

**BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029**

IN THE MATTER OF:

HT Performance
7684 Route 522
Middleburg, PA 17842

Respondent.

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DOCKET NO.: CAA-03-2021-0040

**EXPEDITED SETTLEMENT
AGREEMENT**

EXPEDITED SETTLEMENT AGREEMENT

1. This Expedited Settlement Agreement (or “Agreement”) is entered into by the Director, Enforcement & Compliance Assurance Division, U.S. Environmental Protection Agency, Region III (“Complainant”), and HT Performance (“Respondent”), pursuant to Section 205(c)(1) of the Clean Air Act (“CAA”), as amended, 42 U.S.C § 7524(c)(1), and the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (“Consolidated Rules of Practice”), 40 C.F.R. Part 22 (with specific reference to 40 C.F.R. §§ 22.13(b), 22.18(b)(2), and (3)). The Administrator has delegated this authority to the Regional Administrator who, in turn, has delegated it to the Complainant.
2. The U.S. Environmental Protection Agency (“EPA”) has jurisdiction over the above-captioned matter pursuant to Section 205(c)(1) of the CAA, 42 U.S.C § 7524(c)(1), and 40 C.F.R. §§ 22.1(a)(2) and 22.4 of the Consolidated Rules of Practice.
3. At all times relevant to this Agreement, Respondent, a Pennsylvania limited liability company, was, and currently is, a “person” as defined under Section 302(e) of the CAA, 42 U.S.C § 7602(e), and the owner and operator of a facility located at 7684 Route 522, Middleburg, PA 15757 (the “Facility”).
4. EPA alleges and finds that Respondent failed to comply with Section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B), and the implementing regulations found at 40 C.F.R. § 1068.101(b)(2).
5. As a result of EPA’s investigation and pursuant to its enforcement authority under Section 208(b) of the CAA, 42 U.S.C. §7542(b), EPA obtained evidence that between September 26, 2017 and November 25, 2019, Respondent sold the **eight (8)** products, identified in Table 1, below, which render inoperative emission control systems on EPA-certified motor vehicle and motor vehicle engines (“defeat devices”). These products include: (i) blocker plates that block off flow of emission gases to Exhaust Gas Recirculation (EGR) systems; and (ii) DPF or Selective Catalytic Reduction (SCR) delete kits (“straight pipes”) to remove or bypass the DPF or SCR systems. EPA alleges and finds that Respondent’s sale of these defeat devices,

identified in Table 1, below, constitutes eight (8) violations of CAA Section 203(a)(3)(B), 42 U.S.C. § 7522(a)(3)(B), and the implementing regulations found at 40 C.F.R. § 1068.101(b)(2).

Table 1: Violation Summary - Sale of Defeat Devices

| Invoice No. | Invoice Date | Product Description | Motor Vehicle Application |
|--------------------|---------------------|----------------------------|----------------------------------|
| N/A | 5/28/2018 | 5-inch exhaust | Ford Super Duty Powerstroke |
| N/A | 5/30/2019 | 5-inch exhaust | Ford Super Duty Powerstroke |
| N/A | 5/30/2019 | Blocker plate | Ford Super Duty Powerstroke |
| N/A | 9/17/2018 | Blocker plate | Ford Super Duty Powerstroke |
| N/A | 9/17/2018 | 5-inch exhaust | Ford Super Duty Powerstroke |
| N/A | 12/20/2018 | 5-inch exhaust | Ford Super Duty Powerstroke |
| N/A | 12/20/2018 | Blocker plate | Ford Super Duty Powerstroke |
| N/A | 12/20/2018 | Blocker plate | Ford Super Duty Powerstroke |

6. Respondent certifies that it has not had the same, or closely related violation(s), that were the subject of an enforcement action under Title II of the CAA within five (5) years of the date of Respondent’s execution of this Agreement.

7. Respondent certifies that it has provided EPA with true and accurate documentation demonstrating completion of remedial measures to correct the violations alleged above and come into compliance with the CAA.

8. EPA and Respondent agree that settlement of this matter for a penalty in the amount of **THREE THOUSAND EIGHT HUNDRED AND FIFTY-FIVE DOLLARS (\$3,855.00)**, which Respondent shall be liable to pay in accordance with the terms and provisions set forth below, is reasonable in the public interest and is based upon EPA’s consideration of the statutory factors set forth in Section 205(c)(2) of the CAA, 42 U.S.C. § 7524(c)(2), which include the gravity of the violation, the economic benefit or savings (if any) resulting from the violation, the size of the violator’s business, the violator’s history of compliance with this subchapter, action taken to remedy the violation, the effect of the penalty on the violator’s ability to continue in business, and such other matters as justice may require. These factors were applied to the particular facts and circumstances of this case with specific reference to EPA’s June 21, 2019 Recommendation to Approve Expedited Settlement Agreement Pilot for Clean Air Act Vehicle and Engine Violations – Tampering/Defeat Devices policy, the appropriate Adjustment of Civil Monetary Penalties for Inflation, pursuant to 40 C.F.R. Part 19, and the applicable EPA memoranda addressing EPA’s civil penalty policies to account for inflation.

9. Complainant and Respondent further acknowledge and represent that the payment provisions of this Agreement are based, in part, upon Respondent’s representation that the COVID-19 pandemic has negatively impacted Respondent’s financial health and ability to pay the agreed civil penalty. EPA has reviewed and considered Respondent’s certified statement of its current financial condition and its articulation of the reasons in support of its contention that it is

unable to pay the agreed civil penalty amount within 30 days, or absent the incorporated penalty payment provisions, without experiencing undue hardship. Complainant has relied upon the Respondent’s representation of its current financial condition and, on the basis of Respondent’s certified statement, it is Complainant’s conclusion that the Respondent is unable to pay the full amount of the civil penalty identified and set forth in Paragraph 8, above, within thirty (30) days of the effective date of this ESA and that a payment plan of the nature and duration set forth below is necessary and appropriate. Pursuant to the provisions of this ESA, Respondent will remit a total civil penalty (principal) of **THREE THOUSAND EIGHT HUNDRED FIFTY-FIVE DOLLARS (\$3,855.00)** and interest (calculated at the rate of 2% per annum on the outstanding principal balance) in the amount of **SEVENTY DOLLARS AND TEN CENTS (\$77.10)**, in accordance with the installment payment schedule set forth in Table II, immediately below:

Table II: Civil Penalty Payment Schedule

| Payment No. | Date Payment Due (From Effective Date of Expedited Settlement Agreement & Final Order) | Principle Amount | 2% per Annum Interest | Total Payment Amount Due |
|--------------------|---|-------------------------|------------------------------|---------------------------------|
| 1 | <i>Within 30 Days</i> | \$321.25 | \$6.43 | \$327.68 |
| 2 | <i>Within 60 Days</i> | \$321.25 | \$6.43 | \$327.68 |
| 3 | <i>Within 90 Days</i> | \$321.25 | \$6.43 | \$327.68 |
| 4 | <i>Within 120 Days</i> | \$321.25 | \$6.43 | \$327.68 |
| 5 | <i>Within 150 Days</i> | \$321.25 | \$6.43 | \$327.68 |
| 6 | <i>Within 180 Days</i> | \$321.25 | \$6.43 | \$327.68 |
| 7 | <i>Within 210 Days</i> | \$321.25 | \$6.43 | \$327.68 |
| 8 | <i>Within 240 Days</i> | \$321.25 | \$6.43 | \$327.68 |
| 9 | <i>Within 270 Days</i> | \$321.25 | \$6.43 | \$327.68 |
| 10 | <i>Within 300 Days</i> | \$321.25 | \$6.43 | \$327.68 |
| 11 | <i>Within 330 Days</i> | \$321.25 | \$6.43 | \$327.68 |
| 12 | <i>Within 360 Days</i> | \$321.25 | \$6.37 | \$327.62 |
| Total: | | \$3,855.00 | \$77.10 | \$3,932.10 |

- If Respondent fails to make timely payment of any one of the required installment payments in accordance with the installment payment schedule set forth in Paragraph 9, Table II, immediately above, the entire unpaid balance of the penalty and all accrued interest shall become due immediately upon such failure, and Respondent shall immediately pay the entire remaining principal balance of the civil penalty along with any interest that has accrued up to the time of such payment. In addition, Respondent shall be liable for, and shall pay, applicable interest, administrative handling charges and late payment penalty charges as described in Paragraphs 11 through 15, below, in the event of any such failure or default.

11. Respondent may, at any time after commencement of payments under the installment payment schedule, elect to pay the entire principal balance, together with accrued interest to the date of such full payment.
12. Respondent agrees that, each civil penalty payment and any associated interest, administrative fees, and late payment penalties owed, shall be made by one of following four (4) methods, as further specified and directed below: a) electronic funds transfer (“EFT”); b) Automated Clearinghouse; c) Pay.gov; or d) a cashier’s check, or certified check, payable to the “United States Treasury” with the case name, address and docket number of this Agreement (CAA-03-2021-0081) referenced on the check for the amount specified above. A list of the payment methods is also provided on the website <https://www.epa.gov/financial/makepayment>.

a) Payment of the penalty amount **by EFT** to:

Federal Reserve Bank of New York
ABA 021030004
Account 68010727
SWIFT address FRNYUS33
33 Liberty Street
New York, NY 10045
Beneficiary: Environmental Protection Agency

b) Payment of the penalty amount **by Automated Clearinghouse (ACH)** to EPA can be made through the U.S. Treasury using the following information:

U.S. Treasury REX/Cashlink ACH Receiver

ABA: 051036706
Account Number: 310006, Environmental Protection Agency

CTX Format Transaction Code 22- Checking

Physical Location of the U.S. Treasury Facility
5700 Rivertech Court
Riverdale, MD 20737

Remittance Express (REX): 1-866-234-5681

c) Payment of the penalty amount made **through Pay.gov**:

Payers can use their credit or debit cards (Visa, MasterCard, American Express & Discover) as well as checking account information to make payments. Follow these steps to make a payment:

- (1) You DO NOT need a username and password or account.
- (2) Enter SFO 1.1 in the form search box on the top left side of the screen.

- (3) Open the form and follow the on-screen instructions.
 - (4) Select your method of payment from the “Type of Payment” drop down menu.
 - (5) Based on your selection, the corresponding line will open and no longer be shaded grey.
 - (6) Enter the docket number of this Agreement (CAA-03-2021-0040) into the field.
- d) Payment of the penalty amount **by cashier’s check, or by certified check**, payable to the “United States Treasury” with the case name, address and docket number of this Agreement (CAA-03-2021-0081) referenced on the check which shall be sent:

- (1) via certified mail to:

U.S. Environmental Protection Agency
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

or

- (2) via overnight mail (FedEx or other non-U.S. Postal Service express mail) to:

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

13. Within twenty-four (24) hours of making payment, the Respondent shall also send proof of such payment (a copy of the check, confirmation of credit card or debit card payment, confirmation of wire transfer or of automated clearinghouse transfer) by email to:

Paul Arnold (3ED21)
arnold.paul@epa.gov

and

Regional Hearing Clerk (3RC00)
R3_Hearing_Clerk@epa.gov

14. In signing this Agreement, the Respondent:

- a) admits the jurisdictional allegations set forth in this Agreement;

- b) neither admits nor denies the specific factual allegations set forth in this Agreement, except as provided in the jurisdictional admission above;
 - c) agrees not to contest EPA's jurisdiction with respect to the execution of this Agreement, the issuance of the attached Final Order, or the enforcement the Agreement;
 - d) expressly waives its right to a hearing on any issue of law or fact set forth in this Agreement and any right to appeal the accompanying Final Order;
 - e) consents to the issuance of this Agreement and agrees to comply with its terms;
 - f) agrees to bear its own costs and attorney's fees; and
 - g) agrees not to deduct for federal tax purposes the civil penalty assessed in this Agreement.
15. By its signature below, Respondent certifies, that any information or representation it has supplied or made to EPA concerning this matter was, at the time of submission true, accurate, and complete and that there has been no material change regarding the truthfulness, accuracy or completeness of such information or representation. EPA shall have the right to institute further actions to recover appropriate relief if EPA obtains evidence that any information provided and/or representations made by Respondent to the EPA regarding matters relevant to this Agreement, including information about respondent's ability to pay a penalty, are false or, in any material respect, inaccurate. This right shall be in addition to all other rights and causes of action that EPA may have, civil or criminal, under law or equity in such event. Respondent and its officers, directors and agents are aware that the submission of false or misleading information to the United States government may subject a person to separate civil and/or criminal liability.
16. This Agreement and attached Final Order constitute a settlement by EPA of its claims for civil penalties for the violations alleged in this Agreement.
17. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Sections 22.18(c) and 22.31(a) of the Consolidated Rules of Practice. Further, EPA reserves any rights and remedies available to it under the CAA, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this Agreement, following its filing with the Regional Hearing Clerk.
18. Late payment of the agreed upon penalty may subject Respondent to interest, administrative costs and late payment penalties in accordance with 40 C.F.R. § 13.11.
19. This Agreement is binding on the parties signing below and is effective upon filing with the Regional Hearing Clerk pursuant to the Consolidated Rules of Practice, in accordance with 40 C.F.R. § 22.31(b).

- 20. The undersigned representative certifies that she/he is fully authorized to execute this Agreement and to legally bind Respondent.
- 21. As permitted under 40 CFR § 22.6, the Regional Hearing Clerk will serve copies of this Agreement and Final Order by e-mail to the parties at the following valid e-mail addresses: arnold.paul@epa.gov (for Complainant), and hermy130@live.com (for Respondent).
- 22. Payment of the civil penalty, in accordance with the above terms and provisions, is due and payable immediately upon Respondent's receipt of a true and correct copy of the fully executed and filed Agreement and Final Order. Receipt by Respondent or Respondent's legal counsel of such copy of the fully executed Agreement and Final Order, with a date stamp indicating the date on which the Agreement and Final Order was filed with the Regional Hearing Clerk, shall constitute receipt of written initial notice that a debt is owed EPA by Respondent in accordance with 40 C.F.R. § 13.9(a).

or respondent: HT Performance

Name: Caleb Herman

Title: Owner

Signature: 

Date: July 27, 2021

For Complainant: U.S. Environmental Protection Agency, Region III

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

08/02/2021
Date

**Melvin,
Karen**

Digitally signed by
Melvin, Karen
Date: 2021.08.02
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Karen Melvin, Director
Enforcement and Compliance Assurance Division

In the Matter of: HT Performance

Docket No. CAA-03-2021-0040

**BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029**

IN THE MATTER OF:

HT Performance
7684 Route 522
Middleburg, PA 17842

Respondent.

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DOCKET NO.: CAA-03-2021-0040

**EXPEDITED SETTLEMENT
AGREEMENT**

FINAL ORDER

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

Based upon the representations of the parties in the attached Expedited Settlement Agreement, the penalty agreed to therein is based upon consideration of, *inter alia*, the statutory factors set forth in Section 205(c)(2) of the CAA, 42 U.S.C. § 7524(c)(2), EPA’s June 21, 2019 *Recommendation to Approve Expedited Settlement Agreement Pilot for Clean Air Act Vehicle and Engine Violations – Tampering/Defeat Devices* policy, the appropriate *Adjustment of Civil Monetary Penalties for Inflation*, pursuant to 40 C.F.R. Part 19 and the applicable EPA memoranda addressing EPA’s civil penalty policies to account for inflation.

NOW, THEREFORE, PURSUANT TO Section 205(c)(1) of the Clean Air Act (“CAA”), as amended, 42 U.S.C § 7524(c)(1), and Section 22.18(b)(3) of the Consolidated Rules of Practice, **IT IS HEREBY ORDERED** that Respondent pay a civil penalty in the amount of **THREE THOUSAND EIGHT HUNDRED AND FIFTY-FIVE DOLLARS (\$3,855.00)**, in accordance with the payment provisions set forth in the Expedited Settlement Agreement, and comply with the terms and conditions of the Expedited Settlement Agreement.

This Final Order constitutes the final Agency action in this proceeding. This Final Order shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief, or criminal sanctions for any violations of the law. This Final Order resolves only those causes of action alleged in the Expedited Settlement Agreement and does not waive, extinguish or otherwise affect Respondent’s obligation to comply with all applicable provisions of Title II of the Clean Air Act (“CAA”), 42 U.S.C. §§ 7521 *et seq.*, and the regulations promulgated thereunder.

The effective date of the foregoing Expedited Settlement Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

Date

**JOSEPH
LISA**

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JOSEPH LISA
Date: 2021.08.03
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Joseph J. Lisa
Regional Judicial Officer
U.S. EPA - Region III