

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

ENGINE MANUFACTURERS)	
ASSOCIATION, and CUMMINS INC.,)	
)	
Petitioners,)	
)	
v.)	Nos. 01-1129 and 02-1080
)	
UNITED STATES ENVIRONMENTAL)	
PROTECTION AGENCY, <u>et al.</u> ,)	
)	
Respondents.)	
)	
INTERNATIONAL TRUCK AND)	
ENGINE CORPORATION, <u>et al.</u> ,)	
)	
Petitioners,)	
)	
v.)	No. 00-1510 (and consolidated case
)	No. 00-1512)
UNITED STATES ENVIRONMENTAL)	
PROTECTION AGENCY, <u>et al.</u> ,)	
)	
Respondents.)	
)	
INTERNATIONAL TRUCK AND)	
ENGINE CORPORATION,)	
)	
Petitioner,)	
)	
v.)	No. 01-1137
)	
UNITED STATES ENVIRONMENTAL)	
PROTECTION AGENCY, <u>et al.</u> ,)	
)	
Respondents.)	

ENGINE MANUFACTURERS ASSOCIATION,)	
)	
Petitioner,)	
)	
v.)	No. 00-1066
)	
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, <u>et al.</u> ,)	
)	
Respondents.)	
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ENGINE MANUFACTURERS ASSOCIATION,)	
)	
Petitioner,)	
)	
v.)	No. 03-1007
)	
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, <u>et al.</u>)	
)	
Respondents.)	
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SETTLEMENT AGREEMENT

WHEREAS, the Petitions for Review in these cases seek review, respectively, of: (1) a final rule establishing emission standards for commercial marine diesel engines pursuant to section 213 of the Clean Air Act, 42 U.S.C. §7547, which was published by the United States Environmental Protection Agency (“EPA”) on December 29, 1999 (64 Fed. Reg. 73,300) (No. 00-1066); (2) a final rule establishing emission standards for heavy-duty diesel motor vehicle engines pursuant to section 202 of the Clean Air Act, 42 U.S.C. §7521, which was published by the EPA on October 6, 2000 (65 Fed. Reg. 59,896) (Nos. 00-1510 and 00-1512); (3) a final rule establishing emission standards

for heavy-duty diesel motor vehicle engines pursuant to section 202 of the Clean Air Act, 42 U.S.C. §7521, which was published by the EPA on January 18, 2001 (66 Fed. Reg. 5,002) (Nos. 01-1129 and 02-1080); (4) guidance concerning certification of heavy-duty diesel motor vehicle engines issued by EPA on January 19, 2001 (No. 01-1137); and (5) a final rule establishing emission standards for recreational marine diesel engines pursuant to section 213 of the Clean Air Act, 42 U.S.C. §7547, which was published by the EPA on November 8, 2002 (67 Fed.Reg. 68,242) (No. 03-1007);

WHEREAS, petitioners Engine Manufacturers Association, International Truck and Engine Corporation, and Cummins Inc. (collectively, the “Manufacturer Parties”) have raised issues regarding several provisions of the above-listed rules and guidance;

WHEREAS, the specific parties to this Agreement are EPA and the Manufacturer Parties;

WHEREAS, EPA recognizes and acknowledges that the Manufacturer Parties also have negotiated an agreement (appended hereto as Attachment A) with the California Air Resources Board (“CARB”) consistent in scope and effect with the settlement agreement that has been negotiated by and between the Manufacturer Parties and EPA;

WHEREAS, settlement of all issues raised in the pending cases without expensive and protracted litigation is in the interests of the public, the parties and judicial economy;

WHEREAS, the parties have agreed to a settlement of these matters without any adjudication or admission of fact or law by any party;

NOW THEREFORE, EPA and the Manufacturer Parties, intending to be bound, agree as follows:

1. EPA shall sign for publication in the Federal Register, no later than one year after execution of this Settlement Agreement, or six months after EPA notifies the court of the final

approval of this Settlement Agreement following the public comment process required under 42 U.S.C. §7413(g) and described in paragraph 10, whichever is later, a notice of proposed rulemaking regarding in-use testing of heavy-duty diesel motor vehicles by manufacturers as described in and conforming with Attachment B to this Settlement Agreement. The preamble of the rulemaking notice shall describe the parties' intentions regarding in-use testing of non-road diesel engines as described in paragraphs 1 and 2 of Attachment E. After considering any public comments received, EPA shall use its best efforts to sign, for publication in the Federal Register, a notice of final rulemaking regarding in-use testing of heavy-duty diesel motor vehicles by manufacturers no later than one year after publication of the notice of proposed rulemaking.

2. EPA shall issue no later than six months after execution of this Settlement Agreement, or one month after EPA notifies the court of final approval of this Settlement Agreement following the public comment process required under 42 U.S.C. §7413(g) and described in paragraph 10, whichever is later: (1) a guidance document concerning regulations applicable to heavy-duty diesel engines and motor vehicles as described in and conforming with Attachment C to this Settlement Agreement; (2) a guidance document concerning regulations applicable to marine diesel engines and vessels as described in and conforming with Attachment D to this Settlement Agreement; and (3) a guidance document concerning non-road diesel engines as described in and conforming with paragraph 3 of Attachment E to this Settlement Agreement.

3. The parties may extend the dates set forth in Paragraphs 1 and 2, or otherwise modify this Agreement, by written stipulation executed by counsel for each of the parties.

4. The commitments in Paragraphs 1 and 2 are subject to the availability of appropriated funds. No provision of this Agreement shall be interpreted as or constitute a commitment or requirement that EPA obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C.

§1341, or any other applicable statute or regulation. In the event that sufficient appropriated funding is not available, the parties shall adjust the commitments in Paragraphs 1 and 2.

5. Nothing in the terms of this Settlement Agreement shall be construed to limit or modify the discretion accorded EPA under the Clean Air Act or by general principles of administrative law.

6. Nothing in this Agreement shall be construed to limit or modify EPA's discretion to alter, amend, or revise the regulations or guidance identified in Paragraphs 1 and 2 from time to time, or to promulgate superceding regulations or guidances. Similarly, the Manufacturer Parties do not waive and expressly reserve any and all of their rights with respect to any such altered, amended, revised or superceding regulation or guidance.

7. If EPA accomplishes the items specified in Paragraphs 1 and 2, and the notice of final rulemaking promulgated pursuant to Paragraph 1 is in substantial conformance with Attachment B to this Settlement Agreement, or is revised consistent with comments filed by the Manufacturer Parties during the public comment period, the Manufacturer Parties shall promptly stipulate to the dismissal with prejudice of their Petitions for Review in accordance with Rule 42 of the Federal Rules of Appellate Procedure. Each party shall bear its own costs of litigation, including attorneys' fees.

8. In the event that EPA does not accomplish one or more of the items specified in Paragraphs 1 and 2, or issues a notice of final rulemaking under Paragraph 1 which is not in substantial conformance with Attachment B (except where it is revised consistent with comments filed by the Manufacturer Parties during the comment period), the Manufacturer Parties shall have the right to move the Court to reactivate these proceedings, and that right shall constitute Manufacturer Parties' exclusive remedy if EPA does not accomplish the above-described actions.

The Manufacturer Parties agree to give EPA thirty (30) days notice prior to exercising the rights under this paragraph. The right to move to reactivate these proceedings shall expire 60 days after publication in the Federal Register of the notice of final rulemaking described in the last sentence of Paragraph 1.

9. Except as expressly provided in this Settlement Agreement, none of the parties waives or relinquishes any legal rights, claims, or defenses they may have. Notwithstanding the foregoing, if EPA issues final rules or guidance that are in substantial conformance with Attachments B, C and D, the Manufacturer Parties will not exercise whatever rights they may have to seek review of those final EPA rules or guidance documents pursuant to 42 U.S.C. §7607, or otherwise; provided, however, and in addition to the reservation of rights contained in Paragraph 6 above, the Manufacturer Parties do not waive and expressly reserve their rights to challenge any subsequent EPA action that is inconsistent with any such final EPA rules or guidance.

10. The parties agree and acknowledge that final approval of this Settlement Agreement is subject to the requirements of section 113(g) of the Clean Air Act, 42 U.S.C. §7413(g). That section requires that the Administrator provide notice of any proposed settlement agreement in the Federal Register and provide a period of at least thirty days following publication to allow persons who are not parties or intervenors in the litigation to comment in writing. The Administrator or the Attorney General, as appropriate, must consider those comments in deciding whether to consent to the agreement and may withdraw or withhold his consent to the Settlement Agreement if the comments disclose facts or considerations which indicate that such consent is inappropriate, improper, inadequate or inconsistent with the requirements of the Act. This Agreement shall become final on the date that EPA provides written notice of such finality to the Manufacturing Parties.

11. The undersigned representatives of each party certify that they are fully authorized by the party they represent to bind the respective parties to the terms of this Settlement Agreement. This Agreement will be deemed to be executed when it has been signed by the representatives of the parties set forth below, subject to final approvals pursuant to paragraph 10.

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ATTACHMENTS

Attachment A	Manufacturer Parties' Agreement With CARB
Attachment B	HDIUT Program Outline for NPRM
Attachment C	HDDE Q&A
Attachment D	Marine CI Q&A
Attachment E	Non-road diesel elements