

**IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

UNITED STATES OF AMERICA,	)	
	)	Case No. 1:15-CV-06143
Plaintiff,	)	
	)	Judge: Hon. Mary M. Rowland
v.	)	
	)	
NAVISTAR, INC.,	)	
	)	
Defendant.	)	

**NAVISTAR, INC.'S MITIGATION PROGRAM PLAN**

**PROGRESS REPORT**

**January 31, 2023**

**TABLE OF CONTENTS**

**I. INTRODUCTION..... 3**

**II. MITIGATION PROGRAM PLAN PROGRESS INFORMATION ..... 4**

A. Narrative Description of Status and Progress..... 5

B. Description of Problems Encountered or Anticipated..... 6

C. Status of Permit Applications..... 7

D. Summary of Costs Incurred..... 7

E. Description of Violative Conduct ..... 7

F. Paragraph 10(b) Certifications of Qualifying Engines..... 7

G. Paragraph 10(g) Certifications of Qualifying Engines..... 7

H. Environmental Justice ..... 7

I. Geographic Distribution ..... 8

J. Excel Spreadsheet ..... 9

**III. PARAGRAPH 30 CERTIFICATION & SIGNATURE..... 10**

## I. INTRODUCTION

Navistar, Inc. (“Navistar”) hereby submits this Mitigation Program Progress Report (the “Progress Report” or “Report”) pursuant to Section IX of the Consent Decree and its Appendix A that was entered by the United States District Court for the Northern District of Illinois in the above-captioned action (the “Consent Decree”) on December 14, 2021 (ECF No. 411).

The Consent Decree and its Appendix A require that Navistar semi-annually provide information regarding its progress implementing Navistar’s Mitigation Program Plan (“Mitigation Program Plan” or “Mitigation Program”) approved by EPA on March 21, 2022. That Mitigation Program Plan calls for the mitigation of not less than 10,000 tons of NOx through the permanent destruction of on-highway heavy-duty diesel (“HDD”) engines used to power any combination of Class 4-8 HDD trucks, buses, or other on-highway HDD vehicles. More specifically, the Plan involves the permanent destruction of Qualifying Engines as defined and described by the Consent Decree and its Appendix A.

During this reporting period, and as supported by the detailed information provided below, Navistar has permanently destroyed 205 Qualifying Engines, acquired from within EPA Regions 1, 5, 6, and 7, for a mitigating total of 280.73 NOx tons. To date, Navistar has permanently destroyed 215 Qualifying Engines in total, mitigating 291.23 NOx tons. During this reporting period, Navistar brought in an experienced National Accounts Manager to build out further and lead the Mitigation Program. Great efforts were made to establish a network of dismantling companies/scrapers that could handle the volume of intake, while destroying the engines to the specifications required by the Mitigation Plan. Navistar worked with its experienced administrative team to create a master tracking system internally to document destroyed units and to be able to provide up to the minute status reporting. Navistar also worked to expedite its internal pay structure in order to process purchase orders (“POs”) in a timely

manner to be able to keep up with the intake of trucks. Finally, Navistar expanded its reach across all Used Truck Centers (“UTCs”) and internal buying groups to locate Qualifying Engines.

## **II. MITIGATION PROGRAM PLAN PROGRESS INFORMATION**

As outlined in Section IX of the Consent Decree and Appendix A, Navistar is required to provide the following information in its Mitigation Program Plan Progress Reports:

- A. a description of the status of the project, including progress towards meeting the mitigation requirements and completion of any milestones (if any);
- B. a description of any problems encountered or anticipated, together with implemented or proposed solutions;
- C. status of permit applications (if applicable);
- D. a summary of costs incurred since the previous report;
- E. a description of any conduct that violates the requirements of this Consent Decree and an explanation of the violation’s likely cause and of the remedial steps taken, or to be taken, to prevent or minimize such violation;
- F. a certification prepared consistent with Paragraph 10(b) of Appendix A that the Qualifying Engines for which Navistar claims NOx tons satisfy the requirements of Section VII of the Consent Decree and Appendix A, including certifying that each Qualifying Engine has at least three years of commercially viable remaining life as defined by Paragraph 5 of Appendix A;
- G. a certification prepared consistent with Paragraph 10(g) of Appendix A (where applicable) that an engine that is unable to satisfy Paragraph 4(a)(iv) of Appendix A still constitutes a Qualifying Engine;
- H. a description of Navistar’s efforts to meet its plan for implementing the environmental justice criteria of the Consent Decree (and any difficulties with such implementation), including where applicable:
  - i. identification of the county from which a Qualifying Engines was obtained;
  - ii. information on whether the county contains any environmental justice areas as described in Paragraph 10(c)(ii)(1) of the Appendix;
  - iii. an estimate of the NOx emissions reduced (in tons) in that county;
  - iv. information on whether such county is located in a non-attainment area

with EPA's national ambient air quality standards for criteria pollutants, and for what pollutant;

- I. a description of Navistar's efforts to meet its plan for implementing the geographic distribution criteria of the Consent Decree, including a description of the approximate percentage of NOx mitigated in each EPA Region as set forth in Section II.A.3.a of the Mitigation Program Plan; and
- J. an Excel spreadsheet with the information required by Appendix A Paragraph 10(f).

Each of these items is addressed in more detail below. Navistar also has provided, in Section III, a certification as required by Consent Decree Paragraph 30 that the information provided is true, accurate and complete to the best of the authorized representative's knowledge.

**A. Narrative Description of Status and Progress**

Navistar's Used Truck Organization ("UTO") has developed a strong network to help support the Mitigation Plan acquisition process. Navistar is currently working with eight dismantling companies that cover all EPA regions, and is actively working with all UTCs across the U.S. to identify and acquire Qualifying Engines. This reporting period, Navistar expanded its internal group of buyers that can acquire trucks through channels that would otherwise be on the auction market. Additionally, Navistar increased its direct communication with several large national fleets that have older trucks available for purchase. Finally, Navistar continues to work with all its International dealerships across the U.S. who search for Qualifying Engines and then submit the offers for Navistar's review and consideration. Consistent with the Mitigation Program Plan, Navistar has attempted to locate and permanently destroy Qualifying Engines through auctions, trade-ins, purchases from dealers, direct purchases from owners and other acquisition methods. Based on those efforts, during this reporting period, Navistar has acquired and permanently destroyed 205 Qualifying Engines. Navistar has claimed credit for 280.73 NOx tons in relation to these Qualifying Engines. Navistar calculated the NOx reductions achieved through the Mitigation Program Plan by

utilizing the NOx values identified by HDD on-highway engine categories listed in Paragraph 9 of Appendix A to the Consent Decree and Schedule 1 to the Mitigation Program Plan. Navistar determined the Qualifying Engines' categorization under Paragraph 9 and Schedule 1 of the Mitigation Program Plan based on the type of vehicle model in which the Qualifying Engine was used (*see* Schedule 2 to the Mitigation Program Plan).

Of the 205 Qualifying Engines acquired and permanently destroyed during this review period, 75 were Heavy-Heavy Duty Diesel ("HHDD") Long Haul engines or engines used in Intercity and Transit buses, with 130 involving other Qualifying Engine categories. During this review period, Navistar acquired and destroyed engines from EPA Regions 1, 5, 6, and 7. Of those Qualifying Engines acquired and destroyed, all 205 could start, move a vehicle and had all necessary parts and otherwise met all required criteria under the Consent Decree and Appendix A.

**B. Description of Problems Encountered or Anticipated**

Navistar did not encounter and does not anticipate any long-term problems with its continued implementation of the Mitigation Program Plan, although progress has been impeded by limited inventory in the Class 8 used truck market. The Class 8 used truck market, however, has shown some signs of improvement as prices continue to go down month to month. Some fleets are becoming easier to approach and more willing to discuss the sale of their assets. The increased availability of new trucks should encourage fleets to sell older used truck inventory and return to their normal trade cycles. A stabilized economy and a more normal business performance should keep up this trend for the next 24 months.

**C. Status of Permit Applications**

Navistar does not need to apply and has not applied for any permits in connection with its implementation of the Mitigation Program Plan.

**D. Summary of Costs Incurred**

Navistar spent approximately \$975,550 during this reporting period. These costs are directly tied to the services our partners have performed during the reporting period to acquire and destroy the 205 Qualifying Engines on Navistar's behalf.

**E. Description of Violative Conduct**

To the best of its knowledge, Navistar has not violated the requirements of the Consent Decree or Appendix A.

**F. Paragraph 10(b) Certifications of Qualifying Engines**

Pursuant to Paragraph 10(b) of Appendix A, Attachment 1 of this Progress Report contains Navistar's good faith certification that the Qualifying Engines satisfy the requirements of Section VII of the Consent Decree and Appendix A, including certifying that each Qualifying Engine has at least three years of commercially viable remaining life as defined by Paragraph 5 of Appendix A.

**G. Paragraph 10(g) Certifications of Qualifying Engines**

In accordance with Paragraph 4(a)(iv) of Appendix A, all Qualifying Engines satisfied the requirements and were able to start, move, and had all necessary parts. Accordingly, no certification is required pursuant to Paragraph 10(g) of Appendix A.

**H. Environmental Justice**

EPA has already expressly found in Paragraph 13(e) of the Consent Decree that, with respect to Qualifying Engines from Long Haul HHDD vehicles and Intercity and Transit Buses,

the environmental justice requirements of the Consent Decree are deemed satisfied. Of the 205 Qualifying Engines acquired and destroyed during this reporting period, 75 are classified as Long Haul HHDD vehicles and Intercity and Transit Buses, and thus meet the environmental justice requirements of the Consent Decree. 128 engines were not Long Haul, Transit or Intercity Buses, but were located within counties that contain areas which exceed 80% for one or more EJ categories.

Navistar used reasonable efforts to select and implement the Mitigation Program in a manner that took into consideration EJ areas consistent with Paragraph 13(d)(i) and Paragraph 10(c)(i) of Appendix A. Based on those efforts, Navistar obtained a total of 203 Qualifying Engines that are relevant to the EJ requirements. In addition, 7 vehicles were located in counties within nonattainment areas. See Attachment 2, Excel Spreadsheet.

#### **I. Geographic Distribution**

Pursuant to Paragraph 13(d)(ii) of the Consent Decree, Navistar must use “reasonable efforts” to implement the Project “within each EPA Region in proportion to the number of trucks powered by Subject Engines located in the states within those regions based on the most recent available warranty data[.]” Navistar is meeting this “geographic distribution” requirement as outlined on pages 8-9 of Navistar’s Mitigation Program Plan that was approved by EPA. During this review period, Navistar acquired and permanently destroyed Qualifying Engines from the following EPA Regions:



Region	Total Unit Count	Total NOx Credit	NOx Trgt Per Region	Total NOx Credit (%)	Total Cost	Progress Rpt Unit Count	Progress Rpt NOx Credit	Progress Rpt Cost
Region 1	2	7.60	400	1.90%	\$22,800	2	7.60	\$22,800
Region 2	0	0.00	700	0.00%	\$0	0	0.00	\$0
Region 3	0	0.00	1,000	0.00%	\$0	0	0.00	\$0
Region 4	0	0.00	1,600	0.00%	\$0	0	0.00	\$0
Region 5	184	199.18	2,300	8.66%	\$736,780	174	188.68	\$696,780
Region 6	5	15.43	1,300	1.19%	\$47,290	5	15.43	\$47,290
Region 7	24	69.02	900	7.67%	\$208,680	24	69.02	\$208,680
Region 8	0	0.00	500	0.00%	\$0	0	0.00	\$0
Region 9	0	0.00	800	0.00%	\$0	0	0.00	\$0
Region 10	0	0.00	200	0.00%	\$0	0	0.00	\$0
<b>Total</b>	<b>215</b>	<b>291.23</b>	<b>10,000</b>	<b>2.91%</b>	<b>\$1,015,550</b>	<b>205</b>	<b>280.73</b>	<b>\$975,550</b>

## J. Excel Spreadsheet

Attachment 2 to this report contains the information Navistar is required to provide according to Paragraph 10(f) of Appendix A, including the following information for each Qualifying Engine:

- i. the name, address, telephone number, and email address of the Transferors of Qualifying Engines to Defendant through this Project;
- ii. if different from the zip code required by subparagraph (f)(i), above, the zip code where the Qualifying Engine and associated vehicle or equipment was registered or, if not registered, stored in the ordinary course;
- iii. the Qualifying Engine and associated vehicle or equipment model year, manufacturer, model, VIN (or serial or other unique identification number), vehicle class or equipment type, and mileage or hours of operation of the Qualifying Engine and associated vehicle or equipment for which Defendant asserts it is entitled to claim credits towards satisfying the requirements of Paragraph 13 on the basis of having Permanently Destroyed the Qualifying Engine;
- iv. the amount paid to or value exchanged with the Transferor of the Qualifying Engine;
- v. the number of credits accumulated during the reporting period that Defendant asserts it is entitled to claim towards meeting the requirement of Paragraph 13 of the Consent Decree; and
- vi. the total number of credits Defendant asserts it is entitled to claim towards meeting the requirement of Paragraph 13 of the Consent Decree, to date.

### III. PARAGRAPH 30 CERTIFICATION & SIGNATURE

I certify under penalty of perjury that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I have no personal knowledge that the information submitted is other than true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

FOR NAVISTAR, INC.:

01/31/2023  
Date

  
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