UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:	)	**Docket No.** CAA-05-2021-0019
	)	
Diesel Performance of Grand Junction, Inc.	)	**Proceeding to Assess a Civil Penalty Under Section 205(c)(1) of the Clean Air Act, 42 U.S.C. § 7524(c)(1)**
	)	
Grand Junction, Colorado	)	
	)	
Respondent.	)	
	)	

Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 205(c)(1) of the Clean Air Act (the CAA), 42 U.S.C. § 7524(c)(1), and Sections 22.1(a)(2), 22.13(b) and 22.18(b)(2) and (3) 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.

2. Complainant is the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency (EPA), Region 5.

3. Respondent is Diesel Performance of Grand Junction, Inc. (Respondent or Diesel Performance), a corporation doing business in Colorado.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). *See* 40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO and its right to appeal this CAFO.

Statutory and Regulatory Background

9. 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 (COC).

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

11. "Motor vehicle engine" means an engine that is designed to power a motor vehicle. *See* Section 216(3) of the CAA, 42 U.S.C. § 7550(3).

12. EPA issues COCs to motor vehicle and motor vehicle engine manufacturers to certify that a particular group of motor vehicles or motor vehicle engines conforms to applicable EPA requirements governing motor vehicle emissions. *See* Section 206(a) of the CAA, 42 U.S.C. § 7525(a).

13. EPA promulgated emissions standards for particulate matter, nitrogen oxides, hydrocarbons, and other pollutants applicable to motor vehicles and motor vehicle engines,

including standards for heavy-duty diesel engines (HDDE). *See* Section 202 of the CAA, 42 U.S.C. § 7521; 40 C.F.R. Part 86.

14. To meet the emission standards in 40 C.F.R. Part 86 and qualify for a COC, HDDE motor vehicle manufacturers may utilize devices and elements of design such as Exhaust Gas Recirculation systems (EGRs) or Clean Gas Induction systems (CGIs), Diesel Oxidation Catalysts (DOCs), Diesel Particulate Filters (DPFs), and/or Selective Catalytic Reduction systems (SCRs).

15. Modern HDDE motor vehicles are equipped with electronic control modules (ECMs). ECMs continuously monitor engine and other operating parameters and control the emission control devices and elements of design, such as the engine fueling strategy, EGR/CGI, DOC, DPF, and SCR.

16. Under Section 202(m) of the CAA, 42 U.S.C. § 7521(m), EPA promulgated regulations for motor vehicles manufactured after 2007 that require HDDE motor vehicles to have numerous devices or elements of design that, working together, can detect problems with the vehicle's emission-related systems, alert drivers to these problems, and store electronically-generated malfunction information. *See* 40 C.F.R. §§ 86.005-17, 86.007-17, 86.1806-05. These devices or elements of design are referred to as "onboard diagnostic systems" or "OBD" systems.

17. It is unlawful for "any person to remove or render inoperative any device or element of design installed on or in a motor vehicle or motor vehicle engine in compliance with regulations under [Title II of the CAA] prior to its sale and delivery to the ultimate purchaser, or for any person knowingly to remove or render inoperative any such device or element of design

after such sale and delivery to the ultimate purchaser." *See* Section 203(a)(3)(A) of the CAA, 42 U.S.C. § 7522(a)(3)(A), 40 C.F.R. § 1068.101(b)(1). This is also referred to as "tampering."

18. It is 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 engine in compliance with regulations under[Title II of the CAA], 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." *See* Section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B), 40 C.F.R. § 1068.101(b)(1). These parts or components are also referred to as "defeat devices."

19. The Administrator of EPA (the Administrator) may assess a civil penalty of up to $4,876 per motor vehicle, motor vehicle engine, or part or component for violations that occurred after November 2, 2015, where penalties are assessed on or after December 23, 2020, under Section 205(a)(3) of the CAA, 42 U.S.C. § 7524(a) and 40 C.F.R. Part 19.

Factual Allegations and Alleged Violations

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

21. On April 30, 2020, EPA issued an Information Request (Request) to the Respondent pursuant to Section 208 of the CAA, 42 U.S.C. § 7542. The Request sought information related to the Respondent's purchase, sale, offer for sale, distribution, and/or installation, of certain motor vehicle and engine parts or components.

22. On June 28, 2020, Respondent submitted a response to the Request by providing invoices and documentation related to Respondent's purchase, sale, offer for sale, and

installation of parts or components and services (including ECM tunes) manufactured by Diesel Spec, Inc.

23. On October 27, 2020, Respondent stated that it installed EGR block plates, straight pipe exhausts, and tampered with motor vehicles and motor vehicle engines, including by drilling through DPF systems, removing DPF and SCR systems to install a straight pipe exhaust and welding off EGRs.

24. The parts or components, including EGR block plates, straight pipe exhausts, and ECM tunes, sold, offered for sale, and/or installed by Respondent were intended for "motor vehicles" and were designed for use with motor vehicle HDDEs such as those manufactured by Cummins, Detroit, Paccar, Maxxforce, and other heavy-duty diesel engines, for which each manufacturer obtained COCs establishing compliance with CAA emissions standards.

25. The sale and/or installation of these EGR block plates, straight pipe exhausts, and ECM tunes rendered inoperative elements of design installed on or in a motor vehicle or motor vehicle engine and allowed for the removal or rendering inoperative of emission control devices (i.e., EGR/CGI, DOC, DPF, and/or SCR system(s)) without illuminating a malfunction indicator lamp in the vehicle's OBD system, prompting any diagnostic trouble code in the OBD system, or causing any engine derating due to the removal or disabling of an emission control device. Each of these parts or components constitutes a defeat device.

26. Based on the information provided in Respondent's response to the Request, between January 4, 2017 and May 1, 2020, Respondent sold and/or installed defeat devices for and tampered with at least 155 motor vehicles or motor vehicle engines.

27. On September 29, 2020, EPA issued a Finding of Violation (FOV) to Respondent alleging violations of Sections 203(a)(3)(A) and (B) of the CAA, 42 U.S.C. § 7522(a)(3)(A)

and (B), related to Respondent's sale and/or installation of defeat devices and tampering of motor vehicle or motor vehicle engines.

28. During an October 27, 2020 conference call with EPA, Respondent confirmed that it no longer sells and/or installs defeat devices or tampers with motor vehicles or motor vehicle engines.

29. Respondent knowingly removed and/or rendered inoperative devices or elements of design installed in or on motor vehicles or motor vehicle engines in compliance with the CAA by installing or modifying software on ECMs to allow the motor vehicles to operate without EGR/CGI, DOC, DPF, and/or SCR systems, by physically removing the DPF and/or SCR systems and by installing parts or components that removed and/or bypassed EGR/CGI, DPF, and/or SCR systems in violation of Section 203(a)(3)(A) of the CAA, 42 U.S.C. § 7522(a)(3)(A).

30. Respondent sold, offered to sell, and installed parts or components, including EGR block plate kits, exhaust kits, and ECM tunes, intended for use with, or as part of, a motor vehicle or motor vehicle engine, where a principal effect of the part or component was to bypass, defeat or render inoperative devices and elements of design that control emissions, such as the engine fueling strategy, EGR/CGI, DOC, DPF, SCR, OBD systems, installed on or in a motor vehicle or motor vehicle engine in compliance with the CAA. Respondent knew or should have known that such part or component was being offered for sale or installed for such use or put to such use in violation of Section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B).

Civil Penalty

31. Based on analysis of the factors specified in Section 205(c) of the CAA, 42 U.S.C. § 7524(c), EPA's Clean Air Act Title II Vehicle & Engine Civil Penalty Policy, the facts of this case, the Respondent's ability to pay, the compliance steps that Respondent has taken and agrees

to take, Respondent's certifications set forth herein, and Respondent's cooperation in resolving this matter, Complainant has determined that an appropriate civil penalty to settle this action is $210,000.

32. Within 30 days after the Effective Date of this CAFO, Respondent must pay the above civil penalty by ACH electronic funds transfer, payable to "Treasurer, United States of America," and sent to:

US Treasury REX/Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22-checking

33. Respondent must send a notice of payment that states Respondent's name and the docket number of this CAFO to EPA at the following addresses when it pays the penalty:

Air Enforcement and Compliance Assurance Branch
U.S. Environmental Protection Agency, Region 5
r5airenforcement@epa.gov

Cynthia King (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
king.cynthia@epa.gov

Regional Hearing Clerk (E-19J)
U.S. Environmental Protection Agency, Region 5
r5hearingclerk@epa.gov

34. This civil penalty is not deductible for federal tax purposes.

35. If Respondent does not timely pay this civil penalty, EPA may request the Attorney General of the United States to bring an action to collect any unpaid portion of the penalty with interest, nonpayment penalties and the United States enforcement expenses for the collection action under Section 205(c)(6)of the CAA, 42 U.S.C. § 7524(c)(6). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

36. Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury pursuant to 26 U.S.C. § 6621(a)(2). Respondent must pay the United States enforcement expenses, including but not limited to attorney fees and costs incurred by the United States for collection proceedings. In addition, Respondent must pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue. This nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter. 42 U.S.C. § 7524(c)(6)(B).

Other Conditions

37. By signing this Consent Agreement, Respondent agrees to the following: (i) Respondent 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); (ii) Respondent will not manufacture, sell, offer for sale, or install any part or component in violation of Section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B); and (iii) Respondent acknowledges receipt of EPA's November 23, 2020 "Tampering Policy: The EPA Enforcement Policy on Vehicles and Engine Tampering and Aftermarket Defeat Devices under the Clean Air Act" (Appendix A).

38. By signing this Consent Agreement, Respondent understands that the violations addressed in this CAFO may be considered as a "History of Noncompliance" for any future violations of Title II of the CAA, 42 U.S.C. § 7522(a)(3)(A) and (B), by Respondent or any other business entity owned or operated by Dan Johnson, as addressed in the January 18, 2021, Clean Air Act Title II Vehicle & Engine Civil Penalty Policy.

39. Within 30 days after the date of their signature on this CAFO , Respondent will have removed all defeat devices from all vehicles and engines owned or operated by Respondent

and returned the ECM of each vehicle and engine to factory settings.

40. By the date of their signature on this CAFO, Respondent will have permanently destroyed or returned to the manufacturer all defeat devices in its inventory and/or possession (including, but not limited to, any remote tuning devices or EGR block plates, such as those manufactured or sold by Diesel Spec Inc.).

41. Within 30 calendar days from the Respondent's signature on this CAFO, Respondent shall certify with proof that Respondent has completed the actions required in Paragraphs 39 and 40, above.

42. Within 14 calendar days from the Respondent's signature on this CAFO, Respondent shall remove from its webpages and any social media platform(s) all advertisements, photos, videos, and information that relate to performing tampering and/or selling, offering to sell, and/or installing defeat devices except advertisements, photos, videos, or information relating to how to comply with the CAA.

43. Within 14 calendar days from date of the Respondent's signature on this CAFO, the Respondent shall post a publicly-accessible announcement about Respondent's settlement with EPA on Respondent's current website homepage(s), Respondent's social media homepage(s), including, but not limited to, all Facebook, Twitter, Pinterest, and Instagram accounts associated with Respondent. The announcement shall remain posted for at least 60 calendar days from the date the announcement is posted. Respondent shall use the text contained in Appendix B (Announcement) in at least 12-point font, or another notice reviewed and approved by EPA, to provide such announcement. Respondent shall provide EPA with proof of posting the announcement within 30 calendar days from the Effective Date of this CAFO.

44. Within 30 calendar days from the date of Respondent's signature on this CAFO,

Respondent shall notify, in writing, all customers of Respondent's settlement with EPA. Respondent shall use the letter contained in Appendix C (Letter), or another letter reviewed and approved by EPA to provide such notice. The Letters shall be transmitted by certified U.S. Mail, return receipt requested. Respondent shall notify EPA with proof of each and every mailing within 30 calendar days from the Effective Date of this CAFO to demonstrate that all letters have been sent.

45. Failure to comply with Paragraph 37 of this CAFO may constitute a violation of Sections 203(a)(3)(A) and (B) of the CAA, 42 U.S.C. § 7522(a)(3)(A) and (B), and Respondent could be subject to penalties of up to the statutory civil penalties in 40 C.F.R. § 19.4.

46. 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 is 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.

General Provisions

47. The parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: king.cynthia@epa.gov (for Complainant), and jglenn@johnglennlaw.com (for

Respondent).

48. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in this CAFO.

49. The effect of the settlement described in Paragraph 48, above, is conditioned upon the accuracy of Respondent's representations to EPA.

50. The CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

51. This CAFO does not affect Respondent's responsibility to comply with the CAA and other applicable federal, state and local laws. Except as provided in Paragraph 48, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

52. Respondent certifies that it is complying fully with Sections 203(a)(3)(A) and (B) of the CAA, 42 U.S.C. § 7522(a)(3)(A) and (B).

53. This CAFO constitutes an "enforcement response" as that term is used in EPA's January 18, 2021, Clean Air Act Title II Vehicle & Engine Civil Penalty Policy to determine Respondent's "full compliance history" under Section 205(b) of the CAA, 42 U.S.C. § 7524(b).

54. The terms of this CAFO bind Respondent, and its successors and assigns.

55. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

56. Each party agrees to bear its own costs and attorney's fees in this action.

57. This CAFO constitutes the entire agreement between the parties.

Diesel Performance of Grand Junction, Inc., Respondent

4-22-2021
Date

Dan Johnson, President
Diesel Performance of Grand Junction, Inc.

DJ

United States Environmental Protection Agency, Complainant

MICHAEL HARRIS

Digitally signed by MICHAEL HARRIS
Date: 2021.04.28 11:46:10 -05'00'

Michael D. Harris
Division Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 5

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk ("Effective Date"). This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

ANN COYLE Digitally signed by ANN COYLE Date: 2021.04.28 16:49:30 -05'00'

Date

Ann L. Coyle
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 5

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

ASSISTANT ADMINISTRATOR
FOR ENFORCEMENT AND
COMPLIANCE ASSURANCE

November 23, 2020

MEMORANDUM

SUBJECT: EPA Tampering Policy: The EPA Enforcement Policy on Vehicle and Engine Tampering and Aftermarket Defeat Devices under the Clean Air Act

FROM: Susan Parker Bodine SUSAN BODINE Digitally signed by SUSAN BODINE Date: 2020.11.23 11:51:25 -05'00'

This policy concerns the civil enforcement of the Clean Air Act's (Act or CAA) prohibitions on tampering and aftermarket defeat devices. The EPA's goal in issuing this Policy is to ensure we achieve the human and environmental health protections Congress intended by enforcing these prohibitions while not unduly restraining commerce in the aftermarket sales and service industry. The EPA reaffirms its longstanding practice of using enforcement discretion not to pursue conduct that could potentially constitute a violation of the Clean Air Act if the person engaging in that conduct has a documented, reasonable basis to conclude 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 a documented reasonable basis does not in and of itself constitute a violation.

This Policy supersedes and replaces the following: Mobile Source Enforcement Memorandum 1A (June 25, 1974); Exhaust System Repair Guidelines (March 13, 1991); Engine Switching Fact Sheet (March 13, 1991). These former statements of EPA policy, addenda to them, and all statements restating or interpreting them, no longer apply. The EPA has undergone reorganizations since the issuance of these former statements, but each was issued by an office of the EPA that was responsible for (among other things) the civil enforcement of the prohibitions on tampering and aftermarket defeat devices. Based on this history, and in consultation with the EPA's Office of Transportation and Air Quality, this Tampering Policy is issued by the Office of Enforcement and Compliance Assurance.

This Policy is nonbinding and in no way affects the EPA's authority to investigate and enforce compliance with the Act. *E.g.*, CAA §§ 113, 114, 204, 205, 206, 208, 307, 42 U.S.C. §§ 7413, 7414, 7523, 7524, 7525, 7542, 7607. This Policy is not a final agency action. It is direction for EPA personnel regarding the potential investigation and prosecution of civil enforcement actions, and to inform the public. The EPA independently evaluates each case, considers relevant case-specific facts and circumstances, and reserves the discretion to act at variance with this Policy. The EPA also reserves the right to change this Policy at any time. This Policy creates no obligations on regulated parties, but instead describes steps they may take to avoid becoming the subject of an EPA enforcement action.

Questions about this Policy—or tips about conduct that might be illegal activity—may be directed to the EPA's Vehicle and Engine Enforcement Branch. Contact tampering@epa.gov.

Scope of this Policy

This Policy addresses only potential civil enforcement actions under section 205 of the Act, 42 U.S.C. § 7524, for violations of sections 203(a)(3) or 213(d) of the Act, 42 U.S.C. § 7522(a)(3) and 7547(d), and 40 C.F.R. § 1068.101(b)(1)–(2). Note that state and federal law might apply to actions taken in the course of vehicle maintenance or modification, including the criminal prohibition against tampering with emissions monitoring devices (such as onboard diagnostic systems), in section 113(c)(2)(C) of the Act, 42 U.S.C. § 7413(c)(2)(C).

Section 203(a)(3) of the Act prohibits tampering with emissions controls, and also prohibits making and selling products with a principal effect of bypassing, defeating, or rendering inoperative emissions controls. The prohibitions in section 203(a)(3) apply to all vehicles, engines, and equipment subject to the certification requirements under section 206 of the Act, or other design requirements in the Act or regulations. This includes all motor vehicles (e.g., light-duty vehicles, highway motorcycles, heavy-duty trucks) and motor vehicle engines (e.g., heavy-duty truck engines). Section 213 of the Act and regulations written thereunder apply these prohibitions to 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, evaporative emissions, and onboard diagnostic systems. The prohibitions also apply to those products (e.g., replacement engines under 40 C.F.R. § 1068.240 and products under transition programs like that in 40 C.F.R. § 1039.625) that might be exempt from the Act's certification requirements but still must have emissions controls and meet standards.

The Act's prohibitions on tampering and defeat devices apply for the entire life of vehicles, engines, and equipment. They apply regardless of whether the regulatory "useful life" or warranty period has ended.

This Policy does not address vehicles, engines, or equipment that are excluded from the definitions of motor vehicle, motor vehicle engine, nonroad vehicle, and nonroad engine. *See* 40 C.F.R. § 85.1703 (defining "motor vehicle"). For example, this Policy does not address vehicles originally built and used exclusively for competitive motor sports, which are excluded from the Act's definitions of motor vehicle and nonroad vehicle. Also, this Policy does not address EPA-certified motor vehicles that are converted into a vehicle used solely for competition motorsports, nor aftermarket parts purportedly manufactured or sold for that purpose.

This Policy does not address conduct that is expressly addressed by regulations. This, for example, includes requirements for certification of new vehicles, engines, and equipment (including the regulatory requirements to disclose auxiliary emissions control devices and demonstrate they are not defeat devices), alternative fuel conversions at 40 C.F.R. Part 85, Subpart F, rebuilds pursuant to 40 C.F.R. § 1068.120, and the conversion of nonroad vehicles and nonroad engines for competition use only pursuant to 40 C.F.R. § 1068.235.

If conduct is addressed in a *general* manner by this Policy but that same conduct is addressed in a *specific* manner by a separate EPA enforcement policy, then the specific policy governs. Under such circumstances, if the EPA withdraws the specific policy, then the EPA Tampering Policy will govern. For example, the EPA has a 1986 enforcement policy that specifically addresses replacement catalysts for light-duty gasoline motor vehicles that are beyond their emissions warranty. Sale and Use of Aftermarket Catalytic Converters, 51 Fed. Reg. 28,114 and 51 Fed. Reg. 28,132 (Aug. 5, 1986). The EPA Tampering Policy includes provisions that generally address replacement after-treatment systems like catalysts. If the EPA withdraws this 1986 catalyst policy, then the generally applicable provisions of

the EPA Tampering Policy will apply to replacement catalysts for light-duty gasoline motor vehicles that are beyond their emissions warranty.

This Policy does not address remanufacturing a vehicle, engine, or piece of equipment into a "new" product. As with manufacturing from new components, manufacturing a motor vehicle, motor vehicle engine, nonroad vehicle, or nonroad engine from used components is generally subject to the Act's certification requirements. Generally, the remanufactured vehicle, engine, or equipment must be covered by an EPA certificate of conformity (either its original certificate or a new certificate) or exempted from the certification requirements before being sold, offered for sale, or placed back into service.

This Policy does not address potential violations of section 203(a)(3) by original equipment manufacturers (OEMs).

Lastly, this Policy addresses only the federal Clean Air Act. Many states also have laws prohibiting tampering with in-use vehicles, and some states also prohibit dealers from selling tampered in-use vehicles. In addition, there are state and local inspection programs that require periodic vehicle inspections to determine the integrity of emissions control systems. This Policy does not affect a person's obligation to comply with such state and local laws.

Aftermarket Defeat Devices and Tampering

Vehicle manufacturers employ a wide variety of elements of design to control emissions. Examples include fueling strategies, ignition timing, exhaust gas recirculation systems, filters, and catalysts. Aftermarket parts with a principal effect of bypassing, defeating, or rendering inoperative any aspect of these elements might be illegal aftermarket defeat devices. The EPA enforces the Act's prohibitions on tampering and aftermarket defeat devices to prevent air pollution that harms people's health, especially oxides of nitrogen and particulate matter, and to maintain a level playing field in the aftermarket parts and service industries. The agency generally focuses its civil enforcement efforts on companies that manufacture or sell aftermarket defeat devices, companies that tamper with commercial fleets of vehicles, and service shops that routinely delete emissions control equipment.

All modern motor vehicles and engines, and many nonroad vehicles, engines, and equipment, are equipped with electronic control units (ECUs). ECUs are computers that process user input (like throttle position), the conditions inside and outside the engine and emissions control systems (like atmospheric conditions, engine load, emissions levels), and other information. Based on this information, and according to their programming, ECUs direct the operation of the engine and emissions control systems. OEMs design fuel injection timing—and fueling strategy generally—to be a primary emissions control device and program the ECU accordingly. As described below, ECUs also commonly manage after-treatment systems and onboard diagnostic systems. Products that change an ECU—commonly known as tuners—might be an illegal aftermarket defeat device, the use or installation of which might constitute illegal tampering.

Besides the ECU, OEMs also employ various emissions control equipment. These include exhaust gas recirculation (EGR) systems, which recirculate an engine's exhaust back through the engine to reduce emissions. This also includes a variety of after-treatment systems (which are commonly managed by software in the ECU) which treat exhaust from the engine in order to reduce the amount of pollution emitted into the ambient air. Such devices include three-way catalysts, diesel oxidation catalysts, diesel particulate filters, and selective catalytic reduction systems. The manufacture, sale, offering for sale, or installation of hardware that modifies such emissions control equipment might be prohibited by the

Clean Air Act. Common examples are products that block EGR systems and hollow "straight" pipes that replace filters or catalysts that belong in the exhaust system.

Any part or component that changes an onboard diagnostic system (OBD system) might be an illegal aftermarket defeat device, the use or installation of which might constitute illegal tampering. OBD systems are critical to ensure vehicles, engines, and equipment continue to meet emissions standards throughout the product's life. Egregious examples of aftermarket defeat devices are *delete kits* which include replacement exhaust pipes to remove after-treatment systems and tuners that both reprogram engine function and override the OBD system so the tampered vehicle will operate without any "check engine" light or other result from the OBD system.

Legal Context for This Policy

This Policy concerns the enforcement of Part A of Title II of the Act, 42 U.S.C. §§ 7521–7554, and the regulations promulgated thereunder. These laws reduce air pollution from mobile sources. In creating the Act, Congress found, in part, that "the increasing use of motor vehicles . . . has resulted in mounting dangers to the public health and welfare." CAA § 101(a)(2), 42 U.S.C. § 7401(a)(2). Congress' purpose in creating the Act, in part, was "to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population." CAA § 101(b)(1), 42 U.S.C. § 7401(b)(1).

As required by the Act, the EPA has prescribed standards applicable to the emissions of certain air pollutants from nearly every vehicle, engine, and piece of equipment containing an engine that is introduced into United States commerce. Regulated air pollutants from vehicles, engines, and equipment include oxides of nitrogen, hydrocarbons, carbon monoxide, particulate matter, and greenhouse gases. Regulated products include motor vehicles, motor vehicle engines, nonroad vehicles, nonroad engines, and equipment containing nonroad engines.

To ensure that every vehicle, engine, and piece of equipment introduced into United States commerce satisfies the applicable emissions standards, as required by the Act, the EPA administers a certification program. Under this program, the EPA issues certificates of conformity (COCs), and thereby approves these products for introduction into United States commerce. As described above, OEMs employ many elements of design to meet emissions standards, and pursuant to EPA regulations they must describe these elements in their COC applications and actually employ them in their products to maintain compliance.

The Act requires OEMs to provide emission-related warranties for their products. CAA § 207, 42 U.S.C. § 7541. The EPA has specified warranty requirements by regulation.

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).[1] The Act directs the EPA to enforce emissions standards

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

for nonroad vehicles and nonroad engines in the same manner as for motor vehicles and motor vehicle engines. CAA § 213(d), 42 U.S.C. § 7547(d). Accordingly, the EPA has issued regulations prohibiting tampering and aftermarket defeat devices for nonroad vehicles and nonroad engines at 40 C.F.R. § 1068.101(b)(1)–(2). Where this Policy refers to the prohibitions in section 203(a)(3) regarding motor vehicles and motor vehicle engines, unless otherwise noted, it also refers to the prohibitions on tampering and aftermarket defeat devices for nonroad vehicles and nonroad engines in 40 C.F.R. § 1068.101(b)(1)–(2).

Section 203(a)(3)(A) prohibits tampering with emissions controls, including 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 and catalysts). Section 203(a)(3)(B) prohibits aftermarket defeat devices. This includes hardware (e.g., modified exhaust pipes) and software (e.g., engine tuners and tunes). Oftentimes, aftermarket defeat devices, while sold as a single product, alter numerous emissions-related elements of design. For such aftermarket defeat devices, multiple violations occur when a person manufactures, sells, offers for sale, or installs them.

The EPA may bring enforcement actions for violations of section 203(a)(3) under its administrative authority or by referring matters to the United States Department of Justice. CAA §§ 204, 205, 42 U.S.C. §§ 7523, 7524. Violations are subject to injunctive relief under section 204 of the Act, 42 U.S.C. § 7523. Persons violating section 203(a)(3) are currently subject to a civil penalty of up to $48,192 (for manufacturers and dealers) or $4,819 (for individuals) for each act of tampering, and $4,819 for each aftermarket defeat device. These amounts periodically increase with inflation. 40 C.F.R. § 19.4.

Aftermarket Defeat Devices: CAA § 203(a)(3)(B), 42 U.S.C. § 7522(a)(3)(B), 40 C.F.R. § 1068.101(b)(2): "[The following acts and the causing thereof are prohibited–] 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[.]"

EPA Enforcement Policy Statement on Tampering and Aftermarket Defeat Devices

The EPA typically does not take enforcement action for conduct that might be a violation of section 203(a)(3) of the Clean Air Act if the person engaging in the conduct has a documented "reasonable basis" to conclude that the conduct (or, where the conduct in question is the manufacturing or sale of a part or component, the installation and use of that part or component) does not and will not adversely affect emissions. This Policy Statement does not apply, however, to conduct affecting an OBD system, which may be subject to enforcement regardless of effect on emissions.

The EPA typically considers the documentation of a reasonable basis to be relevant only if that documentation exists at or before the time the conduct that might be a potential violation of section 203(a)(3) occurs (including sale, installation, and service).

When determining whether service performed on an element of an emissions control system was illegal tampering, the EPA typically compares the element after the service to the element's fully-functioning certified configuration (or, if not certified, the original configuration), rather than to the element's configuration prior to the service. Where a person is asked to perform service on an element of an emissions control system that has already been tampered with, the EPA will generally take no enforcement action against that person for their subsequent conduct if the person restores the element to its certified configuration or declines to perform the service.

The EPA has identified several ways that a person may document a reasonable basis to conclude their conduct does not adversely affect emissions. The list on the following pages is meant to be illustrative and is not exhaustive. Insofar as this Policy describes a reasonable basis or other consideration partly in terms of specific numbers, test methods, or other criteria, they reflect the EPA's anticipated judgment in distinguishing between those situations where the EPA would likely investigate further and those situations where the EPA would likely exercise enforcement discretion based on the information available and take no further action. The EPA retains discretion to vary from those criteria. In considering whether to bring an enforcement action under section 203(a)(3), the EPA considers each case independently, taking into account all relevant case-specific facts and circumstances.

A. Identical to Certified Configuration: The EPA will typically find that a person has a reasonable basis for conduct if that conduct:

(1) is solely for the maintenance, repair, rebuild, or replacement of an emissions-related element of design; and

(2) restores that element of design to be identical in all emissions-related respects to the certified configuration (or, if not certified, the original configuration) of the vehicle, engine, or piece of equipment.

Notes on Reasonable Basis A:

i. The conduct (e.g., maintenance, repair, rebuild, or replacement) should be performed according to instructions from the OEM of the vehicle, engine, or equipment.

ii. The "certified configuration" of a vehicle, engine, or piece of equipment is the design for which the EPA has issued a certificate of conformity. 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.

iii. 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 OEM's part to be replaced, and should make available either: (a) documentation that the replacement part is identical in all emissions-related respects to the replaced part (including engineering drawings or similar showing identical dimensions, materials, and design), or (b) test results that support the representation. Such written representations may be in literature that accompanies the product, or in a publicly available source such as a product catalogue or website.

iv. In the case of replacement parts, this reasonable basis applies equally to new parts as to used or remanufactured parts.

v. In the case of engine switching, the person installing an engine into a different vehicle or piece of equipment would have a reasonable basis if they could demonstrate that 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, one may show through emissions testing that there is a reasonable basis for an engine switch under Reasonable Basis D (Emissions Testing), below. Note that there are substantial practical limitations on switching engines. Vehicle chassis and engine designs of one vehicle manufacturer are 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 conform to a certified configuration.

B. Emissions Testing for Replacement After-Treatment Systems for Older Vehicles, Engines, and Equipment: The EPA will typically find that a person has a reasonable basis for conduct if:

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

(2) emissions testing shows that the vehicle, engine, or piece of equipment with the replacement after-treatment system meets or would meet all applicable emissions standards for an amount of time or distance (as applicable) that is equivalent to at least 50% of the regulatory useful life for that category of vehicle, engine, or piece of equipment; and

(3) the replacement after-treatment system bears a permanent label stating the name of the manufacturer of the system, the part number or identifier, the date of manufacture, and the suitable applications for the system.

Notes on Reasonable Basis B:

i. This reasonable basis applies equally to new replacement after-treatment systems as to used or remanufactured replacement after-treatment systems.

ii. The EPA is unlikely to find that there is a reasonable basis if the system sold, offered for sale, or installed on a vehicle, engine, or piece of equipment is not on a list of applications approved by the after-treatment system manufacturer.

iii. In demonstrating the durability of a replacement after-treatment system, one may employ accelerated aging techniques and OEM deterioration factors (as specified in the pertinent application for EPA certification) if doing so is consistent with good engineering judgment and is acceptable by the California Air Resources Board for purposes of obtaining an Executive Order for that kind of replacement after-treatment system.

iv. In screening replacement after-treatment systems for potential investigation or enforcement action, EPA enforcement personnel will typically consider whether the system is covered by a warranty from its manufacturer (in terms of both emissions performance and structural integrity). The EPA generally views a warranty as providing further support for an identified reasonable basis, as described above, if the warranty lasts for a distance (or operating hours, as applicable) equivalent to at least 50% of the useful life of that category of vehicle, engine, or piece of equipment. In the case of replacement after-treatment systems for motor vehicles and motor vehicle engines, the EPA generally views a warranty as providing further support for an identified reasonable basis, as described above, if the warranty lasts at least until whichever of the following occurs first: 2 years (for heavy-duty applications) or 5 years (for light-duty applications), or 50% of the useful life of that category of motor vehicle or motor vehicle engine.

C. New After-Treatment Systems that Decrease Emissions: The EPA will typically find that a person has a reasonable basis for conduct if:

(1) that conduct involves mechanically adding an after-treatment system;

(2) the system is added into the exhaust of a vehicle, engine, or piece of equipment;

(3) the vehicle, engine, or piece of equipment is EPA-certified as having no such system and originally manufactured without any such system; and

(4) any person familiar with emissions control system design and function would reasonably believe adding the system would decrease emissions.

D. **Emissions Testing:** The EPA will typically find that a person has a reasonable basis for conduct if:

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

(2) emissions testing of an appropriate test vehicle, engine, or piece of equipment that had been identically altered by the conduct shows that the vehicle, engine, or piece of equipment will comply with all applicable regulations including 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 as suitable only to those vehicles, engines, or pieces of equipment that are appropriately represented by the tested product.

E. **EPA Certification:** The EPA will typically find that a person has a reasonable basis for conduct that has been certified by the EPA under 40 C.F.R. Part 85 Subpart V (or any other applicable EPA certification or exemption program).

Notes on Reasonable Basis E:

i. This reasonable basis is subject to the same terms and limitations that the EPA issues with any such certification. E.g., 40 C.F.R. Part 85, Subpart V.

ii. In the case of an EPA-certified aftermarket part or component, a reasonable basis generally would exist only if: the part or component is manufactured, sold, offered for sale, or installed on the vehicle, engine, or equipment for which the aftermarket part or component is certified; the installation is performed according to manufacturer instructions; the part or component has not been altered or customized; and the part or component remains identical to the EPA-certified part or component.

F. **CARB Exemption:** The EPA will typically find that a person has a reasonable basis for conduct if the emissions-related element of design that is the object of the conduct (or the conduct itself) has been exempted by the California Air Resources Board (CARB).

Notes on Reasonable Basis F:

i. This reasonable basis is subject to the same terms and limitations that CARB imposes with any such exemption. Generally, the conduct must be legal in California.

ii. In the case of an aftermarket part or component, the EPA considers exemption from CARB to be relevant even where the exemption for that part or component is no longer in effect due solely to passage of time.

iii. In the case of a replacement after-treatment system, the EPA considers exemption from CARB to be relevant even where the vehicle, engine, or equipment on which the system is installed is not among the vehicles, engines, or equipment covered by the CARB exemption, provided that the manufacturer of that replacement system, using good engineering judgment, represents that the system will not adversely affect emissions when used on the other vehicles, engines, or equipment (e.g., because as compared to the vehicles, engines, or equipment covered by the CARB exemption the other vehicles, engines, or equipment are certified to an equivalent or less stringent emission tier level, have the same exhaust configuration, and have similar or less demanding physical characteristics including vehicle weight and engine displacement).

General Notes on Emissions Testing:

i. Where the above-described reasonable bases under the Policy Statement involve emissions testing, unless otherwise noted, the EPA expects that testing to be consistent with the following in order to form a reasonable basis.

ii. The emissions testing may be performed by someone other than the person engaging in the conduct (such as an aftermarket parts manufacturer), but the person performing the conduct should have all documentation of the reasonable basis at or before the time the conduct occurs. Such documentation may be in literature that accompanies the product, or in a publicly available source such as a product catalogue or website.

iii. The emissions testing and documentation are generally 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. One may employ OEM deterioration factors as specified in the pertinent application for EPA certification if doing so is consistent with good engineering judgment.

iv. The applicable emissions standards are either the emissions standards on the Emissions 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 should choose the "worst case" product from among all the products for which the part or component is intended. The appropriate source for worst-case technical information is the product's OEM.

v. The EPA expects that the vehicle, engine, or equipment, as altered by the conduct, would perform identically both on and off the test(s), and should have no element of design that is not substantially included in the test(s).

Other Conditions and Notes:

i. The documentation of the above-described reasonable bases under this Policy Statement must be provided to the EPA upon request, based on the EPA's authority to require information to determine compliance. CAA § 208, 42 U.S.C. § 7542.

ii. The EPA will review reasonable bases as set forth in this Policy in the context of an investigation, and does not issue pre-approvals of reasonable bases.

iii. A reasonable basis consistent with this Policy does not constitute a certification, accreditation, approval, or any other type of endorsement by the 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 this Policy. This includes written and oral advertisements and other communication. However, if true on the basis of this Policy, statements such as the following may be made: "Has no adverse effect on emissions, consistent with the EPA Tampering Policy (2019)."

Appendix B:
Announcement

On XX Date, Diesel Performance of Grand Junction, Inc. entered into a settlement with the United States Environmental Protection Agency (U.S. EPA) to resolve alleged violations of Section 203(a)(3)(A) and 203(a)(3)(B) of the Clean Air Act, related to removing and/or rendering inoperative devices or elements of design and the selling, offering to sell, and/or installing defeat devices for use on heavy-duty diesel engines.

By signing a consent agreement with U.S. EPA, Diesel Performance of Grand Junction, Inc. has certified that it will comply with Section 203(a)(3) of the CAA, which makes it unlawful for: "(A) any person to remove or render inoperative any device or element of design installed on or in a motor vehicle or motor vehicle engine in compliance with regulations under [Title II of the CAA] prior to its sale and delivery to the ultimate purchasers, or for any person knowingly to remove or render inoperative any such device or element of design after such sale and delivery to the ultimate purchaser; or (B) 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 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."

Diesel Performance of Grand Junction, Inc. will pay a penalty of $210,000 and comply with the consent agreement to ensure ongoing compliance with the Clean Air Act.

If you have any questions regarding this announcement, please ask for Dan Johnson.

Thank you,
Dan Johnson

Appendix C:
Letter

To Whom It May Concern:

On XX Date, Diesel Performance of Grand Junction, Inc. entered into a settlement with the United States Environmental Protection Agency (U.S. EPA) to resolve alleged violations of Section 203(a)(30(A) and 203(a)(3)(B) of the Clean Air Act, related to removing and/or rendering inoperative devices or elements of design and the selling, offering to sell, and/or installing defeat devices for use with heavy-duty diesel engines.

By signing a consent agreement with U.S. EPA, Diesel Performance of Grand Junction, Inc. has certified that it will comply with Section 203(a)(3) of the CAA, which makes it unlawful for: "(A) any person to remove or render inoperative any device or element of design installed on or in a motor vehicle or motor vehicle engine in compliance with regulations under [Title II of the CAA] prior to its sale and delivery to the ultimate purchasers, or for any person knowingly to remove or render inoperative any such device or element of design after such sale and delivery to the ultimate purchaser; or (B) 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 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."

Diesel Performance of Grand Junction, Inc. will pay a penalty of $210,000 and comply with the consent agreement to ensure ongoing compliance with the Clean Air Act.

If you have any questions regarding this letter, please ask for Dan Johnson.

Thank you,
Dan Johnson