

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

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| In the Matter of: |) | Docket No. CAA-05-2023-0036 |
| |) | |
| Hiel Enterprises, Inc. |) | Proceeding to Assess a Civil Penalty |
| Prairie City, Illinois |) | Under Section 205(c)(1) of the Clean Air |
| |) | Act, 42 U.S.C. § 7424(c)(1) |
| and |) | |
| |) | |
| Hiel Trucking, Inc. |) | |
| Prairie City, Illinois |) | |
| |) | |
| Respondents. |) | |

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. § 7424(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. Respondents are Hiel Enterprises, Inc. and Hiel Trucking, Inc. (Respondents), corporations doing business in Prairie City, Illinois.

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). 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. Respondents consent 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. Respondents admit the jurisdictional allegations in this CAFO and neither admit nor deny the factual allegations in this CAFO.

8. Respondents waive their 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 their 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. 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. 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. EPA promulgated regulations for motor vehicles manufactured after 2007 that require HDDE motor vehicles to have onboard diagnostic systems to detect various emission control device parameters and vehicle operations. *See* Section 202(m) of the CAA and 42 U.S.C. § 7521(m).

15. To meet the emission standards in 40 C.F.R. Part 86 and qualify for a COC, HDDE motor vehicle 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).

16. Modern HDDE motor vehicles 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 system, DOC, DPF, and SCR system.

17. 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 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.

18. 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 purchasers, 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) of the CAA, 42 U.S.C. § 7522(a)(3); 40 C.F.R. § 1068.101(b)(1). This is also referred to as “tampering.”

19. 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 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)(1). These parts or components are also referred to as “defeat devices.”

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

21. EPA may assess a civil penalty of up to \$5,580 for each applicable CAA violation that occurred after November 2, 2015, where penalties are assessed on or after January 6, 2023, 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. Respondents are corporations doing business in the State of Illinois with their primary place of business located at 22842 State Route 41, Prairie City, Illinois 61470 (the Facility).

23. Respondents are persons, as that term is defined in Section 302(e) of the CAA. 42 U.S.C. § 7602(e).

24. On November 4, 2019, EPA representatives conducted a CAA inspection of Respondents' Prairie City, Illinois, Facility.

25. On February 27, 2020, EPA issued to Hiel Enterprises, Inc. a request for information (RFI) under Section 208 of the CAA, 42 U.S.C. § 7542, requesting documents related to all HDDE motor vehicles that Hiel Enterprises, Inc. owned, operated, and/or leased between January 1, 2018, and the date of receipt of the RFI and any parts or services offered by Hiel Enterprises, Inc. that may affect motor vehicle emissions.

26. On May 15, 2020, Travis J. Hiel submitted a response to EPA's RFI on behalf of both Hiel Trucking, Inc. and Hiel Enterprises, Inc. The response included maintenance records and spreadsheets that listed the HDDE motor vehicles in Hiel Trucking, Inc.'s fleet. The spreadsheet identified 22 HDDE motor vehicles that had one or more emission control components removed or rendered inoperative (including EGRs, DOCs, SCRs, and DPFs) and had one or more ECM tuning products installed that bypassed, defeated, or rendered inoperative those emission controls. The response also included invoices for parts and components sold and/or installed by Hiel Enterprises, Inc.

27. Between September of 2015 and October of 2019, Hiel Trucking, Inc. and Hiel Enterprises, Inc. knowingly removed and/or rendered inoperative emissions control devices or elements of design on at least 11 HDDE motor vehicles from Hiel Trucking, Inc.'s fleet.

28. Between January 1, 2018, and March 3, 2020, Hiel Enterprises, Inc. sold and/or offered for sale at least 54 ECM tuning products capable of bypassing, defeating, and/or rendering inoperative emissions control devices on motor vehicles or motor vehicle engines. Hiel

Enterprises, Inc. installed at least 42 of these products. During the same time period, Hiel Enterprises, Inc. also sold at least 28 exhaust manifolds requiring removal of the EGR system on motor vehicles and engines certified under the CAA to require an EGR system. Hiel Enterprises, Inc. installed at least 25 of these products.

29. Respondent Hiel Enterprises, Inc. sold, offered to sell, and/or installed parts and/or components where a principal effect of the part or component was to bypass, defeat or render inoperative elements of design of those engines, and Respondent Hiel Enterprises, Inc. knew or should have known that the work performed on motor vehicles or motor vehicle engines and these parts or components were offered for sale or 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).

30. Respondents Hiel Enterprises, Inc. and Hiel Trucking, Inc. knowingly removed and/or rendered inoperative devices or elements of design installed on or in a motor vehicles or motor vehicle engines that were installed by the original equipment manufacturer in order to comply with CAA emission standards, in violation of Section 203(a)(3)(A) of the CAA, 42 U.S.C. § 7522(a)(3)(A).

31. On September 14, 2020, EPA issued a Finding of Violation (FOV) to Respondents for violating Section 203(a)(3)(A) and (a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(A) and (a)(3)(B).

32. On October 15, 2020, representatives from EPA and Respondents held a teleconference to discuss the FOV.

33. During the October 15, 2020 teleconference, Respondents represented that after receiving the FOV, Hiel Trucking, Inc. returned 7 of the 11 tampered HDDE motor vehicles from its fleet mentioned in Paragraph 27 of this CAFO back to compliance by reinstalling the

necessary emission control systems and reprogramming the ECMs to factory settings as required by each vehicle’s certified configuration.

34. On June 22, 2023, Respondents provided a spreadsheet to EPA wherein Respondents represented that all but two of the tampered HDDE motor vehicles in Hiel Trucking, Inc.’s fleet mentioned in Paragraph 27 of this CAFO had been returned back to compliance by reinstalling necessary emission control systems and reprogramming the ECMs to factory settings as required by each vehicle’s certified configuration.

Civil Penalty

35. 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, Respondents’ ability to pay, Respondents’ certifications set forth herein, and Respondents’ cooperation in resolving this matter, Complainant has determined that an appropriate civil penalty to settle this action is \$50,000.

36. Penalty Payment. Respondents agree to:

- a. Pay the civil penalty of \$50,000 within 30 days after the effective date of this CAFO.
- b. Pay the civil penalty using any method provided in the table below.

| Payment Method | Payment Instructions |
|---|--|
| Automated Clearinghouse (ACH) payments made through the US Treasury | US Treasury REX/Cashlink ACH Receiver ABA: 051036706 Account Number: 310006, Environmental Protection Agency CTX Format Transaction Code 22 – checking In the comment area of the electronic funds transfer, state Respondent’s name and the CAFO docket number. |
| Wire transfers made through Fedwire | Federal Reserve Bank of New York ABA: 021030004 Account Number: 68010727 SWIFT address: FRNYUS33 33 Liberty Street New York, NY 10045 |

| | |
|--|---|
| | <p>Beneficiary: US Environmental Protection Agency</p> <p>In the comment area of the electronic funds transfer, state Respondent’s name and the docket number of this CAFO.</p> |
| <p>Payments made through Pay.gov</p> <p>Payers can use their credit or debit cards (Visa, MasterCard, American Express & Discover) as well as checking account information to make payments.</p> | <ul style="list-style-type: none"> • Go to Pay.gov and enter “SFO 1.1” in the form search box on the top left side of the screen. • Open the form and follow the on-screen instructions. • Select your type of payment from the "Type of Payment" drop down menu. • Based on your selection, the corresponding line will open and no longer be shaded gray. Enter the CAFO docket number into the field |
| <p>Cashier’s or certified check payable to “Treasurer, United States of America.”</p> <p>Please notate the CAFO docket number on the check</p> | <p>For standard delivery:</p> <p>U.S. Environmental Protection Agency Fines and Penalties Cincinnati Finance Center P.O. Box 979078 St. Louis, Missouri 63197-9000</p> <p>For signed receipt confirmation (FedEx, UPS, Certified Mail, etc):</p> <p>U.S. Environmental Protection Agency Government Lockbox 979078 U.S. EPA Fines and Penalties 1005 Convention Plaza SL-MO-C2-GL St. Louis, Missouri 63101</p> |

37. Within 24 hours of the payment of the civil penalty Respondents must send a notice of payment that states Respondents’ name(s) and the docket number of this CAFO to EPA at the following electronic mail addresses when it pays the penalty: r5airenforcement@epa.gov; schaufelberger.daniel@epa.gov; dawson.matthew@epa.gov; and r5hearingclerk@epa.gov.

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

39. If Respondents do 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. § 7424(c)(6). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

40. Respondents 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). Respondents 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, Respondents 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

41. By signing this Consent Agreement, Respondents agree to the following: (i) Respondents 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) Respondents 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) Respondents certify that they have 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."

42. By signing this Consent Agreement, Respondents certify that they 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.

43. By signing this Consent Agreement, Respondents understand 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. §§ 7521–7590, by Respondents, as addressed in the January 18, 2021, Clean Air Act Title II Vehicle & Engine Civil Penalty Policy.

44. By the date of their signatures on this CAFO, Respondents 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.

45. Within 30 days of the Effective Date of this CAFO, Respondents shall permanently destroy any defeat device (i.e., straight pipes, EGR delete kits, etc.) remaining in Respondents’ inventory and/or possession, including ECM tuning products and all of the associated parts and components, to render them useless. Respondents shall submit videographic or photographic proof in accordance with Paragraph 47.

46. Within 30 days of the Effective Date of this CAFO, Respondents shall remove all defeat devices from, reinstall all emission control devices on, return to the original equipment manufacturer settings the ECM equipped by, and return to its certified configuration each motor vehicle and motor vehicle engine owned or operated by Respondents. Respondents shall provide EPA with a list of all motor vehicles and motor vehicle engines owned or operated by Respondents 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.

47. Within 30 days of the Effective Date of this CAFO, Respondents must provide EPA with their certification and proof that Respondents have completed the actions required by Paragraphs 45 and 46, above.

48. Respondents must submit the information required Paragraphs 45 and 46 of this CAFO via electronic mail to schaufelberger.daniel@epa.gov and r5airenforcement@epa.gov accompanied by the following statement signed by one of their 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 41 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 Respondents could be subject to penalties up to the statutory civil penalties in 40 C.F.R. § 19.4.

50. Each 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 Respondents to the EPA regarding matters relevant to this CAFO, including information about Respondents' 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: dawson.matthew@epa.gov (for Complainant), and cmanning@bhslaw.com (for

Respondents). Respondents understand that the CAFO will become publicly available upon filing.

52. This CAFO resolves only Respondents' 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 33, 34, and 56 of this CAFO.

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

57. This CAFO constitutes an "enforcement response" as that term is used in EPA's January 18, 2021, Clean Air Act Title II Vehicle & Engine Civil Penalty Policy to determine Respondents' history of compliance under Section 205 of the CAA, 42 U.S.C. § 7524.

58. The terms of this CAFO bind Respondents, their 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.

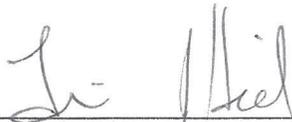
60. Each party agrees to bear its own costs and attorneys' fees in this action.

61. This CAFO constitutes the entire agreement between the parties.

Consent Agreement and Final Order
In the Matter of: **Hiel Enterprises, Inc. and Hiel Trucking, Inc.**
Docket No.

Hiel Enterprises, Inc., Respondent

8/16/23
Date


Travis J. Hiel, President
Hiel Enterprises, Inc.

37-1280992
Tax Identification Number

Hiel Trucking, Inc., Respondent

8/16/23
Date


Travis J. Hiel, President
Hiel Trucking, Inc.

37-1057079
Tax Identification Number

Consent Agreement and Final Order
In the Matter of: **Hiel Enterprises, Inc. and Hiel Trucking, Inc.**
Docket No. CAA-05-2023-0036

United States Environmental Protection Agency, Complainant

**MICHAEL
HARRIS**

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MICHAEL HARRIS
Date: 2023.08.25
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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: **Hiel Enterprises, Inc. and Hiel Trucking, Inc.**
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Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk (“Effective Date”). 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: 2023.08.31
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Ann L. Coyle
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 5