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

In the Matter of:
Maryland Performance Diesel, LLC
Respondent.

Docket No.
CAA-HQ-2018-8353

BUSINESS CONFIDENTIALITY ASSERTED

Consent Agreement and Final Order ("CAFO") Paragraph 32 and Appendix A contain material claimed to be confidential business information ("CBI") pursuant to 40 C.F.R. § 2.203(b). The material claimed as CBI are brand names other than "Maryland Performance Diesel" and "MPD" identified in Paragraph 32, and the Respondent's defeat device product part names and part descriptions identified in Appendix A. The material claimed as CBI has been deleted from the publicly-available copy of the CAFO. A complete copy of the CAFO containing the material claimed as CBI has been filed with the Hearing Clerk. If you have any questions, please contact Mark Palermo at (202) 564-8894, or at palermo.mark@epa.gov.

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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).

3. Respondent in this matter is Maryland Performance Diesel, LLC ("MPD"). Respondent is a limited liability company organized under the laws of the State of Maryland with an office at 1908 Benhill Avenue, Baltimore, Maryland 21226. MPD is a diesel truck service and performance upgrade sales and installation facility. MPD sold performance tuners and tunes ("Performance Tuning Products") and exhaust emission control device replacement pipes ("Replacement Pipes"), and manufactured and sold exhaust gas recirculation ("EGR") delete kits

(collectively "Defeat Devices") that have the effect of altering the engine's fueling strategy or mechanically bypassing vehicle emission 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 $362,141. CAA §§ 205(c)(1), 42 U.S.C. §§ 7524(c)(1), 7545(d)(1); 40 C.F.R. § 19.4.

7. 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.

8. 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

9. 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 light heavy-duty diesel ("LHDD") 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). What follows is a summary of the law that governs these allegations.

10. Definitions, as the terms are used in this Consent Agreement:

(a) "Defeat Device" means a motor vehicle part or component, including Performance Tuning Products, Replacement Pipes, and EGR delete kits, 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) "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." 40 C.F.R. § 86.094-2. For example, manufacturers employ retarded fuel injection timing as a primary emission control device for NOx. Manufacturers also employ certain hardware devices as emission control systems to manage and treat exhaust to reduce levels of regulated pollutants from being created or emitted into the ambient air. Such devices include EGR, diesel particulate filters ("DPFs"), diesel oxidation catalysts ("DOC"), and selective catalytic reduction ("SCR").

(c) "Electronic control module" or "ECM" means a device that receives inputs from various sensors and outputs signals to control engine, vehicle, or equipment functions. The ECM uses software programming including calculations and tables of information to provide the appropriate outputs. ECMs continuously monitor engine and other operating parameters and control the emission control elements of design such as the fueling strategy and emission control device operation.

(d) "Performance Tuning Products" means aftermarket ECM programmers (including hardware commonly referred to as "tuners" and software commonly referred to as "tunes") that have the effect of altering vehicle emissions control systems or elements of design, or facilitating the bypass or deletion of vehicle emissions control devices.

(e) "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."

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

11. 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.

12. EPA issues certificates of conformity to vehicle manufacturers (also known as "original equipment manufacturers" or "OEMs") 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.

13. 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 LHDD trucks. *See generally* 40 C.F.R. Part 86.

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

15. A DPF system is designed to limit harmful emissions of PM and other pollutants. LHDD 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.

16. An EGR system reduces emissions of NO_x generated from fuel combustion. LHDD manufacturers generally design and build motor vehicles and motor vehicle engines using EGR systems in order to meet current NO_x standards. 40 C.F.R. §§ 86.004-11, 86.007-11.

17. A DOC system consists of a flow-through structure coated with an active metal catalyst and surrounded by a stainless steel housing, and are used to promote reactions that change exhaust pollutants. LHDD truck manufacturers generally employ DOC systems to meet current emission standards for PM, hydrocarbons, and carbon monoxide.

18. A SCR system injects a reductant, such as diesel exhaust fluid, into the exhaust stream where it reacts with a catalyst to convert NO_x emissions to nitrogen gas and water. LHDD manufacturers generally design and build trucks using SCR systems in order to meet current NO_x standards. 40 C.F.R. § 86.007-11.

19. A vehicle's emission control devices such as the DPF, EGR, DOC, and SCR 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.

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

21. 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 CAA, 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.

22. 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 for each violation that occurred prior to November 2, 2015, and up to $4,619 for each violation that occurred on or after November 2, 2015. CAA § 205(a), 42 U.S.C. § 7524(a); 40 C.F.R. § 19.4.

23. 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 $369,532 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

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

25. MPD is a seller of aftermarket Defeat Devices and has sold three main categories of products at issue here: (1) Performance Tuning Products, (2) Replacement Pipes, and (3) EGR removal kits. MPD also is a manufacturer of EGR removal kits.

26. Performance Tuning Products are marketed to increase the performance of vehicles (e.g., power output, torque, responsiveness of the engine, fuel efficiency), but simultaneously increase vehicle emissions of regulated pollutants.

27. The Performance Tuning Product Defeat Devices are essentially computers or software 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. The Performance Tuning Products render inoperative the OEM-certified ECM programming and replace it with programming that alters fuel injection and other elements of design that can lead to significant emission increases compared to the OEM certified programming. In addition, the Performance Tuning Product Defeat Devices defeat the OEM-certified ECM programming by overriding the OBD notifications required by regulation under the CAA and allow for the removal of emission control systems or elements of design illuminating a malfunction indicator lamp, prompting a diagnostic trouble code or causing an engine power reduction due to a missing or malfunctioning element of design

28. In addition, the Replacement Pipes and the EGR removal kits manufactured and/or sold by MPD were designed to mechanically bypass certain vehicle emissions control systems. Replacement Pipes are used to facilitate removal of DPF, DOC, or SCR system components and EGR removal kits facilitate removal of EGR components, allowing for operation of motor vehicles without these emission control devices.

29. On July 18, 2016, EPA inspectors conducted an unannounced inspection of the MPD. EPA inspectors were unable to complete a records review during their inspection as MPD was unable to provide records upon request.

30. On July 28, 2016, EPA issued MPD a Request for Information pursuant to section 208 of the CAA, 42 U.S.C. § 7542. MPD responded to the Request for Information on September 16, 2016, September 23, 2016, and October 3, 2016.

31. Between January 1, 2014, and September 12, 2016, MPD sold at least 3,276 EGR removal kits, and at least 329 Performance Tuning Products and between May 18, 2015 and September 12, 2016, MPD sold at least 92 Replacement Pipes to individuals or dealers. These Defeat Devices are listed in Appendix A.

32. Between January 1, 2014, and September 12, 2016, MPD manufactured at least 3,248 EGR removal kits identified in Paragraph 31, which were sold under the brand name "Maryland Performance Diesel," "MPD," [redacted] or [redacted]."

33. Between May 18, 2015, and September 12, 2016, MPD sold at least 14 of the Replacement Pipes identified in Paragraph 31 as part of performance packages including combinations of Performance Tuning Products and/or EGR removal kits.

34. The Defeat Devices identified in Paragraphs 31 through 33 were designed and marketed for use on makes and models of diesel trucks manufactured by FCA US LLC and its corporate predecessors ("FCA"); General Motors Co. ("GM"); and Ford Motor Co. ("Ford"). FCA, GM, and Ford sought and obtained certificates of conformity from the EPA. In doing so, the manufacturers have certified that the motor vehicles have demonstrated compliance with applicable federal emission standards, including certified design configurations using elements of design such as fuel timing, DPF, EGR, DOC, SCR, and OBD systems.

35. MPD has represented to EPA that it is no longer manufacturing, selling, offering for sale or installing Defeat Devices.

36. On November 16, 2016, MPD provided EPA financial information to support its claim that it could not pay a full penalty for the alleged violations and continue in business.

Alleged Violations of Law

37. EPA alleges that, between January 1, 2014, and September 12, 2016, Respondent manufactured, sold, offered to sell, or installed at least 3,697 Defeat Devices, including EGR removal kits, Performance Tuning Products, and Replacement Pipes, which are parts and components intended for use with, or as part of, motor vehicles or motor vehicle engines, where a principal effect of the parts or components is 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, and Respondent knew or should have known such parts and components were being offered for sale or installed for such use or put to such use.

38. Between January 1, 2014 and September 12, 2016, MPD has committed approximately 3,697 violations of section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B), by manufacturing, selling, or offering for sale Defeat Devices, including EGR removal kits, Performance Tuning Products, and Replacement Pipes.

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 Consent Agreement, 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, except the information claimed by Respondent to be confidential business information ("CBI") in Appendix A and requested by Respondent to not be disclosed in accordance with 40 C.F.R. Part 2, and agrees that it does not contain any confidential business information or personally identifiable information, except for the information claimed to be CBI by Respondent;

(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, fictitious, or fraudulent 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; 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 $45,000 (the Civil Penalty). The EPA has reduced the civil penalty on the basis of information produced by Respondent demonstrating its inability to pay a higher civil penalty.

43. Respondent agrees to pay the Civil Penalty to the United States following the issuance of the attached Final Order (i.e., the effective date of this Consent Agreement and attached Final Order) in six installments with interest as follows:

Installment	Due By	Payment	Principal	Interest (1%)
Payment #1	Within 30 days of effective date of CAFO	$11,250.00	$11,250.00	$0
Payment #2	Within 60 days of effective date of CAFO	$6,778.13	$6,750.00	$28.13
Payment #3	Within 90 days of effective date of CAFO	$6,772.50	$6,750.00	$22.50
Payment #4	Within 120 days of effective date of CAFO	$6,766.88	$6,750.00	$16.68
Payment #5	Within 150 days of effective date of CAFO	$6,761.25	$6,750.00	$11.25
Payment #6	Within 180 days of effective date of CAFO	$6,755.63	$6,750.00	$5.63

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

(a) Pay the Civil Penalty 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-2018-8353"; and

(c) Within 24 hours of payment, email proof of payment to Mark J. Palermo, Attorney-Advisor, at palermo.mark@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-2018-8353").

45. As a condition of settlement, Respondent agrees to the following: By signature to this Consent Agreement, Respondent certifies that from the date of their signature, it will not manufacture, sell, offer for sale or install aftermarket Defeat Devices, including Performance Tuning Products, Replacement Pipes, and EGR removal kits. Toward this end, Respondent agrees to comply with the Compliance Plan attached as Appendix B of this CAFO.

Effect of Consent Agreement and Attached Final Order

46. In accordance with 40 C.F.R. § 22.18(c), Respondent's full compliance with this Consent Agreement shall only resolve Respondent's liability for federal civil penalties for the violations and facts alleged above.

47. 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.

48. 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. § 7524(c)(6);

(b) refer the debt to a credit reporting agency or a collection agency, 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.

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

50. 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.

51. 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.

52. 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.

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

54. 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.

Appendix A: MPD DEFEAT DEVICE PRODUCTS LIST
(The information in this Appendix is redacted from the public version of this CAFO in accordance with 40 C.F.R. Part 2, as Respondent has claimed that the information in this Appendix is Confidential Business Information under 40 C.F.R. Part 2.)

Part	Description
[redacted]	[redacted]

Part	Description
[redacted]	[redacted]

Part	Description
[redacted]	[redacted]

Part	Description
[redacted]	[redacted]
[redacted]	[redacted]

Appendix B:

Compliance Plan to Avoid Illegal Tampering and Aftermarket Defeat Devices

This document explains how to help ensure compliance with the Clean Air Act's prohibitions on tampering and aftermarket defeat devices. The document specifies what the law prohibits, and sets forth two principles to follow in order to prevent violations.

The Clean Air Act Prohibitions on Tampering and Aftermarket Defeat Devices

The Act's prohibitions against tampering and aftermarket defeat devices are set forth in section 203(a)(3) of the Act, 42 U.S.C. § 7522(a)(3), (hereafter "§ 203(a)(3)"). The prohibitions apply to all vehicles, engines, and equipment subject to the certification requirements under sections 206 and 213 of the Act. This includes all motor vehicles (e.g., light-duty vehicles, highway motorcycles, heavy-duty trucks), motor vehicle engines (e.g., heavy-duty truck engines), nonroad vehicles (e.g., all-terrain vehicles, off road motorcycles), and nonroad engines (e.g., marine engines, engines used in generators, lawn and garden equipment, agricultural equipment, construction equipment). Certification requirements include those for exhaust or "tailpipe" emissions (e.g., oxides of nitrogen, carbon monoxide, hydrocarbons, particulate matter, greenhouse gases), evaporative emissions (e.g., emissions from the fuel system), and onboard diagnostic systems.

The prohibitions are as follows:

> "The following acts and the causing thereof are prohibited–"
>
> > **Tampering:** CAA § 203(a)(3)(A), 42 U.S.C. § 7522(a)(3)(A), 40 C.F.R. § 1068.101(b)(1): "for any person to remove or render inoperative any device or element of design installed on or in a [vehicle, engine, or piece of equipment] in compliance with regulations under this subchapter 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;"
> >
> > **Defeat Devices:** CAA § 203(a)(3)(B), 42 U.S.C. § 7522(a)(3)(B), 40 C.F.R. § 1068.101(b)(2): "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 [vehicle, engine, or piece of equipment], 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 [vehicle, engine, or piece of equipment] 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."

Section 203(a)(3)(A) prohibits tampering with emission controls. This includes those controls that are in the engine (e.g., fuel injection, exhaust gas recirculation), and those controls that are in the exhaust (e.g., filters, catalytic convertors, and oxygen sensors). Section 203(a)(3)(B) prohibits (among other things) aftermarket defeat devices, including hardware (e.g., certain modified exhaust pipes) and software (e.g., certain engine tuners and other software changes).

The EPA's longstanding view is that conduct that may be prohibited by § 203(a)(3) does not warrant enforcement if the person performing that conduct has a documented, reasonable basis for knowing that the conduct does not adversely affect emissions. *See* Mobile Source Enforcement Memorandum 1A (June 25, 1974).

The EPA evaluates each case independently, and the absence of such reasonable basis does not in and of itself constitute a violation. When determining whether tampering occurred, the EPA typically compares the vehicle after the service to the vehicle's original, or "stock" configuration (rather than to the vehicle prior to the service). Where a person is asked to perform service on an element of an emission control system that has already been tampered, the EPA typically does not consider the service to be illegal tampering if the person either declines to perform the service on the tampered system or restores the element to its certified configuration.

Below are two guiding principles to help ensure Respondent commits no violations of the Act's prohibitions on tampering and aftermarket defeat devices.

Principle 1: Respondent Will Not Modify any OBD System

Respondent will neither remove nor render inoperative any element of design of an OBD system.[1] Also, Respondent will not manufacture, sell, offer for sale, or install any part or component that bypasses, defeats, or renders inoperative any element of design of an OBD system.

Principle 2: Respondent Will Ensure There is a *Reasonable Basis* for Conduct Subject to the Prohibitions

For conduct unrelated to OBD systems, Respondent will have a *reasonable basis* demonstrating that its conduct[2] does not adversely affect emissions. Where the conduct in question is the manufacturing or sale of a part or component, Respondent must have a *reasonable basis* that the installation and use of that part or component does not adversely affect emissions. Respondent will fully document its *reasonable basis*, as specified in the following section, at or before the time the conduct occurs.

Reasonable Bases

[1] *OBD system* includes any system which monitors emission-related elements of design, or that assists repair technicians in diagnosing and fixing problems with emission-related elements of design. If a problem is detected, an OBD system should record a diagnostic trouble code, illuminate a malfunction indicator light or other warning lamp on the vehicle instrument panel, and provide information to the engine control unit such as information that induces engine derate (as provided by the OEM) due to malfunctioning or missing emission-related systems. Regardless of whether an element of design is commonly considered part of an OBD system, the term "OBD system" as used in this Appendix includes any element of design that monitors, measures, receives, reads, stores, reports, processes or transmits any information about the condition of or the performance of an emission control system or any component thereof.

[2] Here, the term *conduct* means: all service performed on, and any change whatsoever to, any emissions-related element of design of a vehicle, engine, or piece of equipment within the scope of § 203(a)(3); the manufacturing, sale, offering for sale, and installation of any part or component that may alter in any way an emissions-related element of design of a vehicle, engine, or piece of equipment within the scope of § 203(a)(3), and any other act that may be prohibited by § 203(a)(3).

This section specifies several ways that Respondent may document that it has a "reasonable basis" as the term is used in the prior section. In any given case, Respondent must consider all the facts including any unique circumstances and ensure that its conduct does not have any adverse effect on emissions.[3]

A. **Identical to Certified Configuration:** Respondent generally has a reasonable basis if its conduct: is solely for the maintenance, repair, rebuild, or replacement of an emissions-related element of design; and restores that element of design to be identical to the certified configuration (or, if not certified, the original configuration) of the vehicle, engine, or piece of equipment.[4]

B. **Replacement After-Treatment Systems:** Respondent generally has a reasonable basis if the conduct:

(1) involves a new after-treatment system used to replace the same kind of system on a vehicle, engine or piece of equipment and that system is beyond its emissions warranty; and

(2) the manufacturer of that system represents in writing that it is appropriate to install the system on the specific vehicle, engine or piece of equipment at issue.

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[3] General notes concerning the Reasonable Bases: Documentation of the above-described reasonable bases must be provided to EPA upon request, based on the EPA's authority to require information to determine compliance. CAA § 208, 42 U.S.C. § 7542. The EPA issues no case-by-case pre-approvals of reasonable bases, nor exemptions to the Act's prohibitions on tampering and aftermarket defeat devices (except where such an exemption is available by regulation). A reasonable basis consistent with this Appendix does not constitute a certification, accreditation, approval, or any other type of endorsement by EPA (except in cases where an EPA Certification itself constitutes the reasonable basis). No claims of any kind, such as "Approved [or certified] by the Environmental Protection Agency," may be made on the basis of the reasonable bases described in this Policy. This includes written and oral advertisements and other communication. However, if true on the basis of this Appendix, statements such as the following may be made: "Meets the emissions control criteria in the United States Environmental Protection Agency's Tampering Policy (2016) in order to avoid liability for violations of the Clean Air Act." There is no reasonable basis where documentation is fraudulent or materially incorrect, or where emissions testing was performed incorrectly.

[4] Notes on Reasonable Basis A: The conduct should be performed according to instructions from the original manufacturer (OEM) of the vehicle, engine, or equipment. The "certified configuration" of a vehicle, engine, or piece of equipment is the design for which the EPA has issued a certificate of conformity (regardless of whether that design is publicly available). Generally, the OEM submits an application for certification that details the designs of each product it proposes to manufacture prior to production. The EPA then "certifies" each acceptable design for use, in the upcoming model year. The "original configuration" means the design of the emissions-related elements of design to which the OEM manufactured the product. The appropriate source for technical information regarding the certified or original configuration of a product is the product's OEM. In the case of a replacement part, the part manufacturer should represent in writing that the replacement part will perform identically with respect to emissions control as the replaced part, and should be able to support the representation with either: (a) documentation that the replacement part is identical to the replaced part (including engineering drawings or similar showing identical dimensions, materials, and design), or (b) test results from emissions testing of the replacement part. In the case of engine switching, installation of an engine into a different vehicle or piece of equipment by any person would be considered tampering unless the resulting vehicle or piece of equipment is (a) in the same product category (e.g., light-duty vehicle) as the engine originally powered and (b) identical (with regard to all emissions-related elements of design) to a certified configuration of the same or newer model year as the vehicle chassis or equipment. Alternatively, Respondent may show through emissions testing that there is a reasonable basis for an engine switch under Reasonable Basis D. Note that there are some substantial practical limitations to switching engines. Vehicle chassis and engine designs of one vehicle manufacturer are very distinct from those of another, such that it is generally not possible to put an engine into a chassis of a different manufacturer and have it match up to a certified configuration.

C. **Emissions Testing:**[5] Respondent generally has a reasonable basis if the conduct:

(1) alters a vehicle, engine, or piece of equipment;

(2) emissions testing shows that the altered vehicle, engine, or piece of equipment will meet all applicable emissions standards for its full useful life; and

(3) where the conduct includes the manufacture, sale, or offering for sale of a part or component, that part or component is marketed only for those vehicles, engines, or pieces of equipment that are appropriately represented by the emissions testing.

D. **EPA Certification:** Respondent generally has a reasonable basis if the emissions-related element of design that is the object of the conduct (or the conduct itself) has been certified by the EPA under 40 C.F.R. Part 85 Subpart V (or any other applicable EPA certification program).[6]

E. **CARB Certification:** Respondent generally has a reasonable basis if the emissions-related element of design that is the object of the conduct (or the conduct itself) has been certified by the California Air Resources Board ("CARB").[7]

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[5] Notes on emissions testing: Where the above-described reasonable bases involve emissions testing, unless otherwise noted, that testing must be consistent with the following. The emissions testing may be performed by someone other than the person performing the conduct (such as an aftermarket parts manufacturer), but to be consistent with this Appendix, the person performing the conduct must have all documentation of the reasonable basis at or before the conduct. The emissions testing and documentation required for this reasonable basis is the same as the testing and documentation required by regulation (e.g., 40 C.F.R. Part 1065) for the purposes of original EPA certification of the vehicle, engine, or equipment at issue. Accelerated aging techniques and in-use testing are acceptable only insofar as they are acceptable for purposes of original EPA certification. The applicable emissions standards are either the emissions standards on the Emission Control Information Label on the product (such as any stated family emission limit, or FEL), or if there is no such label, the fleet standards for the product category and model year. To select test vehicles or test engines where EPA regulations do not otherwise prescribe how to do so for purposes of original EPA certification of the vehicle, engine, or equipment at issue, one must choose the "worst case" product from among all the products for which the part or component is intended. EPA generally considers "worst case" to be that product with the largest engine displacement within the highest test weight class. The vehicle, engine, or equipment, as altered by the conduct, must perform identically both on and off the test(s), and can have no element of design that is not substantially included in the test(s).

[6] Notes on Reasonable Basis D: This reasonable basis is subject to the same terms and limitations as EPA issues with any such certification. In the case of an aftermarket part or component, there can be a reasonable basis only if: the part or component is manufactured, sold, offered for sale, or installed on the vehicle, engine, or equipment for which it is certified; according to manufacturer instructions; and is not altered or customized, and remains identical to the certified part or component.

[7] Notes on Reasonable Basis E: This reasonable basis is subject to the same terms and limitations as CARB imposes with any such certification. The conduct must be legal in California under California law. However, in the case of an aftermarket part or component, the EPA will consider certification from CARB to be relevant even where the certification for that part or component is no longer in effect due solely to passage of time.

The foregoing Consent Agreement *In the Matter of Maryland Performance Diesel, LLC*, Docket No. CAA-HQ-2018-8353, is Hereby Stipulated, Agreed, and Approved for Entry.

For Maryland Performance Diesel, LLC:

[redacted] 4-10-18

Signature Date

Printed Name: Craig Briggs

Title: Managing member

Address: 1908 Bennett ave Baltimore md 21226

Respondent's Federal Tax Identification Number: 45-1204324

The foregoing Consent Agreement *In the Matter of Maryland Performance Diesel, LLC*, Docket No. CAA-HQ-2018-8353, is Hereby Stipulated, Agreed, and Approved for Entry.

For Complainant:

[redacted]

5/8/2018

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

[redacted]

4/17/18

Mark J. Palermo, Attorney Advisor
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

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

In the Matter of: Maryland Performance Diesel, LLC Respondent.	Docket No. CAA-HQ-2018-8353

FINAL ORDER

Pursuant to 40 C.F.R. § 22.18(b) of the EPA's Consolidated Rules of Practice and section 205(c)(1) of the Clean Air Act, 42 U.S.C. § 7524(c)(1), 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 terms of the Consent Agreement, effective immediately.

So ordered.

ENVIRONMENTAL APPEALS BOARD[8]

Dated: _____

_____
[Official Name of Lead Judge]
Environmental Appeals Judge

[8] The three-member panel ratifying this matter is composed of Environmental Appeals Judges _____, _____, and _____.

CERTIFICATE OF SERVICE

I certify that copies of the foregoing "Consent Agreement" and "Final Order," in the matter of *Maryland Performance Diesel, LLC*, Docket No. CAA-HQ-2018-8353, were sent to the following persons in the manner indicated:

By First Class Certified Mail/
Return Receipt Requested [or "By E-mail"]:

For Respondent:

Justin Savage, Esq.
Sidley Austin LLP
1501 K Street, NW
Washington, DC 20005
E-mail: jsidley@sidley.com

By Interoffice Mail [or by "E-mail"]:

For EPA:

Mark J. Palermo, Attorney-Advisor
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Mail Code 2242A
Washington, DC 20460
E-mail: palermo.mark@epa.gov

Dated: _____

_____
Annette Duncan
Administrative Specialist