



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

OCT - 4 2017

REPLY TO THE ATTENTION OF:

VIA E-MAIL
RETURN RECEIPT REQUESTED

Mark Freerksen, Operations Manager
Freerksen Trucking, Inc.
9 3rd Avenue Southwest
Dodge Center, Minnesota, 55927
Email: mfreerksen@freerksentrucking.com

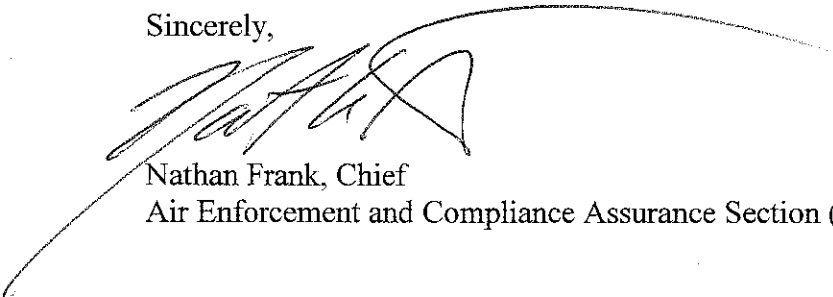
Dear Mr. Freerksen:

Enclosed is a file-stamped Consent Agreement and Final Order (CAFO) which resolves EPA's enforcement action against Freerksen Trucking, Inc., docket no. CAA-05-2018-0001.
As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on October 4, 2017.

Pursuant to the CAFO, Freerksen Trucking, Inc. must pay the first installment of the civil penalty within 30 days of the filing date and pay the remaining civil penalty within 180 days of the filing date. Your check must display the case name and case docket number.

Please direct any questions regarding this case to Andre Daugavietis, Attorney, 312-886-6663.

Sincerely,



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

Enclosure

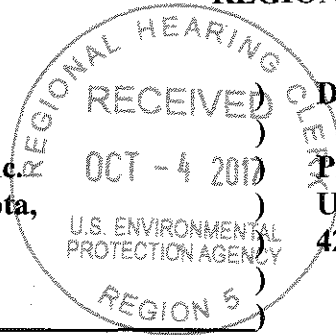
cc: Ann Coyle, Regional Judicial Officer/C-14J
Regional Hearing Clerk/E-19J
Andre Daugavietis/C-14J
Sarah Kilgriff, MPCA/sarah.kilgriff@state.mn.us

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:

Freerksen Trucking, Inc.
Dodge Center, Minnesota,

Respondent.



Docket No. CAA-05-2018-0001

Proceeding to Assess a Civil Penalty
Under Section 205(c)(1) of the Clean Air Act,
42 U.S.C. § 7524(c)(1)

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 Air and Radiation Division, U.S. Environmental Protection Agency (EPA), Region 5.

3. Respondent is Freerksen Trucking Inc. (Respondent or Freerksen), a corporation doing business in Minnesota.

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). 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 this CAFO.

Statutory and Regulatory Background

9. 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).

10. 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.

11. EPA promulgated emissions standards, under Section 202 of the CAA, 42 U.S.C. § 7521, for PM, NO_x, and other pollutants applicable to motor vehicles and motor vehicle engines, including Heavy Duty Diesel (HDD) trucks. See generally 40 C.F.R. Part 86.

12. EPA promulgated regulations for motor vehicles manufactured after 2007 that require HDD trucks to have onboard diagnostic systems to detect various emission control device parameters and vehicle operations. See Section 202(m) of the CAA and 42 U.S.C. § 7521(m).

13. In order to meet the emission standards in 40 C.F.R. Part 86, HDD trucks must utilize Diesel Particulate Filters (DPFs), Exhaust Gas Recirculation (EGR), and/or Selective Catalytic Reduction Systems (SCRs).

14. Section 203(a)(3) of the CAA 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 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; 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 this subchapter, 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.”

15. EPA may assess a civil penalty of up to \$3,750 for each applicable CAA violation that occurred between December 6, 2013, and November 2, 2015, and up to \$4,527 for each applicable CAA violation that occurred after November 2, 2015 and assessed on or after January 15, 2017 in accordance with Section 205(a) of the CAA, 42 U.S.C. § 7524(a), and 40 C.F.R. Part 19.

Factual Allegations and Alleged Violations

16. Respondent is a corporation organized under the laws of the State of Minnesota, with a place of business located at 9 3rd Avenue Southwest, Dodge Center, Minnesota.

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

18. On November 17, 2016, EPA received a complaint that Respondent had performed emission control removal and modification to its trucking fleet.

19. On December 20, 2016, EPA sent a written Request for Information to Respondent pursuant to Section 208 of the CAA, that was received by Respondent on December 30, 2016.

20. In response to the Request for Information, Respondent provided invoices and other information indicating that between August 5, 2015, and December 30, 2016, Respondent modified emission controls, including DPFs, EGRs, and/or the SCRs on 22 HDD trucks, and Respondent installed defeat devices on each vehicle to modify the Engine Control Module. In the response, Respondent also included additional invoices demonstrating that Respondent was beginning to make repairs and reinstallations of the modified vehicles. Respondent also included invoices and other documentation demonstrating breakdowns and other issues associated with the Engine Control Module that trucks within Respondent's fleet had experienced in the years preceding Respondent's installation of the defeat devices.

21. On April 11, 2017, EPA issued a Notice of Violation to Respondent alleging violations of CAA § 203(a)(3)(A). The Notice of Violation is hereby incorporated into this CAFO. A copy of the Notice of Violation is attached as Appendix A.

22. On May 4, 2017, Respondent met with EPA at the Region 5 Headquarters in Chicago, Illinois to discuss the Notice of Violation.

23. As of December 24, 2016, Respondent is no longer installing any defeat devices on any vehicle and is no longer removing, disabling, or bypassing any emission control system or element of design on any vehicle.

24. On May 8, 2017, Respondent reported to EPA that emission controls have been reinstalled on 21 affected trucks and all defeat devices have been correspondingly removed. Respondent reported that the one remaining vehicle had been sold prior to EPA's enforcement action and therefore is unable to reinstall the controls.

25. On June 14, 2017, Respondent provided additional information to EPA regarding repairs it had been forced to make and costs it had incurred throughout its truck fleet over several years as a result of breakdowns and other issues associated with the Engine Control Modules on its trucks. This information included invoices related to repairs Freerksen had to make to trucks within its fleet after it had reinstalled the appropriate emission controls as well as trucks for which it had never installed defeat devices.

26. As set forth in Paragraph 14 in the Notice of Violation, EPA alleges in this matter that Respondent violated Section 203(a)(3)(A) of the CAA by removing and rendering inoperative the SCRs, DPFs and EGRs on 22 of its HDD trucks.

Civil Penalty

27. Based on analysis of the factors specified in Section 205(c) of the CAA, 42 U.S.C. § 7524(c), consideration of the EPA's Clean Air Act Mobile Source Civil Penalty Policy, dated January 2009, the facts of this case, Respondent's cooperation and prompt return to compliance, Complainant has determined that an appropriate civil penalty to settle this action is \$50,000. Respondent agrees to pay this civil penalty.

28. Within 30 calendar days after the effective date of this CAFO, Respondent must pay \$12,500 of the civil penalty by sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

Respondent shall pay the remaining \$37,500 of the civil penalty within 180 days of the effective date of this CAFO using the same method.

29. 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 makes a penalty payment:

Attn: Compliance Tracker (AE-18J)
Air Enforcement and Compliance Assurance Branch
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

Andre Daugavietis (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

Regional Hearing Clerk (E-19J)
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

30. This civil penalty is not deductible for federal tax purposes. See 28 U.S.C. § 162(f).

31. If Respondent does not pay timely the civil penalty as set forth in Paragraph 28, 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 205(c)(6) of the CAA, 42 U.S.C. § 7524(c)(5). The validity, amount and appropriateness of the penalty are not reviewable in a collection action.

32. 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).

General Provisions

33. Consistent with the Standing Order Authorizing E-Mail Service of Orders and Other Documents Issued by the Regional Administrator or Regional Judicial Officer under the Consolidated Rules, dated March 27, 2015, the parties consent to service of this CAFO by e-mail at the following e-mail addresses: daugavietis.andre@epa.gov (for Complainant), and mfreerksen@freerksentrucking.com (for Respondent). The parties waive their right to service by the methods specified in 40 C.F.R. § 22.6.

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

35. The effect of the settlement described in Paragraph 34, above, is conditioned upon the accuracy of Respondent's representations to EPA, as memorialized in Paragraphs 23 and 24 and information by provided Respondent.

36. 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.

37. 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 34, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

38. Respondent certifies that it is currently in compliance and will continue to comply with CAA § 203(a)(3)(A) and CAA § 203(a)(3)(B).

39. Respondent shall follow the Compliance Plan set forth in Appendix B as a guide to maintain compliance. In case of any conflict between the terms of the Compliance Plan and the CAFO, the terms of the CAFO shall govern.

40. This CAFO shall become effective after execution of the Final Order by the Regional Judicial Officer and filing with the Regional Hearing Clerk.

41. 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).

42. The terms of this CAFO bind Respondent, its successors and assigns.


43. 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.

44. Each party agrees to bear its own costs and attorney’s fees in this action.

45. This CAFO constitutes the entire agreement between the parties.

Freerksen Trucking, Inc., Respondent

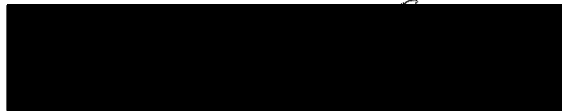
10-2-17
Date


Mark Freerksen, Operations Manager
Freerksen Trucking, Inc.

United States Environmental Protection Agency, Complainant

Date

9/29/17



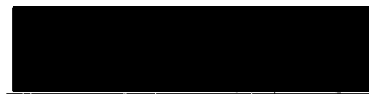
Edward Nam
Director
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5

Consent Agreement and Final Order
In the Matter of: Freerksen Trucking, Inc.
Docket No. CAA-05-2018-0001

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

October 3, 2017
Date



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

CAA-05-2018-0001

APPENDIX A



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

APR 11 2017

...REPLY TO THE ATTENTION OF:

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mark Freerksen
Operations Manager
Freerksen Trucking
9 3rd Avenue Southwest
Dodge Center, Minnesota 55927

Re: Notice of Violation for Clean Air Act Violations

Dear Mr. Freerksen:

The U.S. Environmental Protection Agency is issuing the enclosed Notice of Violation (NOV) to Freerksen Trucking Incorporated (Freerksen or you) for violating the Clean Air Act (CAA), 42 U.S.C. §§ 7401-7671q, and its implementing regulations. As summarized in the attached NOV, EPA determined that Freerksen removed and/or rendered inoperative devices or elements of design installed on or in motor vehicles or motor vehicle engines and has installed parts or components for motor vehicle engines that bypass, defeat, or render inoperative elements of design of those engines that were installed by the original equipment manufacturer in order to comply with CAA emission standards. Therefore, Freerksen violated sections 203(a)(3)(A) of the CAA, 42 U.S.C. §§ 7522(a)(3)(A).

We are offering you an opportunity to confer with us about the violations alleged in the NOV. The conference will give you an opportunity to present information on the specific findings of violation, any efforts you have taken to comply and the steps you will take to prevent future violations. In addition, in order to make the conference more productive, we encourage you to submit to us any information responsive to the NOV prior to the conference date.

Please plan for your facility's technical and management personnel to attend the conference to discuss compliance measures and commitments. You may have an attorney represent you at this conference.

The EPA contact in this matter is Ethan Chatfield. You may call him at (312) 886-5112 to request a conference. You should make the request within 10 calendar days following receipt of this letter. We should hold any conference within 30 calendar days following receipt of this letter.

Sincerely,



Edward Nam
Director
Air and Radiation Division

Enclosure

cc: William Hefner, The Environmental Law Group

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

IN THE MATTER OF:)	
)	
Freerksen Trucking Incorporated)	NOTICE OF VIOLATION
Dodge Center, Minnesota)	
)	EPA-5-17-MN-05
Proceedings Pursuant to)	
Section 113(a)(1) of the)	
Clean Air Act, 42 U.S.C.)	
§ 7413(a)(1))	

NOTICE OF VIOLATION

The U.S. Environmental Protection Agency (EPA) is issuing this Notice of Violation to Freerksen Trucking Incorporated (Freerksen) for violating the Clean Air Act (CAA), 42 U.S.C. §§ 7401-7671q, and its implementing regulations.

Statutory and Regulatory Background

1. Title II of the CAA was enacted to reduce air pollution from mobile sources. In enacting the CAA, Congress found, in part, that “the increasing use of motor vehicles... has resulted in mounting dangers to the public health and welfare.” CAA § 101(a)(2), 42 U.S.C. § 7401(a)(2). Congress’ purpose in enacting the CAA included “to protect and enhance the quality of the Nation’s air resources so as to promote the public health and welfare and the productive capacity of its population,” and “to initiate and accelerate a national research and development program to achieve the prevention and control of air pollution.” CAA § 101(b)(1)-(2), 42 U.S.C. § 7401(b)(1)-(2).
2. 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.
3. 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.
4. EPA promulgated emission standards for particulate matter (PM), nitrogen oxides (NO_x), and other pollutants applicable to motor vehicles and motor vehicle engines, including Heavy Duty Diesel (HDD) trucks, under section 202 of the CAA, 42 U.S.C. § 7521. See generally 40 C.F.R. Part 86.
5. EPA promulgated regulations for motor vehicles manufactured after 2007 that require HDD trucks to have Onboard Diagnostic Systems to detect various emission control device parameters and vehicle operations. See section 202(m) of the CAA and 42 U.S.C. § 7521(m) and 40 C.F.R. §86.010-18.

6. To meet the emission standards in 40 C.F.R. Part 86, HDD trucks utilize Diesel Particulate Filter (DPF), Exhaust Gas Recirculation (EGR) systems, and/or Selective Catalytic Reduction (SCR) systems.
7. 40 C.F.R. §86.004-16(a) states that “No new heavy-duty vehicle or heavy-duty engine shall be equipped with a defeat device.”
8. Section 203(a)(3)(A) of the CAA prohibits “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.”

Facility Background

9. Freerksen Trucking owns and operates a transport company located in Dodge Center, Minnesota.
10. Freerksen is a person, as that term is defined in section 302(e) of the CAA, 42 U.S.C. § 7602(e).
11. On December 20, 2016, EPA issued a CAA Section 208 Information Request to Freerksen.
12. Based on the company’s website and information provided, Freerksen’s mission is to satisfy their customer’s transportation needs through the use of a long-haul trucking operation operating on public roads.
13. On February 15, 2017, Freerksen responded to the Information Request. In the response, Freerksen stated that the company removed air pollution emission control systems on 22 of its HDD trucks from the period of January 1, 2014 to February 15, 2017. In each of these trucks, Freerksen removed or disconnected the SCR systems, DPFs, and/or EGR systems and tampered with the electronic control modules (ECM).

Violations

14. Freerksen violated section 203(a)(3)(A) by removing and rendering inoperative the SCRs, DPFs, and EGRs on 22 of its HDD trucks.

Environmental Impact of Violations

15. These violations have resulted in excess emissions of PM, NO_x, hydrocarbons, and other air pollutants.

- PM: Especially fine particulates containing microscopic solids or liquid droplets which can get deep into the lungs and cause serious health problems. PM exposure contributes to:
 - irritation of the airways, coughing, and difficulty breathing;
 - decreased lung function;
 - aggravated asthma;
 - chronic bronchitis;
 - irregular heartbeat;
 - nonfatal heart attacks; and
 - premature death in people with heart or lung disease.


- NO_x: Current scientific evidence links short-term NO_x exposures, ranging from 30 minutes to 24 hours, with adverse respiratory effects including airway inflammation in healthy people and increased respiratory symptoms in people with asthma. In addition, studies show a connection between breathing elevated short-term NO_x concentrations and increased hospital admissions for respiratory issues, especially asthma.

Enforcement Authority

16. The EPA may bring an enforcement action for these violations under its administrative authority or by referring this matter to the United States Department of Justice with a recommendation that a civil complaint be filed in federal district court. CAA §§ 204 and 205, 42 U.S.C. §§ 7523 and 7524. Persons violating Section 203(a)(3) of CAA, 42 U.S.C. § 7522(a)(3), are subject to an injunction under Section 204 of CAA, 42 U.S.C. § 7523, and a civil penalty of up to \$4,527 for each violation. CAA § 205(a), 42 U.S.C. § 7524(a); 40 C.F.R. § 19.4.

Date

4/11/17


Edward Nam
Director
Air and Radiation Division

CERTIFICATE OF MAILING

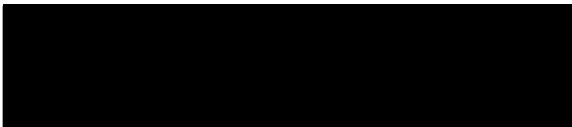
I certify that I sent a Notice of Violation, No. EPA-5-17-MN-05, by Certified Mail, Return Receipt Requested, to:

Mark Freerksen
Operations Manager
Freerksen Trucking
9 3rd Avenue Southwest
Dodge Center, Minnesota 55927

I also certify that I sent copies of the Notice of Violation by first-class mail to:

William P. Hefner
The Environmental Law Group, LTD.
2263 Waters Drive
Mendota Heights, Minnesota 55120

On the 12th day of April 2017.



Handwritten initials

Kathy Jones
Program Technician
AECAB, PAS

CERTIFIED MAIL RECEIPT NUMBER:

2016 3010 0000 9203 2529

CAA-05-2018-0001

APPENDIX B

Appendix B

Compliance Plan to Avoid Illegal Tampering and Aftermarket Defeat Devices

This document explains how to help ensure compliance with the Clean Air Act's (the Act or CAA) prohibitions on tampering and aftermarket defeat devices.

The Clean Air Act Prohibitions on Tampering and Aftermarket Defeat Devices:

The Act's prohibitions against tampering and aftermarket defeat devices are set forth in section 203(a)(3) of the Act, 42 U.S.C. § 7522(a)(3). The prohibitions apply to all vehicles, engines, and equipment subject to the certification requirements under sections 206 and 213 of the Act. This includes all motor vehicles (e.g., light-duty vehicles, highway motorcycles, heavy-duty trucks), motor vehicle engines (e.g., heavy-duty truck engines), nonroad vehicles (e.g., all-terrain vehicles, off road motorcycles), and nonroad engines (e.g., marine engines, engines used in generators, lawn and garden equipment, agricultural equipment, construction equipment).

The prohibitions are as follows:

“The following acts and the causing thereof are prohibited –”

Tampering: CAA § 203(a)(3)(A), 42 U.S.C. § 7522(a)(3)(A), 40 C.F.R. § 1068.101(b)(1): “for any person to remove or render inoperative any device or element of design installed on or in a [vehicle, engine, or piece of equipment] in compliance with regulations under this subchapter 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;”

Defeat Devices: CAA § 203(a)(3)(B), 42 U.S.C. § 7522(a)(3)(B), 40 C.F.R. § 1068.101(b)(2): “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 [vehicle, engine, or piece of equipment], 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 [vehicle, engine, or piece of equipment] in compliance with regulations under this subchapter, 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.”

In summary, CAA § 203(a)(3)(A) prohibits tampering with emission controls. This includes those controls and sensors that are in the engine (e.g., fuel injection, exhaust gas recirculation), and those that are in the exhaust (e.g., filters, catalysts, oxygen sensors). CAA § 203(a)(3)(B) prohibits (among other things) aftermarket defeat devices, including hardware (e.g., certain modified exhaust pipes) and software (e.g., certain engine tuners and other software changes).

The EPA's longstanding view is that conduct that may be prohibited by CAA § 203(a)(3) does not warrant enforcement if the person performing that conduct has a documented, reasonable basis for

knowing that the conduct does not adversely affect emissions. See Mobile Source Enforcement Memorandum 1A (June 25, 1974).

The EPA evaluates each case independently, and the absence of such reasonable basis does not in and of itself constitute a violation. When determining whether tampering occurred, the EPA typically compares the vehicle after the service to the vehicle's original, or "stock" configuration (rather than to the vehicle prior to the service). Where a person is asked to perform service on an element of an emission control system that has already been tampered, the EPA typically does not consider the service to be illegal tampering if the person either declines to perform the service on the tampered system or restores the element to its certified configuration.

Below are two guiding principles to help ensure Respondent commits no violations of the Act's prohibitions on tampering and aftermarket defeat devices¹.

Principle 1: Respondent Will Not Modify any On Board Diagnostic (OBD) Systems

Respondent will neither remove nor render inoperative any element of design of an OBD system.ⁱ Also, Respondent will not manufacture, sell, offer for sale, or install any part or component that bypasses, defeats, or renders inoperative any element of design of an OBD system.

Principle 2: Respondent Will Ensure There is a Reasonable Basis for Conduct Subject to the Prohibitions

For conduct unrelated to OBD systems, Respondent will have a *reasonable basis* demonstrating that its conductⁱⁱ does not adversely affect emissions. Where the conduct in question is the manufacturing or sale of a part or component, Respondent must have a *reasonable basis* that the installation and use of that part or component does not adversely affect emissions. Respondent will fully document its *reasonable basis*, as specified in the following section, at or before the time the conduct occurs.

¹ Note: Nothing in this Appendix is intended to prohibit Respondent from making necessary repairs to worn out, damaged, or inoperative sensors or other elements of an OBD system in compliance with the CAA.

Reasonable Bases

The following are specific ways in which the Respondent may document that it has a “reasonable basis,” as the term is used in the prior section. In any given case, Respondent must consider all the facts including any unique circumstances and ensure that its conduct does not have any adverse effect on emissions.ⁱⁱⁱ

- A. Identical to Certified Configuration:** Respondent generally has a reasonable basis if its conduct:
- (1) is solely for the maintenance, repair, rebuild, or replacement of an emissions-related element of design; and
 - (2) restores that element of design to be identical to the certified configuration (or, if not certified, the original configuration) of the vehicle, engine, or piece of equipment.^{iv}
- B. Replacement After-Treatment Systems:** Respondent generally has a reasonable basis if the conduct:
- (1) involves a new after-treatment system used to replace the same kind of system on a vehicle, engine or piece of equipment beyond its emissions warranty; and
 - (2) the manufacturer of that system represents in writing that it is appropriate to install the system on the specific vehicle, engine or piece of equipment at issue.
- D. Emissions Testing:**^v Respondent generally has a reasonable basis if the conduct:
- (1) alters a vehicle, engine, or piece of equipment; and
 - (2) emissions testing shows that the altered vehicle, engine, or piece of equipment will meet all applicable emissions standards for its full useful life; and
 - (3) where the conduct includes the manufacture, sale, or offering for sale of a part or component, that part or component is marketed only for those vehicles, engines, or pieces of equipment that are appropriately represented by the emissions testing.
- E. EPA Certification:** Respondent generally has a reasonable basis if the emissions-related element of design that is the object of the conduct (or the conduct itself) has been certified by the EPA under 40 C.F.R. Part 85 Subpart V (or any other applicable EPA certification program).^{vi}
- F. CARB Certification:** Respondent generally has a reasonable basis if the emissions-related element of design that is the object of the conduct (or the conduct itself) has been certified by the California Air Resources Board (“CARB”).^{vii}

Endnotes

- i. *OBD system* includes any system which monitors emission-related elements of design, or that assists repair technicians in diagnosing and fixing problems with emission-related elements of design. If a problem is detected, an OBD system must record a diagnostic trouble code, illuminate a malfunction indicator light or other warning lamp on the vehicle instrument panel, and provide information to the engine control unit such as information that induces engine derate (as provided by the OEM) due to malfunctioning or missing emission-related systems. Regardless of whether an element of design is commonly considered part of an OBD system, the term “OBD system” as used in this Appendix includes any element of design that monitors, senses, measures, receives, reads, stores, reports, processes or transmits any information about the condition of or the performance of an emission control system or any component thereof.
- ii. Here, the term *conduct* means: all service performed on, and any change whatsoever to, any emissions-related element of design of a vehicle, engine, or piece of equipment within the scope of § 203(a)(3); the manufacturing, sale, offering for sale, and installation of any part or component that may alter in any way an emissions-related element of design of a vehicle, engine, or piece of equipment within the scope of § 203(a)(3), and any other act that may be prohibited by § 203(a)(3).
- iii. General notes concerning the Reasonable Bases: Documentation of the above-described reasonable bases must be provided to EPA upon request, based on the EPA’s authority to require information to determine compliance. CAA § 208, 42 U.S.C. § 7542. The EPA issues no case-by-case pre-approvals of reasonable bases, nor exemptions to the Act’s prohibitions on tampering and aftermarket defeat devices (except where such an exemption is available by regulation). A reasonable basis consistent with this Appendix does not constitute a certification, accreditation, approval, or any other type of endorsement by EPA (except in cases where an EPA Certification itself constitutes the reasonable basis). No claims of any kind, such as “Approved [or certified] by the Environmental Protection Agency,” may be made on the basis of the reasonable bases described in this Policy. This includes written and oral advertisements and other communication. However, if true on the basis of this Appendix, statements such as the following may be made: “Meets the emissions control criteria in the United States Environmental Protection Agency’s Tampering Policy (2016) in order to avoid liability for violations of the Clean Air Act.” There is no reasonable basis where documentation is fraudulent or materially incorrect, or where emissions testing was performed incorrectly.
- iv. Notes on Reasonable Basis A: The conduct should be performed according to instructions from the original manufacturer (OEM) of the vehicle, engine, or equipment. The “certified configuration” of a vehicle, engine, or piece of equipment is the design for which the EPA has issued a certificate of conformity (regardless of whether that design is publicly available). Generally, the OEM submits an application for certification that details the designs of each product it proposes to manufacture prior to production. The EPA then “certifies” each acceptable design for use, in the upcoming model year. The “original configuration” means the design of the emissions-related elements of design to which the OEM manufactured the product. The appropriate source for technical information regarding the certified or original configuration of a product is the product’s OEM. In the case of a replacement part, the part manufacturer should represent in writing that the replacement part will perform identically with respect to emissions control as the replaced part, and should be able to support the representation with either: (a) documentation that the replacement part is identical to the replaced part (including engineering drawings

or similar showing identical dimensions, materials, and design), or (b) test results from emissions testing of the replacement part. In the case of engine switching, installation of an engine into a different vehicle or piece of equipment by any person would be considered tampering unless the resulting vehicle or piece of equipment is (a) in the same product category (e.g., light-duty vehicle) as the engine originally powered and (b) identical (with regard to all emissions-related elements of design) to a certified configuration of the same or newer model year as the vehicle chassis or equipment. Alternatively, Respondent may show through emissions testing that there is a reasonable basis for an engine switch under Reasonable Basis D. Note that there are some substantial practical limitations to switching engines. Vehicle chassis and engine designs of one vehicle manufacturer are very distinct from those of another, such that it is generally not possible to put an engine into a chassis of a different manufacturer and have it match up to a certified configuration.

v. Notes on emissions testing: Where the above-described reasonable bases involve emissions testing, unless otherwise noted, that testing must be consistent with the following. The emissions testing may be performed by someone other than the person performing the conduct (such as an aftermarket parts manufacturer), but to be consistent with this Appendix, the person performing the conduct must have all documentation of the reasonable basis at or before the conduct. The emissions testing and documentation required for this reasonable basis is the same as the testing and documentation required by regulation (e.g., 40 C.F.R. Part 1065) for the purposes of original EPA certification of the vehicle, engine, or equipment at issue. Accelerated aging techniques and in-use testing are acceptable only insofar as they are acceptable for purposes of original EPA certification. The applicable emissions standards are either the emissions standards on the Emission Control Information Label on the product (such as any stated family emission limit, or FEL), or if there is no such label, the fleet standards for the product category and model year. To select test vehicles or test engines where EPA regulations do not otherwise prescribe how to do so for purposes of original EPA certification of the vehicle, engine, or equipment at issue, one must choose the “worst case” product from among all the products for which the part or component is intended. EPA generally considers “worst case” to be that product with the largest engine displacement within the highest test weight class. The vehicle, engine, or equipment, as altered by the conduct, must perform identically both on and off the test(s), and can have no element of design that is not substantially included in the test(s).

vi. Notes on Reasonable Basis E: This reasonable basis is subject to the same terms and limitations as EPA issues with any such certification. In the case of an aftermarket part or component, there can be a reasonable basis only if: the part or component is manufactured, sold, offered for sale for, and installed on the vehicle, engine, or equipment for which it is certified; according to manufacturer instructions; and is not altered or customized, and remains identical to the certified part or component.

vii. Notes on Reasonable Basis F: This reasonable basis is subject to the same terms and limitations as CARB imposes with any such certification. The conduct must be legal in California under California law. However, in the case of an aftermarket part or component, the EPA will consider certification from CARB to be relevant even where the certification for that part or component is no longer in effect due solely to passage of time.

Consent Agreement and Final Order
In the matter of: Freerksen Trucking, Inc.
Docket Number: CAA-05-2018-0001

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, docket number **CAA-05-2018-0001**, which was filed on *10/4/2017*, in the following manner to the following addressees:

Copy by E-mail to Respondent: Mark Freerksen
mfreerksen@freerksentrucking.com

Copy by E-mail to Attorney for Complainant: Andre Daugavietis
daugavietis.andre@epa.gov

Copy by E-mail to Attorney for Respondent: William P. Hefner
whefner@envirolawgroup.com

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

Dated: *October 4, 2017*



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