine starts, run the engine at a low speed (approximately 2,000 rpm) until the engine stops and then try to start the engine again after allowing the engine to cool for an hour. Repeat step (d) in this process until the engine will not operate; (e) Remove and dispose of any remaining fuel in accordance with applicable law.

(2) Remove (and dispose of appropriately) all oil and fuel from the device. Using a drill bit of no less than 3/8 inch or a cutting torch: (a) drill or cut a hole through the lower crankcase of the engine so that it no longer retains oil; (b) drill or cut a hole through the cylinder head into the combustion chamber; and (c) drill or cut a hole through the cylinder or cylinder block through the cylinder liner.

(3) Compact or crush the engine and all of its parts or components to render them useless.

q. "Project" shall mean a mitigation project, or a portion of a mitigation project if approved in parts pursuant to Paragraph 24;

r. "Project Benefits" shall mean the anticipated public health and environmental benefits for a mitigation Project including an estimate of emission reductions (e.g., NO_X, HC, CO, CO_2 and PM) expected to be realized, and when and where those reductions are expected to occur;

s. "Project Dollars" shall mean the total amount projected to be spent when implementing any one mitigation Project, as proposed pursuant to Section V;

t. "Section" shall mean a portion of this Decree identified by a Roman numeral; and

u. "United States" shall mean the United States of America, acting on behalf of EPA.

IV. CIVIL PENALTY

7. Within 30 Days after the Effective Date of this Consent Decree, Defendant shall pay the sum of $14,000,000 as a civil penalty.

8. Defendant shall pay the civil penalty due at https://www.pay.gov to the U.S. Department of Justice account, in accordance with instructions provided to Defendant by the Financial Litigation Unit ("FLU") of the United States Attorney's Office for the District of Columbia after the Effective Date. The payment instructions provided by the FLU will include a Consolidated Debt Collection System ("CDCS") number, which Defendant shall use to identify all payments required to be made in accordance with this Consent Decree. The FLU will provide the payment instructions to:

Brian Burton
Secretary
Detroit Diesel Corporation
13400 Outer Drive West
Detroit, MI 48239
brian.burton@daimler.com

on behalf of Defendant. Defendant may change the individual to receive payment instructions on its behalf by providing written notice of such change to the United States and EPA in accordance with Section XIV (Notices).

9. At the time of payment, Defendant shall send notice that payment has been made: (a) to EPA via email at cinwd_acctsreceivable@epa.gov or via regular mail at EPA Cincinnati Finance Office, 26 W. Martin Luther King Drive, Cincinnati, Ohio 45268; (b) to the United States via email or regular mail in accordance with Section XIV; and (c) to EPA in accordance with Section XIV. Such notice shall state that the payment is for the civil penalty owed pursuant to the Consent Decree in *United States v. Detroit Diesel Corporation* and shall reference the civil action number, CDCS Number and DOJ case number 90-5-2-1-10557.

10. Defendant shall not deduct any penalties paid under this Decree pursuant to this Section or Section VIII (Stipulated Penalties) in calculating its federal income tax.

V. COMPLIANCE REQUIREMENTS

A. ENVIRONMENTAL MITIGATION

11. Defendant shall perform one or more environmental mitigation Projects at a total cost of no less than $14,500,000 (hereinafter "Total Mitigation Funds") for the purpose of

mitigating the harm caused by the Subject Engines. The Total Mitigation Funds shall include any financial incentives offered pursuant to this Consent Decree.

a. Defendant shall spend no less than $10,875,000 of the Total Mitigation Funds on the school bus replacement Project, described in Appendix A, unless the conditions of Paragraph 14 are met;

b. Defendant shall spend no less than $3,625,000 of the Total Mitigation Funds on the locomotive engine upgrade program described in Appendix B unless the conditions of Paragraph 14 are met.

12. Within 120 Days of the Effective Date, Defendant shall submit, for EPA review and approval pursuant to Section VI (Deliverables), a plan for the implementation of the school bus replacement program, as further identified in Appendix A ("School Bus Mitigation Plan"). Defendant shall identify how it will expend a total of $10,875,000 to implement the school bus replacement program.

13. Within 120 Days of the Effective Date, Defendant shall submit, for EPA review and approval pursuant to Section VI (Deliverables), a plan for the implementation of the locomotive engine upgrade program, as further identified in Appendix B ("Locomotive Mitigation Plan"). Defendant shall identify how it will expend a total of $3,625,000 to implement the locomotive engine upgrade program.

14. In the event that after development and/or implementation of the School Bus Mitigation Plan or the Locomotive Mitigation Plan, Defendant determines that it is impractical to spend the balance of the mitigation funds to satisfy the obligations under Paragraphs 11(a)

and (b) of this Consent Decree, Defendant shall notify the United States in accordance with Paragraph 76. Within 21 Days of providing notice, Defendant shall submit a supplemental mitigation plan ("Supplemental Mitigation Plan") for EPA review and approval pursuant to Section VI (Deliverables). The Supplemental Mitigation Plan shall identify how those remaining funds will either be redirected to the school bus replacement program or the locomotive replacement program or to a Project as identified in Appendix C to this Consent Decree.

15. Defendant shall not include its administrative, attorney's, consultant's or personnel costs, fees and expenses incurred in any way related to the design, implementation or oversight of the Projects as a deduction from the Total Mitigation Funds.

16. The School Bus Mitigation Plan, the Locomotive Mitigation Plan, and if necessary, the Supplemental Mitigation Plan, shall include the following information for any proposed Project, in addition to the more specific information required for any proposed Project as set forth in Section V(B), below:

a. A plan for implementing the Project;

b. A summary-level budget for the Project;

c. A schedule for implementation of the Project;

d. A description of the Project Benefits. To calculate the estimated emissions reductions, Defendant shall use the latest version of the mobile source emission model designated by EPA for use in modeling mobile source emissions for State Implementation Plan purposes, emissions modeling and transportation conformity (as of March 2016, that model is MOVES2014a, 75 FR 60343-60347 (October 7, 2014));

e. The Geographic Area(s) within which the Project will be conducted;

f. Whether the Project is located in whole or in part in any Non-Attainment Area at the time of the submission of the Mitigation Proposal and if so, what percentage of the Project Benefits are anticipated in each such Non-Attainment Area; and

g. Whether the Project is located in whole or in part within a Metropolitan Statistical Area as of the time of the submission of the Mitigation Proposal, and if so, what percentage of the Project Benefits is anticipated in each such census tract.

17. Defendant shall certify, as part of its School Bus Mitigation Plan, Locomotive Mitigation Plan, and if necessary as part of its Supplemental Mitigation Plan that:

a. Defendant is not required to perform the Project by any federal, state, or local law or regulation or by any agreement, grant, or as injunctive relief awarded in any other action in any forum;

b. the Project is not a project that Defendant was planning or intending to construct, perform, or implement other than in settlement of the claims resolved in the Consent Decree;

c. Defendant has not received and will not receive credit for the Project in any other enforcement action; and

d. Defendant will not receive any reimbursement for any portion of the Emissions Mitigation Project from any person.

18. EPA will evaluate Defendant's School Bus Mitigation Plan based on the information provided pursuant to Paragraph 16 and consistent with Appendix A.

19. EPA will evaluate Defendant's Locomotive Mitigation Plan, and if necessary, Supplemental Mitigation Plan, based on the information set forth in Paragraphs 16 and 23 and consistent with Appendices B and C, respectively.

20. In accordance with Section VI (Deliverables), EPA may approve the Projects as set forth in the School Bus Mitigation Plan, the Locomotive Mitigation Plan, or if necessary, the Supplemental Mitigation Plan, in whole or in part (as provided by Paragraph 24), until EPA approves Projects totaling no less than $14,500,000. Within 30 Days of approval by EPA of any Mitigation Plan, or of any separately approved individual Project, Defendant shall commence implementation of the Project(s). Defendant shall complete the approved Project(s) according to the approved plan(s) and the applicable schedule set forth therein, but no later than 3 years from the date of the Project(s)' approval. Nothing in this Consent Decree shall be interpreted to prohibit Defendant from completing the Projects ahead of schedule.

21. Defendant shall maintain, and present to EPA upon request, all documents to substantiate the Project Dollars expended to implement the School Bus Mitigation Plan, the Locomotive Mitigation Plan, and if necessary, the Supplemental Mitigation Plan, and Defendant shall submit these documents to EPA within 30 Days of a request for the documents.

22. In carrying out its obligations under this Section, Defendant may propose to fund Projects that are to be implemented by one or more state, local, tribal, independent non-profit organizations or entities (each a "Third Party"), and solely to implement the School Bus

Mitigation Plan, an Affiliate. The use of a Third Party or Affiliate to carry out the requirements herein shall in no way alter the Defendant's obligations under the Consent Decree, and Defendant shall continue to remain liable for stipulated penalties for any noncompliance. If Defendant proposes to fund a Third Party to implement a Project, Defendant shall require the Third Party to identify, in writing: (a) its legal authority for accepting such funding; and (b) its legal authority to conduct the Project for which Defendant contributes the funds. Regardless of whether Defendant proposes to undertake a Project by itself or to do so by contributing funds to a Third Party or Affiliate that will carry out the Project, Defendant acknowledges that it will receive credit for the expenditure of such funds as Project Dollars only if Defendant demonstrates that the funds have been actually spent by Defendant, the Third Party, or an Affiliate receiving the funds, and that such expenditures met all requirements of this Consent Decree. No greater than a total of 10% of the Project Dollars provided to one or more Third Party, in the aggregate, shall go towards the Third Party's administrative costs to implement the Project. If Defendant elects to use an Affiliate to implement the School Bus Mitigation Plan, neither Defendant nor the Affiliate may deduct any administrative costs from the Project Dollars.

B. EVALUATION CRITERIA FOR MITIGATION PROJECTS

23. The United States will have discretion to approve or disapprove Locomotive Mitigation Plan, the Supplemental Mitigation Plan if necessary, or any individual Project in either, if approved in parts, and it will consider the following criteria when making this determination:

a. Maximization of total Project Benefits (i.e., through the total quantity of tons reduced and through the total affected population where pollutant exposure is expected to be reduced);

b. Cost effectiveness (i.e., cost per ton of pollutant reduced);

c. Ease of administration;

d. Nexus to transportation and diesel engine emissions;

e. Project Benefits in Non-Attainment Areas;

f. Project Benefits in potential low-income areas;

g. Whether Project Benefits would occur in Metropolitan Statistical Areas;

h. Sufficient geography diversity;

i. Whether additional pollutant reductions are projected to occur greater than what may have occurred through normal fleet/engine turnover;

j. Reliability and successful precedent for the project type;

k. Transparency of the Project to the public;

l. Verifiability by auditors; and/or

m. Shovel-readiness (i.e., can be implemented with minimal time and cost).

VI. DELIVERABLES

24. Approval of Deliverables. After review of any plan, report, or other item that is required to be submitted pursuant to this Consent Decree, EPA will, in writing: (a) approve the submission; (b) approve the submission upon specified conditions; (c) approve part of the submission and disapprove the remainder; or (d) disapprove the submission.

25. If the submission is approved pursuant to Paragraph 24, Defendant shall take all actions required by the plan, report, or other document, in accordance with the schedules and requirements of the plan, report, or other document, as approved. If the submission is conditionally approved or approved only in part pursuant to Paragraph 24(b) or (c), Defendant shall, upon written direction from EPA, take all actions required by the approved plan, report, or other item that EPA determines are technically severable from any disapproved portions, subject to Defendant's right to dispute only the specified conditions or the disapproved portions, under Section X (Dispute Resolution).

26. If the submission is disapproved in whole or in part pursuant to Paragraph 24(c) or (d), Defendant shall, within 45 Days or such other time as the Parties agree to in writing, correct all deficiencies and resubmit the plan, report, or other item, or disapproved portion thereof, for approval, in accordance with the preceding Paragraphs. If the resubmission is approved in whole or in part, Defendant shall proceed in accordance with the preceding Paragraph.

27. Any stipulated penalties applicable to the original submission, as provided in Section VIII, shall accrue during the 45-Day period or other specified period, but shall not be

payable unless the resubmission is untimely or is disapproved in whole or in part; provided that, if the original submission was so deficient as to constitute a material breach of Defendant's obligations under this Decree, the stipulated penalties applicable to the original submission shall be due and payable notwithstanding any subsequent resubmission.

28. If a resubmitted plan, report, or other item, or portion thereof, is disapproved in whole or in part, EPA may again require Defendant to correct any deficiencies, in accordance with the preceding Paragraphs, subject to Defendant's right to invoke Dispute Resolution and the right of EPA to seek stipulated penalties as provided in the preceding Paragraphs.

29. Permits. Where any compliance obligation under this Section requires Defendant to obtain a federal, state, or local permit or approval, Defendant shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals. Defendant may seek relief under the provisions of Section IX (Force Majeure) for any delay in the performance of any such obligation resulting from a failure to obtain, or a delay in obtaining, any permit or approval required to fulfill such obligation, if Defendant has submitted timely and complete applications and has taken all other actions necessary to obtain all such permits or approvals.

VII. REPORTING REQUIREMENTS

30. Progress Reports:

a. By July 31 and January 31 of each year after the Effective Date, until termination of this Decree pursuant to Section XVIII, Defendant shall submit a semi-annual report for the preceding six months that shall provide a discussion of Defendant's progress in

satisfying its obligations in connection with the Section V (Compliance Requirements) including, at a minimum, a narrative description of activities undertaken; status of any compliance measures, including the progress of and date of completion for any of the Projects set forth in the Mitigation Plan(s), as approved pursuant Section VI (Deliverables); and a summary of costs incurred since the previous report.

b. The report shall also include a description of any non-compliance with the requirements of this Consent Decree and an explanation of the violation's likely cause and of the remedial steps taken, or to be taken, to prevent or minimize such violation. If Defendant violates, or has reason to believe that it may violate, any requirement of this Consent Decree, Defendant shall notify the United States of such violation and its likely duration, in writing, within ten working Days of the Day Defendant first becomes aware of the violation, with an explanation of the violation's likely cause and the remedial steps taken, or to be taken, to prevent or minimize such violation. Nothing in this Paragraph or the following Paragraph relieves Defendant of its obligation to provide the notice required by Section IX (Force Majeure).

31. Project Completion Reports. Within sixty (60) Days after completion of each Project undertaken pursuant to this Consent Decree, Defendant shall submit to the United States for approval a Project Completion report that documents:

a. The date the Project was completed;

b. The results and documentation of implementation of the Project, including the estimated emission reductions or other environmental benefits achieved and the

location where the Projects occurred;

c. The actual Project Dollars incurred by Defendant in implementing the Project; and

d. A Certification by an authorized representative in accordance with Paragraph 33 of this Consent Decree that the Project has been completed in full satisfaction of the requirements of the Consent Decree.

32. All reports shall be submitted to the persons designated in Section XIV (Notices).

33. All final plans and reports prepared by Defendant pursuant to the requirements of this Section V of the Consent Decree are required to be submitted to EPA electronically in a searchable format, and shall be publicly available from Defendant without charge. Defendant shall post information summarizing the mitigation activities implemented, including the locations where buses and or locomotives have been replaced/repowered on a website annually and shall maintain the material on the website for one year after submission of the Project Completion Report.

34. Each report submitted by Defendant under this Section shall be signed by an official of the submitting party and include the following certification:

> I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I have no personal knowledge that the information submitted is other than true, accurate, and complete. I am aware that there are significant

penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

35. This certification requirement does not apply to emergency or similar notifications where compliance with Paragraph 34 would be impractical.

36. The reporting requirements of this Consent Decree do not relieve Defendant of any reporting obligations required by the Clean Air Act or implementing regulations, or by any other federal, state, or local law, regulation, permit, or other requirement.

37. Any information provided pursuant to this Consent Decree may be used by the United States in any proceeding to enforce the provisions of this Consent Decree and as otherwise permitted by law.

VIII. STIPULATED PENALTIES

38. Defendant shall be liable for stipulated penalties to the United States for violations of this Consent Decree as specified below, unless excused under Section IX (Force Majeure). A violation includes failing to perform any obligation required by the terms of this Consent Decree, which includes the failure to meet the specified time schedules established by or approved under this Decree.

39. Late Payment of Civil Penalty. If Defendant fails to pay the civil penalty required to be paid under Section IV of this Decree (Civil Penalty) when due, Defendant shall pay a stipulated penalty of $5,000 per Day for each Day that the payment is late.

40. Mitigation Project Compliance.

a. If Defendant fails to submit the Mitigation Plans within 120 Days

of entry of the Consent Decree as required by Section V(A) (Environmental Mitigation), Defendant shall pay a stipulated penalty of $5,000 per Day for each Day after 120 Days after the Effective Date for each plan it fails to submit. If, pursuant to Paragraph 24, EPA disapproves of Defendant's Mitigation Plan(s) or Supplemental Mitigation Plan, if necessary, in whole or in part, and Defendant fails to correct the deficiencies and resubmit the disapproved portion(s) within 45 Days, or any such other time that the parties agree to in writing, pursuant to Paragraph 26, Defendant shall pay a stipulated penalty of $5,000 per Day for each Day after 45 Days after EPA's disapproval, or, if applicable, per Day for each Day after the time that the parties agree to in writing for resubmission .

b. If Defendant fails to meet interim implementation deadlines set forth in the schedules for each Project in an approved Mitigation Plan(s) or the approved Supplemental Mitigation Plan, Defendant shall pay a stipulated penalty of $1,000 per Day for each Day that an interim schedule deadline is not met.

c. If Defendant fails to satisfactorily complete the Mitigation Projects by the final deadline(s) as set forth in the schedules for each Project in the approved Mitigation Plans, Defendant shall pay a stipulated penalty of $5,000 per Mitigation Project per Day for each Day after the respective final deadline for each late Mitigation Project.

41. Reporting Requirements. The following stipulated penalties shall accrue per violation per Day for each violation of the reporting requirements of Section VII of this Consent Decree:

Period of Noncompliance	Penalty per Day per Violation
1st through 14th Days	$500
15th through 30th Days	$1,000
31st Day and beyond	$1,500

42. Stipulated penalties under this Section shall begin to accrue on the Day after performance is due or on the Day a violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily completed or until the violation ceases. Stipulated penalties shall accrue simultaneously for separate violations of this Consent Decree.

43. Defendant shall pay any stipulated penalty within 30 Days of receiving the United States' written demand.

44. The United States may, in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due it under this Consent Decree.

45. Stipulated penalties shall continue to accrue as provided in Paragraph 42, during any Dispute Resolution, except that stipulated penalties shall not accrue during the period, if any, when Defendant seeks judicial review by this court pursuant to Paragraph 59, beginning on the 31st day after the Court's receipt of the final submission regarding the dispute until the date that the Court issues a final decisions regarding such dispute. Accrued stipulated penalties need not be paid until the following:

a. If the dispute is resolved by agreement of the Parties or by a decision of EPA that is not appealed to the Court, Defendant shall pay accrued penalties determined to be

owing, together with interest, to the United States within 30 Days of the Effective Date of the agreement or the receipt of EPA's decision or order.

b. If the dispute is appealed to the Court and the United States prevails in whole or in part, Defendant shall pay all accrued penalties determined by the Court to be owing, together with interest, within 60 Days of receiving the Court's decision or order, except as provided in subparagraph c, below.

c. If any Party appeals the District Court's decision, Defendant shall pay all accrued penalties determined to be owing, together with interest, within 15 Days of receiving the final appellate court decision.

46. Defendant shall pay stipulated penalties owing to the United States in the manner set forth and with the confirmation notices required by Paragraph 9, except that the transmittal letter shall state that the payment is for stipulated penalties and shall state for which violation(s) the penalties are being paid.

47. If Defendant fails to pay stipulated penalties according to the terms of this Consent Decree, Defendant shall be liable for interest on such penalties, as provided for in 28 U.S.C. § 1961, accruing as of the date payment became due. Nothing in this Paragraph shall be construed to limit the United States from seeking any remedy otherwise provided by law for Defendant's failure to pay any stipulated penalties.

48. The payment of penalties and interest, if any, shall not alter in any way Defendant's obligation to complete the performance of the requirements of this Consent Decree.

49. Non-Exclusivity of Remedy. Stipulated penalties are not the United States' exclusive remedy for violations of this Consent Decree. Subject to the provisions of Section XII (Effect of Settlement/Reservation of Rights), the United States expressly reserves the right to seek any other relief it deems appropriate for Defendant's violation of this Decree or applicable law, including but not limited to an action against Defendant for statutory penalties, additional injunctive relief, mitigation or offset measures, and/or contempt. However, the amount of any statutory penalty assessed for a violation of this Consent Decree shall be reduced by an amount equal to the amount of any stipulated penalty assessed and paid pursuant to this Consent Decree.

IX. FORCE MAJEURE

50. "Force Majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of Defendant, of any entity controlled by Defendant, or of Defendant's contractors that delays or prevents the performance of any obligation under this Consent Decree despite Defendant's best efforts to fulfill the obligation. The requirement that Defendant exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any such event (a) as it is occurring and (b) after it has occurred to prevent or minimize any resulting delay to the greatest extent possible. Force Majeure does not include Defendant's financial inability to perform any obligation under this Consent Decree. If Defendant proposes to provide funding to a Third Party to conduct the Projects, pursuant to Paragraph 22, and that proposal is approved by EPA, that Third Party is deemed to be within the control of the Defendant for purposes of this Paragraph.

51. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, Defendant shall provide notice orally or by electronic transmission to the United States within 14 Days of when Defendant first knew that the event might cause a delay. Within seven Days thereafter, Defendant shall provide in writing to the United States an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Defendant's rationale for attributing such delay to a force majeure event if it intends to assert such a claim; and a statement as to whether, in the opinion of Defendant, such event may cause or contribute to an endangerment to public health, welfare or the environment. Defendant shall include with any notice all available documentation supporting the claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude Defendant from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. Defendant shall be deemed to know of any circumstance of which Defendant, any entity controlled by Defendant, or Defendant's contractors knew or should have known.

52. If the United States agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended by the United States for such time as is necessary to complete those obligations. An extension of the time for performance of the

obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. The United States will notify Defendant in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

53. If the United States does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, the United States will notify Defendant in writing of its decision.

54. If Defendant elects to invoke the dispute resolution procedures set forth in Section X (Dispute Resolution), it shall do so no later than 15 Days after receipt of the United States' notice. In any such proceeding, Defendant shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Defendant complied with the requirements of Paragraphs 50 and 51, above. If Defendant carries this burden, the delay at issue shall be deemed not to be a violation by Defendant of the affected obligation of this Consent Decree identified to the United States and the Court.

X. DISPUTE RESOLUTION

55. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. Defendant's failure to seek resolution of a dispute

under this Section shall preclude Defendant from raising any such issue as a defense to an action by the United States to enforce any obligation of Defendant arising under this Decree.

56. Informal Dispute Resolution. Any dispute subject to Dispute Resolution under this Consent Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when Defendant sends the United States a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed 30 Days from the date the dispute arises, unless that period is modified by written agreement. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States shall be considered binding unless, within 30 Days after the conclusion of the informal negotiation period, Defendant invokes formal dispute resolution procedures as set forth below.

57. Formal Dispute Resolution. Defendant shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by serving on the United States a written Statement of Position regarding the matter in dispute. The Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting Defendant's position and any supporting documentation relied upon by Defendant.

58. The United States shall serve its Statement of Position within 45 Days of receipt of Defendant's Statement of Position. The United States' Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the United States. The United States' Statement of

Position shall be binding on Defendant, unless Defendant files a motion for judicial review of the dispute in accordance with the following Paragraph.

59. Defendant may seek judicial review of the dispute by filing with the Court and serving on the United States, in accordance with Section XIV of this Consent Decree (Notices), a motion requesting judicial resolution of the dispute. The motion must be filed within 30 Days of receipt of the United States' Statement of Position pursuant to the preceding Paragraph. The motion shall contain a written statement of Defendant's position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree.

60. The United States shall respond to Defendant's motion within the time period allowed by the Local Rules of this Court. Defendant may file a reply memorandum, to the extent permitted by the Local Rules.

61. Standard of Review for Judicial Disputes.

a. Disputes Concerning Matters Accorded Record Review. Except as otherwise provided in this Consent Decree, in any dispute brought under Paragraph 59 pertaining to the adequacy or appropriateness of plans, procedures to implement plans, schedules or any other items requiring approval by EPA under this Consent Decree, Settling Defendants shall have the burden of demonstrating that EPA's action or determination is arbitrary and capricious or otherwise not in accordance with the law based on the administrative record.

b. Other Disputes. Except as otherwise provided in this Consent Decree, in any other dispute brought under Paragraph 59, Defendant shall bear the burden of demonstrating by a preponderance of evidence that its actions were in compliance with this Consent Decree.

62. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of Defendant under this Consent Decree, unless and until final resolution of the dispute so provides. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first Day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 45. If Defendant does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section VIII (Stipulated Penalties).

XI. INFORMATION COLLECTION AND RETENTION

63. The United States and its representatives, including attorneys, contractors, and consultants, shall have the right to obtain information from DDC, to:

a. monitor the progress of activities required under this Consent Decree;

b. verify any data or information submitted to the United States in accordance with the terms of this Consent Decree;

c. obtain documentary evidence, including photographs and similar data; and

d. assess Defendant's compliance with this Consent Decree.

64. In the event that Defendant proposes to undertake a Project by contributing funds to a Third Party pursuant to Paragraph 22, and EPA approves of that proposal, Defendant shall

ensure that the Third Party will comply with this Section, and Defendant shall remain liable, and subject to stipulated penalties for any noncompliance by the Third Party.

65. Until three years after the termination of this Consent Decree, Defendant shall retain, and shall instruct its Affiliates, contractors and agents and recipients of funds, including any Third Party engaged to implement a Project under Paragraph 22, pursuant to this Consent Decree to preserve, all non-identical copies of all documents, records, or other information (including documents, records, or other information in electronic form) (hereafter referred to as "Records") in its or its contractors' or agents' possession or control, or that come into its or its contractors' or agents' possession or control, and that relate in any manner to Defendant's performance of its obligations under this Consent Decree. This information retention requirement shall apply regardless of any contrary corporate or institutional policies or procedures. At any time during this information retention period, upon request by the United States, Defendant shall provide copies of any Records required to be maintained under this Paragraph.

66. At the conclusion of the information-retention period provided in the preceding Paragraph, Defendant shall notify the United States at least 90 Days prior to the destruction of any Records subject to the requirements of the preceding Paragraph and, upon request by the United States, Defendant shall deliver any such Records to EPA. Defendant may assert that certain documents, records, or other information is privileged under the attorney-client privilege or any other privilege recognized by federal law. If Defendant asserts such a privilege, it shall in lieu of producing such Record provide the following: (1) the title of the document, record, or

information; (2) the date of the document, record, or information; (3) the name and title of each author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by Defendant. However, no final documents, records, or other information that Defendant is required to create and that are required to be submitted pursuant to this Consent Decree shall be withheld on grounds of privilege.

67. Defendant may also assert that information required to be provided under this Section is protected as Confidential Business Information ("CBI") under 40 C.F.R. Part 2. As to any information that Defendant seeks to protect as CBI, Defendant shall follow the procedures set forth in 40 C.F.R. Part 2.

68. This Consent Decree in no way limits or affects any right of entry and inspection, or any right to obtain information, held by the United States pursuant to applicable federal laws, regulations, or permits, nor does it limit or affect any duty or obligation of Defendant to maintain documents, records, or other information imposed by applicable federal or state laws, regulations, or permits.

XII. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

69. This Consent Decree resolves the civil claims of the United States for the violations alleged in the Complaint filed in this action through the Date of Lodging, and for a potential claim brought under Section 207(c)(1) and the regulations promulgated thereunder, requiring Defendant to take action to buy back, recall, or modify the Subject Engines to remedy the violations alleged in the complaint concerning the Subject Engines.

70. The United States reserves all legal and equitable remedies available to enforce the provisions of this Consent Decree. This Consent Decree shall not be construed to limit the rights of the United States to obtain penalties or injunctive relief or to pursue administrative action under the Act or implementing regulations, or under other federal laws, regulations, or permit conditions or for any claims not resolved under Paragraph 69.

71. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, civil penalties, or other appropriate relief relating to the Defendant's Business or Defendant's violations, Defendant 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 the United States in the subsequent proceeding were or should have been brought in the instant case, except with respect to claims that have been specifically resolved pursuant to Paragraph 69 of this Section.

72. This Consent Decree is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. Defendant is responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits; and Defendant's compliance with this Consent Decree shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The United States does not, by its consent to the entry of this Consent Decree, warrant or aver in any manner that Defendant's compliance with any aspect of this Consent Decree will result in

compliance with provisions of the CAA, 42 U.S.C. §§ 7401–7671q; or with any other provisions of federal, State, or local laws, regulations, or permits.

73. This Consent Decree does not limit or affect the rights of Defendant or of the United States against any third parties not party to this Consent Decree, nor does it limit the rights of third parties not party to this Consent Decree, against Defendant, except as otherwise provided by law.

74. This Consent Decree shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Consent Decree.

XIII. COSTS

75. The Parties shall bear their own costs of this action, including attorneys' fees, except that the United States shall be entitled to collect the costs (including attorneys' fees) incurred in any action necessary to collect any portion of the civil penalty or any stipulated penalties due but not paid by Defendant.

XIV. NOTICES

76. Unless otherwise specified herein, whenever notifications, submissions, or communications are required by this Consent Decree, they shall be made in writing and transmitted electronically as follows:

As to DOJ by email:	eescdcopy.enrd@usdoj.gov Re: DJ # 90-5-2-1-11386
As to EPA by email:	detroitdiesel@epa.gov
As to Defendant by email:	brian.burton@daimler.com

If any electronic transmission is returned as undeliverable, the notifying Party shall within 2 Days submit the writing to the following addresses:

As to DOJ by mail:	EES Case Management Unit Environment and Natural Resources Division U.S. Department of Justice P.O. Box 7611 Washington, D.C. 20044-7611 Re: DOJ No. 90-5-2-1-10802
As to EPA by mail:	Director Air Enforcement Division Office of Civil Enforcement U.S. Environmental Protection Agency 1200 Pennsylvania Avenue NW 3142 William Jefferson Clinton South Mail Code 2242A Washington, D.C. 20460
As to Defendant by mail:	Brian Burton Secretary Detroit Diesel Corporation 13400 Outer Drive West Detroit, MI 48239

77. Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address provided above.

78. Notices submitted pursuant to this Section shall be deemed submitted upon transmission or mailing, unless otherwise provided in this Consent Decree or by mutual agreement of the Parties in writing.

XV. EFFECTIVE DATE

79. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court or a motion to enter the Consent Decree is granted, whichever occurs first, as recorded on the Court's docket.

XVI. RETENTION OF JURISDICTION

80. The Court shall retain jurisdiction over this case until termination of this Consent Decree, for the purpose of resolving disputes arising under this Decree or entering orders modifying this Decree, pursuant to Sections X and XVII, or effectuating or enforcing compliance with the terms of this Decree.

XVII. MODIFICATION

81. The terms of this Consent Decree, including any attached appendices, may be modified only by a subsequent written agreement signed by all the Parties. Where the modification constitutes a material change to this Decree, it shall be effective only upon approval by the Court.

82. Any disputes concerning modification of this Decree shall be resolved pursuant to Section X of this Decree (Dispute Resolution), provided, however, that, instead of the burden of proof provided by Paragraph 61, the Party seeking the modification bears the burden of demonstrating that it is entitled to the requested modification in accordance with Federal Rule of Civil Procedure 60(b).

XVIII. TERMINATION

83. After the Defendant has completed the requirements of Section V (Compliance Requirements) of this Consent Decree and has paid the civil penalty and any accrued stipulated penalties as required by this Consent Decree, Defendant may serve upon the United States a Request for Termination, together with all necessary supporting documentation, stating that Defendant has satisfied those requirements including those requirements specified in Section V.

84. Following receipt by the United States of Defendant's Request for Termination, the Parties shall confer informally concerning the Request and any disagreement that the Parties may have as to whether Defendant has satisfactorily complied with the requirements for termination of this Consent Decree. If the United States agrees that the Decree may be terminated, the Parties shall submit, for the Court's approval, a joint stipulation terminating the Decree.

85. If the United States does not agree that the Decree may be terminated or does not respond, Defendant may invoke Dispute Resolution under Section X of this Decree. However, Defendant shall not invoke Dispute Resolution, under Paragraph 57 of Section X, until 90 Days after service of its Request for Termination.

XIX. PUBLIC PARTICIPATION

86. This Consent Decree shall be lodged with the Court for a period of not less than 30 Days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations indicating that the Consent Decree is inappropriate,

improper, or inadequate. Defendant consents to entry of this Consent Decree without further notice and agrees not to withdraw from or oppose entry of this Consent Decree by the Court or to challenge any provision of the Decree, unless the United States has notified Defendant in writing that it no longer supports entry of the Decree.

XX. SIGNATORIES/SERVICE

87. Each undersigned representative of Defendant, and the Acting Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party he or she represents to this document.

88. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis. Defendant agrees to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons.

XXI. INTEGRATION

89. This Consent Decree, and its appendices, constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Decree and supersedes all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. Other than deliverables that are subsequently submitted and approved pursuant to this Decree, the Parties acknowledge that there

are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Consent Decree and its appendices.

XXII. FINAL JUDGMENT

90. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court as to the United States and Defendant.

Dated and entered this __ day of _____, 2016.

_____
UNITED STATES DISTRICT JUDGE
United States District Court for the District of Columbia

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. Detroit Diesel Corporation,*

FOR PLAINTIFF UNITED STATES OF AMERICA:

[redacted]

Date

JOHN C. CRUDEN
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice

9-27-16

Date

[redacted]

CARA M. MROCZEK
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611, Ben Franklin Station
Washington, D.C. 20044
601 D Street NW
Washington, DC 20004
202-514-1447 (voice)
202-514-0097 (fax)
Cara.mroczek@usdoj.gov

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. Detroit Diesel Corporation,*

FOR PLAINTIFF UNITED STATES OF AMERICA, on behalf of the United States Environmental Protection Agency:

10/4/16
Date

[redacted]
CYNTHIA GILES
Assistant Administrator
Office of Enforcement and Compliance Assurance

[redacted]
SUSAN SHINKMAN
Director
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance

[redacted]
for PHILLIP A. BROOKS
Director
Air Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance

[redacted]
CHRISTOPHER A. THOMPSON
Chief – Western Field Office
Air Enforcement Division
Office of Enforcement and Compliance Assurance

[redacted]
JAMES F. VAN ORDEN
Attorney Advisor

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. Detroit Diesel Corporation,*

FOR DEFENDANT:

Sept 6th, 2016
Date

[redacted]
Jeff Allen – Vice President
Detroit Diesel Corporation

9/6/16
Date

[redacted]
Brian Burton – Secretary
Detroit Diesel Corporation

APPENDIX A

SCHOOL BUS REPLACEMENT PROJECT

1. In accordance with Section V.A of this Consent Decree, Defendant shall offer financial incentives to replace qualifying school buses powered by a 2006 Model Year or earlier diesel engine with Model Year 2013 or newer school buses certified by EPA or CARB ("New Bus").

2. For purposes of this Appendix, a "qualifying school bus" shall mean:

a. a vehicle used for the purpose of transporting 31 or more preprimary, primary, or secondary students to schools or homes; and

b. That vehicle has accumulated at least 10,000 miles over the 12 months prior to Defendant's offer of a financial incentive, or has been in use for at least 3 days per week during the current school year, or the previous school year if Defendant offers a financial incentive outside of any current school year.

3. Defendant shall offer a financial incentive only to state or local government bodies ("School Districts") that satisfy the following criteria:

a. the School District must have an enrollment of more than 500 students, based upon the number of children ages 5 to 17 years old as estimated in relevant United States Census Bureau data available to Defendant as of the Effective Date;

b. the School District must not provide school bus transportation solely through contracts with private entities; and

c. the School District must operate a fleet of vehicles that includes at least one qualifying school bus.

4. Defendant shall offer financial incentives in the following manner:

a. **Tier A.** Defendant shall, within 45 Days of EPA's approval of the School Bus Mitigation Plan, provide EPA in writing a list of potential School Districts for which it will offer an average financial incentive of no more than 75% of the fair market value of a Class 6 through 8 school bus to replace qualifying school buses powered by diesel engines from Model Year 1997 or earlier with New Buses.

i. Defendant shall offer financial incentives to School Districts under this subsection within 180 Days of EPA's approval of the School Bus Mitigation Plan.

ii. Defendant shall inform each School District that any offer under the subsection is contingent upon there being sufficient funds remaining to provide the offered financial incentive.

iii. Each School District will have 90 Days from the date upon which the Tier A offer is made to accept such offer, though Defendant may reject any acceptance once it has satisfied its obligations under Paragraph 11(a) of this Consent Decree.

b. **Tier B**. If Defendant is unable to reach agreement with enough School Districts identified under Tier A to satisfy its obligations under Paragraph 11(a) of this Consent Decree, Defendant shall move to Tier B. Within 300 Days of EPA's approval of the School Bus Mitigation Plan, Defendant shall provide EPA in writing a list of School Districts for which it will offer an average financial incentive of no more than 50% of the fair market value of a Class 6 through 8 school bus to replace 2006 or earlier engines qualifying school buses with New Buses. The list of School Districts under Tier B may include School Districts previously included under Tier A.

i. Defendant shall offer financial incentives to School Districts under this subsection within 420 Days of EPA's approval of the School Bus Mitigation Plan.

ii. Defendant shall inform each School District that any offer under the subsection is contingent upon there being sufficient funds remaining to provide the offered bus.

iii. Each School District will have 90 Days from the date upon which the Tier B offer is made to accept such offer, though Defendant may reject any acceptance once it has satisfied its obligations under Paragraph 11(a) of this Consent Decree.

c. If Defendant is unable to reach agreement with enough School Districts identified under Tier A and Tier B to satisfy its obligations under Paragraph 11(a) of this Consent Decree, Defendant may transmit to EPA, in writing for EPA approval, a request to offer incentive(s) greater than the incentives set forth in Tier A or B (hereinafter "Alternative Financial Incentive"). With this transmittal, Defendant shall provide a summary of the offers made and the number of bus replacements that have occurred and are projected to occur under Tier A and B, and shall identify which School Districts it intends to offer the proposed Alternative Financial Incentive. Defendant shall also certify that it was unable to secure an adequate number of bus replacements under the financial incentives offered pursuant to the Tier A and B to satisfy its obligations under Paragraph 11(a) of the Consent Decree.

d. If EPA does not provide a response (approval, disapproval or request for more information) to Defendant's request to offer Alternative Financial Incentive(s) within 45 Days of the request made under Paragraph 4(c) of this Appendix, Defendant may invoke dispute resolution under Section X of the Consent Decree.

i. Upon written approval of any Alternative Financial Incentive Defendant shall offer the Alternative Financial Incentives to School Districts under this subsection within 120 Days after EPA approval.

ii. Defendant shall inform each School District that any offer under the subsection is contingent upon there being sufficient funds remaining to provide the offered bus.

iii. Each School District will have 90 Days to accept a financial incentive offered under this subsection, though Defendant may reject any acceptance once it has satisfied its obligations under Paragraph 11(a) of this Consent Decree.

5. Defendant shall offer all financial incentives under this Appendix within 3 years of the Effective Date.

6. Defendant shall provide semi-annual reports under this Appendix by January 31 and July 31 of each year after the Effective Date. In the event that any of those dates falls on a Saturday, Sunday, or federal holiday, the quarterly report will be due on the next day that is not a Saturday, Sunday, or federal holiday.

a. The semi-annual report must identify:

i. the School Districts contacted;

ii. any School Districts Defendant attempted to contact but could not successfully contact;

iii. each financial incentive offered to a School District, which shall describe the fair market value of a school bus based on actual sales data within the relevant geographic area;

iv. each financial incentive accepted by a School District;

v. the model year and manufacturer of each qualifying school bus to be replaced under an accepted financial incentive;

vi. the model year and manufacturer of each school bus that will replace a qualifying school bus;

vii. the number of qualifying school buses replaced under each subsection of Paragraph 4 of this Appendix during the last reporting period;

viii. the cumulative number of qualifying school buses replaced under each subsection of Paragraph 4 of this Appendix during all reporting periods; and

ix. the school districts contacted pursuant to Paragraph 6(a)(i) of this Appendix that are in potential areas of low-income.

7. Defendant shall ensure that each School District that accepts a financial incentive from Defendant will provide Defendant a written certification that:

a. the qualifying school bus proposed for replacement was to have remained in use for no less than five years from the date projected for replacement;

b. the School District will reasonably maintain the school bus replacing the qualifying school bus;

c. the qualifying school bus proposed for replacement satisfies the criteria of Paragraph 2 of this Appendix;

d. the School District satisfies the criteria of Paragraph 3 of this Appendix; and

e. the School District will Permanently Destroy the diesel engine in the qualifying school bus within a reasonable time or arrange for a Third Party to Permanently Destroy the diesel engine in the qualifying school bus within a reasonable time.

8. A School District receiving a financial incentive under this Appendix that Permanently Destroys the diesel engine in a qualifying school bus shall provide Defendant with

photographic evidence and a written explanation of how it Permanently Destroyed the diesel engine in a qualifying school bus. The written explanation will include at least:

a. The method of Permanent Destruction selected under Paragraph 6(n) of this Consent Decree;

b. The date on which the diesel engine in a qualifying school bus was Permanently Destroyed; and

c. The names and titles of the School District officers, employees, or agents who Permanently Destroyed the diesel engine in a qualifying school bus.

d. The names of any Third Parties that Permanently Destroyed the diesel engine in a qualifying school bus.

9. Pursuant to Paragraph 65 of the Consent Decree, Defendant will retain any evidence and written explanation provided under Paragraph 8 of this Appendix.

APPENDIX B

LOCOMOTIVE ENGINE UPGRADE PROJECT

1. Switching or Short Haul Locomotive Engine Upgrade Project. In accordance with Paragraph 13 of the Consent Decree, Defendant shall submit to the EPA a plan for the repowering of two or more Tier 2 or lower switching or short haul locomotive engines ("Locomotive Upgrade Project"). Repower refers to replacing the existing engine(s) with an engine or engines certified to the EPA Tier 3 or more stringent locomotive emission standards. This plan shall identify how DDC will expend no less than $3,625,000 on the Locomotive Upgrade Project. Such a plan shall include the following information:

a. The number of locomotives for which the engines will be repowered, which, at a minimum, must be two locomotives;

b. The estimated cost per locomotive to conduct such engine repowering. This financial incentive must be set at no more than 40% of the cost of a locomotive engine repower with a Tier 3 certified engine, no more than 50% of the cost of a locomotive engine repower with a Tier 4 certified engine and no more than 60% of the cost for all-electric repower, which includes cost and labor, unless Defendant demonstrates to EPA that any such incentive to induce participation in the program is inadequate under Paragraph 2 of this Appendix such that it attains prior written approval from EPA to utilize a greater incentive;

c. The rating of each locomotive engine and the annual hours of operation;

d. The owner of each locomotive, as well as each locomotive's location and age, its power rating, whether it is a short haul or a switch, its actual or estimated number of idling hours per year, and its actual or estimated fuel burned per year;

e. A certification from the owner of each locomotive proposed for inclusion in the program and the supporting evidence demonstrating that the locomotives, for which engines will be repowered, were to have remained in use for no less than 15 years from the date projected for repowering;

f. Evidence that the locomotives, for which engines will be repowered, are located in Non-Attainment Areas and/or are located in Metropolitan Statistical Areas;

g. Provisions by which any recipient of funds or equipment under this program will be required to Permanently Destroy its high-emitting switching or short haul locomotive engines upon acceptance of such funds or equipment and will agree that the locomotive for which the engines were repowered will continue to be maintained and used for no less than 15 years from the receipt of the funds;

h. The proposed schedule under which the engine repowers and Permanent Destruction will occur, and

i. An agreement by the owner to grant the EPA access to its property and to provide information to EPA upon request for the purpose of confirming Defendant's compliance with this Consent Decree.

2. If Defendant is unable to reach agreement with enough recipients to satisfy its obligations under Paragraph 11(b) of this Consent Decree, Defendant may transmit to EPA, in writing for EPA approval, a request to offer an incentive greater than the incentives set forth above ("Alternative Locomotive Incentive"). With this transmittal, Defendant shall provide a summary of the offers made and the number of replacements projected to occur and shall identify which recipients it intends to offer the Alternative Locomotive Incentive. Defendant

shall also certify that it was unable to secure an adequate number of Locomotive Upgrade Projects under the financial incentives offered above to satisfy its obligations under Paragraph 11(b) of the Consent Decree.

a. If EPA does not provide a response (approval, disapproval or request for more information) to Defendant's request to offer Alternative Locomotive Incentive(s) within 45 Days of the request made under Paragraph 2 of this Appendix, Defendant may invoke dispute resolution under Section X of the Consent Decree.

b. Upon written approval of any Alternative Locomotive Incentive, Defendant shall offer the Alternative Locomotive Incentives within 120 Days after EPA approval.

c. Defendant shall inform each recipient that any offer under this subsection is contingent upon there being sufficient funds remaining to provide the offered Locomotive Upgrade Project.

d. Each recipient will have ninety Days to accept a financial incentive offered under this subsection, though Defendant may reject any acceptance once it has satisfied its obligations under Paragraph 11(b) of this Consent Decree.

APPENDIX C

ALTERNATIVE ENVIRONMENTAL MITIGATION PROJECTS

1. Dray Truck Replacement/Engine Upgrades Project. In accordance with Paragraph 14, Defendant may submit to the EPA a plan for an incentive program for the replacement of MY2006 or older dray truck tractors ("Dray Truck Tractors"). Dray Truck Tractors are typically large Class 8 trucks that provide goods movement from a port to a warehouse and back again, or that move empty containers from a business back to the port. Such a plan shall include the following:

a. The number of Dray Truck Tractors to be replaced under the program;

b. The financial incentive to be provided per Dray Truck Tractor. This financial incentive must be set at the lowest level to induce adequate participation in the program and shall be $30,000 or less per Dray Truck Tractor unless Settling Defendant attains prior written approval from the EPA to utilize an incentive greater than $30,000 per Dray Truck Tractor;

c. Evidence that the replaced Dray Truck Tractors were to have remained in use for no less than 5 years from the anticipated date of replacement;

d. Provisions by which any recipient of funds under this program will be required to Permanently Destroy its Dray Truck Tractor upon acceptance of such funds and utilize the replacement Dray Truck Tractor as a Dray Truck for no less than 5 years from the receipt of the funds;

e. The proposed schedule under which the Dray Truck Tractor replacement and Permanent Destruction will occur; and

f. An agreement by the owner of the Dray Truck Tractor to grant the EPA access to its property and to provide information to EPA upon request for the purpose of confirming Defendant's compliance with this Consent Decree.

2. Tug Boat and Ferry Repowering Program. In accordance with Paragraph 14 of the Consent Decree, Defendant may submit to the EPA a plan for a program to provide for the engine (including propulsion and generator engines) retrofit or engine repower of one or more tug boats and/or ferries located in a port, and currently powered by Tier 2 or lower diesel powered marine engines. Repower refers to replacing the existing engine with a new, cleaner engine. Retrofit refers to any technology, device, or system that, when applied to an existing diesel engine, achieves emission reductions beyond what are currently required by EPA regulations at the time of the engine's certification. A list of eligible, EPA verified exhaust control technologies is available at: www.epa.gov/verified-diesel-tech/verified-technologies-list-clean-diesel; a list of eligible, California Air Resources Board (CARB) verified exhaust control technologies is available at: www.arb.ca.gov/diesel/verdev/vt/cvt.htm. Verified retrofits may only be used for the vehicle/engine applications specified in the verification criteria. The plan shall include the following information:

a. The number of tug boats and/or ferries to have their engines replaced or retrofitted;

b. The estimated cost per tug boat and/or ferry to conduct such engine repower or retrofit. The financial incentive must be set at the lowest level to induce adequate participation in the program and shall be $2,000,000 or less per tug boat repower, $3,500,000 or

less per 2016 Tier 4 ferry boat engine repower and $3,000,000 or less per 2015 Tier 3 ferry boat engine repower unless Settling Defendant attains prior written approval from EPA to utilize an incentive greater than $2,000,000 per tug boat repower, $3,500,000 per 2016 Tier 4 ferry boat engine repower and $3,000,000 per 2015 Tier 3 ferry boat engine repower;

c. The rating of each engine and the annual hours of operation of each engine;

d. The owner of each tug boat and/or ferry proposed for inclusion in the program, as well as each tug boat and/or ferry's location and age, its power rating, its actual or estimated number of idling hours per year, and its actual or estimated fuel burned per year;

e. Evidence that the tug boat and/or ferry engines were to have remained in use for no less 1,000 hours for propulsion or 500 hours for auxiliary;

f. Provisions by which any recipient of funds or equipment under this program will be required to Permanently Destroy or to salvage for parts the replaced tug boat and ferry engines upon acceptance of such funds or equipment and will agree that replacement tug boat and ferry engines will continue to be maintained and used for no less than 15 years from the receipt of funds;

g. The proposed schedule under which the retrofitting and/or engine replacements and Permanent Destruction(s) will occur; and

h. An agreement by the ferry and/or tug owner to grant the EPA access to its property and to provide information to EPA upon request for the purpose of confirming Defendant's compliance with this Consent Decree.

3. Truck Stop Electrification. In accordance with Paragraph 14 of the Consent Decree, Defendant may submit to the EPA a plan for a program to provide for the

electrification of truck stops in order to reduce emissions from idling diesel truck engines. If Defendant proposes a truck stop electrification program, its plan shall include the following information:

a. The number of truck stops and their locations to be included in the program;

b. The number of Electrified Parking Spaces ("EPSs") to be installed at each truck stop;

c. The estimated costs both per truck stop and per EPS;

d. The proposed schedule under which EPS installation will occur;

e. The number of non-EPSs and EPSs at each truck stop and data demonstrating the actual or estimated number of trucks utilizing each truck stop at night for the prior 6 month period from the time of the plan;

f. Provisions by which any recipient of funds or equipment under this program will be required to utilize renewable energy (i.e., energy from a source that is not depleted when used, such as wind or solar power, to power the EPSs);

g. The EPS has a life expectancy of 20 years or more from the receipt of the funds and/or installation of equipment; and

h. An agreement to grant the EPA access to the property of any EPS recipient and to provide information to EPA upon request for the purpose of confirming Defendant's compliance with this Consent Decree.