

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

UNITED STATES OF AMERICA,)	
)	Case No. 1:15-CV-06143
Plaintiff,)	
)	Judge: Hon. Mary M. Rowland
v.)	
)	
NAVISTAR, INC.,)	
)	
Defendant.)	

NAVISTAR, INC.'S MITIGATION PROGRAM PLAN

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I. INTRODUCTION

Navistar, Inc. (“Navistar”) hereby submits this Mitigation Program Plan (the “Plan”) pursuant to Paragraph 13 of the Consent Decree that was entered by the United States District Court for the Northern District of Illinois in the above-captioned action (the “Consent Decree”) on December 14, 2021. The Consent Decree requires that Navistar implement a program to mitigate a total of not less than 10,000 tons of NOx emissions, within four years from the Effective Date as defined in the Consent Decree, by completing one or more NOx mitigation projects. The Consent Decree and its attached Appendix A outline a number of requirements for completion of the agreed NOx mitigation and, ultimately, termination of the Consent Decree.

Pursuant to Paragraph 13 of the Consent Decree, Navistar seeks Plan approval for the On-Highway Heavy-Duty Diesel Engine Retirement Project as described in Paragraph 13(e)(i) of the Consent Decree (the “On-Highway HDD Project” or “Project”). Navistar intends to mitigate 10,000 tons of NOx by retiring on-highway heavy-duty diesel (“HDD”) engines used to power any combination of Class 4-8 HDD trucks, buses, or other on-highway HDD vehicles. More specifically, this Plan involves the permanent destruction of Qualifying Engines as defined and described by the Consent Decree and its Appendix A. Navistar’s retirement of Qualifying Engines will be consistent with Paragraph 13(e)(i) of the Consent Decree. In acquiring Qualifying Engines, Navistar will use reasonable efforts to select and implement the On-Highway HDD Project in a manner that attempts to achieve geographic distribution as contemplated by Paragraph 13(d)(ii) of the Consent Decree and takes into consideration environmental justice as contemplated by Paragraph 13(d)(i).

In the event Navistar seeks to extend this Plan to include mitigation projects involving non-road engines and vehicles (as contemplated by Paragraph 13(e)(ii) the Consent Decree and related Appendix), Navistar will submit an additional mitigation plan to EPA pursuant to

Paragraph 13(e) of the Consent Decree. To the extent Navistar intends to undertake additional mitigation projects other than those described in Paragraph 13(e), Navistar will seek EPA approval for those projects consistent with the procedures outlined in Paragraph 14 of the Consent Decree.

II. MITIGATION PROJECT – ON-HIGHWAY, HDD ENGINE RETIREMENT

Paragraph 13(a) of the Consent Decree requires the Plan to include certain information including the plan for implementation, the project's budget, anticipated NOx reductions, and a description of how the program will meet the other requirements of Section VII of the Consent Decree, including where applicable, Navistar's method for identifying areas burdened by adverse human health and environmental impacts. Navistar covers each of these elements below.

Section II.A provides information regarding Navistar's plan for implementation of the Project and a description of how the Project will meet the other requirements of Section VII of the Consent Decree, including (1) the Project details and schedule, (2) Navistar's determination of what constitutes a Qualifying Engine, and (3) the reasonable efforts Navistar will employ to select and implement the Project so as to address geographic distribution, environmental justice and business advantage considerations as described in the Consent Decree. Section II.B provides information regarding the Project's budget. Section II.C covers the Project's anticipated NOx reductions. Additionally, although not required, Navistar describes in Section II.D its plan for meeting the reporting and preservations requirements of the Consent Decree, including the type and scope of information it intends to collect for purposes of implementing the On-Highway HDD Project.

A. Implementation Plan

1. Project Details and Schedule

Navistar will acquire and permanently destroy Qualifying Engines over a period of four years (running from the Effective Date of the Consent Decree) until such time that Navistar will have mitigated not less than 10,000 tons of NOx emissions, to be estimated consistent with the values provided in Paragraph 9 of Appendix A and, for on-highway light HDD (“LHDD”) Qualifying Engines, consistent with Schedule I.

Navistar will acquire any combination of Qualifying Engines through a number of different avenues, including but not limited to, the following:

- a. **Auctions:** Navistar will participate in various types of HDD auctions to acquire Qualifying Engines. These auctions may be in person as well as online and are generally open to the public, although some may be limited to only dealers and manufacturers. These auctions take place both at national, regional and local levels and are run by various auction companies.
- b. **Trade-Ins to Navistar:** Navistar intends to acquire Qualifying Engines via trade-ins from customers for used and new vehicles sold directly by Navistar to customers. Navistar will administer trade-ins for new vehicles consistent with Paragraph 13(e)(i) of the Consent Decree.
- c. **Purchases from Dealers:** Navistar will acquire Qualifying Engines from Dealers (independent companies that serve as distributors of Navistar vehicles). Navistar will communicate criteria for Qualifying Engines to Dealers. In the event a Dealer identifies potential Qualifying Engines in its inventory, Navistar may acquire the Qualifying Engine from the Dealer. Dealers will not be subject to the

trade-in restriction set forth in Paragraph 13(e)(i) of the Consent Decree, which applies only to trade-ins to Navistar.

- d. **Direct Purchases from Owners:** Navistar may, through a variety of means, identify and acquire vehicles containing Qualifying Engines directly from vehicle owners.
- e. **Other Acquisitions:** Navistar may identify other methods to acquire Qualifying Engines that are not listed here. In that instance, Navistar will keep records of the method of acquisition consistent with the requirements of this Plan and the Consent Decree.

Navistar will examine the Qualifying Engine prior to or after acquisition. Such an examination will document, as per Section II.A.2, that the Qualifying Engine meets the applicable requirements. Navistar will Permanently Destroy the Qualifying Engines utilizing one of the three methods identified in Paragraph 6(p)(i-iii) of the Consent Decree. Destruction of the Qualifying Engines will be performed primarily by qualified third parties who will be informed of the requirements of the Consent Decree and this Plan per Paragraph 4 of the Consent Decree. In some circumstances, Navistar employees may perform the destruction. Such employees will also be informed of the requirements of the Consent Decree and this Plan.

Navistar will retain for its records, and make available for EPA's inspection upon request, documentation regarding each Qualifying Engine's destruction that includes information regarding:

- a. the method of permanent destruction elected under the Consent Decree;
- b. the date on which the Qualifying Engine was permanently destroyed;

- c. the names, company affiliation and titles of the person(s) who were responsible for permanently destroying the Qualifying Engine; and
- d. visual evidence, such as photographs or a video, of the destruction of each Qualifying Engine, including:
 - i. an initial image of the Qualifying Engine showing (if visible) the VIN;
 - ii. an image of the process of destruction; and
 - iii. a final image of the destroyed Qualifying Engine.

2. Qualifying Engines/Commercial Viability

Navistar will provide to EPA in each Mitigation Program Progress Report required under Paragraph 26 of the Consent Decree a good faith certification of the “commercial viability”¹ of all Qualifying Engines that are contained in each report.

Navistar will retain for its records, and make available for EPA’s inspection upon request, the following documentation that will serve as support for Navistar’s good faith certification:

- a. A copy of the Qualifying Engine’s vehicle title;
- b. Documentation containing the following information:
 - i. the model year of the engine;
 - ii. the condition of the Qualifying Engine, including whether it can start, move a vehicle and has all necessary parts;
 - iii. visual images of the vehicle and Qualifying Engine;
 - iv. a brief description of the basis for determining that the Qualifying Engine has three years commercially viable performance remaining

¹ See *United States v. Navistar, Inc.*, Consent Decree, Appendix A at ¶¶ 4(a)(v), 5.

- based on its mileage, condition, the need for any restorative maintenance on the Qualifying Engine, the prevailing market conditions for similar vehicles and other criteria as may be relevant;
 - v. the name(s) of the qualified Navistar technician(s) or qualified third party technician(s) that made the aforementioned determinations.; and
- c. Documentation of Navistar's acquisition of the vehicle containing the Qualifying Engine from the Transferor.

For an otherwise Qualifying Engine that cannot start, move a vehicle or does not have all necessary parts, Navistar also will provide to EPA certified statements under Paragraph 10(g) of Appendix A for each such engine contained in Navistar's Mitigation Program Progress Reports. Navistar will retain for its records, and make available for inspection upon EPA's request, the following documentation that will serve as the support for Navistar's 10(g) certifications:

- a. Documentation containing the following information:
 - i. a description of the malfunction or condition preventing the Qualifying Engine from starting or moving a vehicle and/or all missing necessary parts;
 - ii. a description and cost estimate for the repair of the Qualifying Engine;
 - iii. a comparison of the cost of repair estimate and the anticipated value of the vehicle with the Qualifying Engine after a potential repair, taking into account market conditions for similar vehicles in repaired conditions; and
 - iv. the name(s) of the qualified Navistar technician(s) or qualified third party technician(s) that made the aforementioned determinations.

3. Selection/Implementation Criteria

Paragraph 13(d) of the Consent Decree sets forth three criteria for selecting and implementing any mitigation program. These criteria are geographic distribution, environmental justice, and no business advantage, and generally require Navistar to use “reasonable efforts” to select and implement selected projects that take these criteria into consideration.

EPA has already expressly found in Paragraph 13(d)(iii) and 13(e) of the Consent Decree that the On-Highway HDD Project satisfies the no business advantage and the environmental justice criteria. Nevertheless, Navistar describes below how the Project more than meets all three criteria in Paragraph 13(d).

a. Geographic Distribution

Pursuant to Paragraph 13(d)(ii), Navistar must use “reasonable efforts” to implement the On-Highway HDD Project “within each EPA Region in proportion to the number of trucks powered by Subject Engines² located in the states within those regions based on the most recent available warranty data.”

Based on the most recent available warranty data, which was provided to the EPA during the litigation, the Subject Engine vehicles fall into the following EPA Regions on a percentage basis (rounded to the nearest percent): (1) Region 1: 4%; (2) Region 2: 7%; (3) Region 3: 10%; (4) Region 4: 16%; (5) Region 5: 23%; (6) Region 6: 13%; (7) Region 7: 9%; (8) Region 8: 5%; (9) Region 9: 8%; (10) Region 10: 2%. At the time the warranty data was pulled, approximately 3% of Subject Engine vehicles already were exported outside of the United States. Navistar will make reasonable efforts to redistribute that percentage as evenly as practicable across the 10 EPA Regions when implementing the On-Highway HDD Project.

² See *United States v. Navistar, Inc.*, Consent Decree at 3.

Utilizing these percentages, Navistar will use reasonable efforts to achieve mitigation of 10,000 tons of NOx in each Region in a percentage equivalent to those listed in the preceding paragraph. For instance, Navistar will use reasonable efforts to mitigate 23% of the 10,000 tons of NOx, or approximately 2,300 tons, in Region 5. By way of example, based upon the NOx values set forth in Paragraph 9 of Appendix A to the Consent Decree, it would take approximately 605 Heavy-Heavy Duty Diesel Long Haul (“HHDD Long Haul”) vehicles to mitigate those 2,300 tons of NOx . Navistar would use reasonable efforts to acquire those vehicles in Region 5. If, for example, Navistar is able to determine that a vehicle, although not acquired in Region 5, was based out of or operated regularly in Region 5, then Navistar may count that vehicle as part of the mitigation effort for Region 5. While the percentages in this section are not meant to dictate strict vehicle quotas, Navistar will undertake reasonable efforts to target Region acquisitions in a manner so as to attempt to achieve geographic distribution as contemplated in the Consent Decree.

b. Environmental Justice

Navistar’s acquisition and retirement of HHDD Long Haul engines and vehicles and Intercity and Transit buses satisfy the environmental justice criteria set forth in the Consent Decree. HHDD Long Haul vehicle and Intercity buses by their very nature operate across the United States, including in and through numerous environmental justice areas. Transit buses, by their very nature, operate in metropolitan areas that are typically associated with environmental justice areas. As set forth in Paragraph 13(e), the Consent Decree’s environmental justice obligations “are hereby deemed satisfied with respect to Qualifying Engines from Long-Haul Heavy Heavy Duty Diesel vehicles and Intercity and Transit Buses.”

With respect to all other HDD vehicle categories, and in accordance with Paragraph 13(d)(i) of the Consent Decree, to the extent that Navistar chooses to acquire these types of HDD

vehicles, Navistar must use “reasonable efforts” to implement the On-Highway HDD Project “in a manner that takes into consideration [environmental justice] areas.” Pursuant to Paragraph 13(a)(v) of the Consent Decree, Navistar’s methodology for identifying such areas is described below.

For HDD vehicles that are not HHDD Long Haul, or Intercity or Transit buses, Navistar will identify locations from which it has historically sold vehicles and, using the EPA EJSCREEN tool (<https://ejscreen.epa.gov/mapper/>), will determine if any of those locations are located in counties that contain environmental justice areas that score in the 80th percentile or higher for any one of the EJ Indexes. Based on the overlap, Navistar will use reasonable efforts to prioritize those locations when acquiring vehicles that are not HHDD Long Haul, Intercity or Transit buses.

On at least a semi-annual basis, Navistar will review acquisitions for the previous quarter as a whole against the locations identified as environmental justice areas and make reasonable efforts to adjust future acquisitions so as to target environmental justice areas if necessary. While Navistar will use reasonable efforts to consider environmental justice areas as it acquires vehicles, Navistar is not required to acquire every Qualifying Engine from an environmental justice area.

c. No Business Advantage

In order to address the “No Business Advantage” implementation criteria, Navistar is structuring the On-Highway HDD Project consistent with Consent Decree Paragraph 13(e)(i). Specifically, as part of the On-Highway HDD Project (a) Navistar may retire through Permanent Destruction any Qualifying Engine that Navistar owned on or before the Date of Lodging,³ (b)

³ See *United States v. Navistar, Inc.*, Consent Decree at ¶ 6(d).

Navistar may retire through Permanent Destruction⁴ any Qualifying Engines acquired through trade for a new engine or new vehicle sale provided that the trade-in has a Navistar engine or is an International-branded vehicle, and (c) Navistar may retire through Permanent Destruction any otherwise Qualifying Engines acquired through auction or other means of acquiring otherwise Qualifying Engines so long as consistent with the criteria described in Paragraph 13 of the Consent Decree and Appendix A to the Consent Decree.

B. Summary-Level Budget

Navistar's current summary-level budget for the On-Highway HDD Project is roughly \$35 million. This amount includes the budget both for the acquisition of approximately 2,600 HHDD Long Haul on-highway vehicles and also the costs of retirement as well as the On-Highway HDD Project's general administrative costs.

C. Anticipated NOx Emission Reduction Estimates

Navistar anticipates that the NOx emission reduction estimate for the On-Highway HDD Project is not less than 10,000 tons of NOx. Navistar intends to retire a sufficient number of Qualifying Engines to reach this amount. If Navistar is unable to reach the anticipated amount implementing the On-Highway HDD Project, then Navistar will submit for EPA approval additional mitigation projects as set forth in Consent Decree Paragraphs 14-15.

Navistar will calculate the NOx emissions achieved through the On-Highway HDD Project utilizing the NOx values identified by HDD on-highway engine categories listed in Paragraph 9 of Appendix A to the Consent Decree and Schedule 1 to this Plan. Navistar intends to determine a Qualifying Engine's categorization under Paragraph 9 and Schedule 1 based on the type of vehicle model in which the Qualifying Engine was used (*see* Schedule 2). For

⁴ *Id.* at ¶ 6(p).

example, Navistar will consider that any Qualifying Engine contained in a Navistar Transtar model vehicle falls in the “Tractor HHDD Long Haul” engine category based on its primary intended use. In the instance where additional information is made available to Navistar at the point of acquisition that indicates that a vehicle was not used consistent with the assumed engine category, Navistar will categorize the Qualifying Engine at issue consistent with the actual use of the vehicle model. For example, if Navistar is made aware at the time of acquisition that a vehicle model that has a primary intended use as a “Tractor HHDD Long Haul” was instead used in a drayage application, then Navistar would not categorize the Qualifying Engine within that vehicle as a “Tractor HHDD Long Haul” and would instead categorize the Qualifying Engine as a “Tractor HHDD Short Haul.” For non-Navistar vehicle manufacturer models or for Navistar models that predate the models listed on Schedule 2, Navistar intends to use the closest equivalent model for purposes of engine categorization and will maintain documentation reflecting these decisions.

D. Project Reporting Requirements

Section IX of the Consent Decree as well as Appendix A set forth certain reporting requirements for implementation of the On-Highway HDD Project. This sub-part discusses Navistar’s intended actions to comply with those requirements, including the materials Navistar intends to submit with each progress report as well as the On-Highway HDD Project completion report.

Navistar will make all submissions, including this Plan, all Progress Reports and the Completion Report available on the publicly accessible website, <https://www.navistar.com/epasettlement>, subject to redactions for confidential business

information and any personally identifiable information.⁵ All submissions by Navistar shall be signed and include the certification provided at Paragraph 30 of the Consent Decree.

1. Mitigation Program Progress Report

Navistar shall submit its first Mitigation Program Progress Report on July 31, 2022.

Pursuant to Consent Decree Paragraph 26, all subsequent Mitigation Program Progress Reports will be submitted by January 31st and July 31st of each year. Navistar shall submit its Mitigation Program Progress Report for the preceding period since the prior report that includes the following information:

- a. a narrative description of the status of the project, including progress towards meeting the mitigation requirements;
- b. a description of any problems encountered or anticipated, together with implemented or proposed solutions;
- c. status of permit applications (if applicable);
- d. a summary of costs incurred since the previous report;
- e. a description of any conduct that violates 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;
- f. a certification that the Qualifying Engines for which Navistar claims NOx tons satisfy the requirements of the Consent Decree, including a certification that each of the retired engines meet the requirements of commercial viability;

⁵ See *United States v. Navistar, Inc.*, Consent Decree at ¶¶ 26-33.

- g. a certification prepared consistent with Paragraph 10(g) of the Appendix (where applicable) that an engine that is unable to satisfy Paragraph 4(a)(iv) of the Appendix can still be considered a Qualifying Engine;
- h. a certification as required by Consent Decree Paragraph 30 that the information provided is true, accurate and complete to the best of the authorized representative's knowledge;
- i. a description of Navistar's efforts to meets its plan for implementing the geographic distribution criteria of the Consent Decree, including a description of the approximate percentage of NOx mitigated in each EPA Region as set forth in Section II.A.3.a;
- j. a description of Navistar's efforts, where applicable, to meets its plan for implementing the environmental justice criteria of the Consent Decree (and any difficulties with such implementation), including:
 - i. identification of the county from which a Qualifying Engines was obtained;
 - ii. information on whether the county contains any environmental justice areas as described in Paragraph 10(c)(ii)(1) if the Appendix;
 - iii. an estimate of the NOx emissions reduced in that county;
 - iv. information on whether such county is located in a non-attainment area with EPA's national ambient air quality standards for criteria pollutants, and for what pollutant; and
- k. an Excel spreadsheet with the information required by Appendix A Paragraph 10(f).

2. Mitigation Program Completion Report

Pursuant to Consent Decree Paragraph 26, Navistar shall submit for its On-Highway HDD Project a Mitigation Program Completion Report that includes the following information in addition to that provided by the Mitigation Program Progress Reports:

- a. the date of project completion;
- b. results and documentation of implementation (including estimated NOx reductions achieved);
- c. estimated costs for completing the program;
- d. a certification that the program was completed in full satisfaction of the requirements of the Consent Decree.

With regard to “results and documentation of implementation” used in this section, Navistar interprets that phrase to mean the final spreadsheet containing all of the information collected for Navistar’s progress reports.

III. CERTIFICATION & SIGNATURE

I certify under penalty of perjury 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.

FOR NAVISTAR, INC.:

2/16/2022
Date

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right.

