

In the Matter of: APlus Truck Sales, Inc., Respondent.

Docket No. CAA-01-2021-0077

The information claimed confidential has been deleted and a complete copy of the Complaint containing the information claimed confidential has been filed with the Regional Hearing Clerk.¹

¹ The U.S. Environmental Protection Agency (EPA) is including this specific language, on this cover page, per 40 C.F.R. § 22.5(d)(2)(ii). However, please note APlus Truck Sales, Inc. has not, to date, claimed the information as confidential business information (CBI); EPA collected the information during June and August 2019 inspections, and is treating it as CBI, pending further determination. EPA has redacted the information it is treating as CBI.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 1

In the Matter of:

APlus Truck Sales, Inc.,

Respondent.

Docket No. CAA-01-2021-0077

COMPLAINT

Preliminary Statement

1. This is a proceeding to assess administrative civil penalties under 205(c)(1) of the Clean Air Act, 42 U.S.C. § 7524(c)(1).
2. Complainant is the Director of the Enforcement and Compliance Assurance Division, Region 1, U.S. Environmental Protection Agency (“Complainant”).
3. Respondent is APlus Truck Sales, Inc., d/b/a A Plus Diesel Sales, A Plus Truck Sales, and A Plus Auto Body (collectively, “APlus Trucks” or “Respondent”).
4. APlus Truck Sales, Inc. is a Maine corporation.
5. APlus Truck Sales, Inc. is a “person” as defined in section 302(e) of the CAA, 42 U.S.C. § 7602(e).
6. Respondent sells and services motor vehicles at its facility at 8 Storm Drive in Windham, Maine (the “Facility”).

Jurisdiction

7. This action is brought under section 205(c)(1) of the CAA, 42 U.S.C. § 7524(c)(1), in accordance with the United States Environmental Protection Agency’s (“EPA”) “Consolidated Rules of Practice Governing the Administrative Assessment of Civil

Penalties and the Revocation/Termination or Suspension of Permits,” 40 C.F.R. Part 22 (“Consolidated Rules”).

8. The EPA may assess administrative civil penalties for violations of section 203(a) of the CAA, 42 U.S.C. § 7522(a). CAA § 205(c)(1), 42 U.S.C. § 7524(c)(1).
9. Where violations occurred after November 2, 2015 and a penalty is assessed on or after December 23, 2020, an administrative civil penalty may not exceed \$390,092 against each violator, unless the Administrator of the EPA and the Attorney General jointly determine that a matter involving a larger penalty amount is appropriate for administrative penalty assessment. CAA § 205(c)(1), 42 U.S.C. § 7524(c)(1); 40 C.F.R. § 19.4, table 1.
10. The penalty sought in this matter does not exceed \$390,092.

Governing Law

11. This proceeding arises under Part A of Title II of the CAA §§ 202-219, 42 U.S.C. §§ 7521–7554, and the regulations promulgated thereunder. These laws aim to reduce emissions from mobile sources of air pollution, including non-methane hydrocarbons (“NMHC”), oxides of nitrogen (“NO_x”), particulate matter (“PM”), and carbon monoxide (“CO”).
12. “Motor vehicle” means any self-propelled vehicle designed for transporting persons or property on a street or highway. CAA § 216(2), 42 U.S.C. § 7550(2); 40 C.F.R. § 85.1703.
13. “Motor vehicle engine” means an engine that is designed to power a motor vehicle.
14. Under section 202 of the CAA, 42 U.S.C. § 7521, the EPA promulgated emission standards for NMHC, NO_x, PM, CO, and other pollutants applicable to motor vehicles

and motor vehicle engines including heavy-duty diesel (“HDD”) trucks and truck engines. *See generally* 40 C.F.R. Part 86.

15. Manufacturers of new motor vehicles or motor vehicle engines must obtain a certificate of conformity (“COC”) from the EPA to sell, offer to sell, or introduce or deliver for introduction into commerce any new motor vehicles or motor vehicle engines in the United States. CAA § 203(a)(1) of the CAA, 42 U.S.C. § 7522(a)(1).
16. The EPA issues COCs to vehicle manufacturers (also known as “original equipment manufacturers” or “OEMs”) under section 206(a) of the CAA, 42 U.S.C. § 7525(a), to certify that a particular group of motor vehicles conforms to applicable EPA requirements governing motor vehicle emissions.
17. To obtain a COC for a motor vehicle group or engine family, the OEM must demonstrate that each motor vehicle or motor vehicle engine will not exceed established emissions standards for NO_x, PM, CO, NMHC, and other pollutants. 40 C.F.R. §§ 86.004-21, 86.1811-04, 86.1844-01.
18. The COC application must describe, among other things, the emissions-related elements of design of the motor vehicle or motor vehicle engine. This includes all auxiliary emission control devices, which are defined as “any element of design which senses temperature, vehicle speed, engine RPM, transmission gear, manifold vacuum, or any other parameter for the purposes of activating, modulating, delaying, or deactivating the operation of any part of the emission control system” of the motor vehicle. 40 C.F.R. §§ 86.1803-01, 86.1844-01(d)(11).
19. “Element of design” means “any control system (i.e., computer software, electronic control system, emission control system, computer logic), and/or control system

calibrations, and/or the results of systems interaction, and/or hardware items on a motor vehicle or motor vehicle engine.” 40 C.F.R. § 86.094-2.

20. Under section 202(m) of the CAA, 42 U.S.C. § 7521(m), the EPA promulgated regulations for motor vehicles manufactured after 2007 that require HDD trucks to have numerous devices or elements of design that, working together, can detect problems with the vehicle’s emission-related systems, alert drivers to these problems, and store electronically-generated malfunction information. 40 C.F.R. §§ 86.005-17, 86.007-17, 86.1806-05. These devices or elements of design are referred to as “onboard diagnostic systems” or “OBD” systems.
21. Section 203(a)(3)(B), 42 U.S.C. § 7522(a)(3)(B), prohibits any person from manufacturing, selling, offering to sell, or installing any part or component intended for use with, or as part of, any motor vehicle or motor vehicle engine, where a principal effect of the part or component is to bypass, defeat, or render inoperative any device or element of design installed on or in a motor vehicle or motor vehicle engine in compliance with Title II of the CAA, and where the person knows or should know that such part or component is being offered for sale or installed for such use or put to such use.
22. Persons violating section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B), are subject to civil penalties of up to \$4,876 for each violation that occurred after November 2, 2015, where penalties are assessed on or after December 23, 2020. CAA § 205(a), 42 U.S.C. § 7524(a); 40 C.F.R. § 19.4; Civil Monetary Penalty Inflation Adjustment Rule, 85 Fed. Reg. 83,818, 83,820 (Dec. 23, 2020).

23. Any violation of section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B), shall constitute a separate offense with respect to each part or component. CAA § 205(a), 42 U.S.C. § 7524(a).

General Allegations

Motor Vehicle Emissions-Related Elements of Design

24. EPA-certified motor vehicles and motor vehicle engines include a variety of hardware and software devices or elements of design that control emissions of pollutants.
25. Motor vehicles are equipped with engine control units (“ECUs”), which are computers that monitor and control vehicle operations, including the operation of emission control devices and elements of design.
26. OEMs employ certain hardware devices as emission control systems to manage and treat exhaust to reduce levels of regulated pollutants from being created or emitted into the ambient air. Such devices include exhaust gas recirculation (“EGR”), diesel particulate filters (“DPFs”), diesel oxidation catalysts (“DOC”), nitrogen oxide adsorbing catalyst (“NAC”), positive crankcase ventilation (“PCV”), and selective catalytic reduction (“SCR”).
27. EGR is an element of design in diesel-fueled motor vehicles. *See* 40 C.F.R. §§ 86.004-11, 86.004-25, 86.007-11, 86.1806-05.
28. DPF is an element of design in diesel-fueled motor vehicles. *See* 40 C.F.R. §§ 86.004-25, 86.007-11, 86.1806-05.
29. DOC is an element of design in diesel-fueled motor vehicles. *See* 40 C.F.R. §§ 86.004-25, 86.007-11, 86.1806-05.
30. NAC is an element of design in diesel-fueled motor vehicles. *See* 40 C.F.R. §§ 86.004-25, 86.007-11, 86.1806-05.

31. PCV is an element of design in diesel-fueled motor vehicles. *See* 40 C.F.R. §§ 86.004-25, 86.007-11, 86.1806-05.
32. SCR is an element of design. *See* 40 C.F.R. §§ 86.004-25, 86.007-11, 86.1806-05.
33. In addition to emission control hardware, fuel mass, fuel injection pressure, and fuel injection timing are among the elements of design incorporated in diesel-fueled motor vehicles and motor vehicle engines that can affect the quantity of regulated pollutants that are created by the diesel engine. As an example, HDD manufacturers generally employ retarded fuel injection timing as an emission control method for NOx.
34. The emission control devices of a HDD motor vehicle and motor vehicle engine, such as the EGR, DPF, DOC, NAC, and SCR, work in conjunction with the motor vehicle's OBD system, which monitors emission-related systems or components that could cause the vehicle to fail to comply with the CAA's emission standards. The OBD must detect and report malfunctions of EGRs, oxygen sensors, DPFs, DOCs, NACs, and SCRs in motor vehicles by, among other means, illuminating the "check engine light" or other malfunction indicator lamp, recording a diagnostic trouble code, or causing an engine power reduction. 40 C.F.R. § 86.1806-05.
35. General Motors Company is the OEM of GMC and Chevy (collectively "GMC/Chevy") Model Year 2004-2017 2500/3500 Sierra and Silverado 6.6L Duramax Model Year HDD Trucks and their engines.
36. Stellantis, N.V. (and its predecessors) ("Dodge") is the OEM of Dodge Ram Model Year 2006-2017 6.7L Cummins HDD Trucks. Cummins, Inc., is the OEM for the engines for such HDD Trucks.
37. The HDD Trucks identified in Paragraphs 35-36 above are each self-propelled.

38. The HDD Trucks identified in Paragraphs 35-36 above are each designed to transport persons or property on a street or highway.
39. The HDD Trucks identified in Paragraphs 35-36 above are each a “motor vehicle,” as that term is defined under section 216(2) of the CAA, 42 U.S.C. § 7550(2), with a “motor vehicle engine.”
40. Chevy/GMC, Dodge, or Cummins obtained a COC from the EPA for each motor vehicle or motor vehicle engine identified in Paragraphs 35-36.
41. The HDD Trucks and their engines identified in Paragraphs 35-36 above have installed on or in them emissions-related devices or elements of design in compliance with Title II of the CAA, and in conformance with the relevant EPA-issued COC, including one or more of the following: EGR, DOC, NAC, SCR, DPF, OBD, or fueling strategies.
42. Aftermarket ECU programmers (including hardware commonly referred to as “tuners,” and software or firmware commonly referred to as “tunes”), in conjunction with other defeat devices, such as EGR delete or solutions kits, EGR block-off plates, PCV reroute kits, straight exhausts and delete pipes, bypass, defeat, or render inoperative the EGR, DPF, DOC, NAC, PCV, SCR, fueling strategies, or other emission controls.
43. Tuners or tunes allow the EGR, DPF, DOC, NAC, PCV, SCR, or other emissions-related elements of design to be removed or disabled without the OBD illuminating a malfunction indicator lamp, recording a diagnostic trouble code, and/or causing an engine power reduction.

Investigation of APlus Trucks Sales and Service

44. On June 14, 2019, the US executed an administrative warrant, issued by the United States District Court for the District of Maine, granting EPA and its authorized representatives’ access to enter, inspect, photograph, review, and copy paper and electronic records,

including computer hard drives and all other electronic records, maintained at the Facility.

45. On August 28, 2019, EPA returned to the Facility to complete its inspection of electronic records.
46. On June 14 and on August 28, 2019, EPA copied a number of paper and electronic invoices evidencing defeat devices sold for and/or installed on HDD trucks and engines.
47. On June 11, 2020, Complainant issued APlus Trucks a Notice of Violation (“NOV”) describing EPA’s findings that APlus Trucks violated section 203(a)(3)(B) of the CAA as described below.

Alleged Violations

48. The preceding paragraphs are incorporated by reference.
49. From 2017 to 2019, APlus Trucks sold no fewer than 61 defeat devices, as described in Appendix A of the Complaint, for HDD trucks and engines manufactured by entities such as GMC, Cummins, and RAM.
50. The defeat devices sold by APlus Trucks included EGR delete or solutions kits, EGR block-off plates, PCV reroute kits, straight exhausts or delete pipes, and tunes or tuners.
51. Many of APlus Trucks’ invoices documenting the sales of defeat device products show that APlus Trucks also installed the products, and/or identify the defeat devices’ functions.
52. Each defeat device identified in Appendix A bypasses, defeats, or renders inoperative devices or elements of design installed on or in motor vehicles or motor vehicle engines in compliance with regulations under the CAA.
53. Respondent knew or should have known that the defeat devices were offered for sale to, or would be used to, bypass, defeat, or render inoperative devices or elements of design

installed on or in motor vehicles or motor vehicle engines in compliance with regulations under the CAA.

54. The manufacture, sale, offering for sale, or installation of (or causing thereof with respect to) each defeat device constitutes one or more separate violation of section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B).

Relief Sought: Civil Penalty

55. Complainant seeks an administrative penalty of \$168,700 against Respondent for 61 violations of section 203(a)(3)(B) of the CAA that occurred between 2017 and 2019.
56. In determining the amount of the civil penalty in this matter, the CAA requires that the EPA take into account certain penalty factors, namely “the gravity of the violation, the economic benefit or savings (if any) resulting from the violation, the size of [Respondent’s] business, [Respondent’s] history of compliance with this subchapter, action taken to remedy the violation, the effect of the penalty on [Respondent’s] ability to continue in business, and such other matters as justice may require.” CAA § 205(c)(2), 42 U.S.C. § 7524(c)(2).
57. The proposed penalty takes into account the CAA’s penalty factors by applying the EPA’s Clean Air Act Title II Vehicle & Engine Civil Penalty Policy - <https://www.epa.gov/enforcement/clean-air-act-title-ii-vehicle-engine-civil-penalty-policy> (January 18, 2021). The application of the Penalty Policy yields a proposed civil penalty based on the number of violative engines or products, their horsepower, the seriousness of the violations, any remedial actions, and other legal and equitable factors.
58. Complainant has reviewed financial information provided by Respondent. Based on the information provided, Complainant believes that the proposed penalty will not prevent Respondent from continuing in business.

59. The proposed penalty takes into consideration that Respondent has no known prior history of Clean Air Act violations, and that Respondent has submitted a certification to EPA representing that it has ceased the sale and installation of relevant defeat devices for use on motor vehicles.

Notice of Opportunity to Request a Hearing

To contest any material fact or conclusions of law alleged in this Complaint, Respondent must file a written answer (“Answer”) within thirty (30) days of service of this Complaint. The Answer should comply with the requirements of 40 C.F.R. § 22.15. The Answer should clearly and directly admit, deny, or explain each of the factual allegations contained in this Complaint of which such Respondent has any knowledge. Where a Respondent has no knowledge of a particular factual allegation, the Answer should so state. The Answer should contain: (1) the circumstances or arguments which are alleged to constitute the grounds of any defense; (2) the facts which such Respondent disputes; (3) the basis for opposing any proposed relief; and (4) a statement of whether a hearing is requested. All material facts not denied in the Answer will be considered to be admitted.

If a Respondent fails to file a written Answer within thirty (30) days of receipt of this Complaint, such failure shall constitute an admission by such Respondent of all facts newly alleged in the Complaint and a waiver by such Respondent of the right to a hearing. Failure to Answer may result in the filing of a Motion for Default Order and the possible issuance of a Default Order imposing penalties against such Respondent without further proceedings.

Any hearing requested and granted will be conducted in accordance with the Consolidated Rules.

Respondent’s Answer or any Motion should be filed as follows:

If filing by United States Postal Service, UPS, FedEx, DHL or other courier, or personal delivery, address to:

Wanda I. Santiago
Regional Hearing Clerk
U.S. EPA, Region 1
5 Post Office Square - Suite 100
Mail Code: 04-6
Boston, MA 02109-3912

If filing electronically, email to:

RI_Hearing_Clerk_Filings@epa.gov

and

Santiago.Wanda@epa.gov

In addition, Complainant consents to service by Respondent, via email, at Rivers.Tahani@epa.gov. Respondent may also provide service to Complainant via United States Postal Service, UPS, FedEx, DHL or other courier, or personal delivery, addressed to:

Tahani Rivers, Enforcement Counsel
U.S. EPA, Region 1
5 Post Office Square – Suite 100
Mail Code: 04-3
Boston, MA 02109-3912

Respectfully Submitted,

Date

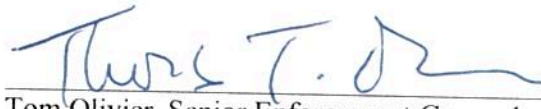
Date

7/16/21

JAMES CHOW

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CHOW
Date: 2021.07.16 10:25:54
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Appendix A: Work Performed and Defeat Devices Sold or Installed as Part of Business Activities Conducted by APlus Trucks as Recorded in Business Records Copied from the Facility.

Alleged Violations of 42 U.S.C. § 7522(a)(3)(B)¹

The Following Information is being Treated as Confidential Business Information

Activity	File Date	Invoice No.	Invoice Date	Vehicle	Defeat Device	Invoice
1	[REDACTED]		[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2	[REDACTED]		[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
3	[REDACTED]		[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
4	[REDACTED]		[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
5	[REDACTED]		[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
6	[REDACTED]		[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
7	[REDACTED]		[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
8	[REDACTED]		[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
9	[REDACTED]		[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
10	[REDACTED]		[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
11	[REDACTED]		[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
12	[REDACTED]		[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
13	[REDACTED]		[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
14	[REDACTED]		[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
15	[REDACTED]		[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

¹ The "file dates" are derived from the metadata associated with the electronic invoices.

Activity	File Date	Invoice No.	Invoice Date	Vehicle	Defeat Device	Invoice
16	[REDACTED]			[REDACTED]	[REDACTED]	[REDACTED]
17	[REDACTED]			[REDACTED]	[REDACTED]	[REDACTED]
18	[REDACTED]			[REDACTED]	[REDACTED]	[REDACTED]
19	[REDACTED]				[REDACTED]	[REDACTED]
20	[REDACTED]				[REDACTED]	[REDACTED]
21	[REDACTED]				[REDACTED]	[REDACTED]
22	[REDACTED]			[REDACTED]	[REDACTED]	[REDACTED]
23	[REDACTED]			[REDACTED]	[REDACTED]	[REDACTED]
24	[REDACTED]			[REDACTED]	[REDACTED]	[REDACTED]
25	[REDACTED]			[REDACTED]	[REDACTED]	[REDACTED]
26	[REDACTED]			[REDACTED]	[REDACTED]	[REDACTED]
27	[REDACTED]			[REDACTED]	[REDACTED]	[REDACTED]
28	[REDACTED]			[REDACTED]	[REDACTED]	[REDACTED]
29	[REDACTED]			[REDACTED]	[REDACTED]	[REDACTED]
30	[REDACTED]				[REDACTED]	[REDACTED]
31	[REDACTED]				[REDACTED]	[REDACTED]
32	[REDACTED]				[REDACTED]	[REDACTED]
33	[REDACTED]			[REDACTED]	[REDACTED]	[REDACTED]
34	[REDACTED]			[REDACTED]	[REDACTED]	[REDACTED]

Activity	File Date	Invoice No.	Invoice Date	Vehicle	Defeat Device	Invoice
35	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
36	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
37	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
38	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
39	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
40	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
41	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
42	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
43	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
44	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
45	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
46	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
47	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
48	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
49	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
50	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
51	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Activity	File Date	Invoice No.	Invoice Date	Vehicle	Defeat Device	Invoice
52						
53						
54						
55						
56						
57						
58						
59						
60						
61						