

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	DOCKET NO. CAA-10-2021-0033
)	
DFI PERFORMANCE CENTER, LLC)	
)	CONSENT AGREEMENT
Scappoose, Oregon)	
)	
Respondent.)	
)	

I. STATUTORY AUTHORITY

1.1. This Consent Agreement is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (“EPA”) by Section 205(c)(1) of the Clean Air Act (“CAA”), 42 U.S.C. § 7524(c)(1).

1.2. Pursuant to Section 205(c)(1) of the CAA, 42 U.S.C. § 7524(c)(1), and in accordance with the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,” 40 C.F.R. Part 22, EPA issues, and DFI Performance Center, LLC (“Respondent”) agrees to issuance of, the Final Order attached to this Consent Agreement (“Final Order”).

II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), issuance of this Consent Agreement commences this proceeding, which will conclude when the Final Order becomes effective.

2.2. The Director of the Enforcement and Compliance Assurance Division, EPA Region 10 (“Complainant”) has been delegated the authority pursuant to Section 205(c)(1) of the CAA, 42 U.S.C. § 7524(c)(1), to sign consent agreements between EPA and the party against whom an administrative penalty for violations of the CAA is proposed to be assessed.

2.3. Part III of this Consent Agreement contains a concise statement of the factual and legal basis for the alleged violations of the CAA together with the specific provisions of the CAA and the implementing regulations that Respondent is alleged to have violated.

III. ALLEGATIONS

CAA Title II, Subpart A

3.1. Part A of Title II of the CAA, 42 U.S.C. §§ 7521–7554, and the regulations promulgated thereunder were enacted to reduce air pollution from mobile sources, including particulate matter (“PM”), non-methane hydrocarbons (“NMHC”), oxides of nitrogen (“NO_x”), and carbon monoxide (“CO.”). In creating 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).

3.2. EPA’s allegations here concern parts or components for motor vehicles and engines subject to emission standards. The CAA requires EPA to prescribe and revise, by regulation, standards applicable to the emission of any air pollutant from new motor vehicles or

engines that cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare. See CAA § 202(a)(1) and (3)(B), 42 U.S.C. § 7521(a)(1) and (3)(B). As required by the CAA, the emission standards must “reflect the greatest degree of emission reduction achievable through the application of [available] technology.” CAA § 202(a)(3)(A)(i), 42 U.S.C. § 7521(a)(3)(A)(i).

3.3. 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.” See also 40 C.F.R. § 85.1703 (further defining “motor vehicle”).

3.4. Under Section 202 of the CAA, 42 U.S.C. § 7521, EPA has promulgated emission standards for PM, NMHC, NO_x, and CO applicable to motor vehicles and motor vehicle engines, including heavy-diesel duty trucks, based on a vehicle’s or engine’s class and model year. See generally 40 C.F.R. Part 86.

3.5. Section 203(a)(1) of the CAA, 42 U.S.C. § 7522(a)(1), prohibits a manufacturer of motor vehicles or motor vehicle engines from selling, offering to sell, importing, or introducing or delivering for introduction into commerce any new motor vehicle or motor vehicle engine in the United States unless the motor vehicle or motor vehicle engine is covered by a certificate of conformity. EPA issues certificates of conformity to motor vehicle and motor vehicle engine manufacturers (also known as “original equipment manufacturers” or “OEMs”) under Section 206(a) of the CAA, 42 U.S.C. § 7525(a), to certify that a particular group of motor vehicles or motor vehicle engines conforms to applicable EPA requirements governing motor vehicle emissions.

3.6. To obtain a certificate of conformity for a given motor vehicle or motor vehicle engine family, the original equipment manufacturer must demonstrate that such motor vehicle or

motor vehicle engine will not exceed established emission standards for PM, NMHC, NO_x, CO, and other pollutants. 40 C.F.R. §§ 86.004-21, 86.1844-01. The application for a certificate of conformity must include, among other things, identification of the covered engine family, a description of the motor vehicle or engine and its emission control systems, all auxiliary emission control devices (“AECDs”) and the engine parameters they monitor, as well as test results from a test vehicle or engine showing that it meets the applicable emission standards. 40 C.F.R. §§ 86.004-21, 86.007-21, 86.094-21, 86.1844-01.

3.7. An AECD is “any element of design which senses temperature, vehicle speed, engine RPM, transmission gear, manifold vacuum, or any other parameter for the purpose of activating, modulating, delaying, or deactivating the operation of any part of the emission control system.” 40 C.F.R. §§ 86.082-2, 86.1803-01.

3.8. “Element of design” means “any control system (*i.e.*, computer software, electronic control system, emission control system, computer logic), and/or control system calibrations, and/or the results of systems interaction, and/or hardware items on a motor vehicle or motor vehicle engine.” 40 C.F.R. §§ 86.094-2, 86.1803-01.

3.9. To meet the emission standards in 40 C.F.R. Part 86 and qualify for a certificate of conformity, motor vehicle and motor vehicle engine manufacturers use a variety of hardware and software devices and elements of design.

3.10. Manufacturers employ certain hardware devices as emission control systems to manage and treat exhaust to reduce levels of regulated pollutants from being created or emitted into the ambient air and meet the emission standards in 40 C.F.R. Part 86. Such devices include exhaust gas recirculation (“EGR”), diesel oxidation catalyst (“DOC”), diesel particulate filters (“DPFs”), and selective catalytic reduction (“SCR”).

3.11. In addition to emission control hardware, various elements of design incorporated into motor vehicles, such as fuel mass, fuel injection pressure, and fuel injection timing, can affect the quantity of regulated pollutants that are created by the diesel engine. As an example, original equipment manufacturers of heavy-duty diesel trucks generally employ retarded fuel injection timing as an emission control method for NO_x. See 59 Fed. Reg. 23,264 at 23,418 (May 5, 1994) (“[I]njection timing has a very significant impact on NO_x emission rates, with advanced timing settings being associated with higher NO_x ...”).

3.12. Modern vehicles and engines are also equipped with electronic control modules (“ECMs”) and onboard diagnostic systems (“OBDS”). ECMs are devices that receive inputs from various sensors and outputs signals to control engine, vehicle, or equipment functions. ECMs continuously monitor engine and other operating parameters to manage the operation of the emission control systems and elements of design, such as fuel injection timing. The OBD detects and reports malfunctions of emission-related elements of design through a network of sensors installed throughout a motor vehicle or motor vehicle engine. CAA § 202(m), 42 U.S.C. § 7521(m); see 40 C.F.R. §§ 86.007-17, 86.010-18, 86.1806-05.

3.13. Section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B), makes it unlawful for “any person to manufacture or sell, or offer to sell, or install, any part or component intended for use with, or as part of, any motor vehicle or motor vehicle engine, where a principal effect of the part or component is to bypass, defeat, or render inoperative any device or element of design installed on or in a motor vehicle or motor vehicle engine in compliance with regulations under [Title II of the CAA], and where the person knows or should know that such part or component is being offered for sale or installed for such use or put to such use.” It is also a violation for any person to cause any of the acts listed above. CAA § 203(a), 42 U.S.C. § 7522(a).

3.14. Section 203(a)(3)(A) of the CAA, 42 U.S.C. § 7522(a)(3)(A), makes it unlawful for “any person to remove or render inoperative any device or element of design installed on or in a motor vehicle or motor vehicle engine in compliance with regulations under [Title II of the CAA] prior to its sale and delivery to the ultimate purchaser, or for any person knowingly to remove or render inoperative any such device or element of design after such sale and delivery to the ultimate purchaser.” It is also a violation for any person to cause any of the acts listed above. 42 U.S.C. § 7522(a).

3.15. Any person who violates Section 203(a)(3) of CAA, 42 U.S.C. § 7522(a)(3), is subject to injunctive relief under Section 204 of CAA, 42 U.S.C. § 7523, and a civil penalty of up to \$4,876 for each violation. CAA § 205(a), 42 U.S.C. § 7524(a); 40 C.F.R. § 19.4, Table 1.

General Allegations

3.16. Respondent is organized under the laws of the State of Oregon and registered to do business in Oregon.

3.17. Respondent is a retail seller and installer of aftermarket automotive parts and specializes in heavy-duty diesel trucks.

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

3.19. On September 21, 2020, EPA issued an information request (“Information Request”) to Respondent under the authority of Section 208 of the CAA, 42 U.S.C. § 7542, requiring the submission of, among other things, information related to Respondent’s manufacture, sale, offer for sale, and installation of parts, components, and services (products) which bypass, defeat, or render inoperative any emission control component, element of design, or emissions related part or component.

3.20. Based on the information provided by Respondent in response to the Information Request, EPA issued a Notice of Potential Violation to Respondent dated October 28, 2020, alleging that from January 1, 2019, through September 29, 2020, Respondent sold, offered for sale, or installed, at least 47 parts or components, in violation of Section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B) and knowingly removed or rendered inoperative one or more devices or elements of design installed on or in at least 17 motor vehicles or motor vehicle engines after sale and delivery to the ultimate purchaser, in violation of Section 203(a)(3)(A) of the CAA, 42 U.S.C. § 7522(a)(3)(A).

Violations

Defeat Devices

3.21. Based on Respondent's response to EPA's Information Request and other available information, from January 1, 2019, to September 29, 2020, Respondent sold, offered for sale, or installed at least 47 parts or components designed and marketed for use with or as part of motor vehicles or motor vehicle engines. This includes:

3.21.1. At least 17 exhaust replacement pipes that allow the customer to remove the control equipment of the exhaust system such as the DOC and the DPF;

3.21.2. At least 13 EGR removal products that allow the customer to remove the EGR system; and

3.21.3. At least 17 tuning products that allow the customer to remove the emission control components.

3.22. These parts and components were designed and marketed for use on, and thus intended for use with or as part of, makes and models of motor vehicles and motor vehicle

engines manufactured by entities such as Cummins Inc.; FCA US LLC and its predecessors; General Motors Co.; and Ford Motor Co.

3.23. These motor vehicles and motor vehicle engines were designed for transporting persons or property on a street or highway, and therefore are subject to motor vehicle and motor vehicle engine emission standards under CAA Title II, Subpart A, 42 U.S.C. §§ 7521–7554.

3.24. The original equipment manufacturer of these motor vehicles and motor vehicle engines sought and obtained certificates of conformity from EPA, thereby certifying that the motor vehicles and motor vehicle engines demonstrated compliance with applicable federal emission standards, including design configurations using elements of design such as fuel timing, EGRs, DPFs, SCRs, and OBD systems.

3.25. The parts and components referred to in Paragraph 3.21 above, when installed in or on motor vehicles, bypass, defeat, or render inoperative devices or elements of design that motor vehicle and motor vehicle engine manufacturers employ to meet emission standards in regulations promulgated under CAA Title II, Subpart A, 42 U.S.C. §§ 7521–7554.

3.26. Respondent knew or should have known that these parts or components were sold or offered for sale or installed to bypass, defeat, or render inoperative devices or elements of design that motor vehicle and motor vehicle engine manufacturers employ to meet emission standards in regulations promulgated under CAA Title II, Part A, 42 U.S.C. §§ 7521–7554.

3.27. Therefore, from January 1, 2019, through September 29, 2020, Respondent committed at least 47 violations of Section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B).

3.28. Under Section 205(a) of the CAA, 42 U.S.C. § 7524(a), and 40 C.F.R. Part 19, EPA may assess a civil penalty of up to \$4,876 for each violation that occurred on or after November 2, 2015.

Tampering

3.29. Based on Respondent's response to EPA's Information Request and other available information, from January 1, 2019, to September 29, 2020, Respondent knowingly removed or rendered inoperative one or more devices or elements of design installed on or in at least 17 motor vehicles or motor vehicle engines after sale and delivery to the ultimate purchaser.

3.30. The devices or elements of design removed or rendered inoperative by Respondent had been installed on or in such motor vehicles or motor vehicle engines in compliance with regulations promulgated under CAA Title II, Part A, 42 U.S.C. §§ 7521–7554.

3.31. Therefore, from January 1, 2019, to September 29, 2020, Respondent committed at least 17 violations of Section 203(a)(3)(A) of the CAA, 42 U.S.C. § 7522(a)(3)(A).

3.32. Under Section 205(a) of the CAA, 42 U.S.C. § 7524(a), and 40 C.F.R. Part 19, EPA may assess a civil penalty of up to \$4,876 for each violation that occurred on or after November 2, 2015.

IV. TERMS OF SETTLEMENT

4.1. Respondent admits the jurisdictional allegations of this Consent Agreement.

4.2. Respondent neither admits nor denies the specific factual allegations contained in this Consent Agreement.

4.3. In determining the amount of penalty to be assessed, EPA has taken into account the factors specified in Section 205(c)(2) of the CAA, 42 U.S.C. § 7524(c)(2). After considering these factors, EPA determined and Respondent agrees that an appropriate penalty to settle this action is \$17,878 (the "Assessed Penalty"). The EPA has reduced the civil penalty on the basis

of information submitted by Respondent to support its claim that it is unable to pay a higher civil penalty and continue in business.

4.4. Respondent agrees to pay the Assessed Penalty within 30 days of the effective date of the Final Order.

4.5. Payments under this Consent Agreement and the Final Order may be paid by check (mail or overnight delivery), wire transfer, ACH, or online payment. Payment instructions are available at: <http://www2.epa.gov/financial/makepayment>. Payments made by a cashier's check or certified check must be payable to the order of "Treasurer, United States of America" and delivered to the following address:

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

Respondent must note on the check the title and docket number of this action.

4.6. Concurrently with payment, Respondent must serve photocopies of the check, or proof of other payment method, described in Paragraph 4.5 on the Regional Hearing Clerk and EPA Region 10 at the following addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10
R10_RHC@epa.gov

Charlotte Papp
U.S. Environmental Protection Agency
Region 10
papp.charlotte@epa.gov

4.7. If Respondent fails to pay any portion of the Assessed Penalty in full by its due date, the entire unpaid balance of penalty and accrued interest shall become immediately due and owing. If such a failure to pay occurs, Respondent may be subject to a civil action pursuant to Section 205(c)(6) of the CAA, 42 U.S.C. § 7524(c)(6), to collect the Assessed Penalty under the

CAA. In any collection action, the validity, amount, and appropriateness of the Assessed Penalty shall not be subject to review.

4.8. If Respondent fails to pay any portion of the Assessed Penalty in full by its due date, Respondent shall be responsible for payment of the following amounts:

4.8.1. Interest. Any unpaid portion of the Assessed Penalty shall bear interest at the rate established pursuant to 26 U.S.C. § 6621(a)(2) from the effective date of the Final Order, 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 Final Order contained herein.

4.8.2. Attorneys' Fees, Collection Costs, Nonpayment Penalty. Pursuant to 42 U.S.C. § 7524(c)(6), should Respondent fail to pay the Assessed Penalty and interest on a timely basis, Respondent shall also be required to pay the United States' enforcement expenses, including attorneys' fees and costs for collection proceedings, and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be in an amount equal to ten percent of the aggregate amount of Respondent's outstanding penalties and nonpayment penalties which are unpaid as of the beginning of such quarter.

4.9. The Assessed Penalty, including any additional costs incurred under Paragraph 4.8, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

4.10. The undersigned representative of Respondent certifies that he or she is authorized to enter into the terms and conditions of this Consent Agreement and to bind Respondent to this document.

4.11. The undersigned representative of Respondent also certifies that, as of the date of Respondent's signature of this Consent Agreement, Respondent is complying fully with Section 203(a)(3) of the CAA, 42 U.S.C. § 7522(a)(3).

4.12. As a condition of settlement, Respondent agrees to the following: By signing this Consent Agreement, the undersigned representative of Respondent certifies that from the date of Respondent's signature: (i) it will not remove or render inoperative any emissions-related device or element of design installed on or in a motor vehicle or motor vehicle engine in violation of Section 203(a)(3)(A) of the CAA, 42 U.S.C. § 7522(a)(3)(A); and (ii) it will not manufacture, sell, offer for sale, or install any part or component, including those described in Paragraph 3.21 above, in violation of Section 203(a)(3)(B) of the CAA, 42, U.S.C. § 7522(a)(3)(B). Toward this end, the Respondent is aware of EPA's November 23, 2020 "Tampering Policy: The EPA Enforcement Policy on Vehicle and Engine Tampering and Aftermarket Defeat Devices under the Clean Air Act."

4.13. Except as described in Paragraph 4.8, each party shall bear its own costs and attorneys' fees in bringing or defending this action.

4.14. For the purposes of this proceeding, Respondent:

4.14.1. expressly waives any affirmative defenses and the right to contest the allegations contained in this Consent Agreement and to appeal the Final Order;

4.14.2. acknowledges that this Consent Agreement and the Final Order will be available to the public and agrees that it does not contain any confidential business information or any personally identifiable information;

4.14.3. certifies that the information it has supplied concerning this matter was at the time of submission true, accurate, and complete; and

4.14.4. 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).

4.15. The provisions of this Consent Agreement and the Final Order shall bind Respondent and its agents, servants, employees, successors, and assigns.

4.16. Respondent consents to the issuance of any specified compliance or corrective action order, to any conditions specified in this Consent Agreement, and to any stated permit action.

4.17. The above provisions in Part IV are STIPULATED AND AGREED upon by Respondent and EPA Region 10.

DATED:

1-27-2021

FOR RESPONDENT:



WESLEY D. TUTTLE, Member
DFI Performance Center, LLC

DATED:

FOR COMPLAINANT:

EDWARD
KOWALSKI

Digitally signed by EDWARD
KOWALSKI
Date: 2021.01.29 08:35:01 -08'00'

EDWARD J. KOWALSKI, Director
Enforcement and Compliance Assurance Division
EPA Region 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	DOCKET NO. CAA-10-2021-0033
)	
DFI PERFORMANCE CENTER, LLC,)	FINAL ORDER
)	
Scappoose, Oregon)	
)	
Respondent.)	
)	

1.1. The Administrator has delegated the authority to issue this Final Order to the Regional Administrator of EPA Region 10, who has redelegated this authority to the Regional Judicial Officer in EPA Region 10.

1.2. 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.

1.3. The Consent Agreement and this Final Order constitute a settlement by EPA of all claims for civil penalties under the CAA for the violations alleged in Part III 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 CAA and regulations promulgated or permits issued thereunder and any applicable implementation plan requirements.

1.4. This Final Order shall become effective upon filing with the Regional Hearing Clerk.

SO ORDERED this _____ day of _____, 2021.

**RICHARD
MEDNICK**

Digitally signed by
RICHARD MEDNICK
Date: 2021.02.01
14:52:53 -08'00'

RICHARD MEDNICK
Regional Judicial Officer
EPA Region 10

Certificate of Service

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER, In the Matter of: DFI Performance Center, LLC, Docket No.: CAA-10-2021-0033** was filed with the Regional Hearing Clerk and served on the addressees in the following manner on the date specified below:

The undersigned certifies that a true and correct copy of the document was delivered via electronic mail to:

Brett S. Dugan
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region 10,
dugan.brett@epa.gov

Wesley Tuttle
Member
DFI Performance Center LLC
dfiperformance99@gmail.com

DATED this ____ day of _____, 2021

TERESA
YOUNG

Digitally signed by
TERESA YOUNG
Date: 2021.02.02
09:52:51 -08'00'

TERESA YOUNG
Regional Hearing Clerk
EPA Region 10