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U.S. EPA - REGION IX

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

In the Matter of:)	Docket No. CAA-09-2021-0028
)	
AutoAnything, Inc.)	CONSENT AGREEMENT AND
)	FINAL ORDER PURSUANT TO
)	40 C.F.R. §§ 22.13 and 22.18
)	
San Diego, California)	
)	
Respondent.)	
_____)	

I. CONSENT AGREEMENT

A. Preliminary Statement

1. This is a civil administrative penalty assessment proceeding brought under section 205(c)(1) of the Clean Air Act (“CAA” or the “Act”), 42 U.S.C. § 7524(c)(1), and sections 22.13 and 22.18 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (“Consolidated Rules”), as codified at 40 C.F.R. Part 22. In accordance with 40 C.F.R. §§ 22.13 and 22.18, entry

of this Consent Agreement and Final Order ("CAFO") simultaneously initiates and concludes this matter.

2. Complainant is the Assistant Director of the Air, Waste & Chemicals Branch of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency Region IX (the "EPA"), who has been delegated the authority to initiate and settle civil administrative penalty proceedings under section 205(c)(1) of the CAA, 42 U.S.C. § 7424 (c)(1). EPA Delegation 7-19 (January 18, 2017); EPA Region 9 Redefinition R9-7-19 (October 5, 2017); Memorandum from John W. Busterud, Regional Administrator, Region 9, to all Region 9 supervisors and employees re: EPA R9 Organizational Realignment General Redefinition of Authority (May 5, 2020).

3. Respondent is AutoAnything, Inc. ("AutoAnything"), a Delaware corporation distributing motor vehicle parts headquartered at 6602 Convoy Ct. Ste, 200 in San Diego, 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. Governing Law

5. This proceeding arises under Part A of Title II of the CAA, CAA §§ 202-219, 42 U.S.C. §§ 7521-7554, and the regulations promulgated thereunder. These laws aim to reduce emissions from mobile sources of air pollution, including hydrocarbons and oxides of nitrogen ("NOx").

6. Section 203(a)(3)(B) of CAA, 42 U.S.C. § 7522(a)(3)(B), prohibits any person from manufacturing, selling, offering to sell, or installing parts or components where a principal effect is to bypass, defeat, or render inoperative a motor vehicle emission control device or element of

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

7. Violations of CAA section 203(a)(3)(B) are subject to civil penalties of up to \$4,876 per defeat device violation that occurred after November 2, 2015, where penalties are assessed on or after December 23, 2020. Section 205 of the CAA, 42 U.S.C. § 7524 and 40 C.F.R. Part 19.

8. Definitions:

a. Section 302(e) of the CAA, 42 U.S.C. § 7602(e), defines "person" as "an individual, corporation, partnership, association, State, municipality, political subdivision of a State, and any agency, department, or instrumentality of the United States and any officer, agent or employee thereof."

b. Section 216(2) of the CAA, 42 U.S.C. § 7550(2), defines "motor vehicle" as "any self-propelled vehicle designed for transporting persons or property on a street or highway."

9. The CAA requires EPA to prescribe and revise, by regulation, standards applicable to the emission of any air pollutant from new motor vehicles or new motor vehicle engines which cause or contribute to air pollution, which may reasonably be anticipated to endanger public health or welfare. CAA §§ 202(a)(1) and (3)(B), 42 U.S.C. §§ 7521(a)(1) and (3)(B).

10. Highway motor vehicles are one category of motor vehicles for which the EPA has promulgated emission standards. See 42 U.S.C. § 7521; see generally 40 C.F.R. Part 86.

11. Highway motor vehicle manufacturers employ many devices and elements of design to meet these emission standards. Certain hardware devices serve as emission control systems to manage and treat exhaust from highway motor vehicles, in order to reduce levels of regulated

pollutants from being created or emitted into the ambient air. Such devices include catalytic converters.

C. Alleged Violations of Law

12. Respondent sells and distributes motor vehicle parts to various individual customers located throughout the United States.

13. On September 20, 2018, EPA sent an information request pursuant to section 208(a) of the CAA, 42 U.S.C. § 7542(a), to Respondent regarding software and hardware Respondent sold since January 1, 2017.

14. Based on Respondent's three-part response, dated March 19, 2019, April 2, 2019, and April 15, 2019 to EPA's information request and additional information gathered during EPA's investigation, EPA alleges that Respondent sold various exhaust systems ("subject exhaust systems") and tuners ("subject tuners") for highway motor vehicles identified in Appendix A of this CAFO (collectively referred to as the "Devices").

15. The subject exhaust systems remove and bypass diesel oxidation catalyst, diesel particulate filter, catalytic converter, and/or selective catalytic reduction systems from the highway motor vehicles for which they are designed.

16. The subject tuners remove and replace emissions-related calibrations and override onboard diagnostic systems to facilitate removal of emissions-related elements of design.

17. The Devices were designed and marketed for use on various highway motor vehicles, and intended to bypass, defeat, or render inoperative emission related devices or elements of design that are installed on those motor vehicles to meet the CAA emission standards.

18. Between February 26, 2018 and September 20, 2018, Respondent sold 270 Devices to individual customers located throughout the United States.

19. The manufacture, sale, offering for sale, or installation of a device that bypasses, defeats, or renders inoperative a vehicle's emission control systems is prohibited under section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B).

20. On May 12, 2020, EPA issued a Notice of Violation to Respondent for approximately 270 violations of section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B), by selling or offering for sale the Devices.

21. EPA alleges that Respondent has committed approximately 270 violations of section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B), by manufacturing, selling, or offering for sale the Devices.

D. Terms of Consent Agreement

22. 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.C of this CAFO;
- c. consents to the assessment of a civil penalty under this Section, as stated below;
- d. consents to the conditions specified in this CAFO;
- e. waives any right to contest the allegations set forth in Section I.C of this CAFO;
and
- f. waives its rights to appeal the proposed Order contained in this CAFO.

E. Civil Penalty

23. Respondent agrees to:

- a. pay the civil penalty of ONE HUNDRED TWENTY-FIVE THOUSAND DOLLARS (\$125,000) (“EPA Penalty”) within 30 days of the Effective Date of this CAFO; and
- b. pay the EPA Penalty using any method, or combination of methods, provided on the website <https://www.epa.gov/financial/makepayment>, and identifying the payment with “Docket No. CAA-09-2021-0028.” Within 24 hours of each payment of the EPA Penalty, send proof of payment to Nathan Dancher at:

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

and at dancher.nathan@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 the payment has been made according to the EPA requirements, in the amount due, and identified with “Docket No. CAA-09-2021-0028”).

24. If Respondent does not pay timely the civil penalty, specified in Paragraph 23, then Respondent shall pay to EPA a stipulated penalty in the amount of FIVE HUNDRED DOLLARS (\$500.00) for each day the default continues plus the remaining balance of the penalty sum specified in Paragraph 23 upon written demand by EPA.

25. If Respondent fails to timely pay any portion of the penalty assessed under this CAFO, EPA may:

- a. request the Attorney General to bring a civil action in an appropriate district court to recover: the amount assessed; interest at rates established pursuant to 26 U.S.C.

- § 6621(a)(2); the United States' enforcement expenses; and a 10 percent quarterly nonpayment penalty, 42 U.S.C. § 7413(d)(5);
- b. refer the debt to a credit reporting agency or a collection agency, 42 U.S.C. § 7413(d)(5), 40 C.F.R. §§ 13.13, 13.14, and 13.33;
 - c. collect the debt by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, 40 C.F.R. Part 13, Subparts C and H; and
 - d. suspend or revoke Respondent's licenses or other privileges granted by EPA, or suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds, 40 C.F.R. § 13.

F. Certification of Compliance

26. Respondent has represented to the EPA that it is no longer manufacturing, selling or offering for sale the parts listed in Appendix A or motor vehicle parts or components which do not comply with the CAA.
27. 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."
28. The provisions of this CAFO shall apply to and be binding upon Respondent and its officers, directors, employees, agents, trustees, servants, authorized representatives, successors, and assigns. Respondent must give written notice and a copy of this CAFO to any successors in interest prior to any transfer of ownership or control of any portion of or interest in Respondent.

Simultaneously with such notice, Respondent shall provide written notice of such transfer, assignment, or delegation to EPA. In the event of any such transfer, assignment, or delegation, Respondent shall not be released from the obligations or liabilities of this CAFO unless EPA has provided written approval of the release of said obligations or liabilities.

29. 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.

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

31. By signing this CAFO, Respondent certifies that the information it has supplied concerning this matter was at the time of submission true, accurate, and complete for each such submission, response, and statement. Respondent acknowledges that there are significant penalties for submitting false or misleading information, including the possibility of fines and imprisonment for knowing submission of such information, under 18 U.S.C. § 1001.

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

G. General Provisions

33. In accordance with 40 C.F.R. § 22.18(c), completion of the terms of this CAFO resolves only Respondent's liability for federal civil penalties for the violations and facts specifically alleged above.

34. This civil penalty paid pursuant to this CAFO is not deductible for federal tax purposes.

35. 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.

36. This CAFO constitutes the entire agreement between the parties and supersedes any prior agreements or understandings, whether written or oral, among the parties with respect to the subject matter hereof.

H. Effective Date

37. 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.

AutoAnything, Inc., Respondent

04 / 14 / 2021

Date



Drew Sanocki, CEO
AutoAnything, Inc.

United States Environmental Protection Agency, Complainant

CLAIRE
TROMBADORE

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CLAIRE TROMBADORE
Date: 2021.04.22 09:02:30
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Date

Claire Trombadore
Assistant Director
Enforcement and Compliance Assurance Division
United States Environmental
Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105

**Consent Agreement and Final Order
In the Matter of: AutoAnything, Inc.
Docket No. CAA-09-2021-0028**

II. FINAL ORDER

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

IT IS HEREBY, ORDERED that this Consent Agreement and Final Order (Docket No. CAA-09-2021-0028), shall be entered and Respondent shall pay a civil administrative penalty in the amount of ONE HUNDRED TWENTY-FIVE THOUSAND DOLLARS (\$125,000), and otherwise comply with the terms set forth in the CAFO. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31.

STEVEN JAWGIEL

Date

Digitally signed by STEVEN
JAWGIEL

Date: 2021.05.07 12:13:43 -07'00'

Steven Jawgiel
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 9

Appendix A

AutoAnything, Inc. Violation Table of CAA § 203 for the period 2/26/2018-9/20/2018 for offering for sale or sale of 270 Subject Exhaust Systems and Tuners¹

#	Part Number	Part Name	Quantity Sold
1	40420	Bully Dog GT Platinum Tuner	82
2	7015	SCT X4 Power Flash Programmer	78
3	40470	Bully Dog BDX Tuner	39
4	7416	SCT X4 Power Flash Programmer	13
5	5015P	SCT Livewire TS Performance Tuner & Monitor	12
6	40460B	Bully Dog GTX Tuner	6
7	5416P	SCT Livewire TS Performance Tuner & Monitor	1
8	S6104409	MBRP Exhaust - Turbo Back - XP Series Exhaust	2
9	PVC10	Pypes Downpipes - Cat Delete Pipes	2
10	S6126409	MBRP Exhaust - Turbo Back - XP Series Exhaust	2
11	DAL435	MBRP Exhaust - Downpipe	1
12	49-02003	AFE Exhaust - Turbo Back Exhaust - ATLAS Series	1
13	49-02007NM	AFE Exhaust - Turbo Back Exhaust - ATLAS Series	1
14	49-02047NM-1	AFE Exhaust - Turbo Back Exhaust - ATLAS Series	1
15	49-04035NM	AFE Exhaust - Down Pipe Back Exhaust - ATLAS Series	1
16	49-04054NM	AFE Exhaust - Down Pipe Back Exhaust - ATLAS Series	1
17	49-12009-1	AFE Exhaust - Turbo Back Exhaust - Large Bore HD Series	1
18	49-42004	AFE Exhaust - Turbo Back Exhaust - MACH Force XP Series	1
19	49-42047-1B	AFE Exhaust - Turbo Back Exhaust - Large Bore HD Series	1
20	49-42054-P	AFE Exhaust - Turbo Back Exhaust - Large Bore HD Series	1
21	49-43034	AFE Exhaust - Turbo Back Exhaust - MACH Force XP Series	1
22	49-43035NM	AFE Exhaust - Turbo Back Exhaust - Large Bore HD Series	1
23	49-43039NM	AFE Exhaust - Down Pipe Back Exhaust - MACH Force XP Series	1
24	49-44053-B	AFE Exhaust - Down Pipe Back Exhaust - MACH Force XP Series	1
25	49-44059-B	AFE Exhaust - Down Pipe Back Exhaust - Large Bore HD Series	1
26	49-44075-B	AFE Exhaust - Turbo Back Exhaust - Large Bore HD Series	1
27	49-44075-P	AFE Exhaust - Turbo Back Exhaust - Large Bore HD Series	1

¹ The products listed in Appendix A include Bully Dog 40420, 40470 and 40460B and SCT 7015, 7416, 5015P and 5416P tuners. The manufacturer of these products (“Derive”) is subject to a Consent Decree that requires Derive to comply with the CAA and to demonstrate a reasonable basis that Derive’s pre-loaded calibrations do not adversely affect vehicle emissions and retain the full operation and functionality of the On Board Diagnostic system. See United States v. Derive Systems, Inc., et al., Civil Action No. 1:18-cv-2201 (D. DC Sept. 24, 2018). Respondent is aware that if Derive products contain any calibration not pre-loaded by Derive (a “custom tune”), each such custom tune must be in compliance with the CAA. The representation that Respondent is no longer selling the parts listed in Appendix A excludes products that are in compliance with the terms of the Derive Consent Decree and the CAA.

#	Part Number	Part Name	Quantity Sold
28	DS103A	ANSA Silverline Exhaust System - Turbo Back (Aluminized)	1
29	DS105409	ANSA Silverline Exhaust System - Turbo Back (409 Stainless)	1
30	DS105A	ANSA Silverline Exhaust System - Turbo Back (Aluminized)	1
31	FS104A	ANSA Silverline Exhaust System - Turbo Back (Aluminized)	1
32	FS504A	ANSA Silverline Exhaust System - Turbo Back (Aluminized)	1
33	1674	BBK Exhaust - Off-road Cat Delete Pipes	1
34	16900	Magnaflow Exhaust - Downpipe Back Exhaust - Performance Series	1
35	17922	Magnaflow Exhaust - Turbo Back Exhaust - Pro Series Stainless Steel	1
36	17974	Magnaflow Exhaust - Turbo Back Exhaust - Pro Series Stainless Steel	1
37	18982	Magnaflow Exhaust - Turbo Back Exhaust - Custom Builder Kit Series	1
38	S6004PLM	MBRP Exhaust - Downpipe Back - Performance Series Exhaust	1
39	S61160BLK	MBRP Exhaust - Turbo Back - Black Series Exhaust	1
40	S6126AL	MBRP Exhaust - Turbo Back - Installer Series Exhaust	1
41	S6128409	MBRP Exhaust - Turbo Back - XP Series Exhaust	1
42	S6212PLM	MBRP Exhaust - Turbo Back - PLM Series Exhaust	1
43	S62240BLK	MBRP Exhaust - Turbo Back - Black Series Exhaust	1
		TOTAL	270

CERTIFICATE OF SERVICE

This is to certify that the fully executed Consent Agreement and Final Order in the matter of AutoAnything Inc. (Docket No CAA-09-2021-0028) was filed with the Regional Hearing Clerk and that a true and correct copy of the same was sent to the parties as follows:

ELECTRONIC MAIL

RESPONDENT


Drew Sanocki, CEO
AutoAnything, Inc.
Convoy Court, Ste, 200
San Diego, California 92111
dsanocki@autoanything.com

ELECTRONIC MAIL

COMPLAINANT

Denise Leong
Assistant Regional Counsel (ORC 2-1)
U.S. EPA, Region IX
75 Hawthorne Street
San Francisco, CA 94105
Leong.denise@epa.gov

STEVEN
ARMSEY

 Digitally signed by STEVEN
ARMSEY
Date: 2021.05.07 20:51:03
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Regional Hearing Clerk
U.S. EPA, Region IX