UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7

BEFORE THE ADMINISTRATOR

In the Matter of:	)	
	)	
UpCountry Fab and Performance, LLC,	)	**Docket No.** CAA 07-2021-0001
	)	
Respondent.	)	
	)	

CONSENT AGREEMENT

1. PRELIMINARY STATEMENT

1. This is an administrative penalty assessment proceeding brought under Section 205(b) of the Clean Air Act (the "Act"), 42 U.S.C. § 7524(b), and Sections 22.13 and 22.18 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules"), as codified at 40 C.F.R. Part 22.

2. Complainant, by delegation from the Administrator of the EPA, the Regional Administrator, EPA, Region 7, and the Director of the Enforcement and Compliance Assurance Division, EPA, Region 7, is the Chief of the Air Branch, Region 7.

3. Respondent is UpCountry Fab and Performance, LLC, a limited liability company registered to do business in the state of Iowa. Respondent is a "person" as defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e).

4. Complainant and Respondent, having agreed that settlement of this action is in the public interest, consent to the entry of this consent agreement ("Consent Agreement" or "Agreement") and the attached final order ("Final Order" or "Order") without adjudication of any issues of law or fact herein, and Respondent agrees to comply with the terms of this Consent Agreement and Final Order.

2. JURISDICTION

5. This Consent Agreement is entered into under Section 205 of the Act, as amended, 42 U.S.C. § 7524, and the Consolidated Rules, 40 C.F.R. Part 22.

6. The Regional Judicial Officer is authorized to ratify this Consent Agreement which memorializes a settlement between Complainant and Respondent. 40 C.F.R. §§ 22.4(b) and 22.18(b).

7. The issuance of this Consent Agreement and attached Final Order simultaneously commences and concludes this proceeding. 40 C.F.R. § 22.13(b).

3. GOVERNING LAW

8. Title II of the CAA, 42 U.S.C. §§ 7521-7554, was enacted to reduce air pollution from mobile sources. In enacting the CAA, 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).

9. EPA promulgated emission standards for particulate matter (PM), nitrogen oxides (NOx), and other pollutants emitted by motor vehicles and motor vehicle engines, including Heavy Duty Diesel Engine (HDDE) trucks, under Section 202 of the CAA, 42 U.S.C. § 7521. See also 40 C.F.R. Part 86. HDDE 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).

10. 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). EPA issues COCs to vehicle manufacturers under Section 206(a) of the CAA, 42 U.S.C. § 7525(a), to certify that a particular group of motor vehicles and motor vehicle engines conform to applicable EPA requirements governing motor vehicle emissions. A manufacturer's application for a COC must include, among other things, a description of the HDDE, its emission control systems, all auxiliary emission control devices and the engine parameters monitored.

11. Pursuant to the emission standards at 40 C.F.R Part 86, HDDE manufacturers employ many devices and elements of design. "Element of design" means "any control system and/or control system calibrations, and/or the results of systems interaction, and/or hardware items on a motor vehicle or motor vehicle engine. 40 C.F.R. § 86.094-2.

12. Elements of design that HDDE manufacturers employ include retarded fuel injunction timing and other fueling specifications as emission control devices for emissions of regulated hydrocarbons and NOx. Common emissions control devices used by HDDE manufacturers include diesel particulate filter (DPF) exhaust as recirculation (EGR) systems, selective catalytic reduction (SCR) systems, and/or diesel oxidation catalysts (DOC). Additionally, modern HDDEs are equipped with electronic control modules (ECMs) which continuously monitor engines and other operating parameters and control engine operation and emission control devices.

13. EPA promulgated regulations for motor vehicles manufactured after 2007 that require HDDE trucks to have onboard diagnostic systems to detect various emission control device parameters and vehicle operations. See Section 202(m) of the CAA, 42 U.S.C. § 7521(m), and 40 C.F.R. §§ 86.010-18(o) and 86.1806-05(n).

14. Section 203(a)(3)(A) of the CAA, 42 U.S.C. § 7522(a)(3)(A), states that it is 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 [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."

15. Section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B), states that it is 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 [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."

16. Section 302(e) of the Clean Air Act, 42 U.S.C. § 7602(e), defines "person" as an individual, corporation, partnership, association, State, municipality, political subdivision of a State, and any agency, department, or instrumentality of the United States and any officer, agent, or employee thereof.

17. EPA may administratively assess a civil penalty, with or without conditions, for violations of Section 203(a) of the CAA, 42 U.S.C. § 7522(a). Section 205(c)(1) of the CAA, 42 U.S.C. § 7524(c)(1).

18. Section 205(c)(1) of the Clean Air Act, 42 U.S.C. § 7524(c)(1), states that the Administrator may compromise, modify, or remit, with or without conditions, any administrative penalty which may be imposed under this subsection.

19. EPA may assess a civil penalty of up to $3,750 for each applicable CAA violation that occurs between January 12, 2009, and November 2, 2015, up to $4,735 for each applicable CAA violation that occurred after November 2, 2015 and for which a penalty is assessed on or after January 15, 2019 and up to $4,819 for each applicable CAA violation that occurred after November 2, 2015 for which a penalty is assessed on or after January 13, 2020, in accordance with Section 205(a) of the CAA, 42 U.S.C.§ 7524(a) and 40 C.F.R. Part 19.

4. STIPULATED FACTS

20. Respondent is the owner and or operator of a metal fabrication and mechanic facility located in Clive, Iowa (facility).

21. On August 28, 2019, EPA issued Respondent an information request pursuant to CAA § 208, 42 U.S.C. § 7542. EPA received the certified mail return receipt for the information request.

22. Respondent never responded to the information request.

23. On November 22, 2019, EPA inspected the facility. During the inspection, Respondent refused to provide records requested by the inspector including invoices related to Respondent's purchases, sales, and work that impacted emission control devices on diesel engines.

24. On November 27, 2019, Respondent, through its counsel, provided to EPA responsive records, including invoices of sales and work performed by Respondent at Respondent's facility. Respondent also provided a spreadsheet detailing the quantity and type of parts sold, offered for sale, or installed by Respondent at Respondent's facility.

25. On December 9, 2019, EPA sent the facility a copy of the EPA inspection report.

26. Information gathered by EPA during the inspection and submitted to EPA after the inspection included 57 invoices dated from May 8, 2019 to August 22, 2019.

5. ALLEGED VIOLATIONS OF LAW

27. Paragraphs 1-26 are incorporated by reference herein.

28. Between May 8, 2018 to August 22, 2019, Respondent knowingly removed and/or rendered inoperative at least 34 devices or elements of design installed on or in 34 motor vehicles or motor vehicle engines that were installed by the original equipment manufacturer in order to comply with CAA emission standards, in violation of Section 203(a)(3)(A) of the CAA, 42 U.S.C. § 7522(a)(3)(A).

29. Between May 8, 2018 to August 22, 2019, Respondent sold, offered to sell, or installed 119 parts or components on motor vehicle engines where the principal effect of the component is to bypass, defeat, or render inoperative elements of designs of those engines. Respondents knew or should have known that the work performed on motor vehicles or motor vehicle engines and these parts or components were 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).

6. TERMS OF CONSENT AGREEMENT

30. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent:

(a) admits that the EPA has jurisdiction over the subject matter alleged in this Agreement;

(b) admits to the facts stated above;

(c) neither admits nor denies the alleged violations of law stated above;

(d) consents to the assessment of a civil penalty as stated below;

(e) consents to the issuance of any specified compliance or corrective action order as provided herein;

(f) consents to the conditions specified in this Agreement;

(g) waives any right to contest in this proceeding the alleged violations of law set forth in Section 5. of this Consent Agreement; and

(h) waives its rights to appeal the Order accompanying this Agreement.

31. For the purpose of this proceeding, Respondent:

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

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

(c) waives any right of judicial review under Section 307(b)(1) of the Clean Air Act, 42 U.S.C. § 7607(b)(1);

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

(e) waives any rights it may possess at law or in equity to challenge the authority of the EPA to bring a civil action in the United States District Court to compel compliance with the Agreement or Order, or both, and to seek an additional penalty for such noncompliance, and agrees that federal law shall govern in any such civil action.

32. Respondent consents to receiving the filed Consent Agreement and Final Order electronically at the following e-mail address(es): stewart@hassancables.com.

33. Section 205(a) of the Act, 42 U.S.C. § 7524(a), and 40 C.F.R. Part 19, authorize the assessment of a civil penalty up to $37,500 for each violation occurring between January 13, 2009, and November 2, 2015, and up to $48,192 for each violation occurring after November 2, 2015, and assessed after January 13, 2020. To determine the amount of civil penalty to be assessed pursuant to section 205(b) of the Act, 42 U.S.C. § 7524(b), the EPA took into account, in addition to such other factors as justice may require, the size of the Respondent's business, the economic impact of the penalty on Respondent's business, Respondent's compliance history and good faith efforts to comply, the duration of violation established by any credible evidence, payment by Respondent of penalties previously assessed for the same violations, the economic benefit of noncompliance, and the seriousness of the violations.

34. The EPA has reduced the civil penalty on the basis of information produced by Respondent demonstrating its inability to pay a higher civil penalty.

35. Penalty Payment. Respondent agrees that, in settlement of the claims alleged in this Agreement, Respondent shall:

(a) pay the compromised civil penalty of $16,000.00 (Sixteen Thousand Dollars and No Cents) ("EPA Penalty") within 30 calendar days of the Effective Date of this Agreement.

(b) Payment of the penalty may be submitted on-line at www.pay.gov by entering "SFO 1.1" in the "Search Public Forms" field. Open the on-line form and complete required fields to complete payment. Respondent shall print a copy of each payment receipt and email a copy of each receipt to EPA's representative identified in this paragraph:

Regional Hearing Clerk
R7_Hearings_Clerk_Filings@epa.gov; and to

Tyler Salamasick, Enforcement Compliance Assurance Division
salamasick.tyler@epa.gov.

Payments may also be made by cashier or certified check made payable to "Treasurer of the United States" and remitted to:

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

or by alternate payment method described at
http://www.epa.gov/financial/makepayment.

The Respondent shall reference the EPA Docket Number on the check. A copy of the check shall be provided to EPA's representatives identified in this paragraph.

36. If Respondent fails to timely pay any portion of the penalty assessed under this Agreement, the EPA may:

(a) request the Attorney General to bring a civil action in an appropriate district court to recover: the amount assessed; interest at rates established pursuant to 26 U.S.C. § 6621(a)(2); the United States' enforcement expenses; and a 10 percent quarterly nonpayment penalty, 42 U.S.C. § 7413(d)(5);

(b) refer the debt to a credit reporting agency or a collection agency, 42 U.S.C. § 7413(d)(5), 40 C.F.R. §§ 13.13, 13.14, and 13.33;

(c) collect the debt by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, 40 C.F.R. Part 13, Subparts C and H; and

(d) suspend or revoke Respondent's licenses or other privileges, or (ii) suspend or disqualify Respondent from doing business with the EPA or engaging in programs the EPA sponsors or funds, 40 C.F.R. § 13.17.

37. Conditions. As a condition of settlement and in compromise of the civil penalty that EPA could otherwise impose herein, Respondent agrees to the following:

(a) By the effective date of this CAFO, and thereafter Respondent shall not manufacture, sell, offer for sale, or install any aftermarket defeat devices, including ECM tuning products ("tuners"), exhaust aftertreatment delete kits or parts, and EGR delete kits or parts, and 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.

(b) By the effective date of this CAFO, and thereafter Respondent shall not provide technical support or information, or perform maintenance, repair, or other services which pertain in any manner to defeat devices and/or tuners installed on any vehicle, or any vehicle systems (e.g. fuel system, exhaust system) on which defeat devices and/or tuners are installed, whether the vehicle is brought into the Facility or not.

(c) Respondent shall follow the Compliance Plan in Appendix A as a guide to maintain compliance. In case of any conflict between the terms of the Compliance Plan and this CAFO, the terms of the CAFO shall govern.

(d) Upon the effective date of this CAFO, Respondent shall cease distributing all prohibited devices. Respondent shall provide documentation in accordance with Paragraph 37 that Respondent shall retain possession of each device until such time as it is irrevocably destroyed so that it cannot be used, rebuilt or otherwise utilized in any manner. Within 30 (thirty) days of the effective date of this CAFO, Respondent shall permanently destroy any defeat device remaining in its inventory and/or possession, including, but not limited to tuners, by compacting or crushing all defeat devices and all of the associated parts and components to render them useless. Respondent shall submit videographic and/or photographic evidence and certification of the manner of destruction and the number of

devices, by part number, that were destroyed, in accordance with Paragraph 37.

(e) Within 30 (thirty) days of the effective date of this CAFO, Respondent shall contact all customers on work orders cited in the table attached as Appendix C, using the Service Recall Letter in Appendix B. Respondent shall provide all parts and labor associated with work performed in response to the Service Recall Letter at no cost to the customer. Respondent shall submit to EPA in accordance with Paragraph 35 the following information regarding work performed on each vehicle in response to the Service Recall Letter: (1) vehicle owner with contact name, address, and phone number; (2) vehicle make and model year; (3) engine manufacturer; (4) engine size (horsepower); (5) emission control equipment reinstalled (e.g. catalyst, DPF, EGR, SCR); (6) cost of reinstallation of emission control equipment per vehicle (separate parts from labor costs); and (7) copies of all invoices for purchase of reinstallation equipment.

38. Respondent must submit notices and reports required by Paragraph 37 of this CAFO via electronic mail to *salamasick.tyler@epa.gov*.

39. In each report that Respondent submits as provided by this CAFO, it must certify that the report is true and complete by including the following statement signed by one of its officers:

> I certify that I am familiar with the information in this document and that, based on my inquiry of those individuals responsible for obtaining the information, it is true and complete to the best of my knowledge. I know that there are significant penalties for submitting false information, including the possibility of fines and imprisonments for knowing violations.

40. Respondent agrees that the time period from the Effective Date of this Agreement until all of the conditions specified in Paragraph 37 are completed (the "Tolling Period") shall not be included in computing the running of any statute of limitations potentially applicable to any action brought by Complainant on any claims (the "Tolled Claims") set forth in Section 5 of this Agreement. Respondent shall not assert, plead, or raise in any fashion, whether by answer, motion or otherwise, any defense of laches, estoppel, or waiver, or other similar equitable defense based on the running of any statute of limitations or the passage of time during the Tolling Period in any action brought on the Tolled Claims; provided, however, the Tolling Period and Tolled Claims shall not include any claims arising or occurring on or before May 8, 2018.

41. The provisions of this Agreement shall apply to and be binding upon Respondent and its officers, directors, employees, agents, trustees, servants, authorized representatives, successors, and assigns. From the Effective Date of this Agreement until the end of the Tolling Period, as set out in Paragraph 40, Respondent must give written notice and a copy of this

Agreement to any successors in interest prior to any transfer of ownership or control of any portion of or interest in the UpCountry Fab and Performance, LLC. Simultaneously with such notice, Respondent shall provide written notice of such transfer, assignment, or delegation to the EPA. In the event of any such transfer, assignment, or delegation, Respondent shall not be released from the obligations or liabilities of this Agreement unless the EPA has provided written approval of the release of said obligations or liabilities.

42. By signing this Agreement, Respondent acknowledges that this Agreement and Order (except for Appendix C) will be available to the public and agrees that this Agreement does not contain any confidential business information or personally identifiable information.

43. By signing this Agreement, the undersigned representative of Complainant and the undersigned representative of Respondent each certify that he or she is fully authorized to execute and enter into the terms and conditions of this Agreement and has the legal capacity to bind the party he or she represents to this Agreement.

44. By signing this Agreement, Respondent certifies that the information it has supplied concerning this matter was at the time of submission true, accurate, and complete for each such submission, response, and statement. Respondent acknowledges that there are significant penalties for submitting false or misleading information, including the possibility of fines and imprisonment for knowing submission of such information, under 18 U.S.C. § 1001.

45. Each party shall bear its own attorney's fees, costs, and disbursements incurred in this proceeding.

7. EFFECT OF CONSENT AGREEMENT AND ATTACHED FINAL ORDER

46. In accordance with 40 C.F.R. § 22.18(c), completion of the terms of this Consent Agreement and Final Order resolves Respondent's liability for federal civil penalties for the violations and facts specifically alleged above.

47. Penalties paid pursuant to this Agreement shall not be deductible for purposes of federal taxes.

48. This Agreement constitutes the entire agreement and understanding of the parties and supersedes any prior agreements or understandings, whether written or oral, among the parties with respect to the subject matter hereof.

49. The terms, conditions and compliance requirements of this Agreement may not be modified or amended except upon the written agreement of both parties, and approval of the Regional Judicial Officer.

50. Any violation of this Order may result in a civil judicial action for an injunction and civil penalties of up to $48,192 for each violation as provided in Section 205(a) of the Act, 42 U.S.C. § 7524(a) and adjusted for inflation pursuant to 40 C.F.R. Part 19, as well as criminal

sanctions as provided in Section 113(c) of the Act, 42 U.S.C. § 7413(c). The EPA may use any information submitted under this Order in an administrative, civil judicial, or criminal action.

51. Nothing in this Agreement shall relieve Respondent of the duty to comply with all applicable provisions of the Act and other federal, state, or local laws or statutes, nor shall it restrict the EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.

52. Nothing herein shall be construed to limit the power of the EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment.

8. EFFECTIVE DATE

53. Respondent and Complainant agree to issuance of the attached Final Order. Upon filing, the EPA will transmit a copy of the filed Consent Agreement to the Respondent. This Consent Agreement and attached Final Order shall become effective after execution of the Final Order by the Regional Judicial Officer on the date of filing with the Hearing Clerk.

The foregoing Consent Agreement In the Matter of UpCountry Fab and Performance, LLC, Docket No. CAA 07-2021-0001, is Hereby Stipulated, Agreed, and Approved for Entry.

FOR RESPONDENT
UPCOUNTRY FAB AND PERFORMANCE, LLC:

Signature

11/4/20
Date

Printed Name: ALEXANDER BUCK

Title: OWNER, UPCOUNTRY FAB + PERFORMANCE, LLC.

Address: 1948 NW 92ND G. B, CLIVE, IA 50325

The foregoing Consent Agreement In the Matter of UpCountry Fab and Performance, LLC, Docket No. CAA 07-2021-0001 is Hereby Stipulated, Agreed, and Approved for Entry.

FOR COMPLAINANT
U.S. ENVIRONMENTAL PROTECTION AGENCY REGION 7:

LISA HANLON Digitally signed by LISA HANLON
Date: 2020.11.12 12:11:46 -06'00'

_____ _____

DATE

Lisa Hanlon
Acting Air Branch Chief
Enforcement and Compliance Assurance Division

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7

BEFORE THE ADMINISTRATOR

In the Matter of:	)	
	)	
UpCountry Fab and Performance, LLC,	)	**Docket No.** CAA 07-2021-0001
	)	
Respondent.	)	
	)	

Pursuant to 40 C.F.R. § 22.18(b) of the EPA's Consolidated Rules of Practice and section 205(c)(1) of the Clean Air Act, 42 U.S.C. § 7524(c)(1), the attached Consent Agreement resolving this matter is incorporated by reference into this Final Order and is hereby ratified.

The Respondent is ORDERED to comply with all terms of the Consent Agreement, effective immediately.

So ordered.

KARINA BORROMEO

Digitally signed by KARINA BORROMEO
Date: 2020.11.17 14:00:04 -06'00'

DATE

Karina Borromeo
Regional Judicial Officer

CERTIFICATE OF SERVICE

I certify that the foregoing "Consent Agreement" and "Final Order," in the Matter of UpCountry Fab and Performance, LLC, Docket No. CAA 07-2021-0001, were filed and copies of the same were mailed to the parties as indicated below.

By Electronic Mail to the Respondent:

UpCountry Fab and Performance, LLC
Stewart Cables
stewart@hassancables.com

and by Electronic Mail to the Complainant:

Sara Hertz Wu
U.S. Environmental Protection Agency Region 7
hertzwu.sara@epa.gov

AMY GONZALES

Digitally signed by AMY GONZALES
Date: 2020.11.18 08:54:09 -06'00'

DATE

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."

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

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 lA (June 25, 1974).

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, 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 perfom1 service on an element of an emission control system that has already been tampered, EPA typically does not consider the service to be illegal tampering if the person either declines to perform the service on the tampered system or restores the element to its certified configuration.

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

Principle 1: Respondent Will Not Modify Any OBD System

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

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

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

Reasonable Bases

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

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

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

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

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

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

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

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

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

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

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

ENDNOTES TO APPENDIX A

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

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

[3] General notes concerning the Reasonable Bases: Documentation of the above-described reasonable bases mu.st be provided to EPA upon request, based on EPA's authority to require information to determine compliance. CAA § 208, 42 U.S.C. § 7542. EPA issues no case-by-case pre-approvals of reasonable bases, nor exemptions to the Act's prohibitions on tan1pering and aftermarket defeat devices (except where such an exemption is available by regulation). A reasonable basis consistent with this Appendix does not constitute a certification accreditation, approval, or any other type of endorsement by EPA (except in cases where an EPA Certification itself constitutes the reasonable basis). No claims of any kind, such as "Approved [or certified] by the Environmental Protection Agency/' may be made on the basis of the reasonable bases described in this Policy. This includes written and oral advertisements and other communication. However, if true on the basis of this Appendix, statements such as the following may be made: "Meets the emissions control criteria in the United States Environmental Protection Agency's Tampering Policy in order to avoid liability for violations of the Clean Air Act." There is no reasonable basis where documentation is fraudulent or materially incorrect, or where emissions testing was performed incorrectly.

[4] Notes on Reasonable Basis A: The conduct should be performed according to instructions from the original manufacturer (OEM) of the vehicle, engine, or equipment. The "certified configuration" of a vehicle, engine, or piece of equipment is the design for which 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. 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 ill writing that the replacement part will perform identically with respect to emissions control as the replaced part, and should be able to support the representation with either: (a) documentation that the replacement part is identical to the replaced part (including engineering drawings or similar showing identical dimensions, materials, and design), or (b) test results from emissions testing of the replacement part. In the case of engine switching, installation of an engine into a different vehicle or piece of equipment by any person would be considered tampering unless the resulting vehicle or piece of equipment is (a) in the same product category (e.g.) light-duty vehicle) as the engine originally powered and (b) identical (with regard to all emissions-related elements of design) to a certified configuration of the same or newer model year as the vehicle chassis or equipment. Alternatively, Respondent may show through emissions testing that there is a reasonable basis for an engine switch under Reasonable Basis C. Note that there are some substantial practical limitations to switching engines. Vehicle chassis and engine designs of one vehicle manufacturer are very distinct from those of another, such that it is generally not possible to put an engine into a chassis of a different manufacturer and have it match up to a certified configuration.

[5] Notes on emissions testing: Where the above-described reasonable bases involve emissions testing, Unless otherwise noted, that testing must be consistent with the following. The emissions testing may be performed by someone other than the person performing the conduct (such as au aftermarket parts manufacturer), but to be

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

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

[7] Notes on Reasonable Basis E: This reasonable basis is subject to the same terms and limitations as CARB imposes with any such certification. The conduct must be legal in California under California law. However, in the case of an aftermarket part or component, 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.

APPENDIX B

Service Recall Letter

DATE

NAME COMPANY (IF APPLICABLE)
STREET ADDRESS
CITY STATE XXXXXX

Re: Service Recall Letter

To Whom It May Concern:

Our records indicate your vehicle(s) (listed below) was serviced by UpCountry Fab and Performance L.L.C. (UpCountry) at least once between May 2018 and August 2019. During your service appointment we removed emission control devices from your vehicle and/or modified your vehicle's emission control system.

We are offering to reinstall all emission control devices and restore the emission control system to its original manufacturer's specification at no cost to you on any of the vehicles listed below that are still in service and in your custody and control.

Vehicle Make Model Year
VIN/License (if available from records)
Any Other Discerning Information

UpCountry is offering this service under the settlement of the United States Environmental Protection Agency's civil enforcement action against UpCountry. for alleged violations of Sections 203(a)(3)(A) and 203(a)(3)(B) of the Clean Air Act, by removing emission control devices and modifying the vehicle's emission control system on heavy-duty diesel engines. Please call [Phone Number] to schedule your appointment to bring your vehicle in and have us reinstall the emission controls. If you have any questions regarding this letter, please ask for

[UpCountry Representative].
Thank you, [UpCountry Representative]

APPENDIX C

Description of Violations and Defeat Device Violations

UpCountry Fab and Performance (UpCountry) (Respondent) sold the defeat devices listed below, which render inoperative emission control systems on EPA-certified motor vehicles. It is a violation of Section 203(a)(3)(A) of the CAA, 42 U.S.C. § 7522(a)(3)(A) to tamper with EPA-certified vehicles and engines. It is a violation of Section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B) to sell, offer for sale, or install a defeat device intended for use with EPA-certified motor vehicles and engines. Based on information summarized below, the EPA finds that Respondent has committed 46 violations of Section 203(a)(3) of the CAA, 42 U.S.C. § 7522(a)(3).

Defeat Device Violation(s)

Defeat Device Description	Quantity	Invoice Number	Date Range
EGR Kit	17	000 662 690 700 728 743 795 1065 1068 1081 1119 1127 1160 1192 1200 1373 1445	5/30/18 8/5/19
EZ Lynk	9	716 717 761 776 942 976 985 1128 1284	7/6/18 5/8/19

Defeat Device Description	Quantity	Invoice Number	Date Range
EFI Live Tune	15	680 780 792 816 812 824 922 951 974 1027 1093 1099 1143 1157 1498	5/23/18 8/22/19
Single Tune w/ VINS License	1	715	7/13/18
SCT Tune Pack	1	1206	4/3/19
MRBP Exhaust	2	713 756	7/12/18 8/14/18
SCT GTX	1	745	8/14/18