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UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 HAWTHORNE STREET
SAN FRANCISCO, CALIFORNIA 94105

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| In the Matter of: | ) | Docket No. CAA-09-2019-00 75 |
| | ) | |
| | ) | |
| Flat Creek Transportation, LLC | ) | CONSENT AGREEMENT AND |
| | ) | FINAL ORDER PURSUANT TO |
| Respondent | ) | 40 C.F.R. §§ 22.13 and 22.18 |
| | ) | |

## I. CONSENT AGREEMENT

### A. PRELIMINARY STATEMENT

1. This is a civil administrative penalty assessment proceeding brought under section 113(d) of the Clean Air Act (the "Act"), 42 U.S.C. § 7413(d), and sections 22.13 and 22.18 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. In accordance with 40 C.F.R. §§ 22.13 and 22.18, entry of this Consent Agreement and Final Order ("CAFO") simultaneously initiates and concludes this matter.

2. Complainant is the Director of the Enforcement Division, United States Environmental Protection Agency, Region IX (the "EPA"), who has been duly delegated the authority to initiate and settle civil administrative penalty proceedings under section 113(d) of the Act.

3. Respondent is Flat Creek Transportation, LLC ("Flat Creek"). Respondent is a motor carrier based in Kinston, Alabama that owns and operates diesel-fueled vehicles operated throughout the United States, including in California.

4. Complainant and Respondent, having agreed that settlement of this action is in the public interest, consent to the entry of this CAFO without adjudication of any issues of law or fact herein and agree to comply with the terms of this CAFO.

## B. JURISDICTION

5. Pursuant to section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), the EPA and the United States Department of Justice jointly determined that this matter, which involves alleged violations that occurred more than one year before the initiation of this proceeding, is appropriate for an administrative penalty assessment.

6. The regulation at issue in this action has been incorporated into the federally-approved and federally-enforceable California State Implementation Plan; therefore, in satisfaction of the notice requirements of section 113(a) of the Act, 42 U.S.C. § 7413(a), on June 15, 2018, the EPA issued to Respondent a notice of violation (NOV) and provided a copy of the NOV to the California Air Resources Board (CARB), providing notice to both Respondent and CARB of the EPA's determination that Respondent committed the alleged violations described in Section I.D. of this CAFO and providing Respondent an opportunity to confer with the EPA. On July 24, 2018, representatives of Respondent and the EPA conferred and discussed the NOV.

## C. GOVERNING LAW

### Clean Air Act

7. Pursuant to section 107(d) of the Act, 42 U.S.C. § 7407(d), the Administrator promulgated lists of attainment status designations for each air quality control region ("AQCR") in every state. These lists identify the attainment status of each AQCR for each of the criteria pollutants. The attainment status designations for California AQCRs are listed at 40 C.F.R. § 81.305.

8. There are multiple AQCRs designated as nonattainment for fine particulate matter ("$PM_{2.5}$") and ozone in California. *See* 40 C.F.R. § 81.305.

9. Section 110(a) of the Act requires that all states adopt SIPs that provide for the implementation, maintenance and enforcement of primary and secondary air quality standards. 42 U.S.C. § 7410(a).

10. A person's failure to comply with any approved regulatory provision of a SIP renders the person in violation of an applicable implementation plan and subject to enforcement under section 113(a)(1) of the Act. 42 U.S.C. § 7413(a)(1).

### Title 13, Section 2025 of California Code of Regulations: On-Road Heavy-Duty Diesel Vehicles

11. In accordance with Resolution 10-44 (December 2010), CARB amended its "Regulation to Reduce Emissions of Diesel Particulate Matter, Oxides of Nitrogen and Other Criteria Pollutants From In-Use Heavy-Duty Diesel-Fueled Vehicles," codified at title 13, section 2025 of the California Code of Regulations (the "Truck and Bus Regulation").

12. The EPA has incorporated the Truck and Bus Regulation, as submitted by CARB on September 21, 2011, into the California SIP, effective May 4, 2012. *See* 77 Fed. Reg. 20308 (April 4, 2012).

13. As stated in section 2025(a) of the Truck and Bus Regulation, the purpose of the regulation is "to reduce emissions of diesel particulate matter (PM), oxides of nitrogen (NOx) and other criteria pollutants from in-use diesel-fueled vehicles."
14. Section 2025(b) of the Truck and Bus Regulation states that the regulation applies to diesel-fueled trucks and buses that are privately or federally owned, and to publicly and privately-owned school buses, that have a manufacturer's gross vehicle weight rating (GVWR) greater than 14,000 pounds.
15. Section 2025(d)(17) of the Truck and Bus Regulation defines "Diesel Particulate Filter" (DPF) as "an emission control technology that reduces diesel particulate matter emissions by directing the exhaust through a filter that physically captures particles but permits gases to flow through...."
16. Section 2025(d)(18) of the Truck and Bus Regulation defines "Diesel Particulate Matter (PM)" as "the particles found in the exhaust of diesel-fueled compression ignition engines...."
17. Section 2025(d)(28) of the Truck and Bus Regulation defines "Fleet" as "one or more vehicles, owned by a person, business, or government agency, traveling in California and subject to this regulation...."
18. Section 2025(d)(29) of the Truck and Bus Regulation defines "Fleet Owner" as either person registered as the owner or lessee of a vehicle by the California Department of Motor Vehicles (DMV), or its equivalent in another state, province, or country, as evidenced on the vehicle registration document carried in the vehicle."

19. Section 2025(d)(42) of the Truck and Bus Regulation defines "Motor Carrier" as "the same as defined in California Veh. Code section 408 for fleets other than those that are comprised entirely of school buses ...."

20. Section 2025(d)(47) of the Truck and Bus Regulation defines "Person" as "an individual, corporation, business trust, estate, trust, partnership, Limited Liability Company, association, joint venture, government, governmental subdivision, agency, or instrumentality, public corporation, or any other legal or commercial entity."

21. Section 2025(d)(60) of the Truck and Bus Regulation defines "Verified Diesel Emission Control Strategy "(VDECS) as "an emission control strategy, designed primarily for the reduction of diesel PM emissions," that has been verified by CARB to achieve a specific level of control.

22. Section 2025(g) of the Truck and Bus Regulation requires Fleet Owners to comply with the following compliance schedule for vehicles above 26,000 pounds GVWR.[1]

    a. Vehicles with an engine model year of 1996 through 1999 must be equipped with the highest level VDECS, i.e., a DPF, by January 1, 2012.

    b. Vehicles with an engine model year of 2000 through 2004 must be equipped with the highest level VDECS, i.e., a DPF, by January 1, 2013.

23. Section 2025(s)(14) of the Truck and Bus Regulation requires Fleet Owners to maintain records documenting VDECS installation, including:

    a. A statement signed by the installer at the time of installation of the VDECS affirming that the installation was performed by an installed authorized by the VDECS manufacturer;

[1] The schedule in section 2025(g) includes additional compliance deadlines through January 1, 2023; only compliance dates within the scope of this NOV are noted herein. The schedule applies to all vehicles that were not reported to ARB under an alternative compliance option and are not otherwise exempt under the Truck and Bus Regulation.

b. The name of the company installing the device;

c. The date the device was installed

d. Description of VDECS installed;

e. VDECS family name;

f. Serial number of the installed VDECS; and

g. Verification level and year of verification of installed VDECS.

24. Section 2025(u) of the Truck and Bus Regulation requires, in pertinent part, Fleet Owners to retain records for each vehicle subject to the recordkeeping requirements of section 2025(s) for three years after the vehicle is retired, and for the overall fleet, for as long as the owner has a fleet or January 1, 2025, whichever is earlier.

25. Section 2025(x)(1) of the Truck and Bus Regulation provides that "[t]he vehicle owner shall comply with all applicable requirements and compliance schedules set forth in this regulation."

## D. VIOLATIONS OF LAW ALLEGED BY EPA

26. Respondent is a "Person" as defined under section 302(e) of the Act, 42 U.S.C. § 7602(e), and section 2025(d)(47) of the Truck and Bus Regulation.

27. Respondent has a "Fleet" of vehicles as that term is defined under section 2025(d)(28) of the Truck and Bus Regulation and is a "Fleet Owner" as that term is defined under section 2025(d)(29) of the Truck and Bus Regulation.

28. The EPA's "Findings of Violation" alleged in Paragraphs 20-22 of the NOV issued on June 15, 2018 are incorporated by reference herein.

29. During 2014-2018, Respondent operated 24 diesel-fueled vehicles without DPFs in California.

30. Respondent violated section 2025(g) of the Truck and Bus Regulation by failing to timely install DPFs on these 24 diesel-fueled vehicles that it operated in California.

31. During 2014-2018, Respondent failed to maintain records for 63 diesel-fueled vehicles that it operated in California.

32. Respondent violated section 2025(s)(14) of the Truck and Bus Regulation by failing to maintain required records regarding these 63 diesel-fueled vehicles operated in California.

33. Respondent violated section 2025(x)(1) of the Truck and Bus Regulation by failing to comply with all applicable requirements and compliance schedules set forth in the Truck and Bus Regulation.

## E. TERMS OF CONSENT AGREEMENT

34. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent:

    a. admits that the EPA has jurisdiction over the subject matter alleged in this CAFO and over Respondent;

    b. neither admits nor denies the specific factual allegations contained in Section I.D. of this CAFO;

    c. consents to the assessment of a civil penalty under this Section, as stated below;

    d. consents to the conditions specified in this CAFO;

    e. waives any right to contest the allegations set forth in Section I.D of this CAFO; and

    f. waives its rights to appeal the proposed Order contained in this CAFO.

### Civil Penalty

35. Respondent agrees to:

    a. pay the civil penalty of SEVENTY-ONE THOUSAND TWO HUNDRED FIFTY DOLLARS ($71,250) ("EPA Penalty") within 30 calendar days of the Effective Date of this CAFO; and

b. pay the EPA Penalty using any method, or combination of methods, provided on the website http://www2.epa.gov/financial/additional-instructions-making-payments-epa, and identifying each and every payment with "Docket No. CAA-09-2017-00__." Within 24 hours of payment of the EPA Penalty, send proof of payment to Janice Chan at:

Mail Code (ENF-2-1)
Enforcement Division
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105

and at chan.janice @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 the EPA requirements, in the amount due, and identified with "Docket No. CAA-09-2019-00__").

36. If Respondent fails to pay the civil administrative penalty specified in Paragraph 35(a) of this CAFO within 30 days after the effective date of this CAFO, then Respondent shall pay to EPA a stipulated penalty in the amount of ONE THOUSAND DOLLARS ($1,000.00) for each day the default continues, upon written demand by EPA.

If Respondent fails to timely pay any portion of the penalty assessed under this CAFO, 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, 40 C.F.R. Part 13, Subparts C and H; and

d. consistent with 40 C.F.R. § 13.17, (i) suspend or revoke Respondent's licenses or other privileges if the failure to timely pay is "inexcusable, prolonged, or repeated," or (ii) suspend or disqualify Respondent from doing business with the EPA or engaging in programs the EPA sponsors or funds.

37. The provisions of this CAFO shall apply to and be binding upon Respondent and its officers, directors, employees, agents, trustees, servants, authorized representatives, successors, and assignees. Respondent must give written notice and a copy of this CAFO to any successors in interest prior to any transfer of ownership or control of any portion of or interest in Respondent. Simultaneously with such notice, Respondent shall provide written notice of such transfer, assignment, or delegation to the EPA. In the event of any such transfer, assignment, or delegation, Respondent shall not be released from the obligations or liabilities of this CAFO unless the EPA has provided written approval of the release of said obligations or liabilities.

38. By signing this CAFO, Respondent acknowledges that this CAFO will be available to the public and agrees that this CAFO does not contain any confidential business information or personally identifiable information.

39. By signing this CAFO, the undersigned representative of Complainant and the undersigned representative of Respondent each certify that he or she is fully authorized to execute and enter into the terms and conditions of this CAFO and has the legal capacity to bind the party he or she represents to this CAFO.

40. By signing this CAFO, Respondent certifies that the information it has supplied concerning this matter was at the time of submission true, accurate, and complete for each such submission, response, and statement. Respondent acknowledges that there are significant penalties for submitting false or misleading information, including the possibility of fines and imprisonment for knowing submission of such information, under 18 U.S.C. § 1001.

41. Each party shall bear its own attorney's fees, costs, and disbursements incurred in this proceeding.

F. EFFECT OF CONSENT AGREEMENT AND ATTACHED FINAL ORDER

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

43. Penalties paid pursuant to this CAFO shall not be deductible for purposes of federal taxes.

44. 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.

45. Any violation of this Order may result in a civil judicial action for an injunction or civil penalties of up to $99,681 per day per violation, or both, as provided in section 113(b)(2) of the Act, 42 U.S.C. § 7413(b)(2), and 40 C.F.R. § 19.4, as well as criminal sanctions as provided in section 113(c) of the Act, 42 U.S.C. § 7413(c). The EPA may use any information submitted under this Order in an administrative, civil judicial, or criminal action.

46. Nothing in this CAFO shall relieve Respondent of the duty to comply with all applicable provisions of the Act and 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.

47. Nothing herein shall be construed to limit the power of the EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment.

48. The EPA reserves the right to revoke this CAFO and settlement penalty if and to the extent that the EPA finds, after signing this CAFO, that any information provided by Respondent was materially false or inaccurate at the time such information was provided to the EPA, and the EPA reserves the right to assess and collect any and all civil penalties for any violation described herein. The EPA shall give Respondent notice of its intent to revoke, which shall not be effective until received by Respondent in writing.

## G. EFFECTIVE DATE

49. Respondent and Complainant agree to issuance of the attached Final Order. Upon filing, the EPA will transmit a copy of the filed CAFO to the Respondent. This CAFO shall become effective

after execution of the Final Order by the Regional Judicial Officer on the date of filing with the Regional Hearing Clerk.

The foregoing Consent Agreement In the Matter of Flat Creek Transportation, LLC, Docket No. CAA-09-2019-0075 is hereby stipulated, agreed, and approved for entry.

FOR RESPONDENT:

(b) (6) [redacted]

Signature

9/3/19

Date

Printed Name: Charles Patterson

Title: Sole Member

Address: P.O. Box 349 Kinston, AL 36453

Respondent's Federal Tax Identification Number: (b) (6) [redacted]

The foregoing Consent Agreement In the Matter of Flat Creek Transportation, LLC, Docket No. CAA-09-2019-0075, is hereby stipulated, agreed, and approved for entry.

FOR COMPLAINANT:

9/20/19
DATE

Amy C. Miller
Director
Enforcement and Compliance Assurance Division
United States Environmental
Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105

## II. FINAL ORDER

EPA Region IX and Flat Creek Transportation, having entered into the foregoing Consent Agreement,

IT IS HEREBY ORDERED that this CAFO (Docket No. CAA-09-2019-0015) be entered, and Respondent shall pay a civil administrative penalty in the amount of SEVENTY-ONE THOUSAND TWO HUNDRED FIFTY DOLLARS ($71,250) and otherwise comply with the terms set forth in the CAFO.

Sept 26, 2019

DATE

BEATRICE WONG
Regional Judicial Officer
U.S. Environmental Protection Agency, Region IX

## CERTIFICATE OF SERVICE

I certify that the original of the fully executed Consent Agreement and Final Order in the matter of Flat Creek Transportation, LLC (Docket No. **CAA-09-2019-** 0075) was filed with the Regional Hearing Clerk, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, and that a true and correct copy of the same was sent to the following parties:

A copy was mailed via CERTIFIED MAIL to:

Mr. Charles D. Patterson
Flat Creek Transportation, LLC
21477 W. State Highway 52
Kinston, AL 36453-6014

**CERTIFIED MAIL NUMBER:** 7018 0680 0000 3320 3087

An additional copy was hand-delivered to the following U.S. EPA case attorney:

Kara Christenson
Assistant Regional Counsel (ORC-2)
U.S. EPA, Region IX
75 Hawthorne Street
San Francisco, CA 94105

LORAZON TOLENTINO

FOR: Regional Hearing Clerk (Printed)
U.S. EPA, Region IX

Regional Hearing Clerk Signature

6/30/19
Date