

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
Philadelphia, Pennsylvania 19103**

In the Matter of:	:	U.S. EPA Docket No. CAA-03-2023-0063
	:	
Zimmey’s Diesel, LLC	:	Proceeding under Section 205(c)(1) of the
2555 E. Cumberland Street	:	Clean Air Act, 42 U.S.C. § 7524(c)(1)
Lebanon, Pennsylvania 17042	:	
	:	
Respondent.	:	

CONSENT AGREEMENT

PRELIMINARY STATEMENT

1. This Consent Agreement is entered into by the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency, Region III (“Complainant”) and Zimmey’s Diesel, LLC (“Respondent”) (collectively the “Parties”), pursuant to Section 205(c)(1) of the Clean Air Act (“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 (“Consolidated Rules of Practice”), 40 C.F.R. Part 22. Section 205(c)(1) of the CAA, 42 U.S.C. § 7524(c)(1), authorizes the Administrator of the U.S. Environmental Protection Agency to assess penalties and undertake other actions required by this Consent Agreement. The Administrator has delegated this authority to the Regional Administrator who, in turn, has delegated the authority to enter into agreements concerning administrative penalties to the Complainant. This Consent Agreement and the attached Final Order (hereinafter jointly referred to as the “Consent Agreement and Final Order”) resolve Complainant’s civil penalty claims against Respondent under the CAA for the violations alleged herein.

2. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice, Complainant hereby simultaneously commences and resolves this administrative proceeding.

JURISDICTION

3. The U.S. Environmental Protection Agency (“EPA”) has jurisdiction over the above-captioned matter, as described in Paragraph 1, above.

4. The Consolidated Rules of Practice govern this administrative adjudicatory proceeding pursuant to 40 C.F.R. § 22.1(a)(2).

GENERAL PROVISIONS

5. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this Consent Agreement and Final Order.

6. Except as provided in Paragraph 5, above, Respondent neither admits nor denies the specific factual allegations set forth in this Consent Agreement.

7. Respondent agrees not to contest the jurisdiction of EPA with respect to the execution of this Consent Agreement, the issuance of the attached Final Order, or the enforcement of this Consent Agreement and Final Order.

8. For purposes of this proceeding only, Respondent hereby expressly waives its right to contest the allegations set forth in this Consent Agreement and Final Order and waives its right to appeal the accompanying Final Order.

9. Respondent consents to the assessment of the civil penalty stated herein, to the issuance of any specified compliance order herein, and to any conditions specified herein.

10. Respondent shall bear its own costs and attorney's fees in connection with this proceeding.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

11. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice, Complainant alleges and adopts the Findings of Fact and Conclusions of Law set forth immediately below.

12. 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 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.

13. Respondent is a Pennsylvania limited liability company with business premises currently located at 2555 E. Cumberland Street in Lebanon, Pennsylvania, and previously located at 564 Horseshoe Pike in Lebanon, Pennsylvania.

14. Respondent is a "person" as defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e), and within the meaning Section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B).

15. On September 9, 2020, EPA issued a request for information letter pursuant to Section 208(a) of the CAA, 42 U.S.C. § 7542(a), requiring Respondent to provide information to determine whether it had acted and was acting in compliance with Section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B) ("RFI letter").

16. On November 20, 2020 and September 22, 2021, Respondent provided responses to EPA's September 9, 2020 RFI letter (collectively, "RFI Response").

17. At all times relevant to this matter, SCT Part 7015 and SCT Part 5015P, manufactured by Derive Systems, Inc. of Sanford, Florida, each were intended for use with, or as part of, motor vehicles or motor vehicle engines, and each had a principal effect of bypassing, defeating, or rendering inoperative a device or element of design installed on or in motor vehicles or motor vehicle engines in compliance with Title II of the CAA.

18. EPA and Respondent have executed and entered into a Tolling Agreement which establishes that the period commencing on December 9, 2021 and ending on June 30, 2022 (inclusive) will not be included in computing the running of any statute of limitations that might be applicable to this action.

**COUNT ONE – Sales or Offers to Sell Prohibited Parts
SCT Part 7015**

19. The allegations of Paragraphs 1 through 18 of this Consent Agreement are incorporated herein by reference.

20. In its RFI Response, Respondent provided information showing that it sold or offered to sell at least 176 units of SCT Part 7015 during the time period between January 4, 2017 and September 22, 2018.

21. During the time period between January 4, 2017 and September 22, 2018, Respondent knew or should have known that SCT Part 7015 was being offered for sale 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 Title II of the CAA.

22. By its sales or offers to sell SCT Part 7015, Respondent violated Section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B).

23. Pursuant to Section 205(a) of the CAA, 42 U.S.C. § 7524(a), each sale or offer to sell SCT Part 7015 constitutes a separate offense.

24. By its sales or offer to sell SCT Part 7015, Respondent committed at least 176 violations of Section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B), from January 4, 2017 through September 22, 2018.

**COUNT TWO – Sales or Offers to Sell Prohibited Parts
SCT Part 5015P**

25. The allegations of Paragraphs 1 through 24 of this Consent Agreement are incorporated herein by reference.

26. In its RFI Response, Respondent provided information showing that it sold or offered to sell at least 31 units of SCT Part 5015P during the time period between January 3, 2017 and September 12, 2018.

27. During the time period between January 3, 2017 and September 12, 2018, Respondent knew or should have known that SCT Part 5015P was being offered for sale 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 Title II of the CAA.

28. By its sales or offers to sell SCT Part 5015P, Respondent violated Section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B).

29. Pursuant to Section 205(a) of the CAA, 42 U.S.C. § 7524(a), each sale or offer to sell SCT Part 5015P constitutes a separate offense.

30. By its sales or offer to sell SCT Part 5015P, Respondent committed at least 31 violations of Section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B), from January 3, 2017 through September 12, 2018.

CIVIL PENALTY

31. In settlement of EPA's claims for civil penalties for the violations alleged in this Consent Agreement, Respondent consents to the assessment of a civil penalty in the amount of **ONE HUNDRED AND FIFTEEN THOUSAND dollars (\$115,000)**, which Respondent shall be liable to pay in accordance with the terms set forth below.

32. The civil penalty is based upon EPA's consideration of a number of factors, including the penalty criteria set forth in Section 205(c)(2) of the CAA, 42 U.S.C. § 7524(c)(2), i.e., the gravity of the violation, the economic benefit or savings (if any) resulting from the violation, the size of the violator's business, the violator's history of compliance with this subchapter, action taken to remedy the violation, the effect of the penalty on the violator's ability to continue in business, and such other matters as justice may require. These factors were applied to the particular facts and circumstances of this case, with specific reference to EPA's *Clean Air Act Title II Vehicle & Engine Civil Penalty Policy (dated January 2021)* which reflects the statutory penalty criteria set forth at Section 205(c)(2) of the CAA, 42 U.S.C. § 7524(c)(2), the appropriate *Adjustment of Civil Monetary Penalties for Inflation* at 40 C.F.R. Part 19, and the applicable EPA memoranda addressing EPA's civil penalty policies to account for inflation.

33. Payment of the civil penalty, and any associated interest charges, administrative cost charges, and penalty charges owed, shall be made by either check (cashier's check or certified check) or by electronic means. Payment shall be made in the following manner:

- a. All payments by Respondent shall include reference to Respondent's name and address, and the Docket Number of this action, i.e., CAA-03-2023-0063;
- b. All checks shall be made payable to the "United States Treasury";

- c. All payments made by check and sent by regular mail shall be addressed and mailed to:

U.S. Environmental Protection Agency
Cincinnati Finance Center
P.O. Box 979078
St. Louis, MO 63197-9000

- d. For additional information concerning other available methods of payment of the civil penalty amount see:

<https://www.epa.gov/financial/makepayment>

- e. A copy of Respondent's check, or other documentation of payment of the penalty using the method selected by Respondent for payment shall be sent simultaneously by email to:

Jennifer M. Abramson
Senior Assistant Regional Counsel
abramson.jennifer@epa.gov

and

U.S. EPA Region III Regional Hearing Clerk
R3_Hearing_Clerk@epa.gov.

34. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below.

Accordingly, Respondent's failure to make timely payment of the penalty as specified herein shall result in the assessment of late payment charges including interest, penalties and/or administrative costs of handling delinquent debts.

35. Payment of the civil penalty is due and payable immediately upon receipt by Respondent of a true and correct copy of the fully executed and filed Consent Agreement and Final Order. Receipt by Respondent or Respondent's legal counsel of such copy of the fully executed Consent Agreement and Final Order, with a date stamp indicating the date on which the Consent Agreement and Final Order was filed with the Regional Hearing Clerk, shall constitute receipt of written initial notice that a debt is owed EPA by Respondent in accordance with 40 C.F.R. § 13.9(a).

36. INTEREST: In accordance with 40 C.F.R. § 13.11(a)(1), interest on the civil penalty assessed in this Consent Agreement and Final Order will begin to accrue on the date Respondent is notified of its debt to the United States as established upon the ratification and filing of the fully executed Consent Agreement and Final Order with the Regional Hearing Clerk. However, EPA will not seek to recover interest on any amount of the civil penalties that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).

37. ADMINISTRATIVE COSTS: The costs of the EPA's administrative handling of overdue debts will be charged and assessed monthly throughout the period a debt is overdue. 40 C.F.R. § 13.11(b). If payment is not received within 30 calendar days of the effective date of this Consent Agreement, EPA will also assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid.

38. LATE PAYMENT PENALTY: A late payment penalty of six percent per year will be assessed monthly on any portion of the civil penalty that remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).

39. If Respondent fails to make a full and complete payment of the civil penalty in accordance with this Consent Agreement and Final Order, the entire unpaid balance of the penalty shall become immediately due and owing.

40. Respondent agrees not to deduct for any tax purpose the civil penalty assessed against it in this Consent Agreement and Final Order.

41. The parties consent to service of the Final Order by e-mail at the following valid email addresses: abramson.jennifer@epa.gov (for Complainant), and stewart@hassancables.com (for Respondent).

GENERAL SETTLEMENT CONDITIONS

42. By signing this Consent Agreement, Respondent acknowledges that this Consent Agreement and Final Order will be available to the public and represents that, to the best of Respondent's knowledge and belief, this Consent Agreement and Final Order does not contain any confidential business information or personally identifiable information from Respondent.

43. Respondent certifies that any information or representation it has supplied or made to EPA concerning this matter was, at the time of submission true, accurate, and complete and that there has been no material change regarding the truthfulness, accuracy or completeness of such information or representation. EPA shall have the right to institute further actions to recover appropriate relief if EPA obtains evidence that any information provided and/or representations made by Respondent to the EPA regarding matters relevant to this Consent Agreement and Final Order, 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 and its officers, directors and agents 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.

CERTIFICATION OF COMPLIANCE

44. Respondent certifies to EPA, upon personal investigation and to the best of its knowledge and belief, that it currently is in compliance with regard to the violations alleged in this Consent Agreement.

OTHER APPLICABLE LAWS

45. Nothing in this Consent Agreement and Final Order shall relieve Respondent of its obligation to comply with all applicable federal, state, and local laws and regulations, nor shall it restrict EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on the validity of any federal, state or local permit. This Consent Agreement and Final Order does not constitute a waiver, suspension or modification of the requirements of the CAA, or any regulations promulgated thereunder.

RESERVATION OF RIGHTS

46. This Consent Agreement and Final Order resolves only EPA's claims for civil penalties for the specific violations alleged against Respondent in this Consent Agreement and Final Order. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. This settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice, 40 C.F.R. § 22.18(c). EPA reserves any rights and remedies available to it under the CAA, the regulations promulgated thereunder and any other federal law or regulation to enforce the terms of this Consent Agreement and Final Order after its effective date.

EXECUTION /PARTIES BOUND

47. This Consent Agreement and Final Order shall apply to and be binding upon the EPA, the Respondent and the officers, directors, employees, contractors, successors, agents and assigns of Respondent. By his or her signature below, the person who signs this Consent Agreement on behalf of Respondent is acknowledging that he or she is fully authorized by the Respondent to execute this Consent Agreement and to legally bind Respondent to the terms and conditions of this Consent Agreement and Final Order.

EFFECTIVE DATE


48. The effective date of this Consent Agreement and Final Order is the date on which the Final Order, signed by the Regional Administrator of EPA, Region III, or his/her designee, the Regional Judicial Officer, is filed along with the Consent Agreement with the Regional Hearing Clerk pursuant to the Consolidated Rules of Practice.

ENTIRE AGREEMENT

49. This Consent Agreement and Final Order constitutes the entire agreement and understanding between the Parties regarding settlement of all claims for civil penalties pertaining to the specific violations alleged herein and there are no representations, warranties, covenants, terms, or conditions agreed upon between the Parties other than those expressed in this Consent Agreement and Final Order.


For Respondent: Zimmey's Diesel, LLC

Date: 06/01/23

By: 
Dale E. Zimmerman, Managing Member
Zimmey's Diesel, LLC


For the Complainant:

After reviewing the Consent Agreement and other pertinent matters, I, the undersigned Director of the Enforcement and Compliance Assurance Division of the United States Environmental Protection Agency, Region III, agree to the terms and conditions of this Consent Agreement and recommend that the Regional Administrator, or his designee, the Regional Judicial Officer, issue the attached Final Order.

By: **KAREN MELVIN**  Digitally signed by
KAREN MELVIN
Date: 2023.06.15
11:00:59 -04'00'

[Digital signature and date]
Karen Melvin, Director
Enforcement and Compliance Assurance Division
U.S. EPA - Region III
Complainant

Attorney for Complainant:

By: **JENNIFER ABRAMSON**  Digitally signed by
JENNIFER ABRAMSON
Date: 2023.06.06
08:00:25 -04'00'

[Digital signature and date]
Jennifer M. Abramson
Senior Assistant Regional Counsel
U.S. EPA - Region III

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
Philadelphia, Pennsylvania 19103**

In the Matter of:	:	U.S. EPA Docket No. CAA-03-2023-0063
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Zimmey’s Diesel, LLC	:	Proceeding under Section 205(c)(1) of the
2555 E. Cumberland Street	:	Clean Air Act, 42 U.S.C. § 7524(c)(1)
Lebanon, Pennsylvania 17042	:	
	:	
Respondent.	:	

FINAL ORDER

Complainant, the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency, Region III, and Respondent, Zimmey’s Diesel, LLC have executed a document entitled “Consent Agreement,” which I hereby ratify as a Consent Agreement in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (“Consolidated Rules of Practice”), 40 C.F.R. Part 22 (with specific reference to Sections 22.13(b) and 22.18(b)(2) and (3)). The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated into this Final Order as if fully set forth at length herein.

Based upon the representations of the parties in the attached Consent Agreement, the penalty agreed to therein is based upon consideration of, *inter alia*, EPA’s *Clean Air Act Title II Vehicle & Engine Civil Penalty Policy (dated January 2021)*, and the statutory factors set forth in Section 205(c)(2) of the CAA, 42 U.S.C. § 7524(c)(2).

NOW, THEREFORE, PURSUANT TO Section 205(c)(1) of the Clean Air Act (“CAA”), 42 U.S.C. § 7524(c)(1), and Section 22.18(b)(3) of the Consolidated Rules of Practice, **IT IS HEREBY ORDERED** that Respondent pay a civil penalty in the amount of ***ONE HUNDRED AND FIFTEEN THOUSAND* dollars (\$115,000)**, in accordance with the payment provisions set forth in the Consent Agreement and in 40 C.F.R. § 22.31(c), and comply with the terms and conditions of the Consent Agreement.

This Final Order constitutes the final Agency action in this proceeding. This Final Order shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief, or criminal sanctions for any violations of the law. This Final Order resolves only those causes of action alleged in the Consent Agreement and does not waive, extinguish or otherwise affect Respondent’s obligation to comply with all applicable provisions of the CAA and the regulations promulgated thereunder.

The effective date of the attached Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

6/20/23
Date: _____

By: **Lisa, Joseph** Digitally signed by Lisa, Joseph
Date: 2023.06.20 08:41:28 -04'00'

Joseph J. Lisa
Regional Judicial and Presiding Officer
U.S. EPA Region III

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
Philadelphia, Pennsylvania 19103**

In the Matter of: : **U.S. EPA Docket No. CAA-03-2023-0063**
: **Proceeding under Section 205(c)(1) of the**
Zimmey's Diesel, LLC : **Clean Air Act, 42 U.S.C. § 7524(c)(1)**
2555 E. Cumberland Street :
Lebanon, Pennsylvania 17042 :
Respondent. :

CERTIFICATE OF SERVICE

I certify that the *Consent Agreement and Final Order* in the above-captioned matter was filed with the EPA Region III Regional Hearing Clerk on the date that has been electronically stamped on the *Consent Agreement and Final Order*. I further certify that, on the date set forth below, I caused to be served upon each of the following persons, in the manner specified below, at the following email addresses, a true and correct copy of the *Consent Agreement and Final Order* in the above-captioned matter:

Copies served **via email** upon:

Stewart D. Cables
Hassan + Cables, LLC
1035 Pearl Street, Suite 200
Boulder, Colorado 80302
stewart@hassancables.com

Jennifer M. Abramson
Senior Assistant Regional Counsel
U.S. EPA - Region III
abramson.jennifer@epa.gov

Paul Arnold
Environmental Engineer
U.S. EPA - Region III
Arnold.Paul@epa.gov

BEVIN
ESPOSITO  Digitally signed by BEVIN ESPOSITO
Date: 2023.06.20 09:57:42 -0400'

[*Digital Signature and Date*]
Regional Hearing Clerk
U.S. Environmental Protection Agency - Region III