

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

No. 1:23-cr-48

Plaintiff,

v.

HON. PAUL L. MALONEY
United States District Judge

SCOTT DEKOCK,

Defendant.

_____ /

AMENDED PLEA AGREEMENT

This constitutes the plea agreement between Scott DeKock and the United States Attorney's Office for the Western District of Michigan. This agreement amends and replaces the previously filed plea agreement for the defendant. The terms of the agreement are as follows:

1. Plea to an Information. The defendant agrees to plead guilty to the Superseding Information. The Superseding Information charges the defendant with aiding and abetting a felony violation of the Clean Air Act in violation of Title 42, United States Code, Section 7413(c)(2)(C), (6). The defendant waives his right to indictment by a grand jury.

2. The Defendant Understands the Crime. In order for the defendant to be guilty of violating Title 42, United States Code, Section 7413(c)(2)(C), at least one of the following sets of elements must be true:

a. Aiding and abetting elements

i. First, a person knowingly falsified, tampered with, and rendered inaccurate, or aided and abetted such falsification, tampering, and

rendering inaccurate, a monitoring device required under Title 42, United States Code, Chapter 85.

- ii. Second, the defendant helped in or encouraged the commission of the crime.
- iii. Third, the defendant intended to help in or encourage the commission of the crime.

b. Responsible corporate officer elements

- i. First, an employee or agent of the defendant's company knowingly falsified, tampered with, and rendered inaccurate, or aided and abetted such falsification, tampering, and rendering inaccurate, a monitoring device required under Title 42, United States Code, Chapter 85.
- ii. Second, the defendant knew of the falsification, tampering, and rendering inaccurate.
- iii. Third, the defendant was a responsible corporate officer, meaning he had authority and capacity to prevent the falsification, tampering, and rendering inaccurate.
- iv. Fourth, the defendant failed to prevent the falsification, tampering, and rendering inaccurate.

The defendant is pleading guilty because the defendant is guilty of the charge described above.

3. The Defendant Understands the Penalties. The statutory maximum sentence that the Court can impose for a violation of Title 42, United States Code, Section 7413(c)(2)(C), (6) is the following:

- a. not more than two years in prison;
- b. not more than one year of supervised release;
- c. a fine of not more than \$250,000, or twice the pecuniary gain from the offense, or twice the pecuniary loss to a person other than the defendant, whichever is greater; and
- d. a \$100 mandatory special assessment.

The defendant agrees to pay the special assessment at or before the time of sentencing unless the defendant affirmatively demonstrates to the Court that he lacks the ability to pay.

4. Supervised Release Defined. Supervised release is a period of time following imprisonment during which the defendant will be subject to various restrictions and requirements. The defendant understands that if he violates one or more of the conditions of any supervised release imposed, he may be returned to prison for all or part of the term of supervised release, which could result in the defendant serving a total term of imprisonment greater than the statutory maximum stated above.

5. Financial Disclosure Statement and Cooperation in Continuing Financial Investigation.

a. The defendant agrees to cooperate fully in the investigation of the amount of any fine that may be imposed; the identification of funds and assets in which he has any legal or equitable interest to be applied toward a fine; and the prompt payment of a fine. The

defendant also agrees that the full fine amount shall be considered due and payable immediately when, and if, imposed. The defendant understands that if the Court imposes a schedule of payments, that schedule is merely the defendant's minimum obligation and neither the only method, nor a limitation on the remedies, available to the United States to enforce the judgment.

b. The defendant's cooperation obligations include: (A) fully and truthfully completing the Department of Justice's Financial Statement of Debtor form, and any addenda to said form deemed necessary by the United States, within ten days of the change of plea hearing and providing it to both the U.S. Attorney's Office and the U.S. Probation Office; (B) providing any documentation within his possession or control reasonably requested by the government regarding his financial condition; and (C) providing a waiver allowing the U.S. Attorney's Office to access his credit report.

c. The defendant agrees that the defendant will not hide, sell, transfer, or devalue assets with the purpose of avoiding payment of any fine or other criminal monetary penalties.

d. The defendant authorizes the U.S. Attorney's Office to inspect and copy all financial documents and information held by the U.S. Probation Office, and to share any information collected pursuant to this agreement with the U.S. Probation Office or the Court.

e. The defendant and the U.S. Attorney's Office agree that information provided by the defendant with respect to a criminal fine will be used to collect assets to satisfy any fine that may be imposed but it will not be used to otherwise enhance the defendant's sentence, in accordance with United States Sentencing Guidelines ("Guidelines") § 1B1.8. However, it is expressly understood that such information may be used by the government at

sentencing to seek enhancement of the defendant's sentence if the government learns of information about the defendant's assets that is contradicted by the information provided by the defendant in accordance with the defendant's obligations under this paragraph.

f. The defendant agrees that failure to comply with any of the provisions in subparagraphs a through e above constitutes a material breach of the Plea Agreement.

6. Factual Basis of Guilt. The defendant and the U.S. Attorney's Office agree and stipulate to the following statement of facts which need not be proven at the time of the plea or sentencing, and which does not include all of the facts underlying the defendant's guilt:

a. During 2017 and 2018, Scott DeKock was an owner of a shipping company. In that capacity, he authorized the company's mechanic, Glenn Hoezee, to violate the Clean Air Act by falsifying, tampering with, rendering inaccurate, deleting, modifying, and removing software and hardware components from the emissions monitoring systems in heavy-duty diesel engines ("HDDEs") and vehicles that were required under the Clean Air Act. Such work was done by or with the approval of Hoezee and/or others, including but not limited to Accurate Truck Service, LLC, Griffin Transportation, Inc., Douglas Larsen, Craig Scholten, Ryan Bos, Robert Swainston, and Randy Clelland.

b. Tampering with or removing the software or hardware of emissions components is sometimes referred to as "deletion," that is, "deleting" the emissions control components and monitoring devices from the vehicle. Reprogramming the on-board diagnostic ("OBD") system and/or engine control module ("ECM") as part of the emissions control deletion can be referred to as "tuning" the vehicle. These modifications may be undertaken for the

purposes of increasing real or perceived performance and fuel efficiency of the vehicles, and of reducing or eliminating the cost and burden associated with maintaining the vehicles.

c. Accurate Truck Service, LLC, headquartered in Grand Rapids, Michigan, is a mechanical shop that provided services, including deletions, for trucks with HDDEs and other vehicles. The company is owned and operated by Craig Scholten, Ryan Bos, and Douglas Larsen. Accurate Truck Service, LLC's service manager is Robert Swainston and its head mechanic during the relevant time period was Randy Clelland, a/k/a "Jeb."

d. DeKock and Hoezee were personally involved in the decision to delete emissions control components from some of the company's vehicles that carried HDDEs.

e. From at least June 2017 to at least November 2018, Scott DeKock and Glenn Hoezee deleted, or aided and abetted the deletion of, at least 4 vehicles owned, leased, or operated by the company DeKock then owned. Accurate Truck Service, LLC, and Diesel Freak LLC performed the deletion of these vehicles at the direction of DeKock and Hoezee. The deletions included a 2014 Kenworth, 2013 15-liter Cummins ISX engine, VIN 1XKAD49X2EJ388516. DeKock intentionally helped delete this vehicle by enabling his employee Hoezee, who reported to him, to delete the vehicle, knowing that he and his company would continue to use and profit from the vehicle in its deleted state.

f. DeKock was a responsible corporate officer for the company he then owned. As noted, he knew about the deletion of emissions control components from the company's vehicles, including the vehicle with VIN ending in 8516. As the owner and responsible corporate officer, DeKock had authority and capacity to prevent the deletions, that is,

if he had directed Hoezee and others not to delete the vehicles, they would not have been deleted. DeKock failed to act to prevent the deletions.

7. The United States Attorney's Office's Agrees.

a. Dismissal of Other Count/Charge. The U.S. Attorney's Office agrees to move to dismiss the underlying Information against the defendant at the time of sentencing. The defendant agrees, however, that in determining the sentence the Court may consider the dismissed count(s) in determining the applicable Guidelines range, where the sentence should fall within the applicable Guidelines range, and the propriety of any departure from the calculated Guidelines range. By this agreement, the defendant does not concede that an increased sentence or an upward departure is, in fact, warranted.

b. Acceptance of Responsibility. The U.S. Attorney's Office agrees not to oppose the defendant's request for a two-level reduction of his offense level for acceptance of responsibility under Section 3E1.1(a) of the Guidelines. However, the U.S. Attorney's Office reserves the right to object to the defendant's request if it subsequently learns of conduct by the defendant that is inconsistent with the criteria set forth in the Commentary to Section 3E1.1. Should the Court grant a two-level reduction as provided herein, the U.S. Attorney's Office will move the Court to grant an additional one-level reduction if the adjusted offense level is 16 or greater pursuant to Section 3E1.1(b).

c. Non-Prosecution Agreement. The U.S. Attorney's Office for the Western District of Michigan agrees not to bring additional criminal charges against the defendant in the Western District of Michigan arising out of the defendant's violations of the Clean Air Act between 2012 and 2022, provided that the conduct is disclosed to the government by the

defendant or his attorney prior to the date of this agreement. This promise of non-prosecution shall not include crimes of violence, if any, or criminal tax violations (including conspiracy to commit such violations chargeable under 18 U.S.C. § 371).

8. The Sentencing Guidelines. The defendant understands that, although the Guidelines are not mandatory, the Court must consult the Guidelines and take them into account when sentencing the defendant. The defendant understands that the Court, with the aid of the presentence report, will determine the facts and calculations relevant to sentencing. The defendant understands that the defendant and the defendant's attorney will have the opportunity to review the presentence report and to make objections, suggestions, and recommendations concerning the calculation of the Guidelines range and the sentence to be imposed. The defendant further understands that the Court shall make the final determination of the Guidelines range that applies in this case, and may impose a sentence within, above, or below the Guidelines range, subject to the statutory maximum penalties described elsewhere in this agreement. The defendant further understands that disagreement with the Guidelines range or sentence shall not constitute a basis for withdrawal of the plea.

9. There is No Agreement About the Final Sentencing Guidelines Range. The defendant and the U.S. Attorney's Office have no agreement as to the applicable Guidelines factors or the appropriate Guidelines range. Both parties reserve the right to seek any sentence within the statutory maximum, and to argue for any criminal history category and score, offense level, specific offense characteristics, adjustments, and departures.

10. Waiver of Constitutional Rights. By pleading guilty, the defendant gives up the right to persist in a plea of not guilty and the right to a speedy and public trial by jury or by

the Court. As a result of the defendant's guilty plea, there will be no trial. At any trial, whether by jury or by the Court, the defendant would have had the following rights:

- a. The right to the assistance of counsel, including, if the defendant could not afford an attorney, the right to have the Court appoint an attorney to represent the defendant.
- b. The right to be presumed innocent and to have the burden of proof placed on the government to prove the defendant guilty beyond a reasonable doubt.
- c. The right to confront and cross-examine witnesses against the defendant.
- d. The right, if the defendant wished, to testify on the defendant's own behalf and present evidence in opposition to the charges, including the right to call witnesses and to subpoena those witnesses to testify.
- e. The right not to be compelled to testify, and, if the defendant chose not to testify or present evidence, to have that choice not be used against the defendant.
- f. By pleading guilty, the defendant also gives up any and all rights to pursue in this Court or on appeal any affirmative defenses, Fourth Amendment, or Fifth Amendment claims, and other pretrial motions that have been filed or could be filed, including the assertion of the statute of limitations.

11. Waiver of Other Rights.

a. FOIA Requests. The defendant hereby waives all rights, whether asserted directly or by a representative, to request or receive from any department or agency of the United States any records pertaining to the investigation or prosecution of this case, including without limitation any records that may be sought under the Freedom of Information Act, 5 U.S.C. § 552, or the Privacy Act of 1974, 5 U.S.C. § 552a.

b. Hyde Waiver. The defendant acknowledges, by his voluntary admission of guilt, that the position of the U.S. Attorney's Office in this case is not vexatious, frivolous, or in bad faith, and the defendant hereby disclaims and waives any right to make any claim for attorneys' fees.

12. The Court is Not a Party to this Agreement. The defendant understands that the Court is not a party to this agreement and is under no obligation to accept any recommendation by the U.S. Attorney's Office or the parties regarding the sentence to be imposed. The defendant further understands that, even if the Court ignores such a recommendation or imposes any sentence up to the maximum established by statute, the defendant cannot, for that reason, withdraw his guilty plea, and he will remain bound to fulfill all his obligations under this agreement. The defendant understands that no one—not the prosecutor, the defendant's attorney, or the Court—can make a binding prediction or promise regarding the sentence the defendant will receive, except that it will be within the statutory maximum.

13. This Agreement is Limited to the Parties. This agreement is limited to the U.S. Attorney's Office for the Western District of Michigan, and cannot bind any other federal, state, or local prosecuting, administrative, or regulatory authority. This agreement applies only to crimes committed by the defendant. This agreement does not apply to or preclude any past, present, or future forfeiture or civil actions.


14. Consequences of Breach. If the defendant breaches any provision of this agreement, whether before or after sentencing, the United States shall have the right to terminate this agreement, or deny any or all benefits to which the defendant would otherwise be entitled

under the terms of this agreement. In the event that the United States elects to terminate this agreement, the agreement shall be considered null and void, and the parties shall return to the same position they were in prior to the execution of this agreement, as though no agreement ever existed. In such an event, the defendant shall remain liable for prosecution on all original charges, and the United States shall be free to bring such additional charges as the law and facts warrant. The defendant further agrees to waive and forever give up his right to raise any claim that such a prosecution is time-barred if the prosecution is brought within one (1) year of the breach that gives rise to the termination of this agreement.

15. This is the Complete Agreement. This agreement has been entered into by both sides freely, knowingly, and voluntarily, and it incorporates the complete understanding between the parties. No other promises have been made, nor may any additional agreements,

understandings, or conditions be entered into unless in a writing signed by all parties or on the record in open court.


MARK A. TOTTEN
United States Attorney


JUSTIN M. PRESENT
Assistant United States Attorney

6/6/23
Date

I have read this agreement and carefully discussed every part of it with my attorney. I understand the terms of this agreement, and I voluntarily agree to those terms. My attorney has advised me of my rights, of possible defenses, of the sentencing provisions, and of the consequences of entering into this agreement. No promises or inducements have been made to me other than those contained in this agreement. No one has threatened or forced me in any way to enter into this agreement. Finally, I am satisfied with the representation of my attorney in this matter.

6/6/2023
Date


SCOTT DEKOCK
Defendant

I am Scott DeKock's attorney. I have carefully discussed every part of this agreement with my client. Further, I have fully advised my client of his rights, of possible defenses, of the sentencing provisions, and of the consequences of entering into this agreement. To my knowledge, my client's decision to enter into this agreement is an informed and voluntary one.

June 9, 2023
Date


CHARLES E. CHAMBERLAIN
Attorney for Defendant