

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

<b>In the Matter of:</b>	)	<b>Docket No. CAA-05-2023-0021</b>
	)	
<b>T&amp;T Farms, Inc.</b>	)	<b>Proceeding to Assess a Civil Penalty</b>
<b>Winamac, Indiana</b>	)	<b>Under Section 205(c)(1) of the Clean Air</b>
	)	<b>Act, 42 U.S.C. § 7524(c)(1)</b>
<b>Respondent.</b>	)	
_____	)	

**Consent Agreement and Final Order**

**Preliminary Statement**

1. This is an administrative action commenced and concluded under Section 205(c)(1) of the Clean Air Act (the CAA), 42 U.S.C. § 7524(c)(1), and Sections 22.1(a)(2), 22.13(b) and 22.18(b)(2) and (3) 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.
2. Complainant is the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency (EPA), Region 5.
3. Respondent is T&T Farms Inc., a corporation doing business in Indiana.
4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).
5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.
6. Respondent consents to the assessment of the civil penalty specified in this CAFO and to the terms of this CAFO.

### **Jurisdiction and Waiver of Right to Hearing**

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO and its right to appeal this CAFO.

### **Statutory and Regulatory Background**

9. Title II of the CAA, 42 U.S.C. §§ 7521–7554, was enacted to reduce air pollution from mobile sources. In enacting the CAA, Congress found, in part, that “the increasing use of motor vehicles . . . has resulted in mounting dangers to the public health and welfare.” Section 101(a)(2) of the CAA, 42 U.S.C. § 7401(a)(2). Congress’s purpose in enacting the CAA included “to protect and enhance the quality of the Nation’s air resources so as to promote the public health and welfare and the productive capacity of its population,” and “to initiate and accelerate a national research and development program to achieve the prevention and control of air pollution.” Section 101(b)(1)-(2) of the CAA, 42 U.S.C. § 7401(b)(1)-(2).

10. Section 216(2) of the CAA, 42 U.S.C. § 7550(2) defines “motor vehicle” as “any self-propelled vehicle designed for transporting persons or property on a street or highway.” *See also* 40 C.F.R. § 85.1703 (further defining “motor vehicle”).

11. EPA promulgated emission standards for particulate matter (PM), nitrogen oxides (NO<sub>x</sub>), and other pollutants applicable to motor vehicle and motor vehicle engines, including diesel engine vehicles, under Section 202 of the CAA, 42 U.S.C. § 7521. *See* the implementing regulations at 40 C.F.R. Part 86. Vehicle and engine emissions standards “reflect the greatest degree of emission reduction achievable through the application of [available] technology.” Section 202(a)(3)(A)(i) of the CAA, 42 U.S.C. § 7521(a)(3)(A)(i).

12. Section 203(a)(1) of the CAA, 42 U.S.C. § 7522(a)(1), prohibits a manufacturer of motor vehicles or motor vehicle engines from selling a new motor vehicle or motor vehicle engine in the United States unless the motor vehicle or motor vehicle engine is covered by a certificate of conformity (COC). EPA issues COCs to motor vehicle and motor vehicle engine manufacturers under Section 206(a) of the CAA, 42 U.S.C. § 7525(a), to certify that a particular group of motor vehicle and motor vehicle engines conform to applicable EPA requirements governing motor vehicle emissions. The COC will include, among other things, a description of the engines, their emission control systems, all auxiliary emission control devices and the engine parameters monitored.

13. Engine manufacturers employ many devices and elements of design to meet emission standards. “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.” *See* 40 C.F.R. §§ 86.094-2 and 86.1803-01.

14. To meet the emission standards in 40 C.F.R. Part 86 and qualify for a COC, engine manufacturers may utilize control devices or elements of design such as Exhaust Gas Recirculation (EGR), Clean Gas Induction (CGI), Diesel Oxidation Catalyst (DOC), Diesel Particulate Filter (DPF), and/or Selective Catalytic Reduction (SCR) systems.

15. Engine and vehicle manufacturers may also employ engine fueling strategies, such as retarded fuel injection timing, as a primary element of design to limit emissions of NO<sub>x</sub>. *See* 59 Fed. Reg. 23,264 at 23,418 (May 5, 1994) (“[I]njection timing has a very significant impact on NO<sub>x</sub> emission rates, with advanced timing settings being associated with higher NO<sub>x</sub> . . .”).

16. Modern motor vehicles are equipped with electronic control modules (ECMs). ECMs continuously monitor engine and other operating parameters and control emission control devices and elements of design, such as the EGR/CGI, DOC, DPF, and SCR systems and the engine fueling strategy.

17. Under Section 202(m) of the CAA, 42 U.S.C. § 7521(m), EPA promulgated regulations for motor vehicles manufactured after 2007 that require vehicles 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.

18. Section 203(a)(3)(A) of the CAA, 42 U.S.C. § 7522(a)(3)(A), prohibits "any person to remove or render inoperative any device or element of design installed on or in a motor vehicle or motor vehicle engine in compliance with regulations under [Title II of the CAA] prior to its sale and delivery to the ultimate purchaser, or for any person knowingly to remove or render inoperative any such device or element of design after such sale and delivery to the ultimate purchaser." This is also referred to as "tampering."

19. The Administrator of EPA (the Administrator) may assess a civil penalty of up to \$5,580 per motor vehicle, motor vehicle engine, or part or component up to a total of \$446,456 against each violator for violations that occurred after November 2, 2015, and where penalties are assessed on or after January 6, 2023, pursuant to Section 205(a) and (c) of the CAA, 42 U.S.C. § 7524(a) and (c), and 40 C.F.R. § 19.4.

### **Factual Allegations and Alleged Violations**

20. Respondent is a company doing business in the State of Indiana with its primary place of business located at 1011 South Monticello Street, Winamac, Indiana 46996.

21. Respondent is a person, as that term is defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

22. On December 10, 2021, EPA issued a request for information (Request) to the Respondent pursuant to Section 208 of the CAA, 42 U.S.C. § 7542, requesting documents related to all heavy-duty diesel engine (HDDE) motor vehicles owned, operated, and/or leased by T&T Farms and the purchase of, and/or installation of, parts, components, and services which bypass, defeat, or render inoperative any emission control component, element of design, or emissions related part or component for the period from January 1, 2018 to December 8, 2021.

23. In responses dated April 8, 2022, and September 8, 2022, Respondent responded to the Request. In its response, Respondent provided invoices, receipts, and other records indicating that between January 1, 2018, and December 1, 2021, T&T Farms removed or rendered inoperative, one or more emission control devices or elements of design, including but not limited to, the EGR, DOC, and/or DPF on at least 18 HDDE motor vehicles in its fleet (see Table 1 for a list of the vehicles).

24. On September 26, 2022, EPA issued a Finding of Violation (FOV) to Respondent for violating Section 203(a)(3)(A) of the CAA, 42 U.S.C. § 7522(a)(3)(A).

25. On December 7, 2022, representatives from EPA and T&T Farms held a teleconference to discuss the FOV.

26. EPA alleges that Respondent removed or rendered inoperative (or caused thereof) emission control devices or elements of design (such as the engine fueling strategy, EGR/CGI, DOC, DPF, SCR, and OBD systems) installed on or in motor vehicles or motor vehicle engines

that were in compliance with Title II of the CAA in violation of Section 203(a)(3)(A) of the CAA, 42 U.S.C. § 7522(a)(3)(A).

**Civil Penalty**

27. Based on analysis of the factors specified in Section 205(c) of the CAA, 42 U.S.C. § 7524(c), the facts of this case and the Respondent’s agreement to promptly return its fleet to compliance, Complainant has determined that an appropriate civil penalty to settle this action is \$75,272.

28. Penalty Payment. Respondent agrees to:

a. Pay the civil penalty above within 30 days after the effective date of this CAFO. The CAFO is effective upon filing with the Regional Hearing Clerk.

b. Pay the civil penalty using any method provided in the table below.

<b>Payment Method</b>	<b>Payment Instructions</b>
Automated Clearinghouse (ACH) payments made through the US Treasury	US Treasury REX/Cashlink ACH Receiver ABA: 051036706 Account Number: 310006, Environmental Protection Agency CTX Format Transaction Code 22 – checking  In the comment area of the electronic funds transfer, state Respondent’s name and the CAFO docket number.
Wire transfers made through Fedwire	Federal Reserve Bank of New York ABA: 021030004 Account Number: 68010727 SWIFT address: FRNYUS33 33 Liberty Street New York, NY 10045 Beneficiary: US Environmental Protection Agency  In the comment area of the electronic funds transfer, state Respondent’s name and the docket number of this CAFO.
Payments made through <a href="https://www.pay.gov">Pay.gov</a>  Payers can use their credit or debit cards (Visa, MasterCard,	<ul style="list-style-type: none"> <li>• Go to <a href="https://www.pay.gov">Pay.gov</a> and enter “SFO 1.1” in the form search box on the top left side of the screen.</li> <li>• Open the form and follow the on-screen instructions.</li> <li>• Select your type of payment from the "Type of Payment" drop down menu.</li> </ul>

<p>American Express &amp; Discover) as well as checking account information to make payments.</p>	<ul style="list-style-type: none"> <li>Based on your selection, the corresponding line will open and no longer be shaded gray. Enter the CAFO docket number into the field</li> </ul>
<p>Cashier's or certified check payable to "Treasurer, United States of America."</p> <p>Please notate the CAFO docket number on the check</p>	<p>For <b>standard delivery</b>:  U.S. Environmental Protection Agency  Fines and Penalties  Cincinnati Finance Center  P.O. Box 979077  St. Louis, Missouri 63197-9000</p> <p>For <b>signed receipt confirmation</b> (FedEx, UPS, Certified Mail, etc):  U.S. Environmental Protection Agency  Government Lockbox 979077  U.S. EPA Fines and Penalties  1005 Convention Plaza  SL-MO-C2-GL  St. Louis, Missouri 63101</p>

29. Within 24 hours of the payment of the civil penalty Respondent must send a notice of payment that states Respondent's name and the docket number of this CAFO to EPA at the following addresses:

Air Enforcement and Compliance Assurance Branch  
U.S. Environmental Protection Agency, Region 5  
[R5airenforcement@epa.gov](mailto:R5airenforcement@epa.gov)

Cynthia King  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 5  
[king.cynthia@epa.gov](mailto:king.cynthia@epa.gov)

Regional Hearing Clerk (E-19J)  
U.S. Environmental Protection Agency, Region 5  
[r5hearingclerk@epa.gov](mailto:r5hearingclerk@epa.gov)

30. This civil penalty is not deductible for federal tax purposes.

31. If Respondent does not pay timely the civil penalty, EPA may request the Attorney General of the United States bring an action to collect any unpaid portion of the penalty

with interest, nonpayment penalties and the United States enforcement expenses for the collection action under Section 205(c)(6) of the CAA, 42 U.S.C. § 7524(c)(6)(B). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

32. Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury pursuant to 26 U.S.C. § 6621(a)(2). Respondent must pay the United States enforcement expenses, including but not limited to attorney's fees and costs incurred by the United States for collection proceedings. In addition, Respondent must pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue. This nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter. 42 U.S.C. § 7524(c)(6)(B).

#### **Other Conditions**

33. Respondent has represented to EPA that due to supply chain issues it will need additional time to fully return vehicles or engines to stock condition (i.e. all OEM emission controls reinstalled, including DPF, SCR, and EGR, and the ECM flashed to factory configurations). Therefore, within 180 calendar days from the Respondent's signature on this CAFO, any tampered vehicles or engines owned or operated by Respondent (including, but not limited to, the vehicles listed in Table 1 below) shall be:

- a. permanently disabled (by cutting a 3-inch hole in the engine block) and scrapped;
- or,
- b. fully returned to stock condition (i.e. all OEM emission controls reinstalled, including DPF, SCR, and EGR, and the ECM flashed to factory configurations).



**Table 1**

<b>Unit #</b>	<b>VIN #</b>
1038	1XPXD49X9KD601038
1062	1XPXD49X6KD601062
1070	1XPXD49X5KD601070
1755	1XPXD49X9CD171755 - permanently out of service
1756	1XPXD49X0CD171756
4082	1XPXD49X9GD344082
6280	1XPXD49X1CD156280
7061	1XKWD49X9FJ427061 - permanently out of service
7480	1XPXD49X3CD157480
8425	1XPXD49X4DD168425 - permanently out of service
8659	1XKWD49X2JJ208659 - reset to factory
8926	3HSDMAPR8FN528926
9212	3HSDMAPROFN679212
9395	1XKWD49X4KJ309395 – reset to factory
9396	1XKWD49X6KJ309396 - reset to factory
9397	1XKWD49X8KJ309397 - permanently out of service
9472	1XPXD49X5FD279472
96501	1XKWD49X7KR296501 - reset to factory

34. Respondent shall provide receipts, invoices, photos, and other documentation verifying that such work was completed within 30 calendar days from the completion of all work described in Paragraphs 33(a) and (b). Scrapped tampered vehicles or engines under Paragraph 33(a) may not be sold as “trucks” or “engines,” but may be stripped and sold/used for parts, with the exception of the engine block and crankshaft, which must be permanently disabled and scrapped.

35. Within 30 days of completion of Paragraph 33 above, Respondent shall certify that all tampered vehicles or engines owned or operated by Respondent (including, but not limited to, the vehicles listed in Table 1 above) have been either: permanently disabled and scrapped or fully returned to stock condition.

36. By signing this Consent Agreement, Respondent agrees to the following:

(i) Respondent will not remove or render inoperative any emissions-related device or element of design installed on or in a motor vehicle or motor vehicle engine in violation of Section 203(a)(3)(A) of the CAA, 42 U.S.C. § 7522(a)(3)(A), or direct any other individual or entity to do so; (ii) Respondent will not manufacture, sell, offer for sale, or install any part or component in violation of Section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B); and (iii) Respondent acknowledges receipt of EPA’s November 23, 2020 “Tampering Policy: The EPA Enforcement Policy on Vehicles and Engine Tampering and Aftermarket Defeat Devices under the Clean Air Act<sup>1</sup>.”

37. By signing this Consent Agreement, Respondent understands that the violations addressed in this CAFO may be considered as a “History of Noncompliance” for any future violations of Title II of the CAA, 42 U.S.C. § 7522(a)(3)(A), by Respondent or any other business entity owned or operated by Tom Halleck, as addressed in the January 18, 2021, Clean Air Act Title II Vehicle & Engine Civil Penalty Policy.

38. By signing this CAFO, Respondent certifies that vehicle Units 8853, 3790, 3791, 4782, 8171, 90169, 245, 1354, and 8619 were purchased as EPA certified “glider vehicle” and to the best of Respondent’s knowledge and understanding were assembled in compliance with 40 C.F.R. Part 1037.

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<sup>1</sup> <https://www.epa.gov/sites/default/files/2020-12/documents/epatamperingpolicy-enforcementpolicyonvehicleandenginertampering.pdf>

39. By signing this CAFO, Respondent certifies that as of the date of their signature on this CAFO that there are no Defeat Devices in their inventory and/or possession (including, but not limited to, straight pipes, EGR delete kits, ECM tuning devices, etc.) with the exception of those installed on the vehicles and engines listed in Table 1, above.

40. Within 14 calendar days from their signature of this CAFO, Respondent shall remove from any webpage(s) and any social media platform(s) it operates or maintains all advertisements, photos, videos, and information that relate to performing tampering and/or selling, offering to sell, and/or installing of Defeat Devices except advertisements, photos, videos, or information relating to how to comply with the CAA.

41. Within 14 calendar days from their signature of this CAFO, Respondent shall post a publicly accessible announcement about Respondent's settlement with EPA on Respondent's current website homepage(s) (if any) and Respondent's social media homepage(s) (if any), including, but not limited to, all Facebook, Twitter, Pinterest, and Instagram accounts associated with Respondent. The announcement shall remain posted for at least 60 calendar days from the date the announcement is posted. Respondent shall use the text contained in Appendix A (Announcement) in 12-point font, or another notice reviewed and approved by EPA, to provide such announcement. Respondent shall provide EPA with proof of posting the announcement within 30 calendar days from Respondent's signature of this CAFO.

42. In each report that Respondent submits to EPA it shall certify that the information provided is true and complete by including the following statement signed by one of its officers:

*I certify that I am familiar with the information in this document and that, based on my inquiry of those individuals responsible for obtaining the information, it is true and complete to the best of my knowledge. I know that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.*

43. Failure to comply with Paragraph 36 of this CAFO may constitute a violation of Section 203(a)(3)(A) or (B) of the CAA, 42 U.S.C. § 7522(a)(3)(A) or (B), and Respondent could be subject to penalties of up to the statutory civil penalties in 40 C.F.R. § 19.4.

44. Respondent is informed and believes, and upon such information and belief certifies that any material information or representation they have supplied or made to EPA concerning this matter was, at the time of submission true, accurate, and complete and that there has been no material change regarding the truthfulness, accuracy or completeness of such information or representation. EPA shall have the right to institute further actions to recover appropriate relief if EPA obtains evidence that any information provided and/or representations made by Respondent to the EPA regarding matters relevant to this CAFO, including incomplete responses to Information Requests and information about Respondent's ability to pay a penalty, were false or, in any material respect, inaccurate. This right shall be in addition to all other rights and causes of action that EPA may have, civil or criminal, under law or equity in such event. Respondent is aware that the submission of false or misleading information to the United States government may subject a person to separate civil and/or criminal liability.

45. For purposes of the identification requirement in Section 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), and 26 C.F.R. § 162-21(b)(2), performance of the Other Conditions Section above is restitution, remediation, or required to come into compliance with the law.

### **General Provisions**

46. The parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: [king.cynthia@epa.gov](mailto:king.cynthia@epa.gov) (for Complainant), and [jaimesaylor@h2lawyers.com](mailto:jaimesaylor@h2lawyers.com)

(for Respondent). Respondent understands that the CAFO will become publicly available upon filing.

47. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in this CAFO.

48. The effect of the settlement described in Paragraph 47, above, is conditioned upon the accuracy of Respondent's representations to EPA.

49. The CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

50. This CAFO does not affect Respondent's responsibility to comply with the CAA and other applicable federal, state and local laws. Except as provided in Paragraph 47 above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

51. Respondent certifies that it is complying fully with Sections 203(a)(3)(A) and (B) of the CAA, 42 U.S.C. § 7522(a)(3)(A) and (B). This CAFO constitutes an "enforcement response" as that term is used in EPA's January 18, 2021, Clean Air Act Title II Vehicle & Engine Civil Penalty Policy to determine Respondent's "full compliance history" under Section 205(b) of the CAA, 42 U.S.C. § 7524(b).

52. The terms of this CAFO bind Respondent, its successors and assigns.

53. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

54. Each party agrees to bear its own costs and attorney's fees in this action.

55. This CAFO constitutes the entire agreement between the parties.

**T&T Farms, Inc., Respondent**

6-27-2023  
Date

Tom Halleck  
Tom Halleck, President  
T&T Farms, Inc.

**United States Environmental Protection Agency, Complainant**

**MICHAEL  
HARRIS**

Digitally signed by  
MICHAEL HARRIS  
Date: 2023.07.17  
12:43:30 -05'00'

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Michael D. Harris  
Division Director  
Enforcement and Compliance Assurance Division  
U.S. Environmental Protection Agency, Region 5

**Consent Agreement and Final Order  
In the Matter of: T&T Farms, Inc.  
Docket No. CAA-05-2023-0021**

**Final Order**

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Ann L. Coyle  
Regional Judicial Officer  
U.S. Environmental Protection Agency  
Region 5



## **Appendix A: Announcement**

On **X** Date, T&T Farms, Inc. (T&T Farms) entered into a settlement with the United States Environmental Protection Agency (EPA) to resolve alleged violations of Section 203(a)(3)(A) of the Clean Air Act, related to the removal or rendering inoperative of emission control devices installed on the heavy-duty diesel vehicles and engines in its fleet.

By signing a consent agreement with EPA, T&T Farms has certified that they will comply with Section 203(a)(3) of the CAA, which makes it unlawful for: “(A) any person to remove or render inoperative any device or element of design installed on or in a motor vehicle or motor vehicle engine in compliance with regulations under [Title II of the CAA] prior to its sale and delivery to the ultimate purchasers, or for any person knowingly to remove or render inoperative any such device or element of design after such sale and delivery to the ultimate purchaser; or (B) for any person to manufacture or sell, or offer to sell, or install, 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 engine in compliance with regulations under [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.”

T&T Farms will pay a penalty of \$75,272 and comply with the consent agreement to ensure ongoing compliance with the Clean Air Act.

If you have any questions regarding this announcement, please ask for Tom Halleck.

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Thank you,

Tom Halleck, President  
T&T Farms, Inc.