



STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

JOHN ELIAS BALDACCI  
GOVERNOR

DAVID P. LITTELL  
COMMISSIONER

MEMORANDUM

TO: Board of Environmental Protection  
FROM: Kurt Tidd PE, Bureau of Air Quality Control  
SUBJECT: Freightliner of Maine, Westbrook.  
DATE: January 7, 2010

\*\*\* \*\*

Statutory and Regulatory References:

Maine's Rule for *New Motor Vehicle Standards*, 06-096 CMR 127 requires that any new Heavy Duty Diesel Truck sold in the State of Maine is required to have emissions controls that comply with the "California-Certified" emissions standards.

Location:

Westbrook, Maine

Description:

On June 29, 2009, Department of Motor Vehicle staff referred to the Department of Environmental Protection documentation that Freightliner of Maine had sold two Freightliner Heavy Duty Diesel Trucks that were not California Emissions Certified that were later registered within the State of Maine.

Environmental Issues:

Maine's Rule for *New Motor Vehicle Standards*, 06-096 CMR 127 establishes motor vehicle emissions standards for vehicles sold within the State of Maine. By regulating the emissions from new vehicles that are sold within the State, the amount of pollutants from mobile sources can be limited, improving the quality of the air the public breathes.

Department Recommendation:

Staff recommends approval of the Consent Agreement which requires Freightliner of Maine to comply with the requirements of Maine's Rule for *New Motor Vehicle Standards*, 06-096 CMR 127 and provides for payment of civil penalties in the amount of \$1,500.00. The penalty was a negotiated settlement based on the Air Bureau's penalty assessment guideline.

AUGUSTA  
17 STATE HOUSE STATION  
AUGUSTA, MAINE 04333-0017  
(207) 287-7688 FAX: (207) 287-7826  
RAY BLDG., HOSPITAL ST.

BANGOR  
106 HOGAN ROAD, SUITE 6  
BANGOR, MAINE 04401  
(207) 941-4570 FAX: (207) 941-4584

PORTLAND  
312 CANCO ROAD  
PORTLAND, MAINE 04103  
(207) 822-6300 FAX: (207) 822-6303

PRESQUE ISLE  
1235 CENTRAL DRIVE, SKYWAY PARK  
PRESQUE ISLE, MAINE 04679-2094  
(207) 764-0477 FAX: (207) 760-3143



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

JOHN ELIAS BALDACCI
GOVERNOR

DAVID P. LITTELL
COMMISSIONER

IN THE MATTER OF:

FREIGHTLINER OF MAINE, INC. ) ADMINISTRATIVE CONSENT
CUMBERLAND COUNTY ) AGREEMENT
WESTBROOK, MAINE )

This Agreement, by and among Freightliner of Maine, Inc. ("Freightliner"), the Maine Department of Environmental Protection ("Department"), and the Maine Office of the Attorney General, is entered into pursuant to the laws concerning the Department's Organization and Powers, 38 M.R.S.A. § 347-A(1).

The parties agree as follows:

- 1. Freightliner is a Maine corporation that engages in a retail heavy duty truck sales with its principal location in Westbrook, Maine.
2. The violation described herein occurred at Freightliner's Westbrook location.
3. Throughout the period of time addressed by this agreement, Freightliner was subject to the following Maine environmental standards:

1. Maine's Rule for New Motor Vehicle Standards, 06-096 CMR 127 Sections 2(F), (G),(I), (J) and (T) and section 4(B)., which states in relevant part

(2). Definitions.

F. California-certified. "California-certified" means having a valid executive order and approved by CARB for sale in California.

G. CARB. "CARB" means the California Air Resources Board.

I. Dealer. "Dealer" means any person engaged in the business of selling, offering to sell, soliciting or advertising the sale of new vehicles who holds a valid sales and service agreement, franchise or contract, granted by the manufacturer or distributor for the retail sale of said manufacturer's or distributor's new vehicles.

AUGUSTA
17 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0017
(207) 287-7688 FAX: (207) 287-7826
RAY BLDG., HOSPITAL ST.

BANGOR
106 HOGAN ROAD, SUITE 6
BANGOR, MAINE 04401
(207) 941-4570 FAX: (207) 941-4584

PORTLAND
312 CANCO ROAD
PORTLAND, MAINE 04103
(207) 822-6300 FAX: (207) 822-6303

PRESQUE ISLE
1235 CENTRAL DRIVE, SKYWAY PARK
PRESQUE ISLE, MAINE 04679-2094
(207) 764-0477 FAX: (207) 760-3143

J. Delivered for sale. "Delivered for sale" means delivered for sale or for lease in Maine.

T. Heavy-duty diesel engine. "Heavy-duty diesel engine" means a diesel engine that is used to propel a motor vehicle with a Gross Vehicle Weight Rating of 14,001 pounds or greater.

(4). Prohibitions.

- B. New Heavy-Duty Diesel Vehicle Requirements. No person, including a manufacturer or dealer, shall deliver for sale or lease, offer for sale or lease, sell or lease, import, or rent a 2005 or 2006 and 2008 and subsequent model-years heavy-duty diesel engine, a new motor vehicle equipped with a 2005 or 2006 and 2008 and subsequent model-years heavy-duty diesel engine, or a motor vehicle with a new 2005 or 2006 and 2008 and subsequent model-year heavy-duty diesel engine, unless the vehicle and engine are California-certified and complies with the following criteria:
4. The sale of two (2) non-complying vehicles in Maine by Freightliner was documented by the Maine Bureau of Motor Vehicles (BMV) after the BMV received an application for title transfer. The BMV reviews all Manufacturers Certificates of Origin (MCO) to determine if the vehicles sold within the State are "California-certified" and refers all non-compliant MCO's to the Department for further investigation.
  5. On June 29, 2009 the BMV referred to the Department of Environmental Protection for investigation, two MCOs from Freightliner for the sale of Freightliner Heavy Duty Diesel Trucks, VIN numbers 1FVACWDJ3ADAN8137 and 1FVACXDJ8DAN8138. Department staff contacted Freightliner on July 15, 2009 to gather further information about these vehicles and Freightliner supplied the Department with documentation. This documentation showed that the two vehicles in questions were not California Certified Vehicles as required by Maine's rule for *New Motor Vehicle Standards*, 06-096 CMR 127(4)(B). On August 10 and 11, 2009, Freightliner reprogrammed the motor control modules (MCM) of the two vehicles in question. By reprogramming the MCM's these vehicles are now compliant with 06-096 CMR 127(4)(B).
  6. By the conduct described in paragraph 4 of this Agreement, Freightliner violated 06-096 CMR 127(4)(B).
  7. A Notice Of Violation (NOV) was issued to Freightliner on September 15, 2009 for the violation described in paragraphs five (5) and six (6).
  8. The Department has regulatory authority over the activities described herein.

**FREIGHTLINER OF MAINE, INC.**     )  
**CUMBERLAND COUNTY**             )  
**WESTBROOK, MAINE**               3

**ADMINISTRATIVE CONSENT  
AGREEMENT**

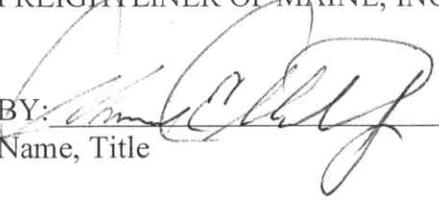
9. For the purpose of this Agreement, Freightliner agrees that it received proper notice of all violations identified herein pursuant to 38 M.R.S.A § 347-A(1)(B).
10. Pursuant to 38 M.R.S.A. §§ 341-D(6)(C) and 347-A(1)(A)(1), administrative consent agreements must be approved by the Board of Environmental Protection (“Board”), which is part of the Department.
11. This Agreement shall not become effective unless and until it is approved by the Board and the Department of the Attorney General.
12. To resolve the violations identified in paragraphs five (5) and six (6), Freightliner agrees to pay the sum of one thousand, five hundred dollars (\$1,500.00) as a civil monetary penalty immediately upon signature of this Agreement, to the Treasurer, State of Maine.
13. The Department and the Office of the Attorney General grant Freightliner a release of the causes of action that they have for the specific violation described in paragraphs five (5) and six (6) above in consideration of the payment called for in paragraph twelve (12) above. The release shall not become effective until all requirements of this Agreement are satisfied.
14. Non-compliance with this Agreement voids the release set forth in paragraph thirteen (13) of this Agreement and may lead to an enforcement action pursuant to 38 M.R.S.A. § 347-A(1)(A), 347-A(5), or 348, as well as pursuit of other remedies.
15. Actions taken pursuant to this Agreement shall be completed in accordance with the requirements of all local, state and federal laws, including but not limited to licensing requirements.
16. The provisions of this Agreement shall apply to, and be binding on, the parties, their officers, agents, servants, employees, successors, and assigns, and upon those persons in active concert or participation with them who receive actual notice of this Agreement.

FREIGHTLINER OF MAINE, INC. )  
CUMBERLAND COUNTY )  
WESTBROOK, MAINE 4

ADMINISTRATIVE CONSENT  
AGREEMENT

IN WITNESS WHEREOF the parties hereto have executed this agreement of four (4) pages.

FREIGHTLINER OF MAINE, INC.

BY:  \_\_\_\_\_ 12/7/09  
Name, Title Date

BOARD OF ENVIRONMENTAL PROTECTION

BY: \_\_\_\_\_  
Susan M. Lessard, Chair Date

MAINE OFFICE OF THE ATTORNEY GENERAL

BY: \_\_\_\_\_  
Gerald D. Reid, Assistant Attorney General Date