BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.

In the Matter of: H&S Performance, LLC Respondent.	Docket No. CAA-HQ-2015-MSEB 8248

CONSENT AGREEMENT

Preliminary Statement

1. This is a civil administrative penalty assessment proceeding instituted under 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 simultaneously commences and concludes this proceeding. 40 C.F.R. § 22.13(b).

2. Complainant in this matter is the United States Environmental Protection Agency ("EPA"). On the EPA's behalf, Phillip A. Brooks, Director, Air Enforcement Division, Office of Civil Enforcement, Office of Enforcement and Compliance Assurance, is authorized by lawful delegation to institute and settle civil administrative penalty assessment proceedings under section 205(c)(1) of the CAA, 42 U.S.C. § 7524(c)(1). EPA Delegation 7-6-A (Aug. 4, 1994); Office of Enforcement and Compliance Assurance Redelegation 7-6-A (March 5, 2013); Office of Civil Enforcement Redelegation 7-6-A (March 5, 2013).

3. Respondent in this matter is H&S Performance, LLC ("H&S"). Respondent is a limited liability corporation organized under the laws of the State of Utah with an office at 4160 South River Road, Saint George, Utah, 84790. Respondent was a high-volume purveyor

of performance tuners and other performance products designed for use with heavy-duty diesel ("HDD") trucks manufactured by Dodge, Ford, and General Motors ("GM"). H&S manufactured and sold performance tuners, exhaust replacement pipes and exhaust gas recirculation delete kits (collectively "Defeat Devices") that have the effect of altering the engine's fueling strategy or mechanically bypassing vehicle emissions controls.

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

Jurisdiction

5. This Consent Agreement is entered into under 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. The EPA may administratively assess a civil penalty if the penalty sought is less than $320,000. CAA § 205(c)(1), 42 U.S.C. § 7524(c)(1); 40 C.F.R. § 19.4.

7. The Administrator and the Attorney General jointly determined that this matter, although it involves a penalty amount greater than $320,000, is appropriate for administrative penalty assessment. CAA § 205(c)(1), 42 U.S.C. § 7524(c)(1); 40 C.F.R. § 19.4.

8. The Environmental Appeals Board is authorized to issue consent orders memorializing settlements between the EPA and Respondent resulting from administrative enforcement

actions under the CAA, and to issue final orders assessing penalties under the CAA. 40 C.F.R. § 22.4(a)(1); EPA Delegation 7-41-C.

9. 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 Consent Agreement and Final Order. 40 C.F.R. §§ 22.13(b), 22.18(b).

Governing Law

10. This proceeding arises under Part A of Title II of the CAA, CAA §§ 202–219, 42 U.S.C. §§ 7521–7554, and the regulations promulgated thereunder. These laws aim to reduce emissions from mobile sources of air pollution, including hydrocarbons, oxides of nitrogen ("NO_x"), and particulate matter ("PM"). The Alleged Violations of Law, stated below, regard motor vehicles, specifically HDD trucks, and violations of the Defeat Device prohibition of section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B), which prohibits any person from manufacturing, selling, offering to sell, or installing parts or components whose principal effect is to bypass, defeat, or render inoperative a motor vehicle emission control device, where such person knows or should know that the part is being offered for sale or installed for such use or put to such use. What follows is a summary of the law that governs these allegations.

11. Definitions:

(a) "Defeat Device" means a motor vehicle part or component, including Electronic Tuning Devices, 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. §§ 86.007-17 or 86.1806-05.

(b) "Electronic Tuning Device" or "Device" means any of the following products marketed by H&S under the H&S Performance brand name: XRT Pro, Mini Maxx, Black Maxx. These devices are also known as performance tuners.

(c) "Motor vehicle" is defined in section 216(2) of the CAA, 42 U.S.C. § 7550(2), as "any self-propelled vehicle designed for transporting persons or property on a street or highway."

(d) "Person" includes individuals, corporations, partnerships, associations, states, municipalities, and political subdivisions of a state. 42 U.S.C. § 7602(e).

12. Section 203(a)(1) of the CAA, 42 U.S.C. § 7522(a)(1), prohibits a vehicle manufacturer from selling a new motor vehicle in the United States unless the vehicle is covered by a certificate of conformity.

13. 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.

14. Under section 202 of the CAA, 42 U.S.C. § 7521, EPA promulgated emission standards for PM, NO_x, and other pollutants applicable to motor vehicles and motor vehicle engines, including HDD trucks. *See generally* 40 C.F.R. Part 86.

15. Under section 202(m) of the CAA, 42 U.S.C. § 7521(m), EPA promulgated regulations for motor vehicles manufactured after 2007 that require HDD trucks 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.

16. A diesel particulate filter ("DPF") is designed to limit harmful emissions of PM and other pollutants. HDD truck manufacturers began designing and building highway trucks using DPFs in 2007 in order to meet more stringent PM emission standards. 40 C.F.R. §§ 86.007-11, 86.1863-07.

17. An exhaust gas recirculation ("EGR") system reduces emissions of NO_x generated from fuel combustion. HDD truck manufacturers began designing and building trucks using EGR systems in order to meet more stringent NO_x standards effective in 2004. 40 C.F.R. §§ 86.004-11, 86.007-11.

18. A vehicle's DPF and EGR work in conjunction with the vehicle's OBD system, which monitors the emission-related components for malfunction or deterioration that could cause the vehicle to fail to comply with the CAA's emission standards.

19. The DPF, EGR, and OBD are components of a motor vehicle's emission control system.

20. Section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B), prohibits any person from manufacturing, selling, offering to sell, or installing any part or component intended for use with, or as part of, any motor vehicle or motor vehicle engine, where a principal effect of the part or component is to bypass, defeat, or render inoperative any device or element of design installed on or in a motor vehicle or motor vehicle engine in compliance with regulations under Title II of the Act, 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.

21. Persons violating section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B), are subject to a civil penalty of up to $3,750 for each violation. CAA § 205(a), 42 U.S.C. § 7524(a); 40 C.F.R. § 19.4.

22. Rather than referring a matter to the United States Department of Justice (DOJ) to commence a civil action, the EPA may assess a civil penalty through its own administrative process if the penalty sought is less than $320,000 or if the EPA and the DOJ jointly determine that a matter involving a larger penalty amount is appropriate for administrative penalty assessment. 42 U.S.C. § 7524(c); 40 C.F.R. § 19.4.

Stipulated Facts

23. H&S Performance, LLC, is a Utah limited liability company with a primary office at 4160 South River Road, Saint George, Utah 84790.

24. H&S is a person, as that term is defined in section 302(e) of the CAA, 42 U.S.C. § 7602(e).

25. H&S was a manufacturer of Defeat Devices and has sold three main categories of products: (1) engine Electronic Tuning Devices, also known as performance tuners, (2) exhaust replacement pipes, and (3) exhaust gas recirculation removal kits. The performance tuners are marketed to increase the performance of the vehicles (e.g., power output, torque, responsiveness of the engine, fuel efficiency), but do so at the expense of emissions and to the detriment of human health and the environment.

26. The performance tuner Defeat Devices are essentially computers that contain programming that modify a variety of emissions-critical computerized controls of the engine fueling system, as well as the OBD systems installed by the manufacturers of the vehicles as part of the vehicles' emissions control systems. In addition, the exhaust

replacement pipes and the exhaust gas recirculation removal kits sold by H&S were designed to mechanically bypass certain vehicle emissions control systems.

27. On July 20, 2011, and March 14, 2013, EPA issued H&S Requests for Information pursuant to section 208 of the CAA, 42 U.S.C. § 7542. H&S responded to these Requests for Information on August 20, 2011, and April 8, 2013, and provided additional responsive information on November 29, 2012, and June 14, 2013.

28. H&S sold (a) "DPF delete" exhaust replacement pipes for several models of Dodge, GM, and Ford HDD motor vehicles; (b) EGR delete kits that remove the EGR and associated equipment; and (c) electronic tuning devices that connect to a motor vehicle's OBD system port and reprogram the vehicle for added power.

29. H&S manufactured and sold products designed for use with: (1) Dodge diesel trucks: 2006-2007 with 5.9 liter engines and 2007½-2011 with 6.7 liter engines; (2) Ford diesel trucks: 2003-2007 with 6.0 liter engines, 2008-2010 with 6.4 liter engines, and 2011 with 6.7 liter engine; and (3) GM diesel trucks: 2007-2011 with 6.6 liter engines. The vehicle models for which H&S manufactured, offered for sale, and sold DPF delete kits, EGR delete kits, and electronic tuning devices, all Defeat Devices, are motor vehicles for which the manufacturer has obtained certificates of conformity from EPA. In doing so, the manufacturers have certified that the vehicle models have demonstrated compliance with applicable emission standards, including certified design configurations using DPF, EGR, and OBD systems.

30. On May 30, 2012, EPA issued a Notice of Violation ("NOV") to H&S for violations of the Defeat Device prohibition of section 203(a)(3)(B) of the CAA.

31. Using EPA's administrative subpoena authority, 42 U.S.C. § 7607(a), EPA deposed the two co-principals of H&S, Bentley Hugie and Casey Shirts, on March 9 and 10, 2015. Deposition testimony of both Messrs. Hugie and Shirts indicates that they knew or should have known that their Defeat Devices were sold and installed to bypass, defeat or render inoperative emissions control systems on motor vehicle engines.

32. H&S is no longer selling, offering for sale or transferring Defeat Devices, primarily due to the involuntary termination of a hardware and software contractual agreement with Bully Dog Technologies, LLC in January of 2015.

33. Between January 2010 and June 2013, H&S manufactured and sold at least 86,293 performance tuners, 9,695 exhaust replacement pipes and 18,448 exhaust gas recirculation delete kits. The products were sold either online or through the H&S dealer network.

34. EPA estimates that the emission impacts of the performance tuners is 71,669 short tons of NO_x, 380 short tons of PM, and 4,231 short tons of non-methane hydrocarbons.

35. EPA conducted an in-depth review of H&S financial records and concluded that the H&S Defeat Device business is defunct.

36. H&S is not operating a Defeat Device business outside of the United States.

Alleged Violations of Law

37. EPA alleges that Respondent manufactured, sold, offered to sell, or installed Defeat Devices, including Electronic Tuning Devices, which were intended to bypass, defeat, or render inoperative emission related devices or elements of design that are installed on a motor vehicle to meet the CAA's emission standards.

38. H&S has committed approximately 114,436 violations of section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B), by selling or offering for sale Defeat Devices, including Electronic Tuning Devices.

Terms of Agreement

39. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent: admits that the EPA has jurisdiction over this matter as stated above; admits to the stipulated facts stated above; neither admits nor denies the alleged violations of law stated above; consents to the assessment of a civil penalty as stated below; consents to the issuance of any specified compliance or corrective action order; consents to any conditions specified in this Consent Agreement, and to any stated Permit Action; waives any right to contest the alleged violations of law; and waives its rights to appeal the Final Order accompanying this Consent Agreement.

40. For the purpose of this proceeding, Respondent:

    (a) agrees that this Agreement states a claim upon which relief may be granted against Respondent;

    (b) 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);

(c) waives any rights it may possess at law or in equity to challenge the authority of the EPA to bring a civil action in a United States District Court to enforce this Agreement or Order, or both, and to seek an additional penalty for such noncompliance, and agrees that federal law shall govern in any such civil action;

(d) consents to personal jurisdiction in any action to enforce this Agreement or Order, or both, in the United States District Court for the District of Columbia;

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

(f) acknowledges that this Agreement constitutes an enforcement action for purposes of considering Respondent's compliance history in any subsequent enforcement actions;

(g) acknowledges that this Consent Agreement and attached Final Order will be available to the public and agrees that it does not contain any confidential business information or personally identifiable information;

(h) acknowledges that its tax identification number may be used for collecting or reporting any delinquent monetary obligation arising from this Agreement (*see* 31 U.S.C. § 7701);

(i) certifies that the information it has supplied concerning this matter was at the time of submission true, accurate, and complete; and

(j) acknowledges that there are significant penalties for knowingly submitting false or misleading information, including the possibility of fines and imprisonment. *See* 18 U.S.C. § 1001.

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

(a) this Consent Agreement 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 Consent Agreement and attached Final Order constitute sufficient consideration for the other party's obligations under this Consent Agreement and attached Final Order. Additionally, both parties agree that Complainant's covenant not to sue Respondent (stated in Paragraph 48) during the time period between the issuance of the attached Final Order and the

deadline (stated in Paragraph 45) for Respondent to complete the non-penalty conditions of this Consent Agreement constitutes sufficient consideration for Respondent's obligation to completely perform the non-penalty conditions of this Consent Agreement as stated in Paragraph 45, regardless of whether the covenant not to sue subsequently terminates; and

(e) each party will bear their own costs and attorney fees in the action resolved by this Consent Agreement and attached Final Order.

42. Respondent agrees to pay to the United States a civil penalty of $1,000,000.00 ("the Civil Penalty"). EPA reduced the civil penalty sought due to information produced by Respondent demonstrating its inability to pay a higher penalty.

43. Respondent agrees to pay $400,000 of the Civil Penalty to the United States within 30 calendar days following the issuance of the attached Final Order (i.e., the effective date of this Consent Agreement and attached Final Order), and the remaining $600,000 of the Civil Penalty within 365 calendar days following the issuance of the attached Final Order. Any civil penalty not paid within 30 calendar days following the issuance of the attached Final Order shall include interest at rates established pursuant to 26 U.S.C. § 6621(a)(2).

44. Respondent agrees to pay the Civil Penalty and any interest in the manner specified below:

(a) Pay the Civil Penalty and any interest using any method provided on the following website: http://www2.epa.gov/financial/additional-instructions-making-payments-epa;

(b) identify each and every payment with "Docket No. CAA-HQ-2015-8248"; and

(c) within 24 hours of payment, email proof of payment to Kathryn P. Caballero at caballero.kathryn@epa.gov ("proof of payment" means, as applicable, a copy of the check, confirmation of credit card or debit card payment, confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to EPA requirements, in the amount due, and identified with "Docket No. CAA-HQ-2015-8248").

45. As a condition of settlement, Respondent 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 Electronic Tuning Devices.

(b) Respondent shall permanently destroy any Defeat Device remaining in H&S inventory and/or possession, including but not limited to Electronic Tuning Devices, by compacting or crushing the Defeat Devices and all of the associated parts and components to render them useless. Respondent shall provide photographic evidence of such destruction to Kathryn P. Caballero at caballero.kathryn@epa.gov within thirty calendar days following the issuance of the attached Final Order (i.e. the effective date of this Consent Agreement and attached Final Order).

(c) Respondent shall not provide technical support or information pertaining to the use, manufacture or sale of Defeat Devices to any person, whether such Defeat Devices were previously manufactured or sold by H&S, or sold by any other individual or entity, including but not limited to business entities.

Respondent may provide information pertaining to the removal and destruction of a Defeat Device to any person.

(d) Respondent shall not offer for sale, sell, convey, or otherwise transfer in any way the design, technology, manufacturing processes or techniques, or intellectual property used to manufacture any Defeat Device, including Electronic Tuning Devices, to any other individual or entity, including but not limited to business entities.

(e) Within sixty (60) calendar days following the issuance of the Attached Final Order, Respondent shall enter into an agreement with a state, local, or tribal agency or non-profit organization ("recipient") experienced in implementing wood-burning appliance replacement, retrofit or upgrade projects in the United States, and that, at the time the agreement is executed, has the staff expertise and organizational capacity to implement a replacement, retrofit or upgrade project. The purpose of the project is to mitigate a portion of the environmental harm resulting from the alleged violations of law. The agreement required by this Paragraph shall provide for Respondent to fund the replacement, retrofit or upgrade of at least 400 inefficient wood-burning appliances, and to spend at least $400,000 on this wood-burning appliance replacement, retrofit or upgrade project, of which a minimum of $100,000 shall be specifically allocated for income-qualified individuals. The project shall be consistent with the materials available on EPA's Burn Wise website at http://www.epa.gov/burnwise, and no more than 10% of the $400,000 shall be allocated for project administration and outreach. The recipient shall

implement the project in a geographical area of the United States that is, as of the date of issuance of the attached Final Order, designated by EPA as Nonattainment for PM_{10} and/or $PM_{2.5}$. The agreement with the recipient shall state that all replacement, retrofits and upgrades be completed within twenty-four (24) months of EPA's approval of the draft agreement; that all of the inefficient wood-burning appliances shall be disposed properly or recycled such that the appliances cannot be resold or reused; and that EPA's Burn Wise information regarding the benefits of cleaner burning appliances, use of dry, seasoned wood, and proper appliance operation be provided to the individual receiving the replacement, retrofit or upgrade. Prior to entering into the agreement, Respondent must provide EPA, to Kathryn P. Caballero at caballero.kathryn@epa.gov, a description of the recipient's experience, staff expertise and organizational capacity, as well as a draft agreement for the Agency's review and approval. Respondent shall provide the $400,000 for the wood-burning appliance replacement, retrofit or upgrade to the recipient within sixty (60) days of EPA's approval of the draft agreement, and shall provide proof of payment to EPA of the $400,000 in accordance with Paragraph 44(c).

(f) If Respondent violates any of the non-penalty conditions in this Paragraph, Respondent shall pay $5,000,000.00 for each violation within 30 calendar days of the violation. Respondent agrees to pay these stipulated penalties to the EPA in the manner specified by Paragraph 44, not more than 30 days after receipt of written demand by the EPA for such penalties.

46. Respondent agrees that the time period from the effective date of this Agreement until its completion of the non-penalty conditions stated in the previous paragraph (the "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 (the "Tolled Claims") set forth in Alleged Violations of Law section of this Consent Agreement. 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.

Effect of Consent Agreement and Attached Final Order

47. In accordance with 40 C.F.R. § 22.18(c), completion of the terms of this Consent Agreement and attached Final Order resolves only Respondent's liability for federal civil penalties for the violations and facts specifically alleged above.

48. Complainant covenants not to sue Respondent for injunctive or other equitable relief for the violations and facts alleged in this matter, but such covenant automatically terminates if and when Respondent fails to timely and satisfactorily complete every condition stated in Paragraph 45 (including payment of any stipulated penalties owed). If and when such covenant terminates, the United States at its election may seek to compel performance of the conditions stated in Paragraph 45 in a civil judicial action under the CAA or as a matter of contract. The covenant not to sue becomes permanent upon satisfactory performance of the conditions stated in Paragraph 45.

49. Failure to pay the full amount of the penalty assessed under this Consent Agreement may subject Respondent to a civil action to collect any unpaid portion of the proposed civil penalty and interest. In order to avoid the assessment of interest, administrative costs, and late payment penalty in connection with such civil penalty, as described in the following Paragraph of this Consent Agreement, Respondent must timely pay the penalty.

50. If Respondent fails to timely pay any portion of the penalty assessed by the attached Final Order, the EPA may:

(a) request the Attorney General to bring a civil action in an appropriate district court to recover: the amount assessed; interest at rates established pursuant to 26 U.S.C. § 6621(a)(2); the United States' enforcement expenses; and a 10 percent quarterly nonpayment penalty, 42 U.S.C. § 7413(d)(5);

(b) refer the debt to a credit reporting agency or a collection agency, 42 U.S.C. § 7413(d)(5), 40 C.F.R. §§ 13.13, 13.14, and 13.33;

(c) collect the debt by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds (*see* 40 C.F.R. Part 13, Subparts C and H); and

(d) suspend or revoke Respondent's licenses or other privileges, or (ii) suspend or disqualify Respondent from doing business with the EPA or engaging in programs the EPA sponsors or funds. 40 C.F.R. § 13.17.

51. Penalties paid pursuant to this Consent Agreement are not deductible for federal tax purposes. 28 U.S.C. § 162(f).

52. This Consent Agreement and attached Final Order apply to and are binding upon the Complainant and the Respondent. Successors and assigns of Respondent are also bound if they are owned, in whole or in part, directly or indirectly, or otherwise controlled by Respondent. Nothing in the previous sentence adversely affects any right of the EPA under applicable law to assert successor or assignee liability against Respondent's successor or assignee.

53. Nothing in this Consent Agreement 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 restrict the EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.

54. The EPA reserves the right to revoke this Consent Agreement and accompanying settlement penalty if and to the extent the EPA finds, after signing this Consent Agreement, that any information provided by Respondent was or is materially false or inaccurate, and the EPA reserves the right to pursue, assess, and enforce legal and equitable remedies for the Alleged Violations of Law. The EPA shall give Respondent written notice of such termination, which will be effective upon mailing.

55. The Parties agree to submit this Consent Agreement to the Environmental Appeals Board with a request that it be incorporated into a Final Order.

56. Respondent and Complainant agree to issuance of the attached Final Order. Upon filing, the EPA will transmit a copy of the filed Consent Agreement to the Respondent. This Consent Agreement and attached Final Order shall become effective after execution of the Final Order by the Environmental Appeals Board and filing with the Hearing Clerk.

The foregoing Consent Agreement In the Matter of H&S Performance, LLC, Docket No. CAA-HQ-2015-8248, is Hereby Stipulated, Agreed, and Approved for Entry.

For H&S Performance, LLC

Signature

9-21-2015
Date

Printed Name: BENTLEY HUGIE

Title: MANAGER, H&S PERFORMANCE, LLC

Address: 4160 S. RIVER ROAD ST. GEORGE, UT

Respondent's Federal Tax Identification Number: 26-3320016

The foregoing Consent Agreement In the Matter of H&S Performance, LLC, Docket No. CAA-HQ-2015-8248, is Hereby Stipulated, Agreed, and Approved for Entry.

For Complainant:

10/28/2015

Phillip A. Brooks, Director
Air Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., N.W.
Washington, DC 20460-0001

Date

10/28/15

Kathryn Pirrotta Caballero, Attorney Adviser
Air Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., N.W.
Washington, DC 20460-0001

Date

ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.

FILED
DEC 17 2015
CLERK, ENVIRONMENTAL APPEALS BOARD
INITIALS

In re: H&S Performance, LLC Respondent.	)))))))	Docket No. CAA-HQ-2015-8248

FINAL ORDER

Pursuant to 40 C.F.R. § 22.18(b)-(c) of the U.S. Environmental Protection Agency's Consolidated Rules of Practice, the attached Consent Agreement resolving this matter is incorporated by reference into this Final Order and is hereby ratified.

The Respondent is ORDERED to comply with all the terms of the Consent Agreement, effective immediately.

So ordered.[1]

ENVIRONMENTAL APPEALS BOARD

Dated: 12/17/15

By: Mary Beth Ward
Mary Beth Ward
Environmental Appeals Judge

[1] The three-member panel ratifying this matter is composed of Environmental Appeals Judges Mary Kay Lynch, Kathie A. Stein, and Mary Beth Ward.

CERTIFICATE OF SERVICE

I certify that copies of the forgoing *Final Order* in the matter of H&S Performance, LLC, Docket No. CAA-HQ-2015-8248, were sent to the following persons in the manner indicated:

By First Class Certified Mail/
Return Receipt Requested:

Bentley Hugie and Casey Shirts, Co-Principals
H&S Performance, LLC
c/o Barry Clarkson
Clarkson, Draper & Beckstrom
162 North 400 East, Suite A-204
P.O. Box 1630
St. George, UT 84771

By Interoffice Mail:

Kathryn P. Caballero
Air Enforcement Division
Office of Enforcement and Compliance Assurance
U.S Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Mail Code 2242A
Washington, DC 20460

Dated: DEC 17 2015

Annette Duncan
Secretary