



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 1
5 Post Office Square, Suite 100
Boston, MA 02109-3912

FILED

Jun 18, 2024

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U.S. EPA REGION 1
HEARING CLERK

CLEAN AIR ACT VEHICLE AND ENGINE EXPEDITED SETTLEMENT AGREEMENT

DOCKET NO. 01-2024-0047

Respondent: Peak Diesel MA LLC
144 Palmer Road
Monson, MA 01057-9592

1. The U.S. Environmental Protection Agency, Region 1 (“EPA”) and Peak Diesel MA LLC (“Respondent”) enter into this Clean Air Act Vehicle and Engine Expedited Settlement Agreement (“Agreement”) to settle the civil violations specified in the attached Table 1, incorporated into this Agreement by reference, pursuant to Section 205(c)(1) of the Clean Air Act (“CAA”), 42 U.S.C. § 7524(c)(1), and 40 C.F.R. §§ 22.13(b), 22.18(b)(2) and (3). The civil violations that are the subject of this Agreement were discovered through a Reporting Requirement and are described in the attached Table 2, incorporated into this Agreement by reference, regarding the devices specified therein.
2. This Agreement resolves Respondent’s liability for federal civil penalties for the violations alleged in Table 2. This Agreement, upon approval and incorporation in the Final Order, concludes this action under Sections 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Penalties and the Revocation/Termination or Suspension of Permits (“Consolidated Rules of Practice”).
3. Respondent admits to being subject to the CAA and its associated regulations and that the United States Environmental Protection Agency has jurisdiction, pursuant to Section 205(c)(1) of the CAA, 42 U.S.C. § 7524(c)(1), over Respondent and Respondent’s conduct described in Table 2. Respondent neither admits nor denies the findings detailed therein and waives any objections Respondent may have to EPA’s jurisdiction.
4. EPA and Respondent agree that settlement of this matter for a penalty in the amount of **\$12,098** is reasonable and in the public interest and is based upon EPA’s consideration of the statutory factors set forth in Section 205(c)(2) of the CAA, 42 U.S.C. § 7524(c)(2), as applied to the particular facts and circumstances of this case with specific reference to EPA’s June 21, 2019 *Recommendation to Approve Expedited Settlement Agreement Pilot for Clean Air Act Vehicle and Engine Violations—Tampering/Defeat Devices* policy, which EPA’s Office of Enforcement and Compliance Assurance has confirmed is still in use, and the appropriate Adjustment of Civil Monetary Penalties for Inflation, pursuant to 40 C.F.R. Part 19.
5. Respondent agrees to pay the \$12,098 penalty and submit proof of payment to EPA within 30 calendar days of receipt of a copy of the ratified Agreement in accordance with the

instructions in “CAA Vehicle and Engine Expedited Settlement Agreement Instructions,” attached and incorporated into this Agreement by reference.

6. Respondent certifies that the required remediation, specified in the attached Table 3 and incorporated into this Agreement by reference, has been carried out.
7. By its signature below, EPA approves the findings resulting from the reporting requirement and alleged violations set forth in Tables 1 and 2. Upon signing and returning this Agreement to EPA, Respondent consents to the terms of this Agreement without further notice. Respondent acknowledges that this Agreement is binding on the parties signing below and becomes effective on the date of the EPA Delegated Official’s ratifying signature on the Final Order.
8. By its signature below, 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 Agreement 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 and its officers, directors and agents are aware that the submission of false or misleading information to the United States government may subject a person to separate civil and/or criminal liability.
9. The payment made by Respondent pursuant to this Agreement is a penalty within the meaning of Section 162(f) of the Internal Revenue Code, 26 U.S.C. § 162(f), and, therefore, Respondent shall not claim the payment as a tax-deductible expenditure for purposes of federal, state, or local law.
10. Upon EPA’s final approval of the Agreement, Respondent expressly waives its right to contest the allegations and its right to appeal the proposed Final Order accompanying the Agreement. Moreover, in entering into this Agreement, Respondent agrees to bear its own costs and attorney’s fees related to this Agreement.
11. Respondent acknowledges that this Agreement is binding on the parties signing below and becomes effective on the date of filing with the Regional Hearing Clerk, after ratification of the Agreement and Final Order by the Regional Judicial Officer.
12. EPA reserves any rights and remedies available to it under the CAA, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this Agreement and accompanying Final Order

following its filing with the Regional Hearing Clerk.

13. The Parties consent to acceptance of digital or original signatures on this Agreement and service of this Agreement by electronic delivery at Respondent's e-mail noted below. Respondent understands that its mailing or e-mail address may be made public when the Agreement and Certificate of Service are filed and uploaded to a searchable database.

APPROVED BY RESPONDENT:

Signature & Date: M E G 6/14/24
Name (print): Marissa E Gore
Title (print): Owner
Email (print): PEAKDIESELMA@GMAIL.COM

APPROVED BY EPA:

Signature & Date: _____

Delegated Official: **James Chow, Acting Director**
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 1

FINAL ORDER

Pursuant to 40 C.F.R. §§ 22.13(b) and 22.18(b) and (c) of the Consolidated Rules of Practice, the foregoing Agreement resolving this matter is incorporated by reference into this Final Order and is hereby ratified. Respondent, Peak Diesel MA LLC, is ordered to pay the civil penalty amount specified in the Agreement. The terms of the Agreement will become effective on the date it is filed with the Regional Hearing Clerk.

Signature & Date: _____

Delegated Official: LeAnn Jensen, Regional Judicial Officer
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 1

Table 1 - Information Collection	
Date(s) Information Collected:	Docket Number:
December 22, 2023	CAA-01-2024-0047
Respondent Location:	
144 Palmer Road	
City:	Inspector(s) Name(s):
Monson	Grace Perry
State: Zip Code:	EPA Approving Official:
MA 01057-9592	James Chow
Respondent:	EPA Enforcement Contact(s):
Peak Diesel MA LLC	Grace Perry and Catherine Smith

Table 2 - Description of Violations and Vehicles/Engines		
<p>On October 24, 2023, EPA issued Peak Diesel MA LLC (“Peak Diesel”) a reporting requirement under Section 208(a) of the Clean Air Act (“CAA”), 42 U.S.C. § 7542(a). Peak Diesel provided a response to the reporting requirement on December 22, 2023, including invoices for work performed by the company.</p> <p>Based on the responses, EPA has identified that Peak Diesel is a person under the CAA who knowingly sold, offered for sale, or installed defeat devices, which render inoperative emission control systems on EPA-certified motor vehicles. It is a violation of Section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B), to sell, offer for sale, or install any defeat device intended for use with EPA-certified motor vehicles and engines with knowledge that such parts or components could bypass, defeat, or render inoperative the emission control systems. Based on information summarized below, EPA finds that Respondent has committed 14 violations of Section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B).</p>		
Defeat Device Violation(s)		
Invoice Number	Part Description	Description of Violation(s)
2394	SCT Tuning Device	Invoice indicates illegal tuner installation and EGR delete
2400	SCT Tuning Device	Invoice indicates illegal tuner installation and EGR delete
2436	EZ Lynk Tuner	Invoice indicates illegal tuner and up pipe installation
2436	MBRP 4-inch exhaust pipe	Invoice indicates illegal tuner and up pipe installation
2451	SCT Tuner	Invoice indicates EGR delete and up pipe installation
2451	PPE Up Pipe	Invoice indicates EGR delete and up pipe installation
2461	EFI Live Tuning File	Invoice indicates illegal tune and catalytic converter delete
2461	Cat Delete Pipe	Invoice indicates illegal tune and catalytic converter delete
2583	DSP5 Switch	Invoice indicates EGR delete
2583	EFI Live Tuning File	Invoice indicates EGR delete
2789	PPE Up Pipe	Invoice indicates up pipe installation and EGR delete
2789	SCT Tuning Device	Invoice indicates up pipe installation and EGR delete
2883	DSP5 Switch	Invoice indicates EGR delete

2883	EFI Live Tuning File	Invoice indicates EGR delete
Table 3 - Penalty and Required Remediation		
Penalty	\$12,098	
Required Remediation	<p>In addition to paying the monetary penalty, Respondent must cease and refrain from selling, or installing any device that defeats, bypasses, or otherwise renders inoperative an emission component of any motor vehicle or engine regulated by the EPA. Respondent must cease and refrain from tampering with emission control systems on EPA-certified motor vehicles and engines. Respondent certifies that it has reviewed EPA's November 23, 2020 "EPA Tampering Policy - The EPA Enforcement Policy on Vehicle and Engine Tampering and Aftermarket Defeat Devices under the Clean Air Act."</p>	

CAA VEHICLE AND ENGINE EXPEDITED SETTLEMENT AGREEMENT INSTRUCTIONS

Within 30 days of receiving this Agreement, you must email Catherine Smith the signed Agreement. If you prefer to send this via CERTIFIED MAIL, you may contact Ms. Smith to arrange (Note that mailed information must be postmarked within 30 days of your receipt of the Agreement).

If you have any questions or would like to request an extension due to extraordinary circumstances, you may contact Catherine Smith. EPA will consider whether to grant an extension on a case-by-case basis where appropriate justification is provided. EPA will not accept or approve any Agreement returned more than 30 days after the date of your receipt of the Agreement unless an extension has been granted by EPA. If you believe that the alleged violations are without merit (and you can provide evidence contesting the allegations), you must provide such information to EPA as soon as possible but no later than 30 days from your receipt of the Agreement.

Unless an extension has been granted in writing by EPA, if you do not sign and return the Agreement within 30 days of your receipt of the Agreement, the Agreement is automatically withdrawn, without prejudice to EPA's ability to file an enforcement action for the above or any other violations. Failure to return the Agreement within the approved time does not relieve you of the responsibility to comply fully with the regulations, including correction of the violations specifically identified in the enclosed Tables. If you choose not to enter into this Agreement and fully comply with its terms, EPA may pursue more formal enforcement measures to correct the violation(s) and seek penalties of up to \$5,761 per violation pursuant to 40 C.F.R. § 19.4.

Upon receiving the signed Agreement, EPA will sign it, file it with the Regional Hearing Clerk, and send you the fully-ratified Agreement. No later than 30 days after the filing date, Respondent, Peak Diesel, must pay the penalty as described below:

TERMS OF PAYMENT

1. Respondent agrees to pay a civil penalty in the amount of **\$12,098** ("Assessed Penalty") within thirty (30) days after the date the Final Order ratifying this Agreement is filed with the Regional Hearing Clerk.
2. Respondent shall pay the Assessed Penalty and any interest, fees, and other charges due using any method, or combination of appropriate methods, as provided on the EPA website: <https://www.epa.gov/financial/makepayment>. For additional instructions see: <https://www.epa.gov/financial/additional-instructions-making-payments-epa>.

3. When making a payment, Respondent shall:

- a. Identify every payment with Respondent's name and the docket number of this Agreement;
- b. Concurrently with any payment or within 24 hours of any payment, Respondent shall serve proof of such payment to the following person(s) by email:

Wanda Santiago
Regional Hearing Clerk
U.S. EPA, Region 1 (Mail Code 4-MO)
5 Post Office Square, Suite 100
Boston, MA 02109-3912
R1_Hearing_Clerk_Filings@epa.gov and santiago.wanda@epa.gov;

Catherine Smith, Esq. at smith.catherine@epa.gov; and

U.S. Environmental Protection Agency
Cincinnati Finance Center
Via electronic mail to:
CINWD_AcctsReceivable@epa.gov

"Proof of payment" means, as applicable, a copy of the check, confirmation of credit card or debit card payment, or confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to EPA requirements, in the amount due, and identified with the appropriate docket number and Respondent's name.

4. Interest, Charges, and Penalties on Late Payments. Pursuant to 31 U.S.C. § 3717, 31 C.F.R. § 901.9, and 40 C.F.R. § 13.11, if Respondent fails to timely pay the full amount of the Assessed Penalty per this Agreement, EPA is authorized to recover, in addition to the amount of the unpaid Assessed Penalty, the following amounts.

- a. Interest. Interest begins to accrue from the Filing Date. If the Assessed Penalty is paid in full within thirty (30) days, interest accrued is waived. If the Assessed Penalty is not paid in full within thirty (30) days, interest will continue to accrue until any unpaid portion of the Assessed Penalty as well as any interest, penalties, and other charges are paid in full. To protect the interests of the United States the rate of interest is set at the IRS standard underpayment rate, as any lower rate would fail to provide Respondent adequate incentive for timely payment.

b. Handling Charges. Respondent will be assessed monthly a charge to cover EPA's costs of processing and handling overdue debts. If Respondent fails to pay the Assessed Penalty in accordance with this Agreement, EPA will assess a charge to cover the costs of handling any unpaid amounts for the first thirty (30) day period after the Filing Date. Additional handling charges will be assessed every thirty (30) days, or any portion thereof, until the unpaid portion of the Assessed Penalty as well as any accrued interest, penalties, and other charges are paid in full.

c. Late Payment Penalty. A late payment penalty of six percent (6%) per annum, will be assessed monthly on all debts, including any unpaid portion of the Assessed Penalty, interest, penalties, and other charges, that remain delinquent more than ninety (90) days. Any such amounts will accrue from the Filing Date.

5. Late Penalty Actions. In addition to the amounts described in the prior Paragraph, if Respondent fails to timely pay any portion of the Assessed Penalty, interest, or other charges and penalties per this Agreement, EPA may take additional actions. Such actions EPA may take include, but are not limited to, the following.

a. Refer the debt to a credit reporting agency or a collection agency, per 40 C.F.R. §§ 13.13 and 13.14.

b. Collect the debt by administrative offset (i.e., the withholding of money payable by the United States government to, or held by the United States government for, a person to satisfy the debt the person owes the United States government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, per 40 C.F.R. Part 13, Subparts C and H.

c. Suspend or revoke Respondent's licenses or other privileges, or suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds, per 40 C.F.R. § 13.17.

d. Refer this matter to the United States Department of Justice for litigation and collection, per 40 C.F.R. § 13.33.

6. Allocation of Payments. Pursuant to 31 C.F.R. § 901.9(f) and 40 C.F.R. § 13.11(d), a partial payment of debt will be applied first to outstanding handling charges, second to late penalty charges, third to accrued interest, and last to the principal that is the outstanding Assessed Penalty amount.

7. Tax Treatment of Penalties. Penalties, interest, and other charges paid pursuant to this Agreement shall not be deductible for purposes of federal taxes.