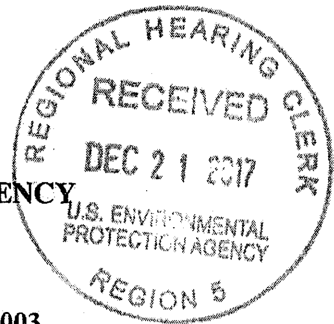


UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:	)	**Docket No. CAA-05-2018-0003**
	)	
Abbyland Trucking, Inc. **Curtiss, Wisconsin,**	)	**Proceeding to Assess a Civil Penalty Under Section 205(c)(1) of the Clean Air Act, 42 U.S.C. § 7524(c)(1)**
Respondent.	)	

Consent Agreement and Final Order

Preliminary Statement

1. This is a civil administrative penalty assessment proceeding in accordance with 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. 40 C.F.R. § 22.13(b).

2. Complainant is the Director of the Air and Radiation Division, U.S. Environmental Protection Agency (EPA), Region 5.

3. Respondent in this matter is Abbyland Trucking, Inc. (Respondent or Abbyland), a Wisconsin Corporation, doing business in Curtiss, Wisconsin. Respondent operates a full service truck repair center and refrigeration transport company.

4. EPA and Respondent, having agreed to settle this action, consent to the entry of this CAFO before taking testimony and without adjudication of any issues of law or fact herein, and agree to comply with the terms of this CAFO.

Jurisdiction

5. This CAFO is entered into in accordance with 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 ("Consolidated Rules").

6. In accordance with CAA §§ 205(c)(1), EPA may administratively assess a civil penalty if the penalty sought is less than $362,141. 42 U.S.C. § 7524(c)(1); 40 C.F.R. § 19.4, 1068.125(b).

7. The Consolidated Rules provide that where the parties agree to settlement of one or more causes of action before the filing of a complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a CAFO. 40 C.F.R. §§ 22.13(b), 22.18(b).

Statutory and Regulatory Background

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 requirements aim to reduce emissions from mobile sources of air pollution, including hydrocarbons, oxides of nitrogen (NO_x), and particulate matter (PM).

9. 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. 42 U.S.C. § 7522(a)(1).

10. EPA issues certificates of conformity to vehicle manufacturers under Section 206(a) of the CAA, 42 U.S.C. § 7525(a), to certify that a particular group of motor vehicles conforms to applicable EPA requirements governing motor vehicle emissions.

11. EPA promulgated emission standards, under Section 202 of the CAA, 42 U.S.C. § 7521, for PM, NO_x, and other pollutants applicable to motor vehicles and motor vehicle engines, including Heavy Duty Diesel (HDD) trucks. See generally 40 C.F.R. Part 86.

12. EPA promulgated regulations for motor vehicles manufactured after 2007 that require HDD trucks to have onboard diagnostic systems to detect various emission control device parameters and vehicle operations. See Section 202(m) of the CAA and 42 U.S.C. § 7521(m),

13. In order to meet the emission standards in 40 C.F.R. Part 86, HDD trucks utilize Diesel Particulate Filter (DPF), Exhaust Gas Recirculation (EGR), and/or Selective Catalytic Reduction (SCR) Systems.

14. Section 203(a)(3)of the CAA 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 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; 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 or motor vehicle engine in compliance with regulations under this subchapter, 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".

Definitions

15. For the purpose of this proceeding, defined terms have the following meanings:

a. "Defeat Device" means a motor vehicle Part or Component, including an ECM Tuning program or device, whose principal effect is to bypass, defeat, or render inoperative a motor vehicle emission control device or

Element of Design, including such emission control devices or elements required by 40 C.F.R. § 86.1806-05.

b. "Diesel Particulate Filter" or "DPF" means an exhaust after-treatment device that physically traps particulate matter (PM) and removes it from the exhaust stream of diesel fueled vehicles and equipment, typically using a porous ceramic or cordierite substrate or metallic filter.

c. "Electronic Control Module" or "ECM" shall means a device that receives inputs from various sensors and outputs signals to control engine, vehicle, or equipment functions. An ECM uses software programming including calculations and tables of information to provide the appropriate outputs. ECM can be a generic term but may refer specifically to the engine control module when discussing emission controls on vehicles and engines.

d. "ECM Tuning" or "Tuning" means the altering, and/or replacing of the software programming, calculations, computer logic, tables of information (e.g., fuel timing maps), coding, or other content or information stored within or used by an ECM. ECM Tuning shall also include the replacement of a ECM chip with a modified ECM chip that has been reprogrammed to allow for similar altering and/or replacing.

e. "Element of Design" means any control system (e.g., 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, as defined in 40 C.F.R. § 86.094-2.

f. "Exhaust Gas Recirculation" or "EGR" includes systems which direct, usually by use of a valve, a portion of engine exhaust back into the engine's combustion chamber in order to control combustion temperatures and pressures, thereby reducing the production of nitrogen oxides (NO_x). The EGR system may include a cooler, which cools the recirculated exhaust.

g. "Part or Component" includes any part or component intended for use with, or as part of, any motor vehicle or motor vehicle engine (e.g., ECM, Element of Design, tuner, tune, calibration map, or software that is installed on or designed for use in such vehicles or engines).

h. "Selective Catalytic Reduction" or "SCR" includes systems (the diesel exhaust fluid (DEF) tank, urea quality sensor, DEF injection system, SCR catalyst(s), and other associated sensors), which inject a reductant, such as DEF, into the exhaust stream where it reacts with catalysts to convert NO_x emissions to nitrogen gas (N_2) and water (H_2O).

Stipulated Facts

16. Respondent is a corporation organized under the laws of the State of Wisconsin, with a place of business located at 330 Plaza Drive, Curtiss, Wisconsin.

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

18. Between the years 2011 and 2014, Respondent sold and installed Defeat Devices in the form of ECM Tuning products manufactured by Performance Diesel Inc. (PDI) that had the principal effect of bypassing, defeating, or rendering inoperative Elements of Design including EGRs, DPFs, and other emission control devices on the affected HDD trucks.

19. On July 21, 2016 and September 8, 2016, Respondent provided additional invoices of ECM Tuning installations and copies of available "PDI liability" waivers signed by customers. EPA found evidence of 320 instances in which Respondent sold and installed Defeat Devices, 202 of which occurred within 5 years of this CAFO.

20. Installation of Defeat Devices and removal of emission control devices may have resulted in an increase in emissions of PM, NO_x, and other air pollutants.

21. On June 3, 2015, EPA conducted an unannounced CAA Inspection of Respondent's Curtiss, Wisconsin facility. During the inspection EPA made a verbal Request for Information to Respondent pursuant to Section 208 of the CAA. 42 U.S.C. § 7542. During the inspection, Respondent provided documents responsive to EPA's Request for Information.

22. On June 14, 2016, EPA issued a Notice of Violation to Respondent alleging violations of CAA § 203(a)(3)(B).

23. As of April 10, 2016, Respondent no longer sold or installed any Defeat Devices.

24. On September 16, 2016, Respondent submitted a request for a mitigated penalty based on a claimed inability to pay. On October 19, 2016, November 23, 2016, and December 5, 2016, Respondent provided additional documentation at the request of EPA, for use in an initial inability to pay analysis.

Alleged Violations

25. EPA alleges that, in violation of Section 203(a)(3)(A) of the CAA, 42 U.S.C. § 7522(a)(3)(A), Respondent knowingly removed or rendered inoperative devices or Element of Design that were installed on or in over 202 motor vehicles or motor vehicle engines to comply with the emission standards promulgated under Title II of the CAA.

26. EPA alleges that, in violation of Section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B), Respondent sold, offered to sell, or installed 202 Defeat Devices, including ECM Tuning programs, which effectively bypassed, defeated, or rendered inoperative emission control devices or Elements of Design that were installed on motor vehicles or motor vehicle engines to comply with the emission standards promulgated under Title II of the CAA.

Civil Penalty

27. Based on analysis of the factors specified in Section 205(c) of the CAA, 42 U.S.C. § 7524(c), the EPA Mobile Source Civil Penalty Policy, dated January 2009, the facts of this case and Respondent's cooperation and ability to pay, Complainant has determined that an appropriate civil penalty to settle this action is $75,000. Respondent agrees to pay this penalty as set forth below.

28. Within 30 days after the effective date of this CAFO, Respondent must pay a $75,000 civil penalty by sending a cashier's or certified check, by priority mail, with a return receipt requested, payable to "Treasurer, United States of America," to:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

29. 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 when it pays the penalty:

Attn: Compliance Tracker (AE-18J)
Air Enforcement and Compliance Assurance Branch
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

Andre Daugavietis (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

Regional Hearing Clerk (E-19J)
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

30. The civil penalty is not deductible for federal tax purposes. 28 U.S.C. § 162(f).

31. If Respondent does not timely pay 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.

32. 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's 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).

Terms of Agreement

33. For the purpose of this proceeding, and consistent with 40 C.F.R. § 22.18(b)(2), Respondent:

a. admits that EPA has jurisdiction over this matter as stated above;

b. admits to the stipulated facts stated above;

c. neither admits nor denies the alleged violations of law stated above;

d. waives any right to contest the alleged violations of law;

e. agrees that this CAFO states a claim upon which relief may be granted against Respondent;

f. consents to the assessment of a civil penalty as stated below;

g. consents to the issuance of any related compliance or corrective action order;

h. consents to any conditions specified in this CAFO;

i. consents to personal jurisdiction in any action to enforce this CAFO, in United States District Court in a judicial district specified under 28 U.S.C. 1391, and agrees that federal law shall govern in any such action;

j. waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this CAFO, including any right of judicial review under Section 307(b)(1) of the Clean Air Act. 42 U.S.C. § 7607(b)(1);

k. waives its rights to appeal the CAFO;

l. acknowledges that this CAFO constitutes an enforcement action for purposes of considering Respondent's compliance history in any subsequent enforcement actions;

m. acknowledges that this CAFO will be available to the public and agrees that it does not contain any confidential business information or personally identifiable information;

n. acknowledges that its tax identification number may be used for collecting or reporting any delinquent monetary obligation arising from this CAFO. 31 U.S.C. § 7701;

o. certifies that the information it has supplied concerning this matter was at the time of submission true, accurate, and as supplemented, is complete; and

p. acknowledges that there are significant penalties for knowingly submitting false, fictitious, or fraudulent information, including the possibility of fines and imprisonment. See 18 U.S.C. § 1001; and

q. agrees that Respondent may not delegate duties under this CAFO to any other party without the written consent of EPA, which may be granted or withheld at EPA's unfettered discretion. If EPA so consents, the CAFO is binding on the party or parties to whom the duties are delegated.

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

a. this CAFO constitutes the entire agreement and understanding of the parties and supersedes any prior agreements or understandings, whether written or oral, among the parties with respect to the subject matter hereof;

b. this Consent Agreement may be signed in any number of counterparts, each of which will be deemed an original and, when taken together, constitute one agreement; the counterparts are binding on each of the parties individually as fully and completely as if the parties had signed one single instrument, so that the rights and liabilities of the parties will be unaffected by the failure of any of the undersigned to execute any or all of the counterparts; any signature page and any copy of a signed signature page may be detached from any counterpart and attached to any other counterpart of this Consent Agreement.

c. 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;

d. each party's obligations under this CAFO constitute sufficient consideration for the other party's obligations under this CAFO; and

Conditions

35. As provided in this Paragraph, Respondent shall conduct a recall of all vehicles in which Respondent installed ECM Tuning or other Defeat Device ("Recall"). The Recall Period shall begin on the effective date of this CAFO and end after 13 months, during which time the Recall shall include the following components and requirements:

a. Within 10 business days from the effective date of this CAFO, Respondent shall contact each of the customers identified in the PDI waiver files, PDI_Waivers_00001 through 00960, (Customers) in writing to offer them participation in the Recall, using the letter contained in Appendix A

("Tune" Customers Recall Letter), or another letter reviewed and approved by EPA. The Recall Letter may be transmitted electronically. The Recall Letter shall request that Customers notify Respondent if a "tuned" truck has been taken out of service, and provide a return mail or email form for Customer use. Respondent may, but is not required to, send notices by certified U. S. Mail, return receipt requested;

b. Within 60 calendar days of the effective date of this CAFO, Respondent shall report to EPA how many of its Customers accepted the offer to participate in the Recall. If additional Customers respond beyond the 60 calendar days, Respondent may supplement its response, as necessary.

c. Customers receiving the Recall Letter will have until the Recall Period ends to return the modified vehicle to Respondent's heavy duty truck maintenance facilities in Curtiss, Wisconsin, as described below.

d. Upon receipt of a vehicle under the Recall, Respondent shall remove any and all ECM Tuning and other Defeat Devices, return an altered ECM chip back to applicable manufacturer specifications for that vehicle, and reinstall any missing or modified emission control Parts or Components (including but not limited to EGR, DPF, and/or SCRs). This service is referenced below as "Retunes." Respondent shall re-install any and all missing or modified emission control Parts or Components regardless of whether such Part or Component was previously removed or modified by Respondent. Respondent may charge Recall Customers for parts and labor expenses for the re-install of any and all missing or modified

emission control Parts or Components not originally installed, modified, and/or removed by Respondent.

e. During the Recall, Respondent shall perform as many Retunes as possible, up to a maximum of 100. "Tuned" trucks that are operated by Customers [not owned by Respondent or its affiliates] and are removed from service rather than Retuned shall not count toward the number of Retunes required under the Recall program.

f. Respondent shall perform Retunes on the 12 previously modified, and currently operating vehicles owned by Respondent (or its affiliates). These vehicles shall count toward the Retunes required under the Recall program. Vehicles which Respondent removes from service, do not need to be Retuned. Such vehicles shall count toward the number of Retunes required under the Recall program.

g. To the extent it may become relevant, including such instances where Customers propose more than 100 vehicles for Retunes, Respondent shall prioritize vehicles that require re-installation of emission controls (e.g., DPFs, EGRs, SCRs) over vehicles only requiring an ECM chip reset.

h. As an incentive to participate in the Recall program, Respondent may offer appropriate Recall Customers participating in the program a 50% or greater discount on the installation of an Auxiliary Power Unit (APU), appropriately sized to the HDD truck participating in the Recall. As part of the Recall, Respondent shall only install APUs on trucks that have all emissions controls installed and operating as per factory settings.

Respondent shall ensure that the APUs are new, fully functional units, and have been certified by either EPA and/or the California Air Resources Board (CARB).[1]

i. Respondent shall further encourage potential Recall Customers to participate in the Recall program by including incentives or additional notifications to the extent practicable. EPA understands that Respondent has no ability to force or compel Customers to participate in the Recall program.

j. Within 30 calendar days following the conclusion of the Recall, Respondent shall submit to EPA an electronic spreadsheet (in an editable Excel-compatible format[2]) describing the vehicles serviced by Respondent as part of this matter. The spreadsheet shall contain the following information:

  i. the year, make, and model of both the vehicle and the engine, the mileage (at time of service), and the engine horsepower;

  ii. a description and model of each Tuning and/or Defeat Device present prior to service, and a list of which, if any, emission controls were missing and/or disabled; and

  iii. a description of the work completed by Respondent to ensure the engine complies with EPA standards, specifying which emission control Parts or Components were installed and/or Retuned.

[1] In accordance with https://www.epa.gov/verified-diesel-tech/smartway-verified-list-idling-reduction-technologies-irts-trucks-and-school.

[2] Supplemental information may be provided in a PDF file keyed to the spreadsheet, if necessary.

Indicate for each vehicle listed, whether it belonged to a Recall Customer, and what, if any, incentives were applied (i.e. 50% discount on APU).

36. In the event that Respondent is unable to Retune the number of vehicles required under Paragraph 35 above within the Recall Period, Respondent shall conduct the environmental mitigation specified in Appendix B (Environmental Mitigation Projects). Each APU that Respondent installs on a participating Recall Customer's HDD truck, as per Paragraph 35(h), may count toward Respondent's Mitigation requirement as detailed in Appendix B, Section I.

37. Respondent further agrees to the following:

a. Respondent shall not manufacture, offer for sale, sell, convey or otherwise transfer any Defeat Device, including but not limited to illegal ECM Tuning.

b. Respondent shall permanently destroy (and dispose of in an environmentally responsible manner) any Defeat Device remaining in Respondent's inventory and/or possession, or removed from any Retuned vehicle. Respondent shall provide photographic and/or other evidence of such destruction (and recycling, if feasible) to EPA at the end of the Recall Period. Other evidence may include, but is not limited to, signed paperwork from a recycler attesting to the receipt and planned eventual destruction of a Defeat Device.

c. Respondent shall encourage any vehicle owner who brings a truck to Respondent's facility for service and which has an installed Defeat Device to reverse such device and related modifications. Any such Retunes that

Respondent performs during the Recall Period may be counted as an applicable Retune required under Paragraph 35(e) only to the extent that Respondent pays for at least half of the cost of the Retune(s), including tax and labor.

d. Respondent shall follow the Compliance Plan set forth in Appendix C (Compliance Plan to Avoid Illegal Tampering and Aftermarket Defeat Devices) as a guide to maintain compliance. In case of any conflict between the terms of the Compliance Plan and the CAFO, the terms of the CAFO shall govern.

Notifications

38. Whenever notifications, submissions, or communications are required by this CAFO, they shall be made in writing to the following address (unless otherwise noted):

Attn: Compliance Tracker, AE-18J
Air Enforcement and Compliance Assurance Branch
U.S. Environmental Protection Agency
Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

Tolling Period

39. Respondent agrees that the time period from the date of Respondent's signature on this Consent Agreement until Respondent's completion of the non-penalty conditions set forth above ("Tolling Period") shall not be included in computing the running of any statute of limitations potentially applicable to any action brought by Complainant on any claims ("Tolled Claims") set forth in Alleged Violations of Law section of this CAFO. Respondent shall not assert, plead, or raise in any fashion, whether by answer, motion or otherwise, any defense of laches, estoppel, or waiver, or other similar equitable defense based on the running of any statute

of limitations or the passage of time during the Tolling Period in any action brought on the Tolled Claims.

General Provisions

40. Respondent certifies that it is complying fully with the regulations at issue (cited above).

41. In accordance with 40 C.F.R. § 22.18(c), Respondent's full compliance with this CAFO shall only resolve Respondent's liability for federal civil penalties for the violations and facts alleged above.

42. This CAFO applies to and is binding upon the Complainant and Respondent. Successors and assigns of Respondent are also bound. EPA may assert successor or assignee liability against any such successor or assignee.

43. Nothing in this CAFO shall relieve Respondent of the duty to comply with all applicable provisions of the CAA or other federal, state, or local laws or statutes, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.

44. 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.

45. If and to the extent EPA finds, that any information provided by Respondent was or is materially false or inaccurate EPA reserves the right to revoke this CAFO, and accompanying settlement penalty agreement, and EPA reserves the right to pursue, assess, and enforce legal and equitable remedies for the alleged violations of law. EPA shall give Respondent written notice of such termination, which will be effective upon mailing.

46. Consistent with the Standing Order Authorizing E-Mail Service of Orders and Other Documents Issued by the Regional Administrator or Regional Judicial Officer under the Consolidated Rules, dated March 27, 2015, the parties consent to service of this CAFO by e-mail at the following e-mail addresses: daugavietis.andre@epa.gov (for Complainant), and phess@abbyland.com (for Respondent). The parties waive their right to service by the methods specified in 40 C.F.R. § 22.6.

47. This CAFO constitutes an "enforcement response" as that term is used in EPA's Clean Air Act Stationary Civil Penalty Policy to determine Respondent's "full compliance history" under Section 205(b) of the CAA, 42 U.S.C. § 7524(b).

48. 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.

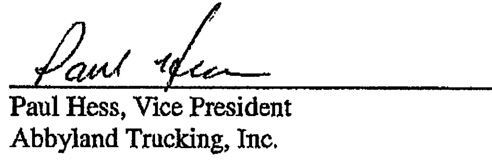
49. Each party agrees to bear its own costs and attorney's fees in this action.

50. This CAFO constitutes the entire agreement between the parties

51. Respondent and Complainant agree to issuance of the attached Final Order. Upon filing, EPA will transmit a copy of the filed CAFO to the Respondent. This CAFO shall become effective after execution of the Final Order and filing with the Hearing Clerk.

Abbyland Trucking, Inc., Respondent

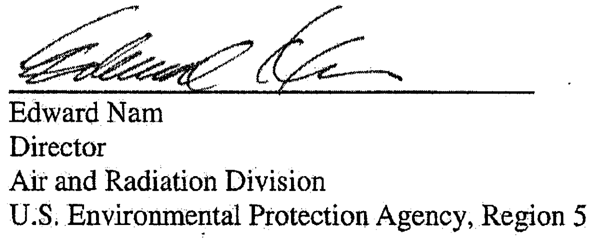
11-13-17
Date



Paul Hess, Vice President
Abbyland Trucking, Inc.

United States Environmental Protection Agency, Complainant

12/20/17
Date



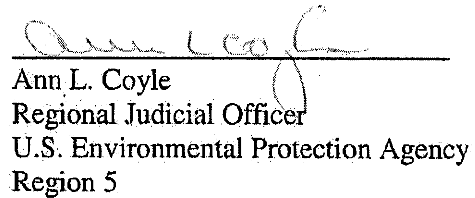
Edward Nam
Director
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5

Consent Agreement and Final Order
In the Matter of: Abbyland Trucking, Inc.
Docket No. CAA-05-2018-0003

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.

December 20, 2017
Date



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

Appendix A – "Tune" Customers Recall Letter

Certified Mail, Return Receipt Requested No. {mergertild}

DATE

{customer address / merge field}

Re: Notice of Recall
Vehicle {merge field}

Dear *{merge field}:*

Between 2011 and 2014, Abbyland Trucking, Inc. offered to "re-tune" heavy-duty diesel truck engines. This process included reprogramming the truck's Electronic Control Module ("ECM") chip and in many cases, making other hardware modifications to the vehicle. (We will refer to this as a "re-tune" in this letter.)

This work was offered at the urging of a former service manager at Abbyland Trucking. His supervisors were unaware at the time that these kinds of modifications were considered to be a violation of the federal Clean Air Act, because they can increase the emission of air pollutants resulting from fuel combustion.

The U.S. Environmental Protection Agency (EPA) conducted a site inspection at our Curtiss, Wisconsin facility and requested copies of our records. We were then cited by EPA. We have worked cooperatively with EPA on this matter, and have reached a settlement. Abbyland Trucking has agreed to pay a civil penalty and to re-tune or unwind the modifications during a 13-month window of time, as explained below.

Our records show that the following vehicle(s) received an ECM re-tune and related hardware modifications at our Curtiss facility:

Truck model and year: *{merge field}* VIN: *{merge field}*

Under our agreement with EPA, we are writing to you to offer to re-tune the ECM chip and make other necessary hardware modifications to the vehicle(s) identified above. "Tune" customers will need to contact *{name}* in our Service Department *{phone / email}* to request repair work. Our Service Manager will coordinate with you to schedule a time for the work to be done.

Abbyland Trucking will pay for the cost of re-tuning the chip to its original or current manufacturer specification, and replacing any emissions control parts installed, modified,

or removed by Abbyland Trucking. You will need to bring the truck to Curtiss, Wisconsin at your expense. In order to be sure we have the correct parts on hand and to minimize your down time, we ask that you arrange to bring your truck to our shop at Curtiss, Wisconsin so that we can determine which parts you will need. We can then schedule a time for you to bring the truck back and have the work done. We estimate it will take approximately 3 work days from the start of this work to completion, though this may vary.

Under our agreement with EPA, Abbyland Trucking has 13 months starting from *[Consent Order Date]* to complete this work. Our offer to re-tune chips and replace associated parts therefore expires on *[End Date: Consent Order Date + 13 months]*. After that expiration date, any work done by Abbyland Trucking on the truck(s) identified above would be at the customer's expense.

As an incentive, we will also offer to install an auxiliary power unit ("APU") in the vehicle at the time it is brought in for a re-tune. We will do this on a cost share basis - Abbyland Trucking will pay half the cost of the unit, with the customer paying the other half. This offer is limited to the first 48 customers who wish to take advantage of this offer. If you are interested, we will provide more details, but we estimate the net cost to you would be approximately $4,500, plus applicable sales taxes, compared to the typical installed cost of $9,000, plus tax. As mentioned above, all work must be completed by *[End Date]*.

In order to plan for an orderly recall and performance of restoration work, we would like to know whether the truck(s) identified above are still in service, whether the truck is still owned by you, and whether you would like to participate in this recall program.

We have included a postage paid return post card so we can know which of our customers are interested in taking advantage of this recall work. In order to understand our full obligations under our agreement with EPA, we especially need to know whether or not you still own the vehicle, or whether it has been taken out of service and scrapped. You can also go to *[web address]* if you prefer to respond on online.

We ask that you return the enclosed post card or respond online within 14 days of receiving this letter so that we can plan for the recall. We will contact you concerning timing and scheduling.

Abbyland Trucking sincerely regrets this situation and we apologize for any inconvenience or difficulty this may have caused.

(signature)

(see attached post-card)

Appendix B

Environmental Mitigation Projects

As set forth in the CAFO, Respondent shall comply with the requirements of this Appendix to implement and secure the environmental benefits associated with the Environmental Mitigation Projects ("Projects") described below. The number and scale of any necessary Project(s) is outlined in Section I.

I. Credit Budget for Environmental Mitigation Projects

A. For the sole purpose of defining the scope and emissions-based budget of the Projects under the CAFO in this matter, each Project is assigned a number of Mitigation Project Units ("MPUs"), where one MPU is the equivalent of the approximate emission reduction potential of one Auxiliary Power Unit ("APU"), calculated using the EPA Diesel Emissions Quantifier tool with national average inputs. MPU designations account for the expected usage, expected lifespan, health effects, and relative cost of the Project. This system is designed to allow for flexibility in Respondent's implementation of the Projects and to ensure consistency among Projects in terms of their environmental and health benefits. For the purpose of this CAFO, the Projects shall be credited at the following MPU designations:

Project	MPU
I. Diesel Truck Idle Reduction Project	
APU	1.0
Battery Powered HVAC	0.8
Direct Fired Heater	0.4
Energy Recovery System	0.5
II. School Bus Replacement Project	10.0

B. The number of MPU(s) that the Respondent shall be required to achieve through Project implementation ("Required MPUs") will depend on the outcome of the Recall, described in Paragraph 35 of the CAFO, as summarized below:

1. At the onset of the Recall, Respondent shall be responsible for achieving 80 MPUs.

2. For every vehicle counted toward the Recall, i.e. those that the Respondent Retunes or removes from service as specified in Paragraph 35(f), the Required MPUs shall decrease by 1.6 MPUs, as shown in the equation below:

$$Required\ MPUs = 80 - 1.6 \times \#Trucks\ Recalled$$

If the above equation results in a fraction, Respondent may round down to the nearest whole number to calculate the Required MPUs.

C. Respondent may deduct from the Required MPUs the number of APUs that the Respondent installed during the Recall, in accordance with Paragraphs 35(h) and 36 of the CAFO, where one (1) APU is the equivalent of one (1) MPU. The remaining MPUs will be referred to as the "Total Required MPUs."

D. Respondent shall share the costs of a Project with the Project participant ("Participant"). Respondent is not required to bear more than 50% of the total cost of each Project. If a Participant refuses to pay at least 50% of the cost of a proposed Project, Respondent is not required to complete the proposed Project. If Respondent is unable to locate additional Participants within the required area or a sufficient alternative Project in accordance with this Appendix, Respondent may propose an alternative Project in accordance with Paragraph II.K. Any costs incurred by the implementation of the Projects are separate, and in addition to, the costs that Respondent may incur as part of the Recall.

II. Overall Schedule and General Requirements

A. Within sixty (60) calendar days from the end date of the Recall as set forth in Paragraph 36 of the CAFO, Respondent shall submit a proposed plan to meet the Total Required MPUs by implementing one or more Projects as set forth below ("Project Plan") to EPA for review and approval. Respondent shall submit the Project Plan in accordance with Paragraph 38 of the CAFO. EPA reserves the right to disapprove any Project proposed in the Project Plan based on factors including analysis of its potential environmental impacts.

B. Proposed Project Plans shall include the following:

1. A description of the Project(s) that Respondent intends to complete. Respondent may, at any time, propose for EPA review and approval, modifications to the Project Plan;

2. Estimation of the number of and identification of the types of vehicles to be retrofitted or replaced through implementation of these Project(s), including the engine types and the EPA- or California Air Resources Board (CARB)-certified technology with which engines will be retrofitted or replaced;

3. All available contact information for the Participant(s), including the name of the organization and the individual owner and/or operator's name, phone number, and email;

4. A summary-level budget for Project(s) which includes the estimated costs (or contract costs, if available) for the equipment and installation of the proposed retrofits and/or replacements; and

5. Implementation timelines and expected completion dates for the proposed retrofits and/or replacements.

C. Respondent may begin planning the Project(s) at any point prior to the end of the Recall; however, with the exception of APUs installed in accordance with Paragraph 36(h) of the CAFO, Respondent shall not begin implementing any Project(s) until after receiving EPA approval for the proposed Project Plan. Any Project(s), and their associated MPUs, executed prior to receiving EPA approval for the Project Plan may result in those MPUs not being credited toward the Budget outlined in Section I. Respondent may revise any submitted and approved Project Plan with EPA approval.

D. Within twelve (12) months of receiving EPA approval for the Project Plan, Respondent shall complete the approved Project(s) according to the approved Project Plan. Nothing in this Appendix shall be interpreted to prohibit Respondent, or any third party, from completing the Project ahead of schedule.

E. Within thirty (30) calendar days following the completion of the approved Projects, Respondent shall submit to EPA for review, a report that contains:

1. A description of the completed Project(s);

2. A list that specifies the vehicles, equipment and engines that were retrofitted or replaced, including model, make and year of manufacture of the vehicles, equipment and engines (and for engines, the engine family name and horsepower), and the technology with which each engine was retrofitted or replaced;

3. Identify any contractors or other third parties who helped to implement the Project;

4. Contact information for the Participant(s), including the name of the organization and the individual owner and/or operator's name, phone number, and email, and for any other party involved in the implementation of the Project, with a brief description of their involvement;

5. The date each Project was completed;

6. A breakdown of the final costs (and/or contract costs, if applicable), for the equipment and installation of the completed retrofits and/or replacements;

7. The estimated emission reductions (i.e., particulate matter (PM), hydrocarbons (HC), nitrogen oxides (NO_x), carbon monoxide (CO), and/or carbon dioxide (CO_2)), in units of tons of emissions reductions annually, tons of emissions over the lifetime of the project, and total MPUs, as defined in this Appendix. Respondent shall list all assumptions utilized in this calculation. Respondent may use EPA's Diesel Emissions Quantifier tool[1] to assist in these calculations. The Diesel Emissions Quantifier tool requires information about

[1] https://www.epa.gov/cleandiesel/diesel-emissions-quantifier-deq

the baseline vehicle as well as the upgrades applied, including the "type of vehicle", "GVWR class", "baseline engine model year", "baseline fuel type", "annual fuel volume", "annual miles travelled", "annual idling hours", etc. Respondent shall acquire these inputs values from the Participants, if feasible, or if that is not an option, use default values; and

8. Certification that the Project has been fully implemented pursuant to the provisions of this CAFO.

F. The Parties recognize that implementation of the Projects in this Appendix may require action by third parties, such as state or local government entities, private companies, and/or school districts. If Respondent is unable to complete an approved Project in accordance with this Appendix and the approved Project Plan due to such third-party's failure to fulfill its obligations under the Plan, and if that failure is not caused by Respondent and is beyond Respondent's control despite best efforts to fulfill its obligations regarding the Project as set out in the CAFO, this Appendix, and any approved Project Plan, then EPA and Respondent may agree to: (1) allow Respondent to amend the Project Plan as appropriate to successfully complete the Project, or (2) cancel the Project and implement another Project listed in Sections III-IV below.

G. As relevant, Respondent shall give priority to Projects:

1. Located in areas of non-attainment with the National Ambient Air Quality Standards (NAAQS) for ozone and/or PM;

2. Involving replacement and/or retrofit of older, higher-polluting vehicles and equipment that have high annual usage rates and/or vehicle miles travelled, so that the pollution reductions obtained from the Project will be maximized.

H. Respondent need not be the sole provider for the retrofits required for these Projects, but Respondent shall ensure that any and all retrofits are carried out by a properly trained, certified mechanic.

I. Respondent shall ensure that all retrofits and/or replacements use technology that is new, fully functional, and has been verified by either EPA or the California Air Resources Board (CARB). Verified technologies can be found at the following websites:

1. EPA's Verified Technologies List for Clean Diesel: https://www.epa.gov/verified-diesel-tech/verified-technologies-list-clean-diesel;

2. EPA's SmartWay Verified List of Idle Reduction Technology for Trucks and School Buses: https://www.epa.gov/verified-diesel-tech/smartway-verified-list-idling-reduction-technologies-irts-trucks-and-school;

3. CARB-verified technologies: https://www.arb.ca.gov/diesel/verdev/vt/cvt.htm.

J. Participants must commit for three years to operate the affected vehicle, to follow manufacturer guidelines, and to neither tamper with nor remove any retrofitted or new technology.

K. If after reasonable efforts, Respondent is unable to complete the projects in III and IV below, Respondent may submit to EPA for review and approval, in accordance with the CAFO, a justification for why the projects listed in III and IV are infeasible, a proposal of an alternative project(s) not listed in this Appendix that secures equal or greater environmental benefits and an alternative timeline to complete such project(s), if needed.

III. Diesel Truck Idle Reduction Project

A. Consistent with the requirements of Sections I and II of this Appendix, Respondent may propose a Project to sponsor the retrofit of long haul heavy duty diesel engines with Idle Reduction Technology (IRT) to reduce diesel consumption and therefore reduce primary air pollutants, such as PM, HC, NO_x, CO, and CO_2 ("Diesel Truck Idle Reduction Project").

B. Respondent may coordinate with the Wisconsin Department of Natural Resources, the Wisconsin Department of Administration and/or other state or local agencies to help locate and contact eligible Participants to take part in this Diesel Truck Idle Reduction Project.

C. Eligible Participants must own and/or operate the vehicle that will be Retrofitted as part of this Project, noting that vehicles owned by Federal agencies are not eligible.

D. Only eligible diesel trucks may participate in the Diesel Truck Idle Reduction Project. An eligible vehicle must be a 1999 or newer diesel truck that complies with the air pollution emissions standards promulgated by EPA under 42 USC § 7521 for engine model year 1998 or later engine model year. The Respondent shall ensure that each vehicle has all emissions controls installed and operating as per factory settings prior to implementing this Project. Vehicles with emission controls that have been bypassed, removed, and/or tampered with are ineligible. If a vehicle has the proper emissions controls but is not operating per factory settings, Respondent shall repair the vehicle to meet specifications, and then proceed with the Idle Reduction Project. In this case, Respondent may charge the Participant for necessary repair costs.

E. Eligible IRT, that may be installed separately or in a logical combination with one another so as to avoid redundancies and maximize emissions reduction potential, must comply with the conditions set forth in Section II of this Appendix and may include the following:

1. APU; and/or

2. Battery Powered HVAC Unit (BP HVAC); and/or

3. Direct Fired Heater/Bunk Heater Unit (DFH), only if the truck already has a functional APU or BP HVAC already installed; and/or

4. Energy Recovery System (ERS).

IV. School Bus Replacement Project

A. Consistent with the requirements of Sections I and II of this Appendix, Respondent may propose a Project to sponsor the replacement of one or more older school buses to obtain air pollutant reductions by replacing an older bus engine with a new, cleaner burning, more energy-efficient bus (New School Bus) and ensuring that the old bus is scrapped ("School Bus Replacement Project").

B. Respondent shall coordinate with the Wisconsin Department of Natural Resources, the Wisconsin Department of Administration and/or other state or local agencies to help locate and contact eligible Participants to take part in this School Bus Replacement Project. Respondent shall review potential Participants and shall select those Participants whose participation in the School Bus Replacement Project will result in the greatest emission reductions per MPU.

C. Eligible Participants must own the older school bus(es) that will be replaced as part of this Project with the following exceptions:

1. Public school districts may apply with state-owned buses as long as they receive an authorized letter from the state agency that owns the buses;

2. Third-party school bus contractors who own the proposed bus to be replaced are eligible to participate in the program, however third-party school bus contractors who lease the proposed bus to be replaced are only eligible if the remaining lease on the vehicle equals or exceeds three years; and

3. Buses owned by Federal agencies are not eligible.

D. Only eligible older school buses may participate in the Replacement Project. To be considered eligible, the vehicle must

1. Be primarily used for the purpose of transporting 10 or more preprimary, primary, or secondary school students to schools or homes;

2. Be rated Class 3-8, as defined by the Department of Transportation's vehicle service classifications; and

3. Have a Gross Vehicle Weight Rating (GVWR) of 10,001 lbs. or above;

4. Have accumulated at least 10,000 or more miles transporting students over the most recent twelve (12) months, or have been in use for at least three days per week transporting students during the current school year;

5. Be operated within 225 miles of Respondent's facility;

6. Have a diesel-powered engine with a model year of 2006 or older; and

7. Be able to start, move in all directions and have all operational parts.

E. For a replacement to be considered eligible, the New School Bus must

1. Operate on electricity or hybrid drivetrains; be fueled with compressed natural gas (CNG), propane, or liquefied natural gas (LNG), provided that the chosen fuel source is available and economically feasible for the Participant, or if Respondent can demonstrate that the aforementioned options are infeasible, be powered by a current model year diesel-fueled engine compliant with the Clean Air Act;

2. Operate in the same manner and over similar routes as the original school bus; and

3. Meet Federal safety standards and required warranties.

Appendix C

Compliance Plan to Avoid Illegal Tampering and Aftermarket Defeat Devices

This document explains how to help ensure compliance with the Clean Air Act's (the Act or CAA) prohibitions on tampering and aftermarket defeat devices.

The Clean Air Act Prohibitions on Tampering and Aftermarket Defeat Devices:

The Act's prohibitions against tampering and aftermarket defeat devices are set forth in section 203(a)(3) of the Act, 42 U.S.C. § 7522(a)(3),. The prohibitions apply to all vehicles, engines, and equipment subject to the certification requirements under sections 206 and 213 of the Act. This includes all motor vehicles (e.g., light-duty vehicles, highway motorcycles, heavy-duty trucks), motor vehicle engines (e.g., heavy-duty truck engines), nonroad vehicles (e.g., all-terrain vehicles, off road motorcycles), and nonroad engines (e.g., marine engines, engines used in generators, lawn and garden equipment, agricultural equipment, construction equipment).

The prohibitions are as follows:

> "The following acts and the causing thereof are prohibited –"
>
> **Tampering:** CAA § 203(a)(3)(A), 42 U.S.C. § 7522(a)(3)(A), 40 C.F.R. § 1068.101(b)(1): "for any person to remove or render inoperative any device or element of design installed on or in a [vehicle, engine, or piece of equipment] in compliance with regulations under this subchapter 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;"
>
> **Defeat Devices:** CAA § 203(a)(3)(B), 42 U.S.C. § 7522(a)(3)(B), 40 C.F.R. § 1068.101(b)(2): "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 [vehicle, engine, or piece of equipment], 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 [vehicle, engine, or piece of equipment] in compliance with regulations under this subchapter, 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."

In summary, CAA § 203(a)(3)(A) prohibits tampering with emission controls. This includes those controls and sensors that are in the engine (e.g., fuel injection, exhaust gas recirculation), and those that are in the exhaust (e.g., filters, catalysts, oxygen sensors). CAA § 203(a)(3)(B) prohibits (among other things) aftermarket defeat devices, including hardware (e.g., certain modified exhaust pipes) and software (e.g., certain engine tuners and other software changes).

The EPA's longstanding view is that conduct that may be prohibited by CAA § 203(a)(3) does not warrant enforcement if the person performing that conduct has a documented, reasonable basis for

knowing that the conduct does not adversely affect emissions. *See* Mobile Source Enforcement Memorandum 1A (June 25, 1974).

The EPA evaluates each case independently, and the absence of such reasonable basis does not in and of itself constitute a violation. When determining whether tampering occurred, the EPA typically compares the vehicle after the service to the vehicle's original, or "stock" configuration (rather than to the vehicle prior to the service). Where a person is asked to perform service on an element of an emission control system that has already been tampered, the EPA typically does not consider the service to be illegal tampering if the person either declines to perform the service on the tampered system or restores the element to its certified configuration.

Below are two guiding principles to help ensure Respondent commits no violations of the Act's prohibitions on tampering and aftermarket defeat devices[1].

Principle 1: Respondent Will Not Modify any On Board Diagonstic (OBD) Systems

Respondent will neither remove nor render inoperative any element of design of an OBD system.[i] Also, Respondent will not manufacture, sell, offer for sale, or install any part or component that bypasses, defeats, or renders inoperative any element of design of an OBD system.

Principle 2: Respondent Will Ensure There is a *Reasonable Basis* for Conduct Subject to the Prohibitions

For conduct unrelated to OBD systems, Respondent will have a *reasonable basis* demonstrating that its conduct[ii] does not adversely affect emissions. Where the conduct in question is the manufacturing or sale of a part or component, Respondent must have a *reasonable basis* that the installation and use of that part or component does not adversely affect emissions. Respondent will fully document its *reasonable basis*, as specified in the following section, at or before the time the conduct occurs.

[1] Note: Nothing in this Appendix is intended to prohibit Respondent from making necessary repairs to worn out, damaged, or inoperative sensors or other elements of an OBD system in compliance with the CAA.

Reasonable Bases

The following are specific ways in which the Respondent may document that it has a "reasonable basis," as the term is used in the prior section. In any given case, Respondent must consider all the facts including any unique circumstances and ensure that its conduct does not have any adverse effect on emissions.[iii]

A. **Identical to Certified Configuration:** Respondent generally has a reasonable basis if its conduct:

(1) is solely for the maintenance, repair, rebuild, or replacement of an emissions-related element of design; and

(2) restores that element of design to be identical to the certified configuration (or, if not certified, the original configuration) of the vehicle, engine, or piece of equipment.[iv]

B. **Replacement After-Treatment Systems:** Respondent generally has a reasonable basis if the conduct:

(1) involves a new after-treatment system used to replace the same kind of system on a vehicle, engine or piece of equipment beyond its emissions warranty; and

(2) the manufacturer of that system represents in writing that it is appropriate to install the system on the specific vehicle, engine or piece of equipment at issue.

D. **Emissions Testing:**[v] Respondent generally has a reasonable basis if the conduct:

(1) alters a vehicle, engine, or piece of equipment; and

(2) emissions testing shows that the altered vehicle, engine, or piece of equipment will meet all applicable emissions standards for its full useful life; and

(3) where the conduct includes the manufacture, sale, or offering for sale of a part or component, that part or component is marketed only for those vehicles, engines, or pieces of equipment that are appropriately represented by the emissions testing.

E. **EPA Certification:** Respondent generally has a reasonable basis if the emissions-related element of design that is the object of the conduct (or the conduct itself) has been certified by the EPA under 40 C.F.R. Part 85 Subpart V (or any other applicable EPA certification program).[vi]

F. **CARB Certification:** Respondent generally has a reasonable basis if the emissions-related element of design that is the object of the conduct (or the conduct itself) has been certified by the California Air Resources Board ("CARB").[vii]

Endnotes

i. *OBD system* includes any system which monitors emission-related elements of design, or that assists repair technicians in diagnosing and fixing problems with emission-related elements of design. If a problem is detected, an OBD system must record a diagnostic trouble code, illuminate a malfunction indicator light or other warning lamp on the vehicle instrument panel, and provide information to the engine control unit such as information that induces engine derate (as provided by the OEM) due to malfunctioning or missing emission-related systems. Regardless of whether an element of design is commonly considered part of an OBD system, the term "OBD system" as used in this Appendix includes any element of design that monitors, senses, measures, receives, reads, stores, reports, processes or transmits any information about the condition of or the performance of an emission control system or any component thereof.

ii. Here, the term *conduct* means: all service performed on, and any change whatsoever to, any emissions-related element of design of a vehicle, engine, or piece of equipment within the scope of § 203(a)(3); the manufacturing, sale, offering for sale, and installation of any part or component that may alter in any way an emissions-related element of design of a vehicle, engine, or piece of equipment within the scope of § 203(a)(3), and any other act that may be prohibited by § 203(a)(3).

iii. General notes concerning the Reasonable Bases: Documentation of the above-described reasonable bases must be provided to EPA upon request, based on the EPA's authority to require information to determine compliance. CAA § 208, 42 U.S.C. § 7542. The EPA issues no case-by-case pre-approvals of reasonable bases, nor exemptions to the Act's prohibitions on tampering and aftermarket defeat devices (except where such an exemption is available by regulation). A reasonable basis consistent with this Appendix does not constitute a certification, accreditation, approval, or any other type of endorsement by EPA (except in cases where an EPA Certification itself constitutes the reasonable basis). No claims of any kind, such as "Approved [or certified] by the Environmental Protection Agency," may be made on the basis of the reasonable bases described in this Policy. This includes written and oral advertisements and other communication. However, if true on the basis of this Appendix, statements such as the following may be made: "Meets the emissions control criteria in the United States Environmental Protection Agency's Tampering Policy (2016) in order to avoid liability for violations of the Clean Air Act." There is no reasonable basis where documentation is fraudulent or materially incorrect, or where emissions testing was performed incorrectly.

iv. Notes on Reasonable Basis A: The conduct should be performed according to instructions from the original manufacturer (OEM) of the vehicle, engine, or equipment. The "certified configuration" of a vehicle, engine, or piece of equipment is the design for which the EPA has issued a certificate of conformity (regardless of whether that design is publicly available). Generally, the OEM submits an application for certification that details the designs of each product it proposes to manufacture prior to production. The EPA then "certifies" each acceptable design for use, in the upcoming model year. The "original configuration" means the design of the emissions-related elements of design to which the OEM manufactured the product. The appropriate source for technical information regarding the certified or original configuration of a product is the product's OEM. In the case of a replacement part, the part manufacturer should represent in writing that the replacement part will perform identically with respect to emissions control as the replaced part, and should be able to support the representation with either: (a) documentation that the replacement part is identical to the replaced part (including engineering drawings

or similar showing identical dimensions, materials, and design), or (b) test results from emissions testing of the replacement part. In the case of engine switching, installation of an engine into a different vehicle or piece of equipment by any person would be considered tampering unless the resulting vehicle or piece of equipment is (a) in the same product category (e.g., light-duty vehicle) as the engine originally powered and (b) identical (with regard to all emissions-related elements of design) to a certified configuration of the same or newer model year as the vehicle chassis or equipment. Alternatively, Respondent may show through emissions testing that there is a reasonable basis for an engine switch under Reasonable Basis D. Note that there are some substantial practical limitations to switching engines. Vehicle chassis and engine designs of one vehicle manufacturer are very distinct from those of another, such that it is generally not possible to put an engine into a chassis of a different manufacturer and have it match up to a certified configuration.

v. Notes on emissions testing: Where the above-described reasonable bases involve emissions testing, unless otherwise noted, that testing must be consistent with the following. The emissions testing may be performed by someone other than the person performing the conduct (such as an aftermarket parts manufacturer), but to be consistent with this Appendix, the person performing the conduct must have all documentation of the reasonable basis at or before the conduct. The emissions testing and documentation required for this reasonable basis is the same as the testing and documentation required by regulation (e.g., 40 C.F.R. Part 1065) for the purposes of original EPA certification of the vehicle, engine, or equipment at issue. Accelerated aging techniques and in-use testing are acceptable only insofar as they are acceptable for purposes of original EPA certification. The applicable emissions standards are either the emissions standards on the Emission Control Information Label on the product (such as any stated family emission limit, or FEL), or if there is no such label, the fleet standards for the product category and model year. To select test vehicles or test engines where EPA regulations do not otherwise prescribe how to do so for purposes of original EPA certification of the vehicle, engine, or equipment at issue, one must choose the "worst case" product from among all the products for which the part or component is intended. EPA generally considers "worst case" to be that product with the largest engine displacement within the highest test weight class. The vehicle, engine, or equipment, as altered by the conduct, must perform identically both on and off the test(s), and can have no element of design that is not substantially included in the test(s).

vi. Notes on Reasonable Basis E: This reasonable basis is subject to the same terms and limitations as EPA issues with any such certification. In the case of an aftermarket part or component, there can be a reasonable basis only if: the part or component is manufactured, sold, offered for sale for, and installed on the vehicle, engine, or equipment for which it is certified; according to manufacturer instructions; and is not altered or customized, and remains identical to the certified part or component.

vii. Notes on Reasonable Basis F: This reasonable basis is subject to the same terms and limitations as CARB imposes with any such certification. The conduct must be legal in California under California law. However, in the case of an aftermarket part or component, the EPA will consider certification from CARB to be relevant even where the certification for that part or component is no longer in effect due solely to passage of time.

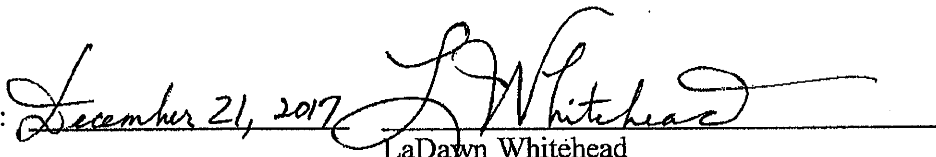
Consent Agreement and Final Order
In the matter of: Abbyland Trucking, Inc.
Docket Number: **CAA-05-2018-0003**

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, docket number **CAA-05-2018-0003**, which was filed on 12/21/2017, in the following manner to the following addressees:

Copy by E-mail to Respondent:	Paul Hess PHess@abbyland.com
Copy by E-mail to Attorney for Complainant:	Andre Daugavietis daugavietis.andre@epa.gov
Copy by E-mail to Attorney for Respondent:	Richard Lewandowski Richard.Lewandowski@huschblackwell.com
Copy by E-mail to Regional Judicial Officer:	Ann Coyle coyle.ann@epa.gov

Dated: December 21, 2017



LaDawn Whitehead
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5