

MELANIE SHEPHERDSON
Senior Counsel
United States Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, California 94105
(415) 972-3923

SYLVIA QUAST
Regional Counsel
United States Environmental Protection Agency, Region IX

Attorneys for Complainant

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

_____)	Docket No. CAA-09-2019- <u>0072</u>
In the Matter of:)	
)	
The Coca-Cola Company,)	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 and Compliance Assurance Division, United States Environmental Protection Agency, Region IX (“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 The Coca-Cola Company (“Coca-Cola” or “Respondent”). Respondent is a beverage company. One of Coca-Cola’s wholly-owned subsidiaries, Coca-Cola Refreshments USA, Inc. (now known as Coca-Cola Refreshments, LLC), owned, operated, and hired diesel-fueled vehicles driven in California.
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 agree 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. The regulation at issue in this action has been incorporated into the federally-approved and federally-enforceable California state implementation plan (“SIP”); therefore, in satisfaction of the notice requirements of section 113(a) of the Act, 42 U.S.C. § 7413(a), on March 27, 2019, the EPA issued to Respondent a notice of violation (“NOV”) and provided a copy of the NOV to the California Air Resources Board (“CARB”), providing notice to both Respondent and CARB that the 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. On July 9, 2019, Representatives of Respondent and the EPA discussed the NOV.

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 multiple AQCRs designated as nonattainment for fine particulate matter (i.e. PM_{2.5}) in California. *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 the California Code of Regulations: On-Road Heavy-Duty Diesel Vehicles

11. On December 14, 2011, CARB 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 federally-approved and federally-enforceable California SIP on May 4, 2012. *See* 77 Fed. Reg. 20308 (April 4, 2012). Since that time, the EPA has coordinated with CARB regarding the EPA's enforcement of the Truck and Bus Regulation pursuant to section 113(a)(1) of the Act, 42 U.S.C. § 7413(a)1), and 40 C.F.R. § 52.23.
13. Section 2025(a) of the Truck and Bus Regulation states that the purpose of the regulation is “to reduce emissions of diesel particulate matter (PM), oxides of nitrogen (NOx) and other criteria pollutants from in-use diesel-fueled vehicles.”
14. Section 2025(b) of the Truck and Bus Regulation states that the 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 Truck and Bus Regulation requires, in part, Fleet Owners to upgrade their vehicles to meet specific performance standards for NOx and PM.
15. 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...”
16. 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.”
17. 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.”

18. Under section 2025(d)(42) of the Truck and Bus Regulation, “Motor Carrier” means “the same as defined in California Vehicle Code Section 408 for fleets other than those that are comprised entirely of school buses...”
19. 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.”
20. 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.
21. 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).”
22. Section 2025(x)(3) of the Truck and Bus Regulation provides that “[c]ompliance may be accomplished by keeping at the business location, a copy of the Certificate of Reported Compliance with the In-Use On-Road Diesel Vehicle Regulation for each fleet, or in the vehicle.”

Title 13, Section 2027 of California Code of Regulations:
Drayage Truck Regulation

23. The CARB adopted the “In-Use On-Road Diesel-Fueled Heavy-Duty Drayage Trucks,” codified at title 13, section 2027 of the California Code of Regulations (the “Drayage Truck Regulation”) on September 19, 2011.

24. The EPA incorporated the Drayage Truck Regulation, as submitted by the CARB on September 21, 2011, and December 9, 2011, into the California SIP, effective May 4, 2012. *See 77 Fed. Reg. 20308 (April 4, 2012).*
25. As stated in section 2027(a) of the Drayage Truck Regulation, the purpose of the regulation is “reduce emissions and public exposure to diesel particulate matter (diesel PM), oxides of nitrogen (NO_x), and other air contaminants by setting emission standards for in-use, heavy-duty diesel-fueled vehicles that transport cargo to and from California's ports and intermodal rail facilities.”
26. Under section 2027(b)(1) of the Drayage Truck Regulation, the Drayage Truck Regulation “applies [through December 31, 2022] to owners and operators of on-road diesel-fueled, alternative diesel-fueled and dual-fueled heavy-duty drayage trucks that operate in California ‘motor carriers,’ that dispatch drayage trucks that operate in California, ‘marine or port terminal,’ ‘intermodal rail yards,’ and rail yard and port authorities.”
27. Under section 2027(c)(15) of the Drayage Truck Regulation, “Drayage Truck” means “any in-use on-road vehicle with a gross vehicle weight rating (GVWR) greater than 26,000 pounds that is used for transporting cargo, such as containerized, bulk, or break-bulk goods, that operates: (A) on or transgresses through port or intermodal rail yard property for the purpose of loading, unloading or transporting cargo, including transporting empty containers and chassis; or (B) off port or intermodal rail yard property transporting cargo or empty containers or chassis that originated from or is destined to a port or intermodal rail yard property.”
28. Under section 2027(c)(16) of the Drayage Truck Regulation, “Drayage Truck Owner” means “(A) the person registered as the owner of a drayage truck as shown by the Department of

- Motor Vehicles, or its equivalent in another state, province, or country; or the International Registration Plan. or (B) the lessee of the truck, as indicated on the drayage truck's registration pursuant to Vehicle Code section 4453.5.”
29. Under section 2027(c)(18) of the Drayage Truck Regulation, “Drayage Truck Registry (DTR)” means “an ARB database that contains information on all trucks that conduct business at California ports and intermodal rail yards.”
30. Under section 2027(c)(33) of the Drayage Truck Regulation, “Motor Carrier” means “a business intermediary that contracts with beneficial cargo owners, ship companies, port terminals or Class I railroads, and with owners and operators of drayage trucks that it dispatches for pick-up and delivery of goods that are destined for or originated from ports and/or intermodal railyards.”
31. Under section 2027(d) of the Drayage Truck Regulation, drayage trucks subject to this regulation must meet Phase 1 and Phase 2 requirements and compliance deadlines.
32. Under the Drayage Truck Regulation, each Motor Carrier must provide a copy of the Drayage Truck Regulation or an ARB-approved summarized version to each drayage truck owner that it contracts with for deliveries to ports and intermodal rail yards in California. *See* Drayage Truck Regulation at § 2027(d)(5)(A)(1).
33. Under the Drayage Truck Regulation, each Motor Carrier must only dispatch drayage trucks that meet emission standards and compliance deadlines set forth in the Drayage Truck Regulation. *See* Drayage Truck Regulation at § 2027(d)(5)(A)(2).
34. Under the Drayage Truck Regulation, each Motor Carrier must only dispatch drayage trucks to ports and intermodal rail yards in California that are registered and in good standing with

the Drayage Truck Registry and are DTR compliant. *See* Drayage Truck Regulation at § 2027(d)(5)(A)(3).

35. Under the Drayage Truck Regulation, each Motor Carrier must keep a record of all dispatched drayage trucks to a port or intermodal rail yard containing the following information for a minimum of five years from the date of dispatch: (a) truck dispatch date and time; (b) bill of lading or tracking number; (c) truck license plate number and issuing state; and (d) DTR number. *See* Drayage Truck Regulation at § 2027(d)(5)(A)(5).
36. Section 2027(e)(1) of the Drayage Truck Regulation requires drayage trucks owners doing business at a port or intermodal railyard to register with the Drayage Truck Registry.

D. STIPULATED FACTS

37. On February 23, 2018, the EPA issued an information request to Respondent pursuant to section 114 of the Act, 42 U.S.C. § 7414, seeking information concerning Respondent's compliance with the Truck and Bus Regulation, Drayage Truck Regulation, and Transport Refrigerated Units Regulation (under California Code of Regulations, section 2477), which was shared with CARB.
38. On June 26, 2018, the EPA received Respondent's response, dated June 18, 2018, to the information request.
39. On November 15, 2018, the EPA sent a follow-up information request to Respondent.
40. On December 21, 2018, Respondent submitted its response to the follow-up information request.
41. As referenced in paragraph 6 above, on March 27, 2019, the EPA issued an NOV to Respondent and provided a copy of the NOV to CARB regarding the alleged violations

described in Section I.E of this CAFO, providing notice to both Respondent and CARB and an opportunity for Respondent to confer with the EPA regarding the NOV.

42. Respondent submitted a supplemental response to the EPA's information request on May 17, 2019.
43. Representatives of Respondent and the EPA discussed the NOV on July 9, 2019 and have had additional discussions on subsequent occasions to negotiate the terms of this settlement, including Respondent's actions with respect to its compliance with recordkeeping and verification systems.
44. Respondent represents that it has taken actions with respect to its third-party carriers sufficient to address the violations the EPA alleged in the NOV and to assure current and ongoing compliance with the Truck and Bus Regulation and Drayage Truck Regulation.

E. VIOLATIONS OF LAW ALLEGED BY THE EPA

45. 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.
46. At all times relevant to this CAFO, Respondent was a "Fleet Owner" of a "Fleet" of vehicles as those terms are defined under sections 2025(d)(28) and (29) of the Truck and Bus Regulation.
47. At all times relevant to this CAFO, Respondent was a "Motor Carrier" as that term is defined under section 2025(d)(42) of the Truck and Bus Regulation and section 2027(c)(33) of the Drayage Truck Regulation.
48. Respondent hired at least 63 different Motor Carriers between January 1, 2015, and October 29, 2017 for which the Respondent did not verify compliance with the Truck and Bus Regulation.

49. Respondent violated section 2025(x)(2) of the Truck and Bus Regulation by failing to verify that each of the 63 Motor Carriers it hired between January 1, 2015 and October 29, 2017 was in compliance with the Truck and Bus Regulation.
50. Respondent violated section 2027(d)(5)(A)(2) of the Drayage Truck Regulation as a Motor Carrier by dispatching drayage trucks that were not in compliance with deadlines set forth in Phase I and Phase 2 of the Drayage Truck Regulation.
51. Respondent violated section 2027(d)(5)(A)(3) of the Drayage Truck Regulation as a Motor Carrier by dispatching drayage trucks to ports and intermodal rail yards that were not registered and in good standing with the Drayage Truck Registry and were not DTR compliant.

F. TERMS OF CONSENT AGREEMENT

52. For the purpose of this proceeding, as required by 40 C.F.R. 22.18(b)(2), Respondent:
 - a. admits that the EPA has jurisdiction over the subject matter alleged in this CAFO and over Respondent;
 - b. admits to the stipulated facts contained in Section I.D of this CAFO;
 - c. neither admits nor denies the specific factual allegations contained in Section I.E of this CAFO;
 - d. consents to the assessment of a civil penalty under this Section, as stated below;
 - e. consents to the conditions specified in this CAFO;
 - f. waives any right to contest the allegations set forth in Section I.E of this CAFO; and
 - g. waives its rights to appeal the proposed Order contained in this CAFO.

Civil Penalty

53. Respondent agrees to:

- a. pay the civil penalty of ONE HUNDRED FORTY-FIVE THOUSAND DOLLARS (\$145,000) (“EPA Penalty”) within 30 calendar days of the Effective Date of this CAFO;
- 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-09-2019-0072”;
- and
- c. Within 24 hours of payment of the EPA Penalty, send proof of payment to Rose Galer at:

U.S. Environmental Protection Agency
Region 9, Enforcement and Compliance Assurance Division
600 Wilshire Blvd., Suite 940
Los Angeles, CA 90017

and at Galer.Rose@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-09-2019-0072”).

54. If Respondent fails to pay the civil administrative penalty specified in Paragraph 53(a) of this CAFO within 30 days after the Effective Date of this CAFO, then Respondent shall pay to the EPA a stipulated penalty in the amount of ONE THOUSAND DOLLARS (\$1000.00) for each day the default continues plus the penalty sum specified in paragraph 53(a), upon written demand by the EPA.

55. If Respondent fails to timely pay any portion of the penalty assessed under this CAFO, the 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.

Additional Terms of Settlement

56. 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 assignees. Nothing in the previous sentence adversely affects any right of the EPA under applicable law to assert successor or assignee liability against Respondent's successors or assignees.

57. By signing this CAFO, Respondent acknowledges that this CAFO will be available to the public and agrees that this CAFO does not itself contain any confidential business information or personally identifiable information.
58. 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.
59. 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.
60. 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

61. 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.
62. Penalties paid pursuant to this CAFO shall not be deductible for purposes of federal taxes.
63. 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.

64. Any violation of this Order may result in a civil judicial action for an injunction or civil penalties of up to \$99,681 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). The EPA may use any information submitted under this Order in an administrative, civil judicial, or criminal action.
65. 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 the 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.
66. Nothing herein shall be construed to limit the power of the 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.
67. The EPA reserves the right to revoke this CAFO and settlement penalty if and to the extent that the 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 the EPA, and the EPA reserves the right to assess and collect any and all civil penalties for any violation described herein. The EPA shall give Respondent notice of its intent to revoke, which shall not be effective until received by Respondent in writing.

H. EFFECTIVE DATE

68. Respondent and Complainant agree to issuance of the attached Final Order. Upon filing, the EPA will transmit a copy of the filed CAFO to Respondent, by email and regular mail. 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 The Coca-Cola Company, Docket No. CAA-09-2019-0072 is hereby stipulated, agreed, and approved for entry.

FOR RESPONDENT:

September 12, 2019
Date

Juan Galaz
Signature

Printed Name: Juan Galaz

Title: SVP, Supply Chain

Address: One Coca-Cola Plaza, Atlanta, GA 30313

Respondent's Federal Tax Identification Number: _____

The foregoing Consent Agreement In the Matter of The Coca-Cola Company, Docket No. CAA-09-2019-0072 is hereby stipulated, agreed, and approved for entry.

FOR COMPLAINANT:

9/13/19
Date



Amy C. Miller
Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency
Region IX
75 Hawthorne Street
San Francisco, CA 94105

II. FINAL ORDER

EPA Region IX and The Coca-Cola Company having entered into the foregoing Consent Agreement,

IT IS HEREBY ORDERED that this CAFO (Docket No. CAA-09-2019-0072) be entered, and Respondent shall pay a civil administrative penalty in the amount of ONE HUNDRED FORTY-FIVE THOUSAND DOLLARS (\$145,000) and otherwise comply with the terms set forth in the CAFO.

September 24, 2019
Date



BEATRICE WONG
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 The Coca-Cola Company (Docket No. CAA-09-2019-0072) 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:

Mr. Juan Galarza
Senior Vice President, Supply Chain
The Coca-Cola Company
One Coca-Cola Plaza
Atlanta, GA 30313

CERTIFIED MAIL NUMBER: 7015 0640 0001 1118 0120

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

Melanie Shepherdson
Senior Counsel (ORC-2)
U.S. EPA, Region IX
75 Hawthorne Street
San Francisco, CA 94105

WRAZON TOLENTINO

FOR: Regional Hearing Clerk (Printed)
U.S. EPA, Region IX

Wrazon Tolentino

Regional Hearing Clerk Signature

9/30/2019

Date