



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

September 30, 2021

VIA E-MAIL

DELIVERY RECEIPT REQUESTED

Brian E. Bogue, President
Brian Bogue Diesel Repair and Welding, LLC
606 W. Dennis Dr.
Paul, ID 83347

Email: boguedieselrepair@gmail.com

Dear Mr. Bogue:

Enclosed is a file-stamped Consent Agreement and Final Order (CAFO) which resolves Brian Bogue Diesel Repair and Welding, LLC, docket no. CAA-05-2021-0037. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on September 30, 2021.

Pursuant to paragraph 36 of the CAFO, Brian Bogue Diesel Repair LLC must pay the civil penalty within 30 days of the filing date. Your check must display the case name and case docket number.

Please direct any questions regarding this case to Cynthia King at (312) 886-6831.

Sincerely,

**NATHAN
FRANK**

Digitally signed by
NATHAN FRANK
Date: 2021.09.30
09:50:29 -05'00'

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

Enclosure

cc: Ann Coyle, Regional Judicial Officer/via electronic mail
Coyle.ann@epa.gov

Regional Hearing Clerk/via electronic mail
R5hearingclerk@epa.gov

Cynthia King, Office of Regional Counsel/via electronic mail
King.cynthia@epa.gov

Ethan Chatfield, Region 5 ECAD/via electronic mail
chatfield.ethan@epa.gov

Katie McClintock, Region 10/via electronic mail
Mcclintock.katie@epa.gov

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:)	Docket No. CAA-05-2021-0037
)	
Brian Bogue Diesel Repair and Welding, LLC)	Proceeding to Assess a Civil Penalty Under Section 205(c)(1) of the Clean Air Act, 42 U.S.C. § 7524(c)(1)
)	
Paul, Idaho)	
)	
Respondent.)	
_____)	

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

3. Respondent is Brian Bogue Diesel Repair and Welding, LLC (Respondent), a limited liability company doing business in Idaho.

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). *See* 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 the proposed final order.

Statutory and Regulatory Background

9. 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).

10. “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.

11. “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).

12. EPA issues 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).

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

14. 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).

15. 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.

16. 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.

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

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

19. The Administrator of EPA (the Administrator) may assess a civil penalty of up to \$4,876 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 23, 2020, under Section 205(a) of the CAA, 42 U.S.C. § 7524(a) and 40 C.F.R. Part 19.

Factual Allegations and Alleged Violations

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

21. On April 29, 2020, EPA issued an Information Request (First Request) to Respondent pursuant to Section 208 of the CAA, 42 U.S.C. § 7542. The First Request sought information related to Respondent’s purchase of, and/or installation of, parts, components, and services which bypass, defeat, or render inoperative any emission control component, element of design, or emissions related part or component for the period of January 1, 2017 to the date of the Request.

22. On May 19, 2020, Respondent submitted a response (First Response) to the First Request. In response to the question of whether from January 1, 2017 to September 17, 2020, the company had “manufactured, offered for sale, sold and/or installed any part, component, or product (such as an EGR block plate, straight exhaust pipe, tune, tuner, ECM re-calibration, or other similar product) which bypass, defeat, or render inoperative any emission control components or elements of design, or emissions related parts or components...,” Respondent answered “No.”

23. On May 29, 2020, Region 5 counsel reached out to the Respondent’s original counsel and asked for clarification and a re-evaluation of Respondent’s First Response. Respondent’s original counsel stated that he would speak with the owner and get back to EPA with more information.

24. Between May 30 and November 15, 2020, EPA made multiple attempts to contact Respondent through Respondent’s original counsel via email and telephone in an effort to clarify Respondent’s First Response, but EPA was unable to reach Respondent’s original counsel.

25. On November 16, 2020, EPA issued a Second Information Request (Second Request) to Respondent pursuant to Section 208 of the CAA, 42 U.S.C. § 7542. The Second Request sought information related to Respondent’s purchase of, and/or installation of, parts, components, and services which bypass, defeat, or render inoperative any emission control component, element of design, or emissions related part or component for the period of April 1, 2017 to the date of the Second Request. The Second Request asked for “yes or no” responses to six questions, as well as receipts or invoices.

26. On December 10, 2020, Respondent submitted a response (Second Response) to the Second Request under new counsel. In the Second Response, Respondent admitted to

purchasing EGR block off plates and ECM tunes, but refused to supply a complete response to some of the questions in that Second Request based on a perceived legal defense.

27. On January 13 and February 4, 2020, EPA and Respondent held conference calls to discuss Respondent's refusal to fully respond to the Second Request. EPA requested that Respondent reevaluate its responses to EPA. Based on these discussions Respondent agreed to re-review the company's response to the First Request and consider supplementing its response.

28. On February 11, 2021, Respondent submitted a supplemental response (Third Response) to the First Request. The Third Response included the approximate number of subject parts transactions, average sales price, total sales, and an approximation of the economic benefit from such transactions. No invoices or additional information was provided by Respondent as was required by the First Request.

29. On April 23, 2021, EPA issued a Finding of Violation (FOV) to Respondent alleging violations of Sections 203(a)(3)(A) and (B) of the CAA, 42 U.S.C. § 7522(a)(3)(A) and (B), related to Respondent's sale, offer to sell and/or installation of Defeat Devices and Tampering with emission controls and/or emissions-related elements of design. In the FOV, EPA also alleged violations of Section 203(a)(2)(A) of the CAA, 42 U.S.C. § 7522(a)(2)(A), related to Respondent's refusal to fully respond to the information requests under Section 208(a) of the CAA, 42 U.S.C. § 7542(a).

30. During a June 8, 2021 conference call, Respondent confirmed that it had ceased any selling and/or installing of Defeat Devices.

31. On June 22, 2021, Respondent provided a total of 79 invoices (dated between January 3, 2017 and December 11, 2019) related to the sale of Diesel Spec Inc. ECM tunes and/or the removal of emission controls on 82 motor vehicle engines.

32. The parts and components sold by, and/or installed by Respondent, are parts or components that were intended for motor vehicles and were designed for use with motor vehicle HDDEs such as those manufactured by Cummins, Detroit, Ford, Paccar, Maxxforce, and other heavy-duty diesel engines, for which each manufacturer obtained COCs establishing compliance with CAA emissions standards.

33. 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 or modifying software on ECMs to allow the motor vehicles to operate without EGR/CGI, DOC, DPF, and/or SCR systems, and by installing parts or components that removed and/or bypassed EGR/CGI, DPF, and/or SCR systems in violation of Section 203(a)(3)(A) of the CAA, 42 U.S.C. § 7522(a)(3)(A).

34. Respondent sold, offered to sell, and installed 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 was to bypass, defeat or render inoperative devices and elements of design that control emissions, such as the engine fueling strategy, EGR/CGI, DOC, DPF, SCR, OBD systems, installed on or in a motor vehicle or motor vehicle engine in compliance with the CAA. Respondent knew or should have known that such part or component was 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).

Civil Penalty

35. 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 Title II Vehicle & Engine 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 certifications set forth herein, Complainant has determined that an appropriate civil penalty to settle this action is \$5,000.

36. Within 30 days after the effective date of this CAFO, Respondent must pay the above civil penalty by sending a cashier's or certified check, via express mail (non-U.S. Postal Service), payable to "Treasurer, United States of America," to:

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines and Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, Missouri 63101

The check must note Respondent's name and the docket number of this CAFO.

37. 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:

Air Enforcement and Compliance Assurance Branch
U.S. Environmental Protection Agency, Region 5
r5airenforcement@epa.gov

Cynthia King (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
king.cynthia@epa.gov

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

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

39. If Respondent does not pay timely the civil penalty, 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.

40. 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. § 7413(d)(5).

Other Conditions

41. 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 for sale, 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 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."

42. By signing this Consent Agreement, Respondent understands that the violations addressed in this CAFO may be considered as a "History of Noncompliance" for any future violations of Title II of the CAA, 42 U.S.C. § 7522(a)(3)(A) and (B), by Respondent or any other business entity owned or operated by Brian E. Bogue, as addressed in the January 18, 2021, Clean Air Act Title II Vehicle & Engine Civil Penalty Policy.

43. By the date of their signature on this CAFO, Respondent shall remove all defeat devices from all vehicles and engines owned or operated by Respondent and return the ECM of each vehicle and engine to factory settings.

44. By the date of their signature on this CAFO, Respondent shall permanently destroy or return to the manufacturer all defeat devices in its inventory and/or possession (including, but not limited to, any remote tuning devices or EGR block plates, such as those manufactured or sold by Diesel Spec Inc.).

45. Within 14 calendar days from the Respondent's signature on this CAFO, Respondent shall certify with proof that Respondent has completed the actions required in paragraphs 43 and 44, above.

46. Within 14 calendar days from the Respondent's signature on this CAFO, Respondent shall remove 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 except advertisements, photos, videos, or information relating to how to comply with the CAA.

47. Within 30 calendar days from the date of Respondent's signature on this CAFO, Respondent shall notify, in writing, all customers whose engines may have received tampering and/or defeat devices of Respondent's settlement with EPA. Respondent shall use the letter contained in Appendix A (Letter), or another letter reviewed and approved by EPA to provide such notice. The Letters shall be transmitted by certified U.S. Mail, return receipt requested. Respondent shall notify EPA with proof of each and every mailing within 30 calendar days from the Effective Date of this CAFO to demonstrate that all letters have been sent.

48. Failure to comply with paragraph 41 of this CAFO may constitute a violation of Sections 203(a)(3)(A) and (B) of the CAA, 42 U.S.C. § 7522(a)(3)(A) and (B), and Respondent could be subject to penalties of up to the statutory civil penalties in 40 C.F.R. § 19.4.

49. 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 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.

50. For purposes of the identification requirement in Section 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), and 26 C.F.R. § 162-21(b)(2), performance of the Other Conditions Section above (paragraphs 41- 50) is restitution, remediation, or required to come into compliance with the law.

General Provisions

51. The parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: king.cynthia@epa.gov (for Complainant), and boguedieselrepair@gmail.com and mkbanks@stoel.com (for Respondent).

52. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in this CAFO.

53. The effect of the settlement described in paragraph 52, above, is conditioned upon the accuracy and completeness of Respondent's representations to EPA.

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 52, 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 Sections 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 January 18, 2021, Clean Air Act Title II Vehicle & Engine Civil Penalty Policy to determine Respondent's "full compliance history" under Section 205(b) of the CAA, 42 U.S.C. § 7524(b).

58. The terms of this CAFO bind Respondent, and 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.

Brian Bogue Diesel Repair and Welding, LLC, Respondent

9-27-21
Date



Brian E. Bogue, President
Brian Bogue Diesel Repair and Welding, LLC

United States Environmental Protection Agency, Complainant

Harris,
Michael

Digitally signed by Harris,
Michael
Date: 2021.09.29
15:32:00 -05'00'

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: Brian Bogue Diesel Repair and Welding, LLC
Docket No. CAA-05-2021-0037

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 (Effective Date). This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

Date

ANN COYLE Digitally signed by ANN
COYLE
Date: 2021.09.30
08:30:02 -05'00'

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

Appendix A: Letter

To Whom It May Concern:

On **X Date**, Brian Bogue Diesel Repair and Welding, LLC. (Brian Bogue Diesel) entered into a settlement with the United States Environmental Protection Agency (EPA) to resolve alleged violations of Section 203(a)(3)(A) and 203(a)(3)(B) of the Clean Air Act, related to the removal and/or rendering inoperative of emission control devices or elements of design and selling, offering to sell, and/or installing defeat devices for use with heavy-duty diesel engines.

By signing a consent agreement with EPA, Brian Bogue Diesel has certified that it will comply with Section 203(a)(3) of the CAA, which 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 purchasers, 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 [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.”

Brian Bogue Diesel will pay a penalty of \$5,000 and comply with the consent agreement to ensure ongoing compliance with the Clean Air Act.

If you have any questions regarding this letter, please ask for Brian Bogue.

Thank you,
Brian Bogue

Consent Agreement and Final Order
In the matter of: **Brian Bogue Diesel Repair and Welding, LLC**
Docket Number: **CAA-05-2021-0037**

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, docket number CAA-05-2021-0037, which was filed on September 30, 2021, in the following manner to the following addressees:

Copy by E-mail to Respondent: Brian E. Bogue
boguedieselrepair@gmail.com

Copy by E-mail to
Attorney for Complainant: Cynthia King
king.cynthia@epa.gov

Copy by E-mail to
Attorney for Respondent: Martin K. Banks
marty.banks@stoel.com

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

Dated: _____

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