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U.S. EPA - REGION IX

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 HAWTHORNE STREET
SAN FRANCISCO, CALIFORNIA 94105

In the Matter of:)	Docket No. CAA-09-2021-0060
)	
K 2 Motor Corp. dba Spec D Tuning)	CONSENT AGREEMENT AND
)	FINAL ORDER PURSUANT TO
)	40 C.F.R. §§ 22.13 AND 22.18
City of Industry, California)	
)	
Respondent.)	
_____)	

I. CONSENT AGREEMENT

A. Preliminary Statement

1. This is a civil administrative penalty assessment proceeding brought under section 205(c)(1) of the Clean Air Act (“CAA” or the “Act”), 42 U.S.C. § 7524(c)(1), 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 commences and concludes this matter.

2. Complainant is the Assistant Director of the Air, Waste & Chemicals Branch of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency Region IX (the "EPA"), who has been duly delegated the authority to commence and settle civil administrative penalty proceedings under section 205(c)(1) of the CAA, 42 U.S.C. § 7424 (c)(1).

3. Respondent is K 2 Motor Corp. dba Spec D Tuning ("K 2 Motor"), a California corporation distributing motor vehicle parts headquartered at 21901 Ferrero Pkwy., City of Industry, CA 91789.

4. Complainant and Respondent, having agreed 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. Governing Law

5. This proceeding arises under Part A of Title II of the CAA, 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 particulate matter ("PM"), non-methane hydrocarbons ("NMHC"), oxides of nitrogen ("NOx"), and carbon monoxide ("CO"). In creating the CAA, Congress found, in part, that "the increasing use of motor vehicles . . . has resulted in mounting dangers to the public health and welfare." CAA § 101(a)(2), 42 U.S.C. § 7401(a)(2).

6. EPA's allegations in this CAFO concern parts or components for motor vehicles and engines subject to emission standards. The CAA requires EPA to prescribe and revise, by regulation, standards applicable to the emission of any air pollutant from new motor vehicles or

engines that cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare. *See* CAA § 202(a)(1) and (3)(B), 42 U.S.C. § 7521(a)(1) and (3)(B). As required by the CAA, the emission standards must “reflect the greatest degree of emission reduction achievable through the application of [available] technology.” CAA § 202(a)(3)(A)(i), 42 U.S.C. § 7521(a)(3)(A)(i).

7. Under Section 202 of the CAA, 42 U.S.C. § 7521, EPA has promulgated emission standards for PM, NMHC, NO_x and CO that are applicable to motor vehicles and motor vehicle engines based on a vehicle’s or engine’s class and model year. *See generally* 40 C.F.R. Part 86.

8. Section 203(a)(1) of the CAA prohibits a vehicle manufacturer from selling a new motor vehicle in the United States unless the vehicle is covered by a certificate of conformity. 42 U.S.C. § 7522(a)(1).

9. The EPA issues certificates of conformity to vehicle manufacturers 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.

10. The application for a certificate of conformity must describe, among other things, the emissions-related elements of design of the motor vehicle or motor vehicle engine. *See* 40 C.F.R. § 86.1844-01.

11. “Element of design” is defined in 40 C.F.R. § 86.1803-01 as “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.”

12. EPA-certified motor vehicles and motor vehicle engines include a variety of hardware, software devices (tuners) and software (tunes) or elements of design that control emissions of air

pollutants. Manufacturers 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 and meet the emission standards in 40 C.F.R. Part 86. Such devices include the catalytic converter which is an element of design in gasoline-fueled motor vehicles that reduces NMHC, CO and/or NOx by routing exhaust through a precious metal coated honeycomb structure that causes a catalytic reaction that breaks down pollutants into less harmful components.

13. Modern vehicles and engines are also equipped with an electronic control module (“ECM”) and onboard diagnostic system (“OBD”). ECMs are devices that receive inputs from various sensors and outputs signals to control engine, vehicle, or equipment functions. ECMs continuously monitor engine and other operating parameters to manage the operation of the emission control systems and elements of design. The OBD detects and reports malfunctions of emission-related elements of design through a network of sensors installed throughout a motor vehicle or motor vehicle engine. *See* CAA § 202(m), 42 U.S.C. § 7521(m).

14. Pursuant to Section 203(a)(3)(B) of CAA, 42 U.S.C. § 7522(a)(3)(B),

The following acts and the causing thereof are prohibited—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 or motor vehicle engine in compliance with regulations under this subchapter, 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[.]

15. “Person” is defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e), to include “an individual, corporation, partnership, association, State, municipality, political subdivision of a State, and any agency, department, or instrumentality of the United States and any officer, agent or employee thereof.”

16. “Motor vehicle” is defined in Section 216(2) of the CAA, 42 U.S.C. § 7550(2), as “any self-propelled vehicle designed for transporting persons or property on a street or highway.”

17. Any person who violates Section 203(a)(3)(B) of CAA, 42 U.S.C. § 7522(a)(3)(B), is subject to a civil penalty of up to \$4,876 for each violation. CAA § 205(a), 42 U.S.C. § 7524(a), 40 C.F.R. § 19.4, Table 1.

C. Allegations

18. Complainant re-alleges and incorporates by reference herein Paragraphs 1 through 18 of this CAFO.

19. At all times relevant to this CAFO, Respondent was a “person” as defined by Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

20. Respondent sells and distributes motor vehicle parts to various individual customers located throughout the United States.

21. On September 6, 2018, EPA issued an information request pursuant to Section 208(a) of the CAA, 42 U.S.C. § 7542(a), to Respondent regarding hardware and software that Respondent sold and/or offered for sale from January 1, 2017.

22. In Respondent’s responses, dated in May 2019 and June 2019, to EPA’s information request, Respondent indicated that it sold and/or offered for sale at least three thousand, eight hundred eighteen (3,818) parts or components (“Subject Parts,” each of which is a “Subject Part”) between January 1, 2017, and September 6, 2018, as identified in the Appendix to this CAFO.

23. The Subject Parts consist of three thousand, eight hundred eighteen (3,818) exhaust emission control delete hardware (sometimes referred to as “straight” or “delete” pipes).

24. Hardware devices and emission control systems such as catalytic converters are

“device[s] or element[s] of design installed on or in a motor vehicle or motor vehicle engine in compliance with [CAA] regulations” within the meaning of Section 203(a)(3)(B) of the CAA, 42U.S.C. § 7522(a)(3)(B).

25. Each Subject Part is, and at all relevant times herein was, intended for use with certified motor vehicles and motor vehicle engines including Honda, Volkswagen, Subaru, Ford and Chevrolet vehicles (“Motor Vehicles”).

26. A principal effect of each Subject Part is to bypass, defeat, or render inoperative device(s) and/or element(s) of design such as the catalytic converter that was installed on these Motor Vehicles.

27. Respondent knew or should have known that each Subject Part was being offered for sale or installed for such use or put to such use.

28. Respondent’s sales and/or offers for sale of three thousand, eight hundred eighteen (3,818) Subject Parts between January 1, 2017, and September 6, 2018, constitute three thousand, eight hundred eighteen (3,818) violations of Section 203(a)(3)(B) of CAA, 42 U.S.C. § 7522(a)(3)(B).

D. Terms of Consent Agreement

29. In accordance with 40 C.F.R. § 22.18(b)(2) and for the purpose of this proceeding, 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.C of this CAFO; c) consents to the assessment of a civil penalty 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.C of this CAFO; and f) waives its rights to appeal the proposed Order contained in this CAFO.

Civil Penalty

30. Respondent agrees to the assessment of a civil penalty in the amount of one hundred fifty-two thousand, one hundred sixty dollars (\$152,160) as final settlement of the civil claims against Respondent arising under the CAA as alleged in Section I.C of this CAFO. The EPA has reduced the civil penalty on the basis of information produced by Respondent demonstrating its inability to pay a higher civil penalty. Respondent shall pay the civil penalty in accordance with the terms set forth below.

31. Respondent shall pay the civil penalty (principal) of one hundred fifty-two thousand, one hundred sixty dollars (\$152,160) and one thousand, four hundred eighty-three dollars and fifty-six cents (\$1,483.56) (interest at 3.12% per annum) in accordance with the installment payment schedule set forth in the following table:

Payment #	Principal Balance	Date Payment Due (from Effective Date of CAFO)	Interest (3.12% per annum)	Principal + Interest	Total Installment Payment Amount Due
1	\$152,160.00	30	\$ -	\$76,080.00	\$76,080.00
2	\$76,080.00	120	\$593.42	\$19,613.42	\$19,390.89
3	\$57,060.00	210	\$445.07	\$19,465.07	\$19,390.89
4	\$38,040.00	300	\$296.71	\$19,316.71	\$19,390.89
5	\$19,020.00	390	\$148.36	\$19,168.36	\$19,390.89
Totals:			\$1,483.56	\$153,643.56	\$153,643.56

32. If Respondent fails to make timely payment of any one of the required installment payments in accordance with the table in the Paragraph immediately above, the entire unpaid balance of the penalty and all accrued interest shall become due immediately upon such failure, and Respondent shall immediately pay the entire remaining principal balance of the civil penalty along with any interest that has accrued up to the time of such payment.

33. Respondent may, at any time after commencement of payments under the

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installment payment schedule, elect to pay the entire principal balance, together with accrued interest to the date of such full payment.

34. Payments under this Consent Agreement and the Final Order may be made by check (mail or overnight delivery), wire transfer, ACH, or online payment. Payment instructions are available at: <http://www2.epa.gov/financial/makepayment>. Payments made by a cashier's check or certified check must be payable to the order of "Treasurer, United States of America" and delivered to the following address:

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

Respondent must note on the check the title and docket number of this action.

35. Concurrently with payment, Respondent must serve photocopies of the check, or proof of other payment method, on the Regional Hearing Clerk and EPA Region 9 at the following addresses:

Daniel Haskell
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region IX
haskell.daniel@epa.gov

Regional Hearing Clerk Office of Regional Counsel
U.S. Environmental Protection Agency, Region IX
R9HearingClerk@epa.gov

36. Payments of the above civil administrative penalty shall not be used by Respondent or any other person as a tax deduction from Respondent's federal, state, or local taxes.

37. If Respondent fails to timely pay any portion of the penalty and interest due 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. § 7524(c)(6);
- b. refer the debt to a credit reporting agency or a collection agency, 42 U.S.C. § 7524(c)(6), 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 granted by EPA, or suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds, 40 C.F.R. § 13.17.

Respondent's Certification of Compliance

38. Respondent certifies that as of the date of its signing this Consent Agreement, Respondent is complying fully with section 203(a)(3) of the CAA, 42 U.S.C. §7522(a)(3).

39. Respondent is aware of EPA's November 23, 2020 "Tampering Policy: The EPA Enforcement Policy on Vehicle and Engine Tampering and Aftermarket Defeat Devices under the Clean Air Act."

40. 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.

41. 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.

42. 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.

43. 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. This CAFO may be signed in counterparts, and its validity shall not be challenged on that basis.

44. 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.

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

E. Effect of Consent Agreement and Final Order

46. 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.

47. 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.

48. This CAFO constitutes the entire agreement between the parties and supersedes any prior agreements or understandings, whether written or oral, among the parties with respect to the subject matter hereof.

F. Effective Date

49. 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: K 2 Motor Corp. dba Spec D Tuning, Docket No. CAA-09-2021-0060 is hereby stipulated, agreed, and approved for entry:

FOR RESPONDENT, K 2 MOTOR CORP. DBA SPEC D TUNING:

8/31/21
Date


Name
Title
K 2 Motor Corp dba Spec D Tuning

The foregoing Consent Agreement In the Matter of: K 2 Motor Corp. dba Spec D Tuning Docket No. CAA-09-2021-0060 is hereby stipulated, agreed, and approved for entry:

FOR COMPLAINANT:

9/8/21

Date

CLAIRE
TROMBADORE

Digitally signed by
CLAIRE TROMBADORE
Date: 2021.09.08
16:10:04 -07'00'

Claire Trombadore
Assistant Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency Region IX
75 Hawthorne Street
San Francisco, CA 94105

In the Matter of: K 2 Motor Corp. dba Spec D Tuning 13
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II. FINAL ORDER

Complainant and Respondent, having entered into the foregoing Consent Agreement,

IT IS HEREBY ORDERED that this CAFO (Docket No. CAA-09-2021-0060) be entered, and that Respondent shall comply with the terms set forth in the Consent Agreement. This Consent Agreement and Final Order shall become effective upon filing.

Date

STEVEN
JAWGIEL

Digitally signed by
STEVEN JAWGIEL
Date: 2021.09.21
11:07:24 -07'00'

STEVEN L. JAWGIEL
Regional Judicial Officer
U.S. Environmental Protection Agency,
Region 9

APPENDIX

#	Part Number	Part name or description	Quantity
Exhaust Emission Control Delete Hardware			
1	HHI-CV0ILX-DK	HHI-CV0ILX-DK 2005 Honda Civic LX L4 1.7 Exhaust Manifold Header	161
2	HH2T-CV06SI-DK	HH2T-CV06SI-DK 2011 Honda Civic Si L4 2.0 Exhaust Manifold Header	46
3	HH4-CMR98LS-DK	HH4-CMR98LS-DK 2002 Chevrolet Camara Z28 V8 5.7L Exhaust Manifold Header	25
4	HH4-MST11V8-DK	HH4-MST11V8-DK 2015 Ford Mustang GT V8 5.0L Exhaust Manifold Header	48
5	MDP-GLF99	MDP-GLF99 2004 Volkswagen Golf GTI I .8L Exhaust Down Pipe	212
6	MDP-WRX02	MDP-WRX02 2006 Subaru Impreza WRX STI 2.5 Exhaust Down Pipe	188
7	MFH-3CV92	MFH-3CV92 1999 Honda Civic EX 1.6L Exhaust System	745
8	MHF-CV92-RS	MHF-CV92-RS 1999 Honda Civic EX 1.6L Exhaust Test Pipe	343
9	MHF-CV92-V2-RS	MHF-CV92-RS 1999 Honda Civic EX 1.6L Exhaust Test Pipe	1,712
10	MHF-ACD90	MHF-ACD90 1990 Honda Accord Sedan Exhaust Test Pipe	338
		Total	3,818

CERTIFICATE OF SERVICE

This is to certify that a Consent Agreement and Final Order in the matter of *K2 Motor Corp* (CAA-09-2021-0060) was filed with the Regional Hearing Clerk and that a true and correct copy of the same was sent to the following parties:

FOR RESPONDENT: Via Electronic Mail

Bryan Chan
President
K 2 Motor Corp. dba Spec D Tuning
bryanc@k2motor.com

FOR COMPLAINANT: Via Electronic Mail

Brian Riedel
Assistant Regional Counsel
U.S. EPA, Region IX
Riedel.Brian@epa.gov

Date: _____

Steven Armsey
Regional Hearing Clerk
EPA - Region IX