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

DEC 14 2016

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Power Performance Enterprises, Inc.
Kory Willis, President
166 Nixon Road
Kinder, LA 70648

Kyle Beall, Esq.
628 North Boulevard
Baton Rouge, LA 70802

Agent for Service of Process
Power Performance Enterprises, Inc.:
Mary Herbert Holmes
528 N. 9th Street
Kinder, LA 70648

Re: Notice of Violation of the Clean Air Act

Mr. Willis:

The United States Environmental Protection Agency has investigated and continues to investigate Power Performance Enterprises, Inc. ("PPEI") for compliance with the Clean Air Act ("CAA" or "the Act"), 42 U.S.C. §§ 7401–7671q, and its implementing regulations. As summarized in this Notice of Violation, the EPA has determined that PPEI sold parts or components for motor vehicles and engines that bypass, defeat, or render inoperative elements of design of those vehicles or engines that were installed by the original equipment manufacturer in order to comply with CAA emission standards. The EPA has also determined that PPEI knew or should have known that these parts or components were offered for sale or installed for such use or put to such use. Therefore, PPEI violated Section 203(a)(3)(B) of the Act, 42 U.S.C. § 7522(a)(3)(B).

Law Governing Alleged Violations

This Notice of Violation arises under Part A of Title II of the Act, 42 U.S.C. §§ 7521–7554, and the regulations promulgated thereunder. These laws were enacted to reduce air pollution from mobile sources of air pollution. 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."[1]

[1] 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," and "to initiate and accelerate a national research and development program to achieve the prevention and control of air pollution."[2]

The EPA's allegations here concern parts or components for motor vehicles and engines subject to emission standards.[3] The Act requires EPA to prescribe and revise, by regulation, standards applicable to the emission of any air pollutant from new motor vehicles or engines that cause or contribute to air pollution, which may reasonably be anticipated to endanger public health or welfare.[4] As required by the Act, the emission standards "reflect the greatest degree of emission reduction achievable through the application of [available] technology."[5] Motor vehicles and engines are subject to specific emission standards for each pollutant, based on a vehicle's or engine's class and model year.[6]

Vehicle and engine manufacturers employ many devices and elements of design to meet emission standards. *Element of design* means "any control system (i.e., computer software, electronic control system, emission control system, computer logic), and/or control system calibrations, and/or the results of systems interaction, and/or hardware items on a motor vehicle or motor vehicle engine."[7] For example, manufacturers employ retarded fuel injection timing as a primary emission control device for emissions of oxides of nitrogen ("NOx"). Manufacturers also employ certain hardware devices as emission control systems to manage and treat exhaust to reduce levels of regulated pollutants from being created or emitted into the ambient air. Such devices include diesel particulate filters ("DPFs"), exhaust gas recirculation ("EGR"), and selective catalytic reduction ("SCR"). Modern vehicles and engines are equipped with electronic control modules ("ECMs"). ECMs continuously monitor engine and other operating parameters and control the emission control devices, such as the fueling strategy.

The Act makes it a violation "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."[8] It is also a violation to cause any of the foregoing acts.[9]

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[2] CAA § 101(b)(1)–(2), 42 U.S.C. § 7401(b)(1)–(2).
[3] *See generally* 40 C.F.R. Part 86, Subpart A (setting emission standards for these categories).
[4] CAA § 202(a)(1) and (3)(B), 42 U.S.C. § 7521(a)(1) and (3)(B).
[5] CAA § 202(a)(3)(A)(i), 42 U.S.C. § 7521(a)(3)(A)(i).
[6] *See, e.g.*, heavy-duty diesel engine emission standards at 40 C.F.R. §§ 86.004-11, 86.007-11, 86.099-11 and light-duty vehicle emission standards at 40 C.F.R. § 86.1811-04. *See also* 40 C.F.R. §§ 86.090-8 (1990 and later model year light-duty vehicles); 86.094-9 (1994 and later model year light-duty trucks); 86.001-9 (2001 and later model year light-duty trucks); 86.004-9 (2004 and later model year light-duty trucks); 86.091-10 (1991 and later model year Otto-cycle heavy-duty engines and vehicles); 86.008-10 (2008 and later model year Otto-cycle heavy-duty engines and vehicles).
[7] 40 C.F.R. § 86.094-2.
[8] CAA § 203(a)(3)(B), 42 U.S.C. § 7522(a)(3)(B).
[9] CAA § 203(a), 42 U.S.C. § 7522(a).

To ensure that every new motor vehicle or engine legally sold, offered for sale, imported, delivered for introduction into commerce, or introduced into commerce in the United States (collectively, "introduced into commerce") satisfies applicable emission standards, the EPA runs a certification program. Under this program, the EPA issues certificates of conformity ("COCs"), thereby qualifying motor vehicles and engines for introduction into commerce.[10] To obtain a COC, a manufacturer must submit a COC application to the EPA for each engine family and each model year in which it intends to manufacture or import motor vehicles or engines for introduction into commerce. The COC application must include, among other things, identification of the covered engine family, a description of the motor vehicle or engine and its emission control systems, all auxiliary emission control devices ("AECDs") and the engine parameters they sense, as well as test results from a test vehicle or engine showing that it satisfies the applicable emission standards.[11] An AECD is "any element of design which senses temperature, vehicle speed, engine RPM, transmission gear, manifold vacuum, or any other parameter for the purpose of activating, modulating, delaying, or deactivating the operation of any part of the emission control system."[12]

Alleged Violations

Information PPEI provided to the EPA shows that from January 1, 2013, to December 31, 2015, PPEI manufactured, offered for sale, or sold software and hardware designed for use on motor vehicles or engines, primarily heavy-duty diesel trucks and engines, manufactured by entities such as Cummins Inc. ("Cummins"); FCA US LLC and its predecessors ("FCA"); General Motors Co. ("GM"); and Ford Motor Co. ("Ford"). PPEI sold hardware, including devices known as "tuners" which are designed to erase and/or reprogram ECMs, and software, including ECM programs known as "tunes," that allow the end user to disable the elements of design that manufacturers employ to meet emission standards. PPEI also created software "tunes" that would disable elements of design that manufacturers employ to meet emission standards and either sent the tunes directly to end users or installed them on hardware manufactured by other entities (e.g., EFI Live) which PPEI then sold. Examples include PPEI's high-selling software or hardware products called (among other things) "DSP5 Tuning," "PPEI Autocal - LML Tuning," "2001 - 2010 Duramax PPEI Autocal," "GM 6.6L Duramax 2011 - 2015 Flo~Pro 864 4" Exhaust With Muffler," and "2010 - 2012 Sinister 6.7L Cummins EGR Delete."

A principal effect of these products is to bypass, defeat, or render inoperative elements of design that control emissions of regulated air pollutants. PPEI rendered the original manufacturers' software inoperative (insofar as the software received input from hardware used as emission control devices) and replaced it with software that allowed the vehicles or engines to function without inputs from emission control devices. Based on the information submitted by PPEI, the products allow or disable elements of design that manufacturers employ to meet emission standards, such as exhaust gas recirculation systems and exhaust aftertreatment devices.

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[10] 40 C.F.R. § 86.007-30.

[11] 40 C.F.R. §§ 86.004-21, 86.007-21, 86.094-21, 86.096-21; *see also* EPA, *Advisory Circular Number 24-3: Implementation of Requirements Prohibiting Defeat Devices for On-Highway Heavy-Duty Engines* (Jan. 19, 2001).

[12] 40 C.F.R. § 86.082-2.

The PPEI software and hardware described above are identified in the table below:

PRODUCT	EFFECT ON EMISSION CONTROL DEVICES	QUANTITY
PPEI Manufactured Tunes and Loaded on EFI Live Tuners	Alter operating parameters and/or override on-board diagnostic (OBD) codes to facilitate removal of diesel oxidation catalyst (DOC), diesel particulate filter (DPF), exhaust gas recirculation (EGR), and/or Selective Catalytic Reduction Systems (SCR).	9,628
PPEI Manufactured Tunes Only	Alter operating parameters and/or override OBD codes to facilitate removal of DOC, DPF, EGR, and/or SCR.	8,896
EFI Live Tuners Without Pre-Loaded Tunes	Alter operating parameters and/or override OBD codes to facilitate removal of DOC, DPF, EGR, and/or SCR.	527
EFI Live VIN Licenses	Allow EFI Live tuner to alter operating parameters and/or override OBD codes to facilitate removal of DOC, DPF, EGR, and/or SCR from a motor vehicle or engine.	2,285
H&S Manufactured Tunes Loaded on Tuners	Alter operating parameters and/or override OBD codes to facilitate removal of DOC, DPF, EGR, and/or SCR.	2,537
EGR Removal Kits	Render EGR inoperative.	41
Exhaust System Component Removal Pipes	Render DOC, DPF, and/or SCR inoperative.	397
	TOTAL	**24,311**

PPEI knew or should have known that these products were offered for sale or installed in order to bypass, defeat, or render inoperative devices or elements of design that control emissions of regulated air pollutants. The products replaced the original manufacturers' ECMs insofar as they overrode the on-board diagnostics to bypass, defeat, or render inoperative emission control devices by allowing the removal of elements of design without illuminating a Malfunction Indicator Lamp, prompting a Diagnostic Trouble Code, or causing an engine power reduction due to a missing or malfunctioning element of control. The exhaust replacement pipes and EGR removal kits physically replaced emission control devices such as DPFs and EGR systems. For example, an advertisement for one of PPEI's products, Dodge Cummins 2007 – 2012 Flo~Pro 835NB Race Pipes, describes the product as:

> Flo~Pro 835NB Race Pipe Alum. Exhaust for 2007 – 2012 Dodge 6.7L Cummins – Tuner Required – NO BUNGS.
>
> Kit #835NB is for race applications only. Race pipes may void factory warranty. Tuner required for proper operation.

An exhaust replacement pipe without bungs is evidence that the exhaust replacement pipe does not contain DPF or DOC systems. The bungs are required for sensors which monitor whether the emission controls are working properly, and identify when a regeneration cycle is required for the DPF system. Without bungs, the emission controls cannot work as intended.

Furthermore, PPEI knew or should have known that these products were offered for sale or installed on "motor vehicles" or "motor vehicle engines." Many products were designed and marketed for use on a specific make, model, and year of Cummins, FCA, GM, or Ford motor vehicle or engine. Cummins, FCA, GM, or Ford sought and obtained COCs from the EPA for these motor vehicles or engines. This certification unequivocally demonstrates that these vehicles and engines are "motor vehicles" and "motor vehicle engines."

Enforcement

The EPA may bring an enforcement action for these violations under its administrative authority or by referring this matter to the United States Department of Justice with a recommendation that a civil complaint be filed in federal district court.[13] Persons violating Section 203(a)(3)(B) of the Act, 42 U.S.C. § 7522(a)(3)(B), are subject to an injunction under Section 204 of the Act, 42 U.S.C. § 7523, and a civil penalty of up to $3,750 for each violation.[14]

The EPA is available to discuss this matter with you in further detail, upon your request. Please contact Edward Kulschinsky, the EPA attorney assigned to this matter, within 14 days of receipt of this Notice of Violation. Mr. Kulschinsky can be reached at (202) 564-4133 or Kulschinsky.Edward@epa.gov.

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[13] CAA §§ 204, 205, 42 U.S.C. §§ 7523, 7524.
[14] CAA § 205(a), 42 U.S.C. § 7524(a); 40 C.F.R. § 19.4.

Sincerely,

Phillip A. Brooks
Director
Air Enforcement Division
Office of Civil Enforcement