

Suzanne Andrews
Regional Counsel
United States Environmental Protection Agency, Region IX

Catherine Schluter
Assistant Regional Counsel
United States Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, California 94105
(415) 972-3911
schluter.catherine@epa.gov

Attorneys for Complainant



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION IX
75 HAWTHORNE STREET
SAN FRANCISCO, CALIFORNIA 94105**

In the Matter of:)	Docket No. CAA-09-2025-0022
)	
White Mountain Trucking LLC)	CONSENT AGREEMENT AND FINAL
)	ORDER PURSUANT TO 40 C.F.R.
)	§§ 22.13 AND 22.18
Respondent.)	
_____)	

I. CONSENT AGREEMENT

The United States Environmental Protection Agency, Region IX ("EPA"), and White Mountain Trucking LLC ("Respondent") agree to settle this matter and consent to the entry of this Consent Agreement and Final Order ("CAFO"), which simultaneously commences and concludes this matter in accordance with 40 C.F.R. §§ 22.13 and 22.18.

A. AUTHORITY, JURISDICTION, AND PARTIES

1. This is a civil administrative action brought under Section 113(d) of the Clean Air Act (the "Act"), 42 U.S.C. § 7413(d).
2. Complainant is the Director of the Enforcement and Compliance Assurance Division,

EPA Region IX, who has been duly delegated the authority to initiate and settle civil administrative penalty proceedings under Section 113(d) of the Act.

3. Respondent is a for hire trucking firm that owns and/or operates heavy duty diesel-fueled vehicles registered to be driven on public highways in California, among other states.

4. Pursuant to section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), EPA and the United States Department of Justice jointly determined that this matter, which involves alleged violations that occurred more than one year before the initiation of this proceeding, is appropriate for an administrative penalty assessment.

5. The regulations at issue in this action have been incorporated into the federally approved and federally enforceable California State Implementation Plan ("SIP"). In accordance with the notice requirements of Section 113(a)(1) of the Act, 42 U.S.C. § 7413(a)(1), EPA issued a Finding and Notice of Violation ("NOV") to Respondent on May 24, 2023, and provided a copy of the NOV to the California Air Resources Board ("CARB"). The NOV provided notice to the Respondent and to CARB that EPA found that the Respondent committed alleged violations described in Section I.C of this CAFO and provided the Respondent an opportunity to confer with EPA.

B. STATUTORY AND REGULATORY AUTHORITY

6. Pursuant to Section 107(d) of the Act, 42 U.S.C. § 7407(d), the Administrator promulgated lists of attainment status designations for each air quality control region ("AQCR") in every state. These lists identify the attainment status of each AQCR for each of the criteria pollutants. The attainment status designations for California AQCRs are listed at

40 C.F.R. § 81.305.

7. There are multiple AQCRs designated as nonattainment for fine particulate matter (PM_{2.5}) and ozone in California. See 40 C.F.R. § 81.305.

8. Section 110(a) of the Act, 42 U.S.C. § 7410(a), requires that all states adopt SIPs that provide for the implementation, maintenance, and enforcement of primary and secondary air quality standards.

9. A person's failure to comply with any approved regulatory provision of a SIP renders the person in violation of an applicable implementation plan and subject to enforcement under Section 113(a)(1) of the Act. 42 U.S.C. § 7413(a)(1).

Title 13, Section 2025 of the California Code of Regulations: Truck and Bus Regulation

10. In accordance with Resolution 10-44 (December 2010), CARB adopted amendments to the "Regulation to Reduce Emissions of Diesel Particulate Matter, Oxides of Nitrogen and Other Criteria Pollutants from In-Use Heavy-Duty Diesel-Fueled Vehicles," codified at title 13, Section 2025 of the California Code of Regulations (the "Truck and Bus Regulation" or "TBR").

11. The EPA incorporated the TBR as submitted by CARB into the California SIP, effective May 4, 2012. See 77 Fed. Reg. 20308 (April 4, 2012).

12. As stated in Section 2025(a) of the TBR, the purpose of the regulation is "to reduce emissions of diesel particulate matter (PM), oxides of nitrogen (NO_x) and other criteria pollutants from in-use diesel-fueled vehicles."

13. Pursuant to Section 2025(b) of the TBR, the TBR "applies to any person, business, ...

that owns or operates, leases, or rents, affected vehicles that operate in California. . . .

Affected vehicles are those that operate on diesel-fuel, dual-fuel, or alternative diesel-fuel that are registered to be driven on public highways, were originally designed to be driven on public highways whether or not they are registered, . . . and have a manufacturer's gross vehicle weight rating (GVWR) greater than 14,000 pounds (lbs)."

14. Section 2025(d)(17) of the TBR defines "Diesel Particulate Filter" ("DPF") as "an emission control technology that reduces diesel particulate matter emissions by directing the exhaust through a filter that physically captures particles but permits gases to flow through. .

.."

15. Section 2025(d)(18) of the TBR defines "Diesel Particulate Matter (PM)" as "the particles found in the exhaust of diesel-fueled compression ignition engines. . . ."

16. Section 2025(d)(28) of the TBR defines "Fleet" as "one or more vehicles, owned by a person, business, or government agency, traveling in California and subject to this regulation.

.."

17. Section 2025(d)(29) of the TBR defines "Fleet Owner" as "either the person registered as the owner or lessee of a vehicle by the California Department of Motor Vehicles (DMV), or its equivalent in another state, province, or country; as evidenced on the vehicle registration document carried in the vehicle."

18. Section 2025(d)(47) of the TBR defines "Person" as "an individual, corporation, business trust, estate, trust, partnership, Limited Liability Company, association, joint venture, government, governmental subdivision, agency, or instrumentality, public

corporation, or any other legal or commercial entity.”

19. Section 2025(d)(48) defines “PM BACT” as “the technology employed on the highest level VDECS for PM or an engine that is equipped with an original equipment manufacturer (OEM) diesel particulate filter and certified to meet the 0.01 g/bhp-hr certification standard.”

20. Section 2025(d)(60) defines “Verified Diesel Emissions Control Strategy (VDECS)” as “an emissions control strategy, designed primarily for the reduction of diesel PM emissions, which has been verified pursuant to the Verification Procedures. . . .”

21. Section 2025(g) of the TBR requires Fleet Owners to comply with the following compliance schedule for vehicles above 26,000 GVWR:

- a. Vehicles with 1993 and older engine model years must be equipped with a 2010 model year engine by January 1, 2015.
- b. Vehicles with an engine model year of 1994 or 1995 must be equipped with a 2010 model year engine by January 1, 2016.
- c. Vehicles with an engine model year of 1996 through 1999 must be equipped with a DPF by January 1, 2012 and must be equipped with a 2010 model year engine by January 1, 2020.
- d. Vehicles with an engine model year of 2000 through 2004 must be equipped with a DPF by January 1, 2013 and must be equipped with a 2010 model year engine by January 1, 2021.
- e. Vehicles with an engine model year of 2005 or 2006 must be equipped with a DPF by January 1, 2014.

- f. Vehicles with an engine model year of 2007 or newer must be equipped with PM BACT by January 1, 2014.

C. ALLEGATIONS

22. At all times relevant to this CAFO, Respondent was a "Person" as that term is defined under Section 2025(d)(47) of the TBR.

23. At all times relevant to this CAFO, Respondent was a person or business that owned and/or operated diesel-fueled vehicles that have a GVWR greater than 14,000 pounds and are registered to be driven on public highways in California, among other states.

24. At all times relevant to this CAFO, the TBR applied to Respondent.

25. At all times relevant to this CAFO, Respondent was a "Fleet Owner" as that term is defined under Section 2025(d)(29) of the TBR.

26. Respondent was the Fleet Owner of two (2) vehicles traveling in California that were above 26,000 pounds GVWR with an engine model year of 1993 or older, that were not equipped with a 2010 model year engine after the compliance deadline of January 1, 2015.

27. Respondent was the Fleet Owner of three (3) vehicles traveling in California that were above 26,000 pounds GVWR with an engine model year between 1996 and 1999, that were not equipped with DPFs after the compliance deadline of January 1, 2012, or were not equipped with a 2010 model year engine after the compliance deadline of January 1, 2020.

28. Respondent was the Fleet Owner of two (2) vehicles traveling in California that were above 26,000 pounds GVWR with an engine model year between 2000 and 2004, that were not equipped with DPFs after the compliance deadline of January 1, 2013, or were not

equipped with a 2010 model year engine after the compliance deadline of January 1, 2021.

29. Respondent was the Fleet Owner of one (1) vehicle traveling in California that was above 26,000 pounds GVWR with an engine model year of 2006, that was not equipped with a DPF after the compliance deadline of January 1, 2014.

30. Respondent was the Fleet Owner of three (3) vehicles traveling in California that were above 26,000 pounds GVWR with an engine model year of 2007 or 2008, that were not equipped with PM BACT after the compliance deadline of January 1, 2014.

31. On various dates between June 14, 2018, and June 7, 2022, inclusive, Respondent operated at least eleven (11) vehicles in California that failed to comply with the engine requirements established in the compliance schedule of Section 2025(g) of the TBR.

32. Respondent's failure to comply with the compliance schedule for at least eleven (11) vehicles in its Fleet between June 14, 2018, and June 7, 2022, inclusive, constitutes eleven (11) violations of Section 2025(g) of the TBR.

D. RESPONDENT'S ADMISSIONS

33. In accordance with 40 C.F.R. § 22.18(b)(2) and for the purpose of this proceeding, Respondent: (i) admits that EPA has jurisdiction over the subject matter alleged in this CAFO and over Respondent; (ii) neither admits nor denies the specific factual allegations contained in Section I.C of this CAFO; (iii) consents to the assessment of the civil administrative penalty under Section I.E of this CAFO; (iv) waives any right to contest the allegations set forth in Section I.C of this CAFO as to the EPA; and (v) waives the right to appeal the proposed final order contained in this CAFO.

34. By signing this CAFO, Respondent waives any rights or defenses that Respondent has or may have for this matter to be resolved in federal court, including but not limited to any right to a jury trial, and waives any right to challenge the lawfulness of the final order accompanying the consent agreement.

E. CIVIL ADMINISTRATIVE PENALTY

35. Respondent agrees to pay a civil penalty in the amount of \$65,000 ("Assessed Penalty"). EPA determined that the Assessed Penalty is an appropriate amount to settle this action, which Respondent consents to pay as follows:

- a. The Assessed Penalty will be paid in six (6) equal installments, in order to complete payment of the entire Assessed Penalty and interest, which is assessed at the IRS standard underpayment rate. Including the Assessed Penalty and interest, the total amount that will be paid upon completion of all payments will be \$65,722.21. The first payment is due within thirty (30) days after the date the Final Order ratifying this Agreement is filed with the Regional Hearing Clerk ("Filing Date"). Respondent's subsequent payments shall thereafter be due in 30-day intervals from said Filing Date.
- b. Respondent shall make payments in accordance with the following schedule:

Payment Number	Payment shall be made <i>no later than</i>	Principal Amount	Interest Amount	Total Payment Amount
1	Thirty (30) days after the Filing Date.	\$10,833.34	\$0.00	\$10,833.34
2	Sixty (60) days after the Filing Date.	\$10,833.34	\$361.11	\$11,194.45
3	Ninety (90) days after the Filing Date.	\$10,833.33	\$144.44	\$10,977.77
4	One hundred twenty (120) days after the Filing Date.	\$10,833.33	\$108.33	\$10,941.66
5	One hundred fifty (150) days after the Filing Date.	\$10,833.33	\$72.22	\$10,905.55
6	One hundred eighty (180) days after the Filing Date.	\$10,833.33	\$36.11	\$10,869.44

- c. Notwithstanding Respondent's agreement to pay the Assessed Penalty in accordance with the installment schedule set forth above, Respondent may pay the entire Assessed Penalty of \$65,000 within thirty (30) days of the Filing Date and, thereby, avoid the payment of interest pursuant to 40 C.F.R. § 13.11(a). In addition, Respondent may, at any time after commencement of payments under the installment schedule, elect to pay the entire principal balance remaining, together with any interest and other charges accrued up to the date of such full payment.

36. 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>.

37. When making a payment, Respondent shall:

a. Identify every payment with Respondent's name and the docket number of this Agreement, CAA-09-2025-0022,

b. Concurrently with any payment or within 24 hours of any payment,

Respondent shall serve proof of such payment to the following persons:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region IX
Office of Regional Counsel (ORC-1)
R9HearingClerk@epa.gov

Connie Hernandez
U.S. Environmental Protection Agency, Region IX
Enforcement and Compliance Assurance Division (ENF-2-1)
Hernandez.connie@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.

c. If Respondent fails to make payments in accordance with the schedule in Paragraph 35.b, Respondent shall pay to EPA a stipulated penalty of FIVE

HUNDRED DOLLARS (\$500.00) per day for each day that payment is late, in addition to the Assessed Penalty. Stipulated penalties shall accrue until the Assessed Penalty and all accrued stipulated penalties are paid and shall become due and payable upon EPA's written request.

38. Interest Charges and Penalties on Late Payments. Pursuant to 42 U.S.C. § 7413(d)(5), 31 U.S.C. § 3717, 31 C.F.R. § 901.9, and 40 C.F.R. § 13.11, if Respondent fails to timely pay any portion of the Assessed Penalty per this Agreement, the entire unpaid balance of the Assessed Penalty and all accrued interest shall become immediately due and owing, and EPA is authorized to recover 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. Per 42 U.S.C. § 7524(c)(6), interest will be assessed pursuant to 26 U.S.C. § 6621(a)(2), that is the IRS standard underpayment rate, equal to the Federal short-term rate plus 3 percentage points.

b. Handling Charges. The United States' enforcement expenses including, but not limited to, attorneys' fees and costs of handling collection.

c. Late Payment Penalty. A ten percent (10%) quarterly non-payment penalty.

39. 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 CAFO, 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. Request that the Attorney General bring a civil action in the appropriate district court to enforce the Final Order and recover the full remaining balance of the Assessed Penalty, in addition to interest and the amounts described above, pursuant to 42 U.S.C. § 7413(d)(5). In any such action, the validity, amount, and appropriateness of the Assessed Penalty and Final Order shall not be subject to review.

40. 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.

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

F. TAX REPORTING

42. Pursuant to 26 U.S.C. § 6050X and 26 C.F.R. § 1.6050X-1, EPA is required to send to the Internal Revenue Service ("IRS") annually, a completed IRS Form 1098-F ("Fines, Penalties, and Other Amounts") with respect to any court order or settlement agreement (including administrative settlements), that require a payor to pay an aggregate amount that EPA reasonably believes will be equal to, or in excess of, \$50,000 for the payor's violation of any law or the investigation or inquiry into the payor's potential violation of any law, including amounts paid for "restitution or remediation of property" or to come "into compliance with a law." EPA is further required to furnish a written statement, which provides the same information provided to the IRS, to each payor (i.e., a copy of IRS Form 1098-F). Failure to comply with providing IRS Form W-9 or Tax Identification Number ("TIN"), as described below, may subject Respondent to a penalty, per 26 U.S.C. § 6723, 26 U.S.C. § 6724(d)(3), and 26 C.F.R. § 301.6723-1. In order to provide EPA with sufficient information to enable it to fulfill these obligations, EPA herein requires, and Respondent herein agrees, that:

- a. Respondent shall complete an IRS Form W-9 ("Request for Taxpayer Identification Number and Certification"), which is available at

<https://www.irs.gov/pub/irs-pdf/fw9.pdf>;

- b. Respondent shall therein certify that its completed IRS Form W-9 includes Respondent's correct TIN or that Respondent has applied and is waiting for issuance of a TIN;
- c. Respondent shall email its completed Form W-9 to EPA's Cincinnati Finance Center at sherrer.dana@epa.gov within 30 days after the Final Order ratifying this Agreement is filed, and EPA recommends encrypting IRS Form W-9 email correspondence; and
- d. In the event that Respondent has certified in its completed IRS Form W-9 that it has applied for a TIN and that TIN has not been issued to Respondent within 30 days after the Effective Date, then Respondent, using the same email address identified in the preceding sub-paragraph, shall further:
 - i. Notify EPA's Cincinnati Finance Center of this fact, via email, within 30 days after the 30 days after the effective date of this CAFO per Paragraph 47; and
 - ii. Provide EPA's Cincinnati Finance Center with Respondent's TIN, via email, within five (5) days of Respondent's issuance and receipt of the TIN.

G. CERTIFICATION OF COMPLIANCE

43. In executing this CAFO, Respondent certifies that, to its knowledge, it is currently in compliance with the TBR.

H. RETENTION OF RIGHTS

44. In accordance with 40 C.F.R. § 22.18(c), this CAFO only resolves Respondent's liability for federal civil penalties for the violations and facts specifically alleged in Section I.C of the CAFO. Nothing in this CAFO is intended to or shall be construed to resolve (i) any civil liability for violations of any provision of any federal, state, or local law, statute, regulation, rule, ordinance, or permit not specifically alleged in Section I.C of the CAFO; or (ii) any criminal liability. EPA specifically reserves any and all authorities, rights, and remedies available to it (including, but not limited to, injunctive or other equitable relief or criminal sanctions) to address any violation of this CAFO or any violation not specifically alleged in Section I.C of the CAFO.

45. This CAFO does not exempt, relieve, modify, or affect in any way Respondent's duty to comply with all applicable federal, state, and local laws, regulations, rules, ordinances, and permits.

I. ATTORNEY'S FEES AND COSTS

46. Each party shall bear its own attorneys' fees, costs, and disbursements incurred in this Proceeding.

J. EFFECTIVE DATE

47. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CAFO shall be effective on the date that the final order contained in this CAFO, having been approved and issued by either the Regional Judicial Officer or Regional Administrator, is filed.

K. BINDING EFFECT

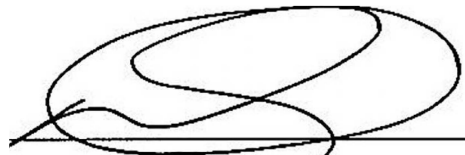
48. The undersigned representative of Complainant and the undersigned representative of Respondent each certifies that he or she is fully authorized to enter into the terms and conditions of this CAFO and to bind the party he or she represents to this CAFO.

49. The provisions of this CAFO shall apply to and be binding upon Respondent and its officers, directors, employees, agents, trustees, servants, authorized representatives, successors, and assigns.

FOR RESPONDENT, WHITE MOUNTAIN TRUCKING LLC:

3/4/2025

DATE



Name: David Arbizu

Title: Managing member

FOR COMPLAINANT, EPA REGION IX:

3/21/2025

DATE

AMY MILLER-
BOWEN

Digitally signed by AMY
MILLER-BOWEN
Date: 2025.03.21
15:51:14 -07'00'

Amy C. Miller-Bowen
Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region IX

II. FINAL ORDER

Complainant and Respondent, White Mountain Trucking LLC, having entered into the foregoing Consent Agreement,

IT IS HEREBY ORDERED that this CAFO (Docket No. CAA-09-2025-0022) be entered, and that Respondent shall pay a civil administrative penalty in the amount of SIXTY-FIVE THOUSAND DOLLARS (\$65,000) plus interest in accordance with the table in Paragraph 35.b and comply with the terms and conditions set forth in the Consent Agreement. This Consent Agreement and Final Order shall become effective upon filing.

Beatrice Wong
Regional Judicial Officer
U.S. Environmental Protection Agency, Region IX

CERTIFICATE OF SERVICE

This is to certify that the fully executed Consent Agreement and Final Order in the matter of *White Mountain Trucking LLC* (Docket No. CAA-09-2025-0022) was filed with the Regional Hearing Clerk and that a true and correct copy of the same was served on the parties, via electronic mail as indicated below:

RESPONDENT:

Eli Enger
Udall Shumway PLC
1138 North Alma School Road, Suite 101
Mesa, AZ 85201
Ete@udallshumway.com

COMPLAINANT:

Catherine Schluter
Assistant Regional Counsel
U.S. EPA, Region IX
75 Hawthorne Street
San Francisco, CA 94105
Schluter.catherine@epa.gov

Ponly Tu
Regional Hearing Clerk
U.S. EPA, Region IX