

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

FILED

Mar 18, 2024

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U.S. EPA REGION 5
HEARING CLERK

In the Matter of:)	Docket No. CAA-05-2024-0021
)	
Outlaw Diesel Performance)	Proceeding to Assess a Civil Penalty
Greenfield, Indiana,)	Under Section 113(d) of the Clean Air Act,
)	42 U.S.C. § 7413(d)
Respondent.)	
_____)	

Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 113(d) of the Clean Air Act (the CAA), 42 U.S.C. § 7413(d), 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 Outlaw Diesel Performance (Respondent), a corporation doing business in Indiana.
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. 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. 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.

10. The CAA requires EPA to prescribe and revise, by regulation, standards applicable to the emission of any air pollutant from new motor vehicles or new motor vehicle engines which cause or contribute to air pollution, which may reasonably be anticipated to endanger public health or welfare. See CAA §§ 202(a)(1) and (3)(8), 42 U.S.C. §§ 7521(a)(1) and (3)(8).

11. 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).

12. “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.

13. “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).

14. EPA issues certificates of conformity (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).

15. 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 (HDDEs). *See* Section 202 of the CAA, 42 U.S.C. § 7521; 40 C.F.R. Part 86.

16. 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 systems (EGRs) or Clean Gas Induction systems (CGIs), Diesel Oxidation Catalysts (DOCs), Diesel Particulate Filters (DPFs), and/or Selective Catalytic Reduction systems (SCRs).

17. 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.

18. 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."

19. Section 302(e) of the CAA, 42 U.S.C. § 7602(e), defines “person” as “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.”

20. Under Section 203(a)(3)(A) of the CAA, 42 U.S.C. § 7522(a)(3)(A), 40 C.F.R. § 1068.101(b)(1), 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.” This is also referred to as “tampering.”

21. Under Section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B), 40 C.F.R. § 1068.101(b)(2), 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.” These parts or components are also referred to as “defeat devices.”

22. The Administrator of EPA (the Administrator) may assess a civil penalty of up to \$ \$5,761 per motor vehicle, motor vehicle engine, part or component for violations that occurred after November 2, 2015, where penalties are assessed on or after December 27, 2023, under Section 205(a) of the CAA, 42 U.S.C. § 7524(a) and 40 C.F.R. Part 19.

23. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this CAFO.

Factual Allegations and Alleged Violations

24. Respondent is a corporation organized under the laws of the State of Indiana with a primary place of business located at 3511 W US 40, Greenfield, IN 46140.

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

26. “Aftermarket automotive parts” are replacement automotive parts that are not made by the original motor vehicle manufacturer.

27. Respondent is an “aftermarket automotive parts” supplier and installer located in Greenfield, Indiana.

28. On April 16, 2020 and November 10, 2021, under Section 208 of the CAA, 42 U.S.C. § 7542, EPA issued Requests to Provide Information Pursuant to the Clean Air Act (Information Requests) to Respondent.

29. On July 2, 2020, Respondent submitted a response to EPA’s April 16, 2020, Information Request. Respondent also provided a supplemental response on October 2, 2020. On January 26, 2022, Respondent submitted a response to EPA’s November 10, 2021, Information Request (collectively, the Responses). In the Responses, Respondent provided information showing that between January 1, 2018, and April 21, 2020, Respondent installed at least 1,227 and sold at least 83 parts or components that disable, remove, bypass, defeat, or render inoperative air pollution emission control systems installed on or in motor vehicles and motor vehicle engines in compliance with Title II

of the CAA. More specifically, Respondent installed 671 and sold 16 (a total of 687) parts or components that remove or bypass the EGR system or can only operate with the EGR system removed (EGR Delete Hardware) and installed 227 and sold 11 (a total of 338) parts or components that remove or bypass the DPF and/or other exhaust aftertreatment systems (Aftertreatment Delete Hardware).

30. Respondent also installed 229 tunes and sold 56 tunes, for a total of 285 tunes where a principal effect of the tune was to bypass, defeat or render inoperative the engine fueling strategy, DPF, EGR, DOC, SCR, and/or OBD systems and/or tamper with the elements of design on motor vehicles or motor vehicle engines (Tuning Products).

31. In the Responses, Respondent indicated that, as of January 26, 2022, Respondent was no longer, selling or installing violative products.

32. On April 9, 2021, EPA issued a Finding of Violation (FOV) to Respondent alleging violations of Section 203(a)(3)(A) and (B) of the CAA, 42 U.S.C. § 7522(a)(3)(A) and (B), related to the Respondent's sale, and/or installation of EGR Delete Hardware, Aftertreatment Delete Hardware, and Tuning Products.

33. The EGR Delete Hardware, Aftertreatment Delete Hardware, and Tuning Products, sold, and/or installed by Respondent are parts or components that were intended for motor vehicles and were designed for use with motor vehicle HDDEs, for which each manufacturer obtained COCs establishing compliance with CAA emission standards.

34. Respondent knowingly removed and/or rendered inoperative devices or elements of design installed in or on motor vehicles or motor vehicle engines in compliance with the CAA by installing EGR Delete Hardware, Aftertreatment Delete Hardware, and Tuning Products on or in at least

1,227 motor vehicles or motor vehicle engines, in violation of Section 203(a)(3)(A) of the CAA, 42 U.S.C. § 7522(a)(3)(A).

35. Respondent sold, offered for sale, and/or installed at least 1,310 EGR Delete Hardware, Aftertreatment Delete Hardware, and Tuning Products that had a principal effect to bypass, defeat, render inoperative, or allow for the removal of one or more emission control devices or elements of design installed on or in a motor vehicle or motor vehicle engine. Respondent knew or should have known that such parts or components were being 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).

36. In agreeing to the terms of this CAFO, including the amount of the civil penalty below, EPA is relying on Respondent’s certifications.

Civil Penalty

37. 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, Respondent’s cooperation, and Respondent’s ability to pay, Complainant has determined that an appropriate civil penalty to settle this action is \$53,409.00.

38. Penalty Payment. Respondent agrees to:

- a. Pay the civil penalty of \$53,409 in eleven installment payments with 3% interest over a 11-month period, according to the table below:

Payment Number	Days from Effective Date	Payment	Principle	Interest
1	30	\$ 5,000.00	\$ 5,000.00	\$ -
2	60	\$ 5,242.05	\$ 5,000.00	\$ 242.05
3	90	\$ 5,108.52	\$ 5,000.00	\$ 108.52
4	120	\$ 5,096.02	\$ 5,000.00	\$ 96.02
5	150	\$ 5,083.52	\$ 5,000.00	\$ 83.52
6	180	\$ 5,071.02	\$ 5,000.00	\$ 71.02
7	210	\$ 5,058.52	\$ 5,000.00	\$ 58.52
8	240	\$ 5,046.02	\$ 5,000.00	\$ 46.02

9	270	\$ 5,033.52	\$ 5,000.00	\$ 33.52
10	300	\$ 5,021.02	\$ 5,000.00	\$ 21.02
11	330	\$ 3,417.52	\$ 3,409.00	\$ 8.52
Total		\$ 54,177.73	\$ 53,409.00	\$ 768.73

b. Pay the civil penalty using any method provided in the table below.

Payment Method	Payment Instructions
<p>Automated Clearinghouse (ACH) payments made through the US Treasury</p>	<p>US Treasury REX/Cashlink ACH Receiver ABA: 051036706 Account Number: 310006, Environmental Protection Agency CTX Format Transaction Code 22 – checking</p> <p>In the comment area of the electronic funds transfer, state Respondent’s name and the CAFO docket number.</p>
<p>Wire transfers made through Fedwire</p>	<p>Federal Reserve Bank of New York ABA: 021030004 Account Number: 68010727 SWIFT address: FRNYUS33 33 Liberty Street New York, NY 10045 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 3180 Rider Trail S. Earth City, Missouri 63045</p>

39. Within 24 hours of the payment of each installment payment of the civil penalty 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:

Air Enforcement and Compliance Assurance Branch
U.S. Environmental Protection Agency, Region 5
R5airenforcement@epa.gov

Louise Gross
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
gross.louise@epa.gov

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

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

41. If Respondent does not pay timely any installment payment as set forth in paragraph 3738, above, the entire unpaid balance of the civil penalty and any amount required by paragraph 3738, above, 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.

42. 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. § 7524(c)(6)(B).

Other Conditions

43. 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 to sell 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 certifies that it has 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.](#)"

44. By the Effective Date of this CAFO, Respondent shall no longer provide any technical support, maintenance, repair, or information pertaining to defeat devices for use with motor vehicles or motor vehicle engines.

45. Respondent certifies it has permanently destroyed all defeat devices remaining in Respondent's inventory and/or possession, by compacting or crushing the defeat devices and all associated parts and components to render them useless.

46. Respondent certifies that it has removed from its 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 (Tampering and/or Defeat Device

Content), except advertisements, photos, videos, or information relating to how to comply with the CAA. Respondent shall provide EPA the web address of each of its webpages and social media platforms and Respondent's certification that it has removed from its webpages and social media platforms all Tampering and Defeat Device Content and that its webpages and social media platforms do not and will not contain any Tampering and/or Defeat Device Content.

47. Within 14 calendar days of the Effective Date of this CAFO, Respondent shall post a publicly accessible announcement about Respondent's settlement with EPA prominently on Respondent's current webpages and social media platforms. 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 12-point font, or another notice reviewed and approved by EPA, to provide such announcement.

48. Within 30 calendar days of the Effective Date of this CAFO, Respondent shall provide EPA with certification and proof that Respondent has completed the actions required by paragraphs 45, 46, and 47 above.

49. Respondent must submit the information required by this CAFO via electronic mail to demma.carlo@epa.gov and r5airenforcement@epa.gov accompanied by the following statement signed by one of its officers:

"I certify under penalty of law that I have examined and am familiar with the information in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete to the best of my knowledge. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment."

50. Failure to comply with paragraph 43 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 Respondent could be subject to penalties up to the statutory civil penalties listed in 40 C.F.R. § 19.4.

51. By signing this Consent Agreement, 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. In entering into this agreement, EPA relied on such information and representations. 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 EPA regarding matters relevant to this CAFO, including information about Respondent's 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. 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.

General Provisions

52. The parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: gross.louise@epa.gov (for Complainant), and stewart@hassancables.com (for Respondent). Respondent understands that the CAFO will become publicly available upon filing.

53. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in 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 Respondent's responsibility to comply with the CAA and other applicable federal, state and local laws. Except as provided in paragraph 53, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

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

57. This CAFO constitutes an "enforcement response" as that term is used in EPA's Clean Air Act Stationary Civil Penalty Policy to determine Respondent's "full compliance history" under Section 113(e) of the CAA, 42 U.S.C. § 7413(e).

58. The terms of this CAFO bind Respondent, its 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 attorney's fees in this action.

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

Outlaw Diesel Performance, Respondent

2-15-24

Date



John Roberson, on behalf of
Outlaw Diesel Performance

2-15-24

Date



Harlan Clemons, on behalf of
Outlaw Diesel Performance

85-4170976

Tax Identification Number

United States Environmental Protection Agency, Complainant

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: Outlaw Diesel Performance
Docket No. CAA-05-2024-0021

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