



REGION 5

CHICAGO, IL 60604

VIA ELECTRONIC MAIL
DELIVERY RECEIPT REQUESTED

Frank Wells
Operations Contact
Dearwester Grain Services, Inc.
Frankw@dgsinc.net

Re: Finding of Violation
Dearwester Grain Services INC
Golden, Illinois

Dear Frank Wells:

The U.S. Environmental Protection Agency is issuing the enclosed Finding of Violation (FOV) to Dearwester Grain Services, Inc. (Dearwester) for violating Section 203(a)(3)(A) of the Clean Air Act (CAA), 42 United States Code (U.S.C.) § 7522(a)(3)(A). As summarized in the attached FOV, EPA has determined that Dearwester has removed or rendered inoperative emission control devices and/or elements of design on or in motor vehicles or motor vehicle engines that were installed by the original equipment manufacturer to comply with CAA emission standards. Section 113 of the CAA gives us several enforcement options. These options include issuing an administrative compliance order, issuing an administrative penalty order and bringing a judicial civil or criminal action.

We are offering you an opportunity to confer with us about the violations alleged in the FOV. The conference will give you an opportunity to present information on the specific findings of violation, any efforts you have taken to comply and the steps you will take to prevent future violations. In addition, in order to make the conference more productive, we encourage you to submit to us information responsive to the FOV prior to the conference date.

Please plan for your facility's technical and management personnel to attend the conference to discuss compliance measures and commitments. You may have an attorney represent you at this conference. The EPA contact in this matter is Liam Klaiman. You may email him at Klaiman.liam@epa.gov to request a conference. You should make the request within 10 calendar days following receipt of this letter. We should hold any conference within 30 calendar days following receipt of this letter.

Sincerely,
**NATHAN
FRANK**
Nathan Frank
Supervisor,

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NATHAN FRANK
Date: 2024.05.08
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Air Enforcement and Compliance Assurance Section IL/IN

cc: Kent Mohr, Manager
Compliance Section
Bureau of Air
Illinois Environmental Protection Agency
Kent.Mohr@Illinois.gov

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:	)	
	)	
Dearwester Grain Services, Inc.	)	FINDING OF VIOLATION
Golden, Illinois	)	
	)	EPA-5-24-MOB-4
Proceedings Pursuant to	)	
the Clean Air Act,	)	
42 U.S.C. §§ 7401 et seq.	)	

FINDING OF VIOLATION

The U.S. Environmental Protection Agency finds that Dearwester Grain Services, Inc. (Dearwester) is violating Section 112 of the Clean Air Act, 42 U.S.C. § 7412. Specifically, Dearwester is violating Section 203(a)(3)(A) of the United States Clean Air Act (CAA), 42 United States Code (U.S.C.) § 7522(a)(3)(A).

Regulatory Authority

1. Title II of the CAA, 42 U.S.C. §§ 7521–7554, was enacted to reduce air pollution from mobile sources. In enacting the CAA, Congress found, in part, that “the increasing use of motor vehicles . . . has resulted in mounting dangers to the public health and welfare.” Section 101(a)(2) of the CAA, 42 U.S.C. § 7401(a)(2). Congress’s purpose in enacting the CAA included “to protect and enhance the quality of the Nation’s air resources so as to promote the public health and welfare and the productive capacity of its population,” and “to initiate and accelerate a national research and development program to achieve the prevention and control of air pollution.” Section 101(b)(1)–(2) of the CAA, 42 U.S.C. § 7401(b)(1)–(2).
2. EPA promulgated emission standards for particulate matter (PM), nitrogen oxides (NO_x), and other pollutants applicable to motor vehicles and motor vehicle engines, under Section 202 of the CAA, 42 U.S.C. § 7521. *See generally* 40 C.F.R. Part 86.
3. Section 203(a)(1) of the CAA, 42 U.S.C. § 7522(a)(1), prohibits a motor vehicle manufacturer from selling a new motor vehicle in the United States unless the motor vehicle is covered by a Certificate of Conformity (COC). EPA issues COCs 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 and motor vehicle engines conform to applicable EPA requirements governing motor vehicle emissions. The COC will include, among other things, a description of the motor vehicle engines, their emission control systems, all auxiliary emission control devices, and the engine parameters monitored.
4. Motor vehicle and motor vehicle engine manufacturers employ many devices and elements of design to meet emission standards. *Element of design* means “any control system (i.e., computer software, electronic control system, emission control system, computer logic), and/or

control system calibrations, and/or the results of systems interaction, and/or hardware items on a motor vehicle or motor vehicle engine.” See 40 C.F.R. §§ 86.094-2 and 86.1803-01.

5. To meet the emission standards in 40 C.F.R. Part 86, and qualify for a certificate of conformity, diesel-powered motor vehicle and motor vehicle engine manufacturers may utilize control devices or elements of design such as Diesel Oxidation Catalyst (DOC), Diesel Particulate Filter (DPF), Exhaust Gas Recirculation (EGR), and/or Selective Catalytic Reduction (SCR) (which includes the use of diesel exhaust fluid or DEF) systems.

6. Motor vehicle and motor vehicle engine manufacturers may also employ retarded fuel injection timing as a primary element of design to limit emissions of NO_x. See 59 Fed. Reg. 23,264 at 23,418 (May 5, 1994) (“[I]njection timing has a very significant impact on NO_x emission rates, with advanced timing settings being associated with higher NO_x ...”).

7. Modern motor vehicles and engines 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 DOC, DPF, EGR, and SCR systems and the engine fueling strategy.

8. Under Section 202(m) of the CAA, 42 U.S.C. § 7521(m), EPA promulgated regulations for motor vehicles manufactured after 2007 that require 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. See 40 C.F.R. §§ 86.007-17, 86.010-18, and 86.1806-05. These devices or elements of design are referred to as “onboard diagnostic systems” or “OBD” systems.

9. Section 203(a)(3)(A) of the CAA, 42 U.S.C. § 7522(a)(3)(A), prohibits “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 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.” This is also referred to as “tampering.”

10. Section 203(a)(3)(A) of the CAA, 42 U.S.C. § 7522(a)(3)(A), makes it unlawful for “any person to manufacture or sell, or offer to sell, or install, any part or component intended for use with, or as part of, any motor vehicle or motor vehicle engine, where a principal effect of the part or component is to bypass, defeat, or render inoperative any device or element of design installed on or in a motor vehicle or motor vehicle engine in compliance with regulations under this subchapter, and where the person knows or should know that such part or component is being offered for sale or installed for such use or put to such use.”

11. Section 216(2) of the CAA, 42 U.S.C. § 7550(2), defines “motor vehicle” as “any self-propelled vehicle designed for transporting persons or property on a street or highway.” See also 40 C.F.R. § 85.1703 (further defining “motor vehicle”).

Background

12. Dearwester is a company doing business in Illinois with its primary place of business located at 709 Prairie Mills Road, Golden, Illinois 62339.

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

14. On February 13, 2024, EPA issued a Request for Information (Request) to Dearwester pursuant to Section 208 of the CAA, 42 U.S.C. § 7542, requesting documents related to all heavy-duty diesel engine (HDDE) motor vehicles owned, operated, and/or leased by Dearwester and the purchase of, and/or installation of, parts, components, and services which bypass, defeat, or render inoperative any emission control component, element of design, or emissions related part or component for the period from January 1, 2019 to February 13, 2024.

15. On April 11, 2024, EPA received Dearwester's response to EPA's Information Request. The response included invoices, receipts, and other records indicating that between January 1, 2018 and December 1, 2021, Dearwester removed or rendered inoperative, one or more emission control devices or elements of design, including but not limited to, the EGR/CGI, DOC, DPF and/or SCR systems on at least 16 certified vehicle and engines owned and/or operated by Dearwester.

16. The removal or rendering inoperative of emission control devices (i.e., EGR, DOC, DPF, and/or SCR system(s)) without illuminating a malfunction indicator lamp in the vehicle's OBD system, prompting any diagnostic trouble code in the OBD system, or causing any engine derating due to the removal or disabling of an emission control device.

17. The parts and/or components removed or rendered inoperative by Dearwester were intended for "motor vehicles" as defined by Section 216(2) of the CAA, 42 U.S.C. § 7550(2). Specifically, the parts and/or components are designed for use on makes and models of diesel-engine motor vehicles for which their respective manufacturers have obtained COCs establishing compliance with CAA emissions standards. Further, Dearwester knew or should have known that these parts and/or components were being used to bypass, defeat, or render inoperative the emission controls on motor vehicles and/or motor vehicle engines certified under the CAA.

18. The CAA does not exempt "off-road use only" or "competition only" motor vehicles or motor vehicle engines. The definitions for motor vehicle at CAA §216(2); 42 U.S.C. §7550(2) and 40 C.F.R. §85.1703 make no exemption for motor vehicles or motor vehicle engines used for competition.¹ More generally, these definitions are based on vehicle attributes (e.g., ability to travel over 25 miles per hour, lack of features that render street use unsafe) and make no exemption for vehicles based on their use.

Violations

19. EPA finds that Dearwester knowingly removed and/or rendered inoperative the EGR, DOC, DPF, SCR, catalyst, and/or OBD systems and tampered with the emissions-related elements of the ECM installed on or in motor vehicles or motor vehicle engines that were in compliance with Title II of the CAA, in violation of Section 203(a)(3)(A) of the CAA, 42 U.S.C. § 7522(a)(3)(A).

Environmental Impact of Violations

20. These violations have caused or can cause excess emissions of PM and NOx.

Particulate Matter: Particulate matter, especially fine particulates contains microscopic solids or liquid droplets, which can get deep into the lungs and cause serious health problems. Particulate matter exposure contributes to:

- * irritation of the airways, coughing, and difficulty breathing;
- * decreased lung function;
- * aggravated asthma;
- * chronic bronchitis;
- * irregular heartbeat;
- * nonfatal heart attacks; and
- * premature death in people with heart or lung disease.

Nitrogen Oxides: Current scientific evidence links short-term NOx exposures, ranging from 30 minutes to 24 hours, with adverse respiratory effects including airway inflammation in healthy people and increased respiratory symptoms in people with asthma. In addition, studies show a connection between breathing elevated short-term NOx concentrations, and increased hospital admissions for respiratory issues, especially asthma.

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HARRIS

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Michael D. Harris
Division Director
Enforcement and Compliance Assurance Division