

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 1

In the Matter of:

APlus Truck Sales, Inc.

Respondent.

Docket No.  
CAA-01-2021-0077

**CONSENT AGREEMENT**

**Preliminary Statement**

1. This is a civil administrative penalty assessment proceeding instituted under section 205(c)(1) of the Clean Air Act (“CAA”), 42 U.S.C. § 7524(c)(1). The issuance of this Consent Agreement and attached Final Order (“CAFO”) concludes this proceeding. 40 C.F.R. § 22.18(b)(3).
2. Complainant in this matter is the United States Environmental Protection Agency (“Complainant” or “EPA”). On the EPA’s behalf, Karen McGuire, Director of EPA, Region 1, Enforcement and Compliance Assurance Division, is authorized by lawful delegation to institute and settle civil administrative penalty assessment proceedings under CAA Section 205(c)(1).
3. Respondent in this matter is APlus Truck Sales, Inc., d/b/a A Plus Diesel Sales, A Plus Truck Sales, and A Plus Auto Body (collectively, “APlus Trucks” or “Respondent”). APlus Trucks is a corporation organized under the laws of the State of Maine with its business at 8 Storm Drive in Windham, Maine. APlus Trucks offers for sale, sells, repairs, services and modifies motor vehicles and motor vehicle engines, including but not limited to, those manufactured by GMC, Chevrolet, Cummins, and RAM. In

addition, APlus Trucks offers for sale, sells, and installs aftermarket motor vehicle parts for use on the motor vehicles and motor vehicle engines.

4. In the Complaint filed on July 16, 2021, EPA alleges that APlus Trucks tampered with, and installed defeat devices in, motor vehicle emission control systems in violation of CAA sections 203(a)(3)(B), 42 U.S.C. § 7522(a)(3)(B).
5. Respondent filed an Answer on September 16, 2021.
6. EPA and APlus Trucks agree that settlement of this matter is in the public interest, and that entry of this without further litigation is the most appropriate means of resolving this matter.
7. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), APlus Trucks: admits the jurisdictional allegations of the complaint; in its Answer admits that it committed the alleged violations and states that it contests the proposed penalty; consents to the assessment of the stated civil penalty and to any conditions specified in the consent agreement; and waives any right to contest the allegations and its right to appeal the proposed Final Order accompanying the Consent Agreement.
8. Therefore, before any hearing, without adjudication of any issue of fact or law, upon the record, and upon the consent of Complainant and APlus Trucks, it is hereby agreed as follows:

#### **Jurisdiction**

9. This Consent Agreement is entered into under section 205(c)(1) of the CAA, 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,” 40 C.F.R. Part 22 (“Consolidated Rules”).

## Terms of Agreement

10. Civil Penalty: Taking into account the particular facts and circumstances of this matter, with specific reference to the penalty factors set forth in Section 205(c) of CAA, 42 U.S.C. § 7524(c), EPA has determined that it is fair and proper to assess a civil penalty for the violations alleged in this complaint in the amount of \$75,000. The penalty amount takes into account the effect of the penalty on the violator's ability to continue in business and other penalty factors.
11. APlus Trucks certifies that the COVID-19 pandemic negatively impacted its financial health. In addition, APlus Trucks certifies that it lost over 25% of its revenue or income from mid-March 2020 to September 2021 due to COVID-19. APlus Trucks has provided detailed financial documentation in support of its claim of inability to pay the penalty proposed in the Complaint.
12. APlus Trucks shall pay the \$75,000 penalty, plus 3% interest, over a period of 3 years from the Effective Date. The principal is \$75,000 and the interest is \$2,562.62, for a total of \$77,562.62.
13. APlus Trucks shall pay a first installment of the penalty within 60 days of the Effective Date of the CAFO in the amount of \$25,375 (\$25,000 plus interest of \$375).
14. APlus Trucks shall pay a monthly payment of \$1,534.93 by the first day of each of 34 subsequent calendar months following the first payment under paragraph 13.
15. Each civil penalty payment will be deemed paid on the date of receipt. APlus Trucks shall pay the civil penalties set forth in Paragraphs 13 and 14 by submitting bank, cashier's, certified checks, or online payment payable to the order of the "Treasurer, United States of America." The checks should be sent via regular mail to:

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

or APlus Trucks may make payment via express mail to:

U.S. Bank  
Government Lockbox 979077  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
St. Louis, MO 63101

or APlus Trucks may make payment:

on-line with a debit card or credit card. No username, password, or account number is necessary for this option. On-line payment can be accessed via [WWW.PAY.GOV](http://WWW.PAY.GOV), entering 1.1 in the form search box on the left side of the screen, opening the form, and following the directions on the screen.

APlus Trucks shall note the case name and docket number of this matter ("*In the Matter of APlus Truck Sales, Inc.*, Docket No. CAA-01-2021-0077") on the check or other payment form and in an accompanying cover letter, and shall simultaneously provide copies of the check or notification of other type of payment and cover letter, via email, to:

Tahani Rivers  
Enforcement Counsel  
U.S. Environmental Protection Agency, Region 1  
5 Post Office Square  
Suite 100 (ORC04-6)  
Boston, MA 02109-3912  
[rivers.tahani@epa.gov](mailto:rivers.tahani@epa.gov)

16. For purposes of this proceeding, the parties each agree that:
- (a) its undersigned representative is fully authorized to bind that party to this Consent Agreement and to execute it on behalf of that party; and
  - (b) each party will bear their own costs and attorney fees in the action resolved by this Consent Agreement and attached Final Order.

17. The parties agree that Respondent and EPA may execute this CAFO by electronic signature. To ensure the validity of these signatures and legal enforceability of this CAFO, EPA electronic signatures will comply with the Agency's 2018 Electronic Signature Policy and Electronic Signature Procedure. Respondent's signature will also comply with all applicable Maine e-signature policies and laws, including the EPA regulations at 40 C.F.R. Part 3, which defines a "valid electronic signature" to mean "an electronic signature on an electronic document that has been created with an electronic signature device that the identified signatory is uniquely entitled to use for signing that document, where this device has not been compromised, and where the signatory is an individual who is authorized to sign the document by virtue of his or her legal status and/or his or her relationship to the entity on whose behalf the signature is executed." 40 C.F.R. § 3.3. At a minimum, all electronically signed documents must be reproducible in a human-intelligible form and clearly indicate: (1) that the document was electronically signed; (2) the unique identity of the individual who signed the document and their intent to sign; and (3) the date and time it was signed. Once the CAFO is signed by a party, the document must be locked to prevent any further alteration of the document. Respondent may deliver electronically signed documents by email to the EPA at [rivers.tahani@epa.gov](mailto:rivers.tahani@epa.gov).
18. After EPA's receipt of the electronically signed CAFO, EPA may electronically sign the CAFO and file and serve copies of the executed CAFO in accordance with the EPA Region 1 Regional Judicial Officer's Standard Operating Procedures dated June 19, 2020. An electronically signed CAFO delivered by email or in hard copy shall be deemed an original document, which shall be stored and managed in accordance with Maine and

Federal recordkeeping requirements. EPA and Respondent acknowledge that electronic signatures carry the legal effect, validity, or enforceability of handwritten signatures. Therefore, the parties shall not deny the legal effect, validity, or enforceability of records containing electronic signatures that they transmit and receive on the ground that such records, including the signature(s), are in electronic form.

19. Respondent certifies that it will not manufacture, sell, offer for sale, or install any vehicle or equipment part or component whose principal effect is to bypass, defeat, or render inoperative any device or element of design installed on or in a vehicle or engine in compliance with Title II of the CAA, and it will not remove or render inoperative any emissions related device or element of design installed on or in a vehicle or vehicle engine in compliance with Title II of the CAA, as prohibited under sections 203(a)(3) or 213(d) of the CAA. Toward this end, 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."

#### **Effect of Consent Agreement and Attached Final Order**

20. This CAFO constitutes a settlement by EPA of all claims for federal civil penalties pursuant to Section 205 of the CAA for the violations alleged in the Complaint. Compliance with this CAFO shall not be a defense to any other actions subsequently commenced pursuant to federal laws and regulations administered by EPA for matters not addressed in this CAFO, and it is the responsibility of Respondent to comply with all applicable provisions of federal, state, or local law. EPA reserves all its other criminal and civil enforcement authorities, including the authority to seek injunctive relief and the

authority to respond to conditions that may present an imminent and substantial endangerment to public health, welfare, or the environment.

21. Failure to make the payments by the required due dates, in paragraphs 13 and 14 of this Consent Agreement, may subject Respondent to a civil action to collect any unpaid portion of the proposed civil penalty and interest. In order to avoid the assessment of interest, administrative costs, and late payment penalty in connection with such civil penalty, as described in the following Paragraph of this Consent Agreement, Respondent must timely pay the penalty.
22. If Respondent fails to make the payments by the required due dates, in paragraphs 13 and 14, the total penalty amount plus all accrued interest and statutory costs and penalties, shall become due immediately to the United States upon such failure. Interest shall continue to accrue on any unpaid amounts until the total amount due has been received by the United States. Respondent shall be liable for such amount regardless of whether EPA has notified Respondent of its failure to pay or made a demand for payment. All payments to the United States under this paragraph shall be made by bank, cashier's, certified check, or online payment as described in Paragraph 15.
23. Pursuant to 42 U.S.C. § 7524(c)(6), EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim.
24. In the event that any portion of the civil penalty amount described in Paragraphs 13 and 14 is not paid when due without demand, pursuant to 42 U.S.C. § 7524(c)(6) of the CAA, Respondent will be subject to an action to compel payment, plus interest, enforcement expenses, and a nonpayment penalty. Interest will be assessed on the civil penalty if it is

not paid when due. In that event, interest will accrue from the due date at the “underpayment rate” established pursuant to 26 U.S.C § 6621(a)(2). In the event that a penalty is not paid when due, an additional charge will be assessed to cover the United States’ enforcement expenses, including attorney’s fees and collection costs. In addition, a quarterly nonpayment penalty will be assessed for each quarter during which the failure to pay the penalty persists. Such nonpayment penalty shall be 10 percent of the aggregate amount of Respondent’s outstanding civil penalties and nonpayment penalties hereunder accrued as of the beginning of such quarter. In any such collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

25. The civil penalty provided under this CAFO, and any interest, nonpayment penalties, and charges described in this CAFO, shall represent penalties assessed by EPA within the meaning of 26 U.S.C. § 162(f) and are not tax deductible for purposes of federal, state or local law. Accordingly, Respondent agrees to treat all payments made pursuant to this CAFO as penalties within the meaning of 26 C.F.R. § 1.162-21, and further agrees not to use these payments in any way as, or in furtherance of, a tax deduction under federal, state or local law.
26. This Consent Agreement and attached Final Order apply to and are binding on the Complainant and on the Respondent, its successors and assigns.
27. Nothing in this Consent Agreement shall relieve Respondent of the duty to comply with all applicable provisions of the CAA or other federal, state, or local laws or statutes, nor shall it restrict the EPA’s authority to seek compliance with any applicable laws or regulations.



28. This Effective Date of this Consent Agreement and attached Final Order shall be the date of filing with the Regional Hearing Clerk.

For APlus Truck Sales, Inc.:



Date

NOVEMBER 4, 2021

8 STAR DR WINDHAM ME 04062

Respondent's Federal Tax Identification Number:

31-2894634

**For Complainant:**

**JAMES CHOW**

Digitally signed by JAMES  
CHOW  
Date: 2021.11.05 16:36:47  
-04'00'

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James Chow, Deputy Director *for*  
Karen McGuire, Director  
Enforcement and Compliance Assurance Division  
Environmental Protection Agency  
Region 1 – New England

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Date

**BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

In the Matter of:

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Respondent.

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**FINAL ORDER**

Pursuant to 40 C.F.R. § 22.18(b) and (c) of the EPA's Consolidated Rules of Practice, the foregoing Consent Agreement resolving this matter is incorporated by reference into this Final Order and is hereby ratified. Respondent is ordered to pay the civil penalty amount specified in the Consent Agreement in the manner specified. The terms of the Consent Agreement will become effective on the date it is filed with the Regional Hearing Clerk.

Date: \_\_\_\_\_

\_\_\_\_\_  
LeAnn Jensen  
Regional Judicial Officer  
U.S. EPA, Region 1