



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
AIR ENFORCEMENT DIVISION, WASHINGTON, D.C.

In the Matter of:

Winnebago Industries, Inc.

Respondent.

Administrative Settlement Agreement

Docket No.
AED/MSEB # 8255

1. This is an Administrative Settlement Agreement (Agreement) between the United States Environmental Protection Agency (EPA) and Winnebago Industries, Inc. (Respondent) (collectively, Parties). The purpose of this Agreement is to resolve alleged violations of the Clean Air Act (CAA) and its regulations by Respondent.
2. Respondent in this matter is Winnebago Industries, Inc. Respondent is a corporation organized under the laws of the State of Iowa with an office at 605 W. Crystal Lake Road, Forest City, Iowa 50436. Among other things, Respondent manufactures motor vehicles such as motorhomes, travel trailers, and coaches.
3. The delegated official of the EPA and signatory to this Agreement is the Director of the Air Enforcement Division of the Office of Civil Enforcement of the Office of Enforcement and Compliance Assurance. The EPA enters this Agreement pursuant to sections 205(c) of the CAA, 42 U.S.C. §§ 7524(c).

Governing Law

4. This Agreement concerns Part A of Title II of the CAA, CAA §§ 202–219, 42 U.S.C. §§ 7521–7554, and related regulations. These laws aim to reduce emissions from mobile

sources of air pollution, including hydrocarbons, carbon monoxide, oxides of nitrogen, particulate matter, and greenhouse gases. The Alleged Violations of Law, stated below, regard motor vehicles, specifically heavy-duty motor vehicles, for which 40 C.F.R. Parts 85 and 86 set emission standards and section 203 of the CAA, 42 U.S.C. § 7522, sets compliance provisions. This section of the Agreement summarizes the law that governs these allegations.

5. To ensure that every motor vehicle introduced into United States commerce satisfies the applicable emission standards, the EPA runs a certification program. This certification program is designed to ensure that every motor vehicle sold in the United States conforms in all material respects to a vehicle that has been approved by the EPA. The EPA approves vehicles by issuing certificates of conformity (COC).
6. To obtain a COC, a manufacturer must submit a COC application to the EPA for each test group and each model year that it intends to manufacture and sell in the United States.
7. “For incomplete light-duty trucks and incomplete heavy-duty vehicles, a certificate covers only those new motor vehicles which, when completed by having the primary load-carrying device or container attached, conform to the maximum curb weight and frontal area limitations described in the application for certification.” 40 C.F.R. § 86.1848(c)(4).
8. The CAA prohibits manufacturers of new motor vehicles from selling, offering for sale, introducing into commerce, delivering for introduction into commerce, or importing (and no person may cause any of the foregoing with respect to) any new motor vehicle unless that vehicle is covered by an EPA-issued COC. CAA § 203(a)(1), 42 U.S.C.

§ 7522(a)(1).

9. Anyone who, since January 12, 2009, sold, offered for sale, introduced into commerce, delivered for introduction into commerce, or imported (or caused the foregoing with respect to) a motor vehicle that was not covered by a COC in violation of section 203(a)(1) of the CAA, 42 U.S.C. § 7522(a)(1), is subject to a civil penalty of up to \$37,500 for each such vehicle. 42 U.S.C. § 7524(a); 40 C.F.R. § 19.4.

Factual Background

10. In model years 2014 and 2015, Respondent purchased certain Ram ProMaster 3500 cab chassis from FCA US LLC (previously Chrysler Group LLC). Respondent subsequently assembled these incomplete heavy-duty motor vehicles into complete class C coaches, namely the Winnebago Trend model and Itasca Viva! model. Respondent then sold the complete vehicles to its dealers.
11. The cab chassis were purportedly covered by the EPA-issued COC for test groups ECRXD03.65V0 (model year 2014, gasoline fueled), ECRXD03.05VV (model year 2014, diesel fueled), FCRXD03.65V0 (model year 2015, gasoline fueled), or FCRXD03.05VV (model year 2015, diesel fueled). The applications for these COCs, and the labels on the cab chassis, specified that the maximum curb weight for these vehicles was 5,150 pounds (model year 2014) or 6,150 pounds (model year 2015).
12. On or about July 22, 2015, Respondent disclosed to the EPA that it had sold the above-described vehicles, and that the curb weight of the complete vehicle exceeded the maximum curb weight stated in the applications for the COCs that purportedly cover them.

13. As of the time of its signature of this Agreement, Respondent has not delivered to its dealers or any person approximately 56 complete vehicles that have been in its possession since discovering the compliance problem in July 2015. Respondent intends to deliver these vehicles, but agreed with the EPA that it would first resolve the Alleged Violations of Law and deliver them consistent with this Agreement.
14. Respondent has applied supplemental labels to the above-described approximately 56 vehicles. Each label states: “This motor vehicle is not EPA certified, but is legal for sale at up to 8,150 lbs. curb weight pursuant to the terms of a settlement agreement with the US EPA, Docket AED/MSEB # 8255.”

Alleged Violations of Law

15. Respondent is a “person.” CAA § 302(e), 42 U.S.C. § 7602(e).
16. Respondent is a “manufacturer.” CAA § 216(1), 42 U.S.C. § 7550(1).
17. Respondent sold, offered for sale, introduced into commerce, or delivered for introduction into commerce (or caused the foregoing with respect to):
 - (a) 811 heavy-duty, gasoline fueled motor vehicles purportedly covered by the COCs for test groups ECRXD03.65V0 (model year 2014) or FCRXD03.65V0 (model year 2015); and
 - (b) 41 heavy-duty, diesel fueled motor vehicles purportedly covered by the COCs for test groups ECRXD03.05VV (model year 2014) or FCRXD03.05VV (model year 2015).
18. These vehicles are subject to the CAA’s certification requirements and are not exempt.
19. Each of these 852 vehicles exceeded the maximum curb weight stated in the applications for the COCs that purportedly cover them. As such, the vehicles are not covered by these

COCs. 40 C.F.R. § 86.1848(c)(4). No other COC covers these vehicles.

20. Therefore, Respondent violated section 203(a)(1) of the CAA, 42 U.S.C. § 7522(a)(1), each time it sold, offered for sale, introduced into commerce, or delivered for introduction into commerce (or caused the foregoing with respect to) every one of these 852 motor vehicles.

Terms of Agreement

21. Respondent:
- (a) agrees that the EPA has jurisdiction over this matter under section 205(c) of the CAA, 42 U.S.C. § 7524(c);
 - (b) admits to the Factual Background stated above;
 - (c) neither admits nor denies the Alleged Violations of Law stated above;
 - (d) agrees to pay the civil penalty stated below;
 - (e) agrees to any conditions specified in this Agreement;
 - (f) waives any right to any hearing, trial, adjudication, or proceeding (including review under sections 205(c) and 307(b)(1) of the CAA, 42 U.S.C. §§ 7534(c) and 7607(b)(1)) on any terms of this Agreement and on any issue of law or fact related to the Alleged Violations of Law and Factual Background stated above;
 - (g) waives any rights it may possess at law or in equity to challenge the authority of the EPA to bring a civil action governed by federal law in a United States District Court to enforce this Agreement and to seek additional remedies for such breach;
 - (h) agrees that Respondent may not delegate Respondent's duties under this Agreement to any other person without the written consent of the EPA, which

- may be granted, conditionally granted, or withheld at EPA's unfettered discretion;
- (i) acknowledges that this Agreement constitutes an enforcement action for purposes of considering Respondent's compliance history in any subsequent enforcement action;
 - (j) acknowledges that this Agreement will be available to the public and agrees that it does not contain any confidential business information or personally identifiable information;
 - (k) acknowledges that its tax identification number may be used for collecting or reporting any delinquent monetary obligation arising from this Agreement (see 31 U.S.C. § 7701);
 - (l) certifies that the information it has supplied concerning this matter was at the time of submission true, accurate, and complete; and
 - (m) acknowledges that there are significant penalties for knowingly submitting false or misleading information, including the possibility of fines and imprisonment (see 18 U.S.C. § 1001).
22. For purposes of this proceeding, the Parties, desiring to settle this matter, each agree that:
- (a) this Agreement is in the public interest and is an appropriate way to resolve this matter;
 - (b) this Agreement constitutes the entire agreement and understanding of the parties and supersedes any prior agreements or understandings, whether written or oral, among the parties with respect to the subject matter hereof;
 - (c) this Agreement may be signed in any number of counterparts, each of which will be deemed an original and, when taken together, constitute one agreement; the

counterparts are binding on each of the parties individually as fully and completely as if the parties had signed one single instrument, so that the rights and liabilities of the parties will be unaffected by the failure of any of the undersigned to execute any or all of the counterparts; any signature page and any copy of a signed signature page may be detached from any counterpart and attached to any other counterpart of this Agreement;

- (d) its undersigned representative is fully authorized by the Party whom he or she represents to bind that Party to this Agreement and to execute it on behalf of that Party;
- (e) each Party's obligations under this Agreement constitute sufficient consideration for the other Party's obligations under this Agreement; additionally, the Parties agree that EPA's covenant not to sue Respondent (stated below) during the time period between the date that the EPA signs this Agreement and termination of the EPA's covenant (if and when this occurs) constitutes sufficient consideration for the satisfactory completion of each and every one of Respondent's obligations under this Agreement; and
- (f) each Party will bear its own costs and attorney fees in the matter resolved by this Agreement.

23. Respondent agrees to pay to the United States a civil penalty of \$237,000 (the Civil Penalty). The Civil Penalty reflects a 75 percent reduction to the gravity component of what would otherwise have been the appropriate penalty in this matter had Respondent not disclosed the violations described above in satisfaction of conditions (2) through (9) of EPA's Audit Policy. Incentives for Self-Policing: Discovery, Disclosure, Correction

and Prevention of Violation, 65 Fed. Reg. 19,618, 19,625-26 (April 11, 2000).

24. Respondent agrees to pay the Civil Penalty to the United States within 30 calendar days following the date that the EPA signs this Agreement. EPA agrees to provide to Respondent at the email address provided on Respondent's signature page, below, a copy of the executed Agreement within 5 calendar days of that date.
25. Respondent agrees to pay the Civil Penalty in the manner specified below:
 - (a) Pay the Civil Penalty using any method provided on the following website:
<http://www2.epa.gov/financial/additional-instructions-making-payments-epa>;
 - (b) Identify each and every payment with "AED/MSEB # 8255"; and
 - (c) Within 24 hours of payment, email proof of payment to Evan Belser at belser.evan@epa.gov ("proof of payment" means, as applicable, a copy of the check, confirmation of credit card or debit card payment, confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to EPA requirements, in the amount due, and identified with "AED/MSEB # 8255").
26. Respondent agrees to pay the following stipulated penalties to the EPA in the manner specified by Paragraph 25 not more than 30 days after receipt of written demand by the EPA for such penalties: \$5,000 per day to the United States if and when it fails to timely pay the Civil Penalty, or provide proof thereof, in accordance with Paragraph 23–25.

Effect of Agreement

27. By its signature below, the EPA covenants not to sue Respondent for civil penalties for the Alleged Violations of Law stated above, but such covenant automatically terminates

90 days after the date that the EPA signs this Agreement if on that date Respondent has failed to timely and satisfactorily pay the Civil Penalty required by Paragraphs 23–25 or pay any and all stipulated penalties demanded under Paragraph 26. If and when such covenant terminates, the United States at its election may seek to compel performance of the terms of this Agreement and seek other relief in a civil administrative or judicial action under the CAA, as a matter of contract, or both.

28. If Respondent fails to timely pay any portion of the Civil Penalty, the EPA may:
- (a) request that the Attorney General bring a civil action in an appropriate district court to recover: the amount assessed; interest at rates established pursuant to 26 U.S.C. § 6621(a)(2); the United States' enforcement expenses; and a 10% quarterly nonpayment penalty (see 42 U.S.C. § 7413(d)(5));
 - (b) refer the debt to a credit reporting agency or a collection agency (see 42 U.S.C. § 7413(d)(5), 40 C.F.R. §§ 13.13, 13.14, and 13.33);
 - (c) collect the debt by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the United States), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds (see 40 C.F.R. Part 13, Subparts C and H); and
 - (d) suspend or revoke Respondent's licenses or other privileges, or suspend or disqualify Respondent from doing business with the EPA or engaging in programs the EPA sponsors or funds (see 40 C.F.R. § 13.17).
29. Penalties paid pursuant to this Agreement are not deductible for federal tax purposes. 28 U.S.C. § 162(f).

30. This Agreement applies to and is binding upon the Respondent. Successors and assigns of Respondent are also bound if they are owned, in whole or in part, directly or indirectly, or otherwise controlled by Respondent or if they continue a substantive portion of Respondent's business that is regulated under the CAA. Nothing in the previous sentence adversely affects any right of the EPA under applicable law to assert successor or assignee liability against Respondent's successor or assignee.
31. Nothing in this Agreement shall relieve Respondent of the duty to comply with all applicable provisions of the CAA or other federal, state, or local laws or statutes, nor shall it restrict the EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local certificate, license, or permit.
32. The EPA reserves the right to terminate its covenant provided by this Agreement if and to the extent the EPA finds, after signing this Agreement, that any information provided by Respondent was or is materially false or inaccurate. If and when such termination occurs, the EPA reserves the right to pursue, assess, and enforce legal and equitable remedies for the Alleged Violations of Law. The EPA shall give Respondent written notice of such termination, which will be effective upon mailing.

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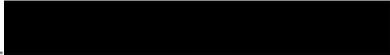
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By my signature, I execute this Agreement on behalf of Winnebago Industries, Inc., and thereby enter Winnebago Industries, Inc., into this Agreement and bind Winnebago Industries, Inc., to this Agreement.


Signature

8/26/2015
Date

Printed Name: 

Title: VP, General Counsel & Secretary

Address: 605 W. Crystal Lake Rd., Forest City, IA 50436

Respondent's Federal Tax Identification Number: 42-0802678

Email address for receipt of copy of Agreement: sfolkers@wgo.net

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By my signature, I execute this Agreement on behalf of the United States Environmental Protection Agency and thereby enter the EPA into this Agreement and bind the EPA to this Agreement.



Sept. 30, 2015

SB

Phillip A. Brooks, Director
Air Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., N.W.
Washington, DC 20460-0001

Date