

Sylvia Quast  
Regional Counsel

Margaret Alkon  
Assistant Regional Counsel  
U.S. Environmental Protection Agency  
Region IX  
75 Hawthorne Street  
San Francisco, CA 94105  
[alkon.margaret@epa.gov](mailto:alkon.margaret@epa.gov)  
(415) 972-3890

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Attorneys for Complainant

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

In the Matter of:

Flowmaster, Inc.

Respondent.

Docket No. CAA-~~09~~-2019-0023

CONSENT AGREEMENT AND  
FINAL ORDER PURSUANT TO  
40 C.F.R. §§ 22.13 AND 22.18

**I. CONSENT AGREEMENT**

**A. PRELIMINARY STATEMENT**

1. This is a civil 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 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 40 C.F.R. Part 22. In accordance with 40 C.F.R. §§ 22.13 and 22.18, entry of this Consent Agreement and Final Order (“CAFO”) simultaneously initiates and concludes this matter.

2. Complainant is the Assistant Director of the Air, Waste & Toxics Branch of the Enforcement Division, United States Environmental Protection Agency, Region IX (the “EPA”), who has been duly delegated the authority to initiate and settle civil administrative penalty proceedings under section 205(c)(1) of the Act, 42 U.S.C. § 7524(c)(1). EPA Delegation 7-19 (January 18, 2017); EPA, Region 9 Redefinition R9-7-19 (October 5, 2017).
3. Respondent is Flowmaster, Inc., a Nevada vehicle parts manufacturer and distributor with an office in Santa Rosa, California.
4. Complainant and Respondent, having agreed that settlement of this action is in the public interest, consent to the entry of this CAFO without adjudication of any issues of law or fact herein, and Respondent agrees to comply with the terms of this CAFO.

#### **B. JURISDICTION**

5. Pursuant to section 205(c)(1) of the Act, 42 U.S.C. § 7524(c)(1), the EPA and the U.S. Department of Justice have jointly determined that this matter is appropriate for an administrative penalty assessment.

#### **C. GOVERNING LAW**

6. This proceeding arises under Part A of Title II of the CAA, CAA §§ 202-219, 42 U.S.C. §§ 7521-7554, and the regulations promulgated thereunder. These laws aim to reduce emissions from mobile sources of air pollution, including hydrocarbons and oxides of nitrogen (“NO<sub>x</sub>”).
7. Section 203(a)(3)(B) of CAA, 42 U.S.C. § 7522(a)(3)(B), prohibits any person from manufacturing, selling, offering to sell, or installing parts or components whose principal effect is to bypass, defeat, or render inoperative a motor vehicle emission control device

or element of design, where the person knows or should know that the part is being offered for sale or installed for such use.

8. Violations of CAA section 203(a)(3)(B) are subject to civil penalties of up to \$3,750 per defeat device for violations that occurred after December 6, 2013 through November 2, 2015, and up to \$4,619 for violations that occur after November 2, 2015, where penalties are assessed on or after January 15, 2018. CAA § 205 of the CAA, 42 U.S.C. § 7524 and 40 C.F.R. Part 19.
9. Definitions:
  - (a) Section 302(e) of the CAA, 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."
  - (b) Section 216(2) of the CAA, 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."
10. The CAA requires 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. CAA §§ 202(a)(1) and (3)(B), 42 U.S.C. §§ 7521(a)(1) and (3)(B).
11. Section 203(a)(1) of the CAA prohibits a vehicle manufacturer from selling a new motor vehicle in the United States unless the vehicle is covered by a certificate of conformity. 42 U.S.C. §7522(a)(1).

12. EPA issues certificates of conformity to vehicle manufacturers under Section 206(a) of the CAA, 42 U.S.C. §7525(a), to certify that a particular group of motor vehicles conforms to applicable EPA requirements governing motor vehicle emissions.
13. Motor vehicle manufacturers employ many devices and elements of design to meet these emission standards. Certain hardware devices serve as emission control systems to manage and treat exhaust from motor vehicles, in order to reduce levels of regulated pollutants from being created or emitted into the ambient air. Such devices include catalytic converters.

#### **D. ALLEGED VIOLATIONS OF LAW**

Complainant alleges:

14. Respondent manufactures and sells aftermarket exhaust parts to various distributors and individual customers located throughout the United States.
15. On April 24, 2017, EPA sent an information request pursuant to section 208(a) of the CAA, 42 U.S.C. § 7542(a), to Respondent regarding products Respondent manufactured and sold.
16. Based on Respondent's June 6, 2017 response to EPA's information request and additional information gathered during EPA's investigation, Respondent manufactured and/or sold various pipe kits, exhaust headers and exhaust kits identified in Attachment 1 of this CAFO.
17. The pipe kits and exhaust headers identified in Attachment 1 of this CAFO enable the removal of OEM exhaust systems containing emissions controls and the exhaust long tube headers replace the OEM exhaust manifold and OEM exhaust system containing emissions controls. These products enable the removal of catalytic converters from the motor vehicles for which they were designed.

18. The pipe kits, exhaust headers and exhaust kits identified in Attachment 1 of this CAFO were designed and marketed for use on various motor vehicles, and intended to bypass, defeat, or render inoperative emission related devices or elements of design that are installed on those motor vehicles to meet the CAA emission standards.
19. Between May 1, 2015 to April 24, 2017, Respondent manufactured and/or sold 446 pipe kits, exhaust headers and exhaust kits to distributors and individual customers located throughout the United States.
20. The manufacture, sale, offering for sale, or installation of a device that bypasses, defeats, or renders inoperative a vehicle's emission control systems is prohibited under section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B). Respondent has committed approximately 446 violations of section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B), by selling or offering for sale the pipe kits, exhaust headers and exhaust kits.

**E. TERMS OF CONSENT AGREEMENT**

21. 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 and over Respondent;
  - b. neither admits nor denies the specific factual allegations contained in Section I.D of this CAFO;
  - c. consents to the assessment of a civil penalty under this Section, as stated below;
  - d. consents to the conditions specified in this CAFO;
  - e. waives any right to contest the allegations set forth in Section I.D of this CAFO;  
and
  - f. waives its rights to appeal the proposed Order contained in this CAFO.

**Civil Penalty**

22. Respondent agrees to:

- a. pay the civil penalty of **TWO HUNDRED SEVENTY THOUSAND DOLLARS (\$270,000)** according to the terms of this CAFO; and
- b. Respondent shall pay the civil penalty within thirty (30) days of the effective date of this CAFO by one of the methods listed below:
  - i. Respondent may pay online through the Department of the Treasury website at [www.pay.gov](http://www.pay.gov). In the Search Public Form field, enter SFO 1.1, click EPA Miscellaneous Payments - Cincinnati Finance Center, and complete the SFO Form Number 1.1.
  - ii. Respondent may also pay the civil penalty using any method, or combination of methods, provided on the following website:

<http://www2.epa.gov/financial/additional-instructions-making-payments-epa>

If clarification regarding a particular method of payment remittance is needed, contact the EPA's Cincinnati Finance Center at (513) 487-2091.

- c. Respondent shall identify each and every payment with the name and docket number of this case; and
- d. Within 24 hours of payment, and as required by 40 C.F.R. § 22.31(c), Respondent shall provide EPA with proof of payment ("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 name and docket number of this case) to the following addresses:

Regional Hearing Clerk  
Office of Regional Counsel (ORC-1)  
U.S. Environmental Protection Agency, Region IX  
75 Hawthorne Street  
San Francisco, CA 94105

Margaret Alkon  
Office of Regional Counsel (ORC-2)  
U.S. Environmental Protection Agency, Region IX  
75 Hawthorne Street  
San Francisco, CA 94105  
[or via email to: [alkon.margaret@epa.gov](mailto:alkon.margaret@epa.gov)]

Rose Galer  
Mail Code (ENF-2-1)  
Enforcement Division  
U.S. Environmental Protection Agency, Region IX  
75 Hawthorne Street  
San Francisco, CA 94105  
[or via email to: [galer.rose@epa.gov](mailto:galer.rose@epa.gov)]

23. If Respondent does not pay timely the civil penalty set forth in Paragraph **22**, EPA may request the Attorney General of the United States to bring a civil action in an appropriate district court to collect any unpaid portion of the penalty with interest, nonpayment penalties and the United States enforcement expenses for the collection action under Section 205(c)(6) of the CAA, 42 U.S.C. § 7524(c)(6). The validity, amount and appropriateness of the penalty are not reviewable in a collection action.
24. Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury pursuant to 26 U.S.C. § 6621(a)(2). Respondent must pay the United States' enforcement expenses, including but not limited to attorney's fees and costs incurred by the United States for collection proceedings. In addition, Respondent must pay a quarterly nonpayment penalty each quarter during which the

assessed penalty is overdue. This nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter. 42 U.S.C. § 7524(c)(6).

25. Penalties paid pursuant to this CAFO shall not be deductible for purposes of federal taxes.
26. Respondent acknowledges that its tax identification number may be used for collecting or reporting any delinquent monetary obligation arising from this Agreement (see 31 U.S.C. § 7701).

#### **Respondent's Certification of Compliance**

26. Respondent certifies that it is currently in compliance with CAA § 203(a)(3).
  - a. Respondent has represented to the EPA that it is no longer manufacturing, selling, or offering for sale the parts listed in Attachment 1.
  - b. Respondent certifies that the information it has supplied concerning this matter was at the time of submission true, accurate, and complete and acknowledges that there are significant penalties for knowingly submitting false, fictitious, or fraudulent information, including the possibility of fines and imprisonment (see 18 U.S.C. § 1001).

#### **General Provisions**

27. 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.
28. By signing this CAFO, 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.



29. In accordance with 40 C.F.R. § 22.18(c), completion of the terms of this CAFO resolves only Respondent's liability for federal civil penalties for the violations and facts specifically alleged above.
30. 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 this 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 this CAFO. .
31. 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 29 above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.
32. Each party shall bear its own attorney's fees, costs, and disbursements incurred in this proceeding, except as specified in Paragraphs 23 and 24, above.
33. This CAFO constitutes the entire agreement and understanding of the parties and supersedes any prior agreements or understandings, whether written or oral, among the parties with respect to the subject matter hereof.
34. This CAFO constitutes an "enforcement response" as that term is used in EPA's Clean Air Act Mobile Source Civil Penalty Policy to determine Respondent's "full compliance history" under Section 205(b) of the CAA, 42 U.S.C. § 7524(b).

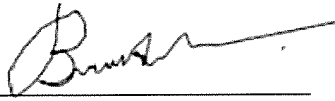
35. By signing this CAFO, the undersigned representative of Complainant and the undersigned representative of Respondent each certify that he or she is fully authorized to execute and enter into the terms and conditions of this CAFO and has the legal capacity to bind the party he or she represents to this CAFO.

**Effective Date**

36. Respondent and Complainant agree to issuance of the attached Final Order. Upon filing, EPA will transmit a copy of the filed CAFO to the Respondent. This CAFO shall become effective after execution of the Final Order by the Regional Judicial Officer on the date of filing with the Regional Hearing Clerk.

The foregoing Consent Agreement In the Matter of Flowmaster, Inc., Docket No. CAA-09-2019  
0023, is hereby stipulated, agreed, and approved for Entry.

FOR RESPONDENT:



12/13/18

Signature

Date

Printed Name: Brian Appelgate

Title: President

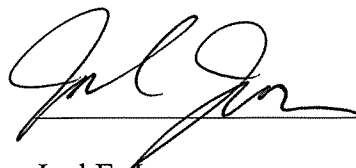
Address: 100 Stony Point Rd Suite 125

Santa Rosa, CA 95401

FOR COMPLAINANT:

2-1-19

DATE

A handwritten signature in black ink, appearing to read "Joel Jones", written over a horizontal line.

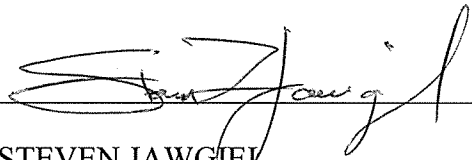
Joel E. Jones  
Assistant Director  
Air, Waste & Toxics Branch  
Enforcement Division  
United States Environmental  
Protection Agency, Region IX  
75 Hawthorne Street  
San Francisco, CA 94105

II. FINAL ORDER

EPA Region IX and Flowmaster, Inc., having entered into the foregoing Consent Agreement,

IT IS HEREBY ORDERED that this CAFO (Docket No. CAA-09-2019-02<sup>23 stj</sup>) be entered, and Respondent shall pay a civil administrative penalty in the amount of **TWO HUNDRED SEVENTY THOUSAND DOLLARS (\$270,000)** and otherwise comply with the terms set forth in the CAFO.

02/25/19  
DATE

  
STEVEN JAWGIEL  
Regional Judicial Officer  
United States Environmental  
Protection Agency, Region IX

## ATTACHMENT 1

<b>Flowmaster, Inc. Sales of 446 Exhaust Systems for Highway Motor Vehicles from May 1, 2015 to April 24, 2017</b>					
<b>Defeat Device Product</b>	<b>Flowmaster's Product Number</b>	<b>Manufactured by</b>	<b>Motor Vehicles</b>	<b>Effect on Motor Vehicle and Engine Emission Control Systems and Elements of Design</b>	<b>Approximate Quantity of Defeat Device Products Sold</b>
Pipe Kits	81066	Flowmaster	2005-2010 Ford Mustang GT models	Enables the removal of the OEM catalytic converters	21
Pipe Kits	81067	Flowmaster	2010-2013 Chevrolet Camaro SS Models	Enables the removal of the OEM catalytic converters	61
Pipe Kits	81069	Flowmaster	2006-2013 Dodge Challenger, Charger and Magnum models	Enables the removal of the OEM catalytic converters	19
Exhaust Headers	814117	Pertronix	2010-14 Chevrolet Camaro	Enables the removal of the OEM catalytic converters	140
Exhaust Headers	814212	Pertronix	2005 to 2010 Ford Mustang GT models	Enables the removal of the OEM catalytic converters	20
Exhaust Headers	814310	Pertronix	2006 to 2014 Dodge Charger, Challenger and Magnum, also Chrysler 300C models	Enables the removal of the OEM catalytic converters	161
Exhaust Kit	817571	Flowmaster	1975 to 1981 Chevrolet Camaro, and Pontiac Firebird	Enables the removal of the OEM catalytic converters	17
Exhaust Kit	817457	Flowmaster	1978 to 1988 Chevrolet Monte Carlo, Pontiac Grand Prix, and Oldsmobile Cutlass	Enables the removal of the OEM catalytic converters	7
<b>Total</b>					<b>446</b>

CERTIFICATE OF SERVICE

I certify that the original of the fully executed Consent Agreement and Final Order in the matter of Flowmaster, Inc. (**Docket No. CAA-~~R9~~-2019-0003**) was filed with the Regional Hearing Clerk, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, and that a true and correct copy of the same was sent to the following parties:

A copy was mailed via CERTIFIED MAIL to:

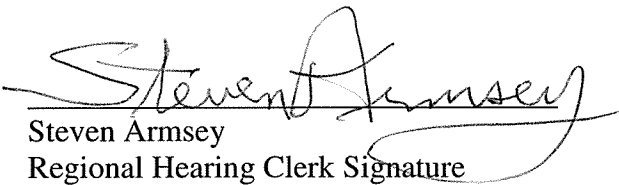
Mr. Brian Applegate, CEO  
Flowmaster, Inc.  
100 Stoney Point Road, #125  
Santa Rosa, CA 95401

By email to:

Joel Bowers, Esq.  
Barnes & Thornburg, LLP  
Joel.Bowers@btlaw.com

An additional copy was hand-delivered to the following U.S. EPA case attorney:

Margaret Alkon  
Regional Counsel (ORC-2)  
U.S. EPA, Region IX  
75 Hawthorne Street  
San Francisco, California 94105

  
Steven Armsey  
Regional Hearing Clerk Signature

2019-02-25  
Date