

**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

PROGRESS REPORT

July 31, 2022

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I. INTRODUCTION

Navistar, Inc. (“Navistar”) hereby submits this Mitigation Program Progress Report (the “Progress Report” or “Report”) pursuant to Section IX of the Consent Decree and its Appendix A 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 (ECF No. 411).

The Consent Decree and its Appendix A require that Navistar semi-annually provide information regarding its progress implementing Navistar’s Mitigation Program Plan (“Mitigation Program Plan” or “Mitigation Program”) approved by EPA on March 21, 2022. That Mitigation Program Plan calls for the mitigation of not less than 10,000 tons of NOx through the permanent destruction of 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, the Plan involves the permanent destruction of Qualifying Engines as defined and described by the Consent Decree and its Appendix A.

To date, and as supported by the detailed information provided below, Navistar has permanently destroyed 10 Qualifying Engines, acquired from within EPA Region 5, for a mitigating total of 10.5 NOx tons. During this reporting period, Navistar also took a number of actions to establish the administrative structure, controls and processes for the Mitigation Program, including engaging internal sales team to capture HDD engines/vehicles in the market, creating partnerships with third parties to assist with the purchasing and destruction of Qualifying Vehicles, determining appropriate processes to collect and retain all necessary documentation attached to each Qualifying Engine.

II. MITIGATION PROGRAM PLAN PROGRESS INFORMATION

As outlined in Section IX of the Consent Decree and Appendix A, Navistar is required to provide the following information in its Mitigation Program Plan Progress Reports:

- A. a description of the status of the project, including progress towards meeting the mitigation requirements and completion of any milestones (if any);
- 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 prepared consistent with Paragraph 10(b) of Appendix A that the Qualifying Engines for which Navistar claims NOx tons satisfy the requirements of Section VII of the Consent Decree and Appendix A, including certifying that each Qualifying Engine has at least three years of commercially viable remaining life as defined by Paragraph 5 of Appendix A;
- G. a certification prepared consistent with Paragraph 10(g) of Appendix A (where applicable) that an engine that is unable to satisfy Paragraph 4(a)(iv) of Appendix A still constitutes a Qualifying Engine;
- H. a description of Navistar's efforts to meet its plan for implementing the environmental justice criteria of the Consent Decree (and any difficulties with such implementation), including where applicable:
 - i. identification of the county from which a Qualifying Engine was obtained;
 - ii. information on whether the county contains any environmental justice areas as described in Paragraph 10(c)(ii)(1) of the Appendix;
 - iii. an estimate of the NOx emissions reduced (in tons) 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;
- I. a description of Navistar's efforts to meet 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 of the Mitigation Program Plan; and
- J. an Excel spreadsheet with the information required by Appendix A Paragraph 10(f).

Each of these items is addressed in more detail below. Navistar also has provided, in Section III, 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.

A. Narrative Description of Status and Progress

Navistar has chosen its Used Truck Organization ("UTO") to be responsible for all purchases of Qualifying Engines and destruction of said engines. To capture HDD engines/vehicles the UTO has engaged both its wholesale team and its International dealer body in a purchase program in which customers will receive a designated value for their older trucks depending upon a number of variables. UTO also signed a partnership with a third-party International dealer, K&R Truck Sales ("K&R"), in which K&R has agreed to assist Navistar in purchasing and destroying Qualifying Engines across various EPA Regions. K&R has significant experience with buying older trucks/buses and has relationships with many scrappers. In addition to the completed destructions as reported in this Report, the UTO has come to a verbal agreement with Midwest Transit for the acquisition and disposal of 250+ Transit Buses and/or school buses to be completed this calendar year. In addition to the UTO, Navistar has appointed their Compliance team to head the tracking and retention portion of the Mitigation Program. The Compliance team works hand-in-hand with the UTO to ensure all documentation and program requirements are met for each Qualifying Engine.

Consistent with the Mitigation Program Plan, Navistar has attempted to locate and permanently destroy Qualifying Engines through auctions, trade-ins, purchases from dealers, direct purchases from owners and other acquisition methods. Based on those efforts, during this reporting period, Navistar has acquired and permanently destroyed 10 Qualifying Engines as of July 31, 2022. Navistar has claimed credit for 10.5 NO_x tons in relation to these Qualifying Engines. Navistar calculated the NO_x reductions achieved through the Mitigation Program Plan

by 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 the Mitigation Program Plan.

Navistar determined the Qualifying Engines' categorization under Paragraph 9 and Schedule 1 of the Mitigation Program Plan based on the type of vehicle model in which the Qualifying Engine was used (*see* Schedule 2 to the Mitigation Program Plan).

Of the 10 Qualifying Engines acquired and permanently destroyed during this review period, 10 were Heavy-Heavy Duty Diesel ("HHDD") Long Haul engines or engines used in Intercity and Transit buses, with 0 involving other Qualifying Engine categories. During this review period, Navistar acquired and destroyed engines from EPA Region 5. Of those Qualifying Engines acquired and destroyed, all 10 could start, move a vehicle and had all necessary parts and otherwise met all required criteria under the Consent Decree and Appendix A.

B. Description of Problems Encountered or Anticipated

Navistar did not encounter and does not anticipate any long-term problems with its continued implementation of the Mitigation Program Plan. The Class 8 used truck market hit a historic supply low in 2021-2022, this low was caused by a drop in new truck production, forcing fleets to run their trucks longer and limiting the number of used units entering the market. With component shortages, some fleets decided to strip older vehicles for repair rather than selling to a buyer like Navistar. In the last 60 days, however, the U.S. used truck market inventory has begun to rise in accordance with increased new truck delivery improvements. Forecasts show these improvements will continue, which will allow used truck supply to increase going forward, and make more trucks available for this Mitigation Program.

C. Status of Permit Applications

Navistar does not need to apply and has not applied for any permits in connection with its implementation of the Mitigation Program Plan.

D. Summary of Costs Incurred

Navistar spent approximately \$40,000 during this reporting period. These costs are directly tied to the services K&R performed during the reporting period to acquire and destroy the 10 Qualifying Engines on Navistar's behalf.

E. Description of Violative Conduct

To the best of its knowledge, Navistar has not violated the requirements of the Consent Decree or Appendix A.

F. Paragraph 10(b) Certifications of Qualifying Engines

Pursuant to Paragraph 10(b) of Appendix A, Attachment 1 of this Progress Report contains Navistar's good faith certification that the Qualifying Engines satisfy the requirements of Section VII of the Consent Decree and Appendix A, including certifying that each Qualifying Engine has at least three years of commercially viable remaining life as defined by Paragraph 5 of Appendix A.

G. Paragraph 10(g) Certifications of Qualifying Engines

In accordance with Paragraph 4(a)(iv) of Appendix A, all Qualifying Engines satisfied the requirements and were able to start, move, and had all necessary parts. Accordingly, no certification is required pursuant to Paragraph 10(g) of Appendix A.

H. Environmental Justice

EPA has already expressly found in Paragraph 13(e) of the Consent Decree that, with respect to Qualifying Engines from Long Haul HHDD vehicles and Intercity and Transit Buses,

the environmental justice requirements of the Consent Decree are deemed satisfied. Each of the 10 Qualifying Engines acquired and destroyed during this reporting period are classified as Transit Buses, and thus meet the environmental justice requirements of the Consent Decree. Nevertheless, Navistar notes that all Qualifying Engines were operational in a county that is in attainment with EPA’s national ambient air quality standards but which contains an EJ area as set forth in Paragraph 13(d)(i) of the Consent Decree and Paragraph 10(c)(ii) of Appendix A. More specifically, the Transit Buses acquired were formerly operated within the City of Grand Rapids, Michigan, which does contain EJ areas as defined by EJSCREEN.

I. Geographic Distribution

Pursuant to Paragraph 13(d)(ii) of the Consent Decree, Navistar must use “reasonable efforts” to implement the Project “within each EPA Region in proportion to the number of trucks powered by Subject Engines located in the states within those regions based on the most recent available warranty data[.]” Navistar is meeting this “geographic distribution” requirement as outlined on pages 8-9 of Navistar’s Mitigation Program Plan that was approved by EPA. During this review period, Navistar acquired and permanently destroyed Qualifying Engines from the following EPA Regions.

| EPA Region | Number of Qualifying Engines Destroyed in Each Region |
|------------|---|
| Region 1 | |
| Region 2 | |
| Region 3 | |
| Region 4 | |
| Region 5 | 10 |
| Region 6 | |
| Region 7 | |
| Region 8 | |
| Region 9 | |
| Region 10 | |

J. Excel Spreadsheet

Attachment 2 to this report contains the information Navistar is required to provide according to Paragraph 10(f) of Appendix A, including the following information for each Qualifying Engine:

- i. the name, address, telephone number, and email address of the Transferors of Qualifying Engines to Defendant through this Project;
- ii. if different from the zip code required by subparagraph (f)(i), above, the zip code where the Qualifying Engine and associated vehicle or equipment was registered or, if not registered, stored in the ordinary course;
- iii. the Qualifying Engine and associated vehicle or equipment model year, manufacturer, model, VIN (or serial or other unique identification number), vehicle class or equipment type, and mileage or hours of operation of the Qualifying Engine and associated vehicle or equipment for which Defendant asserts it is entitled to claim credits towards satisfying the requirements of Paragraph 13 on the basis of having Permanently Destroyed the Qualifying Engine;
- iv. the amount paid to or value exchanged with the Transferor of the Qualifying Engine;
- v. the number of credits accumulated during the reporting period that Defendant asserts it is entitled to claim towards meeting the requirement of Paragraph 13 of the Consent Decree; and
- vi. the total number of credits Defendant asserts it is entitled to claim towards meeting the requirement of Paragraph 13 of the Consent Decree, to date.

III. PARAGRAPH 30 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.:

07/29/22
Date

Michael Neenan