



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

September 30, 2021

VIA E-MAIL

DELIVERY RECEIPT REQUESTED

Jeremy Hassevoort, Maintenance and Equipment Manager
Rabbit River Transport II, LLC
A5717 138th Ave
Holland, Michigan, 49423

Email: tim@hvplaw.com

Dear Mr. Hassevoort:

Enclosed is a file-stamped Consent Agreement and Final Order (CAFO) which resolves Rabbit River Transport II, LLC, docket no. CAA-05-2021-0039. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on September 30, 2021.

Pursuant to paragraph 35 of the CAFO, Rabbit River Transport II, LLC must pay the civil penalty within 30 days of the filing date. Your check must display the case name and case docket number.

Please direct any questions regarding this case to Andre Daugavietis, Associate Regional Counsel, (312) 886-6663.

Sincerely,

**NATHAN
FRANK**

Digitally signed by
NATHAN FRANK
Date: 2021.09.29
19:57:34 -05'00'

Nathan Frank, Chief

Air Enforcement and Compliance Assurance Section (IL/IN)

Enclosure

cc: Ann Coyle, Regional Judicial Officer/via electronic mail
Coyle.ann@epa.gov

Regional Hearing Clerk/via electronic mail
R5hearingclerk@epa.gov

Andre Daugavietis/via electronic mail
daugavietis.andre@epa.gov

Jenine Camilleri/via electronic mail
CamilleriJ@michigan.gov

Rex Lane/via electronic mail
LaneR@michigan.gov

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:)	Docket No. CAA-05-2021-0039
)	
Rabbit River Transport II, LLC)	Proceeding to Assess a Civil Penalty
Holland, Michigan)	Under Section 205(c)(1) of the Clean Air
)	Act, 42 U.S.C. § 7524(c)(1)
Respondent.)	
<hr/>)	

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 Rabbit River Transport II, LLC, a limited liability company doing business in Michigan and throughout the United States.

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). *See* 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. 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 (COC). 42 U.S.C. § 7522(a)(1).

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

11. “Motor vehicle engine” means an engine that is designed to power a motor vehicle. *See* Section 216(3) of the CAA, 42 U.S.C. § 7550(3).

12. 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 vehicles or motor vehicle engines conforms to applicable EPA requirements governing motor vehicle emissions. *See* Section 206(a) of the CAA, 42 U.S.C. § 7525(a).

13. EPA promulgated emissions standards, under Section 202 of the CAA, 42 U.S.C. § 7521, for particulate matter (PM), nitrogen oxides (NO_x), hydrocarbons (HC), and other pollutants applicable to motor vehicles and motor vehicle engines, including standards for heavy-duty diesel engines (HDDE). *See* Section 202 of the CAA, 42 U.S.C. § 7521; 40 C.F.R. Part 86.

14. To meet the emission standards in 40 C.F.R. Part 86 and qualify for a COC, HDDE motor vehicle and engine manufacturers may utilize devices and elements of design such as Exhaust Gas Recirculation or Clean Gas Induction systems (EGRs/CGIs), Diesel Oxidation Catalysts (DOCs), Diesel Particulate Filters (DPFs), and/or Selective Catalytic Reduction systems (SCRs).

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

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

17. It is unlawful for "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." *See* Section 203(a)(3)(A) of the CAA, 42 U.S.C. § 7522(a)(3)(A), 40 C.F.R. § 1068.101(b)(1). This is also referred to as "tampering."

18. It is unlawful “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 [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.” *See* Section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B), 40 C.F.R. § 1068.101(b)(2). These parts or components are also referred to as “defeat devices.”

19. It is unlawful for any person to cause any of the acts set forth in Section 203(a) of the CAA, 42 U.S.C. § 7522(a).

20. EPA may administratively assess a civil penalty for violations of Section 203(a) of the CAA, 42 U.S.C. § 7522(a). *See* Section 205(c)(1) of the CAA, 42 U.S.C. § 7524(c)(1).

21. EPA may assess a civil penalty of up to \$4,876 for each applicable CAA violation that occurred after November 2, 2015 and is assessed on or after December 23, 2020, in accordance with Section 205(a) of the CAA, 42 U.S.C. § 7524(a), and 40 C.F.R. Part 19.

Factual Allegations and Alleged Violations

22. Respondent is Rabbit River Transport II, LLC, a limited liability company organized under the laws of the state of Michigan that owns and operates a fleet out of its office at A5717 138th Ave., Holland, Michigan.

23. Respondent is a “person,” as defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

24. On April 9, 2018, EPA representatives conducted a CAA inspection of Respondent's Holland, Michigan facility.

25. On July 18, 2018, EPA issued to Respondent a request for information (RFI) pursuant to Section 208 of the CAA, requesting documents related to all HDDE motor vehicles owned, operated, and/or leased by Respondent between January 1, 2016 and the date of receipt of the RFI, including documents related to vehicle and engine modifications and to parts or components installed by Respondent on its HDDE motor vehicles and engines.

26. On or around July 30, 2018, August 24, 2018, September 13, 2018, September 21, 2018, December 21, 2018, May 9, 2019, January 21, 2020, and January 28, 2020, EPA received maintenance records, invoices, and spreadsheets identifying HDDE motor vehicles owned by Respondent and work performed that impacted the emission control devices and elements of design installed on those HDDE motor vehicles and engines to meet applicable motor vehicle and engine emission standards under Title II of the CAA.

27. The invoices and spreadsheets provided indicated that between June 6, 2017 and September 29, 2017, Respondent installed or caused the installation of parts or components that allow for the removal of or bypass the EGR/CGI system (EGR/CGI Delete Hardware), allow for the removal of or bypass the exhaust aftertreatment system (Aftertreatment Delete Hardware), and/or were tuners or tunes manufactured by Performance Diesel, Inc. consisting of software and/or devices that bypass, defeat, render inoperative, or allow for the removal of EGR/CGI, DOC, DPF, and/or SCR systems, and/or OBD codes, sensors, signals, or records related to these systems without illuminating a malfunction indicator lamp in the vehicle's OBD system, prompting any diagnostic trouble code in the OBD system, or causing any engine derating and/or alter ECM fuel or ignition timing maps on HDDE motor vehicles and engines (ECM Tuning Products). The invoices and spreadsheets also showed that Respondent removed and/or rendered

inoperative the EGR/CGI, DOC, DPF, and/or SCR systems from at least 2 HDDE motor vehicles or engines (Modified Vehicles) in compliance with the CAA.

28. The parts or components, including EGR/CGI Delete Hardware, Aftertreatment Delete Hardware, and ECM Tuning Products that the Respondent installed, or caused to be installed, were intended for motor vehicles or motor vehicle engines and were designed for use with HDDE motor vehicles or engines, such as those manufactured by Cummins, for which the manufacturer obtained COCs establishing compliance with CAA emissions standards.

29. EPA alleges that between June 6, 2017 and September 29, 2017, Respondent knowingly removed and/or rendered inoperative, or caused the removal and rendering inoperative of, devices or elements of design that were installed on or in at least 2 motor vehicles or motor vehicle engines in compliance with the regulations under Title II of the CAA, in violation of Section 203(a)(3)(A) of the CAA, 42 U.S.C. § 7522(a)(3)(A).

30. EPA alleges that between June 6, 2017 and September 29, 2017, Respondent installed, or caused the installation of, at least 4 parts or components where a principal effect of each part or component was to bypass, defeat, or render inoperative devices or elements of design installed on or in motor vehicles or motor vehicle engines in compliance with the regulations under Title II of the CAA, and the Respondent knew or should have known that such parts or components were installed for such use or put to such use, in violation of Section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B).

31. On June 24, 2020, the EPA issued a Finding of Violation (FOV) to the Respondent alleging violations of Section 203(a)(3)(A) and (B) of the CAA, 42 U.S.C. § 7522(a)(3)(A) and (B).

32. On July 29, 2020, representatives from EPA and Respondent held a teleconference to discuss the FOV.

33. On December 15, 2020, Respondent certified that all vehicles in Respondent's fleet, identified on its updated fleet list provided to EPA on November 11, 2020, are currently operating in their "stock" configuration. All Modified Vehicles have either been returned to their stock configuration or sold.

Civil Penalty

34. 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, information that Respondent provided to EPA, Respondent's ability to pay, and Respondent's cooperation and prompt return to compliance, Complainant has determined that an appropriate civil penalty to settle this action is \$19,504.

35. Within 30 days after the Effective Date of this CAFO, Respondent must pay a \$19,504 civil penalty by sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines and Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, Missouri 63101

The check must note Respondent's name and the docket number of this CAFO.

36. Respondent must send an electronic notice of payment that states Respondent's name and the docket number of this CAFO to EPA at the following addresses when it pays the penalty:

Air Enforcement and Compliance Assurance Branch
U.S. Environmental Protection Agency, Region 5
r5airenforcement@epa.gov

Andre Daugavietis (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
daugavietis.andre@epa.gov

Regional Hearing Clerk (E-19J)
U.S. Environmental Protection Agency, Region 5
R5hearingclerk@epa.gov

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

38. If Respondent does not timely pay the civil penalty, EPA may request the Attorney General of the United States to 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.

39. 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 attorneys' 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

40. 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 compliance with regulations

under Title II of the CAA, in violation of Section 203(a)(3)(A) of the CAA, 42 U.S.C.

§ 7522(a)(3)(A); (ii) Respondent will not manufacture, sell, offer to sell or install any defeat device, including ECM Tuning Products, in violation of Section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B); and (iii) Respondent certifies that it has reviewed 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."

41. By signing this Consent Agreement, Respondent certifies that it will comply with the engine rebuilding requirements set out in 40 C.F.R. § 1068.120 and 40 C.F.R. § 86.004-40, which apply to heavy-duty engines subject to model year 2004 or later standards.

42. 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) and (B), by Respondent or any other business entity owned or operated by Bruce Hassevoort and/or Jeremy Hassevoort, as addressed in the January 18, 2021, Clean Air Act Title II Vehicle & Engine Civil Penalty Policy.

43. By the date of its signature on this CAFO, Respondent shall no longer provide any technical support, maintenance, repair, or information pertaining to defeat devices, including ECM Tuning Products, for use with motor vehicles or motor vehicle engines.

44. Respondent certifies that, by the Effective Date of this CAFO, it has removed all defeat devices from, reinstalled all emission control devices on, returned to the original equipment manufacturer settings the ECM equipped by, and returned to its certified configuration each motor vehicle and motor vehicle engine owned or operated by Respondent. Respondent shall provide EPA with a list of all motor vehicles and motor vehicle engines owned or operated by Respondent with proof (e.g., invoices, receipts, photographs), in accordance with

Paragraph 47, that all vehicles and engines have been returned to and are operating in their certified configurations.

45. Respondent certifies that, by the Effective Date of this CAFO, it has permanently destroyed all defeat devices (including, but not limited to, EGR/CGI Delete Hardware, Aftertreatment Delete Hardware, and ECM Tuning Products manufactured by PDI), remaining in Respondent's inventory and/or possession, by compacting or crushing the defeat devices and all of the associated parts and components to render them useless. Respondent shall provide EPA with photographic proof in accordance with Paragraph 47.

46. Within 14 calendar days of the Effective Date of this CAFO, Respondent shall remove from its webpages and any social media platform(s) all advertisements, photos, videos, and information that relate to performing tampering and/or selling, offering to sell, and/or installing defeat devices (Tampering and/or Defeat Device Content) except advertisements, photos, videos, or information relating to how to comply with the CAA. Respondent shall provide EPA, in accordance with Paragraph 47, the web address of each of its webpages and social media platforms and Respondent's certification that it has removed from its webpages and social media platforms all Tampering and Defeat Device Content and that its webpages and social media platforms do not and will not contain any Tampering and/or Defeat Device Content.

47. Within 30 calendar days of the Effective Date of this CAFO, Respondent shall provide EPA with its certification and proof that Respondent has completed the actions required by Paragraphs 44, 45, and 46. Respondent shall send its certification and supporting materials via electronic mail to clark.sarah@epa.gov and r5airenforcement@epa.gov.

48. In each submission that Respondent submits as provided by this CAFO, it must certify that the submission 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.

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

50. Respondent certifies that any information or representation it has 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's to the EPA regarding matters relevant to this CAFO, including information about Respondent's ability to pay a penalty, are 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. Respondents are 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.

General Provisions

51. The parties consent to service of this CAFO by e-mail at the following e-mail addresses: daugavietis.andre@epa.gov (for Complainant), and tim@hvplaw.com (for Respondent).

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

53. The effect of the settlement described in Paragraph 52, above, is conditioned upon the accuracy of Respondent's representations to EPA, as memorialized in Paragraphs 26, 27, and 33 of this CAFO, and Respondent's letters dated November 11, 2020 and December 15, 2020.

54. 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.

55. 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 52, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

56. Respondent certifies that it is complying fully with Section 203(a)(3)(A) and (B) of the CAA, 42 U.S.C. § 7522(a)(3)(A) and (B).

57. This CAFO constitutes an enforcement action for purposes of considering Respondent's compliance history under Section 205(b) of the CAA, 42 U.S.C. § 7524(b), in any subsequent enforcement actions.

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

59. 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.

60. Each party agrees to bear its own costs and attorneys' fees in this action.
61. This CAFO constitutes the entire agreement between the parties.

Rabbit River Transport II, LLC, Respondent

9-29-21

Date



Jeremy Hassevoort
Maintenance and Equipment Manager
Rabbit River Transport II, LLC

United States Environmental Protection Agency, Complainant

Harris,
Michael

Digitally signed by Harris,
Michael
Date: 2021.09.30
11:04:54 -05'00'

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: Rabbit River Transport II, LLC
Docket No. CAA-05-2021-0039

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective (“Effective Date”) 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 COYLE Digitally signed by ANN
COYLE
Date: 2021.09.30
12:35:59 -05'00'

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

Consent Agreement and Final Order
In the matter of: Rabbit River Transport II, LLC
Docket Number: **CAA-05-2021-0039**

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, docket number CAA-05-2021-0039, which was filed on September 30, 2021, in the following manner to the following addressees:

Copy by E-mail to Respondent: Jeremy Hassevoort
tim@hvplaw.com

Copy by E-mail to Andre Daugavietis
Attorney for Complainant: daugavietis.andre@epa.gov

Copy by E-mail to Timothy A. Hoesch, Esq
Attorney for Respondent: tim@hvplaw.com

Copy by E-mail to Ann Coyle
Regional Judicial Officer: coyle.ann@epa.gov

Dated: _____

LaDawn Whitehead
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5