



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

APR - 5 2019

REPLY TO THE ATTENTION OF

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Nancy K. Hodge
President
Royal Crown Bottling Corporation
1100 Independence Avenue
Evansville, Indiana 47714

Dear Ms. Hodge:

Enclosed is a file-stamped Consent Agreement and Final Order (CAFO) which resolves the matter of Royal Crown Bottling Corporation (Royal Crown), docket no. CAA-05-2019-0015. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on April 5, 2019.

Pursuant to paragraph 34 of the CAFO, Royal Crown must pay the civil penalty within 30 days of the filing date. Your electronic funds transfer must display the case name and case docket number.

Please direct any questions regarding this case to Andre Daugavietis, Associate Regional Counsel at (312) 886-6663.

Sincerely,

A black rectangular redaction box covering the signature of Nathan Frank.

Nathan Frank, Chief
Air Enforcement and Compliance Assurance Section (IL/IN)

Enclosure

cc: Ann Coyle, Regional Judicial Officer/C-14J
Regional Hearing Clerk/E-19J
Andre Daugavietis/C-14J
Phil Perry, IDEM

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:) Docket No. CAA-05-2019-0015
)
Royal Crown Bottling Corporation) Proceeding to Assess a Civil Penalty
Evansville, Indiana) 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 an administrative action commenced and concluded under Section 205(c)(1) of the Clean Air Act (the CAA), 42 U.S.C. § 7524(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 Air and Radiation Division, U.S. Environmental Protection Agency (EPA), Region 5.
3. Respondent is Royal Crown Bottling Corporation, a company doing business in Indiana, and throughout Illinois, Kentucky, Missouri, and Tennessee.
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. 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. “Motor vehicle” means any self-propelled vehicle designed for transporting persons or property on a street or highway. Section 216(2) of the CAA, 42 U.S.C. § 7550(2); See also 40 C.F.R. § 85.1703.

11. “Motor vehicle engine” means an engine that is designed to power a motor vehicle.

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

13. EPA promulgated emissions standards, under Section 202 of the CAA, 42 U.S.C. § 7521, for particulate matter (PM), nitrogen oxides (NO_x), hydrocarbons (HC), and other pollutants applicable to motor vehicles and motor vehicle engines, including standards for heavy-duty diesel engines (HDDE). See generally 40 C.F.R. Part 86.

14. EPA promulgated regulations for motor vehicles manufactured after 2007 that require HDDE motor vehicles 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).

15. To meet the emission standards in 40 C.F.R. Part 86 and qualify for a certificate of conformity, HDDE motor vehicle manufacturers may utilize devices and elements of design such as Exhaust Gas Recirculation systems (EGRs), Diesel Oxidation Catalysts (DOCs), Diesel Particulate Filters (DPFs), and/or Selective Catalytic Reduction systems (SCRs).

16. Modern HDDE motor vehicles 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 system, DOC, DPF, and SCR system.

17. Under Section 202(m) of the CAA, 42 U.S.C. § 7521(m), EPA promulgated regulations for motor vehicles manufactured after 2007 that require HDDE motor vehicles 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. 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 "OBD" systems.

18. 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 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.”

19. EPA may administratively assess a civil penalty for violations of Section 203(a) of the CAA, 42 U.S.C. § 7522(a). Section 205(c)(1) of the CAA, 42 U.S.C. § 7524(c)(1).

20. EPA may assess a civil penalty of up to \$3,750 for each applicable CAA violation that occurred after December 6, 2013, through November 2, 2015, and up to \$4,619 for each applicable CAA violation that occurred after November 2, 2015, and assessed on or after January 15, 2018, in accordance with Section 205(a) of the CAA, 42 U.S.C. § 7524(a), and 40 C.F.R. Part 19.

Factual Allegations and Alleged Violations

21. Respondent is a corporation organized under the laws of the State of Indiana, with its office at 1100 Independence Avenue, Evansville, Indiana.

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

23. On May 31, 2017, EPA sent a written Request for Information to Respondent pursuant to Section 208 of the CAA, addressed to Respondent’s physical location. Since the original request was not received by Respondent, on September 6, 2017, EPA forwarded the Request for Information to Respondent’s P.O. Box: P.O. Box 2870, Evansville, Indiana 47728-0870.

24. In response to the Request for Information, on October 31, 2017, Respondent provided invoices and other information indicating that between June 1, 2014 and approximately September 6, 2017, Respondent removed or rendered inoperative air pollution emission control systems on five HDDE motor vehicles (Modified Trucks) owned by Respondent; specifically, Respondent removed or rendered inoperative the EGRs from four of the five Modified Trucks and the DPFs from two of the five Modified Trucks. To allow for the disabling of the emission controls on the Modified Trucks, Respondent installed Engine Control Module (“ECM”) tuning products (“ECM Tunes”) manufactured by Hanak Enterprises and Derive/SCT. Both of these ECM Tunes had a principal effect of bypassing, defeating, or rendering inoperative HDDE emission control devices or elements of design.

25. The manufacturer of each Modified Truck obtained a certificate of conformity with HDDE emission standards.

26. Each Modified Truck constitutes a “motor vehicle” as that term is defined by the CAA.

27. In response to the Request for Information, on October 31, 2017, Respondent notified EPA that Respondent returned all Modified Trucks “to stock.”

28. 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 elements of design that were installed on or in at least 5 motor vehicles or motor vehicle engines to comply with emission standards promulgated under Title II of the CAA.

29. EPA alleges that, in violation of Section 203(a)(3)(B) of the CAA, Respondent installed at least 5 parts or components where a principal effect of the part or component was to bypass, defeat, and/or render inoperative emission control devices or elements of design that were installed on or in motor vehicles or motor vehicle engines to comply with the emission

standards promulgated under Title II of the CAA, and the Respondent knew or should have known that such products were installed for such use or put to such use.

30. On April 20, 2018, EPA issued a Finding of Violation (FOV) to Respondent alleging violations of CAA § 203(a)(3)(A) and CAA § 203(a)(3)(B).

31. On June 25, 2018 and on subsequent dates, representatives of Respondent spoke with EPA Region 5 to discuss the FOV, and the Parties have engaged in subsequent communications about resolving the matter.

32. On August 29, 2018, Respondent provided EPA with an executed affidavit of Respondent's fleet manager, dated August 24, 2018, certifying the following:

- a. On or about September 2017, Respondent reinstalled the air pollution emission control systems on all five Modified Trucks and returned all systems to their 'stock configuration;' and
- b. On or about June 29, 2018, Respondent inspected the air pollution emission control systems on each motor vehicle in Respondent's fleet, including the five previously Modified Trucks, and found each air pollution emission control system to be properly installed to their stock configuration and operating properly.

Civil Penalty

33. Based on analysis of the factors specified in Section 205(c) of the CAA, 42 U.S.C. § 7524(c), EPA's Clean Air Act Mobile Source Civil Penalty Policy, the facts of this case, the compliance steps that Respondent has taken and agrees to take, and Respondent's cooperation in resolving this matter, Complainant has determined that an appropriate civil penalty to settle this action is \$13,953.

34. Within 30 days after the effective date of this CAFO, Respondent must pay a \$13,953 civil penalty by electronic funds transfer, payable to "Treasurer, United States of America," and sent to:

Federal Reserve Bank of New York
ABA No. 021030004
Account No. 68010727
33 Liberty Street
New York, New York 10045
Field Tag 4200 of the Fedwire message should
read: "D68010727 Environmental Protection Agency"

In the comment or description field of the electronic funds transfer, state Respondent's name and the docket number of this CAFO.

35. 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

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

37. If Respondent does not pay timely the civil penalty as set forth above, 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)(B). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

38. 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)(B).

Other Conditions

39. By signing this Consent Agreement, Respondent certifies that from the date of their signature, (i) it will not manufacture, sell, offer for sale, or install any aftermarket defeat devices, including ECM tuning products, where a principal effect of the device is to bypass, defeat, or render inoperative any emission-related device or element of design installed on or in a motor vehicle or motor vehicle engine, and (ii) it 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. Toward this end, the Respondent agrees to comply with the Compliance Plan attached as Appendix A of this CAFO.

40. Respondent 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 Order, including any right of judicial review under Section 307(b)(1) of the Clean Air Act, 42 U.S.C. § 7607(b)(1).

General Provisions

41. 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 NKHodge@rcbev.com and mschopmeyer@kddk.com (for Respondent). The parties waive their right to service by the methods specified in 40 C.F.R. § 22.6.

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

43. The effect of the settlement described in Paragraph 42 above, is conditioned upon the accuracy of Respondent's representations to EPA, as memorialized in Paragraph 32 of this CAFO.

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

46. Respondent certifies that it is complying fully with CAA § 203(a)(3)(A) and CAA § 203(a)(3)(B).

47. Nothing in this CAFO shall be deemed as an admission in any respect to or by any third party.

48. This CAFO shall become effective after execution of the Final Order by the Regional Judicial Officer and filing with the Regional Hearing Clerk.

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

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

51. 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.

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

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

Royal Crown Bottling Corporation, Respondent

3/11/19
Date



Nancy K. Hodge
President
Royal Crown Bottling Corporation

United States Environmental Protection Agency, Complainant

3/23/19
Date



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

Consent Agreement and Final Order
In the Matter of: Royal Crown Bottling Corporation
Docket No. CAA-05-2019-0015

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.

April 4, 2019
Date


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

Appendix A:

Compliance Plan to Avoid Illegal Tampering and Aftermarket Defeat Devices

This document explains how to help ensure compliance with the Clean Air Act's prohibitions on tampering and aftermarket defeat devices. The document specifies what the law prohibits, and sets forth two principles to follow in order to prevent violations.

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), (hereafter "§ 203(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). Certification requirements include those for exhaust or "tailpipe" emissions (e.g., oxides of nitrogen, carbon monoxide, hydrocarbons, particulate matter, greenhouse gases), evaporative emissions (e.g., emissions from the fuel system), and onboard diagnostic systems.

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."

Section 203(a)(3)(A) prohibits tampering with emission controls. This includes those controls that are in the engine (e.g., fuel injection, exhaust gas recirculation), and those that are in the exhaust (e.g., filters, catalytic convertors, and oxygen sensors). Section 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).

EPA's longstanding view is that conduct that may be prohibited by § 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).*

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, 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, 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.

Principle 1: Respondent Will Not Modify any OBD System

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 conductⁱⁱ 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.

Reasonable Bases

This section specifies several ways that 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: is solely for the maintenance, repair, rebuild, or replacement of an emissions-related element of design; and 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 and that system is 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.

- C. Emissions Testing:**^v Respondent generally has a reasonable basis if the conduct:
 - (1) alters a vehicle, engine, or piece of equipment;
 - (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.

- D. 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 EPA under 40 C.F.R. Part 85 Subpart V (or any other applicable EPA certification program).^{vi}

- E. 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 should 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, 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 EPA’s authority to require information to determine compliance. CAA § 208, 42 U.S.C. § 7542. 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 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 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. 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 C. 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 D: 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, or 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 E: 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, 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: Royal Crown Bottling Corporation
Docket Number: CAA-05-2019-0015

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 2019 0015, which was filed on April 5, 2019, in the following manner to the following addressees:

Copy by Certified Mail to
Respondent:

Nancy K. Hodge
President
Royal Crown Bottling Corporation
1100 Independence Avenue
Evansville, Indiana 47714
NKHodge@rcbev.com

Copy by E-mail to
Attorney for Complainant:

Andre Daugavietis
daugavietis.andre@epa.gov

Copy by E-mail to
Attorney for Respondent:

G. Michael Schopmeyer
mschopmeyer@KDDK.com

Copy by E-mail to
Regional Judicial Officer:

Ann Coyle
coyle.ann@epa.gov

Copy by E-mail to
State Contacts:

Phil Perry, IDEM
PPERRY@idem.IN.gov

Dated: April 5, 2019


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