

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1**

In the Matter of:

Diesel Fuel Systems, Inc.
584 Odlin Road
Bangor, Maine 04401

Respondent.

Docket No. CAA-01-2022-0068

BUSINESS CONFIDENTIALITY ASSERTED

The Consent Agreement contains material claimed to be confidential business information ("CBI") pursuant to 40 C.F.R. § 2.203(b). The material claimed as CBI is located in paragraphs 4 and 28 of the Consent Agreement, and consists of the number of respondent Diesel Fuel System, Inc.'s sales of specific products occurring between January 1, 2019 to January 1, 2021. The material claimed as CBI has been deleted from the publicly-available copy of the Consent Agreement. A complete copy of the Consent Agreement, containing the material claimed as CBI, has been filed with the Regional Hearing Clerk. If you have any questions, please contact Tahani Rivers at (617) 918-1299, or at rivers.tahani@epa.gov.

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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”) simultaneously commences and concludes this proceeding. *See* 40 C.F.R. § 22.13(b).

2. Complainant in this matter is the United States Environmental Protection Agency (“EPA”). On 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 Diesel Fuel Systems, Inc. (“DFS” or “Respondent”). DFS is a corporation organized under the laws of the State of Maine. DFS’s information on file with the Maine Secretary of State identifies the location of its clerk and registered agent as 584 Odlin Road, Bangor, Maine 04401.

4. As described more fully below, EPA alleges that DFS offered for sale, sold, or installed: a) [REDACTED] exhaust emission control delete pipes (“delete pipes”) and other exhaust emission control system bypass components; b) [REDACTED] Exhaust Gas Recirculation Systems (“EGR”) removal and/or block off kits; and c) [REDACTED] On-Board Diagnostic Systems (“OBD”) tuners and tunes. DFS knew or should have known that these products would be used to bypass, defeat, or render inoperative emissions-related devices or elements of design in violation of CAA section 203(a)(3)(B), 42 U.S.C. § 7522(a)(3)(B).

5. EPA and DFS agree that settlement of this matter is in the public interest, and that entry of this CAFO without further litigation is the most appropriate means of resolving DFS’s alleged violations of CAA section 203(a)(3)(B), 42 U.S.C. § 7522(a)(3)(B), discussed below.

6. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), DFS: admits that the EPA has jurisdiction over this matter as stated above; neither admits nor denies the factual allegations below; consents to the assessment of a civil penalty as stated below; waives any right to contest the alleged violations of law; and waives its rights to appeal the Final Order accompanying this Consent Agreement.

7. 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.

Governing Law

8. 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, including non-methane hydrocarbons (“NMHC”), nitrogen oxides (“NOx”), particulate matter (“PM”), and carbon monoxide (“CO”), from sources of air pollution such as

motor vehicles.

9. “Motor vehicle” is defined in section 216(2) of the CAA, 42 U.S.C. § 7550(2), 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”).

10. Under section 202 of the CAA, 42 U.S.C. § 7521, EPA promulgated emission standards for NMHC, NO_x, CO and PM. *See generally* 40 C.F.R. Part 86.

11. Section 203(a)(1) of the CAA, 42 U.S.C. § 7522(a)(1), prohibits a motor vehicle manufacturer from selling a new motor vehicle in the United States unless the motor vehicle is covered by a certificate of conformity. EPA issues certificates of conformity to motor vehicle and motor vehicle engine manufacturers under Section 206(a) of the CAA, 42 U.S.C. § 7525(a), to certify that a particular group of motor vehicles and motor vehicle engines conform to applicable EPA requirements governing motor vehicle emissions.

12. The certificate of conformity will include, among other things, a description of the motor vehicle engines, their emission control systems, all auxiliary emission control devices, and the engine parameters monitored.

13. Motor vehicle and motor vehicle engine manufacturers employ many devices and elements of design to meet emission standards. Element of design means “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.” *See* 40 C.F.R. §§ 86.094-2 & 86.1803-01.

14. To meet the emission standards in 40 C.F.R. Part 86¹, and qualify for a certificate of conformity, diesel-powered motor vehicle and motor vehicle engine manufacturers may utilize

¹ *See, e.g.*, 40 C.F.R. § 86.004-11 (emission standards for model year 2004 and later diesel heavy-duty engines and vehicles), § 86.007-11 (emission standards for model year 2007 and later model year diesel heavy-duty engines and vehicles).

control devices or elements of design such as Selective Catalytic Reduction Systems (“SCR”), Diesel Particulate Filter Systems (“DPF”), Diesel Oxidation Catalyst Systems (“DOC”), EGR and/or OBD.

15. Under the CAA, the term “person” includes individuals, corporations, partnerships, associations, states, municipalities, and political subdivisions of a state. 42 U.S.C. § 7602(e).

16. Section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B), prohibits any person from manufacturing, selling, 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, “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.”

17. A “defeat device” is a 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 a motor vehicle emission control device or element of design, including such emission control devices or elements of design required by regulation under Title II of the CAA. *See* CAA § 203(a)(3)(B), 42 U.S.C. § 7522(a)(3)(B).

18. It is also a violation for any person to cause any of the acts set forth in CAA section 203(a), 42 U.S.C. § 7522(a).

19. Persons violating sections 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B), are subject to a civil penalty of up to \$5,179 for each violation that occurred on or after November 2, 2015, where penalties are assessed on or after January 12, 2022. CAA § 205(a), 42 U.S.C.

§ 7524(a); 40 C.F.R. § 19.4; Civil Monetary Penalty Inflation Adjustment Rule, 87 Fed. Reg. 1,676, 1,679 (Jan. 12, 2022).

20. Any violation of section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B), shall constitute a separate offense with respect to each part or component. CAA § 205(a), 42 U.S.C. § 7524(a).

Factual Background

21. DFS is a Maine business corporation.

22. DFS's record on file with the Maine Secretary of State identifies the location of its clerk and registered agent as 584 Odlin Road in Bangor, Maine 04401.

23. DFS identifies itself as a diesel fuel pump and injector shop with drive-in service capabilities, and is located at 584 Odlin Road in Bangor, Maine.

24. DFS is a "person," as defined in section 302(e) of the CAA, 42 U.S.C. § 7602(e).

25. On May 20, 2021, EPA issued a CAA information request to DFS.

26. On July 9, 2021, DFS provided its response to this information request to EPA.

Alleged Violations of Law

27. Based on information provided by DFS, between January 1, 2019 to January 1, 2021, DFS sold tuners, tunes, parts and/or components on vehicles that bypass, defeat, or render inoperative EGR, SCR, DPF, DOC, and/or OBD for motor vehicles and engines.

28. Specifically, DFS offered for sale, sold, or installed: a) [REDACTED] delete pipes and other exhaust emission control system bypass components; b) [REDACTED] EGR removal and/or block off kits; and c) [REDACTED] OBD tuners and tunes.

29. DFS knew or should have known that it is a violation of the CAA to offer for sale, sell, or install defeat devices in "motor vehicles" or "motor vehicle engines," and that the

products described above would be used to bypass, defeat or render inoperative emissions-related devices or elements of design.

30. Accordingly, EPA alleges that DFS has violated Section 203(a)(3)(B) of the Act, 42 U.S.C. § 7522(a)(3)(B).

Terms of Agreement

31. As a condition of settlement, DFS certifies that from the date of signature DFS: a) 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); b) it will not manufacture, sell, offer for sale, or install any part or component, including those described in Paragraph 28 in violation of Section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B); 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"; c) it will not provide technical support, maintenance, repair, or information pertaining to aftermarket defeat devices, including but not limited to those products listed in Paragraph 28 where a principal effect of the device is to bypass, defeat, or render inoperative any emission-related device or element of design installed on or in a motor vehicle or motor vehicle engine; and d) Respondent has removed any advertisements regarding sales or installation of defeat devices from its website, Facebook, and any other social media accounts.

32. Within 30 days of the effective date of this Consent Agreement and Final Order, Respondent will permanently destroy any defeat device remaining in its inventory and/or possession, including but not limited to tuners, by compacting or crushing the defeat devices and all of the associated parts and components to render them useless. Respondent will submit videographic and photographic evidence in accordance with Paragraph 33 and 34.

33. Respondent must submit notice and the visual evidence that it has complied with Paragraph 32 via e-mail to EPA Compliance Officer Darren Fortescue at Fortescue.darren@epa.gov within six months after the effective date of this Consent Agreement and Final Order.

34. In the notice that Respondent submits as provided by Paragraph 33 of this Consent Agreement and Final Order, it must certify that the notice is true and complete by including 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.

35. 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 the CAA, 42 U.S.C. § 7524(c), EPA has determined that it is fair and proper to assess a civil penalty of \$100,000 for the violations alleged in this CAFO, which EPA has determined is appropriate considering “the effect of the penalty on the violator’s ability to continue in business” and other penalty factors. In accordance with 40 C.F.R. § 13.18 and EPA’s Guidance on Evaluating a Violator’s Ability to Pay a Civil Penalty in an Administrative Enforcement Action (2015), EPA has determined that Respondent adequately substantiated its claimed inability to pay the entire penalty amount within 30 days and that the following payment mechanism is in the best interest of the United States. The first payment shall be \$25,000 and shall be made within thirty (30) days of the effective date of this CAFO. Interest shall accrue at a rate of 6% on the balance remaining less the first payment. The second installment payment shall be \$25,875 and shall be due ninety days later. The third installment payment shall be \$25,875 and shall be due ninety days later. The fourth installment payment shall be \$25,875 and shall be due ninety days later.

Each civil penalty payment will be deemed paid on the date of receipt. For each payment, Respondent shall submit a check or make an electronic payment, as described below. Any check or other payment shall note the case name and docket number of this matter (“*In the matter of: Diesel Fuel Systems, Inc., Docket No. CAA-01-2021-0068*”), and shall be payable to “Treasurer, United States of America.” The penalty can be paid using any method provided on this website: <https://www.epa.gov/financial/makepayment>. These include, among others:

Sending a check via regular mail to:

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

Sending a check via express mail to:

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

DFS shall simultaneously provide copies of the payment to:

Wanda Santiago, Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100 (Mail Code 04-6)
Boston, MA 02109-3912
santiago.wanda@epa.gov

and

Tahani Rivers, Enforcement Counsel
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100 (ORC04-3)
Boston, MA 02109-3912
rivers.tahani@epa.gov

36. If Respondent chooses to pay off the remaining balance of the penalty due under Paragraph 35, in advance of the due date, Respondent should contact Jessica Chalifoux in the *Consent Agreement and Final Order, CAA-01-2022-0068*

EPA Cincinnati Finance Office at chalifoux.jessica@epa.gov to discuss the pre-payment penalty process and pay off amount due. Respondent would not be penalized financially if it chooses to pay off early the balance of the penalty due. Respondent should cc EPA counsel Tahani Rivers at rivers.tahani@epa.gov on any such request.

37. If Respondent fails to make the payment required by Paragraph 35 by the required due date, 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 such unpaid penalty amounts from the missed payment date 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 demand for payment.

38. For purposes of this proceeding, the parties each agree that:

- (a) its undersigned representative is fully authorized by the Party whom he or she represents to bind that Party to this Consent Agreement and to execute it on behalf of that Party; and
- (b) each party will bear its own costs and attorney fees in the action resolved by this Consent Agreement and attached Final Order.

39. 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.

40. After EPA’s receipt of the 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.

41. Respondent further consents to receipt of service of the executed CAFO, once filed, by electronic mail to:

Josh Van Eaton- jvaneaton@bdlaw.com
Dylan King- dking@bdlaw.com
Beveridge & Diamond, PC
1900 N Street, NW- Suite 100
Washington DC 20036-1661

Effect of Consent Agreement and Attached Final Order

42. This CAFO constitutes a settlement by EPA of all claims for federal civil penalties
Consent Agreement and Final Order, CAA-01-2022-0068

pursuant to Section 202 of the CAA for the violations alleged in Paragraphs 27 through 30 of this CAFO. 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.

43. Nothing in this agreement shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this agreement or of the statutes and regulations upon which this agreement is based, excluding any violations resolved by this CAFO, or for Respondent's violation of any applicable provision of law, excluding any violations resolved by this CAFO, nor waiver of any defense, objection, or response the Respondent may assert in response to any claim that the agreement is violated.

44. This CAFO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state, or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit.

45. 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.

46. In the event that the civil penalty amount described in Paragraph 35 is not paid when due without demand, under 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 under 26 U.S.C § 6621(a)(2). In the event that the 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.

47. 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.

48. This Consent Agreement and attached Final Order apply to and are binding on Respondent, its successors, and assigns.

49. This Consent Agreement and attached Final Order shall become effective upon filing with the Regional Hearing Clerk.

For Diesel Fuel Systems,

Inc.: 

Date 11/5/2022

Printed Name: Ross H. Bradford

Title: President

For Complainant:



Karen McGuire, Director
Enforcement and Compliance Assurance Division
U.S. EPA, Region 1

11/9/22

Date

**BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

In the Matter of:

Diesel Fuel Systems, Inc.
Bangor, Maine

Respondent.

Docket No. CAA-01-2022-0068

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**

Digitally signed by
LEANN JENSEN
Date: 2022.11.09
12:29:41 -05'00'

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