

1 **UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**
2 **REGION IX**

3 75 Hawthorne Street
San Francisco, California 94105

4 IN THE MATTER OF:)

DOCKET NO. UIC-09-2019-0032

5 Detroit Diesel Corporation)
6 91-265 Kalaeoloa Boulevard)
Kapolei, HI 96707)

7)
8 Respondent.)
9)

CONSENT AGREEMENT
AND
FINAL ORDER

10 Proceedings under Section 1423(c) of the Safe)
11 Drinking Water Act, 42 U.S.C. § 300h-2(c).)

** FILED **
15MAY2019 - 03:13PM
U.S.EPA - Region 09

12 CONSENT AGREEMENT

13 I. AUTHORITIES AND PARTIES

14 1. The United States Environmental Protection Agency (“EPA” or “Complainant”),
15 Region IX and Respondent Detroit Diesel Corporation (“Detroit Diesel”) (collectively the
16 “Parties”) agree to settle this matter and consent to the entry of this Consent Agreement and
17 [Proposed] Final Order (“CA/FO”), which commences this proceeding in accordance with 40
18 C.F.R. §§ 22.13(b), 22.18(b)(2) and 22.45(b). Pursuant to 40 C.F.R. § 22.18(b)(3), this
19 proceeding will conclude upon the issuance of a Final Order by the Regional Judicial Officer.
20

21 2. This is a civil administrative action instituted by EPA Region IX against
22 Respondent pursuant to Section 1423(c) of the Safe Drinking Water Act (“SDWA”), 42 U.S.C. §
23 300h-2(c), for violations of the SDWA and the Underground Injection Control (“UIC”)
24 requirements set forth at 40 C.F.R. Part 144.
25

1 3. Complainant is the Director of the Enforcement Division, EPA Region IX. The
2 Administrator of EPA delegated to the Regional Administrator of EPA Region IX the authority
3 to bring and settle this action under SDWA. In turn, the Regional Administrator of EPA Region
4 IX further delegated the authority to bring and sign a consent agreement settling this action under
5 SDWA to the Director of the Enforcement Division.

6 4. Respondent Detroit Diesel is a Delaware corporation with its principal place of
7 business located at 13400 Outer Drive West, Detroit, Michigan 48239.

8 II. APPLICABLE STATUTES AND REGULATIONS

9 5. Pursuant to Part C of the SDWA, 42 U.S.C. §§ 300h to 300h-8, EPA has
10 promulgated regulations at 40 C.F.R. Parts 124, 144, 146, 147 (Subpart M), and 148 establishing
11 minimum requirements for State UIC programs to prevent underground injection that endangers
12 drinking water sources within the meaning of Section 1421(d)(2) of the SDWA, 42 U.S.C. §
13 300h(d)(2).

14 6. Section 1422(c) of the SDWA, 42 U.S.C. § 300h-1(c), authorizes EPA to
15 administer the UIC program in states that do not have EPA-approved state programs. The State
16 of Hawaii has not acquired primacy of the UIC program. Therefore, EPA Region IX directly
17 implements UIC program in the State of Hawaii. *See* 40 C.F.R. § 147.601.

18 7. Section 1401(12) of the SDWA, 42 U.S.C. § 300f(12), defines a “person” to mean
19 an individual, corporation, company, association, partnership, State, municipality, or Federal
20 agency (and includes officers, employees, and agents of any corporation, company, association,
21 State municipality, or Federal agency). *See also* 40 C.F.R. § 144.3.

22 8. Section 1421(d)(1) of the SDWA, 42 U.S.C. § 300h(d)(1), and 40 C.F.R. § 144.3,
23 defines “underground injection” to mean, in relevant part, “the subsurface emplacement of fluids
24 by well injection.” *See also* 40 C.F.R. § 144.3.

25 9. Section 1421(d)(2) of the SDWA, 42 U.S.C. § 300h(d)(1), provides that
“[u]nderground injection endangers drinking water sources if such injection may result in the

1 presence in underground water which supplies or can reasonably be expected to supply any
2 public water system of any contaminant, and if the presence of such contaminant may result in
3 such system's not complying with any national primary drinking water regulation or may
4 otherwise adversely affect the health of persons."

5 10. 40 C.F.R. § 144.3 defines "underground source of drinking water (USDW)" to
6 mean an aquifer or its portion, which supplies any public water system; or which contains a
7 sufficient quantity of ground water to supply a public water system; and currently supplies
8 drinking water for human consumption or contains fewer than 10,000 mg/l total dissolved solids;
9 and which is not an exempted aquifer.

10 11. 40 C.F.R. § 144.3 defines "well injection" to mean "the subsurface emplacement
11 of fluids through a well."

12 12. 40 C.F.R. § 144.3 defines a "well" to mean, in relevant part, "[a] bored, drilled, or
13 driven shaft whose depth is greater than the largest surface dimension; or, a dug hole whose
14 depth is greater than the largest surface dimension; or, an improved sinkhole; or, a subsurface
15 fluid distribution system."

16 13. A "cesspool" is a "drywell," which in turn is a "well," as those terms are defined
17 in 40 C.F.R. § 144.3.

18 14. 40 C.F.R. § 144.3 defines "injection well" to mean "a 'well' into which 'fluids'
19 are being injected."

20 15. 40 C.F.R. § 144.3 defines "fluid" to mean "any material or substance which flows
21 or moves whether in a semisolid, liquid, sludge, gas, or any other form or state."

22 16. 40 C.F.R. § 144.3 defines "contaminant" to mean "any physical, chemical,
23 biological, or radiological substance or matter in water."

24 17. 40 C.F.R. § 144.3 defines "owner or operator" as "the owner or operator of any
25 'facility or activity' subject to regulation under the UIC program."

1 18. 40 C.F.R. § 144.3 defines “facility or activity” to mean “any UIC ‘injection well,’
2 or an other facility or activity that is subject to regulation under the UIC program.”

3 19. 40 C.F.R. § 144.6 provides for six classes of injection wells, and 40 C.F.R. §
4 144.81 provides that “Class V” injection wells include large capacity cesspools (“LCCs”), which
5 40 C.F.R. § 144.81(2) defines to include “multiple dwelling, community or regional cesspools,
6 or other devices that receive sanitary wastes, containing human excreta, which have an open
7 bottom and sometimes perforated sides” and which do not include “single family residential
8 cesspools or non-residential cesspools which receive solely sanitary waste and have the capacity
9 to serve fewer than 20 persons per day.”

10 20. 40 C.F.R. § 144.82 provides that the “owner or operator” of a Class V UIC well
11 “must comply with other Federal UIC requirements in 40 C.F.R. parts 144 through 147,” and
12 must also “comply with any other measures required by your State or EPA Regional Office UIC
13 Program to protect [underground sources of drinking water].”

14 21. 40 C.F.R. §§ 144.84(b)(2) and 144.88 required the owners or operators of all
15 existing LCCs to have closed these wells by April 5, 2005.

16 22. Pursuant to Section 1423(c)(1) of the SDWA, 42 U.S.C. § 300h-2(c)(1), and 40
17 C.F.R. § 19.4, EPA may issue an administrative order either assessing a civil penalty of not more
18 than \$22,363 per day per violation up to a maximum of \$279,536, or requiring compliance, or
19 both, against any person who violates the SDWA or any requirement of an applicable UIC
20 program.

21 III. ALLEGATIONS

22 23. Respondent is a corporation and thus a “person” within the meaning of Section
23 1401(12) of the SDWA, 42 U.S.C. § 300f(12), and 40 C.F.R. § 144.3.

24 24. Since at least 1992, Respondent has been the fee simple owner of a commercial
25 property located at 91-265 Kalaeoloa Boulevard (the “Property”) containing a commercial
building (the “Facility”) in the Kapolei Business Park on the Island of Oahu. Since September

1 2015, Respondent has leased the Property to Gordon Truck Centers Inc. (“Gordon Truck
2 Centers”) for operation of a heavy truck dealership and service center at the Facility known as
3 “Freightliners of Hawaii.” Prior to September 2015, Respondent leased the Property to Pacific
4 Detroit Diesel Allison Company, which similarly operated a heavy truck dealership and service
5 center at the Facility since at least December 1999.

6 25. Since at least 1992, Respondent has owned and/or operated a single non-
7 residential cesspool located on the Property with the capacity to serve at least 20 persons at the
8 Facility, which cesspool therefore is considered a LCC pursuant to 40 C.F.R. § 144.81(2).

9 26. On September 28, 2018, the Hawaii Department of Health (“HDOH”) approved
10 Respondent’s plans to replace the LCC located on the Property with an individual wastewater
11 system (“IWS”) consisting of seepage pit septic system, and Respondent completed the work to
12 clean, backfill and close the LCC by January 17, 2019, as confirmed by HDOH in its January 22,
13 2019 inspection of the Property.

14 27. In accordance with Section 1423(c)(1) of the SDWA, 42 U.S.C. § 300h-2(c)(1),
15 and 40 C.F.R. § 19.4, Respondent is liable for administrative penalties of up to \$22,363 per day
16 per violation up to a maximum of \$279,536 for failing to close the LCC by April 5, 2005 in
17 accordance with 40 C.F.R. §§ 144.84(b)(2) and 144.88 until January 17, 2019.

18 IV. SETTLEMENT TERMS

19 A. GENERAL PROVISIONS

20 28. For the purposes of this proceeding, Respondent (1) admits the jurisdictional
21 allegations contained in this CA/FO, (2) neither admits nor denies the specific factual allegations
22 contained in this CA/FO; (3) consents to the assessment of the penalty and to the specified
23 compliance obligations contained in this CA/FO, and (4) and waives any right to contest the
24 allegations or to appeal the Final Order accompanying this CA/FO. 40 C.F.R. § 22.18(b)(2).
25

1 29. Respondent also expressly waives any right to contest the allegations contained in
2 the Consent Agreement and to appeal the Final Order under the SDWA or the Administrative
3 Procedures Act, 5 U.S.C. §§ 701-706.

4 30. Respondent acknowledges and agrees to the terms of this CA/FO as the owner
5 and/or operator of the LCC described above.

6 31. This CA/FO, inclusive of all exhibits, appendices, and attachments, is the entire
7 agreement between the Parties to resolve EPA's civil claims against Respondent for the specific
8 SDWA violations identified in this CA/FO. Full compliance with this CA/FO, which includes
9 payment of an administrative civil penalty in accordance with Section IV.B of this CA/FO, shall
10 constitute full settlement of Respondent's liability for federal civil claims for the SDWA
11 violations specifically identified in this CA/FO.

12 32. The provisions of this CA/FO shall apply to and be binding upon Respondent, its
13 officers, directors, agents, servants, authorized representatives, employees, and successors or
14 assigns. Action or inaction of any persons, firms, contractors, employees, agents, or corporations
15 acting under, through, or for Respondent shall not excuse any failure of Respondent to fully
16 perform its obligations under this CA/FO.

17 33. Issuance of this CA/FO does not in any manner affect the right of EPA to pursue
18 appropriate injunctive or other equitable relief or criminal sanctions for any violations of law,
19 except with respect to those claims that have been specifically resolved pursuant to Paragraph 31
20 above.

21 34. This CA/FO is not a permit or modification of a permit, and does not affect
22 Respondent's obligation to comply with all federal, state, local laws, ordinances, regulations,
23 permits, and orders. Issuance of, or compliance with, this CA/FO does not waive, extinguish,
24 satisfy, or otherwise affect Respondent's obligation to comply with all applicable requirements
25 of the SDWA, regulations promulgated thereunder, and any order or permit issued thereunder,
except as specifically set forth herein.

1 35. EPA reserves any and all legal and equitable remedies available to enforce this
2 CA/FO, as well as the right to seek recovery of any costs and attorneys' fees incurred by EPA in
3 any actions against Respondent for noncompliance with this CA/FO. Violation of this CA/FO
4 shall be deemed a violation of the SDWA.

5 36. Unless otherwise specified, the Parties shall each bear their own costs and
6 attorneys' fees incurred in this proceeding.

7 37. This CA/FO may be executed and transmitted by facsimile, email or other
8 electronic means, and in multiple counterparts, each of which shall be deemed an original, but all
9 of which shall constitute an instrument. If any portion of this Consent Agreement is determined
10 to be unenforceable by a competent court or tribunal, the Parties agree that the remaining
11 portions shall remain in full force and effect.

12 38. The undersigned representative of each party certifies that he or she is duly and
13 fully authorized to enter into and ratify this CA/FO.

14 B. CIVIL ADMINISTRATIVE PENALTY

15 39. Respondent agrees to the assessment of a civil administrative penalty in the
16 amount of one hundred and twenty-nine thousand dollars (\$129,000).

17 40. Respondent shall pay the assessed penalty no later than thirty (30) days from the
18 Effective Date of this CA/FO.

19 41. The penalty may be paid by check (mail or overnight delivery), wire transfer,
20 automated clearing house, or online payment. Payment instructions are available at:
21 <http://www2.epa.gov/financial/makepayment>. Payments made by a cashier's check or certified
22 check must be payable to the order of "Treasurer, United States of America" and delivered to the
23 following address:
24
25

1 U.S. Environmental Protection Agency
2 Fines and Penalties
3 Cincinnati Finance Center
4 P.O. Box 979077
5 St. Louis, Missouri 63197-9000

6 42. Respondent must provide a letter with evidence of the payment made pursuant to
7 this CA/FO, accompanied by the title and docket number of this action, to EPA Region IX's
8 Regional Hearing Clerk, Enforcement Division Compliance Officer, and Office of Regional
9 Counsel attorney, via United States mail, at the following addresses:

10 Regional Hearing Clerk
11 U.S. Environmental Protection Agency
12 Region IX - Office of Regional Counsel
13 75 Hawthorne Street (ORC-1)
14 San Francisco, CA 94105

15 Jelani Shareem, Compliance Officer
16 U.S. Environmental Protection Agency
17 Region IX - Enforcement Division
18 75 Hawthorne Street (ENF-3-3)
19 San Francisco, CA 94105

20 43. In accordance with the Debt Collection Act of 1982 and 40 C.F.R. Part 13
21 interest, penalty charges, and administrative costs will be assessed against the outstanding
22 amount that Respondents owe to EPA for Respondent's failure to pay the civil administrative
23 penalty by the deadline specified in Paragraph 40.

- 24 a. Interest on delinquent penalties will be assessed at an annual rate that is equal to
25 the rate of current value of funds to the United States Treasury (*i.e.*, the Treasury
tax and loan account rate) as prescribed and published by the Secretary of the
Treasury in the Federal Register and the Treasury Fiscal Requirements Manual
Bulletins. 40 C.F.R. § 13.11(a)(1).
- b. A penalty charge will be assessed on all debts more than 90 days delinquent. The
penalty charge will be at a rate of 6% per annum and will be assessed monthly. 40
C.F.R. § 13.11(c).

1 c. Administrative costs for handling and collecting Respondent's overdue debt will
2 be based on either actual or average cost incurred, and will include both direct and
3 indirect costs. 40 C.F.R. § 13.11(b).

4 44. Stipulated Penalties.

5 a. If Respondent fails to pay the assessed civil administrative penalty specified in
6 Paragraph 39 by the deadline specified in Paragraph 40, Respondent agrees to pay
7 in addition to the assessed penalty, a stipulated penalty of \$250 per day for each
8 day the payment is late.

9 b. Respondent agrees to pay any stipulated penalties within thirty (30) days of
10 receipt of EPA's written demand for such penalties. All penalties shall begin to
11 accrue on the first date of noncompliance, and shall continue to accrue through
12 the date of completion of the delinquent CA/FO requirement. Respondent agrees
13 to pay interest, handling charges and penalties that accrue for late payment of the
14 stipulated penalty in the same manner as set forth in Paragraph 43.

15 c. Neither the demand for, nor payment of, a stipulated penalty relieves Respondent
16 of its obligation to comply with any requirement of this CA/FO or modifies or
17 waives any deadlines set forth in this CA/FO.

18 d. EPA may, in the unreviewable exercise of its discretion, elect to pursue any other
19 administrative or judicial remedies in addition to or in lieu of assessing stipulated
20 penalties and/or reduce or waive stipulated penalties due under this CA/FO.

21 45. Failure to pay any civil administrative penalty by the deadline may also lead to
22 any or all of the following actions:

23 a. The debt being referred to a credit reporting agency, a collection agency, or to the
24 Department of Justice for filing of a collection action in the appropriate United
25 States District Court. 40 C.F.R. §§ 13.13, 13.14, and 13.33. In any such collection

1 action, the validity, amount, and appropriateness of the assessed penalty and of
2 this CA/FO shall not be subject to review.

- 3 b. The department or agency to which this matter is referred (*e.g.*, the Department of
4 Justice, the Internal Revenue Service) may assess administrative costs for
5 handling and collecting Respondent's overdue debt in addition to EPA's
6 administrative costs.
- 7 c. EPA may (i) suspend or revoke Respondent's licenses or other privileges; or (ii)
8 suspend or disqualify Respondent from doing business with EPA or engaging in
9 programs EPA sponsors or funds. 40 C.F.R. § 13.17.

10 46. Respondent shall tender any interest, handling charges, and late penalty payments,
11 and stipulated penalty payments, in the same manner as described in Paragraphs 41 and 42
12 above.

13 C. NOTICES

14 47. Respondent must send any written communications to the following addresses:

15 Jelani Shareem, Compliance Officer
16 U.S. Environmental Protection Agency
17 Region IX - Enforcement Division
18 75 Hawthorne Street (ENF-3-3)
19 San Francisco, CA 94105

20 Rich Campbell, Attorney-Advisor
21 U.S. Environmental Protection Agency
22 Region IX – Office of Regional Counsel
23 75 Hawthorne Street (ORC-2)
24 San Francisco, CA 94105

25 48. EPA must send any written communications to the following address:

Matt Markstaller
Manager, Property and Building Management
Daimler Trucks North America LLC
4555 N. Channel Avenue
Portland, OR 97217

With copy to:

Brian Burton, General Counsel
Legal Department
Daimler Trucks North America LLC
4555 N. Channel Avenue
Portland, OR 97217

V. EFFECTIVE DATE

49. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CA/FO shall be effective on the date that the Final Order contained in this CA/FO, having been approved and issued by either the Regional Judicial Officer or Regional Administrator, is filed with the Regional Hearing Clerk.

FOR THE CONSENTING PARTIES:

FOR DETROIT DIESEL CORPORATION:

 _____

Date: 3.14.19

Name

Associate General Counsel

Title

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

 _____

Date: 4/2/19

Amy Miller

Acting Director, Enforcement Division, Region IX
U.S. Environmental Protection Agency
75 Hawthorne Street
San Francisco, CA 94105

Of counsel:

Rich Campbell
Attorney-Advisor
Office of Regional Counsel
U.S. Environmental Protection Agency, Region IX

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX**

75 Hawthorne Street
San Francisco, California 94105

IN THE MATTER OF:)

DOCKET NO. UIC-09-2019-0032

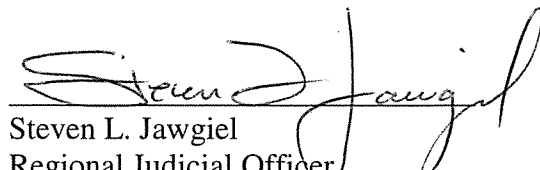
Detroit Diesel Corporation)
91-265 Kalaeoloa Boulevard)
Kapolei, HI 96707)

**CONSENT AGREEMENT
AND
FINAL ORDER**

Respondent.)

Proceedings under Section 1423(c) of the Safe)
Drinking Water Act, 42 U.S.C. § 300h-2(c).)

It is Hereby Ordered that this Consent Agreement and Final Order (U.S. EPA Docket No. UIC-09-2019-0032) be entered and that Respondent shall pay a civil penalty in the amount of one hundred and twenty-nine thousand dollars (\$129,000) in accordance with the terms of this Consent Agreement and Final Order.


Steven L. Jawgiel
Regional Judicial Officer
U.S. EPA, Region IX

CERTIFICATE OF SERVICE

I hereby certify that the forgoing FINAL ORDER incorporating a CONSENT AGREEMENT in the matter of Detroit Diesel Corporation (UIC-09-2019-0032), dated, May 15, 2019, was filed with the Regional Hearing Clerk and sent:

FIRST CLASS MAIL - CERTIFIED

Tracking Numbers: 7016 1370 0000 0748 6459
7016 1970 0000 9792 0561

For Respondent:

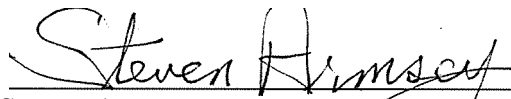
Brian Burton, General Counsel
and
Matt Markstaller, Manager
at
Daimler Trucks North America LLC
4555 N. Channel Avenue
Portland, OR 97217

For EPA Region IX:

HAND DELIVERED

Rich Campbell, Attorney Advisor
United States Environmental Protection Agency
Region IX - Office of Regional Counsel (ORC-2)
75 Hawthorne Street
San Francisco, CA 94105

Dated at San Francisco, California: May 15, 2019



Steven Armsey
Regional Hearing Clerk
U.S. EPA, Region 9