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

_____)	Docket No. CAA-09-2017- <u>0005</u>
In the Matter of:)	
)	
United States General Services)	CONSENT AGREEMENT AND
Administration)	FINAL ORDER
Respondent)	
_____)	

I. CONSENT AGREEMENT

A. PRELIMINARY STATEMENT

1. This is a civil administrative penalty assessment proceeding brought under section 113(d) of the Clean Air Act (“Act”), 42 U.S.C. § 7413(d), 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(b) and

22.18(b), entry of this Consent Agreement and Final Order (CAFO) simultaneously initiates and concludes this matter.

2. Complainant is the Director of the Enforcement Division, United States Environmental Protection Agency, Region IX (EPA), 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 the United States General Services Administration (GSA or “Respondent”), a federal agency that owns and maintains diesel-fueled vehicles driven in 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 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 is appropriate for an administrative penalty assessment.
6. In satisfaction of the notice requirements of section 113(a) of the Act, 42 U.S.C. § 7413(a), on September 21, 2016, EPA issued to Respondent a notice of violation (NOV) and provided a copy of the NOV to the California Air Resources Board, providing notice to both that EPA found that Respondent committed the alleged violations described in Section D of this CAFO and providing Respondent an opportunity to confer with EPA.

C. GOVERNING LAW

Clean Air Act

7. 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.
8. There are multiple AQCRs designated as nonattainment for fine particulate matter (PM_{2.5}) and ozone in California, including the South Coast Air Basin and all of the San Joaquin Valley. See 40 C.F.R. § 81.305.
9. Section 110(a) of the Act requires that all states adopt state implementation plans (SIPs) that provide for the implementation, maintenance, and enforcement of primary and secondary air quality standards. 42 U.S.C. § 7410(a).
10. 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 California Code of Regulations: Truck and Bus Regulation

11. On December 14, 2011, California Air Resources Board (ARB) amended its "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 ("Truck and Bus Regulation").

12. The Truck and Bus Regulation was incorporated into the federal SIP on May 4, 2012. *See* 77 Fed. Reg. 20,308 (April 4, 2012).
13. As stated in section 2025(a) of the Truck and Bus Regulation, the purpose of the regulation is “to reduce emissions of diesel particulate matter (PM), oxides of nitrogen (NOx) and other criteria pollutants from in-use diesel-fueled vehicles.”
14. Under section 2025(d)(3) of the Truck and Bus Regulation, “2010 Model Year Emissions Equivalent Engine” means “emissions from:
 - (A) An engine certified to the 2004 through 2006 model year heavy-duty diesel engine emissions standard that is equipped with the highest level VDECS [Verified Diesel Emission Control Strategy] and reduces NOx emissions by at least 85 percent; or
 - (B) An engine that was built to the 2004 engine emission standard and was not used in any manufacturer’s averaging, banking, or trading program that is equipped with the highest level VDECS and reduces NOx exhaust emissions by at least 85 percent; or
 - (C) An engine certified to the 2007 model year heavy-duty diesel engine emissions standard that meets PM BACT and reduces NOx exhaust emissions by more than 70 percent; or
 - (D) An engine certified to the 2010 model year or newer heavy-duty diesel engine emissions standard that meets PM BACT; or
 - (E) A heavy-duty engine certified to 0.2 g/bhp-hr [grams per brake horsepower-hour] or less NOx emissions level and 0.01 g/bhp-hr or less PM emissions level; or
 - (F) An off-road engine certified to the Tier 4 Final engine emissions standard.”

15. Under section 2025(d)(17) of the Truck and Bus Regulation, “Diesel Particulate Filter” (DPF) means “an emission control technology that reduces diesel particulate matter emissions by directing the exhaust through a filter that physically captures particulates but permits gases to flow through. . . .”
16. Under section 2025(d)(18) of the Truck and Bus Regulation, “Diesel Particulate Matter” (PM) means “the particles found in the exhaust of diesel-fueled compression ignition engines. . . .”
17. Under section 2025(d)(28) of the Truck and Bus Regulation, “Fleet” means “one or more vehicles, owned by a person, business, or government agency, traveling in California and subject to this regulation. . . .”
18. Under section 2025(d)(29) of the Truck and Bus Regulation, “Fleet Owner” means, for vehicles that are owned by the federal government and not registered in any state or local jurisdiction, “the department, agency, branch, or other entity of the United States . . . to which the vehicles in the fleet are assigned or which have responsibility for maintenance of the vehicles.”
19. Under section 2025(d)(47) of the Truck and Bus Regulation, “Person” means “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.”
20. Under section 2025(d)(48) of the Truck and Bus Regulation, “PM BACT” (Best Available Control Technology) means “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 0.01 g/bhp-hr certification standard.”

21. Under section 2025(d)(60) of the Truck and Bus Regulation, “Verified Diesel Emission Control Strategy” (VDECS) means “an emissions control strategy, designed primarily for the reduction of diesel PM emissions, which has been verified pursuant to the Verification Procedures. VDECS can be verified to achieve Level 1 diesel PM reductions (25 percent), Level 2 diesel PM reductions (50 percent), or Level 3 diesel PM reductions (85 percent). VDECS may also be verified to achieve NOx reductions. . . .”
22. Under section 2025(d)(35) of the Truck and Bus Regulation, “Highest Level VDECS” means “the highest level VDECS verified by ARB under its Verification Procedure, Warranty and In-Use Compliance Requirements for In-Use Strategies to Control Emissions from Diesel Engines (Verification Procedure), title 13, CCR, sections 2700-2710, for a specific engine as of 10 months prior to the compliance date, which the diesel emission control strategy manufacturer and authorized diesel emission-control strategy dealer agree can be used on a specific engine and vehicle combination without jeopardizing the original engine warranty in effect at the time of application.
- (A) The highest level VDECS is determined solely on verified diesel PM reductions. Plus designations do not affect the diesel PM level assigned to a VDECS; that is, a Level 3 Plus is the same diesel PM level as Level 3.
- (B) A Level 2 VDECS shall not be considered the highest level VDECS as long as a Level 3 VDECS can be retrofitted on a vehicle in the fleet.
- (C) Level 1 devices are never considered highest level VDECS for the purpose of this regulation.”
23. The Truck and Bus Regulation applies to diesel-fueled trucks and buses that are privately or federally owned, and to publicly and privately owned school buses, that have a

manufacturer's gross vehicle weight rating (GVWR) greater than 14,000 pounds. The Truck and Bus Regulation requires, in part, Fleet Owners to upgrade their vehicles to meet specific performance standards for NOx and PM.

24. Section 2025(f) of the Truck and Bus Regulation requires Fleet Owners to comply with an engine model year compliance schedule to upgrade to a 2010 Model Year Emissions Equivalent Engine for all vehicles in the fleet with a GVWR between 14,001 and 26,000 pounds, which includes the following requirement:

a. By January 1, 2015, all subject vehicles with an engine model year of 1995 or older must be equipped with a 2010 Model Year Emissions Equivalent Engine.

25. Section 2025(g) of the Truck and Bus Regulation requires Fleet Owners to comply with an engine model year compliance schedule to meet PM BACT and upgrade to a 2010 Model Year Emissions Equivalent Engine for all vehicles in the fleet with a GVWR greater than 26,000 pounds, which includes the following requirements:

a. By January 1, 2012, all subject vehicles with an engine model year of 1996 through 1999 must be equipped with a DPF.

b. By January 1, 2013, all subject vehicles with an engine model year of 2000 through 2004 must be equipped with a DPF.

c. By January 1, 2014, all subject vehicles with an engine model year of 2005 or 2006 must be equipped with a DPF.

d. By January 1, 2015, all subject vehicles with an engine model year of 1993 or older must be equipped with a 2010 Model Year Emissions Equivalent Engine.

26. Section 2025(x)(1) of the Truck and Bus Regulation provides that “[t]he vehicle owner shall comply with all applicable requirements and compliance schedules set forth in this regulation.”

D. ALLEGED VIOLATIONS OF LAW

27. Respondent is a “Person” as that term is defined under section 302(e) of the Act, 42 U.S.C. § 7602(e), and section 2025(d)(47) of the Truck and Bus Regulation.
28. Respondent has a “Fleet” of vehicles as that term is defined under section 2025(d)(28) of the Truck and Bus Regulation, and is a “Fleet Owner” as that term is defined under section 2025(d)(29) of the Truck and Bus Regulation.
29. Respondent owned 2 diesel-fueled vehicles with an engine model year of 1995 or older and a GVWR between 14,001 and 26,000 pounds that recorded mileage in California after January 1, 2015.
30. Respondent owned 19 diesel-fueled vehicles with an engine model year of 1996-1999 and a GVWR greater than 26,000 pounds that were not equipped with DPFs and that recorded mileage in California after January 1, 2012.
31. Respondent owned 110 diesel-fueled vehicles with an engine model year of 2000-2004 and a GVWR greater than 26,000 pounds that were not equipped with DPFs and that recorded mileage in California after January 1, 2013.
32. Respondent owned 76 diesel-fueled vehicles with an engine model year of 2005 or 2006 and a GVWR greater than 26,000 pounds that were not equipped with DPFs and that recorded mileage in California after January 1, 2014.

33. Respondent owned 1 diesel-fueled vehicle with an engine model year of 1993 or older and a GVWR greater than 26,000 pounds that recorded mileage in California after January 1, 2015.
34. Respondent violated section 2025(f) of the Truck and Bus Regulation by failing to timely install a 2010 Model Year Emissions Equivalent Engine on the diesel-fueled vehicles identified in Paragraph 29.
35. Respondent violated section 2025(g) of the Truck and Bus Regulation by failing to timely install DPFs on the diesel-fueled vehicles identified in Paragraphs 30 through 32.
36. Respondent violated section 2025(g) of the Truck and Bus Regulation by failing to timely install a 2010 Model Year Emissions Equivalent Engine on the diesel-fueled vehicles identified in Paragraph 33.

E. TERMS OF CONSENT AGREEMENT

37. 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. waives any right to contest the allegations set forth in Section I.D of this CAFO; and
 - e. waives its rights to appeal the proposed Order contained in this CAFO.
38. Respondent expressly waives any right to confer with the EPA Administrator under 40 C.F.R. § 22.31(e) with regard to this case. Respondent expressly waives the notice

requirement and its opportunity to request a hearing on the Order pursuant to section 113(d)(2)(A) of the Act, 42 U.S.C. § 7413(d)(2)(A).

Civil Penalty

39. Respondent agrees to:

- a. pay the civil penalty of FOUR-HUNDRED EIGHTY-FIVE THOUSAND (\$485,000) (“EPA Penalty”) within 30 calendar days of the Effective Date of this CAFO;
- b. pay the EPA Penalty using any method, or combination of methods, provided on the website <http://www2.epa.gov/financial/additional-instructions-making-payments-epa>, and identifying each and every payment with “Docket No. CAA-09-2017-⁰⁰⁰⁵_____.” Payment may also be made using the Intra-Governmental Payment and Collection (IPAC) application, Agency Location Code 68-01-0727. Please include the Docket Number of this action (Docket No. CAA-09-2017-⁰⁰⁰⁵_____) in the description field of the IPAC. The Customer Service contact is Molly Williams at 513-487-2076;

and

- c. Within 24 hours of payment of the EPA Penalty, send proof of payment to Elfego Felix at:

Mail Code (ENF-2-1)
Enforcement Division
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105

and at felix.elfego@epa.gov (“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 the EPA requirements, in the amount due, and identified with “Docket No. CAA-09-2017-⁰⁰⁰⁵_____”).

40. Pursuant to section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5), any unpaid portion of the EPA Penalty shall bear interest at the rate established pursuant to 26 U.S.C. § 6621(a)(2) from the effective date of this CAFO until the date of payment, provided, however, that no interest shall be payable on any portion of the assessed penalty that is paid within 30 days of the effective date of the CAFO. In any action taken to compel payment, the validity, amount, and appropriateness of the penalty shall not be subject to review.
41. Respondent shall seek all existing funds to meet the requirements of this CAFO. Failure to obtain adequate funds or appropriations from Congress does not release Respondent from its obligations to comply with the CAFO. Nothing in this CAFO shall be interpreted to require obligations or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341.
42. If Respondent fails to timely pay any portion of the EPA Penalty, the entire unpaid balance of the EPA Penalty shall become immediately due and owing.
43. Respondent’s Treasury Account Symbol is 47X4534.001 (or 47x4534.1). Inquiries concerning this payment can be made to Thane Douglas. Thane Douglas may be contacted at Thane.Douglas@gsa.gov or (816) 823-2466.
44. The provisions of this CAFO shall apply to and be binding upon Respondent and its officers, agents, servants, employees, contractors, successors, and assigns.

45. 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.
46. By signing this CAFO, the undersigned representative of Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this CAFO and has the legal capacity to bind Respondent and its officers, agents, servants, employees, contractors, successors, and assigns to this CAFO.
47. Each party shall bear its own attorney's fees, costs, and disbursements incurred in this proceeding.

F. EFFECT OF CONSENT AGREEMENT AND ATTACHED FINAL ORDER

48. 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 alleged violations and facts specifically described above and the violations alleged in EPA's September 21, 2016 NOV, through the effective date of this CAFO.
49. 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.
50. 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.

51. Nothing herein shall be construed to limit the power of EPA to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law, or undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment.
52. EPA 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, and 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.
53. If EPA revokes this CAFO under Paragraph 52, any subsequent administrative enforcement action taken by EPA shall initiate a new “proceeding” as defined at 40 C.F.R. § 22.3. Respondent’s waiver of the right to contest allegations in this proceeding under Paragraph 37(d) shall not apply to any new proceeding.

G. EFFECTIVE DATE

54. 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 the United States General Services Administration, Docket No. CAA-09-2017-⁰⁰⁰⁵, is hereby stipulated, agreed, and approved for entry.

FOR RESPONDENT:

Alan B. Thomas, Jr.
Signature

July 6, 2017
Date

Printed Name: Alan B. Thomas, Jr.

Title: Commissioner, Federal Acquisition Service

Address: 1800 F St, NW Washington, DC 20405

The foregoing Consent Agreement in the Matter of the United States General Services Administration, Docket No. CAA-09-2017-⁰⁰⁰⁵_____, is hereby stipulated, agreed, and approved for entry.

FOR COMPLAINANT:

July 20, 2017

DATE

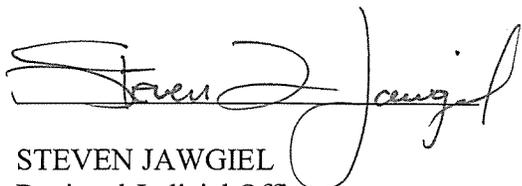
Kathleen H. Johnson

Kathleen H. Johnson
Director
Enforcement Division
United States Environmental
Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105

II. FINAL ORDER

1. The Administrator has delegated the authority to issue this Final Order to the Regional Administrator of EPA Region 9, who has re delegated this authority to the Regional Judicial Officer in EPA Region 9.
2. The terms of the foregoing Consent Agreement are ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of settlement.
3. The Consent Agreement and this Final Order constitute a settlement by EPA of all claims for civil penalties under the Act for the violations alleged in Part D of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(a), nothing in this Final Order shall 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. This Final Order does not waive, extinguish, or otherwise affect Respondent's obligations to comply with all applicable provisions of the Act and regulations promulgated or permits issued thereunder.
4. Respondent shall pay a civil administrative penalty in the amount of FOUR-HUNDRED EIGHTY-FIVE THOUSAND (\$485,000).
5. This Final Order is effective upon filing with the Regional Hearing Clerk.

SO ORDERED this 21 day of July, 2017.



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

CERTIFICATE OF SERVICE

I certify that the original of the fully executed Consent Agreement and Final Order in the matter of the United States General Services Administration (**Docket No. CAA-09-2017-0005**) 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:

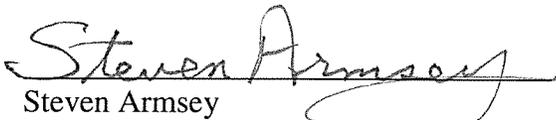
Chris Bross
Director
U.S. General Services Administration
GSA Fleet Region 9
50 United Nations Plaza
San Francisco, California 94102-4912

By U.S. Postal Service to:

Keaton Norquist
Assistant Regional Counsel
U.S. General Services Administration
Office of Regional Counsel, LD9, Rm 4130
50 United Nations Plaza, Mailbox 9
San Francisco, California 94102-4912

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

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


Steven Armsey
Regional Hearing Clerk Signature

7-26-2017
Date