



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

September 29, 2021

VIA E-MAIL
DELIVERY RECEIPT REQUESTED

Frank Tiegs, Owner
Oregon Potato Company
6610 West Court Street
Pasco, Washington, 99301

Email: sschossberger@oregonpotato.com

Dear Mr. Tiegs:

Enclosed is a file-stamped Consent Agreement and Final Order (CAFO) which resolves Oregon Potato Company, docket no. CAA-05-2021-0036. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on September 29, 2021.

Pursuant to paragraph 34 of the CAFO, Oregon Potato Company must pay the civil penalty within 30 days of the filing date. Your electronic funds transfer must display the case name and case docket number.

Please direct any questions regarding this case to Cynthia King, Associate Regional Counsel, (312) 886-6831.

Sincerely,

**NATHAN
FRANK**

Nathan Frank, Chief

Air Enforcement and Compliance Assurance Section (IL/IN)

Digitally signed by
NATHAN FRANK
Date: 2021.09.28
08:55:20 -05'00'

Enclosure

cc: Ann Coyle, Regional Judicial Officer/via electronic mail
Coyle.ann@epa.gov

Regional Hearing Clerk/via electronic mail
R5hearingclerk@epa.gov

Cynthia King/via electronic mail
king.cynthia@epa.gov

John Keenan, Region 10/via electronic mail
keenan.john@epa.gov

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:)	Docket No. CAA-05-2021-0036
)	
Oregon Potato Company)	Proceeding to Assess a Civil Penalty
Pasco, Washington)	Under Section 205(c)(1) of the Clean Air
)	Act, 42 U.S.C. § 7524(c)(1)
Respondent.)	
<hr/>)	

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. § 7524(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 Oregon Potato Company, a company doing business in Washington.

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). *See* 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. Section 203(a)(1) of the CAA, 42 U.S.C. § 7522(a)(1), 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).

10. “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.

11. “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).

12. 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).

13. EPA promulgated emissions standards for particulate matter, nitrogen oxides, hydrocarbons, and other pollutants applicable to motor vehicles and motor vehicle engines, including standards for heavy-duty diesel engines (HDDE). *See* Section 202 of the CAA, 42 U.S.C. § 7521; 40 C.F.R. Part 86.

14. To meet the emission standards in 40 C.F.R. Part 86 and qualify for a COC, HDDE motor vehicle and engine manufacturers may utilize devices and elements of design such as Exhaust Gas Recirculation (EGR) or Clean Gas Induction (CGI) systems, Diesel Oxidation Catalysts (DOCs), Diesel Particulate Filters (DPFs), and/or Selective Catalytic Reduction systems (SCRs).

15. Modern HDDE 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, CGI, DOC, DPF, and SCR systems.

16. Under Section 202(m) of the CAA, 42 U.S.C. § 7521(m), EPA promulgated regulations for motor vehicles manufactured after 2007 that require HDDE 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 "OBD" systems.

17. 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." *See* 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."

18. 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.” *See* 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.”

19. The Administrator of EPA (the Administrator) may assess a civil penalty of up to \$4,876 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 December 23, 2020, 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

20. Respondent is an agricultural company located at 6610 West Court Street, Pasco, Washington.

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

22. Greenridge Farming, Inc. (GRF) is a company owned by Frank Tiegs that owns and operates a fleet out of its office at 6610 West Court Street, Pasco, Washington.

23. On May 21, 2020, EPA issued to Respondent a request for information (May 2020 Request) pursuant to Section 208 of the CAA, 42 U.S.C. § 7542. The May 2020 Request sought documents related to all HDDE motor vehicles owned, operated, and/or leased by

Respondent and the purchase of, and/or installation of, parts, 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, 2017 to the date of receipt of the May 2020 Request.

24. Between July 22, 2020 and September 21, 2020, Respondent provided EPA with its initial and supplemental responses to the May 2020 Request. EPA received additional records between October 28, 2020 and April 6, 2021 from GRF which included documents relevant to OPC. The responses included invoices and documentation related to Respondent's transactions of parts and components manufactured by Diesel Spec, Inc. The parts and components included software and/or devices installed on ECMs (ECM Tuning Products) for use on HDDE trucks belonging to GRF (GRF Trucks).

25. The invoices and documentation indicate that between December 14, 2018 and July 21, 2020, Respondent purchased the ECM Tuning Products for GRF and GRF reimbursed Respondent for those ECM Tuning Products.

26. Each GRF Truck constitutes a "motor vehicle" as that term is defined by the CAA.

27. The manufacturer of each GRF Truck has obtained a COC to comply with CAA emission standards.

28. The ECM Tuning Products bypassed, defeated, or rendered inoperative elements of design installed on or in the GRF Trucks and allowed for the removal or rendering inoperative of emission control devices (i.e., EGR DOC, and/or DPF system(s)) without illuminating a malfunction indicator lamp in the vehicle's OBD system, prompting any diagnostic trouble code

in the OBD system, or causing any engine derating due to the removal or disabling of an emission control device.

29. On July 8, 2021, the EPA issued a Finding of Violation (FOV) to the Respondent alleging violations of Section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B) for the Respondent's sale of defeat devices.

30. On August 5, 2021, representatives from EPA and Respondent held a teleconference to discuss the FOV.

31. On August 5, 2021, Respondent confirmed that it no longer sells defeat devices.

32. Respondent sold parts or components, including ECM Tuning Products, intended for use with, or as part of, a motor vehicle or motor vehicle engine, where a principal effect of the part or component was to bypass, defeat or render inoperative devices and elements of design that control emissions, such as the engine fueling strategy, EGR, DOC, DPF, and/or OBD systems, installed on or in a motor vehicle or motor vehicle engine in compliance with the CAA. Respondent knew or should have known that such part or component was 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).

Civil Penalty

33. Based on analysis of the factors specified in Section 205(c) of the CAA, 42 U.S.C. § 7524(c), the facts of this case, information that Respondent provided to EPA, Respondent's ability to pay, and Respondent's cooperation and prompt return to compliance, Complainant has determined that an appropriate civil penalty to settle this action is \$19,504.

34. Within 30 days after the effective date of this CAFO, Respondent must pay a \$19,504 civil penalty by electronic funds transfer, payable to “Treasurer, United States of America,” and sent to:

Federal Reserve Bank of New York
ABA No. 021030004
Account No. 68010727
33 Liberty Street
New York, New York 10045
Field Tag 4200 of the Fedwire message should
read: “D68010727 Environmental Protection Agency”

In the comment or description field of the electronic funds transfer, state Respondent’s name and the docket number of this CAFO.

35. Respondent must send an electronic notice of payment that states Respondent’s name and the docket number of this CAFO to EPA at the following addresses when it pays the penalty:

Air Enforcement and Compliance Assurance Branch
U.S. Environmental Protection Agency, Region 5
r5airenforcement@epa.gov

Cynthia King (C-14J)
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

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

37. If Respondent does not timely pay 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 205(c)(6) of the CAA, 42 U.S.C. § 7524(c)(6)(B). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

38. 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 attorneys' 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. § 7524(c)(6)(B).

Other Conditions

39. By signing this Consent Agreement, Respondent agrees 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 compliance with regulations under Title II of the CAA, 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 defeat device, including ECM Tuning Products, 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."

40. By signing this Consent Agreement, Respondent understands that the violations addressed in this CAFO may be considered as a "History of Noncompliance" for any future violations of Title II of the CAA, 42 U.S.C. § 7522(a)(3)(A) and (B), by Respondent or any other

business entity owned or operated by Frank Tiegs, as addressed in the January 18, 2021, Clean Air Act Title II Vehicle & Engine Civil Penalty Policy.

41. By the date of its signature on this CAFO, Respondent shall no longer provide any technical support, maintenance, repair, or information pertaining to defeat devices, including ECM Tuning Products, for use with motor vehicles or motor vehicle engines.

42. By the date of Respondent's signature on this CAFO, if Respondent has any defeat devices in its inventory and/or possession, Respondent shall permanently destroy or return to the manufacturer all defeat devices in its inventory and/or possession (including, but not limited to, any remote tuning devices or EGR block plates, such as those manufactured or sold by Diesel Spec Inc.).

43. Within 14 calendar days from the Respondent's signature on this CAFO, Respondent shall remove 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 except advertisements, photos, videos, or information relating to how to comply with the CAA.

44. Within 30 calendar days after the date of Respondent's signature on this CAFO, Respondent shall provide EPA with its certification and proof that Respondent has completed the actions required by Paragraphs 42 and 43. Respondent shall send its certification and supporting materials via electronic mail to hufferd.joshua@epa.gov, clark.sarah@epa.gov, and r5airenforcement@epa.gov.

45. Failure to comply with Paragraph 39 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.

46. 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's to the 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. Respondents 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.

47. For purposes of the identification requirement in Section 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), and 26 C.F.R. § 162-21(b)(2), performance of the Other Conditions Section above is restitution, remediation, or required to come into compliance with the law.

General Provisions

48. The parties consent to service of this CAFO by e-mail at the following e-mail addresses: king.cynthia@epa.gov (for Complainant), and sschossberger@oregonpotato.com (for Respondent).

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

50. The effect of the settlement described in Paragraph 49, above, is conditioned upon the accuracy of Respondent's representations to EPA.

51. 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.

52. 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 49, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

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

54. This CAFO constitutes an "enforcement response" as that term is used in EPA's January 18, 2021, Clean Air Act Title II Vehicle & Engine Civil Penalty Policy to determine Respondent's "full compliance history" under Section 205(b) of the CAA, 42 U.S.C. § 7524(b).

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

56. 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.

57. Each party agrees to bear its own costs and attorneys' fees in this action.

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

Oregon Potato Company, Respondent

9-27-2021
Date

Frank Tiegs
Frank Tiegs, Owner
Oregon Potato Company

United States Environmental Protection Agency, Complainant

Harris, Michael Digitally signed by Harris, Michael
Date: 2021.09.28 11:59:59 -05'00'

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: Oregon Potato Company
Docket No. CAA-05-2021-0036**

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective (“Effective Date”) 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: 2021.09.28 15:18:44
-05'00'

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

Consent Agreement and Final Order
In the matter of: Oregon Potato Company
Docket Number: **CAA-05-2021-0036**

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, docket number CAA-05-2021-0036, which was filed on September 29, 2021, in the following manner to the following addressees:

Copy by E-mail to Respondent: Frank Tiegs
sschossberger@oregonpotato.com

Copy by E-mail to
Attorney for Complainant: Cynthia King
king.cynthia@epa.gov

Copy by E-mail to
Attorney for Respondent: Steven Schossberger
sschossberger@oregonpotato.com

Copy by E-mail to
Regional Judicial Officer: Ann Coyle
coyle.ann@epa.gov

Dated: _____

LADAWN WHITEHEAD

Digitally signed by LADAWN
WHITEHEAD
Date: 2021.09.29 09:57:34 -05'00'

LaDawn Whitehead
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5