

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
v.	)	Civil No. 12-1402
	)	
	)	
VOLVO CONSTRUCTION EQUIPMENT AB,	)	
	)	
Defendant.	)	

STIPULATION OF SETTLEMENT AND JUDGMENT

1. *WHEREAS* the United States of America, acting at the request of the Administrator of the United States Environmental Protection Agency (“EPA”), commenced this action by filing a Complaint (“Complaint”) on August 24, 2012, alleging violations by Volvo Construction Equipment AB (“VCE” or the “Defendant”) of the Clean Air Act (the “Act”), 42 U.S.C. §§ 7522, 7524, 7547 arising out the sale, offering for sale, introduction into commerce and importation into the United States of approximately 266 non-road compression ignition engines in violation of Sections 203 and 213 of the Act, 42 U.S.C. §§7522 and 7547;

2. *WHEREAS* the United States and VCE are parties to a 1999 Consent Decree entered by this Court in *United States v. Volvo Powertrain Corp., Civ. Action 98-02547* (“Consent Decree”);

3. *WHEREAS* on October 15, 2012, the United States served on Volvo Powertrain (an entity related to VCE) and VCE a demand for stipulated penalties under that Consent Decree (“Stipulated Penalties Demand”);

4. *WHEREAS* the Stipulated Penalties Demand related to many of the same engines addressed in this lawsuit, but addressed alleged violations of the Consent Decree;

5. *WHEREAS* this Stipulation of Settlement and Judgment (“Stipulation”) addresses the United States’ claims in this Action and under the Stipulated Penalties Demand related to the engines listed on Appendix A (“the Subject Engines”) which are the same engines listed in Appendix A to the Complaint in this Action;

6. *WHEREAS* the Defendant does not admit any issue of law or fact except as provided in Paragraphs A and B of this Stipulation, and denies liability to the United States arising out of the transactions or occurrences alleged in the underlying Complaint and Stipulated Penalties Demand;

7. *WHEREAS* the United States and the Defendant (the “Parties”) agree that it is in the public interest to resolve this matter without litigation and have negotiated this Stipulation in good faith to avoid expensive and protracted litigation;

8. *NOW THEREFORE*, without adjudication or admission of any issue of fact or law, the Parties, by and through the undersigned, agree and stipulate as follows:

A. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1345 and 1355 and 42 U.S.C. §§ 7524 and 7547. Venue is proper in this District pursuant to 42 U.S.C. § 7524, 28 U.S.C. §§ 1391, and/or 28 U.S.C. § 1395.

B. Solely for the purposes of this Stipulation, or any action to enforce it, the Defendant consents to the Court’s jurisdiction and consents to venue in this judicial district. Defendant does not concede, and reserves the right to assert, any and all defenses available to it, including challenges to jurisdiction and venue, in the event this Stipulation is not entered, is vacated, or otherwise declared unlawful or invalid for any reason. Defendant consents to jurisdiction in this

Court for the purposes of interpreting and enforcing this Stipulation through the date that the Complaint is dismissed with prejudice.

C. For purposes of this Stipulation, the Defendant agrees that the Complaint states claims upon which relief may be granted pursuant to 42 U.S.C. §§ 7522, 7524 and 7547.

D. The obligations of this Stipulation apply to and are binding upon the United States and upon the Defendant and its successors. Any change in the Defendant's ownership or corporate status shall not alter their obligations hereunder.

E. Within thirty days of entry by the Court of this Stipulation, the Defendant shall pay to the United States via electronic funds transfer ("EFT") a total civil penalty of \$181,400, in accordance with instructions provided by the Financial Litigation Unit of the Office of the United States Attorney for the District of Columbia. The EFT documents shall refer to DOJ case number 90-5-2-1-10050. Payments by EFT must be received at the Department of Justice lockbox bank by 4:00 P.M. (Eastern Time) to be credited on that day. Copies of the payment and transmittal documents shall be mailed to:

Chief, Environmental Enforcement Section  
Environmental Enforcement Section  
Environment & Natural Resources Division  
United States Department of Justice  
P.O. Box 7611  
Ben Franklin Station  
Washington, D.C. 20044-7611  
Re: DJ No. 90-5-2-1-10050

and

Phillip A. Brooks  
Air Enforcement Division  
Environmental Protection Agency  
1200 Pennsylvania Ave., NW  
MC 2242-A  
Washington, DC 20460

F. In the event that the Defendant does not comply with the payment obligations of Paragraph E above, it shall be in violation of this Stipulation and shall pay a stipulated penalty to the United States in the amount of two thousand dollars (\$2000) per day for each day that the civil penalty remains unpaid. Stipulated penalties shall accrue regardless of whether Defendant has been notified of a violation or demand for payment by the United States. Stipulated penalties shall be paid in the same manner as that provided for in Paragraph E above for payment of the civil penalty. Further, interest shall accrue on the unpaid balance of civil and/or stipulated penalties in accordance with 28 U.S.C. § 1961 commencing on the date that such penalties are due and continuing until paid. If payment specified in Paragraph E is not made when due, then, in addition to other remedies herein, the United States reserves the right to move this Court to vacate this Stipulation and reinstate this action.

G. Within ten business days of receipt of all amounts due under this Stipulation, the United States shall file a notice with the Court that full payment has been made and a request that the Complaint be dismissed with prejudice.

H. The Defendant's payment of the civil penalty identified in Paragraph E above and any stipulated penalties and interest required by Paragraph F above shall resolve its civil liability for the violations alleged in the Complaint and in the Stipulated Penalties Demand, as to the Subject Engines only through the date of filing of this Stipulation with the Court. This Stipulation is not intended to, nor shall it be construed to, operate in any way to resolve any civil claims other than those expressly alleged in the Complaint and in the Stipulated Penalties Demand as to the Subject Engines only or any criminal liability of the Defendant. This Stipulation also does not resolve matters related to the Consent Decree other than those expressly settled herein;

I. Nothing in this Stipulation shall be construed to release the Defendant or its agents, successors, or assigns from their respective obligations to comply with any applicable Federal, State, or local law, regulation, or permit, or any obligations under the Consent Decree other than for stipulated penalties as set forth in the Stipulated Penalties Demand.. Nothing contained herein shall be construed to prevent or limit the United States' rights to obtain penalties or injunctive relief under the Act or any other law for other alleged violations.

J. Civil penalties and any stipulated penalties paid pursuant to this Stipulation are not deductible by the Defendants or any other person for federal tax purposes.

K. This Stipulation shall be considered an enforceable judgment solely for purposes of post-judgment collection of any unpaid civil and/or stipulated penalties and interest referred to in Paragraphs E and F above, in accordance with Rule 69 of the Federal Rules of Civil Procedure; the Federal Debt Collection Procedures Act, 28 U.S.C. §§ 3001-3008; and any other applicable statutory authority without further order of this Court. In the event all or any portion of the civil penalty amount referred to in Paragraph E above is not paid in accordance with the provisions of this Stipulation, the Defendant shall be liable for attorneys' fees and costs incurred by the United States in collecting any amounts due thereunder.

L. Nothing in this Stipulation creates, nor shall it be construed as creating, any rights or claims in favor of any person not a Party to this Stipulation.

M. The undersigned representatives of the Defendant, and the Chief of the Environmental Enforcement Section for the Environment and Natural Resources Division, certify that each is fully authorized to enter into the terms and conditions of this Stipulation and to bind legally the party he or she represents to this document.

N. The Defendant consents to the entry of this Stipulation of Settlement and Judgment


without further notice.

O. Except as set forth in Paragraph K of this Stipulation of Settlement and Judgment, each party shall bear its own costs and attorneys' fees in this action.

P. There are no separate agreements or understandings with respect to this matter that have not been set forth in this Stipulation of Settlement and Judgment.

Q. This Stipulation of Settlement and Judgment may be executed by the Parties in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

**AS STIPULATED AND AGREED TO BY THE PARTIES, IT IS SO ORDERED**  
**AND ADJUDGED THIS** 23<sup>rd</sup> **DAY OF** August, 2013.

  
\_\_\_\_\_  
Hon. John D. Bates  
United States District Judge

*FOR THE UNITED STATES:*

DATED: 7/28/13



W. BENJAMIN FISHEROW  
Chief  
Environmental Enforcement Section  
Environment & Natural Resources Division  
United States Department of Justice  
Washington, D.C. 20044-7611

DATED: 8/20/13



LORI JONAS  
Senior Attorney  
Environmental Enforcement Section  
Environment & Natural Resources Division  
United States Department of Justice  
P.O. Box 7611  
Ben Franklin Station  
Washington, D.C. 20044  
(202) 514-4080  
[lori.jonas@usdoj.gov](mailto:lori.jonas@usdoj.gov)

DATED: \_\_\_\_\_

PHILLIP A. BROOKS  
Director  
Air Enforcement Division  
Office of Civil Enforcement  
Office of Enforcement and Compliance Assurance  
United States Environmental Protection Agency  
1200 Pennsylvania Ave., N.W.  
Washington, D.C. 20460

*FOR THE UNITED STATES:*

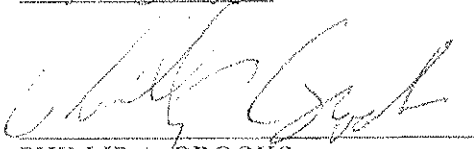
DATED: \_\_\_\_\_

\_\_\_\_\_  
W. BENJAMIN FISHEROW  
Chief  
Environmental Enforcement Section  
Environment & Natural Resources Division  
United States Department of Justice  
Washington, D.C. 20044-7611

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\_\_\_\_\_  
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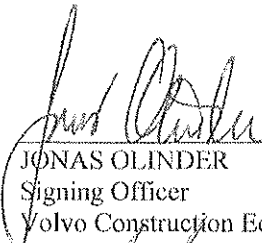
DATED: 8/20/13

  
\_\_\_\_\_  
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Director  
Air Enforcement Division  
Office of Civil Enforcement  
Office of Enforcement and Compliance Assurance  
United States Environmental Protection Agency  
1200 Pennsylvania Ave., N.W.  
Washington, D.C. 20460



*FOR VOLVO CONSTRUCTION EQUIPMENT AB:*

DATED: \_\_\_\_\_

  
\_\_\_\_\_  
JONAS OLINDER  
Signing Officer  
Volvo Construction Equipment AB

DATED: 2 \_\_\_\_\_

  
\_\_\_\_\_  
JØRGEN SVENNINGSSON  
Managing Director  
Volvo Construction Equipment AB



APPENDIX A TO STIPULATION OF SETTLEMENT AND JUDGMENT

No.	Engine Serial No.
1	53352
2	53514
3	102155
4	102156
5	102157
6	102159
7	102160
8	102161
9	102163
10	102164
11	102165
12	102168
13	102312
14	102317
15	102479
16	102487
17	102496
18	102548
19	102552
20	102555
21	102559
22	102597
23	102602
24	102607
25	102612
26	102705
27	102709
28	102713
29	102788
30	102801
31	102803
32	102804
33	102808 <sup>1</sup>
34	102812 <sup>2</sup>
35	102863

<sup>1</sup> Complaint Appendix A includes multiple entries for this engine serial number.

<sup>2</sup> Complaint Appendix A includes multiple entries for this engine serial number.

No.	Engine Serial No.
36	102867
37	102918 <sup>3</sup>
38	102920
39	102921
40	102922
41	102923
42	102924 <sup>4</sup>
43	103080
44	103090
45	103117
46	103121
47	103126
48	103151
49	103359
50	103385
51	103540
52	103544
53	103550
54	103554
55	103558
56	103562
57	103565
58	103665
59	103669
60	103731
61	103735
62	103741
63	103746
64	103747
65	103750
66	103754
67	103991
68	103992
69	103997
70	103998

<sup>3</sup> Complaint Appendix A includes multiple entries for this engine serial number.

<sup>4</sup> Complaint Appendix A includes multiple entries for this engine serial number.

No.	Engine Serial No.
71	104387
72	104388 <sup>5</sup>
73	104389
74	104417
75	104418
76	104509
77	104518
78	104525
79	104526
80	104574
81	104575
82	104689
83	104690
84	104697
85	104699
86	104702
87	104707
88	104710
89	104731
90	104737
91	104740
92	104752
93	104956
94	104959
95	104962
96	104965
97	104968
98	104970
99	104973
100	105164
101	105165
102	105166
103	105167
104	105168 <sup>6</sup>
105	105244

<sup>5</sup> Identified in Complaint Appendix A as engine no. 104380.

<sup>6</sup> Complaint Appendix A includes multiple entries for this engine serial number.

No.	Engine Serial No.
106	105274
107	105346
108	105350
109	105352
110	105376
111	105416 <sup>7</sup>
112	105420
113	105424
114	105428
115	105666
116	105683
117	105794
118	105797
119	105800 <sup>8</sup>
120	105824
121	105828
122	105832
123	105937
124	105939
125	105941
126	105943
127	105945
128	105946
129	106099
130	106116
131	106267
132	106271
133	106275
134	106279
135	106283
136	106286
137	106695
138	106708
139	106782
140	106786

<sup>7</sup> Also identified in Complaint Appendix A as engine serial number 106416.

<sup>8</sup> Complaint Appendix A includes multiple entries for this engine serial number.

No.	Engine Serial No.
141	106790
142	106793
143	106799
144	107054
145	107065
146	107072
147	107083
148	107089
149	107290
150	107472
151	107479
152	107486
153	107492 <sup>9</sup>
154	107892
155	107898 <sup>10</sup>
156	107903
157	108400
158	108403
159	108406
160	108411
161	108414
162	108610
163	108621
164	108623
165	108627
166	109709
167	109719
168	109723 <sup>11</sup>
169	109796
170	109820
171	109823
172	109827
173	109829

<sup>9</sup> Complaint Appendix A includes multiple entries for this engine serial number.

<sup>10</sup> Complaint Appendix A includes multiple entries for this engine serial number.

<sup>11</sup> Complaint Appendix A includes multiple entries for this engine serial number.

No.	Engine Serial No.
174	110166
175	110191
176	110194
177	110204
178	110209
179	110318
180	110323
181	110447
182	110452
183	110457
184	110462
185	110465
186	110478
187	110569
188	110575
189	110581
190	110782
191	110784
192	110786
193	110788
194	110789
195	110792
196	110793
197	111691
198	116130
199	116134
200	116322
201	116641 <sup>12</sup>
202	474344 <sup>13</sup>
203	478223 <sup>14</sup>
204	478224

<sup>12</sup> Complaint Appendix A includes multiple entries for this engine serial number.

<sup>13</sup> Corresponds to engine identified in Complaint Appendix A as engine serial number 121503.

<sup>14</sup> Corresponds to engine identified in Complaint Appendix A as engine serial number 478223.

No.	Engine Serial No.
205	478225
206	478227
207	479779
208	479780
209	479781
210	479782
211	479783
212	479784
213	480807
214	480808
215	482983
216	482984
217	482985
218	482986
219	482987
220	482988
221	482989
222	482990
223	485470
224	485473
225	485474
226	486581
227	486582
228	486583
229	489422
230	489423
231	489424 <sup>15</sup>
232	489425
233	489426
234	489427
235	489429
236	489430 <sup>16</sup>
237	489431 <sup>17</sup>

No.	Engine Serial No.
238	491210
239	491211
240	491212
241	491263
242	491264
243	491265
244	491288
245	493726
246	495492
247	500067
248	500069
249	515036
250	573523
251	573896
252	10121264

<sup>15</sup> Corresponds to engine listed as "missing" in Appendix A to Complaint.

<sup>16</sup> Corresponds to engine listed as "missing" in Appendix A to Complaint.

<sup>17</sup> Corresponds to engine listed as "missing" in Appendix A to Complaint.