

**BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029**

IN THE MATTER OF:

Bell Performance Solutions
1079 Shoemaker Avenue,
Shoemakersville, PA 19555

Respondent.

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DOCKET NO.: CAA-03-2021-0068

**EXPEDITED SETTLEMENT
AGREEMENT**

EXPEDITED SETTLEMENT AGREEMENT

1. This Expedited Settlement Agreement (or “Agreement”) is entered into by the Director, Enforcement & Compliance Assurance Division, U.S. Environmental Protection Agency, Region III (“Complainant”), and Bell Performance Solutions (“Respondent”), pursuant to Section 205(c)(1) of the Clean Air Act (“CAA”), as amended, 42 U.S.C § 7524(c)(1), and the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (“Consolidated Rules of Practice”), 40 C.F.R. Part 22 (with specific reference to 40 C.F.R. §§ 22.13(b), 22.18(b)(2), and (3)). The Administrator has delegated this authority to the Regional Administrator who, in turn, has delegated it to the Complainant.
2. The U.S. Environmental Protection Agency (“EPA”) has jurisdiction over the above-captioned matter pursuant to Section 205(c)(1) of the CAA, 42 U.S.C § 7524(c)(1), and 40 C.F.R. §§ 22.1(a)(2) and 22.4 of the Consolidated Rules of Practice.
3. At all times relevant to this Agreement, Respondent, a Pennsylvania limited liability company, was, and currently is, a “person” as defined under Section 302(e) of the CAA, 42 U.S.C § 7602(e), and the owner and operator of an automotive service and repair shop located at 1079 Shoemaker Avenue, Shoemakersville, PA 19555 (the “Facility”).
4. EPA alleges and finds that Respondent failed to comply with Section 203(a)(3)(B) of the CAA, 42 U.S.C. §§ 7522(a)(3)(B), and the implementing regulations found at 40 C.F.R. § 1068.101(b)(2).
5. As a result of EPA’s investigation and pursuant to its enforcement authority under Section 208(b) of the CAA, 42 U.S.C. §7542(b), EPA obtained evidence that between January 5, 2018 and December 31, 2019, the Respondent sold **forty-nine (49)** products, identified in Table 1, below, which render inoperative emission control systems on EPA-certified motor vehicle and motor vehicle engines (“defeat devices”). These products include: (i) engine control module reprogrammers (also known as “tuners”) that disable emission control systems and/or Diagnostic Trouble Codes (DTCs) on EPA-certified motor vehicles; (ii) Exhaust Gas Recirculation (EGR) deletion kits or components used for the removal or bypass of EGR systems; and (iii) exhaust emission control delete pipes (“straight pipes”) to remove or bypass

the catalytic converter, Diesel Particulate Filter (DPF) or Selective Catalytic Reduction (SCR) systems. Respondent knew or should have known that the product was being offered for sale, or installed for such use, or put to such use. EPA alleges and finds that Respondent’s sale of these defeat devices, identified in Table 1, below, constitutes **forty-nine (49)** violations of CAA Section 203(a)(3)(B), 42 U.S.C. § 7522(a)(3)(B), and the implementing regulations found at 40 C.F.R. § 1068.101(b)(2).

Table 1: Violation Summary – Sale of Defeat Devices

Part No.	No. Sold	Product Description	Motor Vehicle Application
6703	3	EMW Exhaust/Downpipe	2011-2015 Ford Powerstroke
6704	5	EMW Exhaust/Downpipe	2013-2017 Dodge Cummins
4923003	3	AFE Exhaust/Downpipe	2008-2010 Ford Powerstroke
641802409	3	EMW Exhaust/Downpipe	2008-2010 Ford Powerstroke
641819409	1	EMW Exhaust/Downpipe	2008-2010 Ford Powerstroke
661823409	5	EMW Exhaust/Downpipe	2008-2010 GM Duramax
671803409	5	EMW Exhaust/Downpipe	2011-2018 Ford Powerstroke
671806409	10	EMW Exhaust/Downpipe	2007-2012 Dodge Cummins
C6044PLM	1	MBRP Exhaust/Downpipe	2011-2015 GM Duramax
C6048PLM	3	MBRP Exhaust/Downpipe	2011-2015 GM Duramax
C6049P	1	P1 Exhaust/Downpipe	2015-2016 GM Duramax
C6142P	3	P1 & MBRP Exhaust/Downpipe	2004-2012 Dodge Cummins
C6145P	2	P1 Exhaust/Downpipe	2013-2018 Dodge Cummins
C6146PLM	1	P1 Exhaust/Downpipe	2004-2012 Dodge Cummins
C6147PLM	2	P1 & MBRP Exhaust/Downpipe	2011-2018 Dodge Cummins
XD186	1	Block-Off Plate	2004-2007 Ford Powerstroke

6. Respondent certifies that it has not had the same, or closely-related violation(s), that were the subject of an enforcement action under Title II of the CAA within five (5) years of the date of Respondent’s execution of this Agreement.
7. Respondent certifies that it has provided EPA with true and accurate documentation demonstrating completion of remedial measures to correct the violations alleged above and come into compliance with the CAA.
8. EPA and Respondent agree that settlement of this matter for a penalty in the amount of **TWENTY-THREE THOUSAND, EIGHT HUNDRED AND NINETY-TWO DOLLARS (\$23,892)**, which Respondent shall be liable to pay in accordance with the terms and provisions set forth below, is reasonable in the public interest and is based upon EPA’s consideration of the statutory factors set forth in Section 205(c)(2) of the CAA, 42 U.S.C. § 7524(c)(2), which include the gravity of the violation, the economic benefit or savings (if any) resulting from the

violation, the size of the violator's business, the violator's history of compliance with this subchapter, action taken to remedy the violation, the effect of the penalty on the violator's ability to continue in business, and such other matters as justice may require. These factors were applied to the particular facts and circumstances of this case with specific reference to EPA's June 21, 2019 Recommendation to Approve Expedited Settlement Agreement Pilot for Clean Air Act Vehicle and Engine Violations – Tampering/Defeat Devices policy, the appropriate Adjustment of Civil Monetary Penalties for Inflation, pursuant to 40 C.F.R. Part 19, and the applicable EPA memoranda addressing EPA's civil penalty policies to account for inflation.

9. Respondent agrees that, within thirty (30) calendar days of the effective date of this Agreement, Respondent shall make a payment of **TWENTY-THREE THOUSAND, EIGHT HUNDRED AND NINETY-TWO DOLLARS (\$23,892)**, by one of following four (4) methods, as further specified and directed below: a) electronic funds transfer (“EFT”); b) Automated Clearinghouse; c) Pay.gov; or d) a cashier's check, or certified check, payable to the “United States Treasury” with the case name, address and docket number of this Agreement (CAA-03-2021-0068) referenced on the check for the amount specified above. A list of the payment methods is also provided on the website <https://www.epa.gov/financial/makepayment>.

- a) Payment of the penalty amount **by EFT** to:

Federal Reserve Bank of New York
ABA 021030004
Account 68010727
SWIFT address FRNYUS33
33 Liberty Street
New York, NY 10045
Beneficiary: Environmental Protection Agency

- b) Payment of the penalty amount **by Automated Clearinghouse (ACH)** to EPA can be made through the U.S. Treasury using the following information:

U.S. Treasury REX/Cashlink ACH Receiver

ABA: 051036706
Account Number: 310006, Environmental Protection Agency

CTX Format Transaction Code 22- Checking

Physical Location of the U.S. Treasury Facility
5700 Rivertech Court
Riverdale, MD 20737

Remittance Express (REX): 1-866-234-5681

- c) Payment of the penalty amount made **through Pay.gov**:

Payers can use their credit or debit cards (Visa, MasterCard, American Express & Discover) as well as checking account information to make payments. Follow these steps to make a payment:

- (1) You DO NOT need a username and password or account.
 - (2) Enter SFO 1.1 in the form search box on the top left side of the screen.
 - (3) Open the form and follow the on-screen instructions.
 - (4) Select your method of payment from the “Type of Payment” drop down menu.
 - (5) Based on your selection, the corresponding line will open and no longer be shaded grey.
 - (6) Enter the docket number of this Agreement (CAA-03-2021-0068) into the field.
- d) Payment of the penalty amount **by cashier’s check, or by certified check**, payable to the “United States Treasury” with the case name, address and docket number of this Agreement (CAA-03-2021-0068) referenced on the check which shall be sent:
- (1) via certified mail to:

U.S. Environmental Protection Agency
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

or

- (2) via overnight mail (FedEx or other non-U.S. Postal Service express mail) to:

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

10. Within twenty-four (24) hours of making payment, the Respondent shall also send proof of such payment (a copy of the check, confirmation of credit card or debit card payment, confirmation of wire transfer or of automated clearinghouse transfer) by email to:

Kim Laufenberg (3ED21)
laufenberg.kim@epa.gov

and

Regional Hearing Clerk (3RC00)

R3_Hearing_Clerk@epa.gov

11. In signing this Agreement, the Respondent:
 - a) admits the jurisdictional allegations set forth in this Agreement;
 - b) neither admits nor denies the specific factual allegations set forth in this Agreement, except as provided in the jurisdictional admission above;
 - c) agrees not to contest EPA's jurisdiction with respect to the execution of this Agreement, the issuance of the attached Final Order, or the enforcement the Agreement;
 - d) expressly waives its right to a hearing on any issue of law or fact set forth in this Agreement and any right to appeal the accompanying Final Order;
 - e) consents to the issuance of this Agreement and agrees to comply with its terms;
 - f) agrees to bear its own costs and attorney's fees; and
 - g) agrees not to deduct for federal tax purposes the civil penalty assessed in this Agreement.
12. By its signature below, Respondent certifies, that any information or representation it has supplied or made to EPA concerning this matter was, at the time of submission true, accurate, and complete and that there has been no material change regarding the truthfulness, accuracy or completeness of such information or representation. EPA shall have the right to institute further actions to recover appropriate relief if EPA obtains evidence that any information provided and/or representations made by Respondent to the EPA regarding matters relevant to this Agreement are false or, in any material respect, inaccurate. This right shall be in addition to all other rights and causes of action that EPA may have, civil or criminal, under law or equity in such event. Respondent and its officers, directors and agents are aware that the submission of false or misleading information to the United States government may subject a person to separate civil and/or criminal liability.
13. This Agreement and attached Final Order constitute a settlement by EPA of its claims for civil penalties for the violations alleged in this Agreement.
14. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Sections 22.18(c) and 22.31(a) of the Consolidated Rules of Practice. Further, EPA reserves any rights and remedies available to it under the CAA, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this Agreement, following its filing with the Regional Hearing Clerk.
15. Late payment of the agreed upon penalty may subject Respondent to interest, administrative costs and late payment penalties in accordance with 40 C.F.R. § 13.11.

- 16. This Agreement is binding on the parties signing below and is effective upon filing with the Regional Hearing Clerk pursuant to the Consolidated Rules of Practice, in accordance with 40 C.F.R. § .31(b).
- 17. The undersigned representative certifies that she/he is fully authorized to execute this Agreement and to legally bind Respondent.
- 18. As permitted under 40 CFR § 22.6, the Regional Hearing Clerk will serve copies of this Agreement and Final Order by e-mail to the parties at the following valid e-mail addresses: laufenberg.kim@epa.gov (for Complainant), and bpscustome@gmail.com (for Respondent).

or Respondent: Bell Performance Solutions

Name: Mr. Eugene Bell
 Title: Owner _____

Signature:  Date: 2/25/21

For Complainant: U.S. Environmental Protection Agency, Region

After reviewing the Agreement and other pertinent matters, I, the undersigned Director of the Enforcement and Compliance Assurance Division of the United States Environmental Protection Agency, Region III, agree to the terms and conditions of this Agreement and recommend that the Regional Administrator, or his/her designee, the Regional Judicial Officer, issue the attached Final Order.

KAREN
MELVIN

Digitally signed by
 KAREN MELVIN
 Date: 2021.03.08
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 Karen Melvin, Director
 Enforcement and Compliance Assurance Division

**BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029**

IN THE MATTER OF:

Bell Performance Solutions
1079 Shoemaker Avenue,
Shoemakersville, PA 19555

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FINAL ORDER

Complainant, the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency - Region III, and Respondent, Bell Performance Solutions, have executed a document entitled "Expedited Settlement Agreement," which I hereby ratify as a Consent Agreement in accordance with the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* ("Consolidated Rules of Practice"), 40 C.F.R. Part 22, (with specific reference to Sections 22.13(b) and 22.18(b)(2) and (3)). The terms of the foregoing Expedited Settlement Agreement are accepted by the undersigned and incorporated herein as if set forth at length.

Based upon the representations of the parties in the attached Expedited Settlement Agreement, the penalty agreed to therein is based upon consideration of, *inter alia*, the statutory factors set forth in Section 205(c)(2) of the CAA, 42 U.S.C. § 7524(c)(2), EPA’s June 21, 2019 *Recommendation to Approve Expedited Settlement Agreement Pilot for Clean Air Act Vehicle and Engine Violations – Tampering/Defeat Devices* policy, the appropriate *Adjustment of Civil Monetary Penalties for Inflation*, pursuant to 40 C.F.R. Part 19 and the applicable EPA memoranda addressing EPA’s civil penalty policies to account for inflation, and Respondent’s current financial condition.

NOW, THEREFORE, PURSUANT TO Section 205(c)(1) of the Clean Air Act ("CAA"), as amended, 42 U.S.C § 7524(c)(1), and Section 22.18(b)(3) of the Consolidated Rules of Practice, **IT IS HEREBY ORDERED** that Respondent pay a civil penalty in the amount of **TWENTY-THREE THOUSAND, EIGHT HUNDRED AND NINETY-TWO DOLLARS (\$23,892)**, in accordance with the payment provisions set forth in the Expedited Settlement Agreement, and comply with the terms and conditions of the Expedited Settlement Agreement.

This Final Order constitutes the final Agency action in this proceeding. This Final Order shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief, or criminal sanctions for any violations of the law. This Final Order resolves only those causes of action alleged in the Expedited Settlement Agreement and does not waive, extinguish or otherwise affect Respondent’s obligation to comply with all applicable provisions of Title II of the Clean Air Act ("CAA"), 42 U.S.C. §§ 7521 *et seq.*, and the regulations promulgated thereunder.

The effective date of the foregoing Expedited Settlement Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

03/10/2021
Date

JOSEPH
LISA

Joseph J. Lisa
Regional Judicial Officer
U.S. EPA - Region III

Digitally signed by
JOSEPH LISA
Date: 2021.03.10
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