

**U.S. ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.**

In the Matter of:)	
)	
Jaguar Cars, a Division of)	ADMINISTRATIVE SETTLEMENT AGREEMENT
Ford Motor Cars, Inc.)	AED/MSEB File No. 6005
)	

THIS ADMINISTRATIVE Settlement Agreement is made and entered into by and between the United States Environmental Protection Agency (“EPA”) and Jaguar Cars (“Jaguar”), regarding compliance by Jaguar with the requirements of the Clean Air Act (“the Act”) 42 U.S.C. §§ 7521-7543 and the regulations promulgated thereunder at 40 C.F.R. Part 86.

Regulatory Background

1. EPA regulations require manufacturers to install on all new light-duty vehicles and trucks for 1994 and later model-years onboard diagnostic (“OBD”) systems that are capable of identifying emission system malfunctions that could cause emission increases above certain thresholds. 40 CFR § 86.094-17(a). The regulations also require manufacturers to equip those vehicles with a malfunction indicator light (“MIL”) to inform vehicle operators of a malfunction in the emissions control system. 40 CFR § 86.094-17(c) and (d)
2. In lieu of complying with the OBD regulations promulgated by EPA, a manufacturer could satisfy federal OBD requirements for new vehicles through the 1998 model year by demonstrating compliance with California’s OBD regulations (“OBD II”), referred to as the “deemed to comply” rule. 40 CFR§ 86.094-17(j).
3. California’s OBD II regulations require that OBD systems must monitor a vehicle's engine to detect certain levels of misfire increase, and to illuminate the MIL in cases where the misfire

regulatory criteria are met. In addition, OBD system misfire monitoring must be continuous during positive torque engine operation (“continuous misfire monitoring”). Cal. Code Reg. tit 13 § 1968.1(b)(3.3.1).

Factual Background

4. Jaguar sought to utilize EPA’s “deemed to comply” rule for Jaguar vehicles encompassing model years 1995 through 1997. After the California Air Resources Board (“CARB”) had approved the OBD II system descriptions for Jaguar model year 1995 vehicles, Jaguar submitted an application for a certificate of conformity to EPA which contained a copy of the CARB approval letter. EPA subsequently issued a certificate of conformity for the 1995 Jaguar vehicles. This pattern was repeated for Jaguar's model year 1996 and 1997 vehicles.

5. In April, 1997, a CARB investigation of Jaguar vehicles identified alleged violations of the OBD II requirement on model year 1995, 1996 and 1997 vehicles, as described in the following table (“the subject vehicles”). In particular, CARB found that the misfire monitoring portion of the OBD systems of subject vehicles was not continuous, in violation of the OBD II regulation.

SUBJECT VEHICLES

Vehicle Model	Engine Family	# of Vehicles
1995 Jaguar XJ12	SJC6.0V8GFFK	520
1996 Jaguar XJ12	TJC6.0V8GFFK	509
1997 Jaguar XK8	VJC4.0VJGKEL	8,247

6. On April 30, 1997, Jaguar submitted an emissions defect information report to EPA for the subject vehicles, which stated “it appears that the misfire monitoring strategy fails to comply with the OBD II regulation requirement that monitoring for misfire during positive torque engine operation be continuous.”

7. In 1999, CARB and Jaguar entered into an Agreement and Release resolving any claims that the OBD II systems in question failed to comply with California law. The Agreement and Release

specifically cited "Jaguar's cooperation and willingness to remedy the majority of affected vehicles," and also noted that there was "no evidence indicating intent to defraud or conceal information."

8. The emissions certification applications Jaguar had submitted to EPA for the subject vehicles incorporated information provided by Jaguar's OBD II supplier, which did not describe the operation of the misfire monitoring strategy in detail. EPA alleges that the lack of continuous misfire monitoring on the subject vehicles creates material differences between the vehicles as built and the ones described in Jaguar's certification applications, and that, in consequence, the vehicles as built were not covered by a certificate of conformity and Jaguar's subsequent sale of these vehicles was in violation of section 203(a)(1) of the Act. Jaguar denies these allegations but is willing to resolve the matter amicably, and has already implemented or initiated many of the actions required by this Administrative Settlement Agreement.

Terms of Agreement

9. The parties agree that settlement of this matter is in the public interest and that this Administrative Settlement Agreement ("Agreement") is the most appropriate means of resolving the matter. Jurisdiction to settle this matter exists pursuant to § 205(c) of the Act and other provisions of law.

10. The parties stipulate and agree to the following paragraphs; it is further agreed that these stipulations are applicable to this Agreement and any enforcement or penalty proceeding arising out of this Agreement or the subject matter of this Agreement:

11. At all relevant times, Jaguar was a person and a manufacturer within the meaning of § 216 of the Act.

12. The facts set forth in Paragraph 1 through 8 above are true and accurate.

Service Campaign for the Subject 1997 Vehicles

13. As the subject 1997 vehicles return to the dealership for any reason, Jaguar shall conduct a service campaign to capture and reprogram their computers so that the OBD system has continuous misfire monitoring. Jaguar implemented this service campaign on January 23, 1998. As of November 1, 2000 Jaguar had reprogrammed the computers in 7,088 vehicles; this represents a capture rate of 86 % of the subject 1997 vehicles. Based on past experience Jaguar expects the final capture rate to exceed 90%.

Extended Emissions Warranty for Subject 1995 & 1996 Vehicles

14. Jaguar agrees to implement an extended emissions warranty for each subject vehicle for model years 1995 and 1996. This extended emissions warranty shall continue through 14 years from the date of delivery of the vehicle to the initial purchaser, or 150,000 miles of vehicle use, whichever occurs first, and shall be made available to the original owner and each subsequent owner. If a subject vehicle is maintained and operated in accordance with the written instructions for proper maintenance furnished by Jaguar pursuant to section 207(c) of the Act, Jaguar shall repair, at no cost to the owner: (a) any defect that has resulted in the illumination of the malfunction indicator light (“MIL”); (b) any defect that has resulted or will result in the subject vehicle owner having to bear any penalty or other sanction (including the denial of the right to use the vehicle) under Federal, State, or local law as a result of failing a Correlatable Emissions Test;¹ and (c) any emission-related defect, including defects in (i) any of the components identified in Attachment A and (ii) any hardware utilized for OBD II monitoring. Nothing in this Agreement shall be construed to affect any other warranty provided to such owners or purchasers under Federal, State, or local law or otherwise.²

15. In no case shall Jaguar deny an Extended Emissions Warranty claim for repairs conducted by an authorized Jaguar dealer on the basis of: (a) warranty work or pre-delivery service performed by any facility authorized by Jaguar to perform such work or service; (b) work performed by service or repair facilities other than authorized Jaguar dealers, (c) work performed in an emergency situation to rectify an unsafe condition, including an unsafe driveability condition attributable to the manufacturer, provided the vehicle owner has taken timely steps to put the vehicle back in a conforming condition; (d) the use of any uncertified part or non-compliance with any written instruction for proper maintenance and use which is not relevant to the reason that the vehicle failed to comply with applicable emission standards; (e) any cause attributable to Jaguar; or (f) the use of any fuel which is commonly available in the geographical area in which the vehicle is located, unless the written instructions for proper maintenance and use specify that the use of that fuel would adversely affect the emission control devices and systems of the vehicle, and there is commonly

¹ A Correlatable Emissions Test means a state or local emissions test approved by EPA and meeting all of the requirements of Section 207(b) of the Act, 42 U.S.C. § 7541(b), including the requirement that such tests must be reasonably capable of being correlated with the applicable FTP.

² Provided, however, that nothing in this Agreement shall be construed to make Jaguar responsible for any penalty or sanction or loss of use of the vehicle referenced above.

available information for the owner to identify the proper fuels to be used. Jaguar may deny an Extended Emissions Warranty claim in the event that the OBD II system or emission control devices have been compromised as a result of tampering or abuse.

16. The term “defect” as used in Paragraph 14 means a defect in design, materials or workmanship in a device, system, or assembly which causes the subject vehicle to fail to conform, for the full period of the Extended Emissions Warranty provided under this Agreement, with the emission regulations promulgated and in effect pursuant to Section 202 of the Act, 42 U.S.C. § 7521, at the time the vehicle was manufactured.

Emissions Maintenance Campaign for the Subject 1995 and 1996 Vehicles

17. In addition to, and independent of, any adjustments, repairs, or replacements provided to owners of subject 1995 and 1996 vehicles pursuant to the Extended Emissions Warranty under this Agreement, Jaguar shall provide, with respect to each subject vehicle and at no cost to the owner, the following maintenance measures:

a. With respect to each 1995 and 1996 model year subject vehicle which is brought to a dealer during the period 60,000 through 90,000 miles of vehicle use for scheduled maintenance or otherwise, Jaguar shall instruct and cause its dealers, at no cost to the vehicle owner, (i) to change the engine oil and engine oil filter, (ii) to scan the OBD system to identify any emissions-related malfunctions covered by the Extended Emissions Warranty under this Agreement, (iii) to repair any identified defect covered by the Extended Emissions Warranty under this Agreement, and (iv) to perform a visual inspection service and functional check as described in Jaguar’s Service Action S700, Attachment B. The package of replacements and services provided for in this subparagraph shall be available once per subject vehicle during the 60,000 through 90,000 mile period of use described above.

b. With respect to each 1995 and 1996 model year subject vehicle which is brought to dealer during the period from 90,000 through 120,000 miles of vehicle use, Jaguar shall instruct and cause its dealers, at no cost to the vehicle owner: (i) to change the engine oil and engine oil filter, (ii) to scan the OBD system to identify any emissions-related malfunctions covered by the Extended Emissions Warranty under this Agreement, (iii) to repair any identified malfunction or defect covered by the Extended Emissions Warranty under this Agreement, and (iv) to perform a visual inspection service and functional check as described in Jaguar’s Service Action S700, Attachment B. The package of replacements and services provided

for in this subparagraph shall be available once per subject vehicle during the 90,000 through 120,000 mile period of use described above.

18. With respect to California vehicles, Jaguar shall conduct the Emissions Maintenance Campaign specified in Paragraph 17 for subject vehicles from the 1995 and 1996 model years.

Owner Notifications

19. Jaguar shall provide to each owner of a subject vehicle three written notices of the Extended Emissions Warranty and Emission Maintenance Campaign provided under this Agreement. The first notice was sent to all owners of subject vehicles on May 5, 2000. The second notice shall be sent to owners not completing services on or around January 30, 2001. The third notice shall be sent to owners not completing services on June 29, 2001. Notices shall be sent by first class mail or by such other means approved by EPA upon request by Jaguar. Jaguar shall use commercial services such as R. L. Polk to locate vehicle owners; alternatively, Jaguar may use motor vehicle registration lists, as available from State or other commercial sources, or such other means as approved by the parties, as necessary to obtain the names and addresses of current vehicle owners to ensure effective notification.

20. The first, second and third notices shall be in the form provided for in Attachment C to this Agreement.

21. Should Jaguar decide to send or provide to subject vehicle owners any communication regarding the Extended Emissions Warranty of the Emissions Maintenance Campaign under this Agreement other than those contained in Attachment C, Jaguar shall send EPA a copy of the proposed communication at least 30 days prior to its transmission to the recipients.

22.. Jaguar sent out notices to dealers, sales managers and owners of the Extended Emissions Warranty and the Emissions Maintenance Campaign on May 5, 2000. Attachment D. Jaguar shall send to EPA a copy of any further communications directed to dealers who are to perform the work which relates to the Extended Emissions Warranty or the Emissions Maintenance Campaign contemporaneously with their transmission to the recipients.

Record Keeping and Reporting

23. Jaguar shall provide for the establishment and maintenance of records to enable EPA to monitor the implementation of the Extended Emissions Warranty and the Emissions Maintenance Campaign. In addition to any other items required by this Agreement, the records shall include the following:

- a. A list of all of subject vehicles by Vehicle Identification Number, or VIN number;
- b. With respect to each of the required notifications, the date when the owner notification was begun with respect to each model year of subject vehicles;
- c. Reporting under the Extended Emissions Warranty: The number of subject vehicles serviced under the Extended Emissions Warranty described in Paragraph 14 during each 6-month reporting period of this Agreement, the cumulative number of vehicles receiving such service from the date of this Agreement, and a brief description of the service provided;
- d. Reporting under the Emissions Maintenance Campaign: The number of subject vehicles serviced under the Emissions Maintenance Campaign described in Paragraph 17 during each reporting period, the cumulative number of vehicles receiving such service from the date of this Agreement, and a brief description of the services provided;
- e. The brief description of the services provided shall list by VIN Number:
 - i. Whether the services provided were those offered during the 60,000 miles-of-use or those offered during the 90,000 to 120,000 miles-of-use interval,
 - ii. A check list of services performed and
 - iii. The malfunctions detected and repairs made.

24. Jaguar shall submit to EPA reports containing the information described in Sub-Paragraphs 23 (a) through (e) within 90 days following the close of each 6-month period commencing with the first full month after the execution of this Agreement and ending with the 6-month period in which this Agreement is terminated in accordance with Paragraph 37 below. The first report shall include the information described in Sub-Paragraphs 23 (a) through (e) that took place prior to the date of this Agreement. If Jaguar determines that any information provided to EPA pursuant to this Paragraph is incorrect, Jaguar shall submit revised or corrected information together with an explanation of the discrepancy as soon as the revised or corrected information is available, but in any event no later than in the next report following discovery of the discrepancy unless the next report is less than 90 days after the discovery, in which case Jaguar shall have 90 days to make the

report.

24. Jaguar shall maintain the records described in paragraph 23 until the date of termination of this Agreement. These records shall be made available to EPA upon request.

26. In addition to the other provisions set forth in this Agreement, after considering the gravity of the violations, Jaguar's cooperation and willingness to remedy the subject vehicles by recall, the limited number of subject vehicles and other relevant factors, EPA has agreed to resolve these violations for One Hundred Forty Thousand Dollars (\$140,000) in civil penalties.

27. Jaguar agrees to pay One Hundred Forty Thousand Dollars (\$140,000) to the United States of America within thirty (30) days from the date that this Settlement Agreement is executed by EPA ("the due date"). In accordance with § 3717 of the Debt Collection Act of 1982, 31 U.S.C. § 3717, if the debt is not paid within thirty days following the due date, interest will accrue from the due date through the date of actual payment. Interest will be computed in accordance with § 3717(a) of the Debt Collection Act. A late payment handling charge of \$20.00 will also be imposed if the amount due is not paid by the due date, with an additional charge of \$10.00 for each thirty-day period.

28. Jaguar agrees to pay the amount set forth in Paragraph 27 above by check made payable to the "United States of America" and mailed to:

U.S. Environmental Protection Agency
Washington Accounting Operations
P.O. Box 360277M
Pittsburgh, Pennsylvania 15251
ATTN: AED/MSEB - 6005

A copy of the check shall be mailed simultaneously to:

Angela E. Fitzgerald (2242A)
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460
ATTN: AED/MSEB - 6005

29. The parties agree that upon default or failure to comply with any provisions of this Settlement Agreement, EPA may refer this matter to the U.S. Attorney General for collection pursuant to § 205(c)(6) of the Act; commence an action to enforce this Settlement Agreement or to recover the civil penalty pursuant to § 205 of the Act, or pursue any other remedies available to it. Jaguar also specifically agrees that in the event of such default or failure to comply, EPA may proceed in an action based on the original claim of violation of § 203 of the Act, 42 U.S.C. § 7522, and Jaguar expressly waives its right to

assert that such action is barred by 28 U.S.C. § 2462, other statutes of limitation, or other provisions limiting actions as a result of the passage of time.

30. This Agreement becomes effective upon the date signed by the EPA, at which time a copy will be returned to the Respondent.
31. Jaguar hereby represents that the individual or individuals executing this Agreement on behalf of Jaguar are authorized to do so and that such execution intended and is sufficient to bind Jaguar, its officers, agents, directors, owners, heirs, assigns, and successors.
32. The terms of this Agreement are contractual and are not mere recitals. If any provision or provisions of this Agreement are held to be invalid, illegal or unenforceable, the remaining provisions shall not in any way be affected or impaired thereby.
33. The validity, enforceability and construction of all matters pertaining to this Agreement shall be determined in accordance with applicable federal law.
34. This Agreement does not preclude any other action by EPA or any other government entity to address past, present or future violations of the Act or regulations promulgated thereunder.

Stipulated Penalties

35. Jaguar shall pay stipulated penalties to the United States for failure by Jaguar to comply with the terms of this Agreement as follows:
 - a. For failing or refusing to comply with the terms and conditions of the Extended Emissions Warranty with respect to any subject vehicle, \$400 or 1.5 times Jaguar's cost associated with performing the subject work, whichever is greater, but not to exceed \$10,000 per vehicle per violation.
 - b. For failing or refusing to comply with the terms and conditions of the Emissions Maintenance Campaign with respect to any subject vehicle, \$400 per vehicle per violation.
 - c. For failure to commence mailing of any of the 3 required owner notifications required under Paragraph 19 of this Agreement by the date specified in this Agreement, \$200 per day per mailing of the first 30 days of delay, \$400 per day per mailing for the next 30 days of delay, and \$500 per day per mailing for any delay beyond 60 days.
 - d. For failing or refusing to comply with a written request by EPA for the records

described in Paragraph 23 of this Agreement, \$200 per day of delay in producing such records in excess of 30 days after the request.

- f. Upon written demand by EPA seeking stipulated penalties, Jaguar shall either pay the stipulated penalties sought by EPA or file a notice of its intent to seek dispute resolution within 45 days after Jaguar receives such demand. Stipulated penalties shall be paid by cashier's or certified check, payable to the "United States of America," and sent to Washington Accounting Operations at the address in Paragraph 28 referencing AED/MSEB number 6005. A copy of this check shall be sent to EPA at the address in Paragraph 28. Disputes regarding the appropriateness and/or amount of stipulated penalties shall be heard by an EPA Administrative Law Judge under procedures established by EPA's Office of Administrative Law Judges or otherwise agreed to by the parties.
- g. Notwithstanding any other provision of this Agreement, EPA may, at its sole discretion, waive any portion of the stipulated penalties that have accrued pursuant to this Agreement.

Release

- 36. Upon completion of the terms of this Agreement, the alleged civil violations described in this Agreement shall be deemed terminated and resolved. Nothing herein shall limit the right of EPA to proceed against Jaguar in the event of default or noncompliance with this Settlement Agreement, for other violations of law, or with respect to other matters not within the scope of the Settlement Agreement. This Settlement Agreement does not affect or relieve Jaguar of responsibility to comply with other state, federal or local law or regulations.

Termination

- 37. This Agreement will terminate by December 31, 2011, upon Jaguar's certification and EPA's acceptance that it has completed all the Extended Emissions Warranty of the Emissions Maintenance Program requirements of this Agreement.

The following agree to the terms of this Settlement Agreement:

FOR JAGUAR CARS

(Name)
(Title)

Date

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY

Bruce C. Buckheit, Director
Air Enforcement Division
Office of Enforcement and Compliance Assurance

Date