UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATIVE LAW JUDGES

In the Matter of	)	
	)	
Spartan Diesel Technologies, LLC,	)	**Docket No. CAA-HQ-2017-8362**
	)	
Respondent	)	**Issued: October 30, 2018**

INITIAL DECISION AND ORDER ON DEFAULT

I. Statement of the Case

This civil administrative penalty proceeding arises under Title II of the Clean Air Act ("CAA" or the "Act"), 42 U.S.C. §§ 7521-7590, governing mobile sources. On October 19, 2017, the Director of the Air Enforcement Division, Office of Civil Enforcement, Office of Enforcement and Compliance Assurance, United States Environmental Protection Agency ("Complainant," "Agency" or "EPA"), initiated this proceeding by filing a Complaint against Spartan Diesel Technologies, LLC. ("Respondent" or "Spartan") under Section 205(c)(1) of the CAA, 42 U.S.C. § 7524(c)(1).

The Complaint alleges that Respondent manufactured, sold, offered to sell or installed (or caused the foregoing with respect to) at least 5,000 Spartan Phalanx Flash Consoles ("Subject Components"), each of which disables, defeats, or renders inoperative devices or emissions-related elements of design installed in Ford diesel trucks for compliance with Title II of the CAA. The Subject Components were designed for Ford Diesel truck models F250, F350, F450, and F550 for model years 2008 through 2012. The Complaint states that the manufacture, sale, offering for sale or installation of, or causing the foregoing with respect to, each such Subject Component constitutes one or more separate violations of section 203(a)(3)(A) or (B) of the Act, 42 U.S.C. § 7522(a)(3)(A) or (B). The Complaint states further that under Sections 204(a) and 205(a) of the CAA, 42 U.S.C. §§ 7523(a) and 7524(a), Respondent is liable for civil penalties up to $3,750 for each violation.

No response to the Complaint was filed. Consequently, on February 9, 2018, Complainant filed a Motion for Default ("Motion") along with supporting documents, requesting that Respondent be found in default and that a default order be issued requiring Respondent to pay a civil administrative penalty in the amount of $4,154,805 for the violations alleged in the Complaint. Respondent did not file any response to the Motion.

By Order on Motion for Default, dated September 7, 2018, I found Respondent to be in

default, pursuant to Section 22.17 (a) and (c) of the Consolidated Rules of Practice, 40 C.F.R. § 22.17(a) and (c), and found that the facts alleged in the Complaint established Respondent's liability for violating section 203(a)(3)(B) of the Act, 42 U.S.C. § 7522(a)(3)(B).

However, I declined to impose a civil penalty without further information provided by Complainant in support of the penalty calculation, and I ordered Complainant to file additional information regarding the egregiousness of the violation. *See Peace Industry Group (USA), Inc.,* 17 E.A.D. 348, 354 (EAB 2016) (Default "does not constitute a waiver of respondent's right to have [an administrative law judge] evaluate whether the . . . relief sought is appropriate in light of the record," and the judge "must ensure that in the pending case the [EPA] has applied the law and the Agency's policies consistently and fairly.") (inner quotations omitted). Complainant submitted the additional information in a Statement in Support of Issuance of a Penalty and five attachments thereto, filed on September 28, 2018. Complainant mailed the Statement to Respondent's three officially registered addresses and to Respondent at an address at which a mailing previously had been accepted. To date, Respondent has not filed anything in this proceeding.

I find that Complainant has shown that the proposed relief, a penalty in the amount of $4,154,805, is appropriate to impose against Respondent for the violations of section 203(a)(3)(B) of the Act, 42 U.S.C. § 7522(a)(3)(B), found in the Order on Motion for Default.

I1. Statutory and Regulatory Background

Title II of the CAA and regulations promulgated thereunder establish limits for the emissions of certain air pollutants from motor vehicles, including nitrogen oxides, non-methane hydrocarbons, particulate matter, and carbon monoxide. Manufacturers of new motor vehicles or motor vehicle engines must obtain a certificate of conformity ("COC") from EPA to sell, offer to sell, or introduce or deliver for introduction into commerce any new motor vehicle or motor vehicle engine in the United States. 42 U.S.C. § 7522(a)(1). The COC application must describe the emissions-related elements of design of the motor vehicle or motor vehicle engine, including all auxiliary emission control devices ("AECDs"), which are defined as "any element of design which senses temperature, vehicle speed, engine rotations per minute, transmission gear, manifold vacuum, or any other parameter for the purposes of activating, modulating, delaying, or deactivating the operation of any part of the emission control system" of the motor vehicle. 40 C.F.R. §§ 86.1803-01, 86.1844-01(d)(11). To obtain a COC for a given motor vehicle test group or engine family, the original engine manufacturer must demonstrate that each motor vehicle or motor vehicle engine will not exceed established emissions standards for nitrous oxides, particulate matter, carbon monoxide, non-methane hydrocarbons, and other pollutants. 40 C.F.R. §§ 86.004-21, 86.1811-04, 86.1844-01.

The CAA at Section 203(a)(3), 42 U.S.C. § 7522(a)(3), provides as follows:

> (a) The following acts and the causing thereof are prohibited:
> * * *
> (3)
> * * *
> (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 or motor vehicle engine in compliance with requirements under this subchapter [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 * * * *.

III. Findings of Fact

I make the following Findings of Fact based on allegations in the Complaint, which are deemed admitted due to Respondent's default pursuant to 40 C.F.R. § 22.17, and based on documents in the Appendix to the Motion ("Appx.") and the Statement in Support of Issuance of a Penalty ("Statement") with Attachments ("Att.") thereto.[1]

1. Respondent is a corporation organized under the laws of North Carolina and is a "person" under Section 302(e) of the CAA, 42 U.S.C. § 7602(e). Complaint ¶¶ 4, 5.

2. EPA-certified motor vehicles and motor vehicle engines include a variety of hardware and software devices or elements of design that control emissions of air pollution. Complaint ¶ 28.

3. New motor vehicles are equipped with engine control units ("ECUs") which are computers that monitor and control vehicle operations, including the operation of emission control devices and elements of design. Complaint ¶ 29.

4. A standard requirement in modern motor vehicles and motor vehicle engines is an onboard diagnostics ("OBD") system, which must detect and report malfunctions of all monitored emission-related powertrain systems or components. 40 C.F.R. § 86.1806-05(b); Complaint ¶ 30.

[1] Many of the Findings of Fact herein also were made in the Order on Motion for Default.

5. Exhaust gas recirculation ("EGR") is an element of design in diesel-fueled motor vehicles that reduces emissions of nitrogen oxides, which form at high temperatures generated during fuel combustion. By recirculating exhaust gas through the engine, EGR reduces engine temperature and emissions of nitrogen oxides. Complaint ¶ 31.

6. Fuel mass, fuel injection pressure, and fuel injection timing are among the elements of design incorporated in diesel fueled motor vehicles that can affect the quantity of regulated pollutants created by the diesel engine. Complaint ¶ 32.

7. A diesel particulate filter ("DPF") is an element of design that reduces particulate matter ("PM") pollution by collecting soot contained in engine exhaust gas. Proper operation of the DPF requires periodic regeneration of the filter to prevent accumulated PM from clogging the filter. Complaint ¶ 33.

8. Diesel oxidation catalysts ("DOCs") are elements of design that reduce PM, carbon monoxide ("CO"), and non-methane hydrocarbons ("NMHC") emissions by promoting the conversion of those pollutants into less harmful gases in diesel-fueled motor vehicles. Complaint ¶ 34.

9. Selective catalytic reduction ("SCR") is an element of design that reduces emissions of nitrogen oxides ("NO_x") by chemically converting exhaust gas that contains nitrous oxides into nitrogen and water through the injection of diesel exhaust fluid. Diesel exhaust fluid must be periodically refilled, which requires sensors in the diesel exhaust fluid tank to communicate with the OBD to ensure the SCR is properly controlling emissions of NO_x. Complaint ¶ 35.

10. The OBD must detect and report malfunctions of EGR, oxygen sensors, DPFs, and DOCs in motor vehicles so equipped by, among other means, illuminating the "check engine light." 40 C.F.R. § 86.1806-05; Complaint ¶ 36.

11. From January 2011 through at least April 2013, Respondent manufactured, sold, offered to sell, or installed (or caused the manufacture, selling, offering to sell or installation of) Spartan Phalanx Flash Console Tuners ("Subject Components"). Complaint ¶ 38; Appx. at 21-26, 46.

12. Each Subject Component was designed and marketed for use with, or to become part of, a specific make, model and year (or range of years) of Ford trucks powered by heavy duty diesel engines ("HDDEs"). There are two models of the Subject Components: the Spartan

Phalanx Flash Console 6.4L Tuner designed for model years 2008 through 2010 Ford Diesel F250, F350, F450, and F550 trucks, and the Spartan Phalanx Flash Console 6.7L Tuner designed for model years 2011 and 2012 Ford Diesel F250, F350, F450, and F550 trucks. Statement at 5, n. 3; Att. 1 pp. 5-6; Att. 2 ¶ 16; Att. 5 pp. 5-6; Complaint ¶ 39.

13. Each Subject Component was pre-loaded with several "tunes" from which the end-user selects a horsepower level and mode, including "On-Road (DPF On)" and "Race (DPF OFF)," to install on the vehicle. Att. 1 p. 11; Att. 2 ¶ 15; Att. 5, Enclosures B, C. Specifically, the Spartan Phalanx Flash Console 6.4L Tuner was pre-loaded with a range of 40 to 150 horsepower On-Road (DPF On) tunes, and a range of 40 to 350 horsepower Race (DPF OFF) tunes, and the Spartan Phalanx Flash Console 6.7L Tuner was pre-loaded with a range of 25 to 125 horsepower DPF On tunes, and a range of 40 to 200 horsepower Race tunes. Att. 5 Enclosure C; Att. 1 p. 11.

14. Operation of the Spartan Phalanx Flash Console 6.4L Tuner's Race Tuning (DPF-OFF) requires removal of the DPF and/or DOC emission control devices from the vehicle. Att. 5, Enclosure C ("Race Tuning (DPF OFF) * * * These tunes are to be installed if your factory DPF and/or DOC is going to be removed after installing the tunes. Installing racing only tuning with the DPF in place will cause DPF and engine damage.")

15. Operation of the Spartan Phalanx Flash Console 6.7L Tuner's DPF-OFF Tune requires removal of the DOC, DPF and SCR emission control devices from the vehicle. Att. 2 ¶ 18; Att. 5, Enclosure C ("Race Tuning* * * These tunes are to be installed if your factory DPF, DOC, SCR and DEF is (sic) going to be removed after installing the tunes. Installing racing only tuning with the DPF in place will cause DPF and engine damage.")

16. Ford Diesel F250, F350, F450 and F550 trucks for model years 2008 to 2012 are each a "motor vehicle" with a "motor vehicle engine." 42 U.S.C. § 7550(2); 40 C.F.R. § 85.1703; Complaint ¶ 40.

17. Ford Diesel trucks have 6.4 Liter Power Stroke engines with a horsepower of 350 for model years 2008 through 2010, 6.7 Liter Power Stroke engines with a horsepower of 390 or 400 for model year 2011, and 6.7 Liter Power Stroke engines with a horsepower of 400 for model year 2012. Appx. at 27-28, 35-36.

18. Ford Motor Company ("Ford") obtained a COC from the EPA for each such HDDE demonstrating that the HDDEs are motor vehicle engines. Complaint ¶ 41.

19. EGR, SCR, OBD, and specific calibrations for fueling are emissions-related elements of design which Ford installed in compliance with Title II of the Act, and in conformance with the relevant EPA-issued COC, in each Ford model and model year specified above, except that Ford Diesel trucks with the 6.4 Liter Power Stroke engine (model years 2008, 2009, and 2010) are not equipped with SCR. Complaint ¶ 42; Att. 2 ¶¶ 27, 29.

20. Since January 2011, Respondent manufactured, sold, offered to sell, or installed (or caused the manufacture, selling, offering to sell or installation of) at least 5,000 Subject Components. Complaint ¶ 43.

21. Each Subject Component erases or overrides certain specifications of the software of the ECU and transmission control module ("TCM"), as installed by Ford, and replaces it with different software specifications designed by Respondent. Complaint ¶ 44.

22. Each Subject Component disables, defeats, or renders inoperative devices or elements of design installed on or in Ford's motor vehicles or motor vehicle engines for compliance with Title II of the CAA, including but not limited to elements of design related to the following:

(a) Ford-specified torque management parameters;

(b) Engine fueling parameters;

(c) Engine fueling timing;

(d) Turbocharger boost controls and other parameters;

(e) Transmission shift scheduling;

(f) Transmission shift pressures;

(g) Transmission torque converter lockup parameters;

(h) EGR;

(i) OBD monitoring function for the EGR, thereby also allowing the physical removal of the EGR from the vehicle;

(j) DPF regeneration functionality; and

(k) OBD monitoring function for the DPF, thereby also allowing the physical removal of the DPF.

Complaint ¶ 45; Att. 1 p. 19, Table 5; Att. 2 ¶¶ 22, 26, 27.

23. Respondent offered the purchasers of the Subject Components a software file to restore the vehicle to Ford's original programming in the event Respondent's software had to be removed so that the vehicle would be qualified to receive warranty services from Ford. Complaint ¶ 46.

24. Respondent advertised that its Spartan Phalanx Flash 6.4L tuner products were to be used for towing, power, fuel economy, drag racing, sled pulling, and "dyno competition" using relative increases in power levels of 40, 75, 120, or 175 horsepower. Complaint ¶ 47; Appx. at 30-31; Att. 5 Enclosure B.

25. In December 2013, an inspection team comprised of staff from EPA and from Eastern Research Group, Inc. ("ERG") under a contract with EPA conducted an investigation of Respondent for selling potential defeat devices for on-highway heavy-duty diesel engines. The investigation included performing emissions testing of a Spartan Phalanx Flash Console 6.7L Tuner installed on a 2011 Ford F-350 truck, a test vehicle provided by Ford, at a Ford testing facility. ERG installed the Spartan Phalanx Flash Console 6.7L Tuner and, together with EPA and Ford, performed the testing. The tests and results were reported in an Investigation Summary Report, dated November 7, 2014, submitted by ERG to EPA ("Investigation Report"). Att. 1; Att. 2 ¶¶ 13, 14, 17.

26. For the EPA engine family of the test vehicle, BFMXD06.771C, the applicable certified emission standards using the FTP75 test cycle are as follows: 0.4 grams per mile ("g/mi") for NO_x, 0.02 g/mi for PM, 8.1 g/mi for CO, and 0.23 g/mi for NMHC. Att. 1 p. 9, Table 2; Att. 2 ¶ 17. The emission standards for all other 6.7 Power Stroke engine families are similar to the test vehicle's engine family. Att. 2 ¶ 27.

27. All other existing engine families for Ford Diesel trucks with 6.7 Liter Power Stroke engines are equipped with identical emission control devices and the same general engine design. Att. 2 ¶ 27. They have similar engine sizes, designs, power, and vehicle applications to the 2008 through 2010 model year Ford Diesel trucks with 6.4 Liter Power Stroke engines, with the exception that the latter are not equipped with SCRs. Att. 2 ¶¶ 29, 30.

28. For testing of the emissions in race mode, the Spartan Phalanx Flash Console 6.7L Tuner was installed using the tune named "200 HP DPF Off War Hammer Race" ("200 HP DPF-Off"). In accordance with Respondent's user instructions enclosed with the Tuner, the inspection team removed the DOC, DPF and SCR from the test vehicle. To allow the test vehicle's exhaust system to function without the emission control devices, the inspection team installed an aftertreatment delete pipe on the test vehicle. Att. 1 pp. 10-12; Att. 2 ¶ 18.

29. For testing of the emissions in DPF On mode, the Spartan Phalanx Flash Console 6.7L Tuner was installed using the tune named "125 HP DPF On," with all emission control devices still intact on the test vehicle. Att. 2 ¶ 18.

30. Two tests were performed on the test vehicle with the 125 HP DPF On Tune installed. One test procedure, the LA4 test cycle, is designed to mirror city driving conditions simulating frequent starts and stops, and the other, the US06 test cycle, captures aggressive, high-speed and/or high acceleration driving behavior, rapid speed fluctuations, and driving behavior following startup. Att. 1 pp. 16-17; Att. 2 ¶ 20.

31. In addition, "baseline" tests using each of the test cycles, LA4 and the US06, were conducted of emissions from the test vehicle without installation of any "tunes" in the Spartan Phalanx Flash Console 6.7L Tuner. Att. 1 pp. 9, 25; Att. 2 ¶ 18.

32. The LA4 test results show that with the 200 HP DPF-Off Tune installed, NO_x emissions increased by a factor of 350, or by 34,667 percent from the baseline level; NMHC emissions increased by a factor of 1,100, or by 113,460 percent from the baseline level; PM emissions increased by a factor of 40, or by 3,718 percent from the baseline level, and CO emissions increased by a factor of 130, or 12,911 percent from the baseline level. Att. 1 Table 10; Att. 2 ¶ 23.

33. The LA4 test results with the 125 HP DPF-On Tune installed show increases in NO_x, CO, and PM emissions over the vehicle's mean baseline level, but the statistical significance of the increases was not determined. Att. 1 p. 23, Table 10; Att. 2 ¶ 25. The US06 test results with the 125 HP DPF-On Tune installed show an increase in CO and PM emissions over the vehicle's mean baseline level. Att. 1 p. 25, Table 11; Att. 2 ¶ 25.

34. A comparison of the vehicle's stock calibration file with the 125 HP DPF-On Tune calibration file shows that the 125 HP DPF-On Tune causes an engine's fuel injection timing to advance, increases fuel quantity and fuel rail pressure, allows lower air-to-fuel ratio, and

increases the exhaust component protection threshold, all of which are parameters of concern in respect to emission control. Att. 2 ¶¶ 19, 22; Att. 1 p. 21 and Table 7.

35. Increasing the fuel injection timing is commonly understood in the industry and academia to increase NO_x emissions from a diesel engine. Att. 2 ¶ 22.

36. The Spartan Phalanx Flash Console 6.7L Tuner is capable of defeating EGR whether or not the EGR system is physically removed. Att. 1 Table 5; Att. 2 ¶¶ 24, 26.

37. A principal effect of each Subject Component is to disable, defeat, or render inoperative devices or elements of design installed on or in motor vehicle or motor vehicle engines in compliance with Title II of the CAA. Complaint ¶ 49.

38. Respondent knew or should have known that each Subject Component was manufactured, sold, offered for sale, or installed to bypass, defeat, or render inoperative devices or elements of design installed on or in motor vehicles or motor vehicle engines in compliance with Title II of the CAA. Complaint ¶ 50. Included with the Subject Components' installation and operation instructions is a "Race Use Disclaimer and Liability Waiver," required to be signed by the user and sent to Respondent before installation, stating "This product is designed for competition racing use only. Use of State and Federal Highways is a violation of the EPA Clean Air Act." Att. 5 Enclosure C.

39. Complainant's counsel made numerous attempts over 15 months to obtain documentation as to Respondent's ability to pay, but Respondent did not provide any formal documentation. Motion ¶¶ 67, 77; Appx. at 39-54.

40. The Administrator of the EPA and the Attorney General jointly determined that this matter, though it may involve a penalty amount greater than $320,000, is appropriate for administrative penalty assessment. Complaint ¶ 9; Appx at 1.

IV. Penalty Assessment Standards

Section 205 of the CAA provides that "any person who violates section 7522(a)(3)(B) of this title shall be subject to a civil penalty of not more than $2,500. . . . Any such violation with respect to section 7522(a)(3)(B) of this title shall constitute a separate offense with respect to each part or component." 42 U.S.C. § 7524(a). The maximum penalty of $2,500 has been increased to $3,750 for violations occurring on or after January 13, 2009 through November 2, 2015, pursuant to the Civil Monetary Penalty Inflation Adjustment Rule. 40 C.F.R. § 19.4; 82

Fed. Reg. 3633, 3636 (Jan. 12, 2017). The CAA provides further as follows, with respect to assessment of civil administrative penalties:

> In determining the amount of any civil penalty assessed under this subsection, the Administrator shall take into account the gravity of the violation, the economic benefit or savings (if any) resulting from the violation, the size of the violator's business, the violator's history of compliance with this subchapter, action taken to remedy the violation, the effect of the penalty on the violator's ability to continue in business, and such other matters as justice may require.

42 U.S.C. § 7524(c)(2).

To facilitate the calculation of penalties using these factors as applied to mobile sources, the U.S. Environmental Protection Agency has issued guidance in the Clean Air Act Mobile Source Civil Penalty Policy, dated January 2009 ("Penalty Policy").[2] The Penalty Policy provides a basic framework of computing a penalty by first assessing a "preliminary deterrence amount" consisting of the sum of two components: the gravity of the violation and the economic benefit resulting from the violation.

As to the economic benefit component, the Penalty Policy provides that in cases of sale of emission control defeat devices, the economic benefit should be calculated considering the benefits from business transactions that would not have occurred but for the illegal conduct, that is, the net profits from the sale of illegal devices. Penalty Policy at 7, 11.

The gravity component considers either the importance to the regulatory scheme or the actual or potential harm from the violation, which reflects whether the violator's activity actually resulted in, or was likely to result in, the emission of a pollutant in violation of the standards for that engine. Penalty Policy at 11. The actual or potential harm is based on the number of engines at issue and engine size in horsepower, egregiousness of the violation, and any actions taken to remedy or mitigate the violation. *Id*. at 12-14. This is calculated by determining a base per-vehicle penalty based on horsepower of the engine as provided in Table 1 of the Penalty Policy, and then, as provided in Table 2, to account for the egregiousness of the violation, multiplying it by 1 for "minor," 3.25 for "moderate," or 6.5 for "major" level of egregiousness. *Id.* at 12, 16-17, Tables 1 and 2. The latter category, "major," applies where excess emissions from vehicles or engines are "likely to occur," such as where emission control devices are

[2] *Available at* https://www.epa.gov/sites/production/files/documents/vehicleengine-penalty-policy_0.pdf.

missing or ineffective, where engines are uncertified and there is no information about their emissions, or where test data of uncertified engines shows they "exceed emissions standards." *Id.* at 13, 17, Table 2. The "major" category also is applied if there is uncertainty about the proper egregiousness category, and then it can be changed to moderate or minor based on new information. *Id.* at 13. The "moderate" category applies to violations involving uncertified vehicles or engines where their emissions "are likely to be similar to emissions from certified vehicles or engines," such as where engines were produced before the emissions certificate was issued or where the emissions label is missing or deficient to the extent that the certification status of the vehicle or engine cannot be determined, but it is covered by a certificate. *Id.* The "minor" category applies where emissions control labels are defective but the certification status of the engine can be determined from the label. *Id.* at 14.

Next, the number of vehicles or engines is accounted for by applying a scaling factor, shown in Table 3 of the Penalty Policy, which is a factor of 1 for the first ten vehicles or engines, and is incrementally reduced for the number of vehicles or engines greater than ten. *Id.* at 17-18.

This methodology also applies to defeat devices, such as the Subject Components, as the Penalty Policy provides as follows:

> The gravity-calculation approach described above is also appropriate for calculating the gravity penalty-component for violations of . . . the prohibition against manufacturing, offering for sale, selling or installing emission control defeat devices under Section 203(a)(3)(B) of the Act.
> * * *
> In the case of violations of the defeat device prohibition, the gravity would be based on the vehicles or engines on which the defeat devices are installed or intended to be installed, and calculated as if these vehicles or engines had been introduced into commerce . . . with the defeat device installed. A separate penalty would be assessed for each defeat device manufactured, offered for sale, sold, or installed.

Id. at 22.

The gravity component may be increased or decreased by up to 20 percent to account for the violator's degree of willfulness and/or negligence, and up to 10 percent for the degree of cooperation or non-cooperation in resolving the violation, and may be increased to reflect any history of noncompliance. *Id.* at 23-24.

The gravity component also may be increased by up to 30 percent to reflect lack of remediation "if the violations are not corrected through appropriate remedial actions," such as uncertified vehicles being sold into commerce. *Id.* at 14, 20. Next, a value representing the size of the business is added for businesses with a net worth of more than $50,000. *Id.* at 20-21, Table 4. Other unique factors may also be considered in adjusting the penalty. *Id.* at 28.

The next step is to add the adjusted gravity component to the economic benefit component. Finally, the violator's ability to pay is considered, with the burden to demonstrate inability to pay on the violator.

V. Complainant's Calculation of the Penalty

The Complaint (¶ 52) alleges generally that Respondent is liable for "civil penalties up to $3,750 for each violation of section 203(a)(3)(A) or (B) occurring on after January 13, 2009, through November 2, 2015." In the Motion, Complainant requests a civil penalty of $4,154,805, calculated by applying the Penalty Policy as discussed below. Motion ¶¶ 57, 59.

First, the Agency calculated a value representing the economic benefit of Respondent's noncompliance. Using Respondent's reasonable estimates of its profits and gross sales for the years 2013 through 2015 as stated in a letter to EPA from an attorney representing Respondent at the time, the Agency calculated an average percent profit margin. Motion ¶ 67, Appx. at 19. The Agency states that to determine the total profit from selling the Subject Components, it applied that figure to revenue information obtained from "Sales by Item" summaries for the years 2011 through 2013 that Respondent submitted in response to an information request letter. Motion ¶ 67; Appx. at 20-26.

The Complaint alleges that Respondent manufactured, sold, offered to sell or installed "at least 5,000 of the Subject Components." Complaint ¶ 43. EPA asserts that the number 5,000 was based on Respondent's response to the Agency's information request letter. Motion ¶ 65.Complainant reduced the estimate of the total profit from sale of the Subject Components to $719,373 to reflect the estimated profit from the sale of 5,000 Subject Components, or an average of $144 per Subject Component. Motion ¶¶ 67, 68.

Next, the Agency calculated a gravity-based penalty to reflect actual or potential harm from the violation, starting with a base per-vehicle penalty based on engine size and the horsepower of the engines on which the defeat devices at issue were to be installed. Motion ¶ 69; Penalty Policy at 12, 16. The Agency stated that the horsepower of the vehicles on which the Subject Components would be installed ranged from 350 to 400, but that it calculated the penalty conservatively, based on 350 horsepower, although the Subject Components are designed to increase the horsepower by up to 50%. Motion at 18-19 (¶70), n. 6 (citing Appx. at

30-31). According to the Penalty Policy's methodology (Penalty Policy at 16, Table 1), Complainant computed a figure of $80 multiplied by 10 for the first 10 horsepower, $20 multiplied by 90 for the next 90 horsepower, and $5 multiplied by 250 for the next 250 horsepower, yielding a figure of $3,850 for each vehicle in which a Subject Component is installed. Motion ¶¶ 69-70.

As to the egregiousness of the violations, the Motion cites to the Investigation Report and the allegation in the Complaint (¶ 48) that "[t]esting of a Ford truck with a Subject Component installed in accordance with Respondent's instructions caused regulated pollutant NO_x to increase over 30,000 percent, caused regulated pollutant NHMCs to increase over 100,000 percent, and caused regulated pollutant PM to increase over 3,700 percent." Motion ¶ 71; Statement, Att. 1. Complainant explains that the Subject Component increased the vehicles' emissions when operated in the highest horsepower calibration in both the "DPF On" (diesel particulate filter not removed) and "DPF Off" (diesel particulate filter removed) modes, resulting in excess emissions when compared with emissions from the same vehicle operated in the original condition specified by the manufacturer without the Subject Component installed. Statement ¶ 5. Furthermore, Complainant asserts that every Subject Component is designed to allow an end-user to operate a vehicle after physically removing or rendering inoperable emissions control components, which results in increased emissions of particulate matter, NO_x, and/or carbon monoxide. Statement ¶ 4. Mr. Brent Ruminski, Energy Engineer with ERG and a member of the investigation team, explains that operating the Subject Components in any of the available "DPF Off" modes will result in the vehicle exceeding the regulatory emissions standards for PM and NO_x, as such modes disable and allow the removal of emissions control equipment. Statement ¶ 6 and Att. 2 ¶¶ 27, 30. He also explains that operating the Subject Components in any of the "DPF On" modes could have an adverse impact on vehicle emissions, resulting in excess emissions of one or more regulated pollutants as compared with emissions from the same vehicle operated in the original condition specified by the manufacturer without the Subject Component installed. The reason for this is that even in the "DPF On" mode, the Subject Component changes the fueling strategy and other engine parameters that are critical elements of design relied upon by manufacturers to, among other things, control emissions. Statement ¶ 7 and Att. 2, Declaration ¶¶ 25, 31, 32, 34. Complainant points out that Respondent admitted that it had not performed emissions testing of vehicles. Statement ¶ 8 and Att. 3. Complainant concluded that it is appropriate to assess a "major" level of egregiousness, and thus multiplied the base per-vehicle figure by 6.5, resulting in a penalty of $25,025 per vehicle.

In the next step, using Table 3 of the Penalty Policy, Complainant scaled the per-vehicle figure to reflect the affected number of vehicles. For the first ten vehicles, the $25,025 penalty was applied, resulting in a total of $250,250; for the next 90 vehicles, a scaling factor of 0.2 was

applied, resulting in a total of $450,450; for the next 900 vehicles, a scaling factor of 0.04 was applied, resulting in a penalty of $900,900; and for the next 4,000 vehicles, a scaling factor of 0.008 was applied, resulting in a penalty of $800,800. The sum of these figures is $2,402,400. Motion ¶ 72.

Complainant increased that sum by 30 percent, to $3,123,120, to account for Respondent's lack of any remediation of the violations, specifically, its "failure to recall products and mitigate excess emissions in any way." Motion ¶ 73.

No upward adjustment was made to account for the size of Respondent's business, as Complainant had no information as to Respondent's net worth or assets.

The Agency states that for the Penalty Policy's adjustment factor of "degree of cooperation/non-cooperation," it increased the gravity portion of the penalty by 10 percent, that is, by $312,312. It did not make any further adjustments to reflect the factors of "willfulness and/or negligence" or "history of noncompliance. Motion ¶ 76.

Adding the gravity component including the increases for lack of remediation and for non-cooperation, or $3,435,432, to the economic benefit component of $719,373, yields the total proposed penalty of $4,154,805.

In regard to ability to pay, Complainant asserts that it requested Respondent to provide evidence as to any claim of inability to pay a penalty and provides documentation of Complainant's efforts to solicit such evidence over the course of 15 months. Motion ¶ 77, Appx. at 39-54. The Agency states that no formal documentation has been submitted by Respondent as of the date of the Motion, but that Respondent's counsel, prior to ceasing representation of Respondent, had stated that Spartan "has ceased to exist as an entity" and ceased operations when it received EPA's notice of violation. Motion ¶ 77; Appx at 49, 51. Complainant presents a Dunn and Bradstreet financial report "showing that Spartan ceased reliably paying debts in August 2017." Motion ¶ 77 (citing Appx. at 55-70 at 65 (top), 59, 60, 61 (top), 69 (bottom)). Complainant states that the assertion that Respondent already has ceased its business suggests that the penalty would not affect its ability to continue in business. Complainant also points to the Penalty Policy guidance that "a company found in violation of the defeat device prohibition should not receive a reduced penalty to stay in business if the company intends to continue selling defeat devices." Penalty Policy at 27.

Finally, Complainant asserts that it is "aware that multiple sources suggest Spartan and/or its principal, Matthew Geouge, has merely changed the name under which the same business is

being conducted." Motion ¶ 79. In support, Complainant presents a press release from a website, www.dieselops.com, announcing that "Patriot Diagnostics has acquired Spartan Diesel Technologies," and websites for Spartan's retailers showing that Patriot Diagnostics is now offering "Phalanx Console Tuners," which, Complainant asserts, appear to be a direct continuation of Spartan's Phalanx Flash Consoles. Appx. at 71, 74, 76. Complainant points out that according to Yellowpages.com, Patriot Diagnostics is located at the same residential address as Mr. Geouge. Motion ¶ 79; Appx. at 2, 77. Given the lack of financial information from Respondent despite numerous requests, and lack of information regarding the legal and financial relationship with Patriot Diagnostics, Complainant argues that no adjustment for ability to pay is warranted.

VI. Discussion and Conclusion as to Penalty

Under the Rules of Practice, the relief proposed in the Motion, namely a penalty of $4,154,805, "shall be ordered unless the requested relief is clearly inconsistent with the record of the proceeding or the Act." 40 C.F.R. § 22.17(c). I must evaluate "whether the relief sought is appropriate in light of the record" and whether Complainant "has applied the law and the Agency's policies consistently and fairly." *Peace Industry Group (USA), Inc.,* 17 E.A.D. at 354; *Mountain Village Parks, Inc.,* 15 E.A.D. 790, 797-798 (EAB 2013).

Complainant determined a value representing the economic benefit of Respondent's noncompliance by calculating an estimated profit from the sale of 5,000 Subject Components, as it did not have data on Respondent's actual profits from such sales. Motion ¶ 67. Complainant did receive from Respondent's counsel an email dated September 16, 2016, referring to discussions of settling the issues associated with Spartan Diesel's tuners, and listing data representing "(a)ccording to Spartan Diesel, a reasonable estimate of profit and gross sales" for the years 2013, 2014, and 2015. Appx. at 19, 45. From this data, Complainant calculated an average percent profit margin for the three years. Motion ¶ 67.

Respondent's "Sales by Item" summaries provide a "retail list" and "dealer pricing" of items including the Subject Components, namely "Tuner 6.4 R," "Console Tuner 6.7 R," "Console Tuner 6.4 D," Console Tuner 6.7 D," and "packages" ("R" representing retail and "D" representing dealer), and the quantity, amount, percent of sales and average price for each, for the years 2011 and 2012, and for January through April 2013. Appx. at 21-26. Complainant computed the dollar amount of revenue from Respondent's total sales of the Subject Components over the time period of January 2011 through April 2013. Motion ¶ 67. Complainant then applied the average percent profit margin to the total revenue from these sales to estimate the profit from the total sales of the Subject Components during that time period. *Id.* Finally,

Complainant calculated an estimated profit of $719,373 from sales of 5,000 Subject Components. *Id.* Given the price of a Subject Component, $1,499.99 retail, an average profit of $144 per unit seems reasonable. Att. 1 Appendix B p. 2. Thus, a total profit of $719,373 from Respondent's sales of 5,000 Subject Components, which is fewer than the number actually sold by Respondent according to its Sales by Item summaries, is a reasonable and conservative representation of the economic benefit or profit from the illegal sale of the Subject Components.

As to the gravity-based penalty, the Penalty Policy instructs that a violation regarding a defeat device should be calculated based on the vehicle on which the defeat device is to be installed, as if the defeat device had been installed in the vehicle when it was introduced into commerce. Penalty Policy at 22. Thus, for each defeat device, a value is determined based on the horsepower of the vehicle as listed in Table 1 of the Penalty Policy, as the engine size reflects the potential for harm as an objective estimate of the amount of excess emissions that would be emitted from each vehicle or engine over its useful life. Penalty Policy at 12. The Penalty Policy indicates that missing or defective emission control devices add to the amount of excess emissions, and thus the gravity would be based on the vehicle with the defeat device installed. *Id.* at 12, 22. The vehicles into which the Subject Components were to be installed are Ford Diesel trucks with 350 to 400 horsepower. Finding of Fact ("FF") 17. Complainant conservatively based the calculations for each of the Subject Components on all of the vehicles having 350 horsepower, rather than making an estimate based on some of the vehicles having 400 horsepower or based on the increase in horsepower from installation of the Subject Components. FF 13. For engines with 350 horsepower, according to Table 1, the base penalty is $80 multiplied by 10 for the first ten horsepower, plus $20 multiplied by 90 for the next 90 horsepower, plus $5 multiplied by 250 for the additional 250 horsepower, yielding a value of $3,850 for each vehicle into which a Subject Component would be installed. Penalty Policy, Table 1.

Complainant's assessment of a "major" level of egregiousness, multiplying the base per-vehicle figure by 6.5 for each Subject Component, represents that emissions exceeding certified levels or applicable standards from each vehicle on which it is installed are likely to occur. This assessment is supported by the facts in this case and by the opinions stated by Brent Ruminski.

First, the Subject Components when operated in DPF-Off mode require removal of emission control devices. FF 14, 15. The Penalty Policy provides that "[m]ost . . . emission control devices, if missing or defective, . . . would be expected to result in increased emissions," warranting an assessment of the "major" level of egregiousness. Penalty Policy at 13. Second, the LA4 test results on the vehicle with the 200 HP DPF-Off Tune installed show emissions of regulated pollutants far exceeding the baseline levels. FF 32. In his Declaration, Mr. Ruminski

stated his opinion that the 200 DPF-Off Tune "would undoubtedly cause NO_x and PM to exceed the applicable standards if a full certification test were performed on the test vehicle," based on the test results and the fact that the DPF-Off Tune disables the EGR, DOC, DPF and SCR. Att. 2 ¶ 24; FF 15, 36. Given that all other DPF-Off tunes in the Spartan Phalanx Flash Console 6.7L Tuner disable EGR, DOC, DPF and SCR, he stated his further opinion that such tunes also "would undoubtedly cause NO_x and PM to exceed the applicable emissions standards if a full certification test was performed with such tunes installed." *Id.*; FF 15, 36. He also stated, based on the fact that all other engine families of Ford diesel trucks with 6.7 Liter Power Stroke engines have identical emission control devices, the same general engine design, and similar emission standards, that in his opinion "any of Spartan's DPF-off 6.7 Liter tunes would undoubtedly cause NO_x and PM to exceed the applicable standards if full certification tests were performed on those engine families." Att. 2 ¶ 27; FF 27. In addition, he stated, given the DPF-Off tune test results and the fact that the Ford trucks' 6.4 Liter Power Stroke engines have similar engine sizes, designs, and power to those with 6.7 Liter Power Stroke engines, that in his engineering judgment, he "would expect that, if tested, the Spartan 6.4 L DPF-Off tunes would cause NO_x and PM emissions to increase above the applicable Family Emission Limits ("FELs") and above levels that would otherwise be emitted by a 6.4 L Powerstroke in its stock configuration." Att. 2 ¶ 30; FF 14, 27.

I credit Mr. Ruminski's opinions based on his qualifications and explanations provided in his Declaration. He is an Energy Engineer with ERG since 2011, has been a credentialed EPA Clean Air Act vehicle and engine inspector since 2013, has trained over 150 EPA and state agency employees on how to conduct defeat device and tampering inspections, and has conducted over 190 CAA vehicle and engine inspections, most of which involved inspecting highway diesel engines for evidence of aftermarket defeat devices and tampering. Att. 2 ¶¶ 2, 5, 6. He explained that the test cycle FTP75, which is required to establish certification of emissions standards as part of the COC requirements under the regulations for the test vehicle, was not used for the inspection of the Subject Components because it requires a 12 hour "cold soak" period between tests, and the inspectors had only limited time available to conduct the tests at Ford's facility. Att. 2 ¶ 20. He explained that instead, as Ford recommended, they ran consecutive "hot start" test cycles which ensured that at the beginning of the valid test cycle, the vehicle operating conditions remained the same, providing comparable test results. He noted that diesel engine pollutant emissions are typically higher after a cold start than after a hot start, and therefore the results from a hot start LA4 test are expected to be lower than the results that would be expected from an FTP75 test. Att. 2 ¶ 21.

Further supporting assessment of the "major" level of egregiousness are results from the 125 HP DPF-On Tune tests and opinions of Mr. Ruminski based on those tests. The LA4 and

US06 tests with this tune installed showed levels of emissions that were above the baseline levels. FF 33. The comparison of the stock calibration file with the 125 HP DPF-On Tune calibration showed that the latter tune causes an engine's fuel injection timing to advance, increases fuel quantity and fuel rail pressure, allows lower air-to-fuel ratio, and increases the exhaust component protection threshold, all of which are parameters of concern in respect to emission control. FF 34. Mr. Ruminski stated that the Spartan Phalanx Flash Console 6.7L Tuner's DPF-On tunes that are less than 125 horsepower change the fueling strategy and other engine parameters that affect control of emissions. Att. 2 ¶ 32. Therefore, he stated in his Declaration, based on good engineering judgment, he "would expect that these other DPF-On tunes could adversely affect emissions of one or more regulated pollutants." *Id.* He opined further, based on the similarity between 6.4 Liter Power Stroke and 6.7 Liter Power Stroke engines, and the fact that the 6.4 Liter engine was not certified with SCR, that he "would expect, based on good engineering judgment, that the pollutant emission levels observed from a 6.4L Powerstroke after installation of a Spartan 6.4L DPF-On tune could adversely affect emissions." Att. 2 ¶ 34.

Although the evidence of increased emissions resulting from installation of the DPF-On tune is less compelling than that resulting from installation of DPF-Off tune, it nevertheless supports an assessment of the "major" category of egregiousness for each violation, thus a multiplication of each per-vehicle figure by 6.5. FF 33-37. I consider also that according to the Penalty Policy (at 13), the "major" category applies where there is uncertainty about the proper egregiousness category, that Respondent has not provided any evidence to support a lower level of egregiousness, and that there is no evidence as to whether any vehicles were in fact installed only with DPF-On tunes. I also consider that all of the Subject Components, being preloaded with DPF-Off tunes, were capable of being installed with DPF-Off tunes, and that Respondent has stated that the Subject Components were designed for racing use only. FF 13, 38; Att. 3 p. 6. Furthermore, the evidence with respect to the DPF-On tune does not support assessment of a "moderate" category of egregiousness for any violations, as it does not indicate that emissions with a DPF-On tune installed are "likely to be similar to emissions from certified vehicles or engines." Penalty Policy at 13; FF 33-37. It is appropriate therefore to multiply the per-vehicle penalty figure of $3,850 by 6.5, resulting in a penalty of $25,025 per vehicle.

As to the next step, Complainant scaled the per-vehicle figure in accordance with Table 3 of the Penalty Policy to represent 5,000 vehicles on which a Subject Component was installed, and correctly calculated the sum of $2,402,400.

As to the gravity component's factor of effectiveness of actions to remedy or mitigate the violation, the Penalty Policy directs a 30 percent increase in the penalty in the case of vehicles or

engines for which no remedial action is taken, and an increase between zero and 30 percent "where some but not complete remedial actions are taken or where the remedial action was delayed." Penalty Policy at 14. It provides as an example that remedial action for uncertified vehicles or engines can occur by export outside the United States, destroying the vehicles or engines, or recalling and repairing them. The Penalty Policy does not reference any application of this factor to defeat devices.

This factor at first glance may seem inapplicable because it appears unlikely that a manufacturer, seller or distributor of defeat devices would take remedial action such as recalling and repairing them to ensure they meet emissions standards, where the principal effect of the device is to disable, defeat, or render inoperative emission control devices or design elements. FF 22, 37. However, it would be contrary to logic and the intent of the Penalty Policy to increase a penalty on the basis for failure to remediate for an importer or seller that failed to ensure vehicles were certified for emissions, but not to increase a penalty for a seller of defeat devices that are intended to disable or defeat emissions controls. Indeed, the Penalty Policy (at 22) instructs that penalties for defeat device violations should be calculated as if the vehicles or engines had been introduced into commerce or imported with the defeat device installed. And, the Penalty Policy explains that this factor addresses the concern with excess emissions in terms of how long the vehicles are used in the United States, at worst, being "operated for the vehicles' useful life, resulting in years of actual excess emissions." Penalty Policy at 14. Respondent knew or should have known that each Subject Component would be installed to bypass, defeat, or render inoperative emission control elements in the vehicle. FF 37, 38. Recognizing that the Subject Components as installed may not comply with the Clean Air Act, Respondent included disclaimers with the Subject Components. FF 38. The instructions provided with the Subject Components require the user to sign a disclaimer and liability waiver, which states that use of the product on state and federal highways "is a violation of the EPA Clean Air Act" and advises the user to read the Act in full before signing. Att. 5 Enclosure C. Upon powering on the Subject Components, the user views a screen entitled "off-road use only," which requires the user to "accept" a disclaimer stating that the manufacturer or suppliers will not be liable for any impairment to the environment or for use of the product in a manner that does not comply with federal, state or local regulations concerning pollution control. Att. 1 p. 11 and Appendix A, Photograph 17. The disclaimers attempt to shift liability to the consumer, and do not prevent a consumer from installing the Subject Component and thereby disabling the vehicle's emissions control devices, such that the vehicle may emit excess pollutants for many years.

Moreover, the disclaimers do not require that the Subject Components be installed only on vehicles that are not "motor vehicles" subject to section 203(a)(3)(B) of the CAA. The term "motor vehicle" is defined in the CAA as "any self-propelled vehicle designed for transporting

persons or property on a street or highway." CAA § 216(2), 42 U.S.C. § 2550(2). The implementing regulation provides exceptions including a vehicle which "lacks features customarily associated with safe street or highway use" where absence of a particular safety feature would prevent operation on highways. 40 C.F.R. § 85.1703. There is no evidence that Subject Components could be installed only on such vehicles, and indeed the instructions enclosed with the Subject Components acknowledge that they may be "used for on-road applications." Att. 5 Enclosure C. I conclude that the disclaimers do not equate to remedial action or mitigation of a violation.

Therefore, it is appropriate to increase the penalty by 30 percent to account for Respondent's lack of any remediation or mitigation of the violations. The Penalty Policy instructs to increase the multiple-vehicle gravity figure by the percentage chosen. With the 30 percent increase applied to all of vehicles on which Subject Components would be installed, the $2,402,400 gravity figure is increased to $3,123,120.

The penalty can only be adjusted upward to account for the size of the violator's business. For businesses with a net worth of under $50,000, no upward adjustment is made. Complainant conservatively and fairly elected not to increase the penalty for this factor.

The Agency also elected in its discretion not to increase or decrease the penalty for the factor of "willfulness and/or negligence." Considering the criteria on page 24 of the Penalty Policy for adjusting the penalty for this factor, the principal effect of the Subject Components to bypass, defeat, or render inoperative the vehicles' emissions control elements, and that Respondent knew or should have known of such effects, no reduction in the penalty is warranted for this factor. FF 37, 38.

The Agency properly declined to adjust the penalty for the factor of "history of noncompliance," for which the Penalty Policy provides only an increase to the penalty.

The adjustment factor of "degree of cooperation/non-cooperation" reflects the violator's attempts to resolve the violation, such promptness or delay in reporting noncompliance to EPA. Penalty Policy at 24-25. Complainant increased the gravity portion of the penalty by 10 percent, that is, by $312,312, to reflect Respondent's lack of cooperation in providing relevant financial information and in addressing discrepancies regarding the ceasing of operations and discontinuation of its business. Motion ¶ 76. Failure to address such discrepancies suggests Respondent's refusal to report noncompliance and possible ongoing violations by operating under a different name, indicated by documents of record presented by Complainant. Appx. at 2, 71-77. This type of noncooperation is an appropriate basis for increasing the penalty under

the Penalty Policy and is consistent with increasing penalties for that factor as described in other EPA penalty policies. See, e.g., EPA General Enforcement Policy GM-22 pp. 19-20. The gravity based penalty figure of $3,123,120 with the 10 percent adjustment is $3,435,432.

Adding the $719,373 figure representing the economic benefit of noncompliance to the gravity based penalty of $3,435,432 yields a total penalty of $4,154,805, which is the penalty proposed by EPA.

Finally, Complainant has shown that it properly considered the factors of ability to pay and ability to continue in business, and that it appropriately chose not to reduce the penalty for those factors. Complainant's counsel, as stated in his Declaration and as evidenced by emails he sent and received from Respondent's then-attorneys, made numerous attempts over 15 months to obtain documentation as to Respondent's ability to pay, but Respondent did not provide any formal documentation. FF 39. Complainant reviewed a Dunn and Bradstreet financial report on Respondent, and considered Respondent's former counsel's assertion that it has ceased to exist as an entity and has ceased operations. Appx. at 49, 51, 55-70. Furthermore, Complainant has considered evidence that Respondent may have changed the name under which its business is being conducted to Patriot Diagnostics, and Respondent has not provided any evidence to the contrary.

No other circumstances have been shown that warrant any further adjustments to the penalty. I conclude that the Agency's proposed penalty of $4,154,805 is appropriate and consistent with the record of this case, and that in calculating this penalty Complainant has applied the law and the Agency's policies consistently and fairly.

ORDER

1. As concluded in the Order on Motion for Default, dated September 7, 2018, Respondent Spartan Diesel Technologies, LLC, is in default, pursuant to Section 22.17 (a) and (c) of the Consolidated Rules of Practice, 40 C.F.R. § 22.17(a) and (c), and is liable for violating section 203(a)(3)(B) of the Act, 42 U.S.C. § 7522(a)(3)(B), as alleged in the Complaint.

2. Complainant's Motion for a Default Order is hereby **GRANTED** with respect to the assessment of a penalty.

3. Respondent Spartan Diesel Technologies, LLC is hereby **ORDERED** to pay a civil penalty in the amount of **$4,154,805** in the manner directed below.

4. This Initial Decision shall become a final order forty-five (45) days after its service upon

the parties and without further proceedings unless: (1) an appeal to the Environmental Appeals Board is taken within thirty (30) days after this Initial Decision is served upon the parties pursuant to 40 C.F.R. § 22.30(a); (2) a party moves to set aside this default order; or (3) the Environmental Appeals Board elects, upon its own initiative, to review this Initial Decision.

5. Respondent shall pay the above-stated civil penalties as follows:

   Use any method, or combination of methods, provided on the website http://www2.epa.gov/financial/makepayment; identify each and every payment with "Docket No. CAA-HQ-2017-8362"; and, within 24 hours of payment, send proof of payment ("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-HQ-2017-8362") to both the EPA Office of Administrative Law Judges and the Complainant, as follows:

   a. The EPA Office of Administrative Law Judges: If by USPS (except Express Mail), send to:

      U.S. Environmental Protection Agency
      Office of Administrative Law Judges
      Mail Code 1900R
      1200 Pennsylvania Ave., N.W.
      Washington, DC 20460

      If by any other carrier or hand-delivery, deliver to:

      U.S. Environmental Protection Agency
      Office of Administrative Law Judges
      Ronald Reagan Building, Rm. M1200
      1300 Pennsylvania Ave., N.W.
      Washington, DC 20460

   b. Complainant: If by USPS (except Express Mail), send to:

      David E. Alexander
      U.S. EPA, Air Enforcement Division
      1200 Pennsylvania Ave., N.W.
      Mailcode 2242A
      Washington, DC 20460

      If by any other carrier or hand-delivery, deliver to:

David E. Alexander
U.S. EPA, Air Enforcement Division
1200 Pennsylvania Ave., N.W.
William J. Clinton Federal Building, Room 1111B
Washington, DC 20004

6. If Respondent fails to timely pay any portion of the penalties ordered, 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 suspend or disqualify Respondent from doing business with the EPA or engaging in programs the EPA sponsors or funds, 40 C.F.R. § 13.17.

Lisa Busch

M. Lisa Buschmann
Administrative Law Judge

In the Matter of *Spartan Diesel Technologies, LLC*, Respondent.
Docket No. CAA-HQ-2017-8362

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **Initial Decision and Order on Default**, dated October 30, 2018, and issued by Administrative Law Judge M. Lisa Buschmann, was sent this day to the following parties in the manner indicated below.

Mary Angeles
Paralegal Specialist

Original and One Copy by Personal Delivery to:
Mary Angeles, Headquarters Hearing Clerk
U.S. Environmental Protection Agency
Office of Administrative Law Judges
Ronald Reagan Building, Rm M1200, MC1900R
1300 Pennsylvania Ave., NW
Washington, DC 20004

Copy by Electronic and Regular Mail to:
David E. Alexander, Attorney Advisor
U.S. Environmental Protection Agency
Office of Enforcement and Compliance Assurance
Office of Civil Enforcement
Air Enforcement Division
1200 Pennsylvania Ave., NW, Mail Code 2242A
Washington, DC 20460
Email: alexander.david@epa.gov
For Complainant

Copy by Certified Mail to:
Matthew Geouge, Registered Agent
Spartan Diesel Technologies, LLC
518 South Allen Rd.
Flat Rock, NC 28731-9447
Certified Mail No: 7005-1160-0004-4342-4359

Matthew Geouge, Manager
Spartan Diesel Technologies, LLC
578 Upward Rd., Suite 7
Flat Rock, NC 28731
Certified Mail No: 7005-1160-0004-4342-4366

Matthew Geouge, Member
Spartan Diesel Technologies, LLC
328 Trenholm Road
Hendersonville, NC 28739
Certified Mail No: 7005-1160-0004-4342-4373

Matthew Geouge, Registered Agent, Manager, and Member
Spartan Diesel Technologies
107 Education Dr.
Flat Rock, NC 28731
Certified Mail No: 7005-1160-0004-4342-4380
For Respondent

Dated: October 30, 2018
Washington, D.C.