

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No. CAA-05-2023-0017
)	
Green Diesel Engineering, LLC)	Proceeding to Assess a Civil Penalty
CAV Engineering, LLC)	Under Section 205(c)(1) of the Clean Air
Commerce Township, Michigan)	Act, 42 U.S.C. § 7424(c)(1)
)	
Respondents.)	

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. Respondents are Green Diesel Engineering, LLC (“GDE”) and CAV Engineering, LLC, both limited liability companies doing business in the state of Michigan.

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. Respondents consent 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. Respondents admit the jurisdictional allegations in this CAFO.
8. Respondents neither admit nor deny the factual allegations in this CAFO.
9. Respondents waive their 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 their right to appeal this CAFO.

Statutory and Regulatory Background

10. 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).

11. “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.

12. “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).

13. 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).

14. 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.

15. 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).

16. 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.

17. 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.

18. 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."

19. 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.”

20. 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

21. Respondents are each limited liability companies organized under the laws of the State of Michigan with their primary place of business located at 1032 Rig Street, Commerce Township, Michigan, 48390 (the Facility).

22. Respondents are each a person, as that term is defined in Section 302(e) of the CAA. 42 U.S.C. § 7602(e).

23. On July 9, 2019, EPA performed an inspection (“Inspection”) of the Facility.

24. During the Inspection, EPA inspected a black 2014 MY Ram 1500 truck (“Black Ram 1500”) with a 3.0L “EcoDiesel” diesel engine and conducted an OBD system scan while the vehicle was running. EPA observed that the OBD system was not fully functional.

Respondents' President, Keith Cavallini, explained that he uses the Black Ram 1500 for setting up ECMs to check that the module runs before sending the tuned ECM to the customer.

25. On August 8, 2019, EPA issued a Notice of Violation (2019 NOV) to GDE alleging that GDE manufactured, offered for sale, and/or sold parts or components that have a principal effect of altering or bypassing emission control systems or elements of design on certain Fiat Chrysler motor vehicles, and that specifically, these parts were capable of and purposely designed for reversing the Approved Emissions Modification specified by the terms of the Consent Decree ordered on May 3, 2019 by Judge Edward Chen of the Northern District of California (Case No. 3:17-md-02777-EMC).

26. On August 30, 2019, EPA issued a request for information (2019 RFI) to Respondents pursuant to Section 208 of the CAA, requesting documents related to services and/or parts or components manufactured, sold, and/or installed by Respondents.

27. On September 24, November 26, and December 6, 2019, Respondents provided responses to the 2019 RFI.

28. On July 19, 2021, EPA issued a Finding of Violation (2021 FOV) to Respondents, alleging that from January 1, 2017 to at least August 31, 2019, Respondents manufactured, offered for sale, and sold aftermarket software (called "tunes") that modify ECM and transmission control module (TCM) programming or calibrations under names such as "Hot Tune," "Eco Tune," "Tune Update," "Custom Tune," etc., for use with at least the following motor vehicles and motor vehicle engines: Ram 1500 with 3.0L EcoDiesel engine, Jeep Grand Cherokee with 3.0L EcoDiesel engine or with 3.0L CRD engine, Jeep Liberty (KJ) with 2.8L CRD engine, Mercedes Sprinter with 2.7L CDI engine, GM Colorado with 2.8L Duramax engine, VW Jetta with 1.9L TDI engine or with 2.0L TDI engine, VW Beetle with 1.9L TDI

engine or with 2.0L TDI engine, VW Passat with 1.9L TDI engine, VW Golf with 2.0L TDI engine, Mercedes M-Class with 3.0L CDI engine, Mercedes G-Class with 3.0L CDI engine, Mercedes R-Class with 3.0L engine, Mercedes E-Class with 3.0L CDI engine, and Audi A3 with 2.0L TDI engine.

29. The 2021 FOV further alleged that, depending on the specific tune that Respondents sold, Respondents either installed the tune directly onto a motor vehicle ECM, or sold an EFILive, AutoCal, or Alientech Powergate 3+ device and then emailed the tune files to the customer for the customer to install onto their motor vehicle using one of these devices.

30. The 2021 FOV further alleged that, from January 1, 2017 to August 31, 2019, Respondents manufactured, sold, offered for sale, and/or installed at least 6,455 ECM tunes described in Paragraph 28 above 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, such as the EGR, DOC, DPF, and/or SCR systems or engine fueling strategy, without illuminating a malfunction indicator lamp (MIL) in the vehicle's OBD system, prompting any diagnostic trouble code (DTC) in the OBD system, or causing any engine derating due to the removal or disabling of the emission control device ("Defeat Tunes"). These Defeat Tunes include, but are not limited to, the six tunes identified in the 2019 NOV.

31. The 2021 FOV further alleged that Respondents installed Defeat Tune(s) onto the Black Ram 1500 and knowingly removed and/or rendered inoperative emissions-related elements of the ECM installed on or in the motor vehicle or motor vehicle engine.

32. Respondents' manufacture, sale, offer for sale, and/or installation of least 6,455 ECM tunes 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. Respondents 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. Respondents violated Section 203(a)(3)(A) of the CAA, 42 U.S.C. § 7522(a)(3)(A), by knowingly removing and/or rendering inoperative emissions-related elements of the ECM installed on or in motor vehicles or motor vehicle engines that were in compliance with Title II of the CAA, including the Black Ram 1500 inspected by EPA on July 9, 2019.

Civil Penalty

34. 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 Respondents provided to EPA, and Respondents’ ability to pay, Complainant has determined that an appropriate civil penalty to settle this action is \$350,000. EPA has reduced the civil penalty based on information provided by Respondents to support their claims that they are unable to pay a higher civil penalty and remain in business.

35. Penalty Payment. Respondents agree to:

- a. Pay the civil penalty of \$350,000 in two installments with interest as

follows:

<u>Installment</u>	<u>Due By</u>	<u>Payment</u>	<u>Principal</u>	<u>Interest (3%)</u>
Payment #1	Within 30 days of effective date of CAFO	\$175,000.00	\$175,000.00	\$0.00
Payment #2	Within 390 days of effective date of CAFO	\$180,687.50	\$175,000.00	\$5,687.50

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

Payment Method	Payment Instructions
Automated Clearinghouse (ACH) payments made through the US Treasury	<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 Respondents’ name and the CAFO docket number.</p>
Wire transfers made through Fedwire	<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 Respondents’ 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 U.S. EPA Fines and Penalties</p>

	1005 Convention Plaza SL-MO-C2-GL St. Louis, Missouri 63101
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36. Within 24 hours of the payment of the civil penalty Respondents must send a notice of payment and state Respondents' 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

Christopher Grubb
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
grubb.christopher@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 Respondents do 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 205(c)(6) of the CAA, 42 U.S.C. § 7524(c)(6). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

39. Respondents 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). Respondents 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, Respondents 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).

Other Conditions

40. By signing this Consent Agreement, Respondents agree to the following: (i) Respondents 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) Respondents 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) Respondents certify that they have 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."

41. By the Effective Date of this CAFO, Respondents shall no longer provide any technical support, maintenance, repair, or information pertaining to defeat devices for use with motor vehicles or motor vehicle engines.

42. Respondents certify that, by June 17, 2020, they have permanently destroyed all defeat devices remaining in Respondents' inventory and/or possession, by compacting or crushing the defeat devices and all of the associated parts and components to render them useless.

43. Respondent GDE 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 GDE shall provide EPA the web address of each of its webpages and social media platforms and Respondent GDE'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.

44. Within 14 calendar days of the Effective Date of this CAFO, Respondent GDE shall post a publicly-accessible announcement about Respondent GDE's settlement with EPA prominently on Respondent GDE's current website homepage(s), Respondent GDE's social media homepage(s), including, but not limited to, all Facebook, Twitter, Pinterest, and Instagram accounts associated with Respondent GDE. The announcement shall remain posted for at least 60 calendar days from the date the announcement is posted. Respondent GDE 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.

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

46. Respondents must submit the information required by Paragraphs 43 and 44 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.

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

48. Respondents certify that any information or representation they have 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 Respondents to EPA regarding matters relevant to this CAFO, including information about Respondents' 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.

General Provisions

49. The parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: grubb.christopher@epa.gov (for Complainant), and keith@greendieselengineering.com and sjones@rqn.com (for Respondents). Respondents understand that the CAFO will become publicly available upon filing.

50. This CAFO resolves only Respondents' liability for federal civil penalties for the violations alleged in this CAFO.

51. The effect of the settlement described in paragraph 50, above, is conditioned upon the accuracy of the Respondents' representations to EPA, as memorialized in paragraphs 40 through 43 and 54 of 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 Respondents' responsibility to comply with the CAA and other applicable federal, state and local laws. Except as provided in paragraph 50 above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

54. Respondents certify that they are complying fully with Section 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 January 18, 2021, Clean Air Act Title II Vehicle & Engine Civil Penalty Policy to determine Respondents' history of compliance under Section 205 of the CAA, 42 U.S.C. § 7524.

56. The terms of this CAFO bind Respondents, their 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.

Green Diesel Engineering, LLC, Respondent

Date

Keith Cavallini, Managing Member and Resident
Agent
Green Diesel Engineering, LLC

Tax Identification Number

CAV Engineering, LLC, Respondent

Date

Keith Cavallini, Managing Member and Resident
Agent
CAV Engineering, LLC

Tax Identification Number

United States Environmental Protection Agency, Complainant

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: Green Diesel Engineering, LLC & CAV Engineering LLC
Docket No. CAA-05-2023-0017**

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

Appendix A: Announcement

On _____ Date, Green Diesel Engineering LLC (“GDE”) and CAV Engineering LLC (“CAV”) 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, GDE and CAV have certified that they 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.”

GDE and CAV will pay a penalty of \$350,000 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 Keith Cavallini.

Thank you,
Keith Cavallini