UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION III

1650 Arch Street

Philadelphia, Pennsylvania 19103

In the Matter of:	:	
	:	**Docket No. CAA-03-2020-0057**
	:	
INNOVATIVE DIESEL, LLC,	:	**Proceeding under CAA Section 205(c)(1)**
Respondent.	:	

CONSENT AGREEMENT

PRELIMINARY STATEMENT

1. This Consent Agreement is entered into by the Director of the Enforcement and Compliance Assurance Division, United States Environmental Protection Agency, Region III ("EPA" or "Complainant"), and Innovative Diesel, LLC ("Innovative" or "Respondent") (collectively the "Parties"), pursuant to Section 205(c)(1) of the Clean Air Act (the "CAA" or "Act"), 42 U.S.C. § 7524(c)(1), 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. Section 205(c)(1) of the Act authorizes the Administrator of the U.S. Environmental Protection Agency to assess penalties and undertake other actions required by this Consent Agreement. The Administrator has delegated this authority to the Regional Administrator who, in turn, has delegated it to the Complainant. This Consent Agreement and the attached Final Order (hereinafter jointly referred to as the "CAFO") resolve Complainant's civil penalty claims against Respondent under Section 205(c)(1) of the Act for the violations alleged herein.

2. Respondent is a limited liability company organized under the laws of the State of Maryland and owned by Mr. Eric Eldreth. The company's place of business is 306 W Pulaski Highway, Elkton, Maryland 21921. Respondent operates a diesel truck performance upgrade sales facility, as well as a commercial website for sales of aftermarket diesel truck performance upgrade products at www.innovativediesel.com and www.id-motorsports.com.
3. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice, Complainant hereby simultaneously commences and resolves this administrative proceeding.
4. The EPA alleges that between January 1, 2015, and November 15, 2016, Respondent sold, and offered for sale, aftermarket parts and components intended for use with, or as part of, motor vehicles or motor vehicle engines that have a principal effect of bypassing, defeating, or rendering inoperative emission control devices and elements of design installed in or on a motor vehicle or motor vehicle engine in violation of section 203(a)(3) of the CAA, 42 U.S.C. § 7522(a)(3).

JURISDICTION

5. EPA has jurisdiction over the above-captioned matter as described in Paragraphs 1 and 2 herein.
6. This Consent Agreement is entered into under Section 205(c)(1) of the Act, 42 U.S.C. § 7524(c)(1), and the Consolidated Rules, 40 C.F.R. Part 22.1(a)(2).

GENERAL PROVISIONS

7. For purposes of this proceeding only, Respondent admits the jurisdictional allegations and the Stipulated Facts set forth in this CAFO.
8. Except as provided in Paragraph 7, above, Respondent neither admits or denies the specific factual or violation of law allegations set forth in this CAFO.
9. Respondent agrees not to contest the jurisdiction of EPA with respect to the execution of this Consent Agreement, the issuance of the attached Final Order, or the enforcement of this CAFO.

10. For purposes of this proceeding only, Respondent hereby expressly waives its right to contest the allegations set forth in this CAFO and waives its right to appeal the accompanying Final Order.
11. Respondent consents to the assessment of the civil penalty stated herein, to the issuance of any specified compliance order herein, and to any conditions specified herein.
12. Respondent shall bear its own costs and attorney's fees in connection with this proceeding.
13. Persons violating Sections 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B), are subject to a civil penalty of up to $3,750 for each violation that occurred prior to November 2, 2015, and up to $4,735 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.
14. 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 $378,852 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.
15. For the purpose of this proceeding, Respondent:

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

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

    (c) 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 205(c)(5) of the Act, 42 U.S.C. § 7524(5);

(d) Consents to personal jurisdiction in any action to enforce this Consent Agreement or Order, or both, in a United States District Court; and

(e) 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 compel compliance with the Consent 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.

GOVERNING LAW

16. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice, Complainant alleges and adopts the Governing Law, Definitions, Stipulated Facts and Alleged Violations of Law set forth immediately below.

17. This proceeding arises under Part A of Title II of the Act, 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 nonmethane hydrocarbons ("NMHC"), particulate matter ("PM") oxides of nitrogen ("NO_x"), and carbon monoxide ("CO"). The alleged violations of law, stated below, concern motor vehicles and motor vehicle engines and violations of the Defeat Device prohibitions in Section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B).

18. "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."

19. Under Section 202 of the CAA, 42 U.S.C. § 7521, EPA promulgated emission standards for NMHC, PM, NOx, and CO, and other pollutants applicable to motor vehicles and motor vehicle engines. *See generally* 40 C.F.R. Part 86.

20. Manufacturers of new motor vehicles or motor vehicle engines must obtain a certificate of conformity ("COC") from EPA to sell, offer to sell, or introduce or deliver for introduction into commerce any new motor vehicle or motor vehicle engines in the United States. Section 203(a)(1) of the CAA, 42 U.S.C. § 7522(a)(1).

21. The EPA issues COCs 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.

22. To obtain a COC for a given motor vehicle test group or engine family, the OEM must demonstrate that each motor vehicle or motor vehicle engine will not exceed established emissions standards for NO_x, PM, CO, NMHC, and other pollutants. *See generally* 40 C.F.R. 86 Subparts A and S.

23. The COC application must describe, among other things, the emissions-related elements of design of the motor vehicle or motor vehicle engine. *See* 40 C.F.R. §§ 86.004-21, 86.1844-01.

24. "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 of diesel engines employ retarded fuel injection timing as a primary emission control device for emissions of NOx, while manufacturers of gasoline-powered engines employ spark timing as an emission control device. 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 Exhaust Gas Recirculation ("EGR"), Diesel Particulate Filter ("DPF"), Diesel Oxidation Catalyst ("DOC), and Selective Catalytic Convertor ("SCR") systems.

25. "On-Board Diagnostic System" or "OBD" is a system of components and sensors designed to detect, record, and report malfunctions of all monitored emission-related powertrain systems or components. 40 C.F.R. § 86.1806-05(b).

26. Under Section 202(m) of the CAA, 42 U.S.C. § 7521(m), EPA promulgated regulations requiring manufacturers of light heavy-duty diesel engine trucks to install OBD systems on vehicles beginning with the 2007 model year. The regulations required the OBD system to monitor emission control components for any malfunction or deterioration causing exceedance of certain emission thresholds. When the OBD system detected a problem, a check-engine light on the dashboard of the vehicle alerted the driver that a certain repair or repairs were needed. 40 C.F.R. §§ 86.1806-05; 86.1807-17. Thus, OBD is a critical element of design of the motor vehicle.

27. 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.

28. It is also a violation for any person to cause any of the acts set forth in CAA Section 203(a), 42 U.S.C. § 7522(a).

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

DEFINITIONS USED IN THIS CONSENT AGREEMENT

30. "Defeat Device" means a 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 a motor vehicle emission control device or element of design, including such emission control devices or elements of design required by regulation under Title II of the CAA, including Defeat Tuning Products and Exhaust Aftermarket Delete Pipes. *See* CAA § 203(a)(3)(B), 42 U.S.C. § 7522(a)(3)(B).

31. "Defeat Tuning Products" means aftermarket engine control module ("ECM") programmers (including hardware commonly referred to as "tuners" and software commonly referred to as "tunes") that modify ECM programming or calibrations and/or onboard diagnostics ("OBD") operation, whose principal effect is to bypass, defeat, or render inoperative devices or elements of design installed on or in motor vehicles or motor vehicle engines in compliance with Title II of the CAA.
32. "Diesel oxidation catalyst ("DOC") are elements of design in motor vehicles consisting of a substrate coated with catalytic material which, when exhaust flows through at high temperatures, promotes oxidation of pollutants. The DOC oxidizes carbon monoxide and hydrocarbons to carbon dioxide and water.
33. "Diesel particulate filters" ("DPFs") are elements of design in diesel-powered motor vehicles that collect PM pollution contained in engine exhaust gas. Proper operation of the DPF requires periodic regeneration of the filter to prevent accumulated PM from clogging the filter.
34. "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 operating parameters to manage the operation of the emission control systems and elements of design, such as fuel or spark timing.
35. "Exhaust Aftertreatment Delete Pipe" means a component that is designed to physically remove, disable, or bypass an aftertreatment emission control device or other elements of design, such as a DPF, DOC, or SCR, from the exhaust system installed on or in motor vehicles or motor vehicle engines in compliance with Title II of the CAA.
36. "Exhaust Gas Recirculation" ("EGR") is an element of design in motor vehicles that reduces NO_x emissions, which are formed at high temperatures during fuel combustion. By recirculating exhaust gas through the engine, EGR reduces engine temperature and NO_x emissions.

37. "Selective catalytic reduction" ("SCR") is an element of design that reduces NO_x emissions by chemically converting exhaust gas that contains NOx into nitrogen and water through the injection of diesel exhaust fluid. Sensors in the SCR system communicate with the OBD to ensure that SCR is properly controlling NO_x emissions.

STIPULATED FACTS

38. Respondent, Innovative Diesel, LLC is a person, as that term is defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

39. Sales records obtained from Respondent indicate that it offered for sale or sold parts or components that have a principal effect of bypassing, defeating, or rendering inoperative emission control systems or elements of design installed on motor vehicles in compliance with the CAA. Respondent sold, or offered for sale, Defeat Tuning Products and Exhaust Aftermarket Delete Pipes.

40. Respondent sold two classes of Defeat Tuning Products: an SCT 7015 X4 Powerflash Programmer and an SCT 5015 Livewire Performance Programmer ("SCT Tuners") that are designed to disable EGR systems and OBD oxygen sensors. Between January 1, 2015, and November 15, 2016, Respondent sold at least 3,340 SCT 7015 X4 tuners and 1,527 SCT 5015 Livewire tuners.

41. Between January 1, 2015, and November 15, 2016, Respondent sold at least nine Exhaust Aftertreatment Delete Pipes identified as MBRP 4" PLM Turbo-Back Exhaust System for 2003-2007 Ford 6.0L Powerstroke Series.

42. The products identified in Paragraphs 39-41, above, were designed and marketed for use on makes and models of motor vehicles and motor vehicle engines manufactured by Ford Motor Company. This OEM sought and obtained COC from the EPA. In doing so, the manufacturer has 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, EGRs, DOCs, DPFs, NACs, SCRs, and OBD systems.

43. The Defeat Tuning Products sold by Innovative render inoperative the OEM-certified ECM programming and replace it with programming that is designed to disable EGR systems and OBD oxygen sensors. In addition, the aftermarket ECM programmers defeat the OEM-certified ECM programming by overriding the OBD functions required by regulation under the CAA. The Exhaust Aftermarket Delete Pipes sold by Innovative physically replace emission control devices such as DPFs, DOCs, SCRs, and EGR systems.

ALLEGED VIOLATIONS OF LAW

Count I
The Sale Or Offering For Sale of Defeat Devices

44. The allegations of Paragraphs 1 through 43 of this Consent Agreement are incorporated herein by reference as if fully set forth at length.

45. EPA alleges that, between January 1, 2015, and November 15, 2016, Respondent sold, or offered to sell, at least 4,876 Defeat Devices, including 4,867 Defeat Tuning Products and nine Exhaust Aftermarket Delete 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 emissions-related 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.

46. EPA alleges that, between January 1, 2015, and November 15, 2016, Respondent committed approximately 4,876 violations of section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B), by selling or offering for sale Defeat Devices, including Defeat Tuning Products and Exhaust Aftermarket Delete Pipes.

47. By selling or offering for sale Defeat Devices, including Defeat Tuning Products and Exhaust Aftermarket Delete Pipes in violation of section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B),

Respondent is subject to the assessment of civil penalties under section 205(c) of the CAA, 42 U.S.C. § 7524(c).

CIVIL PENALTY

48. In settlement of EPA's claims for civil penalties for the violations alleged in this Consent Agreement, Respondent consents to the assessment of a civil penalty in the amount of One Hundred Fifty Thousand Dollars ($150,000), which Respondent shall be liable to pay in accordance with the terms set forth below.

49. The civil penalty is based upon EPA's consideration of a number of factors, including the penalty criteria ("statutory factors") set forth in CAA, Section 205(c)(2), 42 U.S.C. § 7524(c)(2), which include the gravity of the violation, the economic benefit or savings (if any) resulting from the violation, the size of the violator's business, the violator's history of compliance with this subchapter, action taken to remedy the violation, the effect of the penalty on the violator's ability to continue in business, and such other matters as justice may require. These factors were applied to the particular facts and circumstances of this case with specific reference to EPA's Clean Air Act Mobile Source Civil Penalty Policy – Vehicle and Engine Certification Requirements (Jan. 16, 2009) which reflects the statutory penalty criteria and factors set forth at CAA, Section 205(c)(2), and the appropriate *Adjustment of Civil Monetary Penalties for Inflation,* pursuant to 40 C.F.R. Part 19, and the applicable EPA memoranda addressing EPA's civil penalty policies to account for inflation.

50. The civil penalty is also based upon an analysis of Respondent's ability to pay a civil penalty. This analysis was based upon information submitted to EPA by Respondent.

51. Based upon this analysis EPA has determined that the Respondent is unable to pay a civil penalty in excess of the dollar amount set forth in Paragraph 48, above, in settlement of the above-captioned action.

52. Payment of the civil penalty amount, and any associated interest, administrative fees, and late payment penalties owed, shall be made by either cashier's check, certified check or electronic wire transfer, in the following manner:

    a. All payments by Respondent shall include reference to Respondent's name and address, and the Docket Number of this action, *i.e.*, EPA Docket No. CAA-03-2020-0057;

    b. All checks shall be made payable to the "United States Treasury";

    c. All payments made by check and sent by regular mail shall be addressed and mailed to:

        U.S. Environmental Protection Agency
        Cincinnati Finance Center
        P.O. Box 979077
        St. Louis, MO 63197-9000

    d. For additional information concerning other acceptable methods of payment of the civil penalty amount see:

        https://www.epa.gov/financial/makepayment

    e. A copy of Respondent's check or other documentation of payment of the penalty using the method selected by Respondent for payment shall be sent simultaneously to:

        Robert Stoltzfus
        Senior Assistant Regional Counsel
        U.S. EPA, Region III (3RC50)
        1650 Arch Street
        Philadelphia, PA 19103-2029
        stoltzfus.robert@epa.gov

53. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment of the penalty as specified herein shall result in the assessment of late payment charges including interest, penalties and/or administrative costs of handling delinquent debts.

54. Payment of the civil penalty is due and payable according to the schedule specified in Paragraph 55, below, upon receipt by Respondent of a true and correct copy of the fully executed and filed CAFO. Receipt by Respondent or Respondent's legal counsel of such copy of the fully executed CAFO, with a date stamp indicating the date on which the CAFO was filed with the Regional Hearing Clerk, shall constitute receipt of written initial notice that a debt is owed EPA by Respondent in accordance with 40 C.F.R. § 13.9(a).

55. Respondent shall pay the civil penalty to the United States following the Effective Date of this Consent Agreement and attached Final Order in four installments with interest as follows:

Installment	Due By	Payment	Principal	Interest (1%)
Payment #1	Within 30 days of effective date of CAFO	$37,500.00	$37,500.00	$0
Payment #2	Within 60 days of effective date of CAFO	$37,593.75	$37,500.00	$93.75
Payment #3	Within 90 days of effective date of CAFO	$37,562.50	$37,500.00	$62.50
Payment #4	Within 120 days of effective date of CAFO	$37,531.25	$37,500.00	$31.25

56. INTEREST: In accordance with 40 C.F.R § 13.11(a)(1), interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a copy of the fully executed and filed CAFO is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount of the civil penalties that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R § 13.11(a).

57. ADMINISTRATIVE COSTS: The costs of the EPA's administrative handling of overdue debts will be charged and assessed monthly throughout the period a debt is overdue. 40 C.F.R. § 13.11(b).

Pursuant to Appendix 2 of EPA's *Resources Management Directives – Case Management*, Chapter 9, EPA will assess a $15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional $15.00 for each subsequent thirty (30) days the penalty remains unpaid.

58. LATE PAYMENT PENALTY: A late payment penalty of six percent per year will be assessed monthly on any portion of the civil penalty that remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).

59. If Respondent fails to make a full and complete payment of the civil penalty in accordance with this CAFO, the entire unpaid balance of the penalty shall become immediately due and owing. Failure by Respondent to pay the CAA civil penalty assessed by the Final Order in full in accordance with this CAFO may subject Respondent to a civil action to collect the assessed penalty, plus interest, pursuant to Section 205 of the CAA, 42 U.S.C. § 7524. In any such collection action, the validity, amount and appropriateness of the penalty shall not be subject to review.

60. Respondent agrees not to deduct for federal tax purposes the civil penalty assessed in this CAFO.

GENERAL SETTLEMENT CONDITIONS

61. By signing this Consent Agreement, Respondent acknowledges that this CAFO will be available to the public and represents that, to the best of Respondent's knowledge and belief, this CAFO does not contain any confidential business information or personally identifiable information from Respondent.

62. Respondent certifies that any information or representation it has supplied or made to EPA concerning this matter was, at the time of submission true, accurate, and complete and that there has been no material change regarding the truthfulness, accuracy or completeness of such information or representation. EPA shall have the right to institute further actions to recover appropriate relief if EPA obtains evidence that any information provided and/or representations made by Respondent to the EPA regarding matters relevant to this CAFO, including information about respondent's ability to pay

a penalty, are false or, in any material respect, inaccurate. This right shall be in addition to all other rights and causes of action that EPA may have, civil or criminal, under law or equity in such event. Respondent and its officers, directors and agents are aware that the submission of false or misleading information to the United States government may subject a person to separate civil and/or criminal liability.

63. Any information provided pursuant to this Consent Agreement may be used by the Complainant in any proceeding to enforce the provisions of this Consent Agreement and as otherwise permitted by law.

CERTIFICATION OF COMPLIANCE

64. Respondent certifies to EPA, upon personal investigation and to the best of its knowledge and belief, that it currently is in compliance with regard to the violations alleged in this Consent Agreement.

65. Respondent acknowledges receipt of the Compliance Plan to Avoid Illegal Tampering and Aftermarket Defeat Devices, attached as Appendix A of the Consent Agreement with the goal of the Plan being to assist in maintaining continued compliance with the Act.

OTHER APPLICABLE LAWS

66. Nothing in this CAFO shall relieve Respondent of its obligation to comply with all applicable federal, state, and local laws and regulations, nor shall it restrict EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on the validity of any federal, state or local permit. This CAFO does not constitute a waiver, suspension or modification of the requirements of the CAA, or any regulations promulgated thereunder.

RESERVATION OF RIGHTS

67. This CAFO resolves only EPA's claims for civil penalties for the specific violation[s] alleged against Respondent in this CAFO. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and

substantial endangerment to the public health, public welfare, or the environment. This settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice, 40 C.F.R. § 22.18(c). EPA reserves any rights and remedies available to it under the CAA, the regulations promulgated thereunder and any other federal law or regulation to enforce the terms of this CAFO after its effective date.

EXECUTION/PARTIES BOUND

68. This CAFO shall apply to and be binding upon the EPA, the Respondent and the officers, directors, employees, contractors, successors, agents and assigns of Respondent. By his or her signature below, the person who signs this Consent Agreement on behalf of Respondent is acknowledging that he or she is fully authorized by the Respondent to execute this Consent Agreement and to legally bind Respondent to the terms and conditions of this CAFO.

EFFECTIVE DATE

69. The effective date of this CAFO is the date on which the Final Order, signed by the Regional Administrator of EPA, Region III, or his/her designee, the Regional Judicial Officer, is filed along with the Consent Agreement with the Regional Hearing Clerk pursuant to the Consolidated Rules of Practice.

ENTIRE AGREEMENT

70. This CAFO constitutes the entire agreement and understanding between the Parties regarding settlement of all claims for civil penalties pertaining to the specific violations alleged herein and there are no representations, warranties, covenants, terms, or conditions agreed upon between the Parties other than those expressed in this CAFO.

In Re: Innovative Diesel, LLC
EPA Docket No. CAA-03-2020-0057

FOR RESPONDENT:
INNOVATIVE DIESEL, LLC

[redacted] 12/2/19

Name Date

Printed Name: [redacted]

Title: Owner

Address: 7 Warner Rd. Elkton, MD 21921

In Re: Innovative Diesel, LLC
EPA Docket No. CAA-03-2020-0057

FOR COMPLAINANT:

After reviewing the Consent Agreement and other pertinent matters, I, the undersigned Director of the Enforcement and Compliance Assurance Division of the United States Environmental Protection Agency, Region III, agree to the terms and conditions of this Consent Agreement and recommend that the Regional Administrator, or his/her designee, the Regional Judicial Officer, issue the attached Final Order.

Date: DEC 16 2019 By: [redacted]

Karen Melvin
Director, Enforcement and Compliance
Assurance Division
U.S. EPA – Region III
Complainant

Attorney for Complainant:

Date: 12/12/19 By: [redacted]

Robert Stoltzfus
Senior Assistant Regional Counsel
U.S. EPA – Region III

Appendix A:

In the Matter of Innovative Diesel, LLC, Docket No. CAA-03-2020-0057

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 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

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.

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]

ENDNOTES

[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).

[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 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 C. 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.

[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.

BEFORE THE UNITED STATES

ENVIRONMENTAL PROTECTION AGENCY

REGION III

IN THE MATTER OF:	:	
	:	**Docket No. CAA-03-2020-0057**
INNOVATIVE DIESEL, LLC	:	**Proceeding under CAA Section 205(c)(1)**
Respondent.	:	

FINAL ORDER

Complainant, the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency, Region III, and Respondent, Innovative Diesel, LLC, have executed a document entitled "Consent Agreement," which I hereby ratify as a Consent Agreement in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. Part 22, Sections 22.1(a)(2), 22.13(b) and 22.18(b)(2) and (3). The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated into this Final Order as if fully set forth at length herein.

Based upon the representations of the parties in the attached Consent Agreement, the penalty agreed to therein is based upon consideration of, *inter alia*, EPA's Clean Air Act Mobile Source Civil Penalty Policy – Vehicle and Engine Certification Requirements (Jan. 16, 2009), and the statutory factors set forth in Section 205 of the Clean Air Act, 42 U.S.C. §7524(c)(2).

NOW, THEREFORE, PURSUANT TO Section 205(c)(1) of the Clean Air Act, 42 U.S.C. Section 7524(c)(1), and Section 22.18(b)(3) of the Consolidated Rules of Practice, **IT IS HEREBY ORDERED** that Respondent pay a civil penalty in the amount of **ONE HUNDRED FIFTY THOUSAND DOLLARS ($150,000)**, in accordance with the payment provisions set forth in the Consent Agreement, and comply with the terms and conditions of the Consent Agreement and any appendices thereto.

This Final Order constitutes the final Agency action in this proceeding. This Final Order shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief, or criminal sanctions for any violations of the law. This Final Order resolves only those causes of action alleged in the Consent Agreement and does not waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable provisions of the Clean Air Act and the regulations promulgated thereunder.

The effective date of the attached Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

Date: Dec. 30, 2019

[redacted]

Joseph J. Lisa
Regional Judicial Officer
U.S. EPA, Region III

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103

In the Matter of:	:	
	:	**Docket No. CAA-03-2020-0057**
	:	
INNOVATIVE DIESEL, LLC,	:	**Proceeding under CAA Section 205(c)(1)**
Respondent.	:	

CERTIFICATE OF SERVICE

I certify that on DEC 30 2019, the original and one (1) copy of foregoing ***Consent Agreement and Final Order***, were filed with the EPA Region III Regional Hearing Clerk. I further certify that on the date set forth below, I served a true and correct copy of the same to each of the following persons, in the manner specified below, at the following addresses:

Copy served via **Certified Mail, Return Receipt Requested, Postage Prepaid**, to:

Stewart D. Cables, Esq.
Hassan + Cables, LLC
Columbia Square
1035 Pearl Street, Suite 2000
Boulder, CO 80302
stewart@hassancables.com
(Attorney for Respondent)

Copy served via **Hand Delivery or Inter-Office Mail** to:

Robert Stoltzfus
Senior Assistant Regional Counsel
Office of Regional Counsel (3RC30)
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029
(Attorney for Complainant)

Dated: DEC 30 2019

[redacted]
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region III

TRACKING NUMBER(S): 7004 2510 0004 7902 8599