

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS 66219**

Received by
EPA Region 7
Hearing Clerk

BEFORE THE ADMINISTRATOR

In the Matter of

KC Performance Diesel, LLC
Kansas City, Kansas

Respondent.

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Docket No. CAA-07-2023-0060

CONSENT AGREEMENT AND FINAL ORDER

Preliminary Statement

The U.S. Environmental Protection Agency, Region 7 (EPA or Complainant) and KC Performance Diesel, LLC (Respondent), have agreed to a settlement of this action before filing of a complaint, and thus this action is simultaneously commenced and concluded under 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, as codified at 40 C.F.R. Part 22.

Jurisdiction

1. This proceeding is an administrative action for the assessment of civil penalties instituted pursuant to Section 205(c) of the CAA, 42 U.S.C. § 7524(c). Pursuant to Section 205(c)(1) of the CAA, 42 U.S.C. § 7524(c)(1), EPA may administratively assess a penalty for violations of Section 203(a) of the CAA, 42 U.S.C. § 7522(a), that occurred after November 2, 2015, where the penalty is assessed on or after January 6, 2023, if the penalty sought is less than \$446,456. CAA § 205(c)(1), 42 U.S.C. § 7524(c)(1); 40 C.F.R. § 19.4.

2. This Consent Agreement and Final Order serves as notice that EPA has reason to believe that Respondent has violated Section 203 of the CAA, 42 U.S.C. § 7522, and the regulations promulgated thereunder. Furthermore, this Consent Agreement and Final Order serves as notice pursuant to Section 205(c)(1) of the CAA, 42 U.S.C. § 7524(c)(1), of the EPA's intent to issue an order assessing penalties for these violations.

Parties

3. Complainant is the Director of the Enforcement and Compliance Assurance Division, Region 7, as duly delegated by the Administrator of EPA.

4. Respondent is KC Performance Diesel, LLC, a limited liability company organized under the laws of Kansas.

Statutory and Regulatory Background

5. Title II of the CAA, 42 U.S.C. §§ 7521-7554, was enacted to reduce air pollution from mobile sources. In enacting 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).

6. Section 216(a) of the CAA, 42 U.S.C. § 7550(2), defines the term “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.”) These definitions are based on vehicle attributes (e.g., ability to travel over 25 miles per hour, lack of features that render street use unsafe) and make no exemption for vehicles based on their use (e.g., claim that a vehicle is used solely for competition).

7. EPA promulgated emission standards for particulate matter (PM), nitrogen oxides (NO_x), hydrocarbons (HC), carbon monoxide (CO), and other pollutants emitted by motor vehicles and motor vehicle engines, including Heavy Duty Diesel Engine (HDDE) trucks, under Section 202 of the CAA, 42 U.S.C. § 7521. *See generally* 40 C.F.R. Part 86. HDDE standards “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).

8. To meet the emissions standards in 40 C.F.R. Part 86, HDDE manufacturers employ many devices and elements of design. The regulation at 40 C.F.R. § 86.094-2 defines the term “element of design” as “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.”

9. One element of design that HDDE manufacturers employ is retarded fuel injection timing as a primary emission control device for NO_x emissions. Common emission control devices HDDE manufacturers use include diesel particulate filters (DPFs), exhaust gas recirculation (EGR) systems, selective catalyst reduction (SCR) systems, and/or diesel oxidation catalysts (DOCs). Additionally, modern HDDEs are equipped with electronic control modules (ECMs), which continuously monitor engine and other operating parameters and control the vehicle’s emission control devices.

10. EPA promulgated regulations for motor vehicles manufactured after 2007 that require HDDE trucks to have onboard diagnostic systems to detect various emission control device parameters and vehicle operations. *See* Section 202(m) of the CAA, 42 U.S.C. § 7521(m), and 40 C.F.R. §§ 86.010-18(o), 86.1806-05(n).

11. Section 208(a) and (b) of the CAA authorizes the EPA to enter and conduct inspections of persons subject to the prohibitions on manufacturing aftermarket defeat devices.

42 U.S.C. § 7542(a) and (b). Specifically, Section 208(a) of the CAA requires that subject persons shall make reports and provide information the EPA may reasonably require to determine whether the person has acted or is acting in compliance with Title II, Part A, and, shall, upon request, permit such officer or employee at reasonable times to have access to and copy such records. 42 U.S.C. § 7542(a).

12. Section 203(a)(2) of the CAA, 42 U.S.C. § 7522(a)(2), prohibits any person from failing or refusing to make reports, provide information, permit inspection, or permit access to or copying of records required under Section 208 of the CAA.

13. Section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B), and 40 C.F.R. § 1068.101(b)(2) prohibit any person from manufacturing or selling, or offering to sell, or installing, 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.

14. Section 302(e) of the CAA, 42 U.S.C. § 7602(e), defines the term “person” as “including 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, agency, or employee thereof.”

15. Section 205(a) of the CAA, 42 U.S.C. § 7524(a), states that any person who violates Section 203(a)(2) shall be subject to a civil penalty of not more than \$25,000 per day of violation, and any person other than a manufacturer or dealer who violates Section 203(a)(3)(B) of the CAA shall be subject to a civil penalty of not more than \$2,500 with respect to each part or component. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, as amended, and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, 28 U.S.C. § 2461, and implementing regulations at 40 C.F.R. Part 19, increased these statutory maximum penalties to \$55,808 and \$5,580, respectively, for violations that occur after November 2, 2015, and are assessed after January 6, 2023.

16. Pursuant to Section 205(c)(1) of the CAA, 42 U.S.C. § 7524(c)(1), EPA may compromise, or remit, with or without conditions, any administrative penalty which may be imposed under this section.

Factual Allegations

17. Respondent operates an automotive repair facility at 3002 South 44th Street, Kansas City, Kansas, 66106, that specializes in automotive diesel repair and performance upgrades (the Facility).

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

19. On August 2, 2022, EPA attempted to conduct an on-site inspection of Respondent's Facility. Respondent denied EPA access to inspect the Facility.

20. On or around August 5, 2022, Respondent consented to an inspection to be conducted by EPA on August 19, 2022. However, during that inspection, Respondent denied EPA access to inspect records related to the company's compliance with the CAA's prohibitions related to aftermarket defeat devices.

21. On September 16, 2022, EPA sent a Request for Information to Respondent pursuant to Section 208 of the CAA, 42 U.S.C. § 7542, to evaluate Respondent's compliance with Title II of the CAA and the regulations promulgated thereunder.

22. On October 3, 2022, Respondent provided a response to EPA's Request for Information. In its response, Respondent stated that it sold and/or installed at least ninety-six (96) exhaust kits that disabled emission controls on diesel trucks.

Alleged Violations

23. Complainant hereby states and alleges that Respondent has violated the CAA and federal regulations promulgated thereunder as follows:

Count 1

24. Paragraphs 17 through 22 are incorporated by reference as if fully set forth herein.

25. Section 203(a)(2) of the CAA, 42 U.S.C. § 7522(a)(2), prohibits any person from failing or refusing to provide information, permit inspection, or permit access to or copying of records required under Section 208 of the CAA.

26. On August 2, 2022, and August 19, 2022, Respondent failed or refused to provide EPA information, permit inspection, or permit access to or copying of records required under Section 208 of the CAA.

27. By failing or refusing to provide EPA information, permit inspection, or permit access to copying of records required under Section 208 of the CAA, Respondent is in violation of Section 203(a)(2) of the CAA, 42 U.S.C. § 7522(a)(2).

Counts 2-97

28. Paragraphs 17 through 22 are incorporated by reference as if fully set forth herein.

29. Section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B), and 40 C.F.R. § 1068.101(b)(2), prohibit any person from manufacturing or selling, or offering 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.

30. Between January 2020 and December 2021, Respondent sold and/or installed at least ninety-six (96) parts or components on motor vehicles or motor vehicle engines, where the principal effect of the part or component is to bypass, defeat, or render inoperative elements of design of those engines.

31. Respondent knew or should have known that the parts or components it offered for sale or installed would bypass, defeat, or render inoperative elements of design on those engines.

32. By selling and/or installing at least ninety-six parts or components on motor vehicles or motor vehicle engines where the principal effect of the part or component is to bypass, defeat, or render inoperative elements of design of those engines when it knew or should have known that the parts or components it offered for sale or installed was to bypass, defeat, or render inoperative elements of design on those engines, Respondent is in violation of Section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B), and 40 C.F.R. § 1068.101(b)(2).

CONSENT AGREEMENT

33. Respondent consents to the issuance of this Consent Agreement and Final Order. In addition, for the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent:

- (a) admits the jurisdictional allegations set forth herein;
- (b) neither admits nor denies the specific factual allegations and alleged violations stated herein;
- (c) consents to the assessment of a civil penalty, as stated herein;
- (d) consents to the issuance of any specified compliance or corrective action order;
- (e) consents to any conditions specified herein;
- (f) consents to any stated Permit Action;
- (g) waives any right to contest the allegations set forth herein; and
- (h) waives its rights to appeal the Final Order accompanying this Consent Agreement.