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LOS ANGELES
SUPERIOR COURT

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6 Attorneys for Defendants
 7 UNION PACIFIC RAILROAD COMPANY; THE BURLINGTON
 8 NORTHERN AND SANTA FE RAILWAY COMPANY (SPECIALLY APPEARING);
 9 NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK) AND PACIFIC
 10 HARBOR LINE, INC. (SPECIALLY APPEARING)

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

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ENVIRONMENTAL WORLD WATCH,)	No. BC 269 335
)	
Plaintiff,)	<u>CONSENT JUDGMENT</u>
)	
vs.)	
)	
UNION PACIFIC RAILROAD CO., INC.;)	
BURLINGTON NORTHERN & SANTA FE)	
RAILWAY CO., INC.; NATIONAL)	
PASSENGER RAILROAD CORP.)	
(AMTRAK); PACIFIC HARBOR LINE and)	
DOES 1 through 1000, inclusive,)	
)	
Defendants.)	

1. INTRODUCTION.

1.1 On March 5, 2002, ENVIRONMENTAL WORLD WATCH ("Plaintiff
 EWW" or "EWW"), acting on behalf of itself and the general public of the State of

1 California, filed a Complaint for civil penalties and injunctive relief (“Complaint”)
2 in Los Angeles County Superior Court, Case No. BC269335 against Defendants.
3 UNION PACIFIC RAILROAD COMPANY, THE BURLINGTON NORTHERN
4 AND SANTA FE RAILWAY COMPANY, NATIONAL RAILROAD
5 PASSENGER CORPORATION (AMTRAK), and PACIFIC HARBOR LINE,
6 INC. (collectively, “Defendants”). The Complaint alleges, among other things, that
7 Defendants violated provisions of the Safe Drinking Water and Toxic Enforcement
8 Act of 1986, Health and Safety Code Sections 25249.5, et seq. (“Proposition 65”),
9 and Business and Professions Code Sections 17200, et seq. (the “Unfair
10 Competition Act”), by knowingly and intentionally exposing individuals in
11 California to diesel engine exhaust, benzene, lead, chromium VI, cadmium, carbon
12 monoxide, 1,4-dioxane, toluene, mercury, methylene chloride, nickel,
13 polychlorinated dibenzo-p-dioxins, and polychlorinated dibenzofurans, which are
14 substances or chemicals known to the State of California to cause cancer and/or
15 birth defects or other reproductive harm, without first providing a clear and
16 reasonable warning to such individuals.

17 1.2 Defendants are aggressively pursuing a number of measures that will
18 significantly reduce diesel exhaust emissions. In the next several years, Defendants
19 collectively expect to achieve very significant reductions in NOx emissions
20 nationwide under the Clean Air Act Section 213 rule. A further obligation proposed
21 by the major freight railroad defendants, and agreed to by the U.S. Environmental
22 Protection Agency and the California Air Resources Board, will accelerate NOx
23 reductions in the South Coast Air Quality Management District. This acceleration
24 will achieve about a two-thirds reduction in NOx emissions by 2010—just five
25 years after new locomotives capable of meeting such an emission level become
26 available.

27 1.3 Through new acquisitions, re-manufacturing programs, and retirements,
28 Defendants collectively expect to reduce particulate emissions from locomotives by

1 that venue is proper in the County of Los Angeles, and that this Court has
2 jurisdiction to enter this Consent Judgment as a full settlement and resolution of the
3 allegations contained in the Complaint and of all claims which were or could have
4 been raised by any person or entity based in whole or in part, directly or indirectly,
5 on the facts alleged therein or arising therefrom or related thereto.

6 1.6 The parties enter into this Consent Judgment pursuant to a full and final
7 settlement of any and all claims between the parties for the purpose of avoiding
8 prolonged litigation. This Consent Judgment shall not constitute an admission with
9 respect to any material allegation or admission of any fact, issue of law, or violation
10 of the law contained in the Complaint or contained herein, each and every allegation
11 of which Defendants deny, nor may this Consent Judgment or compliance with it be
12 used as evidence of any wrongdoing, misconduct, culpability, or liability on the part
13 of any Defendant. Nothing in this Consent Judgment shall prejudice, waive, or
14 impair any right, remedy, or defense any Defendant may have in any other or
15 further legal proceeding.

16 1.7 Since October 1, 2000, Defendants have been providing a Proposition 65
17 warning to the public by newspaper publication.

18
19 2. INJUNCTIVE RELIEF--CLEAR AND REASONABLE WARNING.

20 2.1 Each Defendant (either individually or collectively) shall provide a warning
21 to individuals in California by publishing the warning set forth in Exhibit A to this
22 Consent Judgment, according to the schedule set forth therein, in the publications
23 listed in Exhibit B to this Consent Judgment, which are newspapers of general
24 circulation. Modifications to the list of publications may be made from time to time,
25 after providing 60 days' notice of such modification to the Office of the California
26 Attorney General ("Attorney General"). In the absence of an objection by the
27 Attorney General, the proposed change in publication may be made, and shall be
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1 deemed to comply with the requirements of this Consent Judgment. The Attorney
2 General may object to any proposed change in the publications listed in Exhibit B,
3 in which event the court may be asked to determine whether the proposed change
4 materially affects the number of persons likely to be provided with the required
5 warning. The court shall approve the proposed change in publication only if it
6 determines that there is no material effect on the number of persons likely to be
7 provided with the required warning.

8 2.2 The parties specifically acknowledge that the publication of warnings is
9 permitted only in certain narrow circumstances, and that the Attorney General
10 normally requires that published warnings include a map showing the location of
11 the source of Proposition 65 chemical emissions, along with an isopleth indicating
12 the area where exposure exceeds the Proposition 65 warning exemption level. The
13 published warnings called for by this Consent Judgment do not include such an
14 isopleth because the sources at issue--railroad locomotives and related diesel
15 equipment—are very noticeable mobile sources with operating patterns that change
16 significantly over time as demand shifts. The dynamic nature of railroad operations
17 makes it impossible to plot isopleths that are accurate over time. The requirement
18 for isopleths is also less important than under ordinary circumstances due to the
19 very noticeable nature of railroad operations. These operations are noticeable due
20 to their large size and the sounds of the engines operating and the whistles blowing.
21 In addition, the tracks on which railroads operate are clearly marked with warning
22 signs and signals. Thus, because the subject railroad operations are dynamic and
23 very noticeable, these publications are deemed adequate even though they do not
24 include isopleths. These circumstances are believed by the parties and the Attorney
25 General to be unique, and the publication of warnings without isopleths therefore
26 does not provide precedent for any other current or future warnings under
27 Proposition 65.

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1 2.3 In addition to providing published warnings as set forth in paragraph 2.1
2 hereof, Defendants shall provide warnings to their employees who work in
3 California, with respect Diesel Exhaust and any other listed chemicals associated
4 with Diesel Exhaust by: (a) providing the warning set forth in Exhibit A to this
5 Consent Judgment; or (b) providing any other information that meets the
6 requirements of Title 8 California Code of Regulations section 5194 (e.g., by
7 incorporating such information into a workplace sign or material safety data sheet
8 made available to its employees); or (c) in the manner set forth in the consent
9 judgment entered by the court in *Mateel v. Caterpillar, et al.* (San Francisco
10 Superior Court No. 965969), a copy of which is attached hereto as Exhibit C.

11 2.4 Compliance with the method and frequency of transmission and the content
12 of the warning message set forth in this Consent Judgment and the exhibits hereto
13 shall satisfy the Proposition 65 and Unfair Competition Act warning obligations of
14 Defendants, their respective parents, successors, assigns, subsidiaries, affiliates or
15 sister companies, and, to the extent Defendant Operations may implicate warning
16 obligations associated with the property on which Defendant Operations occur, any
17 person or entity who owns or operates property on which Defendant Operations
18 occur, with respect to any exposure caused by or associated with Defendant
19 Operations, to Diesel Exhaust and any other chemicals that may be listed now or in
20 the future under Proposition 65.

21 3. SETTLEMENT PAYMENT.

22 3.1 In settlement of all of the claims referred to in this Consent Judgment
23 against all of the Defendants, Defendants will pay the sum of Three Hundred
24 Thousand Dollars (\$300,000) to EWW and its counsel, WEINREB, WEINREB &
25 MANDELL and GIRARDI & KEESE. EWW and its counsel agree that such
26 payment shall satisfy any and all claims by EWW or its counsel for fees and costs or
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1 for any other form of reimbursement, restitution or monetary compensation,
2 including any claim under Cal. Code Civ. Proc. Section 1021.5 or under Cal. Bus. &
3 Prof. Code sections 17200, et seq. EWW maintains that it and its principal, William
4 Dunlap, have investigated and prosecuted Proposition 65 violations—particularly
5 with respect to diesel exhaust—full-time since August of 1995. Approximately
6 \$40,000 of the settlement funds will be committed to supporting EWW's continued
7 efforts to prosecute diesel polluters, and participate in the efforts of the California
8 Air Resources Board, and others, to lower cancer risk from these pollutants. Such
9 payment shall be made within ten days following the approval of the Consent
10 Judgment by the Court.

11 3.2 This payment shall be allocated as follows: \$20,000 to WEINREB,
12 WEINREB & MANDELL (WW&M) for out-of-pocket expenses; \$100,000 in fees
13 to WW&M; \$100,000 in fees to Girardi & Keese; \$40,000 reimbursement to EWW
14 for overhead, fees and unpaid salary, and another \$40,000 contribution to EWW for
15 its continued efforts in the public interest.

16 3.3 No Defendant shall be required to pay a civil penalty pursuant to Health &
17 Safety Code Section 25249.7(b) or Business and Professions Code Section 17200,
18 et seq.

19 4. ENTRY OF CONSENT JUDGMENT.
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21 4.1 The parties hereby request that the Court promptly enter this Consent
22 Judgment. Upon entry of the Consent Judgment, Defendants, and Plaintiff EWW,
23 waive their respective rights to a hearing or trial on the allegations contained in the
24 Complaint.
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1 5. MATTERS COVERED BY THIS CONSENT JUDGMENT.

2
3 5.1 This Consent Judgment is a final and binding resolution between the
4 Plaintiff EWW, acting on behalf of itself and the general public, and Defendants
5 and their respective parents, successors, assigns, subsidiaries, affiliates and sister
6 companies of (i) any violation of Proposition 65 or the Unfair Competition Act
7 relating to the emission of Diesel Exhaust and any other listed chemicals associated
8 with Diesel Exhaust (including, but not limited to, the claims made in the
9 Complaint), or (ii) any other statutory or common law claim, to the fullest extent
10 that any of the foregoing described in (i) or (ii) were or could have been asserted by
11 any person or entity against Defendants, or any one of them, or any person or entity
12 who owns or operates property on which Defendant Operations occur, based on its
13 or their allegedly knowing and intentional exposure of persons to Diesel Exhaust
14 and any other listed chemicals associated with Diesel Exhaust, both past, present
15 and future, or their failure to provide a clear and reasonable warning of exposure to
16 such individuals, or (iii) any other claim based in whole or part on the facts alleged
17 in the Complaint, whether based on actions committed by Defendants or their
18 respective parents, successors, assigns, subsidiaries, affiliates and sister companies,
19 or any person or entity who owns or operates property on which Defendant
20 Operations occur. Compliance with the terms of this Consent Judgment resolves
21 any issue, now and in the future, concerning compliance by Defendants and all of
22 their respective parents, successors, assigns, subsidiaries, affiliates and sister
23 companies, and any person or entity who owns or operates property on which
24 Defendant Operations occur, with the requirements of Proposition 65 and the
25 Unfair Competition Act, with respect to Defendant Operations, and any resulting
26 exposure to Diesel Exhaust or any other listed chemicals associated with Diesel
27 Exhaust, arising from or associated with Defendant Operations.

1 5.2 Plaintiff EWW, on behalf of those whom it represents by statute, and their
2 respective agents, successors and assigns, waives all rights to institute any form of
3 legal action, and releases all claims, against Defendants, their respective parents,
4 successors, assigns, subsidiaries, affiliates and sister companies, and any person or
5 entity who owns or operates property on which Defendant Operations occur,
6 whether under Proposition 65 or the Unfair Competition Act, arising out of or
7 resulting from, or related directly or indirectly to failure to warn with respect to
8 Defendant Operations (referred to collectively in this paragraph as the "Claims").
9 In furtherance of the foregoing, Plaintiff EWW, on its own behalf and on behalf of
10 those whom it represents by statute, hereby waives any and all rights and benefits
11 which it and they now have, or in the future may have, conferred upon it or any of
12 them with respect to the Claims by virtue of the provisions of Section 1542 of the
13 California Civil Code, which provides as follows:

14
15 "A GENERAL RELEASE DOES NOT EXTEND TO
16 CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR
17 SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF
18 EXECUTING THE RELEASE, WHICH IF KNOWN BY
19 HIM MUST HAVE MATERIALLY AFFECTED HIS
20 SETTLEMENT WITH THE DEBTOR."

21 Plaintiff EWW understands and acknowledges that the significance and
22 consequence of this waiver of California Civil Code Section 1542 (the "Release") is
23 that even if Plaintiff EWW, or those whom it represents by statute, suffer future
24 damages arising out of or resulting from, or related directly or indirectly to, in
25 whole or in part, failure to warn with respect to exposure to Diesel Exhaust and any
26 other listed chemicals associated with Diesel Exhaust, both past, present and future,
27 Plaintiff EWW will not be able to make any claim for those damages against any
28 Defendants, their respective parents, successors, assigns, subsidiaries, affiliates or
 sister companies, or any person or entity who owns or operates property on which

1 Defendant Operations occur. Furthermore, Plaintiff EWW acknowledges that it
2 intends these consequences and this Release to apply to any such Claims which may
3 exist as of the date of this Release, but which Plaintiff EWW does not know exist,
4 and which, if known, would materially affect its decision to enter into this Consent
5 Judgment, regardless of whether their lack of knowledge is the result of ignorance,
6 oversight, error, negligence, or any other cause.

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8 **6. ENFORCEMENT OF JUDGMENT.**

9 6.1 The terms of this Consent Judgment shall have no force or effect prior to
10 forty-five (45) days after the California Attorney General has received the
11 aforementioned copy of this Consent Judgment pursuant to paragraph 10 below,
12 and only in the absence of any written objection by the Attorney General to the
13 terms of this Consent Judgment or enforcement action brought by a the Attorney
14 General, any California county's District Attorney or any City Attorney of a
15 California city with a population exceeding 750,000 (collectively, a "Public
16 Enforcer"). Notwithstanding this paragraph, the Consent Judgment shall have
17 immediate effect and can be entered by the Court upon written waiver of the
18 45 days notice requirement and express approval hereof by the Attorney General or
19 any deputy Attorney General.

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22 6.2 The terms of this Consent Judgment shall be enforced exclusively by the
23 parties hereto, or their heirs, successors, assigns. The parties may, by noticed
24 motion or order to show cause before the Superior Court of Los Angeles County,
25 giving the notice required by law, enforce the terms and conditions contained herein.
26 In any proceeding brought by either party to enforce this Consent Judgment, such
27 party may seek whatever fines, costs, reasonable attorneys' fees, penalties or
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1 remedies as may be provided by this Consent Judgment or by law for any violation
2 of this Consent Judgment.

3 7. MODIFICATION OF JUDGMENT.

4 7.1 This Consent Judgment may be modified only upon written agreement of
5 the parties and upon entry of a Modified Consent Judgment by the Court thereon, or
6 upon motion of any party as provided by law and upon entry of a Modified Consent
7 Judgment or other order by the Court.

8 8. AUTHORITY TO STIPULATE.

9 8.1 Each signatory to this Consent Judgment certifies that he or she is fully
10 authorized by the party he or she represents to enter into this Consent Judgment and
11 to execute it on behalf of the party represented and legally to bind that party.

12 9. RETENTION OF JURISDICTION.

13 9.1 This Court shall retain jurisdiction of this matter to implement this Consent
14 Judgment.

15 10. SERVICE ON THE ATTORNEY GENERAL.

16 10.1 EWW shall serve a copy of this Consent Judgment, signed by all parties, on
17 the California Attorney General on behalf of the parties so that the Attorney
18 General may review this Consent Judgment prior to its submittal to the Court for
19 approval. No sooner than forty-five (45) days after the Attorney General has
20 received the aforementioned copy of this Consent Judgment, and in the absence of
21 any written objection by the Attorney General to the terms of this Consent
22 Judgment, the parties may then submit it to the Court by noticed motion for
23 approval. Exhibit D hereto is a copy of the proof of service attesting that this
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1 Consent Judgment has been served on the Attorney General, showing the manner
2 and date on which that service was made. Notwithstanding this paragraph, and as
3 set forth in paragraph 6 hereinabove, the Consent Judgment shall have immediate
4 effect and can be entered by the Court upon written waiver of the 45 days notice
5 requirement and express approval hereof by the Attorney General or any deputy
6 Attorney General.
7

8 11. ENTIRE AGREEMENT.

9
10 11.1 This Consent Judgment shall also be construed by law as contractual and
11 contains the sole and entire agreement and understanding of the parties with respect
12 to the entire subject matter hereof, and any and all prior discussions, negotiations,
13 commitments and understandings related hereto. No representations, oral or
14 otherwise, express or implied, other than those contained herein have been made by
15 any party hereto. No other agreements not specifically referred to herein, oral or
16 otherwise, shall be deemed to exist or to bind any of the parties.

17 12. GOVERNING LAW.

18 12.1 The validity, construction and performance of this Consent Judgment shall
19 be governed by the laws of the State of California, without reference to any
20 conflicts of law or provisions of California law.

21 13. APPLICATION OF JUDGMENT.

22 13.1 This Consent Judgment shall apply to, inure to the benefit of, and be binding
23 upon the parties, their parents, divisions, subdivisions, affiliates, sister companies,
24 subsidiaries, and successors and assigns of any of them.
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1 14. LIMITATIONS OF CONSENT JUDGMENT.

2 14.1 The contents of this Consent Judgment do not constitute a rule, regulation,
3 standard, or specification for warnings. Thus, no portion of this Consent Judgment
4 can be used in a court of law or any other forum as evidence of improper conduct.
5

6 15. SEVERABILITY.

7 15.1 If any term, condition, or provision of this Consent Judgment is held by a
8 court of competent jurisdiction to be invalid, void, or unenforceable, the remainder
9 of the provisions will remain in full force and effect and shall in no way be affected,
10 impaired, or invalidated.
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Approved as to Form:

DATED: September 6, 2002

Pillsbury Winthrop LLP

By: *Michael Steel*

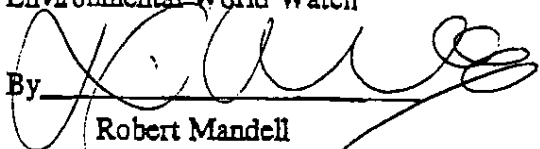
Michael J. Steel


Counsel for Defendants UNION
PACIFIC RAILROAD COMPANY;
THE BURLINGTON NORTHERN
AND SANTA FE RAILWAY
COMPANY (SPECIALLY
APPEARING); NATIONAL
RAILROAD PASSENGER
CORPORATION (AMTRAK) AND
PACIFIC HARBOR LINE, INC.
(SPECIALLY APPEARING)

1 **16. COURT APPROVAL**

2 16.1 If this Consent Judgment is not approved by the Court, it shall be of no
3 force or effect, and cannot be used in any proceeding for any purpose.

4 **IT IS SO STIPULATED.**

5 DATED: ~~Sept~~ ^{Sept} ~~April~~ ^{Sept} 9, 2002 Environmental World Watch
6 By 
7 Robert Mandell
8 Attorney for Plaintiff, EWW

9 DATED: April __, 2002 The Burlington Northern and Santa Fe Railway
10 Company
11 By 

12 DATED: April __, 2002 National Railroad Passenger Corporation (AMTRAK)
13 By _____
14 Alicia M. Serfaty
15 Acting General Counsel

16 DATED: April __, 2002 Union Pacific Railroad Company
17 By _____
18 Lawrence E. Wzorek
19 Assistant Vice President-Law

20 DATED: April __, 2002 Pacific Harbor Line, Inc.
21 By _____
22 Andrew C. Fox
23 President and Chief Operating Officer

24 **IT IS SO ORDERED, ADJUDGED AND DECREED.**
25 **BY THE COURT**
26 DATED: _____
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28 JUDGE OF THE SUPERIOR COURT

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16. COURT APPROVAL

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IT IS SO STIPULATED.

DATED: April __, 2002 Environmental World Watch

By _____
Robert Mandell
Attorney for Plaintiff, EWW

DATED: April __, 2002 The Burlington Northern and Santa Fe Railway Company

By _____

DATED: April 15, 2002 National Railroad Passenger Corporation (AMTRAK)

By Alicia M. Serfaty
Alicia M. Serfaty
Acting General Counsel

DATED: April __, 2002 Union Pacific Railroad Company

By _____
Lawrence E. Wzorek
Assistant Vice President-Law

DATED: April __, 2002 Pacific Harbor Line, Inc.

By _____
Andrew C. Fox
President and Chief Operating Officer

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BY THE COURT

DATED: _____

JUDGE OF THE SUPERIOR COURT

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4 IT IS SO STIPULATED.

5 DATED: April __, 2002 Environmental World Watch

6
7 By _____
8 Robert Mandell
9 Attorney for Plaintiff, EWW


10 DATED: April __, 2002 The Burlington Northern and Santa Fe Railway
11 Company

12 By _____

13 DATED: April __, 2002 National Railroad Passenger Corporation (AMTRAK)

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15 By _____
16 Alicia M. Serfaty
17 Acting General Counsel

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20 Lawrence E. Wzorek
21 Assistant Vice President-Law

22 DATED: April __, 2002 Pacific Harbor Line, Inc.

23
24 By _____
25 Andrew C. Fox
26 President and Chief Operating Officer

27 IT IS SO ORDERED, ADJUDGED AND DECREED.

28 BY THE COURT

DATED: _____

JUDGE OF THE SUPERIOR COURT

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16. COURT APPROVAL

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IT IS SO STIPULATED.

DATED: April __, 2002 Environmental World Watch

By _____
Robert Mandell
Attorney for Plaintiff, EWW

DATED: April __, 2002 The Burlington Northern and Santa Fe Railway Company

By _____

DATED: April __, 2002 National Railroad Passenger Corporation (AMTRAK)

By _____
Alicia M. Serfaty
Acting General Counsel

DATED: April __, 2002 Union Pacific Railroad Company

By _____
Lawrence E. Wzorek
Assistant Vice President-Law

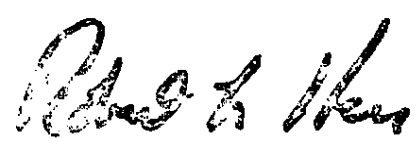
DATED: May 6 ~~April~~ __, 2002 Pacific Harbor Line, Inc.

By Andrew C. Fox
Andrew C. Fox
President and Chief Operating Officer

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IT IS SO ORDERED.

DATED: 2-16-02



JUDGE OF THE SUPERIOR COURT

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EXHIBIT A

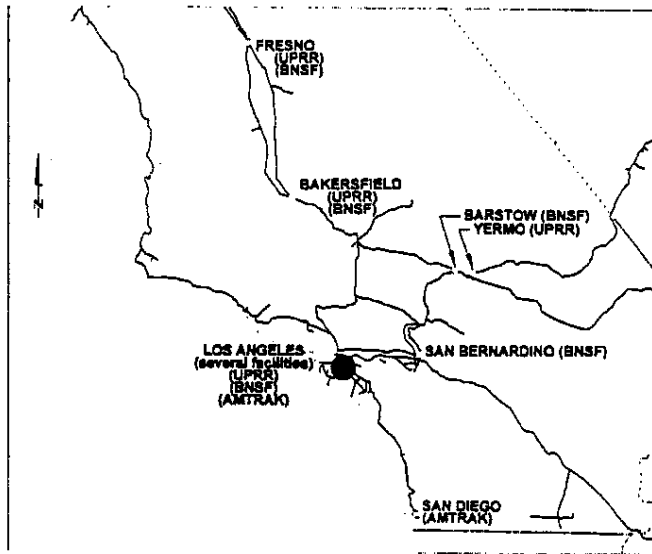
Proposition 65 WARNINGS

PROPOSITION 65 WARNING

Diesel Exhaust from Railroad Operations

Railroad locomotives and related equipment used in transporting goods and passengers are powered by diesel engines and emit diesel exhaust. Diesel exhaust is a chemical known to the State of California to cause cancer, and contains chemicals known to the State to cause birth defects or other reproductive harm.

Some people near railroad operations are exposed to diesel exhaust. Exposure depends on many factors, including the type and intensity of railroad operations, how close you are to the facility, how much time you spend there and whether there are other sources of diesel exhaust in your area. This map shows major railroad facilities in this area, although smaller facilities may also result in exposure:



We want you to know that the railroads have initiated a number of measures to reduce the amount of diesel exhaust generated by our operations. We are committed to delivering freight and moving passengers in a safe and environmentally responsible way.

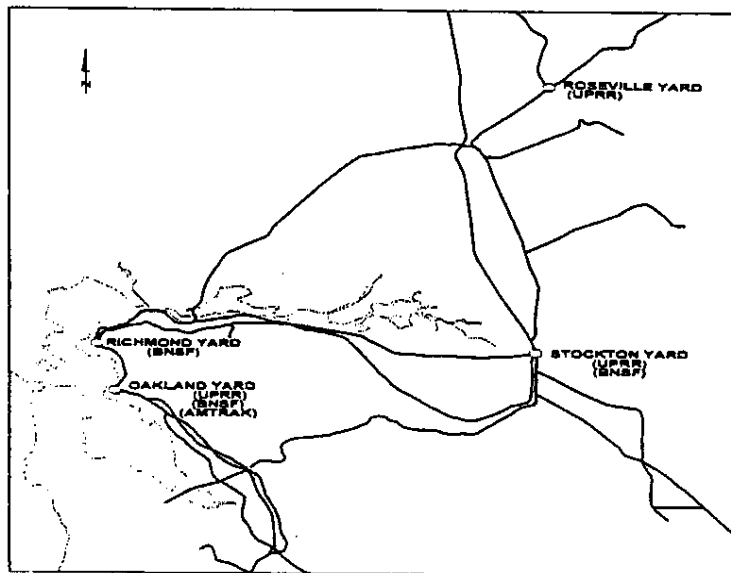
For More Information About Specific Facilities, Contact One of the Following - Amtrak: 810 North Alameda Street, 3rd Floor, Los Angeles, CA 90012; BNSF: Attn: P. 65, 740 East Carnegie, San Bernardino, CA 92408; LA Junction Railway Co.: Attn: P. 65, 740 East Carnegie, San Bernardino, CA 92408; Pacific Harbor Lines: 340 Water Street, Wilmington, CA 90744; UPRR: 10031 Foothills Blvd., Roseville, CA 95747

PROPOSITION 65 WARNING

Diesel Exhaust from Railroad Operations

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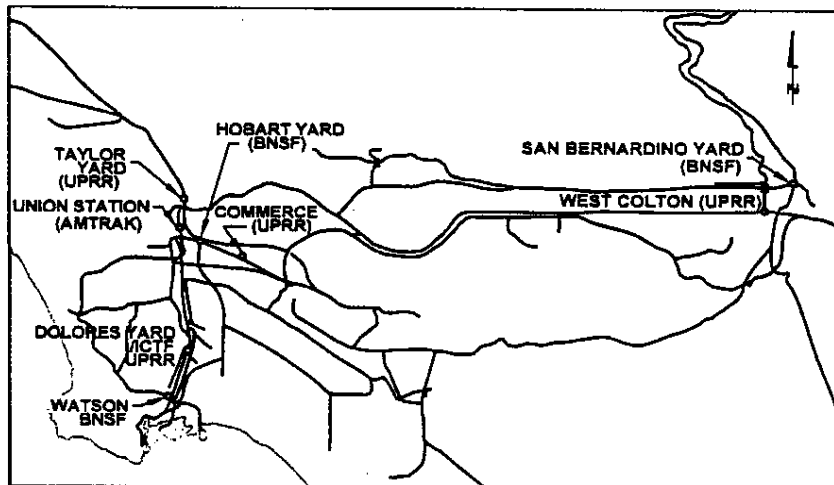
For More Information About Specific Facilities, Contact One of the Following - Alameda Beltway:
Attn: P. 65, 740 East Carnegie, San Bernardino, CA 92408; Amtrak: 810 North Alameda Street, 3rd Floor, Los Angeles, CA 90012; BNSF: Attn: P. 65, 740 East Carnegie, San Bernardino, CA 92408; Oakland Terminal Railway: 10031 Foothills Blvd., Roseville, CA 9574; UPRR: 10031 Foothills Blvd., Roseville, CA 95747

PROPOSITION 65 WARNING

Diesel Exhaust from Railroad Operations

Railroad locomotives and related equipment used in transporting goods and passengers are powered by diesel engines and emit diesel exhaust. Diesel exhaust is a chemical known to the State of California to cause cancer, and contains chemicals known to the State to cause birth defects or other reproductive harm.

Some people near railroad operations are exposed to diesel exhaust. Exposure depends on many factors, including the type and intensity of railroad operations, how close you are to the facility, how much time you spend there and whether there are other sources of diesel exhaust in your area. This map shows major railroad facilities in this area, although smaller facilities may also result in exposure:



We want you to know that the railroads have initiated a number of measures to reduce the amount of diesel exhaust generated by our operations. We are committed to delivering freight and moving passengers in a safe and environmentally responsible way.

For More Information About Specific Facilities, Contact One of the Following - Amtrak: 810 North Alameda Street, 3rd Floor, Los Angeles, CA 90012; BNSF: Attn: P. 65, 740 East Carnegie, San Bernardino, CA 92408; LA Junction Railway Co.: Attn: P. 65, 740 East Carnegie, San Bernardino, CA 92408; Pacific Harbor Lines: 340 Water Street, Wilmington, CA 90744; UPRR: 10031 Foothills Blvd., Roseville, CA 95747

Exhibit B

List of Publications and Schedule for Warnings

Publication Schedule				
	1st Q	2d Q	3d Q	4th Q
San Diego U-T		X		
El Latino	X			
Los Angeles Times			X	
Orange County Regist.	X			
Long Beach Press T.		X		X
Torrance Daily Breeze	X			X
La Opinion		X		X
World Journal	X		X	
Tsing Tao		X		X
Thoi Luan		X		X
	X			
Riverside Press Trib.		X		X
San Gabriel Valley Trib	X	X	X	X
Barstow/Vict. Dispatch	X	X	X	X
San Bernardino Sun	X		X	X
Needles Desert Star		X	X	
Inland Valley Bulletin	X	X		X
San Luis O. Tribune				X
S. Barbara News Press	X			
Fresno Bee				X
Modesto Bee	X			
Bakersfield Californian			X	
Monterey Herald	X			
				X
SF Chronicle			X	
Oakland/ANG	X			
Alameda Times Star	X			
Fremont Argus	X			
Hayward Daily Review	X			
Marin Independent J.	X			
S. Mateo Co. Times	X			
Tri-Valley Herald	X			
Vallejo Times Herald	X			
Milpitas Post	X			

1	Sacramento Bee		X		
	Roseville Press Trib	X	X	X	
2	Stockton Record		X		
	Auburn Journal				X
3					
	Chico News Record		X		
4	Redding Searchlight			X	

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Exhibit C

Copy of Consent Judgment

Entered in *Mateel v. Caterpillar, et al.*

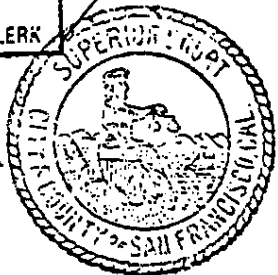
1 Michèle B. Corash, State Bar #103653
 Morrison & Foerster
 2 345 California Street
 San Francisco, California 94104
 3 Telephone: (415) 677-7124

4 Robin M. Shapiro, State Bar #104005
 Morrison & Foerster
 5 1201 K Street, Suite 1170
 Sacramento, California 95814
 6 Telephone: (916) 448-2244

7 Attorneys for Defendants,
 Caterpillar Inc., Cummins Engine
 8 Company, Inc., Deere & Company and
 Detroit Diesel Corp.
 9

FILED
 San Francisco County Superior Court
 DEC 28 1994
 BY: ALAN M. CARLSON, Clerk
 Deputy Clerk

MICROFILMED
 REEL/BATCH F:
 132-26
 DEPUTY COUNTY CLERK



10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 11 CITY AND COUNTY OF SAN FRANCISCO
 12

13 THE MATEEL ENVIRONMENTAL)
 JUSTICE FOUNDATION,)
 14 PACIFIC JUSTICE CENTER)
 15 Plaintiffs,)
 16 v.)
 17 CATERPILLAR, INC., CUMMINS)
 ENGINE CO., DEERE & COMPANY,)
 18 DETROIT DIESEL CORP., AND)
 DOES ONE THROUGH FOUR)
 19 HUNDRED,)
 20 Defendants.)
 21

Case No. 965969
 STIPULATION FOR ENTRY
 OF ORDER AND JUDGMENT
 THEREON

THE ANNEXED INSTRUMENT IS A
 CORRECT COPY OF THE ORIGINAL
 ON FILE IN MY OFFICE.
 ATTEST: CERTIFIED

AUG 28 1998

ALAN CARLSON, Clerk
 Superior Court of the City & County of San Francisco
 BY: *Gloria Gutierrez*
 GLORIA GUTIERREZ DEPUTY CLERK

22 I. Introduction

23 1. On December 20, 1994, the Pacific Justice
 24 Center and The Mateel Environmental Justice Foundation (both
 25 hereinafter "PJC") filed a Complaint for Civil Penalties and
 26 Injunctive Relief ("Complaint") in this Superior Court,
 27 naming Caterpillar Inc., Cummins Engine Company, Inc.,
 28

1 Deere & Company, Detroit Diesel Corp. and DOES 1 through
2 400, as defendants.

3 2. The Defendants are businesses that employ more
4 than ten persons and offer one or more "Covered Products" as
5 defined herein for sale or intended for sale in California.

6 3. The Complaint alleges that Defendants have
7 sold diesel engines or equipment containing diesel engines
8 that emit diesel engine exhaust and its chemical
9 constituents, thereby knowingly and intentionally exposing
10 persons to chemicals known to the State of California to
11 cause cancer and/or reproductive toxicity without first
12 providing a clear and reasonable warning, in violation of
13 the Safe Drinking Water and Toxic Enforcement Act of 1986,
14 Health and Safety Code sections 25249.5, et seq.
15 ("Proposition 65"), and Business and Professions Code
16 sections 17200, et seq. ("Unfair Competition Act").
17 Plaintiffs served 60-day notices pursuant to Health and
18 Safety Code Section 25249.7(d) upon Defendants, the Attorney
19 General and all appropriate District Attorneys more than
20 60 days prior to Defendants being named as Defendants in
21 this Complaint.

22 4. The Plaintiffs (on behalf of the People of the
23 State of California) and the Defendants who are now or
24 become parties to this Stipulation desire to settle and
25 resolve the claims arising from or relating to the matters
26 alleged in the Complaint and hereby stipulate and agree to

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1 the Court's entry of this Stipulation as an Order and
2 Consent Judgment ("Judgment"):

3 5. Parties, Jurisdiction and Venue. For purposes
4 of this Stipulation for Entry of Order and Judgment thereon
5 ("Stipulation") only, the parties and those that later
6 become signatories to this Stipulation pursuant to paragraph
7 25.2 (hereinafter, collectively, the "Parties"), stipulate
8 that this Court has jurisdiction over the allegations of
9 violations contained in the Complaint and personal
10 jurisdiction over those named Defendants entering into this
11 Stipulation and those other persons or entities that elect
12 to become additional parties pursuant to Paragraph 25.2 (all
13 the foregoing herein "Defendants"). The Parties further
14 stipulate that venue is proper in the County of San
15 Francisco; and that this Court has jurisdiction to enter
16 this Stipulation, Order and Judgment as a final resolution
17 of claims specified in the Complaint and otherwise described
18 in this Stipulation and the Judgment thereon.

19 6. No Admissions

20 6.1 While PJC contends that Defendants failed to
21 provide clear and reasonable warnings as required by
22 Proposition 65, Defendants deny that they have violated
23 Proposition 65, the Unfair Competition Act, or any other law
24 or standard applicable to warnings or disclosures concerning
25 exhaust from diesel engines or from equipment containing
26 diesel engines. The Parties enter into this Stipulation
27 pursuant to a settlement of disputed claims for the purpose
28



1 of avoiding prolonged litigation, to ensure that the
2 objectives of Proposition 65 and the Unfair Competition Act
3 are expeditiously carried out, and to provide a prompt,
4 uniform, State-wide approach to the provision of warnings
5 concerning diesel engine exhaust.

6 6.2 Nothing in this Stipulation shall be construed
7 as an admission by any Party of any fact, issue of law, or
8 violation of law, nor shall compliance with this Stipulation
9 or the Judgment entered pursuant to this Stipulation
10 constitute or be construed as an admission by any Party of
11 any fact, issue of law, or violation of law.

12 6.3 Nothing in this Stipulation shall prejudice,
13 waive or impair any right, remedy or defense any Party may
14 have in any other or future legal proceeding, but this
15 paragraph shall not diminish or otherwise affect the
16 releases, obligations, responsibilities and duties of any
17 Party under this Stipulation or the Judgment.

18 7. Covered Products. This Judgment covers,
19 pertains, and applies to the manufacture, sale, distribution
20 and use of all existing and future diesel engines designed
21 for use in off-road equipment and all existing and future
22 off-road equipment containing diesel engines (collectively,
23 hereafter, "Covered Products"). Off-road equipment is
24 equipment designed for use primarily for purposes other than
25 on-road transportation. Covered Products are all current
26 and future diesel engines and/or diesel engine-powered
27 equipment, used or sold for use in mobile and/or stationary
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1 off-road applications, including, but not limited to, the
2 following:

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4	aerial platforms	loaders
	airport ground service	locomotives
5	equipment	logging
	backhoes	marine
6	balers	mining equipment
	combines	motor graders
7	compactors	mowers
	construction equipment	off-highway trucks
8	conveyers	pavers
	cranes	pickers
9	crawlers	pipe layers
	crop dusters	pumps
10	dozers	rollers
	excavators	scrapers
11	farm equipment	skidders
	feeders	sprayers
12	feller bunchers	strippers
	forklifts	tractors
13	generators	trenchers
	graders	utility equipment
14	harvesters	windrowers
	industrial equipment	
15	irrigation	

16

II. Injunctive Relief

17

8. Equipment Warnings. On or with every piece of
18 equipment which is a Covered Product and is shipped by a
19 Defendant equipment manufacturer into or for sale in
20 California, said Defendant equipment manufacturer shall
21 provide warnings regarding exposure to diesel engine exhaust
22 and its chemical constituents from equipment containing
23 diesel engines by one of the two alternative methods
24 described below, at the option of the equipment
25 manufacturer.

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1 8.1 Alternative 1 -- Warning in the Operator
2 Manual.

3 A. Text. At the time the operator manual is
4 next revised, but no later than December 31, 1995, equipment
5 manufacturer Defendants choosing this Alternative 1 will
6 revise their manual to include the warning in Exhibit A and
7 will provide said revised manual with every Covered Product
8 shipped thereafter.

9 B. Method. The language may be printed in
10 the manual or may be in the form of a sticker pasted into
11 the manual. The language will be of the same size and
12 format as Exhibit A or shall be of an equally conspicuous
13 size and format.

14 C. Placement. The warning in the manual
15 will appear in one of the following locations:

- 16 (1) Outside the front cover;
17 (2) Inside the front cover;
18 (3) Outside the back cover;
19 (4) Inside the back cover;
20 (5) As the first page of text

21 8.2 Alternative 2 -- Warning on the Equipment.

22 A. Method. The warning shall be affixed to
23 the equipment or provided by a digital display warning or
24 other electronic "on-screen" warning on every piece of
25 equipment which is a Covered Product shipped by Defendant
26 equipment manufacturer after January 1, 1996.

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1 B. Warning. A warning affixed to the
2 equipment will contain the language and be of the same size
3 and format as the warning in Exhibit B or of an equally
4 conspicuous size and format. If an electronic "on-screen"
5 warning is used, it shall contain the language in Exhibit B
6 and shall be provided in connection with engine ignition in
7 the same manner as other safety warnings electronically
8 communicated "on-screen."

9 C. Location. The warning message will be
10 placed where it is clearly visible to an operator in the
11 operating position.

12 8.3 Upon request of Plaintiffs or the Attorney
13 General, Defendant equipment manufacturer shall provide said
14 requestor with a copy of the warning it is providing
15 pursuant to this paragraph 8.

16 8.4 The obligations in this paragraph 8 do not
17 apply to the sale of loose diesel engines. Loose diesel
18 engines are those sold or distributed separate from the
19 equipment in which they are ultimately placed.

20 9. Loose Engines.

21 9.1 Obligation. Beginning thirty (30) days after
22 the date the Judgment is entered, each Defendant
23 manufacturer of diesel engines shall, with each transaction
24 for the sale or resale of loose engines that are Covered
25 Products into or for sale in California, provide its
26 customer with the notice in Exhibit C, unless the sale is to
27 an equipment manufacturer that is a division, subsidiary, or

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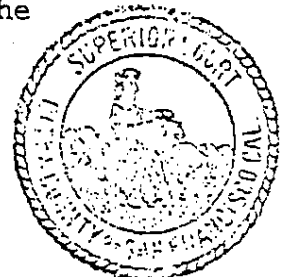


1 an entity related to the engine manufacturer in such a
2 manner that it is subject to the requirements of the
3 Judgment. Two hundred seventy (270) days from the date the
4 Judgment is entered and every six (6) months thereafter,
5 each Defendant manufacturer of diesel engines or an entity
6 acting on behalf of a group of such Defendants shall provide
7 to PJC a list of every recipient, during the preceding six-
8 month period, of the notice sent by said Defendants pursuant
9 to this paragraph 9.1. Provided, however, that an entity
10 providing said list on behalf of a group of Defendants shall
11 not be required to identify which of said Defendants sent
12 the notice to which particular recipient. This obligation
13 shall terminate twenty-seven (27) months after the date
14 Judgment is entered (after four (4) reports have been
15 filed). In the event of a sale of loose engines in or to
16 California, to a person or entity that is neither an engine
17 manufacturer, wholesaler, dealer, retailer, reseller or
18 distributor, nor an equipment manufacturer, the notice shall
19 be in the form of Exhibit G.

20 9.2 Method. This obligation may be met by
21 providing the notice in any one of the following ways:

- 22 A. Mail, with proof of delivery;
 - 23 B. Attached to the engine;
 - 24 C. Placed with instruction and maintenance
- 25 materials that accompany the engines received by the
26 equipment manufacturer.

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1 10. Supplemental and Corrective Advertising.

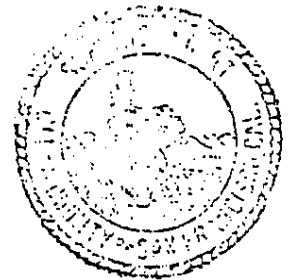
2 10.1 Flyer to Operators.

3 A. No later than sixty (60) days following
4 the Court's entry of the Judgment, the Defendants will cause
5 the flyer in Exhibit D to be published and will provide
6 copies of these to the organizations in subparagraph C below
7 in sufficient number for each organization to provide one
8 copy to each of its members. This requirement can be
9 satisfied by a supply of flyers jointly provided by
10 Defendants or their agent.

11 B. Defendants will pay each organization the
12 amount specified in paragraph 10.1C to offset its costs for
13 disseminating the flyers.

14 C. List of Organizations and Amount of
15 Reimbursement:

16	<u>Organization</u>		<u>Amount</u>
17	1. Operating	1.	\$ 30,000
18	Engineers Local		
19	Union #3 of the		
20	International		
21	Union of Operating		
22	Engineers, AFL-CIO		
23	2. Operating	2.	\$ 30,000
24	Engineers Local		
25	Union #12 of the		
26	International		
27	Union of Operating		
28	Engineers, AFL-CIO		
	3. International	3.	\$ 15,000
	Longshoremen's and		
	Warehousemen's		
	Union		
			<hr/>
	Total:		\$ 75,000

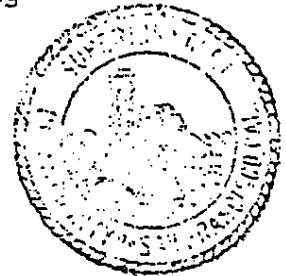


1 D. In the event any of the organizations
2 described in subparagraph 10.1C advises Defendant(s) that it
3 is unwilling to disseminate the flyers under the terms
4 specified herein, Defendants shall pay the amount specified
5 for each such organization to the California Public Health
6 Foundation for use in educating the public about exposures
7 to Proposition 65 chemicals.

8 10.2 Advertisement.

9 A. Defendants will use their best efforts to
10 cause the advertisement in Exhibit E to be published in a
11 one-half page advertisement in each of the following
12 publications:

- 13 (1) Engineer News
- 14 (2) California AFL-CIO News
- 15 (3) Engineer News
- 16 (4) News Record
- 17 (5) Daily Construction Service
- 18 (6) California Builder and Engineer



19 B. The advertisement will run six times at
20 approximately three-month intervals in the course of the
21 eighteen months after the decree is entered.

22 C. If any of the publications identified in
23 paragraph 10.2A(1)-(6) refuses to accept the advertisement
24 on the terms specified herein, Defendants shall be excused
25 from the obligation to advertise in said publication.

26 D. If the total cost of compliance with this
27 paragraph 10.2 is less than \$ 20,000, the difference between
28

1 the amount spent and \$ 20,000 shall be paid to the
2 California Public Health Foundation for use in its work to
3 educate the public about exposure to Proposition 65
4 chemicals. Defendants shall be excused from running
5 advertisements otherwise required by this paragraph 10.2
6 once the cost of compliance with its terms exceeds \$ 20,000.

7 11. Notice to Distributors and Dealers.

8 No less than one hundred twenty (120) days after
9 the Judgment is entered, each equipment manufacturer
10 Defendant, or a designee on behalf of a group of such
11 Defendants, will send the letter set out in Exhibit F to
12 each of said Defendants' distributors and dealers of Covered
13 Products who are either located in California or who
14 Defendant or the group of Defendants have reason to believe
15 sell(s) equipment of such Defendant or group of Defendants
16 into or for sale or use in California, to whom each such
17 Defendant has shipped a Covered Product between July 1, 1991
18 and the date Judgment is entered.

19 12. Letter to Diesel Equipment Owners.

20 No later than six (6) months after the date the
21 Judgment is entered, each Defendant equipment manufacturer
22 shall send the letter attached hereto as Exhibit G to every
23 customer from which it received a warranty card for a
24 Covered Product between December 31, 1991 and the date the
25 Judgment is entered and which gave a California location as
26 its address (or as the address at which the equipment would
27 be used). If a Defendant does not retain such information
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1 for all or any part of the entire period from
2 December 31, 1991 to the date on which the Judgment is
3 entered, the obligations of this paragraph will be satisfied
4 if said Defendant sends the letter to all of those
5 customers, if any, for which it does have such information.

6 III. Plaintiffs' Fees

7 13. No later than December 31, 1994, Defendants,
8 or an entity acting on their behalf, will pay Plaintiffs'
9 reasonable and necessary fees and costs totalling \$280,000.
10 Such payment shall be by check payable to the Pacific
11 Justice Center.

12 IV. Penalty

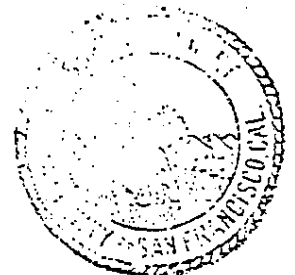
13 14. The total penalty payable by Defendants shall
14 be \$475,000. The amounts paid by Defendants pursuant to
15 paragraphs 10.1, 10.2 and 13 shall be credited dollar for
16 dollar against this obligation. The \$100,000 remaining
17 after deduction of these amounts shall be paid, pursuant to
18 Health and Safety Code section 25249.7(b), 90 days after
19 entry of the Judgment by Defendants or an entity acting on
20 their behalf. Payment shall be made by delivery of
21 certified funds payable to the Attorney General of the State
22 of California, to 2101 Webster Street, 12th Floor, Oakland,
23 California 94612-3049 (Attention: Edward G. Weil, Deputy
24 Attorney General).

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V. Release

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2 15. Plaintiffs, on behalf of the People of the
3 State of California, release each Defendant, its
4 subsidiaries, parents, officers, employees, and the
5 successors, assigns or predecessors in interest of any of
6 them from any and all claims Plaintiffs or the People may
7 have: (1) for past failure to warn any person exposed to
8 diesel engine exhaust from a Defendant's Covered Product;
9 and/or (2) for failure to warn regarding future exposures to
10 engine exhaust from a Defendant's Covered Product provided
11 and so long as Defendant has complied with the provisions of
12 this Judgment. Compliance with the terms of this
13 Stipulation and the Judgment by said Defendant resolves any
14 issue, now and in the future, concerning compliance by said
15 Defendant with the requirements of Proposition 65, the
16 Unfair Competition Act, or other claims arising from failure
17 to comply with Proposition 65 in connection with exposure to
18 Covered Products. Plaintiffs, on behalf of the People of
19 the State of California, also release: (1) each retailer,
20 wholesaler, distributor, dealer, owner, operator, lessor,
21 lessee or user of a Defendant's Covered Product, or other
22 persons or entities that, in the course of business, expose
23 persons to diesel engine exhaust, from all existing claims
24 arising from or related to an alleged failure to warn about
25 exposure to diesel engine exhaust from any Defendant's
26 Covered Products if and so long as said Defendant is in
27 compliance with the requirements of this Judgment; and

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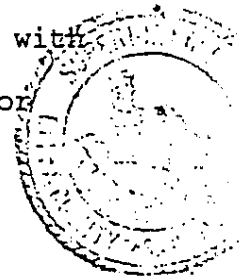


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1 (2) each retailer, wholesaler, distributor, dealer, owner,
2 operator, lessor, lessee or user of a Defendant's Covered
3 Product from future "failure to warn" claims if, and so long
4 as, said Defendant is in compliance with the requirements of
5 this Judgment, and such retailer, wholesaler, distributor,
6 dealer, owner, operator, lessor, lessee, or user has not
7 impeded or impaired the transmission of the warning provided
8 by said Defendant pursuant to the Judgment for said Covered
9 Product. Notwithstanding the foregoing or any other
10 provision of this Stipulation and the Judgment, (1) a user,
11 owner or operator of a Covered Product is not released from
12 liability unless it complies with its obligation to provide
13 such "workplace" warnings regarding diesel engine exhaust as
14 may be required by California or federal occupational safety
15 and health laws and regulations; and (2) an equipment
16 manufacturer is not released from liability unless it
17 complies with the requirements of paragraph 8-8.3 herein.

18 16. Each Defendant, and those to whom such
19 Defendant distributes (by sale or lease) or sells diesel
20 engines or diesel engine powered equipment in its respective
21 chain of distribution (including, without limitation,
22 equipment manufacturers, wholesalers, re-sellers,
23 distributors, retailers, lessors, owners or operators), may
24 continue to ship, sell, lease, distribute, use, own, and
25 operate that Defendant's diesel engines and diesel-powered
26 equipment provided that said Defendant is in compliance with
27 all provisions of this Stipulation and the Judgment. For

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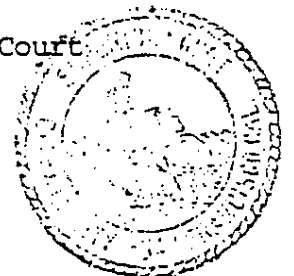


1 purposes of resolving this litigation only, the Parties
2 agree that the manufacture, distribution, sale, resale,
3 lease and/or use of Covered Products by Defendants or those
4 to whom they distribute or sell Covered Products in their
5 respective chains of distribution (including producers,
6 wholesalers, brokers, importers, resellers, distributors,
7 and retailers) do not violate Proposition 65 or the Unfair
8 Competition Act, if Defendants are in compliance with this
9 Stipulation and the Judgment entered pursuant to this
10 Stipulation.

11 VI. Other Terms

12 17. Enforcement of Judgment. The PJC may, by
13 motion or order to show cause before the Superior Court of
14 San Francisco, enforce the terms and conditions of the Order
15 and the Judgment entered pursuant to this Stipulation. In
16 any action brought by the PJC to enforce the terms of the
17 Order and Judgment entered pursuant to this Stipulation, the
18 PJC may seek whatever fines, costs, penalties or remedies
19 are provided by law.

20 18. Entry of Judgment. Judgment pursuant to this
21 Stipulation shall be entered when and as provided in
22 paragraph 28.3 of this Stipulation. The Judgment shall be
23 final and conclusive as to the Parties and all Defendants,
24 including those who, within the time allowed, elect to
25 become parties pursuant to paragraph 25 as if named as Doe
26 defendants, in the original caption. Provided the Court



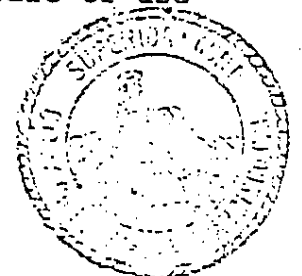
1 enters the Judgment, the Parties waive their right to a
2 hearing or trial on the allegations of the Complaint.

3 19. Matters Covered by This Stipulation and the
4 Judgment Entered Pursuant to This Stipulation.

5 19.1 This Stipulation and the Judgment cover all
6 claims on behalf of the California general public arising
7 from the alleged failure of Defendant loose diesel engine
8 and Defendant diesel engine equipment manufacturers to
9 provide warnings under Proposition 65 for exposure to engine
10 exhaust from Covered Products.

11 19.2 The Judgment entered pursuant to this
12 Stipulation is a full and final judgment as to all
13 Defendants and those to whom they distribute or sell in
14 their respective chains of distribution (including, without
15 limitation thereto, wholesalers, distributors, equipment
16 manufacturers, retailers, engine and or equipment owners
17 and/or operators, brokers, importers, resellers, lessors and
18 retailers), applying to all claims, violations, actions,
19 damages, costs, penalties, attorneys fees or causes of
20 action asserting or based upon alleged violations of
21 Proposition 65 or the Unfair Competition Act arising from
22 the alleged failure to provide clear and reasonable warnings
23 of exposure to diesel engine exhaust or its chemical
24 constituents from Covered Products produced, sold, or
25 distributed by Defendants or any one of them for sale or use
26 in the State of California.

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1 20. Modification of Judgment. The Judgment
2 entered pursuant to this Stipulation may be modified only
3 upon a Party's noticed motion and upon entry of a modified
4 Judgment by the Court thereon that is not opposed by any
5 other party or as otherwise provided by law.

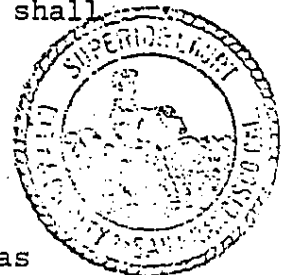
6 21. Application of Judgment. The Judgment entered
7 pursuant to this Stipulation shall apply to and be binding
8 upon the Parties, their directors, officers, employees,
9 agents, divisions, subdivisions, and subsidiaries, and the,
10 successors or assigns of any of them, provided, that no
11 individual natural person shall be liable for payment of any
12 penalties, costs, or other payments toward the cost of
13 injunctive relief, owed by a corporation, partnership, or
14 other business entity that has entered into this
15 Stipulation.

16 22. Authority to Stipulate. Each signatory to
17 this Stipulation certifies that he or she is fully
18 authorized by the Party he or she represents to enter into
19 and stipulate to this Stipulation and to execute it on
20 behalf of the party represented and legally to bind that
21 Party.

22 23. Retention of Jurisdiction. This Court shall
23 retain jurisdiction of this matter to implement the
24 Judgment.

25 24. Obligation. Warning materials will be
26 provided by the Defendants for all Covered Products as
27 specified in this Stipulation.

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1 25. Additional Parties.

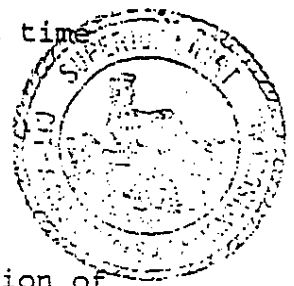
2 25.1 This Stipulation is executed with the
3 understanding that additional parties not named in the
4 Complaint have sold Covered Products in the State of
5 California since February 27, 1988 and that, if those
6 parties do not join in this Stipulation and the Judgment,
7 they may be subject either to separate suit or added as
8 defendants in this action and sued under the fictitious
9 names of Does 1 through 400.

10 25.2 Any person or entity that employs ten or more
11 persons, or which reasonably believes that at some time
12 since February 27, 1988 it has employed ten or more persons,
13 and which sold, distributed, leased, used or owned Covered
14 Products in the State of California since February, 1988,
15 may become a party to this Stipulation by undertaking the
16 following steps:

17 A. Not later than ninety (90) days after
18 this Stipulation is entered by the Court as its Order,
19 executing an "Opt-in" stipulation in which it agrees that:

20 (1) It is an entity that employs ten or more
21 persons, or that it reasonably believes that at some time
22 since February 27, 1988, it has employed ten or more
23 persons, and sold Covered Products in the State of
24 California since February, 1988;

25 (2) Agrees to submit to the jurisdiction of
26 the court as if it had accepted service of a summons and
27 complaint in this action and had agreed to be bound by the
28



1 terms and conditions of this Stipulation as a named party to
2 the action.

3 (3) It has read and agrees to be bound by all
4 terms and conditions of this Stipulation. A copy of the
5 "Opt-in" stipulation as it shall be provided to and executed
6 by such persons and entities is attached as Exhibit H.

7 B. If said person or entity manufactures
8 diesel engines which are sold into or for use in Covered
9 Products in California, said person or entity shall also
10 contribute to the penalty payments required herein by making
11 a payment in the amount specified in subparagraph C. below
12 to the organization making the payments required by
13 paragraphs 10.1, 10.2, 13 and 14 on behalf of the
14 Defendants. Once such payment is made, the entity making
15 the payment will have discharged its obligations under
16 paragraphs 10, 13, and 14 herein.

17 C. So as to allocate costs in a manner which
18 approximately reflects relative sales in and to California:

19 (1) Each Defendant manufacturer described in
20 subparagraph 25.2B whose U.S. sales of loose diesel engines
21 that are Covered Products in the most recent fiscal year
22 were \$10 million or more, the contribution required by
23 subparagraph 25.2B is \$15,000;

24 (2) Each such manufacturer whose U.S. sales of
25 loose diesel engines that are Covered Products in that year
26 were more than \$100,000 but less than \$10 million, the
27 contribution required is \$7,500;

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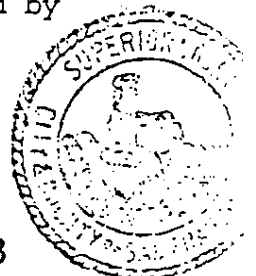


1 (3) Each such Defendant whose U.S. sales of
2 loose diesel engines that are Covered Products in that year
3 were \$100,000 or less, the contribution required is \$2500.

4 25.3 It is the intent of the PJC and the current
5 Defendants that Defendants and their representative trade
6 associations will make a good faith effort to advise
7 potential defendants of this Stipulation and to provide them
8 with copies of the Stipulation and other materials necessary
9 to enable them to elect to become parties to the Stipulation
10 pursuant to paragraph 25.2.

11 25.4 Notwithstanding any other provision of this
12 Stipulation and Judgment, except with the express written
13 approval of PJC, Mitsubishi Caterpillar Forklift America,
14 Inc. ("Mitsubishi") may not opt into and join this
15 Stipulation and Mitsubishi and wholesalers, re-sellers,
16 distributors, retailers, lessors, lessees, owners or
17 operators of Mitsubishi equipment are not released for any
18 past or future violation of Proposition 65 or Business &
19 Professions Code § 17200, if and to the extent said
20 violation is the result of exposure to diesel engine exhaust
21 or its chemical components from an engine manufactured by
22 Mitsubishi, or any division or subsidiary of Mitsubishi, or
23 any other engine manufacturer not a party to this
24 Stipulation. Nothing in this subparagraph 25.4 shall result
25 in an engine manufacturer that is a party to this
26 Stipulation incurring any liability otherwise foreclosed by
27 this Stipulation.

28



1 26. Execution in Counterparts. This Stipulation
2 may be executed in one or more counterparts which taken
3 together shall be deemed to constitute one and the same
4 document.

5 27. Stipulation Conditioned on Attorney General's
6 Review and Court Approval. To ensure that this Stipulation
7 and the Judgment thereon bars further litigation concerning
8 the claims released in paragraph 15, each term of this
9 Stipulation is conditioned upon:

10 27.1 The State Attorney General's written
11 representation that, in light of this Stipulation, no
12 further action is warranted on the matters alleged in the
13 complaint and covered by this Stipulation and Judgment,
14 which representation shall be attached as an exhibit to the
15 Stipulation filed with this Court; and

16 27.2 The above-captioned Court's entry of this
17 Stipulation as its Order.

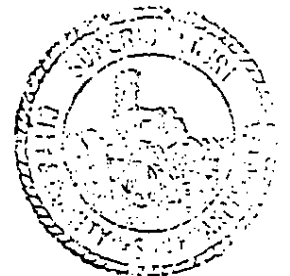
18 28. Final Judgment to Include "Additional
19 Parties". The parties agree to, and hereby jointly, apply
20 to the Court for immediate entry of this Stipulation as its
21 Order, thereby binding the parties to abide by and adhere to
22 its terms. In the event PJC should not be in existence or
23 otherwise be incapable of implementing the requirements of
24 paragraphs 28.1-28.3, such requirements shall be binding
25 upon PJC's officers, directors, partners and/or members.

26
27
28



1 28.1 The parties further agree that on or before
2 April 3, 1995, the Engine Manufacturers Association ("EMA"),
3 acting as agent for Defendants, shall provide to the PJC a
4 list of those additional parties who have executed and
5 submitted to the EMA agreements in the form of attached
6 Exhibit H pursuant to Paragraph 25 of this Stipulation. EMA
7 shall also deliver to the PJC all the original signed
8 agreements. Said list of additional parties provided by the
9 EMA shall clearly indicate which persons or entities among
10 those electing to join the Stipulation as additional parties
11 were not previously named in a "Proposition 65 Sixty Day
12 Notice Letter" sent by the PJC to the California Attorney
13 General's office pursuant to Health & Safety Code
14 § 25249.7(d).

15 28.2 Upon the PJC's receipt of the list of
16 additional parties from the EMA (but in no event later than
17 April 8, 1995), the PJC shall deliver to the California
18 State Attorney General's office a "Sixty Day Notice Letter"
19 that sets forth substantially the same allegations, in
20 substantially the same form, as those set forth in the
21 "Sixty Day Notice Letters" previously served by the PJC on
22 existing defendants, except that said Sixty Day Notice
23 Letter shall name, as alleged violators, those companies, if
24 any, which have timely elected to join this Stipulation as
25 additional parties but which have not been named as alleged
26 violators in one of the PJC's prior "Sixty Day Notice
27 Letters."
28



1 28.3 No sooner than sixty-one days following
2 service on the Attorney General's office of the "Sixty Day
3 Notice Letter" required by paragraph 28.2 (and in no event
4 later than June 15, 1995), the PJC shall file the list of
5 additional parties with the Court as an Exhibit I to this
6 Stipulation ("List of Additional Parties"). Upon the filing
7 of said Exhibit I, any Party may promptly (but in no event
8 later than July 1, 1995) apply to the Court to have this
9 Stipulation entered as its Final Judgment as to all parties
10 to this Stipulation, including all those persons or entities
11 listed as additional parties who will each be deemed to have
12 thereby submitted to the jurisdiction of the Superior Court
13 of California for the County of San Francisco and be a party
14 to the Judgment as if each had accepted service of the
15 summons and complaint as Doe defendants and had agreed to be
16 bound by this Stipulation as named defendants.

17 IT IS SO STIPULATED:

18 MELVIN PEARLSTON
19 WILLIAM VERICK
 PACIFIC JUSTICE CENTER

20 DATED: December 20, 1994

21 By: Melvin Pearlston
22 Attorneys for Plaintiffs
23 Mateel Environmental
24 Justice Foundation and
25 Pacific Justice Center
26
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MORRISON & FOERSTER
MICHÈLE B. CORASH
ROBIN M. SHAPIRO

DATED: 12/20, 1994

By: Michèle B Corash
Joint Counsel for
Defendants Caterpillar
Inc., Cummins Engine
Company, Inc., Deere &
Company, and Detroit
Diesel Corp.

IT IS SO ORDERED.

DATED: December 28, 1994

By: [Signature]
JUDGE OF THE SUPERIOR COURT



EXHIBIT A



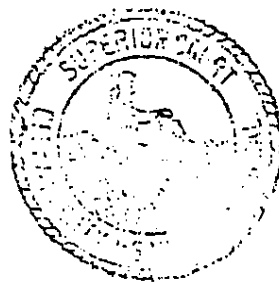
CALIFORNIA
Proposition 65 Warning
Diesel engine exhaust and some of its constituents are known to the State of California to cause cancer, birth defects, and other reproductive harm.

OR

CALIFORNIA
Proposition 65 Warning
Diesel engine exhaust and some of its constituents are known to the State of California to cause cancer, birth defects, and other reproductive harm.



EXHIBIT B



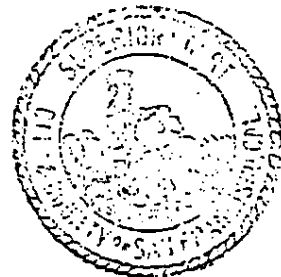
CALIFORNIA

Proposition 65 Warning

Diesel engine exhaust and some of its constituents are known to the State of California to cause cancer, birth defects, and other reproductive harm.



EXHIBIT C



CALIFORNIA PROPOSITION 65 INFORMATION

**TO CALIFORNIA CUSTOMERS AND
TO CUSTOMERS SELLING DIESEL ENGINE EQUIPMENT INTO OR
FOR USE IN CALIFORNIA.**

Proposition 65, a California law, requires warnings on products which expose individuals in California to chemicals listed under that law, including certain chemicals in diesel engine exhaust.

Obligations of Manufacturers of Diesel-Powered Off-Road Equipment. The California Superior Court has approved either of the following two methods of compliance with Proposition 65 requirements by manufacturers of off-road equipment containing diesel engines. (The court order containing these provisions is attached.)

1. On-Equipment Warning. Place the warning pictured in attachment 1 on all equipment shipped by you into or for sale in California after January 1, 1996. The warning must be in a location where it is easily visible to the operator of the equipment when (s)he is operating the equipment. The warning must be secured to the equipment. If warnings or operating instructions are provided through a digital display, you may use that method of providing the warning.
2. Operator Manual Warning. When the operator manual is next revised or by December 31, 1995, whichever is earlier, place the warning in attachment 2 in the operator manual. The warning may be either printed in the manual or on a sticker.

The warning must appear in one of the following locations:

- Inside the front cover
- Inside the back cover
- Outside the front cover
- Outside the back cover
- As the first page of text



Under either alternative, the warning must appear in the same size, print and format as the attachment selected or be of an equally conspicuous size and format. If the warning is provided in an on-screen display, the warning must contain the language in the attachment and must be provided at the time of or in connection with ignition in the same manner as other safety warnings electronically communicated on screen.

Obligation of Resellers of Diesel Engines. This letter must accompany any loose diesel engine sold in California.

Should you have any questions, please call [name of manufacturer's representative.]

Exhibit C (Con't.)

Attachment 1

Warnings to Place on Equipment

CALIFORNIA

Proposition 65 Warning

Diesel engine exhaust and some of its constituents are known to the State of California to cause cancer, birth defects, and other reproductive harm.



Warning in the Manual

CALIFORNIA

Proposition 65 Warning

Diesel engine exhaust and some of its constituents are known to the State of California to cause cancer, birth defects, and other reproductive harm.

OR

CALIFORNIA

Proposition 65 Warning

Diesel engine exhaust and some of its constituents are known to the State of California to cause cancer, birth defects, and other reproductive harm.

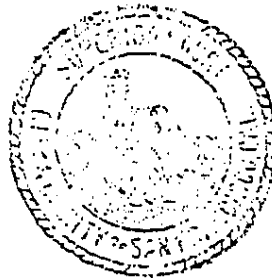


EXHIBIT D



Notice to Operators of Diesel Engine Equipment

California Proposition 65 Warning

Proposition 65, a California law, requires warnings about exposures to chemicals, including constituents of diesel engine exhaust, which are listed under that law.

Beginning during the next year, diesel engine equipment will carry the following CALIFORNIA PROPOSITION 65 WARNING either on the equipment or in the operating manual:

**CALIFORNIA
PROPOSITION 65 WARNING**
Diesel engine exhaust and some of its
constituents are known to the State of
California to cause cancer, birth defects,
and other reproductive harm.

Please note this warning and remember —

Always start and operate the engine in a well-ventilated area;

If in an enclosed area, vent the exhaust to the outside;

Do not modify or tamper with the exhaust system.

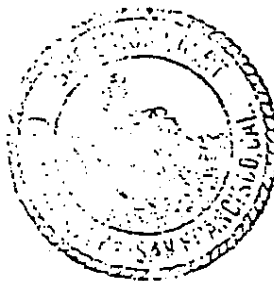




EXHIBIT E

**Proposition 65 Notice to Owners and
Operators of Diesel Engine Equipment**

Proposition 65, a California law, requires warnings about exposures to chemicals, including constituents of diesel engine exhaust, which are listed under that law.

Beginning during the next year, diesel engine equipment will carry the following CALIFORNIA PROPOSITION 65 WARNING either on the equipment or in the operating manual:

**CALIFORNIA
PROPOSITION 65 WARNING**
Diesel engine exhaust and some of its
constituents are known to the State of
California to cause cancer, birth defects,
and other reproductive harm.

Please note this warning and remember —

Always start and operate the engine in a well-ventilated area;

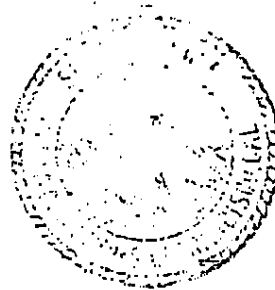
If in an enclosed area, vent the exhaust to the outside;

Do not modify or tamper with the exhaust system.



EXHIBIT F

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**Notice to our Customers Who
Sell or Distribute Diesel Engine
Equipment in California**

Proposition 65, a California law, requires warnings to individuals in California exposed to chemicals, including diesel engine exhaust, listed under that law.

The California Superior Court has approved either of the following two methods of compliance with Proposition 65 requirements by manufacturers of off-road equipment containing diesel engines. (The court order containing these provisions is attached.)

1. On-Equipment Warning.
2. Warnings in the Operator's Manual.

Under either alternative, the warning will state as follows:

CALIFORNIA

Proposition 65 Warning

**Diesel engine exhaust and some of its constituents
are known to the State of California to cause cancer,
birth defects, and other reproductive harm.**

Within the next year, the equipment and/or manuals we provide to you and our customers will contain this warning. We will also be running advertising in trade journals to inform equipment owners and operators about Proposition 65 warnings for diesel engine exhaust. Your obligation under the law and as [name of manufacturer]'s dealer/distributor is to pass on to your customers the new operator manual once it is provided to you and not to tamper with, remove or in any way obscure the new on-equipment warning. If you have any questions, contact [name of equipment manufacturers' representative.]



EXHIBIT G



CALIFORNIA PROPOSITION 65 INFORMATION

**FOR CALIFORNIA OWNERS
OF DIESEL ENGINE EQUIPMENT**

Proposition 65, a California statute, requires warnings before exposing individuals to chemicals, including diesel engine exhaust, which are listed under that law.

Under an agreement approved by the California Superior Court, off-road diesel engine equipment manufacturers will modify warnings currently on their equipment and/or in their operating manuals to provide the following Proposition 65 warning.

CALIFORNIA

Proposition 65 Warning

Diesel engine exhaust and some of its constituents are known to the State of California to cause cancer, birth defects, and other reproductive harm.

As an owner of off-road diesel engine equipment and/or as an employer, you also may have an obligation under the California Occupational Safety and Health Act or under Proposition 65 to warn persons exposed to diesel engine exhaust and/or other Proposition 65 chemicals in and around your workplace. See California Health and Safety Code section 25249.5, Title 22 of the California Code of Regulations at section 1200, *et seq.*, and Title 8 of the California Code of Regulations section 5194.



CALIFORNIA PROPOSITION 65 INFORMATION

**FOR CALIFORNIA OWNERS
OF DIESEL ENGINE EQUIPMENT**

Proposition 65, a California statute, requires warnings before exposing individuals to chemicals, including diesel engine exhaust, which are listed under that law.

Under an agreement approved by the California Superior Court, off-road diesel engine equipment manufacturers will modify warnings currently on their equipment and/or in their operating manuals to provide the following Proposition 65 warning.

CALIFORNIA

Proposition 65 Warning

Diesel engine exhaust and some of its constituents are known to the State of California to cause cancer, birth defects, and other reproductive harm.

As an owner of off-road diesel engine equipment and/or as an employer, you also may have an obligation under the California Occupational Safety and Health Act or under Proposition 65 to warn persons exposed to diesel engine exhaust and/or other Proposition 65 chemicals in and around your workplace. See California Health and Safety Code section 25249.5, Title 22 of the California Code of Regulations at section 1200, *et seq.*, and Title 8 of the California Code of Regulations section 5194.





EXHIBIT H

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Agreement to Join and Be Bound By All
Applicable Terms And Conditions of The
Stipulation for Entry of Order and Judgment
Thereon In *The Mateel Environmental Justice
Foundation, et al. v. Caterpillar, Inc., et al.*



1. A Stipulation for Entry of Order and Judgment thereon dated December __, 1994, has been entered as a stipulated order of the Superior Court for the State of California in and for the County of San Francisco in a civil case captioned *The Mateel Environmental Justice Foundation, et al. v. Caterpillar, Inc. et al.*, Case No. _____. A copy of that Stipulation is attached to this Agreement and is incorporated herein by this reference.
2. Pursuant to the provisions of Paragraph 25 of said Stipulation, the person or entity named below agrees that since February 27, 1988, said person or entity:
(a) has employed (or reasonably believes that it has employed) ten or more persons; and
(b) has, or reasonably believes that it has, sold, distributed, leased, used, or owned Covered Products as that term is defined in Paragraph 7 of said Stipulation.
3. Pursuant to the provisions of Paragraph 25 of said Stipulation, and for the limited purposes of submitting to enforcement of the terms of the Stipulation, the person or entity named below further agrees to submit to the jurisdiction of the Superior Court of California for the County of San Francisco and to be bound by the Stipulation and the Order and Judgment entered thereon just as if it had accepted service of the summons and complaint as a Doe defendant in the above-described civil action and had agreed to be bound by the Stipulation as a named defendant in said action.
4. I have read, and the person or entity named below agrees to be bound by, all terms and conditions of the attached Stipulation.
5. I will mail or deliver the signed original of this Agreement to the Engine Manufacturers Association; and, if the person or entity named below also is an engine manufacturer required by the terms of the Stipulation to contribute to the payments that are to be made, the undersigned will also include a check in the amount of my share, or the share of

the entity on behalf of which I am signing, in the amount specified in Paragraph 25.2C of the Stipulation.

6. I have full authority to agree to this Stipulation on behalf of the entity for which I am signing.

Dated: _____, 1995

Mailing Address:

Phone: _____
Fax: _____

Signature

Print Name

Title

Exact Corporate Name(s) of
Business Entities Agreeing
to Be Bound



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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in Los Angeles County, State of California. I am over 18 and not a party to the within action; my business address is 19400 Business Center Drive, Suite 102, Northridge, California 91324.

On September 10, 2002, I served the foregoing document described as: **CONSENT JUDGMENT** on interested parties in this action by placing a true copy in a sealed envelope addressed as follows:

The Attorney General's Office
Ed Weil, Deputy Attorney General
1515 Clay Street, 20th Floor
Oakland, CA 94612

BY MAIL - I deposited such envelope in the mail at Northridge, California. The envelope was mailed with postage thereon fully prepaid. As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U. S. postal service on that same day with postage thereon fully prepaid at Northridge, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

PERSONAL SERVICE -I caused such envelope to be delivered by hand upon the addressee set forth above.

Executed on September 10, 2002, at Northridge, California.

(State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.



Celia Vasquez