UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

Tracy Rosser
Senior Vice President
Wal-Mart Transportation, LLC
311 North Walton Boulevard
Bentonville, Arkansas 72716

SEP 1 5 2017

Dear Mr. Rosser:

Enclosed is your copy of the Consent Agreement and Final Order ("CAFO") filed pursuant to Section 113(d) of the Clean Air Act. The terms of the CAFO require payment of the penalty within 30 days of the effective date (stamped filing date).

If you have any questions concerning the CAFO, please contact Elfego Felix of my staff at (415) 947-4141 or have your attorney contact Kara Christenson of our Office of Regional Counsel at (415) 972-3881.

Sincerely,

Kathleen H. Johnson
Director, Enforcement Division

Enclosures

cc: Todd Sax, Enforcement Division Chief, California Air Resource Board

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KARA CHRISTENSON
Senior Counsel
United States Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, California 94105
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** FILED **
15SEP2017 - 02:40PM
U.S.EPA - Region 09

SYLVIA QUAST
Regional Counsel
United States Environmental Protection Agency, Region IX

Attorneys for Complainant

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 HAWTHORNE STREET
SAN FRANCISCO, CALIFORNIA 94105

In the Matter of:	)	Docket No. CAA-09-2017-0006
	)	
	)	
Wal-Mart Transportation, LLC,	)	CONSENT AGREEMENT AND
	)	FINAL ORDER PURSUANT TO
Respondent	)	40 C.F.R. §§ 22.13 and 22.18
	)	

I. CONSENT AGREEMENT

A. PRELIMINARY STATEMENT

1. This is a civil administrative penalty assessment proceeding brought under section 113(d) of the Clean Air Act (the "Act"), 42 U.S.C. § 7413(d), and sections 22.13 and 22.18 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules"), as codified at 40 C.F.R. Part 22. In accordance with 40 C.F.R. §§ 22.13 and 22.18, entry of this Consent Agreement and Final Order ("CAFO") simultaneously initiates and concludes this matter.

2. Complainant is the Director of the Enforcement Division, United States Environmental Protection Agency, Region IX (the "EPA"), who has been duly delegated the authority to initiate and settle civil administrative penalty proceedings under section 113(d) of the Act.

3. Respondent is Wal-Mart Transportation, LLC ("Wal-Mart" or "Respondent"), a wholly-owned subsidiary of Wal-Mart Stores, Inc. Respondent is a motor carrier that owns and operates diesel-fueled vehicles driven in California and supports approximately 14 distribution centers and 296 retail units in California.

4. Complainant and Respondent, having agreed that settlement of this action is in the public interest, consent to the entry of this CAFO without adjudication of any issues of law or fact herein and agree to comply with the terms of this CAFO.

B. JURISDICTION

5. Pursuant to section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), EPA and the United States Department of Justice jointly determined that this matter, which involves alleged violations that occurred more than one year before the initiation of this proceeding, is appropriate for an administrative penalty assessment.

6. The regulation at issue in this action has been incorporated into the federally-approved and federally-enforceable California State Implementation Plan; therefore, in satisfaction of the notice requirements of section 113(a) of the Act, 42 U.S.C. § 7413(a), on April 10, 2015, EPA issued to Respondent a notice of violation ("NOV") and provided a copy of the NOV to the California Air Resources Board ("CARB"), providing notice to both Respondent and CARB that EPA found that Respondent committed the alleged violations described in Section I.E. of this CAFO and providing Respondent an opportunity to confer with the EPA. On June 4, 2015, representatives of Respondent and EPA discussed the NOV.

C. GOVERNING LAW

Clean Air Act

7. Pursuant to section 107(d) of the Act, 42 U.S.C. § 7407(d), the Administrator promulgated lists of attainment status designations for each air quality control region ("AQCR") in every state. These lists identify the attainment status of each AQCR for each of the criteria pollutants. The attainment status designations for California AQCRs are listed at 40 C.F.R. § 81.305.

8. There are several AQCRs designated as nonattainment for fine particulate matter (i.e., $PM_{2.5}$) in California, including all of the San Joaquin Valley and major portions of the Los Angeles-South Coast Air Basin. *See* 40 C.F.R. § 81.305.

9. Section 110(a) of the Act requires that all states adopt SIPs that provide for the implementation, maintenance and enforcement of primary and secondary air quality standards. 42 U.S.C. § 7410(a).

10. A person's failure to comply with any approved regulatory provision of a SIP renders the person in violation of an applicable implementation plan and subject to enforcement under section 113(a)(1) of the Act. 42 U.S.C. § 7413(a)(1).

Title 13, Section 2025 of California Code of Regulations: On-Road Heavy-Duty Diesel Vehicles

11. On December 14, 2011, CARB amended its "Regulation to Reduce Emissions of Diesel Particulate Matter, Oxides of Nitrogen and Other Criteria Pollutants From In-Use Heavy-Duty Diesel-Fueled Vehicles," codified at title 13, section 2025 of the California Code of Regulations (the "Truck and Bus Regulation").

12. The Truck and Bus Regulation was incorporated into the federally-approved and federally-enforceable California SIP on May 4, 2012. *See* 77 Fed. Reg. 20308 (April 4, 2012). Since that time, EPA has coordinated with CARB regarding EPA's enforcement of the Truck and Bus

Regulation pursuant to section 113(a)(1) of the Act, 42 U.S.C. § 7413(a)(1), and 40 C.F.R. § 52.23.

13. Under section 2025(d)(17) of the Truck and Bus Regulation, "Diesel Particulate Filter" means "an emission control technology that reduces diesel particulate matter emissions by directing the exhaust through a filter that physically captures particles but permits gases to flow through. . . ."

14. Under section 2025(d)(18) of the Truck and Bus Regulation, "Diesel Particulate Matter (PM)" means "the particles found in the exhaust of diesel-fueled compression ignition engines. . . ."

15. Under section 2025(d)(28) of the Truck and Bus Regulation, "Fleet" means "one or more vehicles, owned by a person, business, or government agency, traveling in California and subject to this regulation."

16. Under section 2025(d)(29) of the Truck and Bus Regulation, "Fleet Owner" means, with certain exceptions, "either the person registered as the owner or lessee of a vehicle by the California Department of Motor Vehicles (DMV), or its equivalent in another state, province, or country, as evidenced on the vehicle registration document carried in the vehicle."

17. Under section 2025(d)(47) of the Truck and Bus Regulation, "Person" means "an individual, corporation, business trust, estate, trust, partnership, Limited Liability Company, association, joint venture, government, governmental subdivision, agency, or instrumentality, public corporation, or any other legal or commercial entity."

18. Under section 2025(d)(48) of the Truck and Bus Regulation, "PM BACT" means "the technology employed on the highest level Verified Diesel Emission Control Strategy for PM or an engine that is equipped with an original equipment manufacturer (OEM) diesel particulate filter and certified to meet 0.01 g/bhp-hr [grams per brake horsepower hour] certification standard."

19. Under section 2025(d)(60) of the Truck and Bus Regulation, VDECS means "an emissions control strategy, designed primarily for the reduction of diesel PM emissions, which has been verified pursuant to the Verification Procedures. VDECS can be verified to achieve Level 1 diesel PM reductions (25 percent), Level 2 diesel PM reductions (50 percent), or Level 3 diesel PM reductions (85 percent). VDECS may also be verified to achieve NOx reductions."

20. The Truck and Bus Regulation applies to diesel-fueled trucks and buses that are privately or federally owned, and to publicly and privately owned school buses, that have a manufacturer's gross vehicle weight rating ("GVWR") greater than 14,000 pounds. The Truck and Bus regulation requires, in part, Fleet Owners to upgrade their vehicles to meet specific performance standards for oxides of nitrogen ("NOx") and particulate matter ("PM").

21. Under section 2025(d)(3) of the Truck and Bus Regulation, "2010 Model Year Emissions Equivalent Engine" means "emissions from: (A) An engine certified to the 2004 through 2006 model year heavy-duty diesel engine emissions standard that is equipped with the highest VDECS and reduces NOx emissions by at least 85 percent; or (B) An engine that was built to the 2004 engine emission standard and was not used in any manufacturer's averaging, banking, or trading program that is equipped with the highest VDECS and reduces NOx exhaust emissions by at least 85 percent; or (C) An engine certified to the 2007 model year heavy-duty diesel engine emissions standard that meets PM BACT and reduces NOx exhaust emissions by more than 70 percent; or (D) An engine certified to the 2010 model year or newer heavy-duty diesel engine emissions standard that meets PM BACT; or (E) A heavy-duty engine certified to 0.2 g/bhp-hr or less NOx emissions level and 0.01 g/bhp-hr or less PM emissions level, or (F) An off-road engine certified to the Tier 4 Final engine emissions standard."

22. Section 2025(g) of the Truck and Bus Regulation requires subject vehicles with GVWR of over 26,000 pounds to meet the PM BACT requirements and upgrade to a 2010 Model Year Emissions Equivalent Engine according to the compliance schedule set forth in Table 2 of that section:

    a. By January 1, 2012, all subject vehicles with an engine model year of 1996 through 1999 must install a PM Filter.

    b. By January 1, 2013, all subject vehicles with an engine model year of 2000 through 2004 must install a PM Filter.

    c. By January 1, 2014, all subject vehicles with an engine model year of 2005 through 2006 must install a PM Filter.

    d. Between January 1, 2015 through January 1, 2023, all subject vehicles must upgrade to a 2010 Model Year Emissions Equivalent Engine depending on their engine model year.

23. Section 2025(x)(1) of the Truck and Bus Regulation provides that "[t]he vehicle owner shall comply with all applicable requirements and compliance schedules set forth in this regulation."

24. Section 2025(x)(2) of the Truck and Bus Regulation provides that "[a]ny in-state or out-of-state motor carrier, California broker, or any California resident who operates or directs the operation of any vehicle subject to this regulation shall verify that each hired or dispatched vehicle is in compliance with the regulation and comply with the record keeping requirements of Section 2025(s)(4)."

25. Under section 2025(s)(4) of the Truck and Bus Regulation, motor carriers or brokers must maintain bills of lading and other documentation identifying the motor carrier or broker who hired or dispatched the vehicle and the vehicle dispatched.

D. STIPULATED FACTS

26. On June 16 and November 25, 2014, EPA issued information requests to Respondent pursuant to section 114 of the Act, 42 U.S.C. § 7414 regarding compliance with the Truck and Bus Regulation ("Information Requests"). Concurrently with issuance of the Information Requests to Respondent, EPA provided copies to CARB.

27. On August 5, August 29, September 10, September 19, and December 31, 2014, Wal-Mart Transportation submitted responses to EPA's Information Requests.

28. As referenced in Paragraph 6 above, on April 10, 2015, EPA issued an NOV to Respondent and provided a copy of the NOV to CARB regarding the alleged violations described in Section I.E. of this CAFO providing notice to both Respondent and CARB and an opportunity for Respondent to confer with the EPA regarding the NOV.

29. On June 4, 2015, representatives of Respondent and EPA discussed the NOV, and have had additional discussions on subsequent occasions to negotiate the terms of this settlement, including Respondent's actions with respect to its private fleet and third-party carriers.

30. Respondent represents that it has taken actions with respect to its private fleet and third-party carriers sufficient to address the violations EPA alleged in the NOV and to assure compliance with the Truck and Bus Regulation.

31. EPA has determined that Respondent's compliance program is consistent with the obligations imposed on motor carriers to verify compliance pursuant to section 2025(x)(2) of the Truck and Bus Regulation.

E. VIOLATIONS OF LAW ALLEGED BY EPA

32. Respondent is a "Person" as defined under section 302(e) of the Act, 42 U.S.C. § 7602(e), and section 2025(d)(47) of the Truck and Bus Regulation.

33. Respondent has a "Fleet" of vehicles as that term is defined under section 2025(d)(28) of the Truck and Bus Regulation, and is a "Fleet Owner" as that term is defined under section 2025(d)(29) of the Truck and Bus Regulation.

34. Respondent owned and operated 19 diesel-fueled vehicles without diesel particulate filters ("DPFs") during 2013-2014.

35. Respondent violated section 2025(g) of the Truck and Bus Regulation by failing to timely install DPFs on these 19 diesel-fueled vehicles that it owned and operated in California, during 2013-2014.

36. Respondent hired at least 249 different motor carriers between May 4, 2012 and June 16, 2014 for which the Respondent did not verify compliance with the Truck and Bus Regulation.

37. Respondent violated section 2025(x)(2) of the Truck and Bus Regulation by failing to verify that each of the 249 motor carriers it hired between May 4, 2012 and June 16, 2014 was in compliance with the Truck and Bus Regulation.

38. Respondent violated section 2025(x)(1) of the Truck and Bus Regulation by failing to comply with all applicable requirements and compliance schedules set forth in the Truck and Bus Regulation.

F. TERMS OF CONSENT AGREEMENT

39. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent:

    a. admits that EPA has jurisdiction over the subject matter alleged in this CAFO and over Respondent;

    b. admits to the stipulated facts contained in Section I.D. of this CAFO;

    c. neither admits nor denies the specific factual allegations contained in Section I.E. of this CAFO;

    d. consents to the assessment of a civil penalty under this Section, as stated below;

e. consents to the conditions specified in this CAFO, including performance of a Supplemental Environmental Project set forth in Paragraphs 42 through 52 and Appendix A of this CAFO;

f. waives any right to contest the allegations set forth in Section I.E of this CAFO; and

g. waives its rights to appeal the proposed Order contained in this CAFO.

Civil Penalty

40. Respondent agrees to:

a. pay the civil penalty of ONE HUNDRED THOUSAND DOLLARS ($100,000) ("EPA Penalty") within 30 calendar days of the Effective Date of this CAFO; and

b. pay the EPA Penalty using any method, or combination of methods, provided on the website http://www2.epa.gov/financial/additional-instructions-making-payments-epa, and identifying each and every payment with "Docket No. CAA-09-2017-0006" Within 24 hours of payment of the EPA Penalty, send proof of payment to Elfego Felix at:

Mail Code (ENF-2-1)
Enforcement Division
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105

and at felix.elfego@epa.gov ("proof of payment" means, as applicable, a copy of the check, confirmation of credit card or debit card payment, confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to the EPA requirements, in the amount due, and identified with "Docket No. CAA-09-2017-0006").

41. If Respondent fails to pay the civil administrative penalty specified in Paragraph 34(a) of this CAFO within 30 days after the effective date of this CAFO, then Respondent shall pay to EPA a stipulated penalty in the amount of ONE THOUSAND DOLLARS ($1,000.00) for each day the default continues, upon written demand by EPA.

If Respondent fails to timely pay any portion of the penalty assessed under this CAFO, EPA may:

a. request the Attorney General to bring a civil action in an appropriate district court to recover: the amount assessed; interest at rates established pursuant to 26 U.S.C. § 6621(a)(2); the United States' enforcement expenses; and a 10 percent quarterly nonpayment penalty, 42 U.S.C. § 7413(d)(5);

b. refer the debt to a credit reporting agency or a collection agency, 42 U.S.C. § 7413(d)(5), 40 C.F.R. §§ 13.13, 13.14, and 13.33;

c. collect the debt by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, 40 C.F.R. Part 13, Subparts C and H; and

d. consistent with 40 C.F.R. § 13.17, (i) suspend or revoke Respondent's licenses or other privileges if the failure to timely pay is "inexcusable, prolonged, or repeated," or (ii) suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds.

Conditions - Supplemental Environmental Project

42. As a condition of settlement, Respondent agrees to perform a Supplemental Environmental Project ("SEP") as set forth in Paragraphs 42 through 49 and Appendix A to this CAFO. Respondent has selected the South Coast Air Quality Management District ("SCAQMD") as the SEP Implementer for the installation of at least one School Air Filtration System ("AFS") to reduce harmful air pollutants in classrooms in schools in the South Coast Air Basin.

43. Respondent shall provide THREE HUNDRED THOUSAND DOLLARS ($300,000) to the SEP Implementer within 60 calendar days of the effective date of this CAFO to be utilized in the AFS SEP.

44. The AFS SEP shall be implemented as set forth in Paragraphs 42 through 49 and Appendix A of this CAFO in compliance with the schedule and the other terms of this CAFO.

45. The AFS SEP shall be for the purpose of improving air quality. The funding shall be utilized to: 1) install high performance filtration systems in classrooms and common areas, 2) conduct post-installation testing to verify the performance of the systems and report test results, 3) train school staff on the maintenance of these AFSs to ensure proper and efficient operation, 4) provide a three year supply of replacement filters, 5) prepare reports to document the status of the SEP, and 6) provide for reasonable administrative costs charged by the AFS SEP Implementer for implementing the AFS SEP.

46. Within 60 days of completion of installation of the AFS SEP, a SEP Completion Report that includes the information specified in Appendix A of this CAFO shall be submitted to EPA at the address specified in Appendix A. Respondent may place reasonable reliance on the accuracy of reports or other information provided by the AFS SEP Implementer.

47. After receipt of the SEP Completion Report described in Paragraph 46 above, EPA shall, within 30 days, notify Respondent, in writing, regarding: (a) any deficiencies in the SEP Completion Report itself along with a grant of an additional thirty (30) days for Respondent to correct any deficiencies; or (b) indicate that EPA concludes that the project has been completed satisfactorily; or (c) determine that the project has not been completed satisfactorily and seek stipulated penalties as specified below.

48. If EPA elects to exercise option (a) in Paragraph 47 above, EPA shall permit Respondent the opportunity to object in writing to the notification of deficiency given pursuant to Paragraph 47 within ten (10) days of receipt of such notification. EPA and Respondent shall have an additional thirty (30) days from receipt by EPA of the notification of objection to reach agreement on changes necessary to the SEP Completion Report. If agreement cannot be reached on any such issue within this 30-day period, EPA shall provide a written statement of its decision on the adequacy of completion of the SEP to Respondent, which decision shall be final and binding upon Respondent. In the event the SEP is not completed as reasonably contemplated herein, as determined by EPA, stipulated penalties shall be due and payable by Respondent to EPA as specified below.

49. Respondent shall request the SEP Implementer to maintain, and present to EPA upon request, all documents to substantiate the funds expended and work completed to implement the SEP described in Paragraphs 42 through 49 and Appendix A of this CAFO, and to provide these documents to EPA within thirty (30) calendar days of any request for the documents. Respondent may place reasonable reliance on the accuracy of reports or other information provided by the SEP Implementer to satisfy this obligation.

50. Respondent certifies the truth and accuracy of each of the following:

a. That, as of the date of executing this CAFO, Respondent is not required to perform or develop the SEPs by any federal, state, or local law or regulation and is not required to perform or develop the SEPs by agreement, grant, or as injunctive relief awarded in any other action in any forum;

b. That the SEP is not a project that Respondent was planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this CAFO;

c. That Respondent had not received and will not receive credit for the SEP in any other enforcement action;

d. That Respondent will not receive reimbursement for any portion of the SEP from another person or entity;

e. That for federal income tax purposes, Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP;

f. That it is not a party to any open federal financial assistance transaction that is funding or could fund the same activity as the SEPs described in this CAFO; and

g. That it has inquired of the SEP Implementer as to whether it is a party to an open federal financial assistance transaction that is funding or could fund the same activity as the SEP and has been informed by the SEP Implementer that it is not a party to such a transaction.

51. In the event that Respondent fails to comply with one or more requirements of the SEP set forth in Paragraphs 42 through 49 and Appendix A of this CAFO, the following provisions for stipulated penalties shall apply:

a. Respondent agrees to pay Complainant a stipulated penalty in the following amounts for each day the default continues:

VIOLATION	STIPULATED PENALTY
Failure to pay the SCAQMD $300,000 as the SEP Implementer within 60 calendar days from the effective date of this CAFO.	$1,000 per calendar day after 60 days from the effective date of this CAFO up to but not to exceed FOUR HUNDRED THOUSAND DOLLARS.
Failure to timely complete the SEP, including installation of the air filtration system(s) and submittal of SEP Completion Report.	$250 per calendar day for the first thirty (30) calendar days, then $500 per calendar day thereafter up to but not to exceed FIFTY THOUSAND DOLLARS.

b. All penalties shall begin to accrue on the date that performance is due or a violation of this CAFO occurs and shall continue to accrue through the final day of correction of the noncompliance. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations.

c. All penalties owed to EPA under this Section shall be due within thirty (30) calendar days of Respondent's receipt of a notification of noncompliance and request for payment from EPA. Such notification shall describe the noncompliance and shall indicate the amount of penalties due. Interest at the current rate published by the United States Treasury, as described at 40 C.F.R. § 13.11, shall begin to accrue on the unpaid balance at the end of the thirty-day period.

d. Payment of stipulated penalties shall be made in accordance with the procedure set forth for payment of the penalty in Section I.F of this CAFO.

e. All payments shall indicate Respondent's name and address, and the EPA docket number assigned to this action.

f. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this CAFO.

g. Where all elements of a SEP have been satisfactorily completed, but the Respondent has expended less than the agreed-upon amount of the SEP, EPA may, in its discretion, choose to reduce or waive stipulated penalties otherwise due under this CAFO.

h. The payment of stipulated penalties specified in this Section shall not be deducted by Respondent or any other person or entity for federal, state or local taxation purposes.

52. Any public statement, oral or written, in print, film, or other media, made by Respondent making reference to the SEP under this CAFO, from the date of its execution of this CAFO, shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action, In the Matter of Wal-Mart Transportation, LLC, (Docket No. CAA-09-2017-0006), taken by the U.S. Environmental Protection Agency to enforce federal laws."

Additional Terms of Settlement

53. The provisions of this CAFO shall apply to and be binding upon Respondent and its officers, directors, employees, agents, trustees, servants, authorized representatives, successors, and assignees. Respondent must give written notice and a copy of this CAFO to any successors in interest prior to any transfer of ownership or control of any portion of or interest in Respondent. Simultaneously with such notice, Respondent shall provide written notice of such transfer, assignment, or delegation to EPA. In the event of any such transfer, assignment, or delegation,

Respondent shall not be released from the obligations or liabilities of this CAFO unless EPA has provided written approval of the release of said obligations or liabilities.

54. By signing this CAFO, Respondent acknowledges that this CAFO will be available to the public and agrees that this CAFO does not contain any confidential business information or personally identifiable information.

55. By signing this CAFO, the undersigned representative of Complainant and the undersigned representative of Respondent each certify that he or she is fully authorized to execute and enter into the terms and conditions of this CAFO and has the legal capacity to bind the party he or she represents to this CAFO.

56. By signing this CAFO, Respondent certifies that the information it has supplied concerning this matter was at the time of submission true, accurate, and complete for each such submission, response, and statement. Respondent acknowledges that there are significant penalties for submitting false or misleading information, including the possibility of fines and imprisonment for knowing submission of such information, under 18 U.S.C. § 1001.

57. Each party shall bear its own attorney's fees, costs, and disbursements incurred in this proceeding.

G. EFFECT OF CONSENT AGREEMENT AND ATTACHED FINAL ORDER

58. In accordance with 40 C.F.R. § 22.18(c), completion of the terms of this CAFO resolves only Respondent's liability for federal civil penalties for the violations and facts specifically alleged above.

59. Penalties paid pursuant to this CAFO shall not be deductible for purposes of federal taxes.

60. This CAFO constitutes the entire agreement and understanding of the parties and supersedes any prior agreements or understandings, whether written or oral, among the parties with respect to the subject matter hereof.

61. Any violation of this Order may result in a civil judicial action for an injunction or civil penalties of up to $45,268 per day per violation, or both, as provided in section 113(b)(2) of the Act, 42 U.S.C. § 7413(b)(2), as well as criminal sanctions as provided in section 113(c) of the Act, 42 U.S.C. § 7413(c). EPA may use any information submitted under this Order in an administrative, civil judicial, or criminal action.

62. Nothing in this CAFO shall relieve Respondent of the duty to comply with all applicable provisions of the Act and other federal, state, or local laws or statutes, nor shall it restrict EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.

63. Nothing herein shall be construed to limit the power of EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment.

64. EPA reserves the right to revoke this CAFO and settlement penalty if and to the extent that EPA finds, after signing this CAFO, that any information provided by Respondent was materially false or inaccurate at the time such information was provided to EPA, and EPA reserves the right to assess and collect any and all civil penalties for any violation described herein. EPA shall give Respondent notice of its intent to revoke, which shall not be effective until received by Respondent in writing.

H. EFFECTIVE DATE

65. Respondent and Complainant agree to issuance of the attached Final Order. Upon filing, EPA will transmit a copy of the filed CAFO to the Respondent. This CAFO shall become effective after execution of the Final Order by the Regional Judicial Officer on the date of filing with the Regional Hearing Clerk.

The foregoing Consent Agreement In the Matter of Wal-Mart Transportation, LLC, Docket No. CAA-09-2017-000_, is hereby stipulated, agreed, and approved for entry.

FOR RESPONDENT:

Signature

Date 8/18/17.

Printed Name: Tracy L. Rosser

Title: SVP, Transportation

Address: 311 N. Walton Blvd Bentonville, AR 72716

Respondent's Federal Tax Identification Number: _____

The foregoing Consent Agreement In the Matter of Wal-Mart Transportation, LLC, Docket No. CAA-09-2017-000_, is hereby stipulated, agreed, and approved for entry.

FOR COMPLAINANT:

9/7/17
DATE

Kathleen H. Johnson
Director
Enforcement Division
United States Environmental
Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105

II. FINAL ORDER

EPA Region IX and Wal-Mart Transportation, LLC, having entered into the foregoing Consent Agreement,

IT IS HEREBY ORDERED that this CAFO (Docket No. CAA-09-2017-0006) be entered, and Respondent shall pay a civil administrative penalty in the amount of ONE HUNDRED THOUSAND DOLLARS ($100,000) and otherwise comply with the terms set forth in the CAFO.

09/15/17

DATE

STEVEN JAWGIEL
Regional Judicial Officer
United States Environmental
Protection Agency, Region IX

APPENDIX A
AIR FILTRATION SYSTEM SUPPLEMENTAL ENVIRONMENTAL PROJECT ("AFS SEP")

A. SEP Purpose

The Air Filtration System ("AFS") Supplemental Environmental Project ("SEP") shall be for the purpose of installing an AFS at an entire school to reduce exposures to Ultrafine Particles[1] ("UFP"), Black Carbon ("BC"), and Fine Particulate Matter ("$PM_{2.5}$") emitted from trucks operating on highways near the school.

B. SEP Implementation

1. Wal-Mart Transportation, LLC ("Wal-Mart"), has selected the South Coast Air Quality Management District ("SCAQMD") as the SEP Implementer to implement the AFS SEP.

2. Wal-Mart shall provide $300,000 to the SEP Implementer within sixty (60) days of the effective date of this CAFO for the purpose of accomplishing the AFS SEP in accordance with Paragraphs 42 through 49 and Appendix A of this CAFO.

3. The SEP funds shall be expended in accordance with Paragraphs 42 through 49 and Appendix A of this CAFO to: 1) install high performance air filtration units in classrooms and common areas, 2) conduct post-installation testing to verify the performance of the systems and to report test results, 3) train school staff on the maintenance of these AFSs to ensure proper and efficient operation, 4) provide a three-year supply of replacement filters, 5) prepare reports to document the status of the SEP, and 6) provide for reasonable administrative costs charged by the SEP Implementer for implementing the SEP.

4. Unless SCAQMD, as the SEP Implementer, determines in its professional judgment that there is a more effective installation strategy, the SEP funds shall be used to purchase at least one AFS for at least one entire school. For purposes of Appendix A of this CAFO, "entire school" shall mean all classrooms and common areas in a school for which the installation of an air filtration unit is reasonably practicable and must include a substantial percentage of total classrooms and common areas in the school. If there are remaining funds, Wal-Mart shall purchase an additional AFS for another entire school(s). If there are insufficient funds to purchase an additional AFS for an entire school, Wal-Mart can direct the remaining balance to pay for the cost of additional replacement filters, future maintenance costs, air filtration unit(s) for a classroom or common area within a school (but not the entire school), and other associated costs for the AFS and/or air filtration unit(s) purchased.

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[1] UFP are particles roughly defined by an aerodynamic diameter less than 0.1 μm, estimated by measuring the total number concentration of all airborne particles down to at least 10 nm in diameter.

5. The SEP Implementer will evaluate potential school sites in terms of proximity to major roadways and the type of the current heating, ventilation and air conditioning ("HVAC") units. School boundaries will be located within approximately 500 feet of major roadways. Site visits shall be conducted as necessary to verify the existing HVAC system/specifications. The SEP Implementer will determine the type of AFS to install in accordance with the Performance Specifications identified below. Consideration will be given to whether the type of AFS has been installed in schools/classrooms in proximity to major sources of particulate matter and whether the AFS vendor or contractor for that type of AFS has design and operational proposals appropriate for classroom conditions. The SEP Implementer shall consult, as appropriate, other air pollution control agencies that have programs installing AFSs.

6. The SEP Implementer shall present a detailed schedule for the installation of the AFS. Installation and other implementation issues shall be coordinated with the appropriate school and school district.

7. The SEP Implementer shall ensure that there is a maintenance program established to provide training for the selected school(s)' maintenance staff for ongoing maintenance of the AFS following installation of the AFS at the school. An operation and maintenance manual shall be provided to the school/school districts, and shall include, but not be limited to, the required frequency for cleaning and replacement of the filters and other maintenance procedures.

8. Within 60 days after completion of the AFS SEP, an AFS SEP Completion Report shall be submitted to EPA at the address specified in Section E herein. The SEP Completion Report must include the following information: 1) the type of AFS installed, 2) the number of schools/classrooms/common areas where AFSs are installed, 3) the expenditures associated with the project, 4) the operation and maintenance manual, and 5) a written certification of project completion. For purposes of the AFS SEP Completion Report, Wal-Mart may place reasonable reliance on the accuracy of reports or other information provided to it by the SEP Implementer. The AFS SEP Completion Report should be certified by an appropriate corporate official.

C. Environmental Benefit

Exposure to traffic-related air pollution has been linked to a variety of short-term and long-term health effects, including asthma, reduced lung function, impaired lung development in children, and cardiovascular effects in adults. Children's exposure to traffic-related air pollution while at school is a concern because many schools across the country are located near heavily traveled roadways and children are particularly vulnerable to air traffic pollution.[2] Certain filtration systems have been independently tested and proven to remove up to 87 to 96% of ultra-fine particulates and black carbon from classrooms.

[2] http://www.epa.gov/sites/production/files/2015-10/documents/ochp_2015_near_road_pollution_booklet_v16_508.pdf.

D. Performance Specifications

In order to ensure that the environmental benefit will be achieved and that the AFS will function effectively within the classroom setting, the following performance specifications are hereby incorporated, as required, by the AFS SEP unless they differ from local requirements. The AFS will meet these performance specifications at the time the AFS is installed at the selected school.

1. Definitions.

    a. Baseline Conditions – Percentage reduction in the indoor concentration of a particular air pollutant relative to its concurrent outdoor level before installation of any air filtration unit.
    b. Minimum Average Removal Efficiency – Minimum percentage reduction in the indoor air concentration of a particular pollutant relative to its concurrent outdoor level after installation of one or more air filtration units, averaged over all time periods and installations.
    c. Potential Average Removal Efficiency – Potential percentage reduction in the indoor concentration of a particular pollutant relative to its concurrent outdoor level after installation of one or more air filtration units, demonstrated for several time periods and installations.

2. Removal Efficiency Standard

    The AFS must demonstrate, from Baseline Conditions, Minimum Average Removal Efficiencies of 50% for UFC, BC and $PM_{2.5}$ and should have demonstrated Potential Average Removal Efficiencies of at least 90% for the same pollutants unless local school authorities require different standards.

3. Minimal Impact on Air Flow

    The AFS shall lower the indoor concentrations of pollutants identified in D(2) above, but shall not significantly reduce the existing air flow rates through the HVAC system and shall not require significantly higher power consumption to achieve similar flow rates. Determinations regarding impacts on air flow may require coordination and consultation with local school authorities.

4. Low Noise

    The AFS shall not exceed a 45 decibels noise threshold for any new in-classroom equipment, a standard required by many school districts unless local rules have different requirements.

5. Filter Lifetime

To minimize labor costs associated with filter replacement, the advertised lifetime of the installed high-performance filters should be at least three months.

E. Schedule

Wal-Mart shall submit the funds for the AFS SEP within 60 days of the effective date of this CAFO to the SEP Implementer.

The AFS SEP shall be completed no later than two years after the effective date of this CAFO.

Within 60 days of completion of the AFS SEP, the AFS SEP Completion Report shall be submitted to:

Elfego Felix
Mail Code (ENF-2-1)
Enforcement Division
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105

CERTIFICATE OF SERVICE

I certify that the original of the fully executed Consent Agreement and Final Order in the matter of Wal-Mart Transportation, LLC (**Docket No. CAA-09-2017-0006**) was filed with the Regional Hearing Clerk, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, and that a true and correct copy of the same was sent to the following parties:

A copy was mailed via CERTIFIED MAIL to:

Tracy Rosser
Senior Vice President
Wal-Mart Transportation, LLC
311 North Walton Boulevard
Bentonville, Arkansas 72716

By U.S. Postal Service to:

Ilana Saltzbart
King & Spalding LLP
1700 Pennsylvania Avenue, NW
Washington, D.C. 20006

An additional copy was hand-delivered to the following U.S. EPA case attorney:

Kara Christenson
Senior Counsel (ORC-2)
U.S. EPA, Region IX
75 Hawthorne Street
San Francisco, California 94105

Steven Armsey
Steven Armsey
Regional Hearing Clerk Signature

Sept. 15, 2017
Date