

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No. CAA-05-2024-0016
)	
Wehrli Custom Fabrication, Inc.)	Proceeding to Assess a Civil Penalty
Dekalb, Illinois,)	Under Section 205(c) of the Clean Air Act,
)	42 U.S.C. § 7524(c)(1)
Respondent.)	
_____)	

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. § 7424(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 Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency (EPA), Region 5.
3. Respondent is Wehrli Custom Fabrication, Inc., a corporation doing business in Dekalb, Illinois.
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. 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.

10. 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. *See* CAA §§ 202(a)(1) and (3)(8), 42 U.S.C. §§ 7521(a)(1) and (3)(8).

11. 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 (COC). *See* 42 U.S.C. § 7522(a)(1).

12. “Motor vehicle” means any self-propelled vehicle designed for transporting persons or property on a street or highway. *See* Section 216(2) of the CAA, 42 U.S.C. § 7550(2); *See also* 40 C.F.R. § 85.1703.

13. “Motor vehicle engine” means an engine that is designed to power a motor vehicle. See Section 216(3) of the CAA, 42 U.S.C. § 7550(3).

14. EPA issues COCs to motor vehicle and motor vehicle engine manufacturers to certify that a particular group of motor vehicles or motor vehicle engines conforms to applicable EPA requirements governing motor vehicle emissions. See Section 206(a) of the CAA, 42 U.S.C. § 7525(a).

15. EPA promulgated emissions standards for particulate matter, nitrogen oxides, hydrocarbons, and other pollutants applicable to motor vehicles and motor vehicle engines. See Section 202 of the CAA, 42 U.S.C. § 7521; 40 C.F.R. Part 86.

16. To meet the emission standards in 40 C.F.R. Part 86 and qualify for a COC, motor vehicle and engine manufacturers may utilize devices and elements of design such as exhaust gas recirculation (EGRs), diesel oxidation catalysts (DOCs), diesel particulate filters (DPFs), and/or selective catalytic reduction systems (SCRs).

17. Modern motor vehicles and engines are equipped with electronic control modules (ECMs). ECMs continuously monitor engine and other operating parameters and control the emission control devices and elements of design, such as the engine fueling strategy, EGR/CGIs, DOCs, DPFs, and SCRs.

18. Under Section 202(m) of the CAA, 42 U.S.C. § 7521(m), EPA promulgated regulations for motor vehicles manufactured after 2007 that require diesel engine motor vehicles and engines to have numerous devices or elements of design that, working together, can detect problems with the vehicle’s emission-related systems, alert drivers to these

problems, and store electronically-generated malfunction information. See 40 C.F.R. §§ 86.005-17, 86.007-17, 86.1806-05. These devices or elements of design are referred to as “onboard diagnostic systems” or OBDs.

19. 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.”

20. It is 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.” Section 203(a)(3)(A) of the CAA, 42 U.S.C. § 7522(a)(3)(A), 40 C.F.R. § 1068.101(b)(1). This is also referred to as “tampering.”

21. It is 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.” Section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B), 40 C.F.R. § 1068.101(b)(2). These parts or components are also referred to as “defeat devices.”

22. The Administrator of EPA (the Administrator) may assess a civil penalty of up to \$5,580 per motor vehicle, motor vehicle engine, or part or component for violations of Section 203(a) of the CAA, 42 U.S.C. § 7522(a), that occurred after November 2, 2015, where penalties are assessed on or after January 6, 2023, under Section 205(a) of the CAA, 42 U.S.C. § 7524(a) and 40 C.F.R. Part 19.

Factual Allegations and Alleged Violations

23. Respondent is a corporation organized under the laws of the State of Illinois with a primary place of business located at 231 Harvestore Drive, DeKalb, Illinois 60115.

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

25. Respondent is an “aftermarket automotive parts” manufacturer, supplier, and installer located in DeKalb, Illinois.

26. “Aftermarket automotive parts” are replacement automotive parts that are not made by the original motor vehicle manufacturer.

27. On February 24, 2020, EPA performed an inspection (Inspection) of the Facility to evaluate Respondent’s compliance with Title II of the CAA.

28. On August 4, 2020, EPA issued an Information Request pursuant to Section 208 of the CAA, 42 U.S.C. § 7542, seeking information related to Respondent’s manufacture, purchase, sale, and installation of parts and components and services which bypass, defeat, or render inoperative any emission control component, element of design, or emissions related part or component for the period from January 1, 2018 to August 4, 2020.

29. Based on the purchase orders, sales invoices, and spreadsheets provided by Respondent, from January 2, 2018 to May 15, 2020, Respondent manufactured, sold, and/or installed EGR block plates, exhaust systems, ECM tunes or tuners, and other engine components.

30. On September 27, 2021, EPA issued a Finding of Violation (FOV) to Respondent alleging violations of Section 203(a)(3)(A) and (B) of the CAA, 42 U.S.C. § 7522(a)(3)(A) and (B), related to the Respondent's manufacture sale, and/or installation of aftermarket automotive parts.

31. The aftermarket parts manufactured, sold, and/or installed by Respondent are parts or components that were intended for motor vehicles and were designed for use with motor vehicle heavy-duty diesel engines, for which each manufacturer obtained COCs establishing compliance with CAA emission standards.

32. Respondent manufactured, sold, offered for sale, and/or installed at least 1,447 aftermarket automotive parts that had a principal effect to bypass, defeat, render inoperative, or allow for the removal of one or more emission control devices or elements of design installed on or in a motor vehicle or motor vehicle engine. Respondent knew or should have known that such parts or components were being offered for sale or installed for such use or put to such use, in violation of Section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B).

33. Respondent knowingly removed and/or rendered inoperative devices or elements of design installed in or on motor vehicles or motor vehicle engines in compliance with the CAA by installing or modifying software on ECMs installed on or in at least 101 motor

vehicles or motor vehicle engines, in violation of Section 203(a)(3)(A) of the CAA, 42 U.S.C. § 7522(a)(3)(A).

Civil Penalty

34. Based on analysis of the factors specified in Section 113(e) of the CAA, 42 U.S.C. § 7413(e), the facts of this case, and Respondent's ability to pay, Complainant has determined that an appropriate civil penalty to settle this action is \$267,680.21

35. Penalty Payment. Respondent agrees to:

a. Pay the civil penalty of \$267,680.21 in four installments with interest as follows: \$68,927.65 within 90 days of the effective date of this CAFO; \$68,425.75 within 180 days of the effective date of this CAFO; \$67,923.85 within 270 days of the effective date of this CAFO; and \$67,421.96 within 360 days of the effective date of this CAFO.

b. Pay the civil penalty using any method provided in the table below.

Payment Method	Payment Instructions
<p>Automated Clearinghouse (ACH) payments made through the US Treasury</p>	<p>US Treasury REX/Cashlink ACH Receiver ABA: 051036706 Account Number: 310006, Environmental Protection Agency CTX Format Transaction Code 22 – checking</p> <p>In the comment area of the electronic funds transfer, state Respondent’s name and the CAFO docket number.</p>
<p>Wire transfers made through Fedwire</p>	<p>Federal Reserve Bank of New York ABA: 021030004 Account Number: 68010727 SWIFT address: FRNYUS33 33 Liberty Street New York, NY 10045 Beneficiary: US Environmental Protection Agency</p> <p>In the comment area of the electronic funds transfer, state Respondent’s name and the docket number of this CAFO.</p>
<p>Payments made through Pay.gov</p> <p>Payers can use their credit or debit cards (Visa, MasterCard, American Express & Discover) as well as checking account information to make payments.</p>	<ul style="list-style-type: none"> • Go to Pay.gov and enter “SFO 1.1” in the form search box on the top left side of the screen. • Open the form and follow the on-screen instructions. • Select your type of payment from the "Type of Payment" drop down menu. • Based on your selection, the corresponding line will open and no longer be shaded gray. Enter the CAFO docket number into the field
<p>Cashier’s or certified check payable to “Treasurer, United States of America.”</p> <p>Please notate the CAFO docket number on the check</p>	<p>For standard delivery: U.S. Environmental Protection Agency Fines and Penalties Cincinnati Finance Center P.O. Box 979078 St. Louis, Missouri 63197-9000</p> <p>For signed receipt confirmation (FedEx, UPS, Certified Mail, etc): U.S. Environmental Protection Agency Government Lockbox 979078 3180 Rider Trail S. Earth City, Missouri 63045</p>

36. Within 24 hours of the payment of the civil penalty Respondent must send a notice of payment and states Respondent's name and the docket number of this CAFO to EPA at the following addresses:

Air Enforcement and Compliance Assurance Branch
U.S. Environmental Protection Agency, Region 5
R5airenforcement@epa.gov

Cynthia King
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
King.cynthia@epa.gov

Regional Hearing Clerk (E-19J)
U.S. Environmental Protection Agency, Region 5
r5hearingclerk@epa.gov

37. This civil penalty is not deductible for federal tax purposes.

38. If Respondent does not pay timely the civil penalty 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 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

39. 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 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. § 7413(d)(5).

40. Pursuant to 26 U.S.C. § 6050X and 26 C.F.R. § 1.6050X-1, EPA is required to send to the Internal Revenue Service (“IRS”) annually, a completed IRS Form 1098-F (“Fines, Penalties, and Other Amounts”) with respect to any court order or settlement agreement (including administrative settlements), that require a payor to pay an aggregate amount that EPA reasonably believes will be equal to, or in excess of, \$50,000 for the payor’s violation of any law or the investigation or inquiry into the payor’s potential violation of any law, including amounts paid for “restitution or remediation of property” or to come “into compliance with a law.” EPA is further required to furnish a written statement, which provides the same information provided to the IRS, to each payor (i.e., a copy of IRS Form 1098-F). Failure to comply with providing IRS Form W-9 or Tax Identification Number (“TIN”), as described below, may subject Respondent to a penalty, per 26 U.S.C. § 6723, 26 U.S.C. § 6724(d)(3), and 26 C.F.R. § 301.6723-1. In order to provide EPA with sufficient information to enable it to fulfill these obligations, EPA herein requires, and Respondent herein agrees, that:

- a. Respondent shall complete an IRS Form W-9 (“Request for Taxpayer Identification Number and Certification”), which is available at <https://www.irs.gov/pub/irs-pdf/fw9.pdf>;
- b. Respondent shall therein certify that its completed IRS Form W-9 includes

Respondent's correct TIN or that Respondent has applied and is waiting for issuance of a TIN;

c. Respondent shall email its completed Form W-9 to EPA's Cincinnati Finance Center at wise.milton@epa.gov, within 30 days after the Final Order ratifying this Agreement is filed, and EPA recommends encrypting IRS Form W-9 email correspondence; and

d. In the event that Respondent has certified in its completed IRS Form W-9 that it does not yet have a TIN but has applied for a TIN, Respondent shall provide EPA's Cincinnati Finance Center with Respondent's TIN, via email, within five (5) days of Respondent's receipt of a TIN by the IRS.

Other Conditions

41. By signing this Consent Agreement, Respondent agree to the following: (i) Respondent 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); (ii) Respondent will not manufacture, sell, offer to sell or install any part or component in violation of Section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B); and (iii) Respondent certifies that it has reviewed EPA's November 23, 2020 "Tampering Policy: The EPA Enforcement Policy on Vehicles and Engine Tampering and Aftermarket Defeat Devices under the Clean Air Act."

42. By the Effective Date of this CAFO, Respondent shall no longer provide any technical support, maintenance, repair, or information pertaining to defeat devices for use with

motor vehicles or motor vehicle engines.

43. Respondent certifies it has permanently destroyed all defeat devices remaining in Respondent's inventory and/or possession, by compacting or crushing the defeat devices and all associated parts and components to render them useless.

44. Respondent certifies that it has removed from its webpages and any social media platform(s) all advertisements, photos, videos, and information that relate to performing tampering and/or selling, offering to sell, and/or installing defeat devices (Tampering and/or Defeat Device Content), except advertisements, photos, videos, or information relating to how to comply with the CAA. Respondent shall provide EPA the web address of each of its webpages and social media platforms and Respondent's certification that it has removed from its webpages and social media platforms all Tampering and Defeat Device Content and that its webpages and social media platforms do not and will not contain any Tampering and/or Defeat Device Content.

45. Within 14 calendar days of the Effective Date of this CAFO, Respondent shall post a publicly-accessible announcement about Respondent's settlement with EPA prominently on Respondent's current website homepage(s), Respondent's social media homepage(s), including, but not limited to, all Facebook, Twitter, Pinterest, and Instagram accounts associated with Respondent. The announcement shall remain posted for at least 60 calendar days from the date the announcement is posted. Respondent shall use the text contained in Appendix A (Announcement) in 12-point font, or another notice reviewed and approved by EPA, to provide such announcement.

46. Within 30 calendar days of the Effective Date of this CAFO, Respondent shall provide EPA with certification and proof that Respondent has completed the actions required by Paragraphs 43, 44, and 45, above.

47. Respondent must submit the information required by Paragraph 46 of this CAFO via electronic mail to fenzl.brianna@epa.gov and r5airenforcement@epa.gov accompanied by the following statement signed by one of its officers:

I certify that I am familiar with the information in this document and that, based on my inquiry of those individuals responsible for obtaining the information, it is true and complete to the best of my knowledge. I know that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

48. Failure to comply with Paragraph 40 of this CAFO may constitute a violation or violations of Section 203(a)(3)(A) and/or (B) of the CAA, 42 U.S.C. § 7522(a)(3)(A) and/or (B), and Respondent could be subject to penalties up to the statutory civil penalties in 40 C.F.R. § 19.4.

49. 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. In entering into this agreement, EPA relied on such information and representations. 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 EPA regarding matters relevant to this CAFO, including information about Respondent's ability to pay a penalty, 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 is 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.

General Provisions

50. The parties' consent to service of this CAFO by e-mail at the following valid e-mail addresses: king.cynthia@epa.gov (for Complainant), and stewart@hassancables.com (for Respondent). Respondent understands that the CAFO will become publicly available upon filing.

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

52. 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.

53. 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 51, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

54. Respondent certifies that it is complying fully with Sections 203(a)(3)(A) and (B) of the CAA, 42 U.S.C. § 7522(a)(3)(A) and (B).

55. This CAFO constitutes an "enforcement response" as that term is used in EPA's Clean Air Act Stationary Civil Penalty Policy to determine Respondent's "full compliance history" under Section 113(e) of the CAA, 42 U.S.C. § 7413(e).

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

57. 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.

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

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

Wehrli Custom Fabrication, Respondent

2/6/2024

Date

DocuSigned by:



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Jason Wehrli, Owner

Wehrli Custom Fabrication, Inc.

45-3358971

Tax Identification Number

United States Environmental Protection Agency, Complainant

**MICHAEL
HARRIS**

Digitally signed by
MICHAEL HARRIS
Date: 2024.02.21
15:38:19 -06'00'

Michael D. Harris
Division Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 5

Consent Agreement and Final Order
In the Matter of: Wehrli Custom Fabrication, Inc.
Docket No. CAA-05-2024-0016

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.

Date

ANN COYLE Digitally signed by ANN
COYLE
Date: 2024.02.26
15:43:19 -06'00'

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

**Appendix A:
Announcement**

On _____ Date, Wehrli Custom Fabrication (“Wehrli”) entered into a settlement with the United States Environmental Protection Agency (EPA) to resolve alleged violations of Section 203(a)(3)(A) and 203(a)(3)(B) of the Clean Air Act, related to the removal and/or rendering inoperative of emission control devices and elements of design and the manufacturing selling, offering to sell, and/or installing defeat devices for use on heavy-duty diesel engines.

By signing a consent agreement with EPA, Wehrli has certified that it will comply with Section 203(a)(3) of the CAA, which 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 purchasers, 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 [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.”

Wehrli will pay a penalty of \$267,680.21 and comply with the consent agreement to ensure ongoing compliance with the Clean Air Act.

If you have any questions regarding this announcement, please ask for Jason Wehrli.

Thank you,
Jason Wehrli