

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	DOCKET NO. CAA-10-2022-0014
)	
R.C. MAST, INC.,)	CONSENT AGREEMENT
)	
)	
Spokane, Washington)	
)	
Respondent.)	

I. STATUTORY AUTHORITY

1.1. This Consent Agreement is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (“EPA”) by Section 205(c)(1) of the Clean Air Act (“CAA”), 42 U.S.C. § 7524(c)(1).

1.2. Pursuant to Section 205(c)(1) of the CAA, 42 U.S.C. § 7524(c)(1), and in accordance with the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,” 40 C.F.R. Part 22, EPA issues, and R.C. Mast, Inc. (“Respondent”) agrees to issuance of, the Final Order attached to this Consent Agreement (“Final Order”).

II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), issuance of this Consent Agreement commences this proceeding, which will conclude when the Final Order becomes effective.

2.2. The Director of the Enforcement and Compliance Assurance Division, EPA Region 10 (“Complainant”) has been delegated the authority pursuant to Section 205(c)(1) of the CAA, 42 U.S.C. § 7524(c)(1), to sign consent agreements between EPA and the party against whom an administrative penalty for violations of the CAA is proposed to be assessed.

2.3. Part III of this Consent Agreement contains a concise statement of the factual and legal basis for the alleged violations of the CAA, together with the specific provisions of the CAA and the implementing regulations that Respondent is alleged to have violated.

III. ALLEGATIONS

CAA Title II, Subpart A

3.1. This proceeding arises under CAA Title II, Subpart A, 42 U.S.C. §§ 7521–7554, and the regulations promulgated thereunder.

3.2. These laws were enacted to reduce air pollution from mobile sources, including particulate matter (“PM”), non-methane hydrocarbons (“NMHC”), oxides of nitrogen (“NO_x”), and carbon monoxide (“CO.”).

3.3. The CAA requires EPA to prescribe and revise, by regulation, standards applicable to the emission of any air pollutant from new motor vehicles or engines that cause or contribute to air pollution, which may reasonably be anticipated to endanger public health or welfare. CAA § 202(a)(1) and (3)(B), 42 U.S.C. § 7521(a)(1) and (3)(B).

3.4. As required by the CAA, the emission standards must “reflect the greatest degree of emission reduction achievable through the application of [available] technology.” CAA § 202(a)(3)(A)(i), 42 U.S.C. § 7521(a)(3)(A)(i).

3.5. Under Section 202 of the CAA, 42 U.S.C. § 7521, EPA has promulgated emission standards for PM, NMHC, NO_x, and CO applicable to motor vehicles and motor vehicle engines, including heavy-duty diesel (“HDD”) trucks, based on a vehicle’s or engine’s class and model year. See generally 40 C.F.R. Part 86.

3.6. Definitions:

a. “Auxiliary emission control device” (“AECD”) means “any element of design which senses temperature, vehicle speed, engine RPM [revolutions per minute], transmission gear, manifold vacuum, or any other parameter for the purpose of activating, modulating, delaying, or deactivating the operation of any part of the emission control system.” 40 C.F.R. §§ 86.082-2, 86.1803-01.

b. “Element of Design” means “any control system (*i.e.*, computer software, electronic control system, emission control system, computer logic) and/or control system calibrations, and/or the results of systems interaction, and/or hardware items on a motor vehicle engine.” 40 C.F.R. §§ 86.094-2, 86.1803-01.

c. “Motor vehicle” means any self-propelled vehicle designed for transporting persons or property on a street or highway. CAA § 216(2), 42 U.S.C. § 7550(2).

d. “New motor vehicle” or “new motor vehicle engine” means, with respect to imported vehicles or engines, a motor vehicle and engine, respectively, manufactured after the effective date of a regulation issued under 42 U.S.C. § 7521 which is applicable

to such vehicle or engine (or which would be applicable to such vehicle or engine had it been manufactured for importation to the United States). CAA § 216(3), 42 U.S.C. § 7550(3).

e. “Onboard diagnostic” (“OBD”) is a standard system requirement in modern motor vehicles and motor vehicle engines and must detect and report malfunctions of all monitored emission-related powertrain systems or components through a network of sensors installed throughout a motor vehicle or motor vehicle engine. See CAA § 202(m), 42 U.S.C. § 7521(m); see also 40 C.F.R. §§ 86.007-17, 86.010-18, 86.1806-05.

f. “Person” includes an individual, corporation, partnership, association, state, municipality, political subdivision of a state, and any agency, department, or instrumentality of the United States and any officer, agent, or employee thereof. CAA § 302(e), 42 U.S.C. § 7602(e).

3.7. To ensure that every new motor vehicle or engine legally sold, offered for sale, imported, delivered for introduction into commerce, or introduced into commerce in the United States satisfies applicable emission standards, EPA runs a certification program.

3.8. With certain exceptions not relevant here, manufacturers of new motor vehicles or motor vehicle engines must obtain a certificate of conformity 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. See CAA § 203(a)(1), 42 U.S.C. § 7522(a)(1); see also 40 C.F.R. § 86.007-30.

3.9. The certificates of conformity issued to motor vehicle and motor vehicles engine manufacturers (also known as “original equipment manufacturers” or “OEMs”) certify that a

particular group of motor vehicles or motor vehicle engines conforms to applicable EPA requirements governing motor vehicle emissions. CAA § 206(a), 42 U.S.C. § 7525(a).

3.10. To obtain a certificate of conformity for a given motor vehicle or motor vehicle engine test family, the OEM must demonstrate that each motor vehicle or motor vehicle engine covered by the certificate will not exceed established emissions standards for PM, NMHC, NO_x, CO, and other pollutants. See 40 C.F.R. §§ 86.004-21, 86.007-11, 86.094-21, 86.1844-01.

3.11. The application for a certificate of conformity must include, among other things, identification of the covered engine family, a description of the motor vehicle or engine and its emission control systems, all AECDs and the engine parameters they sense, as well as test results from a test vehicle or engine showing that it satisfies the applicable emission standards. See 40 C.F.R. §§ 86.004-21, 86.007-21, 86.094-21, 86.1844-01.

3.12. A vehicle is covered by a certificate of conformity only if the vehicle is as described in the manufacturer's application for the certificate of conformity "in all material respects." See 40 C.F.R. §§ 86.098-23(e)(1), 86.1848-10(c)(6).

3.13. Manufacturers employ certain hardware devices as emission control systems to manage and treat exhaust to reduce levels of regulated pollutants from being created or emitted into the ambient air and meet the emission standards in 40 C.F.R. Part 86. Such devices include exhaust gas recirculation, diesel oxidation catalysts, diesel particulate filters, and selective catalytic reduction. For example:

- a. "Exhaust gas recirculation" ("EGR") is an element of design in diesel-fueled motor vehicles that reduces NO_x emissions, which are formed at the high temperatures caused during fuel combustion. By recirculating exhaust gas through the engine, EGR reduces engine temperature and NO_x emissions. HDD OEMs generally

design and build motor vehicles and motor vehicle engines using EGR systems to meet NO_x standards. See 40 C.F.R. §§ 86.004-11, 86.007-11.

b. “Diesel oxidation catalyst” (“DOC”) is an element of design in diesel-fueled motor vehicles that reduces CO and NMHCs in the exhaust into their less harmful components. HDD OEMs generally design and build motor vehicles and motor vehicle engines using DOC systems to meet CO and NMHC emission standards. See 40 C.F.R. §§ 86.004-11, 86.007-11.

c. “Diesel particulate filter” (“DPF”) is an element of design in diesel-fueled motor vehicles that reduces PM emissions 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. HDD OEMs began designing and building HDD using DPFs in 2007 in order to meet more stringent PM emission standards. See 40 C. F.R. §§ 86.007-11.

d. “Selective catalytic reduction” (“SCR”) is element of design that reduces NO_x emissions by chemically converting exhaust gas that contains NO_x into nitrogen and water through the injection of diesel exhaust fluid. Diesel exhaust fluid (“DEF”) must be periodically refilled, which requires sensors in the DEF tank to communicate with the OBD system to ensure that the SCR is properly controlling NO_x emissions. HDD OEMs generally design and build HDD using SCR systems in order to meet current NO_x standards. See 40 C.F.R. § 86.007-11.

3.14. The CAA prohibits manufacturers of new motor vehicles or new motor vehicle engines from selling, offering for sale, introducing into commerce, or delivering for introduction into commerce, or causing any of the foregoing, or in the case of any person, from importing or

causing the importation of a new motor vehicle or motor vehicle engine to the United States unless that new motor vehicle or motor vehicle engine is covered by an EPA-issued certificate of conformity. CAA § 203(a)(1), 42 U.S.C. § 7522(a)(1).

3.15. Any person who violates Section 203(a)(1) of CAA, 42 U.S.C. § 7522(a)(1), is subject to injunctive relief under Section 204 of CAA, 42 U.S.C. § 7523, and a civil penalty of up to \$48,762 for each violation. CAA § 205(a), 42 U.S.C. § 7524(a); 40 C.F.R. § 19.4, Table 1.

General Allegations

3.16. Respondent is organized under the laws of the State of Washington and registered to do business in Washington.

3.17. Respondent is an importer of motor vehicles, including HDD trucks, into the United States.

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

Violation 1

3.19. On June 10, 2021, Respondent imported or caused to be imported from Canada into the United States a 2009 model year Ford F-350 (“Subject Vehicle #1”).

3.20. Ford obtained a certificate of conformity from EPA for engine family 9FMXA06.4AGC that included the 2009 model year Ford F-350 (“Ford Certificate of Conformity”).

3.21. The Ford Certificate of Conformity states on its face that the certificate covers only those new motor vehicles that conform, in all material respects, to the design specifications provided to EPA in the certificate application.

3.22. Ford certified in its application materials for the Ford Certificate of Conformity that the 2009 model year Ford F-350 would comply with the requirements of the CAA by the operation and maintenance of emission control technologies including DOC, EGR and DPF, as well as a number of sensors associated with each of these technologies.

3.23. On the date of its importation into the United States, Subject Vehicle #1 was a “new motor vehicle” as defined in CAA Section 216(3), 42 U.S.C. § 7550(3).

3.24. Based on an inspection of Subject Vehicle #1 by officers from the United States Department of Homeland Security, Customs and Border Protection (“CBP”) after importation into the United States, Subject Vehicle #1 did not contain the engine specified in the Ford Certificate of Conformity. Instead, Subject Vehicle #1 contained an engine manufactured by Cummins Engine Company for Chrysler Motors Corp, and was labeled as being manufactured on June 2, 1994.

3.25. In addition, Subject Vehicle #1 had an exhaust system that did not have the required sensors connected to the vehicle, making the exhaust system nonfunctional.

3.26. At the time of importation to the United States by Respondent, Subject Vehicle #1 was not as described in Ford’s application for the Ford Certificate of Conformity in all material respects and thus was not covered by the Ford Certificate of Conformity.

3.27. Subject Vehicle #1 was also not covered by any other certificate of conformity at the time of its importation to the United States by Respondent.

3.28. The importation of Subject Vehicle #1 to the United States was not exempt from the requirement to be covered by a certificate of conformity under CAA Section 203(b) of the CAA, 42 U.S.C. § 7522(b), or under any regulation promulgated under CAA Title II, Parts A or C.

3.29. Therefore, on June 10, 2021, Respondent violated CAA Section 203(a)(1), 42 U.S.C. § 7522(a)(1), by importing or causing to be imported Subject Vehicle #1 to the United States.

IV. TERMS OF SETTLEMENT

4.1. Respondent admits the jurisdictional allegations of this Consent Agreement.

4.2. Respondent neither admits nor denies the specific factual allegations contained in this Consent Agreement.

4.3. In determining the amount of penalty to be assessed, EPA has taken into account the factors specified in CAA Section 205(c)(2), 42 U.S.C. § 7413(c)(2). After considering these factors, EPA has determined and Respondent agrees that an appropriate penalty to settle this action is \$23,190 (the “Assessed Penalty”).

4.4. Respondent agrees to pay the Assessed Penalty within 30 days of the effective date of the Final Order.

4.5. Payments under this Consent Agreement and the Final Order may be paid by check (mail or overnight delivery), wire transfer, ACH, or online payment. Payment instructions are available at: <http://www2.epa.gov/financial/makepayment>. Payments made by a cashier’s check or certified check must be payable to the order of “Treasurer, United States of America” and delivered to the following address:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

Respondent must note on the check the title and docket number of this action.

4.6. Concurrently with payment, Respondent must serve photocopies of the check, or proof of other payment method, described in Paragraph 4.5 on the Regional Hearing Clerk and EPA Region 10 at the following addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10
R10_RHC@epa.gov

John Keenan
U.S. Environmental Protection Agency
Region 10
Keenan.john@epa.gov

4.7. If Respondent fails to pay any portion of the Assessed Penalty in full by its due date, the entire unpaid balance of penalty and accrued interest shall become immediately due and owing. If such a failure to pay occurs, Respondent may be subject to a civil action pursuant to CAA Section 205(c)(6), 42 U.S.C. § 7524(c)(6), to collect the Assessed Penalty under the CAA. In any collection action, the validity, amount, and appropriateness of the Assessed Penalty shall not be subject to review.

4.8. If Respondent fails to pay any portion of the Assessed Penalty in full by its due date, Respondent shall be responsible for payment of the following amounts:

a. Interest. Any unpaid portion of the Assessed Penalty shall bear interest at the rate established pursuant to 26 U.S.C. § 6621(a)(2) from the effective date of the Final Order, provided, however, that no interest shall be payable on any portion of the Assessed Penalty that is paid within 30 days of the effective date of the Final Order contained herein.

b. Attorneys' Fees, Collection Costs, Nonpayment Penalty. Pursuant to 42 U.S.C. § 7524(c)(6), should Respondent fail to pay the Assessed Penalty and interest on a timely basis, Respondent shall also be required to pay the United States' enforcement expenses, including attorneys' fees and costs for collection proceedings, and

a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be in an amount equal to ten percent of the aggregate amount of Respondent's outstanding penalties and nonpayment penalties which are unpaid as of the beginning of such quarter.

4.9. The Assessed Penalty, including any additional costs incurred under Paragraph 4.8, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

4.10. The undersigned representative of Respondent certifies that he or she is authorized to enter into the terms and conditions of this Consent Agreement and to bind Respondent to this document.

4.11. The undersigned representative of Respondent also certifies that Respondent has put into place measures to ensure compliance with CAA Section 203(a)(1), 42 U.S.C. § 7522(a)(1).

4.12. Except as described in Paragraph 4.8, each party shall bear its own costs and attorneys' fees in bringing or defending this action.

4.13. For the purposes of this proceeding, Respondent:

a. Expressly waives any affirmative defenses and the right to contest the allegations contained in this Consent Agreement and to appeal the Final Order;

b. Acknowledges that this Consent Agreement and the Final Order will be available to the public and agrees that it does not contain any confidential business information or any personally identifiable information;

c. Certifies that the information it has supplied concerning this matter was at the time of submission true, accurate, and complete; and

d. 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).

4.14. The provisions of this Consent Agreement and the Final Order shall bind Respondent, its successors and assigns, and other entities or persons otherwise bound by law. In any action related to this Consent Agreement and Final Order, Respondent shall not raise as a defense the failure by any of its officers, directors, employees, agents, or contractors to take any actions necessary to comply with the provisions of this Consent Decree.

4.15. Respondent consents to the issuance of any specified compliance or corrective action order, to any conditions specified in this Consent Agreement, and to any stated permit action.

4.16. The above provisions in Part IV are STIPULATED AND AGREED upon by Respondent and EPA Region 10.

DATED:

FOR RESPONDENT:

Richard Mast
President
R.C. Mast, Inc.

DATED:

FOR COMPLAINANT:

EDWARD J. KOWALSKI, Director
Enforcement and Compliance Assurance Division
EPA Region 10

1.4. This Final Order shall become effective upon filing with the Regional Hearing Clerk.

SO ORDERED this _____ day of _____ 2021.

RICHARD MEDNICK
Regional Judicial Officer
EPA Region 10

Certificate of Service

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER, In the Matter of: R.C. Mast, Inc., Docket No.: CAA-10-2022-0014**, was filed with the Regional Hearing Clerk and served on the addressees in the following manner on the date specified below:

The undersigned certifies that a true and correct copy of the document was sent by electronic mail to:

Ms. Julie Vergeront
U.S. Environmental Protection Agency
Region 10, Mail Stop 11-C07
1200 Sixth Avenue, Suite 155
Seattle, Washington 98101
vergeront.julie@epa.gov

Further, the undersigned certifies that a true and correct copy of the aforementioned document was sent by electronic mail to:

Mr. Lawrence Beyer
Attorney for R.C. Mast
674 Lake Road
Webster, New York 14580
lbeyer1@rochester.rr.com

DATED this ____ day of _____ 2021.

Regional Hearing Clerk