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16 UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
17 REGION IX  
18 75 HAWTHORNE STREET  
19 SAN FRANCISCO, CALIFORNIA 94105

19 In the Matter of:

20 Borla Performance Industries, Inc.,  
21  
22 Respondent.

Docket No. CAA-09-2020-0044

23 CONSENT AGREEMENT AND FINAL  
24 ORDER PURSUANT TO  
25 40 C.F.R. §§ 22.13 AND 22.18

26 CONSENT AGREEMENT

27 I. Preliminary Statement

28 1. This civil administrative penalty assessment proceeding was commenced pursuant to section 205(c)(1) of the Clean Air Act ("CAA"), 42 U.S.C. § 7524(c)(1), and the

1 Consolidated Rules of Practice Governing the Administrative Assessment of Civil  
2 Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22.

- 3
- 4 2. Complainant in this matter is the Director of the Enforcement and Compliance Assurance  
5 Division, U.S. Environmental Protection Agency Region IX (“EPA” or “Complainant”),  
6 who has been duly delegated the authority to commence and settle civil administrative  
7 penalty proceedings under section 205(c)(1) of the CAA, 42 U.S.C. § 7424(c)(1).  
8
- 9 3. Respondent in this matter is Borla Performance Industries, Inc. (“Respondent”), a  
10 California corporation.
- 11 4. Complainant filed a Complaint on June 30, 2020, alleging Respondent violated section  
12 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B). Complainant filed an Amended  
13 Complaint on August 6, 2020, and a Second Amended Complaint on March 12, 2021. In  
14 the Second Amended Complaint, Complainant alleged Respondent committed 5,338  
15 violations of section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B), through  
16 Respondent’s manufacture, sale, and offer for sale of 57 Exhaust System Defeat Devices  
17 (as defined in the Second Amended Complaint), that bypass, defeat, or render inoperative  
18 catalytic converters installed in motor vehicles to comply with emission standards under  
19 Title II of the CAA.  
20
- 21
- 22 5. Respondent filed its Answer to the First Amended Complaint on September 28, 2020, and  
23 filed its Answer to the Second Amended Complaint on March 29, 2021.
- 24 6. On April 20, 2021, Complainant filed a Motion for Accelerated Decision on Liability and  
25 to Strike Affirmative Defenses (“Motion for Accelerated Decision”). Respondent filed its  
26 Opposition to the Motion for Accelerated Decision on June 12, 2021.  
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7. On March 15, 2022, the Chief Administrative Law Judge entered an Order Granting Complainant's Motion for Accelerated Decision and found that there were no genuine issues of material fact and Complainant was entitled to judgment as a matter of law as to Respondent's liability for 4,787 violations of section 203(a)(3)(B) of the Clean Air Act, 42 U.S.C. § 7522(a)(3)(B). Additionally, the Tribunal granted Complainant's motion to strike several of Respondent's affirmative defenses for purposes of the liability determination. The amount of civil penalty, if any, to be imposed for the identified violations remains in dispute and the Tribunal set a hearing on penalty issues to begin July 25, 2022.

8. After entry of the Order on Complainant's Motion for Accelerated Decision, and having found that settlement is consistent with the provisions and objectives of the CAA and applicable regulations, the EPA and Respondent ("the Parties") agreed to settle this proceeding through the entry of this Consent Agreement and attached Final Order ("CAFO") without further adjudication of any issues of law or fact herein, pursuant to 40 C.F.R. § 22.18.

## II. Terms of Agreement

9. The Parties agree that settlement of this matter without litigation will save time and resources, that it is in the public's interest, and that the entry of this CAFO is the most appropriate means of resolving such matters.
10. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent:
- a. admits to the jurisdictional allegations of the Second Amended Complaint,

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- b. neither admits nor denies specific factual allegations or legal conclusions contained in the Second Amended Complaint,
  - c. consents to the assessment of a civil penalty as stated below,
  - d. consents to any conditions specified in this Consent Agreement,
  - e. waives any right to contest the allegations in the Complaint, and
  - f. waives any right to appeal the proposed final order accompanying this Consent Agreement.

### 10 III. Civil Penalty

11 11. Respondent agrees to pay a civil penalty, calculated in accordance with the CAA, in the  
12 amount of **ONE MILLION, TWENTY-TWO THOUSAND, AND FIVE HUNDRED**  
13 **DOLLARS (\$1,022,500)**, that is to be paid within thirty (30) calendar days of the Effective  
14 Date of this CAFO.

15  
16 12. Respondent agrees to pay the assessed penalty using any method, or combination of methods,  
17 provided on the website <https://www.epa.gov/financial/makepayment>, and identifying the  
18 payment with "Docket No. CAA-09-2020-0044." Within 24 hours of payment of the  
19 assessed penalty, Respondent agrees to send proof of payment to Andrew Chew at  
20 [chew.andrew@epa.gov](mailto:chew.andrew@epa.gov) and the EPA Region 9 Regional Hearing Clerk at  
21 [r9hearingclerk@epa.gov](mailto:r9hearingclerk@epa.gov). "Proof of payment" means, as applicable, a copy of the check,  
22 confirmation of credit card or debit card payment, confirmation of wire or automated  
23 clearinghouse transfer, and any other information required to demonstrate the payment has  
24 been made according to the EPA requirements, in the amount due, and identified with  
25 "Docket No. CAA-09-2020-0044."  
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1 13. Payment of the above civil administrative penalty shall not be used by Respondent or any  
2 other person as a tax deduction from Respondent's federal, state, or local taxes.

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4 14. If Respondent does not timely pay the civil penalty, specified in Paragraph 11, then  
5 Respondent shall pay to the EPA a stipulated penalty in the amount of five hundred dollars  
6 (\$500) for each day the default continues plus the remaining balance of the penalty sum  
7 specified in Paragraph 11 upon written demand by the EPA.

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

- 11 a. request the Attorney General bring a civil action in an appropriate district  
12 court to recover: the amount assessed; interest at rates established pursuant to  
13 26 U.S.C. § 6621(a)(2); the United States' enforcement expenses; and a  
14 10 percent quarterly nonpayment penalty, 42 U.S.C. § 7524(c)(6);  
15  
16 b. refer the debt to a credit reporting agency or a collection agency,  
17 42 U.S.C. § 7524(c)(6), 40 C.F.R. §§ 13.13, 13.14, and 13.33;  
18  
19 c. collect the debt by administrative offset (i.e., the withholding of money  
20 payable by the United States to, or held by the United States for, a person to  
21 satisfy the debt the person owes the Government), which includes, but is not  
22 limited to, referral to the Internal Revenue Service for offset against income  
23 tax refunds, 40 C.F.R. Part 13, Subparts C and H; and  
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25 d. suspend or revoke Respondent's licenses or other privileges granted by EPA,  
26 or suspend or disqualify Respondent from doing business with EPA or  
27 engaging in programs EPA sponsors or funds, 40 C.F.R. § 13.17.

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#### IV. Certification of Compliance

16. Respondent certifies it is in compliance as of the date of signature of this CAFO with section 203(a)(3) of the CAA, 42 U.S.C. § 7522(a)(3). Respondent has represented to the EPA that it is no longer manufacturing, selling, or offering for sale the 57 parts listed as Exhaust System Defeat Devices in the Second Amended Complaint.

17. 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.”

18. 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. Prior to payment of the assessed penalty and providing payment notification in accordance with this CAFO, 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.

19. 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.

1 20. By signing this CAFO, the undersigned representative of Complainant and the undersigned  
2 representative of Respondent each certify that he or she is fully authorized to execute and  
3 enter into the terms and conditions of this CAFO and has the legal capacity to bind the party  
4 he or she represents to this CAFO. This CAFO may be signed in counterparts, and its validity  
5 shall not be challenged on that basis.  
6

7 21. By signing this CAFO, Respondent certifies that the information it has supplied concerning  
8 this matter was at the time of submission true, accurate, and complete to the best of its  
9 knowledge and belief for each such submission, response, and statement. Respondent  
10 acknowledges that there are significant penalties for submitting false or misleading  
11 information, including the possibility of fines and imprisonment for knowing submission of  
12 such information, under 18 U.S.C. § 1001.  
13

14 22. Each party agrees to bear its own costs and attorney's fees in this action.  
15

#### 16 **V. General Provisions**

17 23. In accordance with 40 C.F.R. § 22.18(c), completion of the terms of this CAFO resolves only  
18 Respondent's liability for federal civil penalties for the violations alleged in the Second  
19 Amended Complaint.  
20

21 24. Nothing in this CAFO shall relieve Respondent of the duty to comply with all applicable  
22 provisions of the Act and other federal, state, or local laws or statutes, nor shall it restrict  
23 EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be  
24 construed to be a ruling on, or determination of, any issue related to any federal, state, or  
25 local permit.  
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1 25. This CAFO constitutes the entire agreement between the parties and supersedes any prior  
2 agreements or understandings, whether written or oral, among the parties with respect to the  
3 subject matter hereof.  
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5 **VI. Effective Date**

6 26. The Parties agree to the issuance of the attached Final Order. Upon filing, EPA will transmit  
7 a copy of the filed CAFO to the Respondent. This CAFO shall become effective after  
8 execution of the Final Order by the Regional Judicial Officer on the date of filing with the  
9 Regional Hearing Clerk.  
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1 The foregoing Consent Agreement In the Matter of: Borla Performance Industries, Inc.,  
2 EPA Docket No. CAA-09-2020-0044 is hereby stipulated, agreed, and approved for  
3 entry:

4 FOR RESPONDENT:

5  
6 6/15/2022  
7 Date



8 Borla Performance Industries, Inc.  
9 By: Alyse Borla, President

1 The foregoing Consent Agreement In the Matter of: Borla Performance Industries, Inc.,  
2 EPA Docket No. CAA-09-2020-0044 is hereby stipulated, agreed, and approved for  
3 entry:

4 FOR COMPLAINANT:

5 \_\_\_\_\_  
6  
7 Date

8 **JOEL**  
9 **JONES**

Digitally signed by  
JOEL JONES  
Date: 2022.06.22  
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for/ Amy C. Miller-Bowen, Director  
Enforcement & Compliance Assurance  
Division  
U.S. Environmental Protection Agency,  
Region 9

1  
2 **FINAL ORDER**

3 Complainant and Respondent, having entered into the foregoing Consent Agreement,  
4 IT IS HEREBY ORDERED that this Consent Agreement and Final Order (Docket No.  
5 CAA-09-2020-0044) be entered, and that Respondent shall pay a civil administrative  
6 penalty in the amount of **ONE MILLION, TWENTY-TWO THOUSAND, AND FIVE**  
7 **HUNDRED DOLLARS (\$1,022,500)**, and otherwise comply with the terms set forth in the  
8 Consent Agreement. This Consent Agreement and Final Order shall become effective upon  
9 filing.  
10

11 **STEVEN JAWGIEL** Digitally signed by STEVEN  
JAWGIEL  
Date: 2022.06.28 10:53:02 -07'00'

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DATE

13 STEVEN L. JAWGIEL  
14 Regional Judicial Officer  
U.S. Environmental Protection Agency,  
15 Region 9  
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1 **CERTIFICATE OF SERVICE**

2 I certify that the original of the fully executed Consent Agreement and Final Order in the matter  
3 of Borla Performance Industries, Inc., Docket No. CAA-09-2020-0044 was filed with the  
4 Regional Hearing Clerk, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, CA 94105,  
and that a true and correct copy of the same was sent to the following parties:

5 Via Email to:

6 Kent Mayo  
7 On Behalf of Borla Performance Industries, Inc.  
8 Baker Botts L.L.P.  
9 700 K Street, NW  
10 Washington, DC 20001  
11 [Kent.Mayo@bakerbotts.com](mailto:Kent.Mayo@bakerbotts.com)

12 Via Email to:

13 Nathaniel Moore  
14 Assistant Regional Counsel (ORC-2)  
15 U.S. EPA, Region IX  
16 75 Hawthorne Street  
17 San Francisco, CA 94105  
18 Moore.Nathaniel@epa.gov

19 **Tu, Ponly**

Digitally signed by Tu, Ponly  
Date: 2022.06.28 15:48:39 -07'00'

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21 Ponly J. Tu  
22 Regional Hearing Clerk  
23 U.S. EPA, Region IX

Date