

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 4

In the Matter of:

DK Engine Parts, LLC

Respondent.

Docket No. **CAA-04-2023-0055(b)**

CONSENT AGREEMENT

I. NATURE OF ACTION

1. This is an administrative penalty assessment proceeding brought under Section 205(c)(1) of the Clean Air Act (“CAA” or the “Act”), 42 U.S.C. § 7524(c)(1), and Sections 22.13(b) and 22.18 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 Title 40 of the Code of Federal Regulations (C.F.R.), Part 22.
2. This Consent Agreement and the attached Final Order shall collectively be referred to as the CAFO.
3. Having found that settlement is consistent with the provisions and objectives of the Act and applicable regulations, the Parties have agreed to settle this action pursuant to 40 C.F.R. § 22.18 and consent to the entry of this CAFO without Respondent’s admission of violation or adjudication of any issues of law or fact herein.

II. PARTIES

4. Complainant is the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency (EPA), Region 4, who has been delegated the authority on behalf of the Administrator of the EPA to enter into this CAFO pursuant to 40 C.F.R. Part 22 and Section 205(c)(1) of the Act.
5. Respondent is DK Engine Parts, LLC., a limited liability company doing business in the state of Georgia. This proceeding pertains to Respondent’s facility located at 172 N 85th Parkway, Fayetteville, Georgia, 30214 (Facility).

III. GOVERNING LAW

6. This proceeding arises under Part A of Title II of the Act, CAA §§ 202-219, 42 U.S.C. §§ 7521-7554, and the regulations promulgated thereunder.
7. The Act requires the 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. Section 202(a)(1) and (3) of the CAA, 42 U.S.C. § 7521(a)(1) and (3); 40 C.F.R. part 86.
8. Section 203(a)(3)(B) of the Act, 42 U.S.C. § 7522(a)(3)(B), prohibits any person from manufacturing, selling, offering to sell, or installing any 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 is to bypass, defeat, or render inoperative any device or element of design installed on or in a “motor vehicle” or “motor vehicle engine” in compliance with the regulations under Subpart A of Title II of the Act (referred to as “aftermarket defeat devices”), and where the person knows or should know that the part or component is being offered for sale or installed for such use.
9. Any person who violates Section 203 of the Act, 42 U.S.C. § 7522, or rule promulgated thereunder, may be assessed a civil penalty pursuant to Section 205(c)(1) of the Act, 42 U.S.C. § 7524(c)(1), and 40 C.F.R. Part 19. Civil penalties under Section 205(c)(1) of the Act, 42 U.S.C. § 7524(c)(1), may be assessed by an administrative order. The Administrator may compromise, or remit with or without conditions, any administrative penalty which may be imposed under Section 205(c)(1) of the Act, 42 U.S.C. § 7524(c)(1).
10. Section 302(e) of the Act, 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.
11. Section 203(a)(1) of the Act 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). 42 U.S.C. § 7522(a)(1).
12. Section 216(2) of the Act, 42 U.S.C. § 7550(2), defines “motor vehicle” as any self-propelled vehicle designed for transporting persons or property on a street or highway.
13. Section 216(3) of the Act, 42 U.S.C. § 7550(3), defines “motor vehicle engine” as an engine that is designed to power a motor vehicle.
14. The EPA issues COCs to motor vehicle engine and motor vehicle manufacturers under section 206(a) of the CAA, 42 U.S.C. § 7525(a), to certify that a particular group of motor vehicle engines or motor vehicles conforms to applicable EPA requirements governing motor vehicle emissions.
15. The application for a COC must describe, among other things, the emissions-related “elements of design” of the motor vehicle or motor vehicle engine. See 40 C.F.R. § 86.1844-01.

16. 40 C.F.R. § 86.1803-01 defines “element of design” as 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 or motor vehicle engine.
17. To meet the emission standards in 40 C.F.R. part 86 and qualify for a COC, motor vehicle manufacturers may utilize “elements of design” that control emissions of air pollutants, such as exhaust gas recirculation, catalytic converters, diesel particulate filters, and/or selective catalytic reduction systems.

IV. FINDINGS OF FACTS

18. At all times relevant to this CAFO, Respondent manufactured, sold, and/or offered to sell motor vehicle parts to various distributors and customers throughout the United States.
19. On October 7, 2019, EPA sent an information request (Request) pursuant to Section 208(a) of the Act, 42 U.S.C. § 7542(a), to Respondent regarding the aftermarket defeat devices it manufactured, sold, and/or offered for sale.
20. On December 9, 2019, Respondent submitted a response to the Request by providing sales information and documentation related to the Respondent’s manufacture, sale, and/or offer for sale of aftermarket defeat devices.
21. Based on Respondent’s December 9, 2019, response to the Request, and additional information gathered during the EPA’s investigation, the EPA alleges that Respondent manufactured, sold, and/or offered for sale aftermarket defeat devices such as the exhaust gas recirculation delete hardware, identified in Appendix A, herein incorporated in this CAFO by reference.
22. The aftermarket defeat devices were designed and marketed for use on various motor vehicles, and intended to bypass, defeat, or render inoperative emissions-related devices or elements of design, such as the exhaust gas recirculation systems, that are installed on those motor vehicles to meet the CAA emission standards.
23. On September 29, 2022, EPA sent a Notice of Potential Violation and Opportunity to Confer (NOPVOC) to the Respondent concerning the alleged violations.
24. On November 16, 2022, EPA and the Respondent held a show cause meeting to discuss the violations alleged in the NOPVOC. During the show cause meeting, Respondent confirmed that it no longer manufactures, sells, and/or offers for sale aftermarket defeat devices.

V. ALLEGED VIOLATIONS

25. Respondent is a “person” as defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e).
26. Based on the information provided in the Respondent’s response to the Request, and as shown in Appendix A of this CAFO, between September 1, 2018, and October 7, 2019, Respondent manufactured, sold, and/or offered to sell at least 7,683 exhaust gas recirculation delete kits.

27. The parts identified in Appendix A of this CAFO (incorporated by reference) are aftermarket defeat devices because they are parts or components intended for use with, or as part of, motor vehicles or motor vehicle engines, and a principal effect of the parts or components is to bypass, defeat, or render inoperative emissions-related devices or elements of design that are installed in or on a motor vehicle to meet the regulations under Subpart A of Title II of the Act, such as the exhaust gas recirculation system.
28. Respondent knew or should have known that the aftermarket defeat devices identified in Appendix A were being manufactured, sold, and/or offered for sale for such use or put to such use, in violation of Section 203(a)(3)(B) of the Act, 42 U.S.C. § 7522(a)(3)(B).
29. The EPA alleges that, between September 1, 2018, and October 7, 2019, Respondent committed approximately 7,683 violations of Section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B), by manufacturing, selling, and/or offering for sale, the aftermarket defeat devices identified in Appendix A of this CAFO.

VI. STIPULATIONS

30. The issuance of this CAFO simultaneously commences and concludes this proceeding. 40 C.F.R. § 22.13(b).
31. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent:
 - a. admits that EPA has jurisdiction over the subject matter alleged in this CAFO;
 - b. neither admits nor denies the factual allegations set forth in Section IV (Findings of Facts) of this CAFO;
 - c. consents to the assessment of a civil penalty as stated below;
 - d. consents to the conditions specified in this CAFO;
 - e. waives any right to contest the allegations set forth in Section V (Alleged Violations) of this CAFO; and
 - f. waives its rights to appeal the Final Order accompanying this CAFO.
32. For the purpose of this proceeding, Respondent:
 - a. agrees that this CAFO states a claim upon which relief may be granted against Respondent;
 - b. acknowledges that this CAFO constitutes an enforcement action for purposes of considering Respondent's compliance history in any subsequent enforcement actions;
 - c. waives any rights it may possess at law or in equity to challenge the authority of EPA to bring a civil action in a United States District Court to compel compliance with the CAFO, and to seek an additional penalty for such noncompliance, and agrees that federal law shall govern in any such civil action;
 - d. by executing this CAFO, certifies to the best of its knowledge that Respondent is currently in compliance with all relevant requirements of the Act and its implementing regulations;
 - e. waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during any discussions with, or to be served with and reply to, any memorandum or communication addressed to EPA officials where the purpose of such discussion,

memorandum, or communication is to persuade such official to accept and issue this CAFO; and

f. agrees to comply with the terms of this CAFO.

33. In accordance with 40 C.F.R. § 22.5, the individuals named in the certificate of service are authorized to receive service related to this proceeding and the parties agree to receive service by electronic means.

VII. TERMS OF PAYMENT

34. Respondent consents to the payment of a compromised civil penalty with conditions, which was calculated in accordance with the Act and based on the Respondent's substantiated ability to pay claim, in the amount of **\$150,000.00**, which is to be paid within thirty (30) calendar days of the Effective Date of this CAFO.

35. Payments shall be made by cashier's check, certified check, by electronic funds transfer (EFT), or by Automated Clearing House (ACH) (also known as REX or remittance express). If paying by check, the check shall be payable to: Treasurer, United States of America, and the Facility name and docket number for this matter shall be referenced on the face of the check. If Respondent sends payment by the U.S. Postal Service, the payment shall be addressed to:

U.S. Environmental Protection Agency
P.O. Box 979078
St. Louis, Missouri 63197-9000

If Respondent sends payment by non-U.S. Postal express mail delivery, the payment shall be sent to:

U.S. Environmental Protection Agency
Government Lockbox 979078
1005 Convention Plaza
Mail Station: SL-MO-C2-GL
St. Louis, Missouri 63101
Contact Number: (314) 425-1819

If paying by EFT, Respondent shall transfer the payment to:

Federal Reserve Bank of New York
ABA: 021030004
Account Number: 68010727
SWIFT address: FRNYUS33
33 Liberty Street
New York, New York 10045
Field Tag 4200 of the Fedwire message should read:
"D 68010727 Environmental Protection Agency"

If paying by ACH, Respondent shall remit payment to:

US Treasury REX / Cashlink ACH Receiver

ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 – checking
Physical location of US Treasury facility:
5700 Rivertech Court
Riverdale, Maryland 20737
Contact: John Schmid, (202) 874-7026
REX (Remittance Express): 1-866-234-5681

36. Respondent shall send proof of payment, within 24 hours of payment of the civil penalty, to:

Regional Hearing Clerk
R4_Regional_Hearing_Clerk@epa.gov

and

Aleeka Broner
Enforcement and Compliance Assurance Division
Air Enforcement Branch
broner.aleeka@epa.gov

37. “Proof of payment” means, as applicable, a copy of the check, confirmation of credit card or debit card payment, 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 Facility name and Docket No. CAA-04-2023-0055(b).

38. If Respondent fails to timely pay any portion of the penalty assessed under this CAFO, EPA may recover in addition to the amount of the unpaid penalty assessed, the following amounts on any amount overdue:

- a. Interest. Interest will begin to accrue on the civil penalty from the Effective Date of this CAFO. If the civil penalty is paid within 30 days of the Effective Date of this CAFO, Interest is waived. However, if the civil penalty is not paid in full within 30 days of the Effective Date of this CAFO, Interest will continue to accrue on any unpaid portion until the unpaid portion of the civil penalty and accrued Interest are paid. Interest will be assessed at rates established pursuant to 26 U.S.C. § 6621(a)(2).
- b. Non-Payment Penalty. A 10 percent quarterly nonpayment penalty pursuant to Section 205(c)(6) of CAA, 42 U.S.C. § 7424(c)(6).
- c. Attorneys’ Fees and Costs of Collection. The United States enforcement expenses, including, but not limited to, attorneys’ fees and cost of collection pursuant to Section 205(c)(6) of CAA, 42 U.S.C. § 7424(c)(6).

39. If Respondent fails to timely pay any portion of the penalty assessed under this CAFO, EPA may:

- a. Refer the debt to a credit reporting agency or a collection agency pursuant to 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 to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, 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, 40 C.F.R. § 13.17; and/or
- d. Request that the Attorney General bring a civil action in the appropriate district court to recover the amount assessed, in addition to the amounts described above, pursuant to 42 U.S.C. § 7424(c). In any such action, the validity, amount, and appropriateness of the penalty and of this CAFO shall not be subject to review.

40. Penalties paid pursuant to this CAFO shall not be deductible for purposes of federal taxes.

VIII. RESPONDENT'S CERTIFICATION OF COMPLIANCE

- 41. Respondent and the EPA have agreed, in compromise of the civil penalty that otherwise may be imposed herein, that Respondent shall fulfill the conditions stated below in paragraphs 42 through 45.
- 42. By signing this Consent Agreement, Respondent agrees to the following: (i) Respondent will not manufacture, sell, or offer for sale any part or component including but not limited to products listed in Appendix A, if the part or component is 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 in compliance with applicable regulations, and where Respondent knows or should know that such part or component is 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); and (ii) 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. No later than 30 days of the effective date of the CAFO, Respondent shall permanently delete and/or destroy any aftermarket defeat device remaining in its inventory and/or possession, including products listed in Appendix A.
- 44. "Permanently delete and/or destroy" means (a) in the case of hardware, to crush the device and all of its parts or components to render them useless; and (b) in the case of software, tunes, calibrations or other programming, to completely and permanently erase all programming and information.
- 45. Within 14 calendar days from the date the Respondent signs the CAFO, the Respondent shall remove from its webpages and any of Respondent's social media accounts all advertisements, photos, videos, and information that relates to selling and/or offering to sell defeat devices except advertisements, photos, videos or information relating to how to comply with the CAA.

IX. EFFECT OF CAFO

46. In accordance with 40 C.F.R. § 22.18(c), Respondent's full compliance with this CAFO shall only resolve Respondent's liability for federal civil penalties for the violations and facts specifically alleged above.
47. Full payment of the civil penalty, as provided in Section VII (Terms of Payment), shall satisfy the requirements of this CAFO, but shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. 40 C.F.R. § 22.18(c).
48. Any violation of this CAFO may result in a civil judicial action for civil penalties as provided in Section 205(c)(6) of the Act, 42 U.S.C. § 7414(c)(6), as well as criminal sanctions as provided in Section 113(c) of the Act, 42 U.S.C. § 7413(c). EPA may use any information submitted under this CAFO in an administrative, civil judicial, or criminal action.
49. Nothing in this CAFO shall relieve Respondent of the duty to comply with all applicable provisions of the Act and other federal, state, or local laws or statutes, nor shall it restrict EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit, except as expressly provided herein.
50. Nothing herein shall be construed to limit the power of EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment as provided under the Act.
51. The terms, conditions, and compliance requirements of this CAFO may not be modified or amended except upon the written agreement of both Parties, and approval of the Regional Judicial Officer.
52. The provisions of this CAFO shall apply to and be binding upon Respondents, successors, and assigns. Respondent shall direct its officers, directors, employees, agents, trustees, and authorized representatives to comply with the provisions of this CAFO. Respondent must give written notice and a copy of this CAFO to any successors in interest prior to any transfer of ownership or control of any portion of or interest in Respondent. Simultaneously with such notice, Respondent shall provide written notice of such transfer, assignment, or delegation to the EPA. In the event of any such transfer, assignment, or delegation, Respondent shall not be released from the obligations or liabilities of this CAFO unless the EPA has provided written approval of the release of said obligations or liabilities.
53. Any change in the legal status of the Respondent, or change in ownership, partnership, corporate or legal status relating to the Facility, will not in any way alter Respondent's obligations and responsibilities under this CAFO.
54. By signing this Consent Agreement, Respondent acknowledges that this CAFO will be available to the public and agrees that this CAFO does not contain any confidential business information or personally identifiable information.

55. By signing this Consent Agreement, the Complainant and the undersigned representative of Respondent each certify that he or she is fully authorized to execute and enter into the terms and conditions of this CAFO and has the legal capacity to bind the party he or she represents to this CAFO.
56. By signing this Consent Agreement, both Parties agree that each party's obligations under this CAFO constitute sufficient consideration for the other party's obligations.
57. By signing this Consent Agreement, Respondent certifies that the information it has supplied concerning this matter was at the time of submission, and continues to be, true, accurate, and complete for each such submission, response, and statement. Respondent acknowledges that there are significant penalties for submitting false or misleading information, including the possibility of fines and imprisonment for knowing submission of such information, under 18 U.S.C. § 1001.
58. EPA also reserves the right to revoke this CAFO and settlement penalty if and to the extent that EPA finds, after signing this CAFO, that any information provided by Respondent was materially false or inaccurate at the time such information was provided to EPA. If such false or inaccurate material was provided, EPA reserves the right to assess and collect any and all civil penalties for any violation described herein. EPA shall give Respondent notice of its intent to revoke, which shall not be effective until received by Respondent in writing.
59. It is the intent of the parties that the provisions of this CAFO are severable. If any provision or authority of this CAFO or the application of this CAFO to any party or circumstances is held by any judicial or administrative authority to be invalid or unenforceable, the application of such provisions to other parties or circumstances and the remainder of the CAFO shall remain in force and shall not be affected thereby.
60. Unless specifically stated otherwise in this CAFO, each party shall bear its own attorney's fees, costs, and disbursements incurred in this proceeding.

X. EFFECTIVE DATE

61. This CAFO shall become effective after execution of the Final Order by the Regional Judicial Officer, on the date of filing with the Hearing Clerk.

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Complainant and Respondent will Each Sign on Separate Pages]

The foregoing Consent Agreement in the Matter of **DK Engine Parts LLC**, Docket No. **CAA-04-2023-0055(b)**, is Hereby Stipulated, Agreed, and Approved for Entry.

FOR RESPONDENT:



Signature

6-5-2023

Date

Printed Name: David DeBuc

Title: President

Address: 172 N 85 Parkway Fayetteville, GA 30214

The foregoing Consent Agreement in the Matter of **DK Engine Parts LLC**, Docket No. **CAA-04-2023-0055(b)** is Hereby Stipulated, Agreed, and Approved for Entry.

FOR COMPLAINANT:

Larry L. Lamberth
Acting Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 4

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4

In the Matter of:

DK Engine Parts, LLC

Respondent.

Docket No. **CAA-04-2023-0055(b)**

FINAL ORDER

The Regional Judicial Officer is authorized to ratify this Consent Agreement which memorializes a settlement between Complainant and Respondent. 40 C.F.R. §§ 22.4(b) and 22.18(b)(3). The foregoing Consent Agreement is, therefore, hereby approved, ratified and incorporated by reference into this Final Order in accordance with the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*, 40 C.F.R. Part 22.

The Respondent is hereby ORDERED to comply with all of the terms of the foregoing Consent Agreement effective immediately upon filing of this Consent Agreement and Final Order with the Regional Hearing Clerk. This Final Order disposes of this matter pursuant to 40 C.F.R. §§ 22.18 and 22.31.

BEING AGREED, IT IS SO ORDERED.

Tanya Floyd
Regional Judicial Officer

CERTIFICATE OF SERVICE

I certify that the foregoing Consent Agreement and Final Order, in the Matter of **DK Engine Parts LLC**, Docket No. **CAA-04-2023-0055(b)**, were filed and copies of the same were emailed to the parties as indicated below.

Via email to all parties at the following email addresses:

To Respondent: Jonathan E. Wells, Attorney
 Kazmarek Mowrey Cloud Laseter, LLP
 jwells@kmcllaw.com
 1230 Peachtree Street NE, Suite 900
 Atlanta, GA 30309
 303-249-9994

To EPA: Aleeka Broner, Life Scientist
 aleeka.broner@epa.gov
 404-562-9186

 Lucia Mendez, Attorney-Adviser
 mendez.lucia@epa.gov
 404-562-9637

 U.S. EPA Region 4
 61 Forsyth Street, S.W.
 Atlanta, Georgia 30303-8960

Shannon L. Richardson, Regional Hearing Clerk
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

APPENDIX A

| Product Description | Quantity Sold |
|--|----------------------|
| 2003-2010 Ford 6.0L EGR Delete kit | 956 |
| 2008-2010 Ford 6.4L EGR Delete kit | 1336 |
| 2011-2017 Ford 6.7L EGR Delete Kit | 869 |
| 2011-2017 Ford 6.7L EGR Delete Kit with Coolant Bypass Plate | 403 |
| 2007-2009 Cummins 6.7L EGR Delete Kit | 254 |
| 2010-2017 Cummins 6.7L EGR Delete Kit | 2021 |
| 2004.5-2005 Duramax LLY EGR Delete Kit | 674 |
| 2006-2007.5 Duramax LBZ EGR Delete Kit | 308 |
| 2007.5-2010 Duramax LMM EGR Delete Kit | 347 |
| 2011-2016 Duramax LML EGR Delete Kit | 515 |