

**** FILED ****
27MAR2017 - 10:00AM
U.S.EPA - Region 09

DAVID H. KIM
Assistant Regional Counsel
United States Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, California 94105
(415) 972-3882

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- <u>0004</u>
)	
)	
Werner Enterprises, Inc.)	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 Werner Enterprises, Inc., a public, for-hire trucking firm based in Omaha, Nebraska that owns and/or operates diesel-fueled vehicles registered to be driven on public highways nationwide and in California.
4. Complainant and Respondent, having agreed Werner has cooperated fully in this investigation and 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 Respondent agrees 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. In satisfaction of the notice requirements of section 113(a) of the Act, 42 U.S.C. § 7413(a), on February 1, 2016, EPA issued to Respondent a notice of violation (“NOV”) and provided a copy of the NOV to the California Air Resources Board (“ARB”), providing notice to both 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.

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 seven AQCRs designated as nonattainment for fine particulate matter (i.e., PM_{2.5}) in California, including all of the San Joaquin Valley and 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, ARB 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 federal SIP on May 4, 2012.
See 77 Fed. Reg. 20308 (April 4, 2012).
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 particulates 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 VDECS 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 [british horsepower per hour] certification standard.”
19. Under section 2025(d)(60) of the Truck and Bus Regulation, “Verified Diesel Emission Control Strategy (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 NO_x 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 ARB Rule requires, in part, Fleet Owners to upgrade their vehicles to meet specific performance standards for oxides of nitrogen (“NO_x”) 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 NO_x 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 NO_x 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 NO_x 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 (D) 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 starting January 1, 2012 according to the compliance schedule set forth in Table 2:
 - 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 or about June 16, 2014, EPA, Region IX, issued an information request pursuant to section 114 of the Act, 42 U.S.C. § 7414, to Respondent (the “First Information Request”), seeking information concerning Respondent’s compliance with the Truck and Bus Regulation during 2012-2014.
27. On or about September 4, 2014, Respondent submitted its response to the First Information Request.
28. On or about April 30, 2015, EPA, Region IX, issued an information request pursuant to section 114 of the Act, 42 U.S.C. § 7414, to Respondent (the “Second Information Request”), seeking information concerning Respondent’s compliance with the Truck and Bus Regulation during 2012-2015.
29. On or about June 4, 2015, Respondent submitted its response to the Second Information Request.
30. Respondent is a “Person” as that term is 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.
31. 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.

E. ALLEGED VIOLATIONS OF LAW

32. Respondent operated one diesel-fueled vehicle with an engine model year of 2000-2004 and a GVWR greater than 26,000 pounds that lacked a PM filter in California during 2013-2014.
33. Respondent violated section 2025(g) of the Truck and Bus Regulation by failing to timely install a PM filter on at least one diesel-fueled vehicle that it owned and operated in California during 2013-2014.
34. Respondent operated four diesel-fueled vehicles with an engine model year of 2005-2006 and a GVWR greater than 26,000 pounds that lacked PM filters in California during 2014.
35. Respondent violated section 2025(g) of the Truck and Bus Regulation by failing to timely install PM filters on at least four diesel-fueled vehicles that it owned and operated in California during 2014.
36. Respondent hired 42 motor carriers between May 4, 2012 and June 16, 2014 but failed to verify the compliance of these companies 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 42 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. neither admits nor denies the specific factual allegations contained in Section I.E of this CAFO;
- c. consents to the assessment of a civil penalty under this Section, as stated below;
- d. consents to the conditions specified in this CAFO;
- e. waives any right to contest the allegations set forth in Section I.E of this CAFO; and
- f. waives its rights to appeal the proposed Order contained in this CAFO.

Civil Penalty

40. Respondent agrees to:

- a. pay the civil penalty of SIXTY-FIVE THOUSAND DOLLARS (\$65,000) ("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-09-2017-0004". Within 24 hours of payment of the EPA Penalty, send proof of payment to Nathan Dancher at:

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

and at dancher.nathan@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-09-2017-00047").

41. If Respondent fails to pay the civil administrative penalty specified in Paragraph 40(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 plus the penalty sum specified in Paragraph 40(a), upon written demand by EPA.
42. 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. suspend or revoke Respondent's licenses or other privileges, or (ii) suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds, 40 C.F.R. § 13.17.
43. 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 assigns. 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.
44. 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.
45. 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.
46. 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.

47. 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

48. 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.
49. Penalties paid pursuant to this CAFO shall not be deductible for purposes of federal taxes.
50. 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.
51. Any violation of this Order may result in a civil judicial action for an injunction or civil penalties of up to \$37,500 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.
52. 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.


53. 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.
54. 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

55. 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 Werner Enterprises, Inc., Docket No. CAA-09-2017-0004, is Hereby Stipulated, Agreed, and Approved for Entry.

FOR RESPONDENT:


Signature _____ Date 3/14/17

Printed Name: Nathan Meisgeier

Title: Vice President + General Counsel

Address: 14507 Frontier Road, Omaha, NE 68138

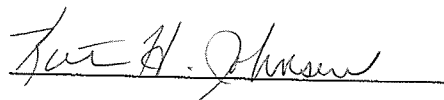
Respondent's Federal Tax Identification Number: 47-0648386

The foregoing Consent Agreement In the Matter of Werner Enterprises, Inc., Docket No. CAA-09-2017-0004 is Hereby Stipulated, Agreed, and Approved for Entry.

FOR COMPLAINANT:

3-22-17

DATE



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

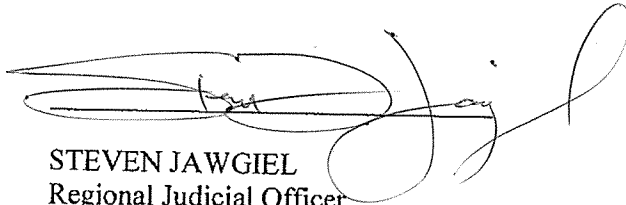
II. FINAL ORDER

EPA Region IX and Werner Enterprises, Inc., having entered into the foregoing Consent Agreement,

IT IS HEREBY ORDERED that this CAFO (Docket No. CAA-09-2017-009⁴) be entered, and Respondent shall pay a civil administrative penalty in the amount of SIXTY-FIVE THOUSAND DOLLARS (\$65,000) and otherwise comply with the terms set forth in the CAFO.

03/27/17

DATE



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

CERTIFICATE OF SERVICE

I certify that the original of the fully executed Consent Agreement and Final Order in the matter of Werner Enterprises, Inc. (**Docket #s: CAA-09-2016-000**) 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:

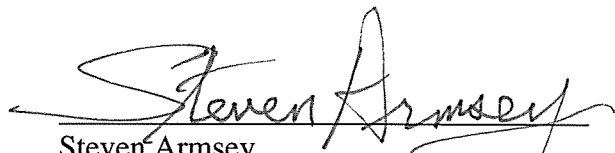
Derek J. Leathers
President
Werner Enterprises, Inc.
14507 Frontier Road
Omaha, Nebraska 68138-3808

By U.S. Postal Service to:

David R. Tripp
Senior VP and Deputy General Counsel
Stinson Leonard Street LLP
1201 Walnut Street, Suite 2900
Kansas City, MO 64106-2150

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

David Kim
Assistant Regional Counsel (ORC-2)
U.S. EPA, Region IX
75 Hawthorne Street
San Francisco, CA 94105


Steven Armsey
Regional Hearing Clerk Signature

03-27-2017
Date