



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590
March 31, 2022

VIA E-MAIL
DELIVERY RECEIPT REQUESTED

Travis Wakefield
Diesel Dr Diagnostics
1507 Fayette Ave
Effingham, IL, 62401

Email: dieseldrdiagnostics@gmail.com

Dear Travis Wakefield:

Enclosed is a file-stamped Consent Agreement and Final Order (CAFO) which resolves Diesel Dr Diagnostics, Inc., docket no. CAA-05-2022-0012. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on March 31, 2022.

Pursuant to paragraph 36 of the CAFO, Diesel Dr Diagnostics, Inc. must pay the civil penalty within 30 days of the filing date. Your electronic funds transfer must display the case name and case docket number.

Please direct any questions regarding this case to John C. Matson, Associate Regional Council, 312-886-2243.

Sincerely,

Frank,
Nathan

Digitally signed by Frank,
Nathan
Date: 2022.03.25
18:20:34 -05'00'

Nathan Frank, Supervisor
Air Enforcement and Compliance Assurance Section (IL/IN)

Enclosure

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

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

John C. Matson/via electronic mail
matson.john@epa.gov

Kent Mohr/via electronic mail
kent.mohr@illinois.gov

Consent Agreement and Final Order
In the matter of: Diesel Dr Diagnostics Inc.
Docket Number: **CAA-05-2022-0012**

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, docket number CAA-05-2022-0012, which was filed on March 31, 2022, in the following manner to the following addressees:

Copy by E-mail to Respondent: Travis Wakefield
dieseldrdiagnostics@gmail.com

Copy by E-mail to Attorney for Complainant: John C. Matson
matson.john@epa.gov

Copy by E-mail to Attorney for Respondent: Frank Lyons
flyons@schiffhardin.com

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

Isidra Martinez
Acting Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:)	Docket No. CAA-05-2022-0012
)	
Diesel Dr Diagnostics, Inc. Effingham, Illinois)	Proceeding to Assess a Civil Penalty Under Section 205(c)(1) of the Clean Air Act, 42 U.S.C. § 7524(c)(1)
Respondent.)	
<hr/>)	

Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 205(c)(1) of the Clean Air Act (the CAA), 42 U.S.C. § 7524(c)(1), and Sections 22.1(a)(2), 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), as codified at 40 C.F.R. Part 22.

2. Complainant is the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency (EPA), Region 5.

3. Respondent is Diesel Dr Diagnostics, Inc. (Diesel Dr), a corporation currently doing business in Illinois and previously doing business in North Carolina.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). See 40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO and its right to appeal this CAFO.

Statutory and Regulatory Background

9. Section 203(a)(1) of the CAA, 42 U.S.C. § 7522(a)(1), 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).

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

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

12. EPA issues COCs to motor vehicle and motor vehicle engine manufacturers 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 for particulate matter, nitrogen oxides, hydrocarbons, and other pollutants applicable to motor vehicles and motor vehicle engines, including standards for heavy-duty diesel engines (HDDE). *See* Section 202 of the CAA, 42 U.S.C. § 7521; 40 C.F.R. Part 86.

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

15. 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, DOC, DPF, and SCR systems.

16. Under Section 202(m) of the CAA, 42 U.S.C. § 7521(m), EPA promulgated regulations for motor vehicles manufactured after 2007 that require HDDE motor vehicles 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. *See* 40 C.F.R. §§ 86.005-17, 86.007-17, 86.1806-05. These devices or elements of design are referred to as "onboard diagnostic systems" or "OBD" systems.

17. It is unlawful for "any person to remove or render inoperative any device or element of design installed on or in a motor vehicle or motor vehicle engine in compliance with regulations under [Title II of the CAA] prior to its sale and delivery to the ultimate purchaser, or for any person knowingly to remove or render inoperative any such device or element of design after such sale and delivery to the ultimate purchaser." Section 203(a)(3)(A) of the CAA, 42 U.S.C. § 7522(a)(3)(A), 40 C.F.R. § 1068.101(b)(1). This is also referred to as "tampering."

18. It is unlawful for "any person to manufacture or sell, or offer to sell, or install, any part or component intended for use with, or as part of any motor vehicle or motor vehicle engine,

where a principal effect of the part or component is to bypass, defeat, or render inoperative any device or element of design installed on or in a motor vehicle 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.” Section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B), 40 C.F.R. § 1068.101(b)(2). These parts or components are also referred to as “defeat devices.”

19. The Administrator of EPA (the Administrator) may assess a civil penalty of up to \$4,876 per motor vehicle, motor vehicle engine, or part or component, with a maximum administrative penalty of \$390,092, for violations that occurred after November 2, 2015, where penalties are assessed on or after December 23, 2020, pursuant to Section 205(a) and (c) of the CAA, 42 U.S.C. § 7524(a) and (c), and 40 C.F.R. Part 19.

Factual Allegations

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

21. On June 10, 2020, EPA sent a request for information (Information Request) to Respondent in accordance with Section 208 of the CAA, 42 U.S.C. § 7542, requesting, among other things, information related to Respondent’s sale, offer for sale and/or installation of parts, components, and services (products) which bypass, defeat, or render inoperative any emission control component, element of design, or emissions related part or component.

22. On August 21, 2020, EPA received Respondent’s response to EPA’s Information Request (Response). The Response included invoices for products sold and/or installed by Respondent on customer motor vehicles/engines. Work descriptions on the invoices in the

Response did not however, provide sufficient information for EPA to determine the full scope of the work Respondent had performed.

23. The Response provided by Respondent states that from January 1, 2017 to June 10, 2020, it utilized two primary products to perform tunes that modify the ECM on certain motor vehicle and/or motor vehicle engines. Respondent used: 1) an Alientech device to upload and download the vehicle/engine data necessary to perform tunes, and 2) WinOLS software to modify ECM files/parameters and perform the tune. Respondent also stated that it used a third-party service known as "MyChiptuningfiles" to "assist in the tuning of its race tunes."

24. The tunes that modified the ECM performed by Respondent on certain motor vehicles and/or motor vehicle engines ranged from changing the fuel injection parameters to disabling emission control systems (e.g., EGR, CGI, DOC, DPF, and/or SCR system(s)) without illuminating a malfunction indicator lamp in the vehicle's OBD system, prompting any diagnostic trouble code in the OBD system, or causing any engine derating due to the removal or disabling of an emission control device.

25. On October 21, 2020, EPA submitted a supplemental request for information (Supplemental Request) to Respondent in accordance with Section 208 of the CAA, 42 U.S.C. § 7542, to clarify the provided work descriptions.

26. On December 8, 2020, Respondent requested an extension to complete the response to the Supplemental Request and confirmed that it is no longer "selling tunes/devices that defeat or alter vehicle emission controls."

27. On January 8, 2021, EPA received Respondent's response to EPA's Supplemental Request (Supplemental Response). The Supplemental Response included a copy of the invoices with hand-written, annotated, general descriptions of the type of work performed. Respondent

also completed an Excel Spreadsheet denoting the actual work performed for each invoice description.

28. The Response and Supplemental Response submitted by Respondent indicate that Respondent manufactured, sold, offered for sale, and/or installed parts or components that bypassed, defeated, or rendered inoperative emission control components and/or elements of design (defeat devices). Furthermore, the Response and Supplemental Response indicate that Respondent removed or rendered inoperative devices or elements of design installed on or in a motor vehicle or motor vehicle engine in compliance with the CAA (tampering).

29. The parts and/or components manufactured, sold, offered for sale, and/or installed by Respondent were intended for “motor vehicles” as defined by Section 216(2) of the CAA, 42 U.S.C. § 7550(2). Specifically, Respondent’s parts and/or components were designed for use on makes and models of diesel-engine motor vehicles for which their respective manufacturers have obtained COCs establishing the compliance with CAA emissions standards in unaltered condition.

30. On February 10, 2021, EPA issued a Finding of Violation (FOV) to Respondent alleging Respondent violated Section 203(a)(3)(A) and (B) of the CAA, 42 U.S.C. § 7522(a)(3)(A) and (B), related to Respondent’s manufacturer, sale, offer for sale and/or installation of defeat devices for motor vehicle or motor vehicle engines.

Alleged Violations

31. Between January 2, 2017 and July 13, 2020, on at least 2,726 occasions (as set forth in Table 1, below) Respondent removed or rendered inoperative devices or elements of design installed on or in a motor vehicle or motor vehicle engine in compliance with the CAA.

32. Between January 2, 2017 and July 13, 2020, on at least 2,726 occasions (as set forth in Table 1, below) Respondent manufactured, sold and/or offered to sell parts or components intended for use with, or as part of, a motor vehicle or motor vehicle engine, where a principal effect of the part or component was to bypass, defeat or render inoperative emission devices and elements of design that control emissions, such as the engine fueling strategy, EGR/CGI, DOC, DPF, SCR, OBD systems, installed on or in a motor vehicle or motor vehicle engine in compliance with the CAA.

Table 1:

Product	Quantity
EGR/CGI Delete	364
EGR and DPF Delete	285
EGR, DPF, and SCR/Urea Delete	17
Horsepower only Tune	2,060
Total modified vehicles	2,726

33. Respondent knew or should have known that such part or component was being offered for sale or installed for such use or put to such use.

34. Respondent violated Section 203(a)(3)(A) and (B) of the CAA, 42 U.S.C. § 7522(a)(3)(A) and (B), by manufacturing, selling, offering for sale and installing Defeat Devices.

35. Each part or component described in paragraph 31 and 32 that was manufactured, sold, offered for sale, or installed is a separate violation of Section 203(a)(3)(A) and (B) of the Act, 42 U.S.C. § 7522(a)(3)(A) and (B).

Civil Penalty

36. Based on analysis of the factors specified in Section 205(c) of the CAA, 42 U.S.C. § 7524(c), EPA's Clean Air Act Title II Vehicle & Engine Civil Penalty Policy, the facts of this case, the Respondent's ability to pay, the compliance steps that Respondent has taken and agree to take, Respondent's certifications set forth herein, and Respondent's cooperation in resolving this matter, Complainant has determined that an appropriate civil penalty to settle this action is \$50,000. EPA agrees that Respondent may pay this amount, with interest, as set forth in Paragraph 37 below. By agreeing to permit Respondent to pay the penalty in installments, EPA has determined that an alternative payment mechanism is in the best interests of the United States, and that the size and frequency of the installment payments bears a reasonable relation to the size of the debt, and Respondent's ability to pay.

37. Respondent must pay the \$50,000 civil penalty plus accrued interest in no more than three (3) installments, with interest, as follows: 1) 20,000 within 30 days of the effective date of this CAFO; 2) \$20,150 (\$20,000 penalty + \$150.00 interest) within 180 days from the effective date of this CAFO; and \$10,101.39 (\$10,000 penalty + \$101.39 interest) within 360 days of the effective date of this CAFO. With interest, the total civil penalty amount Respondent shall pay on or before 360 days of the effective date of this CAFO is \$50,251.39. Respondent must pay each installment by electronic funds transfer, payable to "Treasurer, United States of America," and sent to:

Federal Reserve Bank of New York
ABA No. 021030004
Account No. 68010727
33 Liberty Street
New York, New York 10045

Field Tag 4200 of the Fedwire message should read:
“D68010727 Environmental Protection Agency”

In the comment or description field of the electronic funds transfer, state Respondent’s name and the docket number of this CAFO.

38. Respondent must send a notice of payment that states Respondent’s name and the docket number of this CAFO to EPA at the following addresses when it pays the penalty:

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

John Matson (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
matson.john@epa.gov

Regional Hearing Clerk (E-19J)
U.S. Environmental Protection Agency, Region 5
r5hearingclerk@epa.gov

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

40. If Respondent does not pay timely any installment payment as set forth in paragraph 37, above, the entire unpaid balance of the civil penalty and any amount required by paragraph 41, below, shall become due and owing upon written notice by EPA to Respondent of the delinquency. 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 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

41. Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury pursuant to 26 U.S.C. § 6621(a)(2). Respondent must pay the United States enforcement expenses, including but not limited to attorneys fees and costs incurred by the United States for collection proceedings. In addition, Respondent must pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue. This nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter. 42 U.S.C. § 7413(d)(5).

Other Conditions

42. By signing this Consent Agreement, Respondent agrees to the following: (i) Respondent will not remove or render inoperative any emissions-related device or element of design installed on or in a motor vehicle or motor vehicle engine in violation of Section 203(a)(3)(A) of the CAA, 42 U.S.C. § 7522(a)(3)(A); (ii) Respondent will not manufacture, sell, offer for sale, or install any part or component in violation of Section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B); and (iii) Respondent acknowledges receipt of 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."

43. By signing this Consent Agreement, Respondent understands that the violations addressed in this CAFO may be considered as a "History of Noncompliance" for any future violations by Respondent of Title II of the CAA, 42 U.S.C. § 7522(a)(3)(A) and (B), by Respondent or any other business entity owned or operated by Travis Wakefield, as addressed in the January 18, 2021, Clean Air Act Title II Vehicle & Engine Civil Penalty Policy.

44. Within 30 calendar days (or a longer period, if requested and approved by EPA in writing) after the date of Respondent's signature on this CAFO, Respondent shall remove all defeat devices from all vehicles and engines owned or operated by Respondent and return the ECM of each vehicle and engine to factory settings.

45. Within 30 days after the date of Respondent's signature on this CAFO, Respondent shall certify its intent to comply with the actions required in paragraph 44. Within 10 days of completion of the actions required in paragraph 44, Respondent shall provide to EPA a certification and documentation that it has complied with the actions required by paragraph 44.

46. By the date of Respondent's signature on this CAFO, Respondent shall permanently destroy or return to the manufacturer all defeat devices in its inventory and/or possession.

47. Within 30 calendar days from the Respondent's signature on this CAFO, Respondent shall certify with proof that Respondent has completed the actions required in paragraph 46.

48. Within 14 calendar days from the Respondent's signature on this CAFO, Respondent shall remove from its catalogs, webpages and any social media platform(s) all advertisements, photos, videos, and information that relate to performing tampering and/or selling, offering to sell, and/or installing defeat devices except advertisements, photos, videos, or information relating to how to comply with the CAA.

49. Within 14 calendar days from the Respondent's signature on this CAFO, Respondent shall post a publicly-accessible announcement about Respondent's settlement with EPA on Respondent's current website homepage(s), Respondent's social media homepage(s), including, but not limited to, all Facebook, Twitter, Pinterest, and Instagram accounts associated

with Respondent and its subsidiaries. The announcement shall remain posted for at least 60 calendar days from the date the announcement is posted. Respondent shall use the text contained in Appendix A (Announcement) in at least 12-point font, or another notice reviewed and approved by EPA, to provide such announcement. Respondent shall provide EPA with proof of posting the announcement within 30 calendar days from the Effective Date of this CAFO.

50. Within 30 calendar days from the Effective Date of this CAFO, Respondent shall locate and notify of Respondent's settlement with EPA, in writing, customers who purchased emission control system delete tunes. Due to missing or incomplete information, Respondent is only required to locate and provide this notice to at least 119 business customers for sales totaling at least \$2,500 and 31 additional business customers for sales totaling less than \$2,500. Respondent shall use the letter contained in Appendix B (Letter), or another letter reviewed and approved by EPA to provide such notice. The Letters shall be transmitted by certified U.S. Mail, return receipt requested, or equivalent for mail to Canada. Respondent shall notify EPA with proof of mailing within 30 calendar days from the Effective Date of this CAFO to verify that all letters have been sent. Respondent shall also provide to EPA within 30 calendar days from the Effective Date of this CAFO, a spreadsheet of all customers that were notified (spreadsheet shall include any company name(s), a contact name, a contact address and the notification date).

51. Failure to comply with paragraphs 42-50 of this CAFO may constitute a violation of Section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B), and Respondent could be subject to penalties of up to the statutory civil penalties in 40 C.F.R. § 19.4.

52. Respondent certifies that any information or representation it has supplied or made to EPA concerning this matter was, at the time of submission true, accurate, and complete and that there has been no material change regarding the truthfulness, accuracy or completeness

of such information or representation. EPA shall have the right to institute further actions to recover appropriate relief if EPA obtains evidence that any information provided and/or representations made by Respondent to the EPA regarding matters relevant to this CAFO 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.

Respondent is 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.

53. For purposes of the identification requirement in Section 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), and 26 C.F.R. § 162-21(b)(2), performance of the Other Conditions Section above (paragraphs 42-47) is restitution, remediation, or required to come into compliance with the law.

General Provisions

54. The parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: matson.john@epa.gov (for Complainant), dieseldrdiagnostics@gmail.com (for Respondent).

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

56. The effect of the settlement described in paragraph 55, is conditioned upon the accuracy of Respondent's representations to EPA.

57. 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.

58. This CAFO does not affect Respondent's responsibility to comply with the CAA and other applicable federal, state and local laws. Except as provided in paragraph 55, above,

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

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

60. 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 Respondent’s “full compliance history” under Section 205(b) of the CAA, 42 U.S.C. § 7524(b).

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

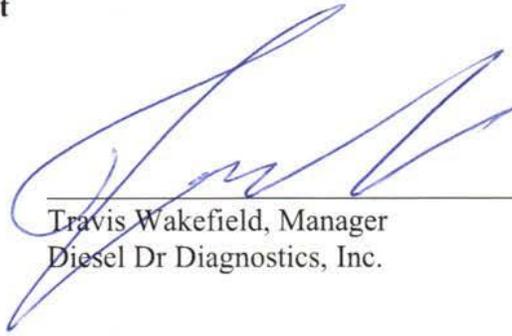
62. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

63. Each party agrees to bear its own costs and attorney’s fees in this action.

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

Diesel Dr Diagnostics, Inc., Respondent

3-22-22
Date



Travis Wakefield, Manager
Diesel Dr Diagnostics, Inc.

United States Environmental Protection Agency, Complainant

**MICHAEL
HARRIS**

Digitally signed by
MICHAEL HARRIS
Date: 2022.03.28
13:17:09 -05'00'

Michael D. Harris
Division Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 5

Consent Agreement and Final Order
In the Matter of: Diesel Dr Diagnostics, Inc.
Docket No. CAA-05-2022-0012

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. 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: 2022.03.30
10:38:23 -05'00'

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