



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

SEP 30 2019

REPLY TO THE ATTENTION OF

VIA E-MAIL
RETURN RECEIPT REQUESTED

Shawn Hartl, Owner
Hartl Diesel, LLC
N4362 State Highway 13
Medford, Wisconsin 54451
Email: ptomasi@foley.com

Dear Mr. Hartl:

Enclosed is a file-stamped Consent Agreement and Final Order (CAFO) which resolves Hartl Diesel, LLC, docket no. CAA-05-2019-0039. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on September 30, 2019.

Pursuant to paragraph 33 of the CAFO, Hartl Diesel, LLC 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 Andre Daugavietis, Associate Regional Counsel at (312) 886-6663.

Sincerely,

A handwritten signature in blue ink, appearing to read "Nathan Frank".

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

Enclosure

cc: Ann Coyle, Regional Judicial Officer/via electronic mail
Regional Hearing Clerk/via electronic mail
Andre Daugavietis, Region 5, ORC/via electronic mail
Maria Hill, WDNR /via electronic mail

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:

Hartl Diesel LLC
Medford, Wisconsin

Respondent.



Docket No. CAA-05-2019-0039

Proceeding to Assess a Civil Penalty
Under Section 205(c)(1) of the Clean Air Act,
42 U.S.C. § 7524(c)(1)

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

3. Respondent is Hartl Diesel LLC, a company doing business primarily in Wisconsin.

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. EPA and Respondent, having agreed to settle this action, consent to the entry of this CAFO before taking testimony and without adjudication of any issues of law or fact herein, and agree to comply with the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO, neither admits nor denies the factual allegations in this CAFO, and specifically denies knowingly violating the CAA.

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 any 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. 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.

12. EPA issues certificates of conformity 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.

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 generally* 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 certificate of conformity, HDDE motor vehicle manufacturers may utilize devices and elements of design such as Exhaust Gas Recirculation systems (EGRs), 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 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. Section 203(a)(3) of the CAA makes it unlawful for: “(A) 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; or (B) 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 this subchapter (“Defeat Device”), 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.”

19. 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).

20. EPA may assess a civil penalty of up to \$3,750 for each applicable CAA violation that occurred after December 6, 2013 through November 2, 2015, and up to \$4,735 for each applicable CAA violation that occurred after November 2, 2015, and assessed on or after January 15, 2019, in accordance with Section 205(a) of the CAA, 42 U.S.C. § 7524(a), and 40 C.F.R. Part 19.

Stipulated Facts

21. Respondent is a limited liability company organized under the laws of the State of Wisconsin, with its office at N4362 State Highway 13, Medford, Wisconsin.

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

23. On November 6, 2017, EPA sent a written Request for Information to Respondent pursuant to Section 208 of the CAA.

24. In response to the Request for Information, on January 12, 2018, Respondent provided invoices and other information indicating that between November 2014 and October 2017, Respondent removed or rendered inoperative HDDE emission control devices or elements of design and installed Engine Control Module (“ECM”) tuning products (“ECM Tunes”) manufactured by Performance Diesel Inc. (PDI) on at least 72 HDDE motor vehicles (“Modified Trucks”). These ECM Tunes had a principal effect of bypassing, defeating, or rendering inoperative HDDE emission control devices or elements of design on the Modified Trucks. The affected HDDE models impacted include: Freightliner (Cascadia, Classic, Classic XL, Coronado), International (5600, 5900i, 9400, ProStar), Kenworth (T-600, T-660, T-700, T-800, T-880, T-2000, W-900, W-900L), Peterbilt (367, 369, 378, 379, 384, 386, 388, 389), and Western Star (Day Cab). Respondent also provided signed waiver documents signed by each vehicle owner and provided to PDI for each of the HDDE motor vehicles.

25. The manufacturer of each Modified Truck had obtained a certificate of conformity with HDDE emission standards before originally selling the vehicle in commerce.

26. Each Modified Truck constitutes a “motor vehicle” as that term is defined by the CAA.

Alleged Violations

27. EPA alleges that, in violation of Section 203(a)(3)(A) of the CAA, 42 U.S.C. § 7522(a)(3)(A), Respondent knowingly removed or rendered inoperative devices or elements of design that were installed on or in motor vehicles or motor vehicle engines to comply with emission standards promulgated under Title II of the CAA.

28. EPA alleges that, in violation of Section 203(a)(3)(B) of the CAA, Respondent sold and installed parts or components where a principal effect of the part or component was to bypass, defeat, and/or render inoperative emission control devices or elements of design that were installed on or in motor vehicles or motor vehicle engines to comply with the emission standards promulgated under Title II of the CAA, and the Respondent knew or should have known that such products were installed for such use or put to such use.

29. On March 15, 2018, EPA issued a Finding of Violation (FOV) to Respondent alleging violations of CAA § 203(a)(3)(A) and CAA § 203(a)(3)(B).

30. On May 11, 2018 and on subsequent dates, representatives of Respondent spoke with EPA Region 5 to discuss the FOV, and the Parties have engaged in subsequent communications about resolving the matter.

31. During the May 11, 2018 meeting, Respondent stated that it is no longer selling or installing ECM Tunes manufactured by PDI. Respondent further stated that it does not install parts or components that bypass, defeat, and/or render inoperative emission control devices or elements of design that were installed on or in motor vehicles or motor vehicle engines to comply with the emission standards promulgated under Title II of the CAA. Respondent further stated that it only performs service on emission control devices or elements of design that were installed on or in motor vehicles or motor vehicle engines to repair malfunctions in order to comply with the emission standards promulgated under Title II of the CAA.

Civil Penalty

32. 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 Mobile Source Civil Penalty Policy, the facts of this case, the Respondent's ability to pay, the compliance steps that Respondent has taken and agrees to take, and Respondent's cooperation in resolving this matter, Complainant has determined that an appropriate civil penalty to settle this action is \$3,600. EPA has reduced the civil penalty on the basis of information provided by Respondent to support its claims that it is unable to pay a higher civil penalty and remain in business.

33. Within 30 days after the effective date of this CAFO, Respondent must pay a \$3,600 civil penalty 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.

34. 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:

Attn: Compliance Tracker (ECA-18J)
Air Enforcement and Compliance Assurance Branch
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

Andre Daugavietis (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5

77 W. Jackson Boulevard
Chicago, Illinois 60604

Regional Hearing Clerk (E-19J)
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

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

36. If Respondent does not pay timely the civil penalty set forth above, or any stipulated penalties due under Paragraph 43 below, 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. § 7524(c)(6)(B). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

37. 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 attorney's 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

38. By signing this Consent Agreement, Respondent certifies that from the date of signature by the principal, Shawn Hartl, (i) it will not manufacture, sell, offer for sale, or install any aftermarket defeat devices, including ECM tuning products, where a principal effect of the device is to bypass, defeat, or render inoperative any emission-related device or element of

design installed on or in a motor vehicle or motor vehicle engine, and (ii) it 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, other than performing maintenance on a damaged or defective emissions-related device to repair or replace a damaged device with a functional device, as authorized by the CAA. Toward this end, the Respondent agrees to comply with the Compliance Plan attached as Appendix A of this CAFO. This provision applies to Shawn E. Hartl even if doing business other than under Hartl Diesel LLC.

39. Respondent certifies that, since May 11, 2019, it has not had, and will not have, any ECM Tunes or ECM tuning products, EGR block plates, or other Defeat Devices in its possession or control, or copies of ECM Tunes in digital form or saved on any electronic media.

40. Within 30 calendar days from the effective date of this CAFO, Respondent shall contact each of the customers identified on the PDI waivers, in writing to notify them of Hartl's settlement with EPA. Respondent shall use the letter contained in Appendix B (Customer Letter), or another letter reviewed and approved by EPA to provide such notice. The Customer Letters may be transmitted electronically or by certified U. S. Mail, return receipt requested. Respondent shall notify EPA with proof of mailing within 30 calendar days from the effective date of this CAFO to verify that all letters/emails have been sent.

41. Within 30 calendar days from receipt of this CAFO, Respondent or his counsel shall contact the Wisconsin State Patrol Motor Carrier Enforcement Unit. Within 90 calendar days from receipt of this CAFO (unless an extension is granted by EPA), Respondent shall offer to conduct up to two in-person training(s) for Wisconsin State Patrol (WSP) vehicle inspectors at Hartl Diesel's facility in Medford, Wisconsin. Respondent shall conduct such training(s) if the offer is accepted by the WSP. Such training(s) shall include hands-on demonstrations and a tutorial that describes the operations and functions of EGR, DOC, DPF, SCR and related

emission control devices on a HDDE motor vehicles, and includes tips on how WSP can identify motor vehicles with a tampered emission control system(s). Respondent shall document the response(s) received from WSP, and any other interested state agency, regarding the offer to conduct training(s). Respondent shall record the date, location, and a list of participants for each training. Respondent shall maintain copies of responses received from any WSP, and any other state agency, and copies of training materials for a period of two years.

42. Within 30 Days of the completion of all of the training required in Paragraph 40, Respondent shall submit a report to EPA that contains the following: (1) a description of each training conducted, (2) a complete list of all participants for the training, (3) the date and location of each trainings, and (4) a copy of any material distributed at each training. Respondent shall submit the report by first-class mail to the Compliance Tracker address provided in Paragraph 34, above.

43. Failure to comply with Paragraphs 38 of this CAFO, including the requirement to follow the Compliance Plan in Appendix A, may constitute a violation of CAA Section 203(a)(3) and Respondent could be subject to penalties of up to \$4,735 per violation.

General Provisions

44. Respondent waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this Order, including any right of judicial review under Section 307(b)(1) of the Clean Air Act, 42 U.S.C. § 7607(b)(1).

45. Consistent with the Standing Order Authorizing E-Mail Service of Orders and Other Documents Issued by the Regional Administrator or Regional Judicial Officer under the Consolidated Rules, dated March 27, 2015, the parties consent to service of this CAFO by e-mail at the following e-mail addresses: daugavietis.andre@epa.gov (for Complainant) and

ptomasi@foley.com (for Respondent). The parties waive their right to service by the methods specified in 40 C.F.R. § 22.6.

46. Respondent certifies that the information (including representations and certifications) that it has provided to EPA with respect to this CAFO were at the time of submission true, accurate and complete. EPA reserves the right to revoke this Consent Agreement, and accompanying settlement penalty, if and to the extent that EPA finds that any such information provided by Respondent was or is materially false or inaccurate, and EPA reserves the right to pursue, assess and enforce legal and equitable remedies for the violations alleged in this CAFO. EPA shall provide Respondent written notice of any such finding, which will be effective upon mailing or electronic transmission.

47. The effect of the settlement described in this CAFO, is conditioned upon the accuracy of Respondent's representations to EPA, including as memorialized in Paragraph 31 of this CAFO.

48. 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 not addressed by the CAFO.

49. 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 46, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

50. Respondent certifies that it is complying fully with CAA § 203(a)(3)(A) and CAA § 203(a)(3)(B).

51. Nothing in this CAFO shall be deemed as an admission in any respect to or by any third party.

52. This CAFO shall become effective after execution of the Final Order by the Regional Judicial Officer and filing with the Regional Hearing Clerk.

53. This CAFO constitutes an “enforcement response” as that term is used in EPA’s Clean Air Act Mobile Source Civil Penalty Policy to determine Respondent’s “full compliance history” under Section 205(b) of the CAA, 42 U.S.C. § 7524(b).

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


55. 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.

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

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

Hartl Diesel LLC, Respondent

9/24/19
Date



Shawn E. Hartl
Owner and Operator
Hartl Diesel LLC

United States Environmental Protection Agency, Complainant

9/30/2019
Date

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

Consent Agreement and Final Order
In the Matter of: Hartl Diesel LLC
Docket No. **CAA-05-2019-0039**

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.

9/30/19
Date


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

Appendix A:

Compliance Plan to Avoid Illegal Tampering and Aftermarket Defeat Devices

This document explains how to help ensure compliance with the Clean Air Act's prohibitions on tampering and aftermarket defeat devices. The document specifies what the law prohibits, and sets forth two principles to follow in order to prevent violations.

The Clean Air Act Prohibitions on Tampering and Aftermarket Defeat Devices

The Act's prohibitions against tampering and aftermarket defeat devices are set forth in section 203(a)(3) of the Act, 42 U.S.C. § 7522(a)(3), (hereafter "§ 203(a)(3)"). The prohibitions apply to all vehicles, engines, and equipment subject to the certification requirements under sections 206 and 213 of the Act. This includes all motor vehicles (e.g., light-duty vehicles, highway motorcycles, heavy-duty trucks), motor vehicle engines (e.g., heavy-duty truck engines), nonroad vehicles (e.g., all-terrain vehicles, off road motorcycles), and nonroad engines (e.g., marine engines, engines used in generators, lawn and garden equipment, agricultural equipment, construction equipment). Certification requirements include those for exhaust or "tailpipe" emissions (e.g., oxides of nitrogen, carbon monoxide, hydrocarbons, particulate matter, greenhouse gases), evaporative emissions (e.g., emissions from the fuel system), and onboard diagnostic systems.

The prohibitions are as follows:

"The following acts and the causing thereof are prohibited—"

Tampering: CAA § 203(a)(3)(A), 42 U.S.C. § 7522(a)(3)(A), 40 C.F.R. § 1068.101(b)(1): "for any person to remove or render inoperative any device or element of design installed on or in a [vehicle, engine, or piece of equipment] in compliance with regulations under this subchapter 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;"

Defeat Devices: CAA § 203(a)(3)(B), 42 U.S.C. § 7522(a)(3)(B), 40 C.F.R. § 1068.101(b)(2): "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 [vehicle, engine, or piece of equipment], 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 [vehicle, engine, or piece of equipment] in compliance with regulations under this subchapter, 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."

Reasonable Bases

This section specifies several ways that Respondent may document that it has a “reasonable basis” as the term is used in the prior section. In any given case, Respondent must consider all the facts including any unique circumstances and ensure that its conduct does not have any adverse effect on emissions.ⁱⁱⁱ

- A. **Identical to Certified Configuration:** Respondent generally has a reasonable basis if its conduct: is solely for the maintenance, repair, rebuild, or replacement of an emissions-related element of design; and restores that element of design to be identical to the certified configuration (or, if not certified, the original configuration) of the vehicle, engine, or piece of equipment.^{iv}

- B. **Replacement After-Treatment Systems:** Respondent generally has a reasonable basis if the conduct:
 - (1) involves a new after-treatment system used to replace the same kind of system on a vehicle, engine or piece of equipment and that system is beyond its emissions warranty; and
 - (2) the manufacturer of that system represents in writing that it is appropriate to install the system on the specific vehicle, engine or piece of equipment at issue.

- C. **Emissions Testing:**^v Respondent generally has a reasonable basis if the conduct:
 - (1) alters a vehicle, engine, or piece of equipment;
 - (2) emissions testing shows that the altered vehicle, engine, or piece of equipment will meet all applicable emissions standards for its full useful life; and
 - (3) where the conduct includes the manufacture, sale, or offering for sale of a part or component, that part or component is marketed only for those vehicles, engines, or pieces of equipment that are appropriately represented by the emissions testing.

- D. **EPA Certification:** Respondent generally has a reasonable basis if the emissions-related element of design that is the object of the conduct (or the conduct itself) has been certified by EPA under 40 C.F.R. Part 85 Subpart V (or any other applicable EPA certification program).^{vi}

- E. **CARB Certification:** Respondent generally has a reasonable basis if the emissions-related element of design that is the object of the conduct (or the conduct itself) has been certified by the California Air Resources Board (“CARB”).^{vii}

^v Notes on emissions testing: Where the above-described reasonable bases involve emissions testing, unless otherwise noted, that testing must be consistent with the following. The emissions testing may be performed by someone other than the person performing the conduct (such as an aftermarket parts manufacturer), but to be consistent with this Appendix, the person performing the conduct must have all documentation of the reasonable basis at or before the conduct. The emissions testing and documentation required for this reasonable basis is the same as the testing and documentation required by regulation (e.g., 40 C.F.R. Part 1065) for the purposes of original EPA certification of the vehicle, engine, or equipment at issue. Accelerated aging techniques and in-use testing are acceptable only insofar as they are acceptable for purposes of original EPA certification. The applicable emissions standards are either the emissions standards on the Emission Control Information Label on the product (such as any stated family emission limit, or FEL), or if there is no such label, the fleet standards for the product category and model year. To select test vehicles or test engines where EPA regulations do not otherwise prescribe how to do so for purposes of original EPA certification of the vehicle, engine, or equipment at issue, one must choose the “worst case” product from among all the products for which the part or component is intended. EPA generally considers “worst case” to be that product with the largest engine displacement within the highest test weight class. The vehicle, engine, or equipment, as altered by the conduct, must perform identically both on and off the test(s), and can have no element of design that is not substantially included in the test(s).

^{vi} Notes on Reasonable Basis D: This reasonable basis is subject to the same terms and limitations as EPA issues with any such certification. In the case of an aftermarket part or component, there can be a reasonable basis only if: the part or component is manufactured, sold, offered for sale, or installed on the vehicle, engine, or equipment for which it is certified; according to manufacturer instructions; and is not altered or customized, and remains identical to the certified part or component.

^{vii} Notes on Reasonable Basis E: This reasonable basis is subject to the same terms and limitations as CARB imposes with any such certification. The conduct must be legal in California under California law. However, in the case of an aftermarket part or component, EPA will consider certification from CARB to be relevant even where the certification for that part or component is no longer in effect due solely to passage of time.

CAA-05-2019-0039

Appendix B:

Letter

To Whom It May Concern:

On XX Date, Hartl Diesel, LLC entered into a settlement with the United States Environmental Protection Agency (U.S. EPA) to resolve alleged violations of tampering with emission control devices under Sections 203(a)(3)(A) and 203(a)(3)(B) of the Clean Air Act, by installing ECM tuning products on motor vehicles with heavy-duty diesel engines.

By signing a consent agreement with U.S. EPA, Hartl Diesel, LLC and Shawn Hartl have certified that they will not manufacture, sell, offer for sale, or install any aftermarket defeat devices, including ECM tuning products, where a principal effect of the device is to bypass, defeat, or render inoperative any emission-related device or element of design installed on or in a motor vehicle or motor vehicle engine, and (ii) they 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.

Hartl Diesel, LLC will pay a penalty of \$3,600 and follow a compliance plan to ensure ongoing compliance with the Clean Air Act.

If you have any questions regarding this letter, please ask for [Hartl Representative].

Thank you,
[Hartl Representative]

Consent Agreement and Final Order
In the matter of: Hartl Diesel, LLC
Docket Number: CAA-05-2019-0039

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, docket number CAA05 20190039, which was filed on 9/30/2019, in the following manner to the following addressees:

Copy by E-mail to Respondent: Shawn Hartl
1911shartl@gmail.com

Copy by E-mail to Attorney for Complainant: Andre Daugavietis
daugavietis.andre@epa.gov

Copy by E-mail to Attorney for Respondent: Peter A. Tomasi
ptomasi@foley.com

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

Dated: September 30, 2019



LaDawn Whitehead
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5