

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,)
)
 Plaintiff,) Civil Action No.
)
 v.)
)
 DAIMLERCHRYSLER CORPORATION,)
)
 Defendant.)
 _____)

CONSENT DECREE

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WHEREAS, Plaintiff, the United States of America, at the request of the Administrator of the United States Environmental Protection Agency (“EPA”) and by authority of the Attorney General, filed a Complaint herein against defendant DaimlerChrysler Corporation (“DCC”) alleging violations of the Clean Air Act (the “Act”), as amended, 42 U.S.C. § 7401 *et seq.*, for failure to file timely Emissions Defect Information Reports (“EDIR”) with EPA as required by 40 C.F.R. § 85.1903 with regard to defective Catalytic Converters for certain classes and categories of Jeep[®] and Dodge vehicles;

WHEREAS, EPA and DCC have engaged in discussions concerning the correction of these alleged defects in certain DCC light-duty trucks leading to the agreements contained herein, thereby avoiding potential further administrative or judicial proceedings with respect to the matters resolved herein;

WHEREAS, EPA promulgated regulations pursuant to Section 202 of the Act, 42 U.S.C. § 7521, which set forth standards related to the control of emissions applicable to specified classes of new motor vehicles, including light-duty vehicles and trucks;

WHEREAS, EPA promulgated regulations pursuant to Section 207(c) of the Act, 42 U.S.C. § 7541(c), which set forth provisions under which a manufacturer can be required to remediate vehicles not in conformance with standards in Section 202 of the Act, 42 U.S.C. § 7521;

WHEREAS, under the authority of Section 208(a) of the Act, 42 U.S.C. § 7542(a), EPA promulgated regulations codified at 40 C.F.R. Part 85, requiring manufacturers to report emission-related defects to EPA; and Section 85.1903, 40 C.F.R. § 85.1903 requires a manufacturer to file an EDIR with EPA within fifteen working days after the manufacturer determines that: (1) in accordance with procedures established by the manufacturer to identify

safety related defects, a specific emission-related defect exists; and (2) the specific emission-related defect exists in twenty-five or more vehicles of the same model year. In addition, Section 85.1903(b), 40 C.F.R. § 85.1903(b), provides that any required information that was either not available or is significantly revised must be submitted by the manufacturer as the information becomes available;

WHEREAS, DCC is incorporated under the laws of the State of Delaware and is qualified to do business in all fifty states and the District of Columbia. DCC is a “person” within the meaning of Section 302(e) of the Act, 42 U.S.C. § 7602(e), and a “manufacturer” within the meaning of Section 216(1) of the Act, 42 U.S.C. § 7550(1);

WHEREAS, at all times relevant to this action, DCC was engaged in the business of manufacturing and selling new motor vehicles in the United States;

WHEREAS, DCC has sold, offered for sale, or introduced or delivered for introduction into commerce, or imported, new motor vehicles into the United States, including the vehicles that are the subject of this Consent Decree;

WHEREAS, the United States alleges in the Complaint, *inter alia*, that there are emission-related defects in the Catalytic Converters installed in certain classes or categories of DCC Jeep[®] and Dodge motor vehicles;

WHEREAS, the United States further asserts that DCC failed to file timely EDIRs with EPA, as required by 40 C.F.R. § 85.1903, with regard to the Catalytic Converter defects;

WHEREAS, DCC has acted in good faith in its dealings with DOJ and EPA in the discussions concerning the resolution of this matter;

WHEREAS, DCC has denied and continues to deny the violations alleged in the Complaint and nothing herein shall constitute an admission of liability;

WHEREAS, the United States and DCC have consented to entry of this Consent Decree without trial of any issues; and

WHEREAS, the United States and DCC recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the United States and DCC in good faith, that implementation of this Consent Decree will avoid prolonged and complicated litigation between the United States and DCC, and that this Consent Decree is fair, reasonable, and in the public interest;

NOW, THEREFORE, before the taking of any testimony, without the adjudication or admission of any issue of fact or law except as provided in Section I of this Consent Decree, and with the consent of the parties, it is hereby ADJUDGED, ORDERED, AND DECREED as follows:

I. JURISDICTION AND VENUE

1. The Court has jurisdiction over the subject-matter of this action and the Parties pursuant to 28 U.S.C. §§ 1331, 1345, 1355, and Sections 204 and 205 of the Act, 42 U.S.C. §§ 7523 and 7524.

2. Venue in this Court is proper pursuant to Sections 204 and 205 of the Act, 42 U.S.C. §§ 7523 and 7524. For purposes of this Decree, or any action to enforce this Decree, DCC consents to the Court's jurisdiction over this Decree or such action and over DCC, and consents to venue in this judicial district.

3. For purposes of this Consent Decree, DCC agrees that the Complaint states claims upon which relief may be granted pursuant to Sections 203, 204, and 205 of the Act, 42 U.S.C. §§ 7522, 7523, and 7524.

II. DEFINITIONS

4. Unless specifically defined in this Section or elsewhere in this Consent Decree, terms used herein shall have the meanings currently set forth in Sections 202, 216, and 302 of the Act, 42 U.S.C. §§ 7521, 7550, and 7602, and the regulations promulgated under Title II of the Act, 42 U.S.C. §§ 7521–7590.

- a. “Act” means the Clean Air Act, as amended, 42 U.S.C. § 7401 *et seq.*
- b. “California” means the State of California.
- c. “California Vehicles” means those Catalyst and OBD Affected Vehicles certified to California emissions standards and registered in the State of California.
- d. “CARB” means the California Air Resources Board.
- e. “Catalyst Affected Vehicles” means: model year 1996 through 1998 Jeeps[®]; 1996 through 1999 light-duty Dodge Ram pickup trucks, vans, and wagons, and Dodge Dakota pickup trucks; and 2000 and 2001 heavy-duty 5.9 and 8.0 liter Dodge Ram pickup trucks.
- f. “Catalytic Converter” means a DCC OEM device installed in the exhaust system of an internal combustion engine that utilizes precious metals for the purpose of reducing hydrocarbon, carbon monoxide, and oxides of nitrogen emissions, including any and all catalysts and any parts that are integral to any converter or would necessitate converter replacement if it were to fail, such as the converter shell, nipples, and heat shield.

g. “Certificate of Conformity” means a certificate issued by EPA pursuant to Section 206 of the Act, 42 U.S.C. § 7525.

h. “Consent Decree” or “Decree” means this document, including the Appendices identified or incorporated herein and the Attachments identified in the Appendices.

i. “Day” means a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

j. “DCC Dealer” is any authorized dealer of new DCC motor vehicles.

k. “DCC Technician” is a DCC Dealer employee who is an Automotive Service Excellence (ASE) Certified Technician.

l. “Effective Date” is the date the Consent Decree is entered by the Court.

m. “EDIR” means an Emissions Defect Information Report required pursuant to 40 C.F.R. § 85.1903.

n. “Emission-related Defect” means a defect in design, materials, or workmanship in a device, system, or assembly described in the approved Application for Certification (required by 40 C.F.R. §§ 86.1843-01 and 86.1844-01, 40 C.F.R. § 86.098-22 and like provisions of subpart A of Part 85 and 40 C.F.R. Part 86) which affects any parameter or specification enumerated in Appendix VIII to 40 C.F.R. Part 85.

o. “Empty Can Catalyst” means an Original Design Catalytic Converter in which the catalytic substrate and retaining mat have deteriorated to the extent that they are no longer significantly present in the Catalytic Converter shell.

p. “EPA” means the United States Environmental Protection Agency and any of its successor departments or agencies.

q. “FTP” means the Federal Test Procedures for 1994 and later light-duty vehicles and light-duty trucks specified in 40 C.F.R. Part 86.

r. “Interest” means interest at the rate allowed on money judgments pursuant to 28 U.S.C. § 1961.

s. “MIL” means the malfunction indicator light required to be installed on all vehicles meeting the OBD II requirements as defined in “OBD II.”

t. “New DCC OEM Catalytic Converter” means any Catalytic Converter released as a service part for the Catalyst Affected Vehicles that has either: (i) a metallic substrate; or (ii) a ceramic substrate and an Interam[®] 2000LTA intumescent mat (or equivalent).

u. “OBD” means the vehicle component or element of design installed to meet the requirements of OBD II that serves as a computer-based emission control monitoring system required in model year 1994 and later gasoline or diesel engines, light-duty vehicles, and trucks.

v. “OBD II” means the requirements found at Title 13, California Code of Regulations, Section 1968.1, as in effect for Model Year 1996 through 2001 motor vehicles, and 40 C.F.R. § 86.094-17.

w. “OBD Affected Vehicles” means 1996 through 1998 Jeeps[®] and 1996 through 1999 light-duty Dodge Ram pickup trucks, vans, and wagons, and Dodge Dakota pickup trucks.

x. “OEM” means original equipment manufacturer.

y. “Original Design Catalytic Converter” means any Catalytic Converter installed on a Catalyst Affected Vehicle that is not a New DCC OEM Catalytic Converter.

z. “Paragraph” means a portion of this Consent Decree identified by an Arabic numeral.

aa. “Parties” means the United States and DCC, and each shall be a “Party.”

bb. “Section” means a portion of this Consent Decree identified by a Roman numeral.

cc. “United States” means the United States of America, acting on behalf of EPA.

III. APPLICABILITY

5. This Consent Decree applies to and is binding upon the United States and upon DCC, its employees, contractors, agents, successors, and assigns. Unless approved by the Parties in writing, any change in DCC’s ownership or corporate status shall in no way alter DCC’s responsibilities under this Consent Decree. In any action to enforce this Consent Decree, DCC shall not raise as a defense the failure of its officers, directors, agents, servants, contractors, or employees or their successors to take actions necessary to comply with the provisions hereof.

6. DCC shall provide a copy of this Consent Decree to any contractor retained to perform work required under this Consent Decree. DCC shall not assert as a defense to any action to enforce this Consent Decree the failure of any DCC officer, employee, or agent (provided that “agent” shall not be deemed to include a DCC Dealer) to have received a copy of this Consent Decree.

IV. INJUNCTIVE RELIEF

A. **EXTENDED WARRANTY, CATALYST INSPECTION AND REPLACEMENT, AND OWNER REIMBURSEMENT PROGRAM**

7. DCC shall implement an Extended Warranty, Catalyst Inspection and Replacement, and Owner Reimbursement Program in accordance with Appendix A.

8. Nothing in this Consent Decree shall be construed to affect any other warranty provided to such owners or purchasers under federal, state, or local law, or otherwise.

B. **OBD RECALL AND CATALYST INSPECTION AND REPLACEMENT PROGRAM**

9. DCC shall implement an OBD Recall and Catalyst Inspection and Replacement Program in accordance with Appendix B.

C. **VEHICLE OWNER NOTIFICATION PROGRAM**

10. DCC shall implement a Vehicle Owner Notification Program in accordance with Appendix C.

D. **SUPPLEMENTAL EMISSION-RELATED DEFECT MONITORING AND REPORTING SYSTEM**

11. DCC shall implement a Supplemental Emission-Related Defect Monitoring and Reporting System for all DCC vehicles sold in the United States pursuant to a Certificate of Conformity, in accordance with Appendix D.

V. REPORTING

12. Each notice, submission, or report required by this Consent Decree shall be accompanied by a transmittal letter referencing the appropriate Paragraph or Appendix of this Consent Decree. DCC shall, through a duly authorized representative having knowledge of the

contents of the notice, submission, or report, sign and certify under 28 U.S.C. § 1746 as follows:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that this document and its attachments were prepared either by me personally or under my direction or supervision in a manner designed to ensure that qualified and knowledgeable personnel properly gathered and presented the information contained therein. I further certify, based on my personal knowledge or on my inquiry of those individuals immediately responsible for obtaining the information, that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing and willful submission of a materially false statement.

DCC shall not object to the admissibility in evidence of any such reports in a proceeding to enforce this Consent Decree.

13. Compliance with the reporting and notification requirements of this Consent Decree shall not relieve DCC of its obligation to comply with any other reporting or notification requirements imposed by any applicable federal, state, or local laws, regulations, or permits. Nothing contained in this Consent Decree is intended to waive or modify any requirement to submit reports, EDIRs, submissions, notifications, or communications with the United States or EPA, in the manner, to the persons, or as otherwise required by any statute, regulation, or other law or provision.

14. Unless otherwise provided herein, reports, submissions, notifications to, or communications with the United States or DCC shall be deemed submitted on the date they are postmarked and sent by first class mail, overnight receipt mail service, or by certified or registered mail, return receipt requested. Except as otherwise specifically provided herein, when written notification to or communication with the United States, EPA, or DCC is required by the terms of this Consent Decree, it shall be addressed as follows:

As to the United States:

Chief
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611, Ben Franklin Station
Washington D.C. 20044-7611
Re: DOJ No. 90-5-2-1-08231

For EPA:

Director
Compliance and Innovative Strategies Division (6403J)
Office of Transportation and Air Quality
Office of Air and Radiation
U.S. Environmental Protection Agency
1310 L Street, N.W.
Washington, D.C. 20004

Director
Air Enforcement Division (2242A)
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Ariel Rios Building South
Washington, D.C. 20004

With a copy to:

Thomas M. Ball
Program Manager
Compliance and Innovative Strategies Division
U.S. Environmental Protection Agency
2000 Traverwood
Ann Arbor, MI 48105

Jacqueline Robles Werner, Esq.
Air Enforcement Division (2242A)
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

As to DCC:

Reginald R. Modlin
Director, Environmental and Energy Planning
DaimlerChrysler Corporation
800 Chrysler Drive
Auburn Hills, MI 48326

Kathleen Hennessey
Office of the General Counsel
DaimlerChrysler Corporation
800 Chrysler Drive
Auburn Hills, MI 48326

All Parties to the Consent Decree may change the address for providing notices to it by serving all other addressees identified above with a written notice setting forth the new address.

VI. SETTLEMENT OF PENALTY CLAIM

15. Within thirty days after the Effective Date of this Consent Decree, DCC shall pay the United States the sum of \$1 million to settle the United States' disputed claim that DCC is liable for the payment of a civil penalty.

16. Payment shall be made by Electronic Funds Transfer ("EFT") to the U.S. Department of Justice ("DOJ") in accordance with instructions to be provided to DCC following lodging of the Consent Decree by the Financial Litigation Unit of the U.S. Attorney's Office. Any EFT received at the DOJ lockbox bank after 11:00 a.m. Eastern Time will be credited on the next business day. Notice of the EFT shall simultaneously be mailed to the following:

Docket Clerk
Mailcode MS 2214A
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Jacqueline Robles Werner, Esq.
Air Enforcement Division (2242A)
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Thomas M. Ball
Program Manager
Compliance and Innovative Strategies Division
U.S. Environmental Protection Agency
2000 Traverwood
Ann Arbor, MI 48105

Chief
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Reference DOJ Case No. 90-5-2-1-08231

17. The transmittal letter forwarding such notice shall include the DOJ case number 90-5-2-1-08231 and the civil action number of this case.
18. If DCC fails to make the payment required by Paragraph 15 within thirty days of the Effective Date, the payment is late. Late payment is subject to Interest and Stipulated Penalties as provided below.
19. DCC shall not deduct the payment required by Paragraph 15 in calculating its federal income tax.
20. The United States shall be deemed a judgment creditor for purposes of collection of the payment required by Paragraph 15.

VII. SUPPLEMENTAL ENVIRONMENTAL PROJECTS

21. DCC shall establish, implement, and complete a Supplemental Environmental Project (“SEP”) in accordance with the terms, instructions, elements, work plans, and time schedules in Appendix E attached hereto.

22. It is agreed by and between the Parties that the SEP is intended to secure significant environmental protection and improvements that are not otherwise required by law.

23. DCC shall expend at least \$3 million in eligible SEP costs for the SEP identified in Appendix E.

24. DCC is responsible for the satisfactory completion of the SEP in accordance with the requirements of this Decree. “Satisfactory completion” means that DCC shall complete the work in accordance with all work plans and specifications for the project and shall spend not less than the amount set forth in Paragraph 23 of this Consent Decree. DCC may use contractors or consultants in planning and implementing the SEP.

25. EPA may, in its sole discretion, require DCC to provide information in addition to that described in Appendix E of this Consent Decree in order to determine the adequacy of SEP completion or eligibility of SEP costs.

26. After receiving the final SEP Report pursuant to Appendix E, the United States shall notify DCC whether DCC has satisfactorily completed the SEP. If the SEP has not been satisfactorily completed in accordance with all applicable work plans and schedules, or if the amount expended on performance of the SEP is less than the amount set forth in Paragraph 23 of this Consent Decree, Stipulated Penalties may be assessed under Section VIII of this Consent Decree.

27. Should DCC dispute any determination by the United States concerning the satisfactory performance of the SEP or the amount of eligible SEP costs, it may invoke the Dispute Resolution provisions of Section X of this Decree. No other disputes arising under this Section shall be subject to Dispute Resolution.

28. Each submission required under this Section shall be signed by an official with knowledge of the SEP and shall bear the certification language set forth in Paragraph 12 (Reporting) of this Consent Decree.

29. Any public statement, oral or written, in print, film, or other media, made by DCC making reference to the SEP under this Decree shall include the following language: “This project was undertaken in connection with the settlement of an enforcement action, United States v. DaimlerChrysler Corporation, taken on behalf of the U.S. Environmental Protection Agency under the Clean Air Act.”

VIII. STIPULATED PENALTIES

30. DCC shall be liable for Stipulated Penalties to the United States for violations of this Consent Decree as specified below, unless excused under Section IX (Force Majeure). A violation includes failing to perform any obligation required by the terms of this Decree, including any work plan or schedule approved under this Decree, according to all applicable requirements of this Decree and within the specified time schedules established by or approved under this Decree.

31. The following Stipulated Penalties shall accrue per violation per day for each violation of a requirement identified as follows:

a. For failure to make the payment required by Paragraph 15 of this Consent Decree when due: \$1,000.00 per day for each day that the payment is late.

b. For failure to commence the owner notification process required under Appendices A, B, or C of this Consent Decree, or DCC Dealer notifications required under Appendices A or B, by the dates specified therein: \$300 per day for the first thirty days of the delay; \$500 per day for the next thirty days of delay; and \$700 per day for any delay beyond sixty days.

c. For failing or refusing to inspect or replace a Catalytic Converter, or to reimburse an owner, as and when required by the Extended Warranty, Catalyst Inspection and Replacement, and Owner Reimbursement Program in Appendix A, or the OBD Recall and Catalyst Inspection and Replacement Program in Appendix B: \$800 per vehicle per day of violation.

d. For failing or refusing to perform an OBD reflash on a vehicle as and when required by the OBD Recall and Catalyst Inspection and Replacement Program in Appendix B: \$400 per vehicle per day of violation.

e. For failure to create, maintain, or provide copies of records or reports as required by this Consent Decree: \$100 per day for the first thirty days of delay; \$200 per day for the next thirty days of delay; and \$400 per day for any delay beyond sixty days.

f. For failing or refusing to comply with requirements of Paragraph 11 of this Consent Decree or the terms and conditions of the Supplemental Emission-Related Defect Monitoring and Reporting Protocol set forth in Appendix D, as follows:

- i. For failure within thirty Days of the Effective Date of this Decree to supplement its existing emission-related defect monitoring and reporting procedures in accordance with App. D, Paragraph 1: \$1,000 per day.
- ii. For failure timely to file any report required by Appendix D, or to include in an any report filed pursuant to Appendix D all available required information:

<u>For each violation</u>	<u>Penalty</u>
1st to 10th day	\$ 500 per day
11 th to 30 th day	\$ 750 per day
After 30 th day	\$1,000 per day

g. For failure to satisfactorily complete any SEP in accordance with the SEP Plan and all work plans and specifications for the project: \$300 per day for the first thirty days of delay; \$500 per day for the next thirty days of delay; and \$700 per day for any delay beyond sixty days.

h. If DCC has spent less for any SEP than the amount set forth in the SEP Plan, DCC shall pay a stipulated penalty equal to the difference between the amount of total eligible SEP costs incurred by DCC and the amount set forth in the Plan.

i. For failing or refusing to submit SEP annual reports or the final SEP Report in accordance with the SEP Plan: \$200 per day for the first thirty days of delay; \$400 per day for the next thirty days of delay; and \$500 per day for any delay beyond sixty days.

32. Stipulated Penalties shall continue to accrue as provided in Paragraph 31 of this Consent Decree during any Dispute Resolution, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of EPA that is not appealed to the Court, DCC shall pay accrued penalties determined to be owing, together with Interest, to the United States within thirty days of the effective date of the agreement or the receipt of EPA's decision or order.

b. If the dispute is appealed to the Court and the United States prevails in whole or in part, DCC shall pay all accrued penalties determined by the Court to be owing, together with Interest, within sixty days of receiving the Court's decision or order, except as provided in subparagraph c, below.

c. If any Party appeals the District Court's decision, DCC shall pay all accrued penalties determined to be owing, together with Interest, within fifteen days of receiving the final appellate court decision.

33. Subject to the provisions of Section XII (Effect of Decree) of this Consent Decree, the Stipulated Penalties provided for in this Consent Decree shall be in addition to any other rights, remedies, or sanctions available to the United States for DCC's violation of this Consent Decree or applicable law.

34. If a date by which DCC must meet any obligation of this Consent Decree falls on a holiday or weekend, the due date shall be the following working day. Stipulated civil penalties shall automatically begin to accrue on the first day DCC fails to satisfy any obligation or requirement of this Consent Decree and shall continue to accrue until the violation or deficiency is corrected. Stipulated penalties shall continue to accrue throughout any dispute resolution process.

35. Stipulated penalties shall be paid no later than thirty days following the first day in which EPA sends to DCC a demand for payment of the stipulated penalties which have accrued to date together with an explanation for the basis(es) for the demand. DCC shall pay Stipulated Penalties owing to the United States by EFT in accordance with Paragraph 16 of this Consent Decree or by certified or cashier's check in the amount due, payable to the "U.S. Department of Justice," referencing DOJ No. 90-5-2-1-08231 and the civil action number of this case, and delivered to the office of the United States Attorney, District of Columbia, United States Attorney's Office, 555 4th Street, NW, Washington, DC 20530.

36. DCC shall not deduct Stipulated Penalties paid under this Section in calculating its federal income tax.

37. If DCC fails to pay Stipulated Penalties according to the terms of this Consent Decree, DCC shall be liable for Interest on such penalties accruing as of the date payment became due.

38. Notwithstanding any other provision of this Decree, the United States may, in its unreviewable discretion, waive any portion of a stipulated penalty that has accrued pursuant to this Decree.

IX. FORCE MAJEURE

39. A "force majeure event" is any event beyond the control of DCC, its contractors, or any entity controlled by DCC that delays the performance of any obligation under this Consent Decree despite DCC's best efforts to fulfill the obligation. "Best efforts" includes anticipating any potential force majeure event and addressing the effects of any such event (a) as it is occurring and (b) after it has occurred, to prevent or minimize any resulting delay to the greatest

extent possible. "Force Majeure" does not include DCC's financial inability to perform any obligation under this Consent Decree.

40. DCC shall provide written notice, as provided in Paragraph 14 of this Consent Decree, within fourteen days of the time DCC first knew of, or by the exercise of due diligence, should have known of, the event. The notice shall state: the anticipated duration of any delay; its cause(s); DCC's past and proposed actions to prevent or minimize any delay; a schedule for carrying out those actions; and DCC's rationale for attributing any delay to a force majeure event. Failure to provide oral and written notice as required by this Paragraph shall preclude DCC from asserting any claim of force majeure. DCC shall adopt all reasonable measures to avoid or minimize such delay.

41. If the United States agrees that a force majeure event has occurred, the United States may agree to extend the time for DCC to perform the affected requirements for the time necessary to complete those obligations. An extension of time to perform the obligations affected by a force majeure event shall not, by itself, extend the time to perform any other obligation. Where the United States agrees to an extension of time, the appropriate modification shall be made pursuant to Section XV (Modification) of this Consent Decree.

42. If the United States does not agree that a force majeure event has occurred, or does not agree to the extension of time sought by DCC, the United States' position shall be binding, unless DCC invokes Dispute Resolution under Section X of this Consent Decree. In any such dispute, DCC bears the burden of proving, by a preponderance of the evidence, that each claimed force majeure event is a force majeure event, that DCC gave the notice required by

Paragraph 40, that the force majeure event caused any delay DCC claims was attributable to that event, and that DCC exercised best efforts to prevent or minimize any delay caused by the event.

43. An extension of one compliance date based on a particular event shall not automatically extend any other compliance date. DCC shall make an individual showing of proof regarding the cause of each delayed incremental step or other requirement for which an extension is sought.

X. DISPUTE RESOLUTION

44. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. DCC's failure to seek resolution of a dispute under this Section shall preclude DCC from raising any such issue as a defense to an action by the United States to enforce any obligation of DCC arising under this Decree.

45. Informal Dispute Resolution. Any dispute subject to Dispute Resolution under this Consent Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when DCC sends the United States a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed thirty days from the date the dispute arises, unless that period is modified by written agreement. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States shall be considered binding unless, within forty-five days after the conclusion of the informal negotiation period, DCC invokes the formal dispute resolution procedures in Paragraph 46 of this Consent Decree.

46. Formal Dispute Resolution. DCC shall invoke formal dispute resolution procedures, within the time period provided in the Paragraph 45 of this Consent Decree, by serving on the United States a written Statement of Position regarding the matter in dispute. The Statement of Position shall include, but may not necessarily be limited to, any factual data, analysis, or opinion supporting DCC's position and any supporting documentation relied upon by DCC.

47. The United States shall serve its Statement of Position within forty-five days of receipt of DCC's Statement of Position. The United States' Statement of Position shall include, but may not necessarily be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the United States. The United States' Statement of Position shall be binding on DCC, unless DCC files a motion for judicial review of the dispute in accordance with Paragraph 48 of this Consent Decree.

48. DCC may seek judicial review of the dispute by filing with the Court and serving on the United States, in accordance with Paragraph 14 of this Consent Decree, a motion requesting judicial resolution of the dispute. The motion must be filed within forty-five days of receipt of the United States' Statement of Position pursuant to the Paragraph 47 of this Consent Decree. The motion shall contain a written statement of DCC's position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree.

49. The United States shall respond to DCC's motion within the time period allowed by the Local Rules of this Court. DCC may file a reply memorandum, to the extent permitted by the Local Rules.

50. In any dispute brought under Paragraph 48, DCC shall bear the burden of demonstrating that its position clearly complies with and furthers the objectives of this Consent Decree and the Clean Air Act and that DCC is entitled to relief under applicable law. The United States reserves the right to argue that its position is reviewable only on the administrative record and must be upheld unless arbitrary and capricious or otherwise not in accordance with law.

51. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of DCC under this Consent Decree, unless and until final resolution of the dispute so provides. Stipulated Penalties with respect to the disputed matter shall continue to accrue from the first day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 32, above. If DCC does not prevail on the disputed issue, Stipulated Penalties shall be assessed and paid as provided in Section VIII (Stipulated Penalties).

XI. RIGHT OF ENTRY/RECORDS RETENTION

52. Subject to and in compliance with the requirements of Section 208 of the Act, 42 U.S.C. § 7542, EPA and its authorized representatives and contractors are authorized, upon presentation of appropriate credentials:

a. to enter, at reasonable times, the premises of DCC for the purposes of inspecting or observing any activity conducted pursuant to this Consent Decree; and

b. to inspect and review any record required to be kept under the terms and conditions of this Consent Decree.

Nothing herein shall be construed, however, to require DCC to impose new or additional right of entry requirements on DCC Dealers.

53. DCC shall maintain the following records:

a. Any documents reflecting or constituting communications with vehicle owners with respect to the Extended Warranty, Catalyst Inspection and Replacement, and Owner Reimbursement Program, OBD Recall and Catalyst Inspection and Replacement Program, and the Vehicle Owner Notification Program (collectively, the “Programs”);

b. Any documents reflecting or constituting communications with any contractor that DCC retains to assist with the implementation of the Programs and the Supplemental Environmental Projects under this Consent Decree; and

c. Any documents upon which DCC relied in making any report required pursuant to this Consent Decree.

54. DCC shall make these records available to EPA upon request. DCC shall retain all such records for a period of five years after termination of this Consent Decree. All information and documents submitted by DCC to the United States pursuant to this Consent Decree shall be subject to public inspection, unless identified and supported as confidential business information by DCC in accordance with 40 C.F.R. Part 2. Nothing herein shall be construed, however, to require DCC to impose new or additional recordkeeping or retention requirements on DCC Dealers. Nothing herein shall be construed to require DCC to allow EPA access to documents protected by any applicable privilege.

55. This Consent Decree in no way limits or affects any right of entry and inspection, or any right to obtain information, held by EPA pursuant to applicable federal laws, regulations, or permits, nor does it limit or affect any duty or obligation of DCC to maintain documents, records, or other information imposed by applicable federal or state laws, regulations, or permits.

XII. EFFECT OF DECREE

56. This Consent Decree does not pertain to any matters other than those expressly specified in Paragraphs 57 and 58 of this Consent Decree.

57. This Consent Decree resolves the United States' civil claims for penalties and injunctive relief under Sections 203, 204, 205, and 208 of the Act, 42 U.S.C. §§ 7522, 7523, 7524, and 7542 with respect to:

- a. the violations alleged in the Complaint; and
- b. any failure to file EDIRs, make other reports or provide information, or to undertake a recall or other remedial action with respect to: (i) the Original Design Catalytic Converters on the Catalyst Affected Vehicles; or (ii) the inability of the OBD system, as originally installed on the OBD Affected Vehicles, to detect an Empty Can Catalyst or the failure or deterioration in performance of the Catalytic Converter.

58. In consideration of the actions that will be performed and the payments that will be made by DCC under the terms of the Consent Decree, EPA shall not base a determination under Section 207(c)(1) of the Act, 42 U.S.C. § 7541, that any of the Catalyst Affected Vehicles does not conform to the regulations prescribed under Section 202 of the Act, 42 U.S.C. § 7521, based on the design or performance of Original Design Catalytic Converters, or that any of the OBD Affected Vehicles does not conform to such regulations based on the failure of the OBD

system, as originally installed on vehicles, to detect Catalytic Converter performance deterioration or failure or an Empty Can Catalyst. EPA's commitment under this Paragraph is conditioned upon the satisfactory performance by DCC of its obligations under this Consent Decree. This commitment extends only to DCC and does not extend to any other person.

59. This Consent Decree does not limit or affect the rights of DCC or of the United States against any third parties not party to this Consent Decree, nor does it limit the rights of third parties not party to this Consent Decree, against DCC, except as otherwise provided by law.

60. This Consent Decree shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Consent Decree.

XIII. NON-WAIVER PROVISIONS

61. This Consent Decree in no way affects or relieves DCC of any responsibility to comply with any federal, state, or local laws or regulations.

62. DCC is responsible for achieving and maintaining complete compliance with all applicable federal and state laws and regulations, and compliance with this Consent Decree shall be no defense to any actions commenced pursuant to said laws and regulations, except as otherwise expressly specified in the Consent Decree.

63. The United States reserves any and all legal and equitable remedies available to enforce the provisions of this Consent Decree.

64. This Consent Decree shall not limit any authority of EPA under the Clean Air Act or any applicable statute, including the authority to seek information from DCC or to seek access to the property of DCC. Except as provided in Paragraphs 57 and 58, the United States reserves all remedies available to it for violations of the Clean Air Act by DCC that are not alleged in the

Complaint as well as for violations of the Clean Air Act by DCC that occur after the date of lodging of this Consent Decree.

65. This Consent Decree does not resolve criminal liability, if any, that any person might have for violations of the Clean Air Act.

66. Nothing in this Consent Decree shall be construed to limit the authority of the United States to undertake any action against any person, including DCC, in response to conditions that may present an imminent and substantial endangerment to the environment or to the public health or welfare.

XIV. COSTS OF SUIT

67. The Parties shall bear their own costs of this action, including attorneys' fees, except that the United States shall be entitled to collect the costs (including attorneys' fees) incurred in any action necessary to collect any portion of the payment required by Paragraph 15 or any Stipulated Penalties due but not paid by DCC.

XV. MODIFICATION

68. The terms of this Consent Decree may be modified only by a subsequent written agreement signed by all the Parties. Where the modification constitutes a material change to any term of this Decree, it shall be effective only upon approval by the Court.

XVI. PUBLIC COMMENT AND ENTRY OF CONSENT DECREE

69. The Parties agree and acknowledge that final approval by the United States and entry of this Consent Decree is subject to the requirements of 28 C.F.R. § 50.7, which provides for notice of the lodging of this Consent Decree in the Federal Register, an opportunity for public comment, and consideration by the United States of any comments. The United States reserves

the right to withdraw or withhold its consent on the basis of such comments. This Paragraph does not create any rights exercisable by DCC.

70. DCC consents to the entry of this Consent Decree without further notice.

XVII. TERMINATION

71. This Consent Decree will terminate upon further order of this Court at any time after December 31, 2009, after DCC serves upon the United States, together with all necessary supporting documentation, a Request for Termination stating that DCC has:

- a. made the payment required by Paragraph 15 and any accrued Interest imposed by this Consent Decree;
- b. paid in full any Stipulated Penalties imposed by this Consent Decree; and
- c. completed all other requirements of this Consent Decree.

72. Following receipt by the United States of DCC's Request for Termination, the Parties shall confer informally concerning the Request and any disagreement that the Parties may have as to whether DCC has satisfactorily complied with the requirements for termination of this Consent Decree. If the United States, after consultation with EPA, agrees that the Decree may be terminated, the Parties shall submit, for the Court's approval, a joint stipulation terminating the Decree.

73. If the United States, after consultation with EPA, does not agree that the Decree may be terminated, DCC may invoke Dispute Resolution under Section X of this Decree. However, DCC shall not seek Dispute Resolution of any dispute regarding termination until 120 days after service of its Request for Termination.

XVIII. SIGNATORIES/SERVICE

74. Each undersigned representative of DCC, EPA, and the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party he or she represents to this document. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis.

75. DCC agrees not to oppose entry of this Consent Decree by the Court or to challenge any provision of the Decree, unless the United States has notified DCC in writing that it no longer supports entry of the Decree.

76. DCC agrees to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons.

XIX. INTEGRATION

77. This Consent Decree, including the Appendices identified or incorporated herein and any Attachments that are identified in the Appendices, constitute the final, complete, and exclusive agreement and understanding between the Parties with respect to the settlement embodied in the Decree and supersedes all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. Other than the Appendices, which are attached to and incorporated in this Decree, the Attachments identified in the Appendices, and submittals that are subsequently submitted and approved pursuant to this Decree, no other

document, nor any representation, inducement, agreement, understanding, or promise, constitutes any part of this Decree or the settlement it represents, nor shall it be used in construing the terms of this Decree.

XX. FINAL JUDGMENT

78. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court as to the United States and DCC.

XXI. RETENTION OF JURISDICTION

79. This Court shall retain jurisdiction of this matter for the purposes of implementing and enforcing the terms and conditions of this Consent Decree and for the purpose of adjudicating all disputes among the Parties that may arise under the provisions of this Consent Decree, to the extent that this Consent Decree provides for resolution of disputes by the Court.

XXII. APPENDICES

80. The following appendices are attached to and incorporated into this Consent Decree:

“Appendix A” is the Extended Warranty, Catalyst Inspection and Replacement, and Owner Reimbursement Program;

“Appendix B” is the OBD Recall and Catalyst Inspection and Replacement Program;

“Appendix C” is the Owner Notification Program;

“Appendix D” is the Emission-Related Defect Monitoring and Reporting Protocol; and
“Appendix E” is the Supplemental Environmental Project.

SO ORDERED AND APPROVED in accordance with the foregoing this ____ day of
_____, 2005

United States District Judge

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FOR PLAINTIFF, UNITED STATES OF AMERICA

_____ Dated: _____
KELLY A. JOHNSON, D.C. Bar # 431714
Acting Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice
10th & Pennsylvania Avenue, N.W.
Washington, D.C. 20530

_____ Dated: _____
KENNETH L. WAINSTEIN, D.C. BAR # 451058
United States Attorney

_____ Dated: _____
R. CRAIG LAWRENCE, D.C. BAR # 171538
Assistant United States Attorney

_____ Dated: _____
KEITH V. MORGAN, D.C. Bar #422665
Assistant United States Attorney
Judiciary Center Building
555 Fourth Street, NW
Washington, DC 20530

_____ Dated: _____
THOMAS CARROLL, Bar # 388593
Senior Attorney
Environmental Enforcement Section
United States Department of Justice
10th & Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Signature Page – United States v. DaimlerChrysler Corporation

PHYLLIS A. HARRIS
Principal Deputy Assistant Administrator
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Dated: _____

WILLIAM L. WEHRUM
Acting Assistant Administrator
Office of Air and Radiation
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Dated: _____

MERRYLIN ZAW-MON
Director, Compliance and Innovative Strategies Division (6403J)
Office of Transportation and Air Quality
Office of Air and Radiation
U.S. Environmental Protection Agency
1310 L Street, N.W.
Washington, D.C. 20004

Dated: _____

THOMAS M. BALL
Program Manager
Compliance and Innovative Strategies Division
U.S. Environmental Protection Agency
2000 Traverwood
Ann Arbor, MI 48105

Dated: _____

ADAM M. KUSHNER
Director
Air Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
1200 Pennsylvania Avenue, N.W.
Mailcode 2242A
Washington, D.C. 20004

Dated: _____

Signature Page – United States v. DaimlerChrysler Corporation

Dated: _____

JACQUELINE ROBLES WERNER

Attorney

Air Enforcement Division

Office of Civil Enforcement

Office of Enforcement and Compliance Division

1200 Pennsylvania Avenue, N.W.

Mailcode 2242A

Washington, D.C. 20004

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FOR DEFENDANT, DAIMLERCHRYSLER CORPORATION

DEBORAH L. MORRISSETT
Vice President, Regulatory Affairs
DaimlerChrysler Corporation
800 Chrysler Drive
Auburn Hills, MI 48326

Dated: _____

PATRICK M. RAHER, D.C. Bar # 168542
Partner
Hogan & Hartson LLP
555 Thirteenth Street, N.W.
Washington, D.C. 20006

Dated: _____

APPENDIX A

EXTENDED WARRANTY, CATALYST INSPECTION AND REPLACEMENT, AND OWNER REIMBURSEMENT PROGRAM

DCC shall implement an Extended Warranty, Catalyst Inspection and Replacement, and Owner Reimbursement Program as follows:

1. Extension of Warranty. DCC shall extend the Catalytic Converter warranty provided pursuant to Section 207(i)(2) of the Act for each of the vehicles specified in Paragraph 2 of this Appendix A (“Extended Warranty Vehicles”) to the latest date that is: (a) ten years from the date the vehicle was placed in service or 120,000 miles, whichever is first; (b) one year from the date of the Owner Notification Letter sent pursuant to Paragraph 15 of this Appendix A; or (c) two years from the date of the Owner Notification Letter sent pursuant to Paragraph 15 of this Appendix A if the Extended Warranty Vehicle is presented for service as a result of a failed California SMOG check or an Inspection and Maintenance (“I/M”) test required under a State Implementation Plan due to a defective Original Design Catalytic Converter. Notwithstanding the foregoing, DCC shall extend the warranty provided pursuant to the Act for the non-California certified 2000 MY 5.9L (EMM) and 8.0L Heavy-Duty Dodge Ram Pickup Truck (BR/BE) to the latest date that is: (a) the end of the warranty provided pursuant to the Act; or (b) twelve months from the date of the Owner Notification Letter sent pursuant to Paragraph 15 of this Appendix A. If the date the vehicle was placed in service is not known, the warranty period for that vehicle shall begin on April 1 of the calendar year that is the same as the model year. DCC shall afford the benefits of the Extended Warranty, Catalyst Inspection and Replacement, and Owner Reimbursement Program of this Appendix A to the current owner of

the Extended Warranty Vehicle, without regard to whether the owner is an initial or a subsequent purchaser of the vehicle.

2. Vehicles Included in the Extended Warranty, Catalyst Inspection and Replacement, and Owner Reimbursement Program. The following vehicles, that according to DCC warranty records have the Original Design Catalytic Converter, shall be included in the Extended Warranty, Catalyst Inspection and Replacement, and Owner Reimbursement Program:

<u>Model Year</u>	
1996	2.5L Jeep® Cherokee (XJ)
1996	3.9L Dodge Ram Van/Wagon (AB) and Ram Pickup Truck (BR)
1996	5.2L Dodge Ram Pickup Truck (BR)
1996	5.9L (EML) Dodge Ram Pickup Truck (BR)
1997	3.9L Dodge Ram Van/Wagon (AB), Dakota (AN), and Ram Pickup Truck (BR)
1998	3.9L Dodge Ram Pickup Truck (BR)
1999	3.9L Dodge Dakota (AN)
1999	5.2L Dodge Ram Pickup Truck (BR/BE)
2000	5.9L (EMM) Heavy-Duty Dodge Ram Pickup Truck (BR/BE) (NAA)
2000	8.0L Heavy-Duty Dodge Ram Pickup Truck (BR/BE) (NAA)

3. An owner may submit an Extended Warranty claim by bringing a vehicle to any Dealer authorized by DCC to service that model vehicle.

4. DCC shall inspect and evaluate the Catalytic Converter in accordance with the Catalytic Converter Inspection Procedure set forth in the applicable Technical Service Bulletin (Attachment 5A or 5B to Appendix A) for each Extended Warranty Vehicle that is presented to a DCC Dealer during the Extended Warranty period described in Paragraph 1 of this Appendix A where:

- a. the owner presents a copy of the Vehicle Owner Notification Letter; or

b. the owner requests inspection or repair due to a rattle or noise from the underside of the vehicle.

5. DCC shall replace the Original Design Catalytic Converter if:

a. The Catalytic Converter substrate material rattles, or is loose, deteriorated, broken into pieces, or missing;

b. The vehicle is presented with an illuminated MIL and a catalyst efficiency code of P0420 has been set by the OBD system; or

c. The vehicle is presented with proof of a tailpipe emissions failure from a California SMOG or an I/M test, and the MIL is either not illuminated, or the MIL is illuminated and a catalyst efficiency code of P0420 has been set by the OBD system.

6. The Catalytic Converters used as replacements under the Extended Warranty, Catalyst Inspection and Replacement, and Owner Reimbursement Program shall be New DCC OEM Catalytic Converters. As part of any Catalytic Converter replacement, DCC also shall perform all other associated work to ensure proper installation and operation of the Catalytic Converter. DCC shall make all inspections or repairs under the Extended Warranty, Catalyst Inspection and Replacement, and Owner Reimbursement Program within sixty days of the presentation of the vehicle to a DCC repair facility. DCC's notifications to Dealers regarding the Extended Warranty, Catalyst Inspection and Replacement, and Owner Reimbursement Program shall advise Dealers that the inspections and repairs must be performed within sixty days of an owner's presentation of the vehicle. DCC shall ensure that an adequate inventory of replacement parts for repairs under the Extended Warranty, Catalyst Inspection and Replacement, and Owner Reimbursement Program is readily available to DCC Dealers. If DCC is unable to make all

inspections and repairs to a vehicle that is covered under the Extended Warranty, Catalyst Inspection and Replacement, and Owner Reimbursement Program within sixty days after the initial presentation of the vehicle to a Dealer, then the owner shall be entitled to have the inspections and repairs performed at DCC's expense by any licensed repair facility of the owner's choosing.

7. Expenses of Extended Warranty, Catalyst Inspection and Replacement, and Owner Reimbursement Program. DCC shall provide the inspection, diagnosis, adjustment, repair services, and associated taxes for the Catalytic Converter, as required by this Appendix, free of charge to vehicle owners.

8. Any cost obligation of any DCC Dealer authorized by and incurred consistent with DCC's Warranty Bulletin and Technical Service Bulletin as a result of making any inspection, repair, adjustment or replacement under the Extended Warranty, Catalyst Inspection and Replacement, and Owner Reimbursement Program shall be borne by DCC. DCC shall not transfer any such cost obligation to any vehicle owner.

9. Warranty on Replacement Catalytic Converters. Any replacement Catalytic Converter installed on an Extended Warranty Vehicle under this Appendix A shall have a warranty that extends to the latest date that is: (a) for light-duty vehicles, eight years or 80,000 miles from the date the vehicle was placed in service, whichever is first; (b) for heavy-duty vehicles, five years or 50,000 miles from the date the vehicle was placed in service, whichever is first; or (c) twelve months or 12,000 miles from the date of installation, whichever is first.

10. Reimbursement for Unpaid Expenses for Repair Covered by Warranty. DCC shall reimburse all reasonable expenses, including the costs of parts and labor for

inspection and repair of the Catalytic Converter, to all Extended Warranty Vehicle owners who, prior to the date five days after the date of the Owner Notification Letter, paid for a repair involving replacement of the catalyst within the applicable warranty period and have proof of such payment. DCC shall provide each owner of an Extended Warranty Vehicle a copy of the applicable Owner Reimbursement Questions & Answers in Attachments 1A or 1B to this Appendix A.

11. DCC shall establish reimbursement procedures for processing reimbursement claims under this Consent Decree providing for reimbursement within a reasonable time, not to exceed sixty days from the time the reimbursement claim is received. If DCC has any question regarding the validity of the reimbursement claim, DCC's reimbursement procedures shall provide for a prompt final decision to be communicated by DCC to the owner within forty-five days from receipt of the claim, so that the vehicle owner can take steps to appeal the denial.

12. Within the forty-five-day time period specified in Paragraph 11 of this Appendix, DCC shall:

- a. Notify the owner that it will honor the reimbursement claim and will pay the claim; or
- b. provide the owner, in writing, with an explanation of the basis upon which the claim is being denied and a notice that the owner may obtain further information concerning the Extended Warranty, Catalyst Inspection and Replacement, and Owner Reimbursement Program under this Consent Decree or report violations of the terms of the Extended Warranty, Catalyst Inspection and Replacement, and Owner Reimbursement Program by contacting:

Director, Air Enforcement Division
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., N.W. (2242A)
Washington, D.C. 20460
(202) 564-2260.

13. Failure by DCC to notify an owner about a decision on a claim within the required time period shall result in such claim being deemed valid.

14. Any claim deemed valid pursuant to Paragraph 13 of this Appendix, and not paid within sixty days of the end of the time period specified in Paragraph 11, shall be subject to a penalty equal to and in addition to the amount of the claim submitted and shall be paid to the owner within thirty days.

15. Vehicle Owner Notification Letter. Commencing sixty days after the Effective Date of this Consent Decree, DCC shall use diligent efforts to send an Owner Notification Letter to each Extended Warranty Vehicle owner. "Diligent effort," for purposes of this Paragraph, shall include the use of commercial services, such as R.L. Polk Company, or other customary practices in the industry to identify and locate vehicle owners. The Owner Notification Letter shall be sent through the United States mail, first class. The Owner Notification Letter shall be in the form provided for in Attachment 2A and 2B to this Appendix A. Each notice shall be accompanied by a postage-paid card to be used in the event the vehicle has been sold, retired, or otherwise removed from service, in the form provided in Attachment 3.

16. Dealer Notification Letter. Prior to or concurrently with sending the Owner Notification Letters, DCC shall send Warranty and Technical Service Bulletins, as set forth in Attachments 4A, 4B, 5A, and 5B to each DCC Dealer. The Warranty and Technical Service Bulletins shall be sent through the DCC Electronic Distribution System. In addition, within

forty-five days of the Effective Date, DCC shall place the Warranty and Technical Service Bulletins on its computerized Dealer Notification System and shall distribute the Technical Service Bulletin to any Technical Service Bulletin subscribers other than DCC Dealers.

17. Copies of Letters to the United States. DCC shall send to the United States, as specified in Section V (Reporting) of this Consent Decree, a representative copy of each communication directed to vehicle owners and dealers under the Extended Warranty, Catalyst Inspection and Replacement, and Owner Reimbursement Program including, but not limited to, the Owner Notification Letter and the Dealer Notification Letter. Such representative copies shall be mailed to the United States at the same time they are sent to the vehicle owners or dealers. DCC shall submit a report to the United States confirming the distribution or mailing of the Warranty Bulletin and Technical Service Bulletins or other correspondence to vehicle owners or DCC dealers within thirty days of completion of the mailing.

18. Maintenance of Records. DCC shall maintain records regarding the implementation of the Extended Warranty, Catalyst Inspection and Replacement, and Owner Reimbursement Program in a form suitable for inspection, such as computer information storage devices or card files, and which shall be made available to the United States upon request, including:

- a. name and address of vehicle owners to whom notification was given and that owner's vehicle identification number;
- b. the date range of owner notification; and
- c. the vehicle identification number for vehicles on which the Catalytic Converter was inspected and/or repaired under the Extended Warranty, Catalyst Inspection and

Replacement, and Owner Reimbursement Program, along with a description of any repair that was performed.

Records shall be retained for a period of no less than five years following the termination of this Consent Decree.

19. Reports. DCC shall submit to the United States, on a quarterly basis for the first year and semi-annually thereafter, commencing with the first full quarter after the Effective Date of this Consent Decree and continuing through the termination date of this Consent Decree, a written report on the status of the Extended Warranty, Catalyst Inspection and Replacement, and Owner Reimbursement Program, including but not limited to:

- a. the date notification began and date completed;
- b. the number of vehicles inspected under the Program;
- c. the number of vehicles where a Catalytic Converter was replaced under the Program;
- d. listed by owner name and vehicle identification number:
 - i. owners who requested reimbursement for prior Catalytic Converter replacements;
 - ii. which of these requests were paid; and
 - iii. the date they were paid.
- e. listed by owner name and vehicle identification number:
 - i. owners who requested reimbursement for prior Catalytic Converter replacements and were denied; and
 - ii. the date the owner was notified of the denial.

20. In addition, following the first full quarter after the effective date of this Consent Decree, DCC shall submit a report stating the number of Warranty Bulletins and Technical Service Bulletins and Owner Notification Letters that were returned as undeliverable.

21. Each report required above shall be submitted by DCC to the United States within thirty days after the end of the applicable reporting period.

**APPENDIX A - ATTACHMENT 1A
(OWNER REIMBURSEMENT QUESTIONS AND ANSWERS)**

Q: My vehicle's catalytic converter was replaced but not at a DaimlerChrysler Corporation dealership. Am I entitled to reimbursement consideration?

A: Yes. If the repair was completed within the 10-year/120,000 mile limitation and prior to the date of the owner notification letter.

Q: Another related component in my vehicle had to be replaced as a direct result of this repair. Is this other component covered?

A: If the part is integral to the catalytic converter or would require catalytic converter replacement if it were to fail, then it will be covered.

Q: I was given a partial goodwill reimbursement by the dealer and/or the DaimlerChrysler Corporation District Manager for the catalyst repair on my vehicle. Will consideration now be given for reimbursement of the complete repair?

A: Yes. The portion of the repair that was paid by the customer and not previously reimbursed will be considered.

Q: I have since sold my vehicle but still have the bill for the catalyst repairs. Am I still eligible for reimbursement?

A: Yes. As long as an original, legible, paid receipt, or a duplicate paid receipt can be submitted reimbursement will be considered.

Q: I have lost my receipt. Can I still get a reimbursement?

- A. Yes, as long as documentation can be furnished. The repairing facility should be contacted to see if a duplicate paid receipt can be obtained. Cancelled checks or credit card receipts should be submitted as further supporting documentation.
- Q. My vehicle was involved in an accident and the catalyst was damaged and had to be replaced. Is this replacement eligible for reimbursement?
- A. No. These repairs should be handled through your insurance company.
- Q. I have a DaimlerChrysler Corporation Service Contract on my vehicle and had to pay a deductible. Will DaimlerChrysler Corporation reimburse me the deductible that I paid?
- A. Yes. As long as the repair involved the catalyst it will be considered.
- Q. I have a non-DaimlerChrysler Corporation service contract on my vehicle. Will DaimlerChrysler Corporation reimburse me the total amount of the repair?
- A. No. When a dealership sells their own in-house contracts a normal business risk is assumed. The dealer or their service contract company will not be reimbursed the cost of the repair.

APPENDIX A - ATTACHMENT 1B
(OWNER REIMBURSEMENT QUESTIONS AND ANSWERS)

Q: My vehicle's catalytic converter was replaced but not at a DaimlerChrysler Corporation dealership. Am I entitled to reimbursement consideration?

A: Yes. If the repair was completed prior to the date of the owner notification letter.

Q: Another related component in my vehicle had to be replaced as a direct result of this repair. Is this other component covered?

A: If the part is integral to the catalytic converter or would require catalytic converter replacement if it were to fail, then it will be covered.

Q: I was given a partial goodwill reimbursement by the dealer and/or the DaimlerChrysler Corporation District Manager for the catalyst repair on my vehicle. Will consideration now be given for reimbursement of the complete repair?

A: Yes. The portion of the repair that was paid by the customer and not previously reimbursed will be considered.

Q: I have since sold my vehicle but still have the bill for the catalyst repairs. Am I still eligible for reimbursement?

A: Yes. As long as an original, legible, paid receipt, or a duplicate paid receipt can be submitted reimbursement will be considered.

Q: I have lost my receipt. Can I still get a reimbursement?

A: Yes, as long as documentation can be furnished. The repairing facility should be contacted to see if a duplicate paid receipt can be obtained. Cancelled checks or credit card receipts should be submitted as further supporting documentation.

- Q. My vehicle was involved in an accident and the catalyst was damaged and had to be replaced. Is this replacement eligible for reimbursement?
- A. No. These repairs should be handled through your insurance company.
- Q. I have a DaimlerChrysler Corporation Service Contract on my vehicle and had to pay a deductible. Will DaimlerChrysler Corporation reimburse me the deductible that I paid?
- A. Yes. As long as the repair involved the catalyst it will be considered.
- Q. I have a non-DaimlerChrysler Corporation service contract on my vehicle. Will DaimlerChrysler Corporation reimburse me the total amount of the repair?
- A. No. When a dealership sells their own in-house contracts a normal business risk is assumed. The dealer or their service contract company will not be reimbursed the cost of the repair.

APPENDIX A - ATTACHMENT 2A

Dear (Name):

This letter is to inform you that the warranty period on your vehicle's catalytic converter has been extended to 10 years/120,000 miles or until xxxx (insert date which is 12 months from the date of the letter), whichever is later.

In addition, if before xxxxx (insert date that is 2 years from the date of this letter), your vehicle fails either a California SMOG or Emissions Inspection and Maintenance (I/M) tailpipe test due to a defective catalytic converter, or an OBD test with a catalyst efficiency code (P0420), your catalytic converter will be replaced free of charge (parts and labor). Bring a copy of the test results with this letter to your dealer.

DaimlerChrysler is extending the catalytic converter warranty period for your vehicle (VIN: xxxxxxxxxxxxxxxxxxxx) because under certain conditions some catalytic converters may be subject to mechanical degradation that will produce a "rattling" sound or possibly lead your vehicle to fail a California SMOG test or Emissions Inspection and Maintenance (I/M) test in other areas of the country.

If your vehicle develops a "rattling" sound from the underside of the vehicle within the extended warranty period, simply contact your dealer. The catalytic converter will be inspected, and replaced if necessary, free of charge (parts and labor).

NOTE: This extended catalytic converter warranty does not include the replacement of other exhaust system components. If other exhaust system components require replacement, the associated repair costs are the owner's responsibility.

If you have any questions or concerns which your dealer is unable to resolve, please contact DaimlerChrysler at 1-800-992-1997.

If you have already experienced this condition and have paid to have it repaired within the extended warranty period but prior to xxxxx (insert date that is five days after date of letter), you may send your original receipts and/or other adequate proof of payment to the following address for reimbursement:

DaimlerChrysler Customer Center
P.O. Box 21-8004
Auburn Hills, MI 48321-8004

Please help us update our records, by filling out the enclosed prepaid postcard, if any of the conditions listed on the card apply to you or your vehicle. Be sure to print the last eight characters of your VIN (xxxxxxx) and notification code E-YY on the postcard.

The enclosed "Owner Reimbursement Questions and Answers" may answer some questions you may have about the reimbursement program.

Please keep this letter with your vehicle's other warranty information for future reference if necessary.

Sincerely,
DAIMLERCHRYSLER CORPORATION
Enclosure: Owner Reimbursement Questions and Answers

APPENDIX A - ATTACHMENT 2B

Dear (Name):

This letter is to inform you that the warranty period on your vehicle's catalytic converter has been extended until xxxx (insert date which is 12 months from the date of the letter).

DaimlerChrysler is extending the catalytic converter warranty period for your vehicle (VIN: xxxxxxxxxxxxxxxxxxxx) because under certain conditions some catalytic converters may be subject to mechanical degradation that will produce a "rattling" sound or possibly lead your vehicle to fail a California SMOG test or Emissions Inspection and Maintenance (I/M) test in other areas of the country.

If your vehicle develops a "rattling" sound from the underside of the vehicle within the extended warranty period, simply contact your dealer. The catalytic converter will be inspected, and replaced if necessary, free of charge (parts and labor).

NOTE: This extended catalytic converter warranty does not include the replacement of other exhaust system components. If other exhaust system components require replacement, the associated repair costs are the owner's responsibility.

If you have any questions or concerns which your dealer is unable to resolve, please contact DaimlerChrysler at 1-800-992-1997.

If you have already experienced this condition and have paid to have it repaired within the extended warranty period but prior to xxxxx (insert date that is five days after date of letter), you may send your original receipts and/or other adequate proof of payment to the following address for reimbursement:

DaimlerChrysler Customer Center
P.O. Box 21-8004
Auburn Hills, MI 48321-8004

The enclosed "Owner Reimbursement Questions and Answers" may answer some questions you may have about the reimbursement program.

Please help us update our records, by filling out the enclosed prepaid postcard, if any of the conditions listed on the card apply to you or your vehicle. Be sure to print the last eight characters of your VIN (xxxxxxx) and notification code E-YY on the postcard.

Please keep this letter with your vehicle's other warranty information for future reference if necessary.

Sincerely,
DAIMLERCHRYSLER CORPORATION
Enclosure: Owner Reimbursement Questions and Answers

APPENDIX A - ATTACHMENT 3 (INFORMATION CHANGE CARD)



83-005-0052 (5/04)

BUSINESS REPLY MAIL
FIRST-CLASS MAIL PERMIT NO. 9941 DETROIT, MI

POSTAGE WILL BE PAID BY ADDRESSEE



VIN (Last 8 Characters of Vehicle Identification Number)

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Notification Code (Shown on Bottom of Letter)

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This service was previously performed on my vehicle (*check one if applicable*):

- My vehicle was inspected and found to be ok.
- My vehicle was repaired.

This vehicle was (*check one if applicable*):

- scrapped
- stolen
- exported

This vehicle was sold to (*check one if applicable*):

- A dealer, or someone whose name and address is unknown.
- Someone other than a dealer (*type or print the new owner's name and address below*).

Date of sale: _____

Updated name and address (*type or print the new owner's name and address or your new name and/or address if it has changed*):

Owner's title (*check one if applicable*):

- Mr.
- Miss
- Mr. & Mrs.
- Dr.
- Mrs.
- Ms.
- Rev.
- Business

First Name _____ MI _____

Last Name _____

Street Address _____

City _____

State _____ Zip Code _____

**APPENDIX A - ATTACHMENT 4A
(WARRANTY BULLETIN)**

WARRANTY PLANNING AND ADMINISTRATION

TO: Dealer Principal, Service Mgr., and Claims Admin. Mgr.

SUBJECT: Catalytic Converter Warranty Coverage Extension for Select 1996–1999 MY Jeep® and Dodge Trucks Equipped with the Original Design Catalytic Converter

NO: D-05-x

DATE: October 2005

FOR: Dealers

PURPOSE:

To announce the Catalytic Converter Warranty Extension for vehicles equipped with the Original Design Catalytic Converter, as referenced below:

Model Year	Vehicle
1996	2.5L Jeep® Cherokee (XJ)
1996	3.9L Dodge Ram Van/Wagon (AB)
1996	3.9L Dodge Ram Pickup Truck (BR)
1996	5.2L Dodge Ram Pickup Truck (BR)
1996	5.9L (EML) Dodge Ram Pickup Truck (BR)
1997	3.9L Dodge Ram Van/Wagon (AB)
1997	3.9L Dodge Dakota (AN)
1997	3.9L Dodge Ram Pickup Truck (BR)
1998	3.9L Dodge Ram Pickup Truck (BR)
1999	3.9L Dodge Dakota (AN)
1999	5.2L Dodge Ram Pickup Truck (BR/BE)

BACKGROUND:

The Original Design Catalytic Converter warranty has been extended to 10 years or 120,000 miles from the date the vehicle was placed in service, or one year from the date of the Vehicle Owner Notification letter. The coverage that is most favorable to the customer will apply.

In addition, if within 2 years of the date of the Owner Notification Letter, the vehicle fails either a California SMOG or Emissions Inspection and Maintenance (I/M) tailpipe test due to a defective catalytic converter, or an OBD test with a catalyst efficiency code (P0420), the

customer will be eligible for replacement of the catalytic converter free of charge. The customer is required to present a copy of the test failure at the time the vehicle is presented for service to receive a new catalytic converter.

These extensions apply to the vehicle regardless of ownership. Repairs must be made within sixty days of vehicle presentation. Replacement of the catalytic converter will be covered as a warranty expense. This service does not include the replacement of other exhaust system components. If other exhaust system components require replacement, the associated repair costs are the customer's responsibility. VIP should be used to determine whether the vehicle to be serviced has an Original Design Catalytic Converter.

TIMING:

Effective Immediately

ACTION:

A generic copy of the customer letter can be found in DealerCONNECT eFiles>Service>Warranty>Glove Box Materials>2005. A list of reimbursement questions and answers is included with the customer letter. Please print and include a copy of this letter in the glove box package of any involved vehicle currently in your new or used vehicle inventory.

Service Bulletin # xx-xxx-xx, dated xxxx has been released to assist all dealers in the proper diagnosis and replacement of an original design catalytic converter if it exhibits the condition described in the service bulletin. All technicians should familiarize themselves with this bulletin before diagnosing or repairing any vehicle.

The Global Claim System (GCS) will only honor the extended coverage on the labor operations numbers referenced in the service bulletin.

ADDITIONAL INFORMATION:

Owners who previously experienced Original Design Catalytic Converter failure and paid to have it repaired within the extended warranty period but before issuance of the Vehicle Owner Notification letter may be eligible for reimbursement. To request reimbursement the vehicle owner should include the original paid receipt (keeping a copy for their records) and/or other adequate proof of payment including the vehicle identification number (VIN) to the following address for reimbursement consideration:

DaimlerChrysler
P.O. Box 21-8004
Auburn Hills, Michigan 48321-8004

Customers with questions or concerns about this issue are being asked to contact their dealership. In the event further assistance is necessary they may call the DaimlerChrysler Customer Assistance Center, toll free at 1-800-992-1997. Please ensure that all affected dealership personnel are aware of this bulletin.

**APPENDIX A - ATTACHMENT 4B
(WARRANTY BULLETIN)**

WARRANTY PLANNING AND ADMINISTRATION

TO: Dealer Principal, Service Mgr., and Claims Admin. Mgr.

SUBJECT: Catalytic Converter Warranty Coverage Extension for non-California Certified 2000MY Heavy-Duty Dodge Trucks Equipped with the Original Design Catalytic Converter

NO: D-05-x

DATE: October 2005

FOR: Dealers

PURPOSE:

To announce the Catalytic Converter Warranty Extension for vehicles equipped with the Original Design Catalytic Converter, as referenced below:

Model Year	Vehicle
2000	5.9L (EMM) Heavy-Duty Dodge Ram Pickup Truck (BR/BE) (NAA)
2000	8.0L Heavy-Duty Dodge Ram Pickup Truck (BR/BE) (NAA)

BACKGROUND:

The Original Design Catalytic Converter warranty has been extended for one year from the date referenced on the Vehicle Owner Notification letter.

This extension applies to the vehicle regardless of ownership. Repairs must be made within sixty days of vehicle presentation. Replacement of the catalytic converter will be covered as a warranty expense. This service does not include the replacement of other exhaust system components. If other exhaust system components require replacement, the associated repair costs are the customer's responsibility. VIP should be used to determine whether the vehicle to be serviced has an Original Design Catalytic Converter.

TIMING:

Effective Immediately

ACTION:

A generic copy of the customer letter can be found in DealerCONNECT eFiles>Service>Warranty>Glove Box Materials>2005. A list of reimbursement questions and answers is included with the customer letter. Please print and include a copy of this letter in the glove box package of any involved vehicle currently in your new or used vehicle inventory.

Service Bulletin # xx-xxx-xx, dated xxxx has been released to assist all dealers in the proper diagnosis and replacement of an original design catalytic converter if it exhibits the condition described in the service bulletin. All technicians should familiarize themselves with this bulletin before diagnosing or repairing any vehicle.

The Global Claim System (GCS) will only honor the extended coverage on the labor operations numbers referenced in the service bulletin.

ADDITIONAL INFORMATION:

Owners who previously experienced Original Design Catalytic Converter failure and paid to have it repaired within the extended warranty period but before issuance of the Vehicle Owner Notification letter may be eligible for reimbursement. To request reimbursement the vehicle owner should include the original paid receipt (keeping a copy for their records) and/or other adequate proof of payment including the vehicle identification number (VIN) to the following address for reimbursement consideration:

DaimlerChrysler
P.O. Box 21-8004
Auburn Hills, Michigan 48321-8004

Customers with questions or concerns about this issue are being asked to contact their dealership. In the event further assistance is necessary they may call the DaimlerChrysler Customer Assistance Center, toll free at 1-800-992-1997.

Please ensure that all affected dealership personnel are aware of this bulletin.

APPENDIX A - ATTACHMENT 5A (TECHNICAL SERVICE BULLETIN)

Service Bulletin – Catalytic Converter Extended Warranty

SUBJECT: Catalytic Converter Extended Warranty
OVERVIEW: This Bulletin involves inspecting and if necessary replacing the catalytic converter.

Note: The Original Design Catalytic Converter warranty has been extended to 10 years/120,000 miles, or until [date certain = twelve months after date of Vehicle Owner Notification Letter], whichever is longer. Additionally, in states that require SMOG or I/M testing, replacement of the catalytic converter due to certain test failures will be covered as a warranty expense. Vehicles that according to warranty records have already had the catalytic converter replaced with an improved service part have been excluded from this extended warranty.

MODELS:

1996 2.5L Jeep[®] Cherokee (XJ)
1996 3.9L Dodge Ram Van/Wagon (AB) and Dodge Ram Pickup (BR)
1996 5.2L Dodge Ram Pickup (BR)
1996 5.9L (EML) Dodge Ram Pickup (BR)
1997 3.9L Dodge Ram Van/Wagon (AB), Dodge Dakota (AN) and Dodge Ram Pickup (BR)
1998 3.9L Dodge Ram Pickup (BR)
1999 3.9L Dodge Dakota (AN)
1999 5.2L Dodge Ram Pickup (BR/BE)

SYMPTOM/CONDITION:

The vehicle may have an illuminated MIL as the result of a Diagnostic Trouble Code (DTC) P0420 – Catalyst Efficiency, or may have failed a California SMOG or state I/M test but without an illuminated MIL, or the vehicle operator may describe a rattling sound from the underside of the vehicle.

DIAGNOSIS:

1. Verify the vehicle is covered by the Extended Warranty.
2. If the vehicle has a MIL illuminated as a result of Diagnostic Trouble Code (DTC) P0420 - Catalyst Efficiency or if it has failed an I/M or SMOG check and has no MIL illuminated, perform the Repair Procedure.
3. If the vehicle operator describes a rattling sound from the underside of the vehicle, perform the following “thump” test to determine if the catalyst substrate is “loose” or “rattling” inside the can.

- A. Raise the vehicle on a hoist and with the vehicle properly secured, identify a solid surface on the body of the catalytic converter to strike from the **underside**. (Note: Avoid striking a heat shield as the heat shield itself may be rattling). If there is a skid plate in the way, choose a solid connecting pipe close to the converter body to strike.
- B. Strike (thump) the surface identified above using a sharp blow from an appropriate rubber mallet.
- C. Loose ceramic cores (substrates) in converter shells have a distinct “rattling” sound when struck by a mallet. The sound is like a masonry brick rattling inside a metal can. (Note: This rattling sound is NOT a resonant sound that would be consistent with loose metal to metal exhaust pipe or hanger connections).
- D. Other sources of rattle noises, such as loose exhaust connections, muffler parts, or any other part of the exhaust system, should be eliminated by holding the connecting pipes and the muffler while thumping the converter. This will isolate potentially interfering noises.
- E. If the results of the inspection are positive, and a “rattling” noise is detected, replace the catalytic converter.

REPAIR PROCEDURE:

1. Replace the catalytic converter. Refer to the service information available in TechCONNECT. Reference: Service Info, 11 – Exhaust – Catalytic Converters – Removal and Installation.

POLICY:

Reimbursable within the provisions of the extended warranty period of 10 years/120,000 miles or until (*date1*), whichever is longer, or for certain I/M test failures. Refer to Warranty Bulletin D-X-XX for complete details. This service does not include the replacement of other exhaust system components. If other exhaust system components require replacement, the associated repair costs are the customer’s responsibility.

TIME ALLOWANCE:

[XXXX]

FAILURE CODE:

[XXXXX]

APPENDIX A - ATTACHMENT 5B (TECHNICAL SERVICE BULLETIN)

Service Bulletin – Catalytic Converter Extended Warranty

SUBJECT: Catalytic Converter Extended Warranty
OVERVIEW: This Bulletin involves inspecting and if necessary replacing the catalytic converter.

Note: The Original Design Catalytic Converter warranty has been extended to [date certain = twelve months after date of Vehicle Owner Notification Letter]. Vehicles that according to warranty records have already had the catalytic converter replaced with an improved service part have been excluded from this extended warranty.

MODELS:

2000 5.9L (EMM) Heavy Duty Dodge Ram Pickup (BR/BE)(NAA)
2000 8.0L Heavy Duty Dodge Ram Pickup (BR/BE)(NAA)

SYMPTOM/CONDITION:

The vehicle operator may describe a rattling sound from the underside of the vehicle.

DIAGNOSIS:

1. Verify the vehicle is covered by the Extended Warranty.
2. If the vehicle operator describes a rattling sound from the underside of the vehicle, perform the following “thump” test to determine if the catalyst substrate is “loose” or “rattling” inside the can.
 - A. Raise the vehicle on a hoist and with the vehicle properly secured, identify a solid surface on the body of the catalytic converter to strike from the underside. (Note: Avoid striking a heat shield as the heat shield itself may be rattling). If there is a skid plate in the way, choose a solid connecting pipe close to the converter body to strike.
 - B. Strike (thump) the surface identified above using a sharp blow from an appropriate rubber mallet.
 - C. Loose ceramic cores (substrates) in converter shells have a distinct “rattling” sound when struck by a mallet. The sound is like a masonry brick rattling inside a metal can. (Note: This rattling sound is NOT a resonant sound that would be consistent with loose metal to metal exhaust pipe or hanger connections).
 - D. Other sources of rattle noises, such as loose exhaust connections, muffler parts, or any other part of the exhaust system, should be eliminated by holding the connecting pipes and the muffler while thumping the converter. This will isolate potentially interfering noises.
 - E. If the results of the inspection are positive, and a “rattling” noise is detected, replace the catalytic converter.

REPAIR PROCEDURE:

1. Replace the catalytic converter. Refer to the service information available in TechCONNECT. Reference: Service Info, 11 – Exhaust – Catalytic Converters – Removal and Installation.

POLICY:

Reimbursable within the provisions of the extended warranty period of 12 months, which expires on (date certain = one year from the date of Owner notification). This service does not include the replacement of other exhaust system components. If other exhaust system components require replacement, the associated repair costs are the customer's responsibility.

Refer to Warranty Bulletin D-X-YY for complete details.

TIME ALLOWANCE:

[XXXXXX]

FAILURE CODE:

[XXXXXX]

APPENDIX B

OBD RECALL AND CATALYST INSPECTION AND REPLACEMENT PROGRAM

DCC shall implement an OBD Recall Program as follows:

1. Recall Vehicles: The following vehicles (“Recall Vehicles”) shall be included in the recall for the repair of the OBD system for threshold and empty-can detection and for the inspection and, if necessary, replacement of the Original Design Catalytic Converter:

Model Year

1996	4.0L Jeep® Cherokee (XJ) and Grand Cherokee (ZJ)
1997	2.5L Jeep® Wrangler (TJ) (built July 1996 and later), Cherokee (XJ), and Dodge Dakota (AN)
1998	2.5L Jeep® Wrangler (TJ), Cherokee (XJ), and Dodge Dakota (AN)

2. OBD Repair. As part of the recall of the Recall Vehicles, DCC shall reflash the Powertrain Control Module (“PCM”) as necessary to enable the OBD system to detect a Catalytic Converter malfunction and to illuminate the MIL if the Catalytic Converter performance causes vehicle emissions to exceed the threshold limits (“OBD threshold detection”) specified in:

- a. 40 C.F.R. § 86.094-17 and 40 C.F.R. § 86.098-17; or
- b. California Code of Regulations, Title 13, Section 1968.1;

as applicable. DCC shall instruct its employees or contractors assigned to develop the PCM reflash to determine whether the same software and calibrations are also capable of detecting an Empty Can Catalyst, and if so, to use reasonable efforts and good engineering judgment to enable the PCM reflash to illuminate the MIL upon detection of an Empty Can Catalyst. DCC’s instructions to its employees or contractors shall further provide that, if a determination is made that the PCM reflash will not detect an Empty Can Catalyst, then the employees or contractors

shall assess, using good engineering judgment, whether further calibration modifications would likely enable the PCM reflash to detect an Empty Can Catalyst, and if so, to undertake one attempt to modify the calibrations to do so and to illuminate the MIL upon detection of an Empty Can Catalyst. If that one attempt is not successful, then the PCM reflash shall instead include the modifications described in Paragraph 3 of this Appendix B. The OBD system as modified by the PCM reflash (except where Empty Can Detection cannot be achieved) shall comply with the applicable OBD II regulations. DCC shall complete any necessary design and testing of the required modifications, repair, or replacement for the Recall Vehicles in accordance with the following schedule: (i) for the 1996 4.0L Jeep® Cherokee (XJ), by April 30, 2006; (ii) for the 1996 4.0L Jeep® Grand Cherokee (ZJ), by April 30, 2006; and (iii) for all other Recall Vehicles, by September 15, 2006. Not later than ten days prior to these deadlines, DCC may, for good cause shown, petition EPA for an extension of time in which to complete these design and testing requirements, the timely approval of which EPA shall not unreasonably withhold, provided, however, that no such deadline shall be extended beyond March 31, 2007.

3. OBD Modifications on Vehicles Where Empty Can Detection Is Not Available. For those Recall Vehicles receiving a PCM reflash that does not achieve Empty-Can Detection pursuant to Paragraph 2 of this Appendix B, the PCM reflash shall include modifications to the OBD system such that a MIL illuminated as a result of OBD threshold detection will remain illuminated (or will re-illuminate within two engine starts when a disconnected battery is reconnected), and a fault code stored as a result of OBD threshold detection will remain stored, until the OBD fault code memory is cleared consistent with the applicable OBD II regulations.

4. Testing and Evaluation Report. No later than thirty days after the relevant

deadline set forth in Paragraph 2 of Appendix B, DCC shall submit to the United States a statement describing in detail, with respect to each class or category of Recall Vehicles, the modifications to the OBD system that will be installed on the vehicles to implement OBD threshold detection and to implement either Empty Can Detection or, if applicable, the OBD Modifications required pursuant to Paragraph 3 of this Appendix B. The statement shall include a detailed report of the testing conducted pursuant to Paragraph 2, including all data, results, and analysis supporting DCC's determination that the PCM reflash will not achieve Empty Can Detection and, in addition, the impact, if any, on fuel consumption, safety, and driveability.

5. Catalyst Inspection and Replacement. As part of the OBD Recall Program, DCC shall inspect the Original Design Catalytic Converter in accordance with the thump test set forth in the Technical Service Bulletin (Attachment 5A or 5B to Appendix A). DCC shall replace the Original Design Catalytic Converter on each OBD Recall Vehicle if the results of the thump test are positive.

6. Additional Warranty on Recall Vehicle Catalytic Converters. The warranty period for the Catalytic Converter installed on each of the Recall Vehicles shall be the later of: (a) eight years or 80,000 miles, whichever is first, from the date the vehicle was placed in service; or (b) twelve months or 12,000 miles, whichever is first, from the date the recall service is performed.

7. Reimbursement for Unpaid Expenses of Repair Covered by Additional Warranty. DCC shall reimburse all reasonable expenses, including the costs of parts and labor for inspection and repair of the Catalytic Converter, to any Recall Vehicle owner who previously paid for a repair involving replacement of the catalyst after the expiration of the original eight year/80,000 mile warranty period but before receiving the Owner Notification Letter pursuant to

this Appendix B. DCC shall establish reimbursement procedures for processing reimbursement claims under this Appendix B in the same manner and within the same time periods as set forth in Appendix A to this Consent Decree.

8. DCC shall send copies of letters to the United States, maintain records, and submit reports regarding the OBD Recall Program in the manner specified in Appendix A.

9. Notification to vehicle owners shall be made by first class mail. The notification of vehicle owners shall be in the form set forth in Attachment 1 to this Appendix B and shall be accompanied by a postage-prepaid card to be used by a vehicle owner in the event the vehicle to be recalled has been sold, retired, or otherwise removed from service, in the form attached as Attachment 2 to this Appendix B.

10. DCC shall take appropriate steps to locate vehicle owners, including obtaining motor vehicle registration lists as available from State or commercial sources, as necessary to obtain the names and addresses of vehicle owners to ensure an effective notification.

11. EPA may require DCC to send a subsequent notification to vehicle owners by first class mail.

12. DCC shall arrange under its existing agreements with DCC Dealers or authorized repair facilities to ensure that vehicles brought to such facilities in response to the recall are retrofitted with OBD modifications required by this Consent Decree. DCC shall give notice to such repair facilities that any reinstallation of OBD system software or calibrations not including the OBD modification required by this Decree will be regarded by EPA as tampering under the Clean Air Act that could subject the repair facility to penalties of up to \$2,500 per violation.

**APPENDIX B - ATTACHMENT 1
(OWNER NOTIFICATION LETTER)**

**EMISSIONS RECALL—REPROGRAM OF THE POWERTRAIN CONTROL
MODULE AND INSPECTION OF THE CATALYTIC CONVERTER**

Dear (Owner Name):

The Administrator of the U.S. Environmental Protection Agency has determined that certain 1996 model year Jeep® Cherokee and Grand Cherokee vehicles equipped with a 4.0 liter engine and certain 1997 and 1998 Jeep® Wrangler and Cherokee vehicles, and Dodge Dakota pickup trucks equipped with a 2.5 liter engine require modification in order to comply with requirements of the Clean Air Act designed to protect public health and welfare. DaimlerChrysler Corporation (DCC) has determined that the modifications required by EPA will improve the vehicle's ability to monitor the performance of the emission control system and may reduce the emission of pollutants that are regulated by EPA under the Clean Air Act. Because DCC has achieved this improved emissions system monitoring without compromising the safety or driveability of your vehicle, EPA and DCC strongly encourage you to bring your car to a dealer to perform the modification.

The problem is: The Powertrain Control Module (PCM) on your vehicle (VIN xxxxxxxxxxxxxxxxxxxx) contains software that may not be capable of detecting a deteriorating catalyst. This can result in failure to illuminate the On-Board Diagnostic (OBD) malfunction indicator light (MIL) warning the customer of a potential problem. Also, under certain conditions, some catalytic converters may be subject to mechanical degradation that causes them to rattle. This catalytic converter degradation eventually could result in higher exhaust emission levels and the illumination of the MIL.

What your dealer will do: DaimlerChrysler will repair your vehicle free of charge (parts and labor). To do this, your dealer will reprogram your vehicle's Powertrain Control Module. The work will take about an hour to complete. However, additional time may be necessary depending on how dealer appointments are scheduled and processed. Your dealer will also inspect your vehicle's catalytic converter. If the catalyst is found to be "rattling" or loose, the dealer will replace it free of charge (parts and labor).

NOTE: This recall does not include the replacement of other exhaust system components. If other exhaust system components require replacement, the associated repair costs are your responsibility.

Your catalytic converter warranty period will be: (A) eight years or 80,000 miles from the vehicle's original in-service date; or (B) twelve months or 12,000 miles from the date your recall service is performed, whichever of (A) or (B) is later.

What you must do: Simply contact your dealer right away to schedule a service appointment.

If you need help If you have questions or concerns which your dealer is unable to resolve, please contact DaimlerChrysler at 1-800-853-1403.

Please help us update our records, by filling out the enclosed prepaid postcard, if any of the conditions listed on the card apply to you or your vehicle. Be sure to print the last eight characters of your VIN (xxxxxxx) and notification code E-YY on the postcard.

If you paid for a repair involving the replacement of the catalyst after the expiration of the original eight year/80,000 mile warranty period but before receiving this Owner Notification Letter, you may send your original receipts and/or other adequate proof of payment to the following address for reimbursement:

DaimlerChrysler Customer Center
P.O. Box XXXXX
XXXXX

In order to ensure your full protection under the emission warranty made applicable to your vehicle by federal and/or California law and your right to participate in future recalls, it is recommended that you have your vehicle serviced as soon as possible. Failure to do so could legally be determined to be a lack of proper maintenance of your vehicle. Further, without this repair, your vehicle may fail a state or local emission inspection test.

We apologize for any inconvenience but trust you understand our interest in clean air. Thank you for your attention to this important matter.

Additional Information on Reverse Side for California Residents

If you live in California and don't have this recall performed:

The State of California requires the completion of emission recall repairs prior to vehicle registration renewal. In addition, the State requires that every vehicle must pass a vehicle inspection or SMOG check every two years and before it is sold. Without the free service we are providing, your vehicle may be more likely to fail this test and require that you make costly repairs.

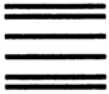
How the state knows that the recall has not been performed:

State of California regulations require DaimlerChrysler to provide the Department of Motor Vehicles with a record of all vehicles that have not had the recall service performed.

Your dealer will provide you with a Vehicle Emission Recall Proof of Correction Form after the recall service is performed. Be sure to save this form since the California Department of Motor Vehicles may require that you supply it as proof that the recall has been performed.

APPENDIX B - ATTACHMENT 2 (OWNER INFORMATION CHANGE CARD)

83-005-0052 (5/04)



NO POSTAGE
NECESSARY
IF MAILED
IN THE
UNITED STATES

BUSINESS REPLY MAIL
FIRST-CLASS MAIL PERMIT NO. 9941 DETROIT, MI
POSTAGE WILL BE PAID BY ADDRESSEE

RECALL ADMINISTRATION 482-00-85
PO BOX 218008
AUBURN HILLS MI 48321-9959



VIN (Last 8 Characters of Vehicle Identification Number)

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Notification Code (Shown on Bottom of Letter)

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This service was previously performed on my vehicle (*check one if applicable*):

- My vehicle was inspected and found to be ok.
- My vehicle was repaired.

This vehicle was (*check one if applicable*):

- scrapped stolen exported

This vehicle was sold to (*check one if applicable*):

- A dealer, or someone whose name and address is unknown.
- Someone other than a dealer (*type or print the new owner's name and address below*).

Date of sale: _____

Updated name and address (*type or print the new owner's name and address or your new name and/or address if it has changed*):

Owner's title (*check one if applicable*):

- Mr. Miss Mr. & Mrs. Dr.
- Mrs. Ms. Rev. Business

First Name _____ MI _____

Last Name _____

Street Address _____

City _____

State _____ Zip Code _____

SERVICE PROCEDURE

A. Reprogram the PCM and inspect the Catalytic Converter:

To be determined.

B. Replace Catalytic Converter if necessary:

To be determined.

C. Install the Authorized Modifications Label:

1. Type or print (with a ballpoint pen) the recall number, dealer code, and date on the Authorized Modifications Label (Figure 2).
2. Attach the label near the VECI label and then close the hood.

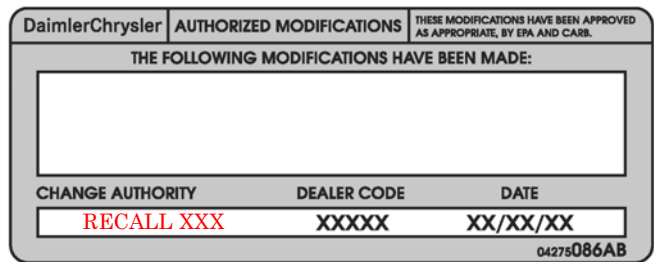


Figure 1

D. Complete Proof of Correction Form for California Residents:

This recall is subject to the **State of California Registration Renewal/Emissions Recall Enforcement Program**. Complete a Vehicle Emission Recall Proof of Correction Form (**Form No. 81-016-1053**) and **supply it to vehicle owners residing in the state of California** for proof that this recall has been performed when they renew the vehicle registration.

COMPLETION REPORTING AND REIMBURSEMENT

Claims for vehicles that have been serviced must be submitted on the DealerCONNECT Claim Entry Screen located on the Service tab. Claims submitted will be used by DaimlerChrysler to record recall service completions and provide dealer payments. Use one of the following labor operation numbers and time allowances:

Labor Operation	Number	Time Allowance
Reprogram PCM & Inspect Catalyst	XX-XX-XX-XX	X.X hours
Reprogram PCM, Inspect & Replace Catalyst	XX-XX-XX-XX	X.X hours

Add the cost of the label plus applicable dealer allowance to your claim.

NOTE: See the Warranty Administration Manual, Recall Claim Processing Section, for complete recall claim processing instructions.

DEALER NOTIFICATION

All dealers will receive a copy of this dealer recall notification letter by mail. Two additional copies will be sent through the DCMMS. This notification can be viewed on DealerCONNECT by selecting “Global Recall System” on the Service tab, then clicking on the description of this notification.

OWNER NOTIFICATION AND SERVICE SCHEDULING

All involved vehicle owners known to DaimlerChrysler are being notified of the service requirement by first class mail. They are requested to schedule appointments for this service with their dealers. A generic copy of the owner letter is attached. Enclosed with each owner letter is an Owner Notification postcard to allow owners to update our records if applicable.

VEHICLE LISTS, GLOBAL RECALL SYSTEM, VIP AND DEALER FOLLOW UP

All involved vehicles have been entered into the DealerCONNECT Global Recall System (GRS) and Vehicle Information Plus (VIP) for dealer inquiry as needed.

GRS provides involved dealers with an updated VIN list of their incomplete vehicles. The owner’s name, address and phone number are listed if known. Completed vehicles are removed from GRS within several days of repair claim submission.

To use this system, click on the “**Service**” tab and then click on “**Global Recall System.**” Your dealer’s VIN list for each recall displayed can be sorted by: those vehicles that were unsold at recall launch, those with a phone number, city, zip code, or VIN sequence.

Dealers must perform this repair on all unsold vehicles before retail delivery. Dealers should also use the VIN list to follow up with all owners to schedule appointments for this repair.

Recall VIN lists may contain confidential, restricted owner name and address information that was obtained from the Department of Motor Vehicles of various states. Use of this information is permitted for this recall only and is strictly prohibited from all other use.

ADDITIONAL INFORMATION

If you have any questions or need assistance in completing this action, please contact your Service and Parts District Manager.

Customer Services Field Operations
DaimlerChrysler Corporation

APPENDIX C

OWNER NOTIFICATION PROGRAM

1. Vehicles Included in the Owner Notification Program. The following vehicles (the “Owner Notification Vehicles”) shall be included in the Owner Notification Program:

Model Year

1999	3.9L Dodge Ram Van/Wagon (AB) and Dodge Ram Pickup Truck (BR)
1999	5.2L Dodge Ram Van/Wagon (AB) and Dodge Dakota (AN)
1999	5.9L (EML) Dodge Ram Van/Wagon (AB), Dodge Dakota (AN), and Dodge Ram Pickup Truck (BR/BE)
2001	5.9L (EMM) Heavy-Duty Dodge Ram Pickup Truck (BR/BE)
2001	8.0L Heavy-Duty Dodge Ram Pickup Truck (BR/BE)

2. Notice Program. DCC shall send a letter by first-class mail to owners of Owner Notification Vehicles as set forth in Attachment 1 to this Appendix C within thirty days of the Effective Date of the Consent Decree.

3. Owner Identification. DCC shall send an Owner Notification Letter to the current owner of each of the Owner Notification Vehicles. DCC shall identify current vehicle owners and their addresses by use of commercial services, such as R.L. Polk Company, or other customary practices in the industry to locate vehicle owners. DCC shall make diligent effort to identify the proper address and resend any letters returned as undeliverable.

4. Copies, Maintenance of Records, and Reporting. DCC shall send representative copies of letters to the United States, maintain records, and submit reports regarding the status of the Vehicle Owner Notification Program, in the manner specified in Appendix A, Paragraphs 17, 18.a, 18.b, 19.a, 20, and 21. However, the written report on the status of the Vehicle Owner Notification Program shall include, but is not limited to, the number of letters sent to owners and the number returned as undeliverable or as addressee no longer at that address.

**APPENDIX C - ATTACHMENT 1
(OWNER NOTIFICATION LETTER)**

CATALYTIC CONVERTER WARRANTY

Dear (owner name):

As required by federal law, the warranty period on your vehicle's catalytic converter is [relevant warranty period], whichever occurs first.

Pursuant to a settlement with the United States Environmental Protection Agency, DaimlerChrysler is reminding you of the catalytic converter warranty period for your vehicle (VIN: xxxxxxxxxxxxxxxxxxxx) because under certain conditions some catalytic converters may be subject to mechanical degradation that will produce a "rattling" sound. This catalytic converter degradation could eventually result in higher exhaust emission levels and the illumination of the "check engine" light.

If your vehicle, within the warranty period, develops a "rattling" sound from the underside or fails a State Inspection and Maintenance check or California SMOG test due to a defective catalytic converter, simply contact your dealer. The catalytic converter will be inspected and replaced if necessary, free of charge (parts and labor). If you have any questions or concerns which your dealer is unable to resolve, please contact DaimlerChrysler at 1-800-992-1997.

Please keep this letter with your vehicle's other warranty information for future reference if necessary.

Sincerely,

DAIMLERCHRYSLER CORPORATION

APPENDIX D

SUPPLEMENTAL EMISSION-RELATED DEFECT MONITORING AND REPORTING PROTOCOL

1. General Provisions. In addition to complying with all applicable federal and state laws regarding reporting of emission-related defects, including 40 C.F.R. Part 85, Subpart T, DCC shall, within thirty days from the Effective Date of the Consent Decree, supplement its existing emission-related defect monitoring and reporting procedures with the following Supplemental Emission-Related Defect Monitoring and Reporting Protocol. Nothing in this Appendix shall be construed to supersede the Settlement Agreement entered into by EPA and DCC dated November 19, 2002 (AED/MSEB No. 6093).

2. Requirement to submit an Emission Warranty Information Report.

a. Beginning with Model Year 2006 vehicles, DCC shall review national warranty claim records for each engine family or test group on a quarterly basis to determine and compile by cumulative total the number of claims made for emission-related components. The data compiled shall be based on all warranty claims, without any pre-screening of data as to the validity of the claims, except for the elimination of duplicate claims.

b. DCC shall categorize warranty claims for each engine family or test group by the specific emission control component replaced or repaired.

c. On the basis of data obtained, DCC shall submit to EPA an Emission Warranty Information Report (“EWIR”) for each quarter when the cumulative number of unscreened warranty claims for a specific emission-related component or repair represent at least one percent or twenty five (whichever is greater) of the vehicles or engines of an engine family or test group.

d. The emission warranty information report shall contain the following information in substantially the format outlined below:

- i. A description of each class or category of vehicles or engines affected by a warranty replacement or warranty repair of a specific emission-related component, including model year and engine family or test group.
- ii. The number and percentage of vehicles or engines in each engine family or test group for which a warranty replacement or warranty repair of a specific emission-related component was identified.
- iii. A short description of the specific emission-related component that was replaced or repaired under warranty.

b. An EWIR shall be submitted not more than twenty-five Working Days after the close of a calendar quarter. Subsequent to the submission of an EWIR, DCC shall submit to EPA quarterly reports updating the number and percentage of emission-related warranty claims with the most recent information, unless a recall has been implemented. For purposes of this Appendix D, “Working Days” means a calendar day on which DCC is open for business.

c. The warranty claim records upon which each EWIR is based shall be made available to EPA upon request.

3. Requirement to submit a Field Information Report.

a. On the basis of data obtained and reported pursuant to Paragraph 2 of this Appendix D, DCC shall submit to EPA a Field Information Report (“FIR”) not more than forty-five Working Days after an EWIR indicates that a cumulative total of unscreened national

warranty claims for a specific emission related component in an engine family or test group is found to exist in excess of four percent or fifty (whichever is greater) of the vehicles, unless DCC has committed to perform a recall by notifying the EPA of its intent in writing. A recall plan must be submitted within forty-five days of that notice.

b. The FIR shall contain the following information in substantially the format outlined below:

- i. A Field Information Report number assigned by DCC which shall be used in all related correspondence.
- ii. A description of each class or category of vehicles or engines affected including make, model, model-year, engine family or test group, and such other information as may be required to identify the vehicles or engines affected. The description shall include those engine families or test groups related to the affected engine family or test group through common certification test data allowed under 40 C.F.R. § 86.1839-01, as adopted May 4, 1999 (“carry-over” and “carry-across” engine families or test groups).
- iii. A description of the emission-related component that failed or was replaced or repaired under warranty, the failure and the probable cause of the failure.
- iv. The number and percentage of vehicles or engines in each engine family or test group for which a failure of a specific emission-related component was identified.

- v. The total number and percentage of unscreened warranty claims and failures of a specific emission related component projected to occur during the engine family's or test group's useful life and a description of the method used to project this number.
- vi. An estimated date when the failure of a specific emission-related component will reach four percent or fifty (whichever is greater) within an engine family or test group based on national warranty data screened for claims validity.

4. Requirement to submit an Emissions Information Report.

a. When the failure of a specific emission-related component exceeds four percent or fifty (whichever is greater) within an engine family or test group based on national warranty data screened for claims validity, DCC shall submit to EPA an Emissions Information Report ("EIR"). DCC shall submit this report regardless of whether an Emission Defect Information Report has been submitted under Paragraph 1 of this Appendix D for this specific emission-related component.

b. No Emissions Information Report shall be required if DCC has committed to perform a recall by notifying EPA of its intent in writing. A recall plan shall be submitted within forty-five days of the DCC's notification of intent to perform a recall.

c. The Emissions Information Report shall contain the following information in substantially the format outlined below.

- i. The Field Information Report number from which the failure was first reported, if applicable, and the Emission Defect Information Report for this component failure, if applicable.
- ii. A description of each class or category of vehicles or engines affected by the failure including make, model, model-year, engine family or test group, and such other information as may be required to identify the vehicles or engines affected.
- iii. A description of the emission-related component that failed, the failure and the probable cause of failure.
- iv. A description of any driveability problems or impact on other vehicle or engine performance factors such as fuel economy and cold starting likely to result from the failure.
- v. A description of how emissions will be affected in the vehicles or engines due to the failure.
- vi. A description of how emissions will be affected over the useful life of the vehicles due to the failure.
- vii. If DCC has decided not to conduct a recall with respect to the emission-related component that failed, a statement of the basis for DCC's decision.

APPENDIX E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

1. DCC shall implement a supplemental environmental project (“SEP”) in accordance with the criteria, terms and procedures specified in this Appendix E. The SEP shall be designed to reduce diesel emissions from heavy-duty diesel powered motor vehicles and nonroad equipment, and shall meet the criteria set forth in Paragraph 8.
2. DCC may carry out its SEP responsibilities directly or through contractors selected by DCC. DCC may consult EPA on selection of a contractor or contractors, but the decision to select any contractor will be DCC’s right and responsibility, and is not subject to EPA approval. DCC shall ensure that all contractor costs related to the SEP are reasonable and necessary for the completion of the SEP.
3. DCC shall spend a total of \$3 million to implement the SEP. If DCC does not receive acceptable proposals for the SEP sufficient to expend the total amount, or if a participating fleet drops out, DCC shall consult with the United States on an alternative SEP or SEPs for the remaining amount. Costs incurred for internal DCC personnel, or by entities in which DCC has a financial interest, for the development and oversight of the SEP may not be credited toward the \$3 million spending requirement. Parts and equipment provided by entities in which DCC has a financial interest may be credited toward the \$3 million spending requirement.
4. Within ninety days after the Effective Date, DCC shall submit for approval by the United States a plan for conducting the SEP (“Proposed Plan”).
 - a. The Proposed Plan shall include the following information: (i) a description of the SEP, including its locations; (ii) a description of how the SEP satisfies the criteria

set forth in Paragraph 8; (iii) the estimated cost of the SEP; (iv) a list of milestones in the performance of the SEP; (v) a schedule for performing the SEP, including a schedule for each milestone; and (vi) a description of the benefits that will result from the SEP, including an estimate of any emissions reductions; (vii) a copy of the contract(s) for the SEP between DCC and any contractor engaged to implement the SEP; and (viii) a sample form of the contract that DCC or its SEP contractor will use to obtain the commitment of any fleet obtaining SEP funding to:

- (1) Maintain any equipment installed in connection with the SEP during and after completion of the SEP;
- (2) use ultra low-sulfur diesel fuel with the affected vehicles and equipment during and after completion of the SEP;
- (3) the extent feasible, take steps to achieve additional emissions reduction benefits in connection with the project, such as by implementing an idle control program; and
- (4) use retrofitted vehicles and equipment in the area and for the time contemplated by the Proposed Plan;
- (5) use retrofitted vehicles and equipment at least four days per week on average, provided, however, that for vehicles operated on a seasonal basis, the four-day-per-week minimum threshold under the previous sentence shall apply during the season(s) in which the vehicles are operated.

- b. The Proposed Plan also shall include a certification that: (i) as of the date of the Proposed Plan, neither DCC nor the owner of any vehicles to be modified or purchased under the Proposed Plan is required (or will be required by pending settlement or currently enacted change in the law) to take any of the actions specified in the Proposed Plan by any federal, state, or local law or regulation, or as injunctive relief awarded in any other action in any forum; (ii) the SEP is not a project that DCC was planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this Decree; (iii) DCC has not received, and is not negotiating to receive, credit for the SEP in any other enforcement action; and (iv) DCC will not receive any reimbursement for any portion of the SEP from any other person.
5. The United States may approve or disapprove the Proposed Plan submitted pursuant to the previous Paragraph. The United States may disapprove the Proposed Plan if it determines that the SEP does not achieve the criteria set forth in this Appendix E, or does not satisfy EPA's *Supplemental Environmental Projects Policy* (May 1, 1998). If the United States disapproves the Proposed Plan, the United States shall provide DCC with the reason(s) for such disapproval. DCC shall have thirty days to submit a revised Proposed Plan. Informal dispute resolution under Section X is not available with respect to the United States' disapproval of the Proposed Plan.
6. DCC shall commence the SEP in accordance with the schedule set forth in the approved Proposed Plan. DCC shall complete the SEP no later than three years after the date of approval by the United States under the preceding Paragraph. Not later than ninety days

prior to the foregoing deadline, DCC may, for good cause shown, petition EPA for an extension of time in which to complete the SEP, the timely approval of which EPA shall not unreasonably withhold, provided, however, that no such deadline shall be extended beyond five years after the date of approval by the United States of the Proposed Plan pursuant to Paragraph 5 of this Appendix E.

7. SEP Reports. DCC shall submit to the United States, on an annual basis and continuing until completion of the SEP, written reports regarding DCC's performance of the SEP. Each annual report shall include a summary of DCC's activities in performing the SEP, and a description of any problems encountered, including durability, maintenance and repair problems, and the resolution of such problems. The annual report for each calendar year shall be due by January 31 of the following year. Within sixty days after completion of the SEP, DCC shall submit a final SEP Report that includes the above information; a certification that the SEP has been implemented in accordance with the Proposed Plan, including approved modifications thereto; a summary of DCC's costs; documentation of DCC's costs; and an explanation and estimate of the benefits, including emission reductions, resulting from the SEP.
8. SEP Criteria. The SEP shall satisfy each of the following criteria:
 - a. It shall involve the retrofit or replacement of high-emitting, heavy-duty diesel engines in vehicles or non-road equipment, with emissions control equipment to reduce emissions of particulates and ozone precursors or new lower-emitting engines. The replacement engines must be certified by EPA, and the retrofit technology must be verified or certified by EPA or the State of California.

Preference shall be given to the installation of replacement engines in vehicles or non-road equipment that primarily are operated in non-attainment areas;

- b. It shall involve fleets located in geographically diverse areas.
- c. It shall not involve school buses; and
- d. It shall cover the hardware and installation costs, and may provide also for incremental maintenance costs and/or costs of repairs not covered by warranty on such hardware.