

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	
)	
)	Docket No. CAA-05-2024-004
CUTTING EDGE ENTERPRISES, INC.,)	
Forest Lake, Minnesota,)	ANSWER
)	
Respondent.)	
)	
Proceeding to Assess a Civil Penalty)	
Pursuant to Clean Air Act)	
Section 205(c)(1))	
)	

For its Answer in response to the Complaint of the United States Environmental Protection Agency, Region 5, Respondent Cutting Edge Enterprises, Inc. (“Cutting Edge”) states as follows.

Except as hereinafter admitted, qualified, or otherwise answered below, Respondent Cutting Edge denies each and every matter, thing, and allegation in the Complaint.

ANSWER TO COMPLAINT

I. PRELIMINARY STATEMENT

1. Paragraph 1 is introductory and contains no factual statements requiring a response. To the extent that this paragraph refers to a statute, regulation, or written document, that item speaks for itself.

2. Paragraph 2 is introductory and contains no factual statements requiring a response. To the extent that this paragraph refers to a statute, regulation, or written document, that item speaks for itself.

3. Admit.

4. Admit.

5. Paragraph 5 is a legal conclusion and contains no factual statements requiring a response. To the extent that this paragraph refers to a statute, regulation, or written document, that item speaks for itself.

II. JURISDICTION

6. Paragraph 6 is introductory and contains no factual statements requiring a response. To the extent that this paragraph refers to a statute, regulation, or written document, that item speaks for itself.

7. Paragraph 7 is a legal conclusion and contains no factual statements requiring a response. To the extent that this paragraph refers to a statute, regulation, or written document, that item speaks for itself. To the extent that a response is required, Paragraph 7 is denied.

8. Paragraph 8 is a legal conclusion and contains no factual statements requiring a response. To the extent that this paragraph refers to a statute, regulation, or written document, that item speaks for itself. To the extent that a response is required, Paragraph 8 is denied.

9. Paragraph 9 is both introductory and a legal conclusion and contains no factual statements requiring a response. To the extent that this paragraph refers to a statute, regulation, or written document, that item speaks for itself. To the extent that Paragraph 9 suggests that a civil penalty may be imposed in an administrative proceeding, Paragraph 9 is denied.

10. Paragraph 10 is a legal conclusion and contains no factual statements requiring a response. To the extent that this paragraph refers to a statute, regulation, or written document, that item speaks for itself.

III. GOVERNING LAW AND RELEVANT BACKGROUND

Regulation of Air Pollution from New Moter Vehicles and Moter Vehicle Engines

11. Paragraph 11 is introductory and contains no factual statements requiring a response. To the extent that this paragraph refers to a statute, regulation, or written document, that item speaks for itself.

12. Paragraph 12 is a legal conclusion and contains no factual statements requiring a response. To the extent that this paragraph refers to a statute, regulation, or written document, that item speaks for itself.

13. Paragraph 13 is a legal conclusion and contains no factual statements requiring a response. To the extent that this paragraph refers to a statute, regulation, or written document, that item speaks for itself.

14. Paragraph 14 is a legal conclusion and contains no factual statements requiring a response. To the extent that this paragraph refers to a statute, regulation, or written document, that item speaks for itself.

15. Paragraph 15 is introductory and contains no factual statements requiring a response.

16. Paragraph 16 is introductory and contains no factual statements requiring a response.

17. Paragraph 17 is introductory and contains no factual statements requiring a response.

18. Paragraph 18 is introductory and contains no factual statements requiring a response.

19. Paragraph 19 is introductory and contains no factual statements requiring a response.

20. Paragraph 20 is introductory and contains no factual statements requiring a response.

21. Paragraph 21 is introductory and contains no factual statements requiring a response.

22. Paragraph 22 is a legal conclusion and contains no factual statements requiring a response. To the extent that this paragraph refers to a statute, regulation, or written document, that item speaks for itself.

Acts Prohibited by Section 203(a)(3)(B) of the Clean Air Act

23. Paragraph 23 is a legal conclusion and contains no factual statements requiring a response. To the extent that this paragraph refers to a statute, regulation, or written document, that item speaks for itself.

24. Paragraph 24 is a legal conclusion and contains no factual statements requiring a response. To the extent that this paragraph refers to a statute, regulation, or written document, that item speaks for itself. To the extent that Paragraph 9 suggests that a civil penalty may be imposed in an administrative proceeding, Paragraph 9 is denied.

25. Paragraph 25 is a legal conclusion and contains no factual statements requiring a response. To the extent that this paragraph refers to a statute, regulation, or written document, that item speaks for itself.

EPA'S Certificate of Conformity Program for New Motor Vehicles and Motor Vehicle Engines

26. Paragraph 26 is a legal conclusion and contains no factual statements requiring a response. To the extent that this paragraph refers to a statute, regulation, or written document, that item speaks for itself.

27. Paragraph 27 is a legal conclusion and contains no factual statements requiring a response. To the extent that this paragraph refers to a statute, regulation, or written document, that item speaks for itself.

28. Paragraph 28 is a legal conclusion and contains no factual statements requiring a response. To the extent that this paragraph refers to a statute, regulation, or written document, that item speaks for itself.

29. Paragraph 29 is a legal conclusion and contains no factual statements requiring a response. To the extent that this paragraph refers to a statute, regulation, or written document, that item speaks for itself.

Motor Vehicle and Motor Vehicle Engine Emission-Related Elements of Design

30. Paragraph 30 is a legal conclusion and contains no factual statements requiring a response. To the extent that this paragraph refers to a statute, regulation, or written document, that item speaks for itself.

31. Paragraph 31 is a legal conclusion and contains no factual statements requiring a response. To the extent that this paragraph refers to a statute, regulation, or written document, that item speaks for itself.

32. Paragraph 32 is a legal conclusion and contains no factual statements requiring a response. To the extent that this paragraph refers to a statute, regulation, or written document, that item speaks for itself.

33. Paragraph 33 is introductory and contains no factual statements requiring a response.

34. Paragraph 34 is both introductory and a legal conclusion and contains no factual statements requiring a response. To the extent that this paragraph refers to a statute, regulation, or written document, that item speaks for itself.

35. Paragraph 35 is introductory and contains no factual statements requiring a response.

36. Paragraph 36 is introductory and contains no factual statements requiring a response.

37. Paragraph 37 is a legal conclusion and contains no factual statements requiring a response. To the extent that this paragraph refers to a statute, regulation, or written document, that item speaks for itself.

38. Paragraph 38 is introductory and contains no factual statements requiring a response.

39. Paragraph 39 is introductory and contains no factual statements requiring a response.

40. Paragraph 40 is introductory and contains no factual statements requiring a response.

41. Paragraph 41 is introductory and contains no factual statements requiring a response.

42. Paragraph 42 is a legal conclusion and contains no factual statements requiring a response. To the extent that this paragraph refers to a statute, regulation, or written document, that item speaks for itself.

43. Paragraph 43 is a legal conclusion and contains no factual statements requiring a response. To the extent that this paragraph refers to a statute, regulation, or written document, that item speaks for itself.

44. Paragraph 44 is a legal conclusion and contains no factual statements requiring a response. To the extent that this paragraph refers to a statute, regulation, or written document, that item speaks for itself.

The Types of Aftermarket Products at Issue

45. Paragraph 45 is introductory and contains no factual statements requiring a response.

46. Paragraph 46 is introductory and contains no factual statements requiring a response.

47. Paragraph 47 is introductory and contains no factual statements requiring a response.

48. Paragraph 48 is introductory and contains no factual statements requiring a response.

49. Paragraph 49 is introductory and contains no factual statements requiring a response.

50. Paragraph 50 is introductory and contains no factual statements requiring a response.

51. Paragraph 51 is introductory and contains no factual statements requiring a response.

52. Paragraph 52 is introductory and contains no factual statements requiring a response.

53. Paragraph 53 is introductory and contains no factual statements requiring a response.

54. Paragraph 54 is introductory and contains no factual statements requiring a response.

IV. FACTUAL ALLEGATIONS

55. Admit.

56. Denied.

57. Admit.

58. Admit.

59. Admit.

60. Respondent admits that, on advice of counsel, it refused to allow a Region 5 inspector into its facility and vehicles after the Region 5 inspector admitted that they did not have a warrant or other order requiring Respondent to permit the Region 5 inspector into its premises.

61. Admit. To the extent that this paragraph refers to a statute, regulation, or written document, that item speaks for itself.

62. Respondent admits that it provided written responses to Complainant's request for information. To the extent that this paragraph refers to those documents, those documents speak for themselves.

63. Respondent admits that it provided written responses to Complainant's request for information. To the extent that this paragraph refers to those documents, those documents speak for themselves .

64. Admit. To the extent that this paragraph refers to a written document, that item speaks for itself.

65. Admit. To the extent that this paragraph refers to a written document, that item speaks for itself.

66. Respondent admits that it provided written responses to Complainant's request for information. To the extent that this paragraph refers to those documents, those documents speak for themselves.

67. Respondent admits that it provided written responses to Complainant's request for information. To the extent that this paragraph refers to those documents, those documents speak for themselves.

V. GENERAL ALLEGATIONS

68. Paragraph 68 is a legal conclusion and contains no factual statements requiring a response.

69. Paragraph 69 is a legal conclusion and contains no factual statements requiring a response.

70. Paragraph 70 is a legal conclusion and contains no factual statements requiring a response.

71. Paragraph 71 is a legal conclusion and contains no factual statements requiring a response.

72. Paragraph 72 is a legal conclusion and contains no factual statements requiring a response.

73. Respondent admits that Complainant issued the 2020 FOV. To the extent that Paragraph 73 relies on the allegations in the 2020 FOV, Paragraph 73 is denied.

VI. COUNTS

Counts 1 to 37: The Manufacture and Sale of Delete Tunes

74. Respondent reincorporates Paragraphs 1 to 73 of this Answer by reference as though fully set forth herein.

75. Paragraph 75 is a legal conclusion and contains no factual statements requiring a response. To the extent that this paragraph refers to a statute, regulation, or written document, that item speaks for itself.

76. Denied.

77. Paragraph 77 is a legal conclusion and contains no factual statements requiring a response.

78. Paragraph 78 is a legal conclusion and contains no factual statements requiring a response.

79. Paragraph 79 is a legal conclusion and contains no factual statements requiring a response.

80. Paragraph 80 is a legal conclusion and contains no factual statements requiring a response.

81. Paragraph 81 is a legal conclusion and contains no factual statements requiring a response.

82. Paragraph 82 is a legal conclusion and contains no factual statements requiring a response. To the extent that this paragraph refers to a statute, regulation, or written document, that item speaks for itself.

83. Admit. To the extent that this paragraph refers to a statute, regulation, or written document, that item speaks for itself.

84. Denied.

85. Denied.

86. Paragraph 86 is a legal conclusion and contains no factual statements requiring a response.

87. Paragraph 87 is a legal conclusion and contains no factual statements requiring a response. To the extent that this paragraph refers to a statute, regulation, or written document, that item speaks for itself. To the extent that a response is required, Paragraph 87 is denied.

VII. RELIEF SOUGHT

88. Paragraph 88 is a legal conclusion and contains no factual statements requiring a response. To the extent that this paragraph refers to a statute, regulation, or written document, that item speaks for itself.

89. Paragraph 89 is a legal conclusion and contains no factual statements requiring a response. To the extent that this paragraph refers to a statute, regulation, or written document, that item speaks for itself. To the extent that a response is required, Paragraph 89 is denied.

90. Paragraph 90 is a legal conclusion and contains no factual statements requiring a response. To the extent that this paragraph refers to a statute, regulation, or written document, that item speaks for itself. To the extent that a response is required, Paragraph 90 is denied.

91. Paragraph 91 is a legal conclusion and contains no factual statements requiring a response. To the extent that this paragraph refers to a statute, regulation, or written document, that item speaks for itself. To the extent that a response is required, Paragraph 91 is denied.

92. Paragraph 92 is a legal conclusion and contains no factual statements requiring a response. To the extent that this paragraph refers to a statute, regulation, or written document, that item speaks for itself.

93. Paragraph 93 is a legal conclusion and contains no factual statements requiring a response. To the extent that this paragraph refers to a statute, regulation, or written document, that item speaks for itself.

94. Paragraph 94 is a legal conclusion and contains no factual statements requiring a response. To the extent that this paragraph refers to a statute, regulation, or written document, that item speaks for itself.

95. Paragraph 95 is a legal conclusion and contains no factual statements requiring a response. To the extent that this paragraph refers to a statute, regulation, or written document, that item speaks for itself.

96. Paragraph 96 is a legal conclusion and contains no factual statements requiring a response. To the extent that this paragraph refers to a statute, regulation, or written document, that item speaks for itself.

VIII. RULES GOVERNING THIS PROCEEDING

97. Paragraph 97 is a legal conclusion and contains no factual statements requiring a response. To the extent that this paragraph refers to a statute, regulation, or written document, that item speaks for itself.

IX. ANSWER AND OPPORTUNITY TO REQUEST A HEARING

98. Paragraph 98 is a legal conclusion and contains no factual statements requiring a response.

99. Paragraph 99 is a legal conclusion and contains no factual statements requiring a response.

100. Paragraph 100 is a legal conclusion and contains no factual statements requiring a response.

101. Paragraph 101 is a legal conclusion and contains no factual statements requiring a response.

102. Paragraph 102, including footnote 1, is a legal conclusion and contains no factual statements requiring a response.

103. Paragraph 103 is a legal conclusion and contains no factual statements requiring a response. To the extent an answer is required, Respondent restates that as except as herein admitted, qualified, or otherwise answered, Respondent denies each and every matter, thing, and allegation in the Complaint.

104. Paragraph 104 is a legal conclusion and contains no factual statements requiring a response.

105. Paragraph 105 is a legal conclusion and contains no factual statements requiring a response. To the extent that this paragraph refers to a statute, regulation, or written document, that item speaks for itself.

106. Paragraph 106 is a legal conclusion and contains no factual statements requiring a response. To the extent that this paragraph refers to a statute, regulation, or written document, that item speaks for itself.

107. Paragraph 107 is informational and contains no factual statements requiring a response.

X. SETTLEMENT CONFERENCE

108. Paragraph 108 is informational and contains no factual statements requiring a response.

109. Paragraph 109 is informational and contains no factual statements requiring a response.

110. Paragraph 110 is a legal conclusion and contains no factual statements requiring a response. To the extent that this paragraph refers to a statute, regulation, or written document, that item speaks for itself.

111. Paragraph 111 is informational and contains no factual statements requiring a response.

XI. SEPARATION OF FUNCTIONS AND *EX PARTE* COMMUNICATIONS

112. Paragraph 112 is a legal conclusion and contains no factual statements requiring a response. To the extent that this paragraph refers to a statute, regulation, or written document, that item speaks for itself.

113. Paragraph 113 is a legal conclusion and contains no factual statements requiring a response.

114. Paragraph 114 is a legal conclusion and contains no factual statements requiring a response. To the extent that this paragraph refers to a statute, regulation, or written document, that item speaks for itself.

XII. CONTINUING OBLIGATION TO COMPLY

115. Paragraph 115 is a legal conclusion and contains no factual statements requiring a response.

AFFIRMATIVE DEFENSES

1. Complainant cannot assess civil penalties under the Clean Air Act via an administrative proceeding because Complainant's claims are subject to Respondent's Seventh Amendment right to a jury trial, pursuant to *SEC v. Jarkesy*, ___ U.S. ___, 144

S.Ct. 2117 (2024), and Complainant’s claims are not subject to the “public rights” exception to that right to a jury trial.

2. Complainant’s claims are or may be barred, in whole or in part, by the applicable statute of limitations.

3. Respondent reserves the right to raise any additional defenses that it may have or as may be revealed by further discovery or investigation of the matter.

REQUEST FOR A HEARING

Pursuant to 40 C.F.R. § 22.15(c), Respondent hereby requests a hearing upon the issues raised by the Complaint and the Answer.

WHEREFORE, Respondent Cutting Edge Enterprises, Inc. respectfully requests that the Presiding Officer:

1. Dismiss the action as an unconstitutional attempt to assess civil penalties in an administrative proceeding, in violation of Respondent’s Seventh Amendment right to trial by jury;

2. In the alternative, dismiss the action to the extent that any of the claims are barred, in whole or in part, by the applicable statute of limitations; and

3. That the Presiding Officer grant such other and further relief as the Presiding Officer deems just and proper.

Dated: July 22, 2024

/s/ Lindsey A. Remakel

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