BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:	)	DOCKET NO. CAA-10-2020-0044
	)	
ALLIGATOR DIESEL PERFORMANCE LLC,	)	**CONSENT AGREEMENT**
	)	
Hayden, Idaho	)	
	)	
Respondent.	)	

I. STATUTORY AUTHORITY

1.1. This Consent Agreement is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 205(c)(1) of the Clean Air Act ("CAA"), 42 U.S.C. § 7524(c)(1).

1.2. Pursuant to Section 205(c)(1) of the CAA, 42 U.S.C. § 7524(c)(1), and in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties," 40 C.F.R. Part 22, EPA issues, and Alligator Diesel Performance LLC ("Respondent") agrees to issuance of, the Final Order attached to this Consent Agreement ("Final Order").

II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), issuance of this Consent Agreement commences this proceeding, which will conclude when the Final Order becomes effective.

2.2. The Director of the Enforcement and Compliance Assurance Division, EPA Region 10 ("Complainant") has been delegated the authority pursuant to Section 205(c)(1) of the CAA, 42 U.S.C. § 7524(c)(1), to sign consent agreements between EPA and the party against whom an administrative penalty for violations of the CAA is proposed to be assessed.

2.3. Part III of this Consent Agreement contains a concise statement of the factual and legal basis for the alleged violations of the CAA together with the specific provisions of the CAA and the implementing regulations that Respondent is alleged to have violated.

III. ALLEGATIONS

CAA Title II, Subpart A

3.1. This proceeding arises under CAA Title II, Subpart A, 42 U.S.C. §§ 7521–7554, and the regulations promulgated thereunder. These laws were enacted to reduce air pollution from mobile sources, including particulate matter ("PM"), non-methane hydrocarbons ("NMHC"), oxides of nitrogen ("NO_x"), and carbon monoxide ("CO.").

3.2. The CAA requires EPA to prescribe and revise, by regulation, standards applicable to the emission of any air pollutant from new motor vehicles or engines that cause or contribute to air pollution, which may reasonably be anticipated to endanger public health or welfare. CAA § 202(a)(1) and (3)(B), 42 U.S.C. § 7521(a)(1) and (3)(B).

3.3. As required by the CAA, the emission standards "reflect the greatest degree of emission reduction achievable through the application of [available] technology." CAA § 202(a)(3)(A)(i), 42 U.S.C. § 7521(a)(3)(A)(i).

3.4. Under Section 202 of the CAA, 42 U.S.C. § 7521, EPA has promulgated emission standards for PM, NMHC, NO_x, and CO applicable to motor vehicles and motor vehicle engines, including heavy-diesel duty ("HDD") trucks, based on a vehicle's or engine's class and model year. See generally 40 C.F.R. Part 86.

3.5. "Motor vehicle" means any self-propelled vehicle designed for transporting persons or property on a street or highway. CAA § 216(2), 42 U.S.C. § 7550(2); 40 C.F.R. 85.1703.

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

3.7. EPA issues certificates of conformity to vehicle manufacturers (also known as "original equipment manufacturers" or "OEMs") under CAA § 206(a), 42 U.S.C. § 7525(a), to certify that a particular group of motor vehicles or motor vehicle engines conforms to applicable EPA requirements governing motor vehicle emissions.

3.8. To obtain a certificate of conformity for a given motor vehicle or motor vehicle engine test family, the OEM must demonstrate that each motor vehicle or motor vehicle engine will not exceed established emissions standards for PM, NMHC, NO_x, CO, and other pollutants. 40 C.F.R. §§ 86.004-21, 86.811-04, 86.1844-01.

3.9. The application for a certificate of conformity must describe, among other things, the emissions-related elements of design of the motor vehicle or motor vehicle engine. See 86.1844-01. This includes all auxiliary emission control devices ("AECDs"), which are defined as "any element of design which senses temperature, vehicle speed, engine RPM, transmission gear, manifold vacuum, or any other parameter for the purpose of activating, modulating,

delaying, or deactivating the operation of any part of the emission control system." 40 C.F.R. § 86.1803-01 and 86.1844-01(d)(11).

3.10. 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. § 86.1803-01.

3.11. 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).

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

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

General Allegations

3.14. EPA-certified motor vehicles and motor vehicle engines include a variety of hardware and software devices or elements of design that control emissions of air pollutants.

3.15. An onboard diagnostic system ("OBD") is a standard requirement in modern motor vehicles and motor vehicle engines and must detect and report malfunctions of all monitored emission-related powertrain systems or components through a network of sensors

installed throughout a motor vehicle or motor vehicle engine. CAA § 202(m); 42 U.S.C. § 7521(m); 40 C.F.R. §§ 86.007-17, 86.1806-05.

3.16. Manufacturers 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 and meet the emission standards in 40 C.F.R. Part 86. Such devices include exhaust gas recirculation ("EGR"), diesel particulate filters ("DPFs"), and selective catalytic reduction ("SCR"). For example:

a. EGR is an element of design in diesel-fueled motor vehicles that reduces NO_x emissions, which are formed at the high temperatures caused during fuel combustion. By recirculating exhaust gas through the engine, EGR reduces engine temperature and NO_x emissions. HDD OEMs generally design and build motor vehicles and motor vehicle engines using EGR systems to meet NO_x standards. 40 C.F.R. §§ 86.004-11, 86.007-11.

b. DPF is an element of design in diesel-fueled motor vehicles that reduces PM pollution by collecting soot contained in engine exhaust gas. Proper operation of the DPF requires periodic regeneration of the filter to prevent accumulated PM from clogging the filler. HDD OEMs 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.

c. SCR is an element of design that reduces NO_x emissions by chemically converting exhaust gas that contains NO_x into nitrogen and water through the injection of diesel exhaust fluid. Diesel exhaust fluid ("DEF") must be periodically refilled, which requires sensors in the DEF tank to communicate with the OBD to ensure that SCR is properly controlling NO_x emissions.

HDD OEMs generally design and build trucks using SCR systems in order to meet current NO_x standards. 40 C.F.R. § 86.007-11.

3.17. In addition to emission control hardware, fuel mass, fuel injection pressure, and fuel injection timing are among the elements of design incorporated in diesel-fueled motor vehicles that can affect the quantity of regulated pollutants that are created by the diesel engine. As an example, HDD OEMs generally employ retarded fuel injection timing as an emission control method for NO_x.

3.18. Electronic control modules ("ECMs") are devices that receive 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 injection timing.

3.19. "Defeat Tuning Products" as used in this Consent Agreement means aftermarket ECM programmers (including hardware commonly referred to as "tuners" and software commonly referred to as "tunes") that have a principal effect of altering a motor vehicle or motor vehicle engine's emissions control systems or elements of design and/or allow bypass, deactivation, or deletion of vehicle emissions control devices without engine malfunction or reporting of diagnostic trouble codes by the vehicle's OBD system.

3.20. "EGR Delete Parts" as used in this Consent Agreement means aftermarket parts and components that physically remove or bypass the EGR in a compatible motor vehicle or motor vehicle's exhaust system.

3.21. "Aftermarket Defeat Device" as used in this Consent Agreement means a motor vehicle part or component, including Defeat Tuning Products and EGR Delete Parts, where a principal effect of the part or component is to bypass, defeat, or render inoperative a motor

vehicle or motor vehicle engine emission control device or element of design installed in compliance with regulations under Title II of the CAA. See CAA § 203(a)(3)(B), 42 U.S.C. § 7522(a)(3)(B).

3.22. Aftermarket Defeat Devices are designed and marketed for use with, or to become part of, a specific make, model and year (or range of years) of compatible motor vehicles.

3.23. Respondent is organized under the laws of the State of Idaho and registered to do business in Idaho.

3.24. Respondent is a retail seller of aftermarket automotive parts and specializes in HDD trucks.

3.25. Respondent is a person, as that term is defined in CAA § 302(e), 42 U.S.C. § 7602(e).

3.26. EPA conducted an inspection of Respondent's facility in Hayden, Idaho, on September 15, 2016.

3.27. On May 18, 2018, EPA issued an Information Request to Respondent under the authority of CAA § 208, 42 U.S.C. § 7542 ("Information Request"). The Information Request requested information regarding specified automotive parts or components manufactured, sold, or offered for sale by Respondent from January 1, 2016 to May 17, 2018.

3.28. Based on the information provided by Respondent in response to the Information Request, EPA issued a Notice of Violation to Respondent dated January 28, 2019, alleging that Respondent sold at least 31,543 parts or components from January 1, 2016 through May 17, 2018 in violation of CAA § 203(a)(1)(B), 42 U.S.C. § 7522(a)(3)(B).

Violations

3.29. From January 1, 2016 through May 17, 2018, Respondent sold and offered for sale at least 31,543 parts or components intended for use with or as part of motor vehicles or motor vehicle engines, primarily HDD trucks and engines, including the following:

a. At least 2,358 crankcase emission control removal products;

b. At least 11,615 electronic software or programing products , which remove and replace emissions-related calibrations and override OBD systems to facilitate removal of emissions-related elements of design;

c. At least 9,638 exhaust replacement pipes, which remove and bypass diesel oxidation catalyst, DPF, catalytic converter, and/or SCR systems; and

d. At least 7,932 EGR removal products.

3.30. These parts and components were designed and marketed for use on makes and models of motor vehicles and motor vehicle engines manufactured by entities such as Cummins Inc.; FCA US LLC and its predecessors and successors; General Motors Co.; and Ford Motor Co.

3.31. These motor vehicles and motor vehicle engines were designed for transporting persons or property on a street or highway, and therefore are subject to motor vehicle and motor vehicle engine emission standards under CAA Title II, Subpart A, 42 U.S.C. §§ 7521–7554.

3.32. The OEMs of these motor vehicles and motor vehicle engines sought and obtained certificates of conformity from the EPA, thereby certifying that the motor vehicles and motor vehicle engines demonstrated compliance with applicable federal emission standards, including design configurations using elements of design such as fuel timing, EGRs, DPFs, SCRs, and OBD systems.

3.33. The parts and components referred to in Paragraph 3.29 above, when installed in or on motor vehicles, bypass, defeat, or render inoperative devices or elements of design that

motor vehicle and motor vehicle engine manufacturers employ to meet emission standards in regulations promulgated under CAA Title II, Subpart A, 42 U.S.C. §§ 7521–7554. Such parts and components are therefore Aftermarket Defeat Devices.

3.34. Respondent knew or should have known that these Aftermarket Defeat Devices were sold or offered for sale to bypass, defeat, or render inoperative devices or elements of design that motor vehicle and motor vehicle engine manufacturers employ to meet emission standards in regulations promulgated under Part A of Title II of the CAA, 42 U.S.C. §§ 7521–7554.

3.35. Respondent therefore violated CAA § 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B), on at least 31,543 occasions from January 1, 2017 through May 17, 2018.

3.36. Under CAA § 205(a), 42 U.S.C. § 7524(a), and 40 C.F.R. Part 19, EPA may assess a civil penalty of up to $4,735 for each violation that occurred on or after November 2, 2015.

IV. TERMS OF SETTLEMENT

4.1. Respondent admits the jurisdictional allegations of this Consent Agreement.

4.2. Respondent neither admits nor denies the specific factual allegations and legal conclusions contained in this Consent Agreement.

4.3. In determining the amount of penalty to be assessed, EPA has taken into account the factors specified in CAA Section 205(c)(2), 42 U.S.C. § 7413(c)(2). After considering these factors, EPA has determined and Respondent agrees that an appropriate penalty to settle this action is $90,000 (the "Assessed Penalty"). The EPA has reduced the civil penalty on the basis of information submitted by Respondent to support its claim that it is unable to pay a higher civil penalty and continue in business.

4.4. Respondent agrees to pay the Assessed Penalty within 30 days of the effective date of the Final Order.

4.5. Payments under this Consent Agreement and the Final Order may be paid by check (mail or overnight delivery), wire transfer, ACH, or online payment. Payment instructions are available at: http://www2.epa.gov/financial/makepayment. Payments made by a cashier's check or certified check must be payable to the order of "Treasurer, United States of America" and delivered to the following address:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

Respondent must note on the check the title and docket number of this action.

4.6. Concurrently with payment, Respondent must serve photocopies of the check, or proof of other payment method, described in Paragraph 4.5 on the Regional Hearing Clerk and EPA Region 10 at the following addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10, Mail Stop 11-C07
1200 Sixth Avenue, Suite 155
Seattle, Washington 98101
young.teresa@epa.gov

John Keenan
U.S. Environmental Protection Agency
Region 10, Mail Stop 20-C04
1200 Sixth Avenue, Suite 155
Seattle, Washington 98101
Keenan.john@epa.gov

4.7. If Respondent fails to pay any portion of the Assessed Penalty in full by its due date, the entire unpaid balance of penalty and accrued interest shall become immediately due and owing. If such a failure to pay occurs, Respondent may be subject to a civil action pursuant to CAA § 205(c)(6), 42 U.S.C. § 7524(c)(6), to collect the Assessed Penalty under the CAA. In

any collection action, the validity, amount, and appropriateness of the Assessed Penalty shall not be subject to review.

4.8. If Respondent fails to pay any portion of the Assessed Penalty in full by its due date, Respondent shall be responsible for payment of the following amounts:

a. Interest. Any unpaid portion of the Assessed Penalty shall bear interest at the rate established pursuant to 26 U.S.C. § 6621(a)(2) from the effective date of the Final Order, provided, however, that no interest shall be payable on any portion of the Assessed Penalty that is paid within 30 days of the effective date of the Final Order contained herein.

b. Attorneys' Fees, Collection Costs, Nonpayment Penalty. Pursuant to 42 U.S.C. § 7524(c)(6), should Respondent fail to pay the Assessed Penalty and interest on a timely basis, Respondent shall also be required to pay the United States' enforcement expenses, including attorneys' fees and costs for collection proceedings, and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be in an amount equal to ten percent of the aggregate amount of Respondent's outstanding penalties and nonpayment penalties which are unpaid as of the beginning of such quarter.

4.9. The Assessed Penalty, including any additional costs incurred under Paragraph 4.8, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

4.10. The undersigned representative of Respondent certifies that he or she is authorized to enter into the terms and conditions of this Consent Agreement and to bind Respondent to this document.

4.11. The undersigned representative of Respondent also certifies that, as of the date of Respondent's signature of this Consent Agreement, Respondent is complying fully with CAA § 203(a)(3), 42 U.S.C. § 7522(a)(3).

4.12. As a condition of settlement, Respondent agrees to the following: By signing this Consent Agreement, the undersigned representative of Respondent certifies that from the date of Respondent's signature: (i) it will not remove or render inoperative any emissions-related device or element of design installed on or in a motor vehicle or motor vehicle engine in violation of section 203(a)(3)(A) of the CAA, 42 U.S.C. § 7522(a)(3)(A); and (ii) it will not manufacture, sell, offer for sale, or install any part or component, including those described in Paragraph 3.29 above, in violation of section 203(a)(3)(B) of the CAA, 42, U.S.C. § 7522(a)(3)(B). Toward this end, the Respondent agrees to comply with the Compliance Plan attached as Appendix A to this Consent Agreement.

4.13. Except as described in Paragraph 4.8, each party shall bear its own costs and attorneys' fees in bringing or defending this action.

4.14. For the purposes of this proceeding, Respondent:

a. expressly waives any affirmative defenses and the right to contest the allegations contained in this Consent Agreement and to appeal the Final Order;

b. acknowledges that this Consent Agreement and the Final Order will be available to the public and agrees that it does not contain any confidential business information or any personally identifiable information;

c. certifies that the information it has supplied concerning this matter was at the time of submission true, accurate, and complete; and

d. acknowledges that there are significant penalties for knowingly submitting false, fictious, or fraudulent information, including the possibility of fines and imprisonment (see 18 U.S.C. § 1001).

4.15. The provisions of this Consent Agreement and the Final Order shall bind Respondent and its agents, servants, employees, successors, and assigns.

4.16. Respondent consents to the issuance of any specified compliance or corrective action order, to any conditions specified in this Consent Agreement, and to any stated permit action.

4.17. The above provisions in Part IV are STIPULATED AND AGREED upon by Respondent and EPA Region 10.

DATED:

1/17/2020

FOR RESPONDENT:

CHAD HALL, Member
Alligator Diesel Performance LLC

DATED:

1/27/2020

FOR COMPLAINANT:

EDWARD J. KOWALSKI, Director
Enforcement and Compliance Assurance Division
EPA Region 10

U.S. Environmental Protection Agency
1200 Sixth Avenue, Suite 155, 11-C07
Seattle, Washington 98101
(206) 553-1037

Appendix A

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."

U.S. Environmental Protection Agency
1200 Sixth Avenue, Suite 155, 11-C07
Seattle, Washington 98101
(206) 553-1037

Section 203(a)(3)(A) prohibits tampering with emission controls. This includes those controls and sensors that are in the engine (e.g., fuel injection, exhaust gas recirculation), and those that are in the exhaust (e.g., filters, catalysts, 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.[i] 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[ii] 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.[iii]

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. [iv]

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 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:**[v] Respondent generally has a reasonable basis if the conduct:
   (1) alters a vehicle, engine, or piece of equipment; and
   (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).[vi]

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").[vii]

U.S. Environmental Protection Agency
1200 Sixth Avenue, Suite 155, 11-C07
Seattle, Washington 98101
(206) 553-1037

Endnotes

---

[i]. *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 must 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, senses, 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.

[ii]. 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).

[iii]. 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.

[iv]. 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.

[v]. 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).

[vi]. 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 for, and 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.

[vii]. 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.

U.S. Environmental Protection Agency
1200 Sixth Avenue, Suite 155, 11-C07
Seattle, Washington 98101
(206) 553-1037

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:	)	DOCKET NO. CAA-10-2020-0044
	)	
ALLIGATOR DIESEL PERFORMANCE LLC,	)	**FINAL ORDER**
	)	
Hayden, Idaho	)	
	)	
Respondent.	)	

1.1. The Administrator has delegated the authority to issue this Final Order to the Regional Administrator of EPA Region 10, who has redelegated this authority to the Regional Judicial Officer in EPA Region 10.

1.2. The terms of the foregoing Consent Agreement are ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of settlement.

1.3. The Consent Agreement and this Final Order constitute a settlement by EPA of all claims for civil penalties under the CAA for the violations alleged in Part III of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(a), nothing in this Final Order shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order does not waive, extinguish, or otherwise affect Respondent's obligations to comply with all applicable provisions of the CAA and regulations promulgated or permits issued thereunder and any applicable implementation plan requirements.

U.S. Environmental Protection Agency
1200 Sixth Avenue, Suite 155, 11-C07
Seattle, Washington 98101
(206) 553-1037

1.4. This Final Order shall become effective upon filing with the Regional Hearing Clerk.

SO ORDERED this 28 day of January, 2020.

RICHARD MEDNICK
Regional Judicial Officer
EPA Region 10

U.S. Environmental Protection Agency
1200 Sixth Avenue, Suite 155, 11-C07
Seattle, Washington 98101
(206) 553-1037

Certificate of Service

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER, In the Matter of: Alligator Diesel Performance LLC, Docket No.: CAA-10-2020-0044**, was filed with the Regional Hearing Clerk and served on the addressees in the following manner on the date specified below:

The undersigned certifies that a true and correct copy of the document was delivered to:

Julie Vergeront
U.S. Environmental Protection Agency
Region 10, Mail Stop 11-C07
1200 Sixth Avenue, Suite 155
Seattle, Washington 98101

Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt to:

Murray Feldman
Holland & Hart LLP
P.O. Box 2527
Boise, Idaho 83701

DATED this 29 day of January, 2020.

TERESA YOUNG
Regional Hearing Clerk
EPA Region 10