

**BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.**

In the Matter of:

THE SHYFT GROUP, INC.,

Respondent.

Docket No.
CAA-20248454

CONSENT AGREEMENT AND FINAL ORDER

Preliminary Statement

1. This is a civil administrative penalty assessment proceeding instituted under Section 205(c)(1) of the Clean Air Act (“CAA”), 42 U.S.C. § 7524(c)(1). The issuance of this Consent Agreement and attached Final Order simultaneously commences and concludes this proceeding. 40 C.F.R. § 22.13(b).
 2. Complainant in this matter is the United States Environmental Protection Agency (“EPA” or “Complainant”). On the EPA’s behalf, Mary E. Greene, Director, Air Enforcement Division, Office of Civil Enforcement, Office of Enforcement and Compliance Assurance, is authorized by lawful delegation to institute and settle civil administrative penalty assessment proceedings under Section 205(c)(1) of the CAA, 42 U.S.C. § 7524(c)(1).
 3. Respondent in this matter is The Shyft Group, Inc. (“Shyft” or “Respondent”), formerly Spartan Motors, Inc. Respondent is a corporation organized under the laws of the State of Michigan with an office at 41280 Bridge Street, Novi, Michigan 48375. Among other things, the Respondent manufactures chassis for custom motor homes, truck bodies, walk-in vans, and vocational vehicle bodies.
 4. The EPA and Respondent (referred to collectively as “Parties” and individually
- Consent Agreement and Final Order, CAA-2024-8454*

as “Party”), having agreed to settle this action, consent to the entry of this Consent Agreement and the attached Final Order before taking testimony and without adjudication of any issues of law or fact herein and agree to comply with the terms of this Consent Agreement and the attached Final Order.

Jurisdiction

5. This Consent Agreement is entered into under Sections 205(c)(1) and 213(d) of the CAA, 42 U.S.C. § 7524(c)(1), section 1068.125 of Title 40 of the Code of Federal Regulations, 40 C.F.R. § 1068.125, and the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits,” 40 C.F.R. Part 22 (“Consolidated Rules”).
6. The EPA and the United States Department of Justice jointly determined that this matter, although it involves a penalty assessment above \$460,926 is appropriate for an administrative penalty assessment. 42 U.S.C. § 7413(d); 40 C.F.R. § 19.4.
7. The Environmental Appeals Board is authorized to issue consent orders memorializing settlements between the EPA and Respondent resulting from administrative enforcement actions under the CAA, and to issue final orders assessing penalties under the CAA. 40 C.F.R. § 22.4(a)(1); EPA Delegation 7-41-C.
8. The Consolidated Rules provide that where the Parties agree to settlement of one or more causes of action before the filing of a complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a Consent Agreement and Final Order. 40 C.F.R. §§ 22.13(b), 22.18(b).

Governing Law

9. This proceeding arises under Part A of Title II of the CAA, CAA §§ 202-219, 42 U.S.C. §§ 7521-7554, and the regulations promulgated thereunder. These laws aim to reduce emissions from mobile sources of air pollution, generally including hydrocarbons, oxides of nitrogen, and carbon monoxide. The Alleged Violations of Law, stated below, regard motor vehicles, specifically vocational vehicles, and violations of section 203(a)(1) of the CAA 42 U.S.C. § 7522(a)(1), which prohibits a manufacturer from selling, offering for sale, introducing, or delivering for introduction into commerce a new motor vehicle unless such vehicle is covered by a certificate of conformity. What follows is a summary of the law that governs these allegations.
10. General definitions:
- (a) “Certificate of Conformity” means a certificate issued by EPA pursuant to Section 206 of the Act, 42 U.S.C. § 7525, and to 40 C.F.R. § 1037.801 (defining “certification”).
 - (b) “Commerce” means commerce between any place in any state and any place outside thereof and commerce wholly within the District of Columbia. 42 U.S.C. §§ 7550(6), 7602(d).
 - (c) A “complete vehicle” is a functioning vehicle that has the primary load carrying device or container (or equivalent equipment) attached.
 - (d) “Vehicle family” means a division of a manufacturer’s product line used for certification purposes that includes vehicles or components that are expected to have similar emission characteristics throughout their useful life. 40 C.F.R. § 1037.801.
 - (e) “Person” includes individuals, corporations, partnerships, associations,

states, municipalities, and political subdivisions of a state. 42 U.S.C.

§ 7602(e).

- (f) To “manufacture” means the physical and engineering process of designing, construction, and/or assembling a vehicle. 40 C.F.R. § 1037.801.
- (g) A “manufacturer” means any person who manufactures or assembles a vehicle (including ... or another incomplete vehicle) for sale in the United States or otherwise introduces a new motor vehicle into commerce in the United States. This includes importers who import who import vehicles for resale. 40 C.F.R. § 1037.801.
- (h) “Model year” means a calendar year or, if it is different than the calendar year, a manufacturer’s annual production period, which includes January 1 of such calendar year. 40 C.F.R. § 1037.801.
- (i) A “vocational vehicle” means relating to a vehicle subject to the standards of § 1037.105 (including vocational tractors).
- (j) A “vehicle” means equipment intended for use on highways that meets at least one of the following criteria: (i) A piece of equipment that is intended for self-propelled use on highways becomes a vehicle when it includes at least an engine, a transmission, and a frame. (Note: For purposes of this definition, any electrical, mechanical, and/or hydraulic devices attached to engines for purposes of powering wheels are transmissions.) (ii) [a] piece of equipment that is intended for self-propelled use on highways becomes a vehicle when it includes a passenger compartment attached to a frame with one or more axles. 40 C.F.R. § 1037.801

11. The New Heavy-Duty Motor Vehicles Rule, 40 C.F.R. Part 1037, (hereafter,

GHG regulations) applies the requirements of 40 C.F.R. § 1068.101 to the engine and vehicle manufacturers of heavy-duty vehicles. 40 C.F.R. §§ 1037.601.

12. The GHG regulations prescribe limits to four groups of pollutants: (1) exhaust emissions of oxides of nitrogen (“NO_x”), carbon monoxide (“CO”), and particulate matter (“PM”), which are known as non-greenhouse gases with standards provided at 40 C.F.R. Part 86; (2) exhaust emissions of carbon dioxide (“CO₂”), methane (“CH₄”), and nitrous oxide (“N₂O”), which are known as greenhouse gases (“GHG”) with standards provided at 40 C.F.R. §§ 1037.105-107; (3) Hydrofluorocarbons (“HFC”) that are also known as GHG with standards provided at 40 C.F.R. § 1037.115; and (4) fuel evaporative pollutants with standards provided at 40 C.F.R. § 1037.103.
13. 40 C.F.R. Part 1037 requires vocational vehicles of model year 2014 and later to comply with CO₂ emissions. 40 C.F.R. § 1037.105. These emission standards apply to vehicles above 26,000 pounds gross vehicle weight rating (“GVWR”) that are not tractors. *Id.*
14. Manufacturers use the Greenhouse Gas Emission Model (“GEM”) to demonstrate that their vocational vehicles comply with the CO₂ emission standards. 40 C.F.R. § 1037.520.
15. The GEM requires manufacturers of tractors or vocational vehicles to input a set of required fields, as specified by the vehicle’s model. 40 C.F.R. § 1037.520(a).
16. 40 C.F.R. Part 1037 requires that the equipment and component manufacturers referenced in Paragraph 11 obtain a certificate of conformity (“COC”) to demonstrate that the vehicle meets emission and other standards, 40 C.F.R. §§ 1037.201, 1037.205.
17. 40 C.F.R. § 1068.101(a)(1) prohibits manufacturers from, the sale, the offer for sale, the

introduction into commerce, the delivery for introduction into commerce, or the import of any heavy-duty motor vehicles and motor vehicle engines that are subject to 40 C.F.R. Parts 1036 and 1037, unless it is covered by a valid COC for its model year and has the required label or tag. 40 C.F.R. §§ 1068.1(a)(2), 1068.101(a)(1).

18. Once issued, a COC is valid starting with the indicated effective date but it is not valid for any production after December 31 of the model year for which it is issued.

40 C.F.R. §§ 1068.103(a), (c), (d).

19. A person who violates 40 C.F.R. § 1068.101(a)(1) on or after August 1, 2016, is subject to a civil penalty of not more than \$57,617 for each violation, as adjusted for inflation. 40 C.F.R. § 1068.101(a)(1); *See* 88 Fed. Reg. 89,309 (Dec. 27, 2023) (to be codified at 40 C.F.R. § 19.4).

Stipulated Facts

20. Respondent is a person as the term is defined in paragraph 10(f).
21. Respondent is a manufacturer as defined in paragraph 10(h).
22. Sales records obtained from the Respondent indicate that it manufactured, sold, and introduced into commerce vocational vehicles as defined in paragraph 10(i).
23. Between May 1, 2017, and July 20, 2020, Respondent sold and introduced into commerce 65 Class 7 diesel vocational vehicles. Between May 1, 2017, and July 20, 2020, Respondent sold and introduced into commerce 4,250 Class 8 diesel vocational vehicles. Collectively, the 4,315 vehicles are referred to as the “Subject Vehicles,” identified in Appendix A.
24. The Subject Vehicles are uncertified because they were manufactured and introduced into commerce without any applicable COC or exemption.
25. The Subject Vehicles identified in Appendix A of this Consent Agreement and Final

Order are vocational vehicles as defined above and are subject to the emission standards and compliance provisions of the CAA and its regulations. 42 U.S.C. §§ 7522, 7547(d).

Alleged Violations of Law

26. Based on information obtained from the Respondent described in Paragraphs 20 through 25, above, the EPA alleges that Respondent manufactured and introduced into commerce or delivered for introduction into commerce 4,315 uncertified Subject Vehicles in violation of section 203(a)(1) of the CAA, 42 U.S.C. § 7522(a)(1), and 40 C.F.R. § 1037.601(a). The Subject Vehicles are not covered by a COC because Respondent manufactured and introduced the Subject Vehicles into commerce without any applicable COC or exemption.

Terms of Agreement

27. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent admits that the EPA has jurisdiction over this matter as stated above; admits to the stipulated facts stated above; neither admits nor denies the alleged violations of law stated above; consents to the assessment of a civil penalty as stated below; consents to the issuance of any specified compliance or corrective action order; consents to any conditions specified in this Consent Agreement and to any stated Permit Action; waives any right to contest the alleged violations of law; and waives its rights to appeal the Final Order accompanying this Consent Agreement.
28. For the purpose of this proceeding, Respondent:
- (a) agrees that this Agreement states a claim upon which relief may be granted against Respondent;
 - (b) waives any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review that Respondent may have with respect to any

- issue of fact or law set forth in this Consent Agreement, including any right of judicial review under Section 307(b)(1) of the CAA, 42 U.S.C. § 7607(b)(1);
- (c) waives any rights it may possess at law or in equity to challenge the authority of the EPA to bring a civil action in a United States District Court to enforce this Agreement or Order, or both, and to seek an additional penalty for such noncompliance, and agrees that federal law shall govern in any such civil action;
 - (d) consents to personal jurisdiction in any action to enforce this Agreement or Order, or both, in the United States District Court for the District of Columbia;
 - (e) agrees that Respondent may not delegate duties under this Consent Agreement to any other Party without the written consent of the EPA, which may be granted or withheld at EPA's unfettered discretion. If the EPA so consents, the Consent Agreement is binding on the Party or Parties to whom the duties are delegated;
 - (f) acknowledges that this Agreement constitutes an enforcement action for purposes of considering Respondent's compliance history in any subsequent enforcement actions;
 - (g) acknowledges that this Consent Agreement and attached Final Order will be available to the public and agree that it does not contain any confidential business information or personally identifiable information;
 - (h) acknowledges that its tax identification number may be used for collecting or reporting any delinquent monetary obligation arising from this Agreement (see 31 U.S.C. § 7701);
 - (i) certifies that the information it has supplied concerning this matter was at the time of submission true, accurate, and complete; and
 - (j) acknowledges that there are significant penalties for knowingly submitting

false, fictitious, or fraudulent information, including the possibility of fines and imprisonment (see 18 U.S.C. § 1001).

29. For purposes of this proceeding, the Parties each agree that:
- (a) this Consent Agreement 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;
 - (b) this Consent Agreement may be signed in any number of counterparts, each of which will be deemed an original and, when taken together, constitute one agreement; the counterparts are binding on each of the Parties individually as fully and completely as if the Parties had signed one single instrument, so that the rights and liabilities of the Parties will be unaffected by the failure of any of the undersigned to execute any or all of the counterparts; any signature page and any copy of a signed signature page may be detached from any counterpart and attached to any other counterpart of this Consent Agreement.
 - (c) its undersigned representative is fully authorized by the Party whom he or she represents to bind that Party to this Consent Agreement and to execute it on behalf of that Party;
 - (d) each Party's obligations under this Consent Agreement and attached Final Order constitute sufficient consideration for the other Party's obligations under this Consent Agreement and attached Final Order; and
 - (e) each Party will bear their own costs and attorney fees in the action resolved by this Consent Agreement and attached Final Order.
30. Respondent agrees to pay to the United States a civil penalty of \$2,000,000 (the "Civil Penalty").

31. Respondent agrees to pay the Civil Penalty to the United States within 30 calendar days following the issuance of the attached Final Order (i.e., the effective date of this Consent Agreement and attached Final Order).
32. Respondent agrees to pay the Civil Penalty in the manner specified below:
- (a) Pay the Civil Penalty using any method provided on the following website:
<http://www.epa.gov/financial/additional-instructions-making-payments-epa>;
 - (b) Identify each and every payment with “Docket No. CAA-2024-8454”; and
 - (c) Within 24 hours of payment, email proof of payment to Ian Altendorfer at altendorfer.ian@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 EPA requirements, in the amount due, and identified with “Docket No. CAA-2024-8454”).
33. By signing this Consent Agreement, the EPA and Shyft hereby mutually terminate the tolling agreements previous entered into by the EPA and Shyft dated May 5, 2022; October 31, 2022; April 7, 2023; September 28, 2023; January 24, 2024, and April 26, 2024 which defined a tolling period of May 1, 2022, to July 1, 2024.
34. Respondent agrees that the time period from the Effective Date of the Agreement until all of the conditions specified in Paragraphs 30 and 31 are completed (the “Tolling Period”) shall not be included in computing the running of any statute of limitations potentially applicable to any action, including any action for injunctive or other equitable relief, brought by Complainant on any of the alleged violations of law set forth in this Consent Agreement (“Tolled Claims”). Settling Parties shall not assert, plead, or raise in any fashion, whether by answer, motion, or otherwise, any defense of

laches, estoppel, or waiver, or other similar equitable defense based on the running of any statute of limitations or the passage of time during the Tolling Period in any action brought on the Tolerated Claims.

Effect of Consent Agreement and Attached Final Order

35. In accordance with 40 C.F.R. § 22.18(c), Respondent's full compliance with this Consent Agreement shall only resolve Respondent's liability for federal civil penalties for the violations and facts alleged above.
36. Failure to pay the full amount of the penalty assessed under this Consent Agreement may subject Respondent to a civil action to collect any unpaid portion of the proposed civil penalty and interest. In order to avoid the assessment of interest, administrative costs, and late payment penalty in connection with such civil penalty, as described in the following four paragraphs of this Consent Agreement, Respondent must timely pay the penalty.
37. Interest, Charges, and Penalties on Late Payments. Pursuant to 42 U.S.C. § 7524(c)(6), 31 U.S.C. § 3717, 31 C.F.R. § 901.9, and 40 C.F.R. § 13.11, if Respondent fails to timely pay any portion of the Assessed Penalty per this Agreement, the entire unpaid balance of the Assessed Penalty and all accrued interest shall become immediately due and owing, and the EPA is authorized to recover the following amounts.
 - (a) Interest. Interest begins to accrue from the Filing Date. If the Assessed Penalty is paid in full within 30 days, interest accrued is waived. If the Assessed Penalty is not paid in full within 30 days, interest will continue to accrue until any unpaid portion of the Assessed Penalty as well as any accrued interest, penalties, and other charges are paid in full. Per 42 U.S.C. § 7524(c)(6), interest will be assessed pursuant to 26 U.S.C. § 6621(a)(2), that is the IRS standard underpayment rate, equal to the

Federal short-term rate plus 3 percentage points.

(b) Handling Charges. The United States' enforcement expenses including, but not limited to, attorneys' fees and costs of collection proceedings.

(c) Late Payment Penalty. A 10% quarterly non-payment penalty.

38. Late Penalty Actions. In addition to the amounts described in the prior Paragraph, if Respondent fails to timely pay any portion of the Assessed Penalty, interest, or other charges and penalties per this CAFO, the EPA may take additional actions. Such actions the EPA may take include, but are not limited to, the following:

(a) Refer the debt to a credit reporting agency or a collection agency, per 40 C.F.R.

§§ 13.13 and 13.14;

(b) Collect the debt by administrative offset (*i.e.*, the withholding of money payable by the United States government to, or held by the United States government for, a person to satisfy the debt the person owes the United States government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, per 40 C.F.R. Part 13, Subparts C and H.

(c) 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.

(d) Request that the Attorney General bring a civil action in the appropriate district court to recover the full remaining balance of the Assessed Penalty, in addition to interest and the amounts described above, per 42 U.S.C. § 7524(c)(6). In any such action, the validity, amount, and appropriateness of the Assessed Penalty shall not be subject to review.

39. Allocation of Payments. Pursuant to 31 C.F.R. § 901.9(f) and 40 C.F.R. § 13.11(d), a partial payment of debt will be applied first to outstanding handling charges, second to late penalty charges, third to accrued interest, and last to the principal that is the outstanding Assessed Penalty amount.
40. Tax Treatment of Penalties. Penalties, interest, and other charges paid pursuant to this CAFO shall not be deductible for purposes of federal taxes.
41. This Consent Agreement and attached Final Order apply to and are binding upon the Complainant and the Respondent. Successors and assigns of Respondent are also bound if they are owned, in whole or in part, directly or indirectly, or otherwise controlled by Respondent. Nothing in the previous sentence adversely affects any right of the EPA under applicable law to assert successor or assignee liability against Respondent's successor or assignee.
42. Nothing in this Consent Agreement shall relieve Respondent of the duty to comply with all applicable provisions of the CAA or 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.
43. The EPA reserves the right to revoke this Consent Agreement and accompanying settlement penalty if and to the extent the EPA finds, after signing this Consent Agreement, that any information provided by Respondent was or is materially false or inaccurate, and the EPA reserves the right to pursue, assess, and enforce legal and equitable remedies for the Alleged Violations of Law. The EPA shall give Respondent written notice of such termination, which will be effective upon mailing.

44. The Parties agree to submit this Consent Agreement to the Environmental Appeals Board with a request that it be incorporated into a Final Order.
45. Respondent and Complainant agree to issuance of the attached Final Order. Upon filing, the EPA will transmit a copy of the filed Consent Agreement to the Respondent. This Consent Agreement and attached Final Order shall become effective after execution of the Final Order by the Environmental Appeals Board and filing with the Hearing Clerk.

APPENDIX A
Subject Vehicles

<i>Spartan Emergency Vehicles</i>	<i>Class 7</i>	<i>Class 8</i>
<i>Gladiator (Fire Truck)</i>		463
<i>Metro Star (Fire Truck)</i>	1	343
<i>TOTAL</i>	1	806

<i>Spartan Specialty Vehicles</i>	<i>Class 7</i>	<i>Class 8</i>
<i>K1 (Mobile Home)</i>	62	107
<i>K2 (Mobile Home)</i>	2	2,283
<i>K3 (Mobile Home)</i>		974
<i>K4 (Mobile Home)</i>		78
<i>TOTAL</i>	64	3,444

The foregoing Consent Agreement in the matter of The Shyft Group, Inc., Docket No. CAA-2024-8454, is Heroby Stipulated, Agreed, and Approved for Entry.

For The Shyft Group, Inc.:


Signature

Printed Name: Joshua Sherbin

Title: Chief Legal Officer and Corporate Secretary

Address: 41280 Bridge Street, Novi, MI 48375

Respondent's Federal Tax Identification Number: 800168486

For Complainant:

MARY
GREENE

Digitally signed by MARY
GREENE
Date: 2024.07.22
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Mary E. Greene, Director
Air Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., N.W.
Washington, DC 20460-0001



Digitally signed by IAN
ALTENDORFER
Date: 2024.06.06
08:45:51 -04'00'

Ian Altendorfer, Attorney-Advisor
Air Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., N.W.
Washington, DC 20460-0001

**ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.**

In re:

THE SHYFT GROUP, INC.,

Respondent.

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Docket No. CAA-2024-8454

FINAL ORDER

Pursuant to 40 C.F.R. § 22.18(b)-(c) of EPA’s Consolidated Rules of Practice, the attached Consent Agreement resolving this matter is incorporated by reference into this Final Order and is hereby ratified.

The Respondent is ORDERED to comply with all terms of the Consent Agreement, effective immediately.

So ordered.¹

ENVIRONMENTAL APPEALS BOARD

Date: _____

[Official NAME OF LEAD JUDGE]
Environmental Appeals Board Judge

¹ The three-member panel ratifying this matter is composed of Environmental Appeals Judges ____, ____, and ____.

CERTIFICATE OF SERVICE

I certify that copies of the foregoing “Consent Agreement” and “Final Order,” in the matter of The Shyft Group, Inc., Docket No. CAA-2024-8454, were sent in the manner indicated:

By E-mail:

Amanda K. Beggs
Senior Counsel
777 East Wisconsin Avenue,
Milwaukee, WI 53202-5306
E-mail: abeggs@foley.com

Ian Altendorfer
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., N.W.
Mail Code 2243A
Washington, DC 20460
E-mail: altendorfer.ian@epa.gov

Dated: _____

Emilio Cortes
Clerk of the Board