

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

<b>In the Matter of:</b>	)	<b>Docket No. CAA-05-2023-0035</b>
	)	
<b>Dan’s Diesel Performance, Inc.</b>	)	<b>Proceeding to Assess a Civil Penalty</b>
<b>Machesney Park, Illinois</b>	)	<b>Under Section 205(c)(1) of the Clean Air</b>
	)	<b>Act, 42 U.S.C. § 7524(c)(1)</b>
<b>Respondent.</b>	)	
_____	)	

**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 (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. Respondent is Dan’s Diesel Performance, Inc. (Respondent or DDP), a corporation doing business in Machesney Park, Illinois.

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. 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. 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 from mobile sources of air pollution.

10. The CAA requires EPA to prescribe and revise, by regulation, standards applicable to the emission of any air pollutant from new motor vehicles or new motor vehicle engines which cause or contribute to air pollution, which may reasonably be anticipated to endanger public health or welfare. *See* CAA §§ 202(a)(1) and (3)(8), 42 U.S.C. §§ 7521(a)(1) and (3)(8).

11. 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. *See* 42 U.S.C. § 7522(a)(1).

12. “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.

13. “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).

14. EPA issues certificates of conformity 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).

15. 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.

16. To meet the emission standards in 40 C.F.R. Part 86 and qualify for a certificate of conformity, 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).

17. 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.

18. 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.

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

20. Under Section 203(a)(3)(A) of the CAA, 42 U.S.C. § 7522(a)(3)(A), 40 C.F.R. § 1068.101(b)(1), 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.” This is also referred to as “tampering.”

21. Under Section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B), 40 C.F.R. § 1068.101(b)(2), 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.” These parts or components are also referred to as “defeat devices.”

22. 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**

23. Respondent is a corporation organized under the laws of the State of Illinois with a primary place of business located at 1279 Anvil Road, Machesney Park, IL 61115.

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

25. Respondent is an “aftermarket automotive parts” manufacturer, supplier, and installer located in Machesney Park, Illinois.

26. “Aftermarket automotive parts” are replacement automotive parts that are not made by the original motor vehicle manufacturer.

27. On November 19, 2019, under Section 208 of the CAA, 42 U.S.C. § 7542, EPA issued a Request to Provide Information Pursuant to the Clean Air Act (Information Request) to Respondent.

28. On February 11, 2020, Respondent submitted a response to EPA’s Information Request. Respondent also provided supplemental responses on May 20, 2020 and July 15, 2020 (collectively, the Response). In this Response, Respondent provided information showing that between January 1, 2018 and November 19, 2019, Respondent sold at least 2,014 parts or components that disable, remove, bypass, defeat, or render inoperative air pollution emission control systems installed on or in motor vehicles and motor vehicle engines in compliance with Title II of the CAA. More specifically, Respondent sold at least 177 parts or components that remove or bypass the EGR system or can only operate with EGR system removed (EGR Delete Hardware) and at least 541 parts or components that remove or bypass the DPF, DOC, SCR and/or other exhaust aftertreatment system (Aftertreatment Delete Hardware).

29. Respondent also sold and, in many cases, manufactured at least 1,296 tunes or tuners where a principal effect of the tune or tuner was to bypass, defeat or render inoperative the

engine fueling strategy, DPF, EGR, DOC, SCR, and/or OBD systems and/or tamper with the elements of design on motor vehicles or motor vehicle engines (Tuning Products). Most of these Tuning Products were manufactured by Respondent and sold under Respondent's "Commander" line of Tuning Products.

30. In its Response, Respondent provided 1,778 invoices for products sold and/or installed at its Machesney Park facility. These invoices show that, of the 2,014 parts or components sold by Respondent as described in Paragraphs 28 and 29, Respondent installed at least 236 EGR Delete Hardware products, Aftertreatment Delete Hardware products, and Tuning Products.

31. In the Response, Respondent indicated that as of February 11, 2020, Respondent had removed all violative products from the DDP website and was no longer manufacturing, selling, or installing violative products.

32. On September 23, 2020, EPA issued a Finding of Violation (FOV) to Respondent alleging violations of Section 203(a)(3)(A) and (B) of the CAA, 42 U.S.C. § 7522(a)(3)(A) and (B), related to the Respondent's manufacture, sale, and/or installation of EGR Delete Hardware, Aftertreatment Delete Hardware, and Tuning Products.

33. The EGR Delete Hardware, Aftertreatment Delete Hardware, and Tuning Products manufactured, sold, and/or installed by Respondent are parts or components that were intended for motor vehicles and were designed for use with motor vehicle heavy-duty diesel engines, for which each manufacturer obtained certificates of conformity establishing compliance with CAA emission standards.

34. Respondent manufactured, sold, offered for sale, and/or installed at least 2,014 EGR Delete Hardware, Aftertreatment Delete Hardware, and Tuning Products 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. Respondent 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).

35. Respondent knowingly removed and/or rendered inoperative devices or elements of design installed in or on motor vehicles or motor vehicle engines in compliance with the CAA by installing EGR Delete Hardware, Aftertreatment Delete Hardware, and Tuning Products on or in at least 236 motor vehicles or motor vehicle engines, in violation of Section 203(a)(3)(A) of the CAA, 42 U.S.C. § 7522(a)(3)(A).

36. In agreeing to the terms of this CAFO, including the amount of the civil penalty below, EPA is relying on Respondent's certifications.

### **Civil Penalty**

37. 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, Respondent's cooperation, and agreement to perform a supplemental environmental project, Complainant has determined that an appropriate civil penalty to settle this action is \$256,151.

38. Respondent agrees to pay the civil penalty of \$256,151 within 30 calendar days after the effective date of this CAFO, using any method provided in the table below:

<b>Payment Method</b>	<b>Payment Instructions</b>
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 Respondent’s 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 Respondent’s name and the docket number of this CAFO.</p>
<p>Payments made through <a href="https://www.pay.gov">Pay.gov</a></p> <p>Payers can use their credit or debit cards (Visa, MasterCard, American Express &amp; Discover) as well as checking account information to make payments.</p>	<ul style="list-style-type: none"> <li>• Go to <a href="https://www.pay.gov">Pay.gov</a> and enter “SFO 1.1” in the form search box on the top left side of the screen.</li> <li>• Open the form and follow the on-screen instructions.</li> <li>• Select your type of payment from the "Type of Payment" drop down menu.</li> <li>• Based on your selection, the corresponding line will open and no longer be shaded gray. Enter the CAFO docket number into the field</li> </ul>
<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 <b>standard delivery</b>:</p> <p>U.S. Environmental Protection Agency            Fines and Penalties            Cincinnati Finance Center            P.O. Box 979077            St. Louis, Missouri 63197-9000</p> <p>For <b>signed receipt confirmation</b> (FedEx, UPS, Certified Mail, etc):</p> <p>U.S. Environmental Protection Agency            Government Lockbox 979077            U.S. EPA Fines and Penalties            1005 Convention Plaza            SL-MO-C2-GL            St. Louis, Missouri 63101</p>



39. Within 24 hours of the payment of the civil penalty Respondent must send a notice of payment that states Respondent's 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](mailto:R5airenforcement@epa.gov)

Ian Cecala (C-14J)  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 5  
[cecala.ian@epa.gov](mailto:cecala.ian@epa.gov)

Regional Hearing Clerk (E-19J)  
U.S. Environmental Protection Agency, Region 5  
[r5hearingclerk@epa.gov](mailto:r5hearingclerk@epa.gov)

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

41. If Respondent does not pay timely the civil penalty or any stipulated penalties due under Paragraph 56, below, 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.

42. 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 attorney 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).

### **Supplemental Environment Project**

43. In response to the alleged violations of the CAA and in settlement of this matter, although not required by the CAA or any other federal, state, or local law, Respondent agrees to complete a supplemental environmental project (SEP), as described in Appendix A.

44. This SEP is consistent with applicable EPA policy, specifically the “[2015 Update to the 1998 U.S. Environmental Protection Agency Supplemental Environmental Projects Policy](#),” dated March 10, 2015. The SEP is not inconsistent with any provision of the CAA. The SEP relates to the alleged violations and advances at least one of the objectives of the CAA by reducing NO<sub>x</sub>, particulate matter, and sulfur dioxide emissions in areas impacted by excess emissions from Respondent’s alleged CAA violations.

45. Respondent must complete the SEP as follows. Within 730 calendar days from the Effective Date of this CAFO, Respondent must spend at least \$375,000 to complete the diesel emission reduction project specified in Appendix A.

46. With regard to the SEP, Respondent certifies the truth and accuracy of each of the following:

- a. That all cost information Respondent provided to EPA in connection with EPA’s approval of the SEP is complete and accurate, that in good faith estimates that the cost to implement the SEP is \$375,000.
- b. That Respondent will not include administrative costs or employee oversight of the implementation of the SEP in its project costs.
- c. That, as of the date of executing this CAFO, Respondent is not required to perform or develop the SEP by any federal, state, or local law or regulation and is not required to perform or develop the SEP by agreement, grant, or as injunctive relief awarded in any other action in any forum;

- d. That the SEP is not a SEP that Respondent was planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this CAFO;
- e. That Respondent has not received and will not receive credit for the SEP in any other enforcement action;
- f. That Respondent has not received or will not receive reimbursement for any portion of the SEP from another person or entity.
- g. That Respondent shall neither generate nor use any pollutant reductions from the SEP as netting reductions, pollutant offsets, or to apply for, obtain, trade, or sell any pollutant reduction credits.
- h. Respondent certifies under penalty of law that it would have agreed to perform a comparably valued, alternative project other than a diesel emission reduction SEP, if the Agency were precluded by law from accepting a diesel emission reduction SEP.

47. EPA may inspect Respondent's facility or request records at any time to monitor Respondent's compliance with this CAFO's SEP requirements.

48. Respondent must maintain copies of the underlying research and data for reports submitted to EPA pursuant to this CAFO. Respondent must provide the documentation of any underlying research and data to EPA within seven days of EPA's request for the information.

49. Respondent must submit semi-annual progress reports to EPA on the status of SEP implementation in December and June of each year during the 730-day SEP implementation period. The first semi-annual report should be submitted to EPA in December 2023.

50. The semi-annual progress reports should include, at a minimum: a description of the actions completed and a breakdown of any associated costs, and a description of the actions that are not yet completed with an estimated timeframe by when those actions will be completed. Respondent may include other information it deems relevant.

51. Respondent must submit a SEP Completion Report to EPA within 760 days of the Effective Date of this CAFO. This report must contain all information specified in Appendix A.

52. Respondent must submit all notices and reports required by this CAFO by e-mail to the Air Enforcement and Compliance Assurance Branch at the following address:

[r5airenforcement@epa.gov](mailto:r5airenforcement@epa.gov).

53. In each report that Respondent submits as provided by this CAFO, it must certify that the report is true and complete by including the following statement signed by one of its officers:

I certify under penalty of law that I have examined and am familiar with the information in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete to the best of my knowledge. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

54. Following receipt of the SEP Completion Report described in Paragraph 51, above, EPA must notify respondent in writing that:

- a. Respondent has satisfactorily completed the SEP and the SEP Completion report;
- b. There are deficiencies in the SEP as completed or in the SEP Completion Report and EPA will give Respondent 30 days to correct the deficiencies; or
- c. Respondent has not satisfactorily completed the SEP or the SEP Completion Report and EPA will seek stipulated penalties under Paragraph 56.

55. If EPA exercises option b in paragraph 54, above, Respondent may object in writing to the deficiency notice within 10 days of receiving the notice. The parties will have 30 days from EPA's receipt of Respondent's objection to reach an agreement. If the parties cannot reach an agreement, EPA will give Respondent a written decision on its objection. Respondent will comply with any requirement that EPA imposes in its decision. If Respondent does not

complete the SEP as required by EPA’s decision, Respondent will pay stipulated penalties to the United States under Paragraph 56, below.

56. If Respondent violates any requirement of this CAFO relating to the SEP, Respondent must pay stipulated penalties to the United States as follows:

- a. Except as provided in subparagraph b, below, if Respondent did not complete the SEP satisfactorily according to the requirements of this CAFO, including the schedule in Paragraph 45, Respondent must pay a penalty of \$468,750. “Satisfactory completion” of the SEP means Respondent spent no less than \$375,000 to replace at least three (3) school buses in accordance with the terms, provisions, and deadlines established in Paragraph 45 and Appendix A. EPA, at its sole discretion, will determine whether Respondent has achieved satisfactory completion of the SEP.
- b. If Respondent completed the SEP satisfactorily, but Respondent spent less than the amount set forth in Paragraph 45, Respondent shall pay a stipulated penalty to the United States which equals the difference between the proposed SEP amount as defined above and the actual cost of SEP.
- c. If Respondent fails to comply with the deadlines in Paragraph 45 and Appendix A for implementing the SEP, Respondent shall pay stipulated penalties for each failure to meet an applicable deadline, as follows:

<u>Penalty per violation per day</u>	<u>Period of violation</u>
\$500	1 <sup>st</sup> through 14 <sup>th</sup> day
\$750	15 <sup>th</sup> through 30 <sup>th</sup> day
\$1,000	31 <sup>st</sup> day and beyond

- d. If Respondent fails to submit the semi-annual progress reports or the SEP Completion Report within the deadlines specified in Paragraphs 48, 49, and 50, Respondent must pay penalties in the following amounts for each day after the report was due until it submits the report:

<u>Penalty per violation per day</u>	<u>Period of violation</u>
\$250	1 <sup>st</sup> through 14 <sup>th</sup> day
\$500	15 <sup>th</sup> through 30 <sup>th</sup> day
\$750	31 <sup>st</sup> day and beyond

57. EPA's determinations of whether Respondent completed the SEP satisfactorily and whether Respondent made good faith and timely efforts to complete the SEP will bind Respondent.

58. Stipulated penalties shall begin to accrue on the day after performance is due and shall continue to accrue through the final day of the completion of the activity or other resolution under this CAFO.

59. Respondent must pay any stipulated penalties within 15 days of receiving EPA's written demand for the penalties. Respondent will use the method of payment specified in Paragraph 38, above, and will pay interest and nonpayment penalties on any overdue amounts.

60. Any public statement that Respondent makes referring to the SEP must include the following language: "Dan's Diesel Performance undertook this project under the settlement of the United States Environmental Protection Agency's enforcement action against Dan's Diesel Performance for violations of Section 203(a)(3)(A) and (B) of the Clean Air Act."

61. If an event occurs which causes or may cause a delay in completing the SEP as required by this CAFO:

- a. Respondent must notify EPA in writing within 10 days after learning of an event which caused or may cause a delay in completing the SEP. The notice must describe the anticipated length of the delay, its cause(s), Respondent's past and proposed actions to prevent or minimize the delay and a schedule to carry out those actions. Respondent must take all reasonable actions to avoid or minimize any delay. If Respondent fails to notify EPA according to this paragraph, Respondent will not receive an extension of time to complete the SEP.
- b. If the parties agree that circumstances beyond the control of Respondent caused or may cause a delay in completing the SEP, the parties will stipulate to an extension of time no longer than the period of delay.
- c. If EPA does not agree that circumstances beyond the control of Respondent caused or may a delay in completing the SEP, EPA will notify Respondent in writing of its decision and any delays in completing the SEP will not be excused.

- d. Respondent has the burden of proving that circumstances beyond its control caused or may cause a delay in completing the SEP. Increased costs for completing the SEP will not be a basis for an extension of time under subparagraph b, above. Delay in achieving an interim step will not necessarily justify or excuse delay in achieving subsequent steps.

62. For federal income tax purposes, Respondent will neither capitalize into inventory or basis, nor deduct any costs or expenditures incurred in performing the SEP.

### **Other Conditions**

63. 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 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 part or component 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.](#)"

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

65. Respondent certifies it has permanently destroyed all defeat devices remaining in Respondent's inventory and/or possession, by compacting or crushing the defeat devices and all associated parts and components to render them useless.

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

67. Within 14 calendar days of the Effective Date of this CAFO, Respondent shall post a publicly-accessible announcement about Respondent's settlement with EPA prominently on Respondent's current website homepage(s). The announcement shall remain posted for at least 60 calendar days from the date the announcement is posted. Respondent shall use the text contained in Appendix B (Announcement) in 12-point font, or another notice reviewed and approved by EPA, to provide such announcement.

68. Within 30 calendar days of the Effective Date of this CAFO, Respondent shall provide EPA with certification and proof that Respondent has completed the actions required by Paragraphs 65, 66, and 67 above.

69. Respondent must submit the information required by Paragraph 59 of this CAFO via electronic mail to [demma.carlo@epa.gov](mailto:demma.carlo@epa.gov) and [r5airenforcement@epa.gov](mailto:r5airenforcement@epa.gov) accompanied by the following statement signed by one of its officers:

I certify under penalty of law that I have examined and am familiar with the information in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete to the best of my knowledge. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

70. Failure to comply with Paragraph 63 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 listed in 40 C.F.R. § 19.4.

71. 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. 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 Respondent to 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. Respondent is 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**

72. The parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: [cecala.ian@epa.gov](mailto:cecala.ian@epa.gov) (for Complainant), [stewart@hassancables.com](mailto:stewart@hassancables.com) (for Respondent). Respondent understands that the CAFO will become publicly available upon filing.

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

74. The effect of the settlement described in Paragraph 73, above, is conditioned upon the accuracy of Respondent's representations to EPA, as memorialized in Paragraphs 28, 29, 30, 31, 66, and 67 of this CAFO.

75. 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.

76. 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 73, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

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

78. 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 history of compliance under Section 205 of the CAA, 42 U.S.C. § 7524.

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

80. 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.

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

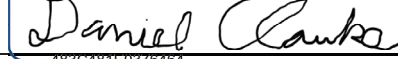
82. This CAFO constitutes the entire agreement between the parties.

**Dan's Diesel Performance, Inc., Respondent**

8/14/2023

Date

DocuSigned by:



**Daniel J. Clarke, Owner**  
**Dan's Diesel Performance, Inc.**

**United States Environmental Protection Agency, Complainant**

**MICHAEL  
HARRIS**

Digitally signed by  
MICHAEL HARRIS  
Date: 2023.08.23  
10:16:11 -05'00'

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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: Dan's Diesel Performance, Inc  
Docket No. CAA-05-2023-0035**

**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.

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Date

ANN COYLE Digitally signed by ANN  
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Date: 2023.08.24  
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Ann L. Coyle  
Regional Judicial Officer  
U.S. Environmental Protection Agency  
Region 5

## Appendix A:

### Diesel Emission Reduction SEP

1. Within 730 calendar days of the Effective Date of the CAFO, Dan's Diesel Performance, Inc. ("DDP" or "Respondent"), in consultation with the Parkview County School District ("PCSD"), shall spend at least \$375,000 to replace at least three (3) PCSD school buses from the following list (hereinafter called the "Vehicle List"):

Item	Vehicle Identification Number	Model Year	Make	Model
1	4DRBUAAP28A496600	2008	International	CE
2	4UZABRDJ6ACAK7871	2010	Freightliner	C2
3	1BAKGCKHX9F264095	2009	Bluebird	Vision

2. In determining which vehicles to replace, DDP and PCSD have given priority to older, higher-polluting vehicles that have high annual usage rates and/or vehicle miles travelled so that the pollution reductions obtained from the Project will be maximized.

3. DDP, in consultation with the PCSD, may request to include vehicles not on the Vehicle List by providing to EPA in writing a justification for the addition. Such vehicles shall be considered a part of the Vehicle List for purposes of this Appendix only if EPA agrees in writing.

4. Within 730 calendar days of the Effective Date of the CAFO, Respondent, in consultation with the PCSD, shall spend at least \$375,000 to purchase three (3) school buses to replace the school buses identified in the Vehicle List.

5. The replacement school buses shall be engine model year 2016 or newer powered

by a diesel or alternative fueled engine (including hybrids) certified to EPA emission standards, with an engine certified to meet California Air Resources Board's Optional Low-NOx Standard or powered by a zero-tailpipe emission source.

6. Any diesel engine in a school bus that is replaced through this project shall be permanently destroyed. For purposes of this Appendix, "permanently destroyed" shall mean to destroy a vehicle or engine using one of the following methods:

- a. (i) Remove (and dispose of appropriately) the engine oil from the crankcase, replace the oil with a 40 percent solution of sodium silicate ( $\text{SiO}_2 / \text{Na}_2\text{O}$  with a weight ratio of 3.0 or greater); (ii) Run the engine at a low speed (approximately 2,000 rpm) until the engine stops; (iii) After allowing the engine to cool for an hour, try to start the engine; if the vehicle or engine contains a battery and that battery is charged and the engine will not operate at idle, the procedure is complete; (iv) If the engine starts, run the engine at a low speed (approximately 2,000 rpm) until the engine stops and then try to start the engine again after allowing the engine to cool for an hour. Repeat step (iv) in this process until the engine will not operate; (v) Remove and dispose of any remaining fuel in accordance with applicable law.
- b. Remove (and dispose of appropriately) all oil and fuel from the device. Using a drill bit of no less than 3/8 inch or a cutting torch: (i) drill or cut a hole through the lower crankcase of the engine so that it no longer retains oil; (ii) drill or cut a hole through the cylinder head into the combustion chamber; and (iii) drill or cut a hole through the cylinder or cylinder block through the cylinder liner.
- c. Compact or crush the engine and all of its parts or components to render them useless.

7. Respondent must submit semi-annual progress reports to EPA on the status of SEP implementation in December and June of each year during the 730-day SEP implementation period. The first semi-annual report should be submitted to EPA in December 2023.

8. The semi-annual progress reports should include, at a minimum: a description of the actions completed and a breakdown of any associated costs, and a description of the actions that are not yet completed with an estimated timeframe by when those actions will be completed. Respondent may include other information it deems relevant.

9. DDP must submit a SEP Completion Report to EPA within 760 days of the Effective Date of this CAFO. This report must contain the following information:

- a. Detailed description of the SEP as completed;
- b. Description of any problems and the actions taken to correct the problems;
- c. Itemized cost of goods and services used to complete the SEP documented by copies of invoices, purchase orders or cancelled checks that specifically identify and itemize the individual cost of the goods and services;
- d. Certification that DDP has completed the SEP in compliance with this CAFO; and
- e. Description of the environmental and public health benefits resulting from the SEP (quantify the benefits and pollution reductions, if feasible).
- f. For any diesel engine permanently destroyed in accordance with Paragraph 6 of this Appendix:
  - i. The method in Paragraph 6 of this Appendix used to permanently destroy the engine;
  - ii. Photographs demonstrating the engine was permanently destroyed using one of the methods in Paragraph 6 of this Appendix;
  - iii. The date on which the engine was permanently destroyed; and
  - iv. The names and titles of any officers, employees, or agents of DDP or PCSD who permanently destroyed the engine;



## **Appendix B:**

### **Announcement**

On \_\_\_\_\_ [Date], Dan's Diesel Performance ("DDP") 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 (CAA), 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. The alleged violations took place between January 1, 2018 and November 19, 2019.

By signing a consent agreement with EPA, DDP has certified that it 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."

DDP will pay a penalty of \$256,151 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 Daniel Clarke.

Thank you,

Daniel Clarke