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

JAN 18 2017

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ENFORCEMENT AND
COMPLIANCE ASSURANCE

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

IN THE MATTER OF: Vivid Distributing, LLC d/b/a Vivid Racing and Agency Power Industries

Vivid Distributing, LLC
1429 W. Scott Avenue
Gilbert, AZ 85233

ATTENTION: Rob Rohn (Agent and Member) and Dan Mermelstein (Member)

Request for Information under Section 208(a) of the Clean Air Act, 42 U.S.C. § 7542(a)

The United States Environmental Protection Agency (EPA) hereby requires Vivid Distributing, LLC dba Vivid Racing (Vivid Racing) and Agency Power Industries, LLC (Agency Power) to submit certain information as part of an EPA investigation to determine Vivid Racing's and Agency Power's compliance with Sections 203 and 213 of the Clean Air Act (CAA), 42 U.S.C. §§ 7522 and 7547, and the applicable regulations at 40 C.F.R. Parts 85 and 86. Examples of vehicles or pieces of equipment regulated under these Parts include, but are not limited to, highway light duty trucks. Appendix B specifies the information that you must submit, Appendix C provides instructions for your response to this request, and Appendix D provides definitions for some of the terms used in this request.

We are issuing this Request for Information (Request) under Section 208(a) of the CAA, 42 U.S.C. § 7542(a). Under Section 208(a) of the CAA, EPA may require any person who is subject to the CAA to provide information necessary to determine whether the person has acted in compliance with these requirements and the regulations promulgated thereunder.

You must submit the information requested within thirty (30) calendar days from the date of this request. If you anticipate being unable to fully respond to this request by such date, you must contact Janice Chan at 415-972-3308 within 15 days of the date of this request and, with an appropriate justification, request an extension of time to answer some or all of the enclosed questions. If timely submitted, EPA will review your request and may extend the time in which your response must be provided.

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Failure to provide the required information may result in the initiation of a civil action pursuant to Section 205(b) of the CAA, 42 U.S.C. § 7524(b). Failure to provide all requested information in its entirety, and in the format requested, may result in additional inquiries and penalties. It is important that your responses be clear, accurate, and complete. We will regard submitted information that is misleading, false, incomplete, or submitted without regard to its accuracy as a violation of the CAA and/or criminal statutes. We may use any information submitted in response to this request in an administrative, civil or criminal action.

Finally, you must submit all requested information under an authorized signature with the following certification (provided in Appendix F):

> I certify under penalty of law that I have examined and am familiar with the information in the enclosed documents, including all attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are, to the best of my knowledge and belief, true and complete. I am aware that there are significant penalties for knowingly submitting false statements and information, including the possibility of fines or imprisonment pursuant to Section 113(c)(2) of the Clean Air Act, 42 U.S.C. § 7413(c)(2), and 18 U.S.C. §§ 1001 and 1341.

You are entitled to assert a business confidentiality claim covering all or part of the information you submit in response to this request, in accordance with the procedures described in the Confidentiality of Business Information (CBI) regulations, 40 C.F.R. Part 2, Subpart B. However, no such CBI claim may be made with respect to emissions data as defined at 40 C.F.R. § 2.301(a)(2). You must specify the page, paragraph and sentence when identifying the information subject to your claim. Appendix A specifies the assertion and substantiation requirements for business confidentiality claims. EPA may, without further notice, provide the public with any information not subject to a CBI claim.

Please submit all requested information, via courier service or overnight delivery, to:

Janice Chan
U.S. Environmental Protection Agency
Enforcement Division (ENF-2-1)
75 Hawthorne Street
San Francisco, CA 94105

Any questions concerning this Information Request should be directed to Janice Chan of EPA's Region 9 Air Enforcement Office at 415-972-3308, or your attorney may contact David Kim of EPA's Region 9 Office of Regional Counsel at 415-972-3882.

Evan Belser

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

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APPENDIX A

Confidential Business Information

You may assert a business confidentiality claim covering all or part of the information you provide in response to this Information Request for any business information entitled to confidential treatment under Section 208(c) of the CAA, 42 U.S.C. § 7542, and 40 C.F.R. Part 2, subpart B. Under Section 208(c) of the CAA, you are entitled to confidential treatment of information that would divulge methods or processes entitled to protection as trade secrets. Under 40 C.F.R. Part 2, subpart B, business confidentiality means "the concept of trade secrecy and other related legal concepts which give (or may give) a business the right to preserve the confidentiality of business information and to limit its use or disclosure by others in order that the business may obtain or retain business advantages it derives from its rights in the information." *See* 40 C.F.R. § 2.201(e).

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Information covered by a claim of business confidentiality will be disclosed by EPA only to the extent, and by means of the procedures, set forth in Section 208(c) of the CAA and 40 C.F.R. Part 2, subpart B. EPA will construe your failure to furnish a business confidentiality claim with your response to this Information Request as a waiver of that claim, and the information may be made available to the public without further notice to you.

To assert a business confidentiality claim, you must place on (or attach to) all information you desire to assert as business confidential either a cover sheet, stamped or typed legend, or other suitable form of notice employing language such as "trade secret," "proprietary," or "company confidential" at the time you submit your response to this Information Request. Allegedly confidential portions of otherwise non-confidential documents should be clearly identified, and may be submitted separately to facilitate identification and handling by EPA. You should indicate if you desire confidential treatment only until a certain date or until the occurrence of a certain event.

The criteria EPA will use in determining whether material you claim as business confidential is entitled to confidential treatment are set forth at 40 C.F.R. §§ 2.208 and 2.301. These regulations provide, among other things, that you must satisfactorily show that: (1) the information is within the scope of business confidentiality as defined at 40 C.F.R. § 2.201(e), (2) that you have taken reasonable measures to protect the confidentiality of the information and that you intend to continue to do so, (3) the information is not and has not been reasonably obtainable by legitimate means without your consent, and (4) the disclosure of the information is likely to cause substantial harm to your business' competitive position. *See* 40 C.F.R. § 2.208 (a)-(e). Emission data, as defined at 40 C.F.R. § 2.301(a)(2), is expressly not entitled to confidential treatment under 40 C.F.R. Part 2, subpart B. *See* 42 U.S.C. § 7542(c); 40 C.F.R. § 2.301(e).

If you assert a claim of business confidentiality in connection with information and documents forwarded in response to this request for information, in accordance with 40 C.F.R. § 2.204(e)(4), EPA is requesting that you answer the following questions with respect to any information or document for which you assert a claim of business confidentiality:

1. What specific portions of the information are alleged to be entitled to confidential treatment? Specify by page, paragraph and sentence when identifying the information subject to your claim.

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2. For what period of time do you request that the information be maintained as confidential, *e.g.*, until a certain date, until the occurrence of a specified event or permanently? If the occurrence of a specific event will eliminate the need for confidentiality, specify that event. Additionally, explain why the information should be protected for the time period you have specified.

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3. What measures have you taken to protect the information claimed as confidential from undesired disclosure? Have you disclosed the information to anyone other than a governmental body or someone who is bound by an agreement not to disclose the information further? If so, why should the information still be considered confidential?

4. Is the information contained in any publicly available material such as the Internet, publicly available databases, promotional publications, annual reports or articles? Is there any means by which a member of the public could obtain access to the information? Is the information of a kind that you would customarily not release to the public?

5. Has any governmental body made a determination as to the confidentiality of the information? If so, please attach a copy of the determination.

6. For each category of information claimed as confidential, explain with specificity whether disclosure of the information is likely to result in substantial harm to your competitive position. Explain the specific nature of those harmful effects, why they should be viewed as substantial, and the causal relationship between disclosure and such harmful effect. How could your competitors make use of this information to your detriment?

7. Is there any other explanation you deem relevant to EPA's determination of your business confidentiality claim that is not covered in the preceding questions? If so, you may provide such additional explanation.

You must furnish comments to the above questions concurrent with your response to this Information Request if you have claimed any information as business confidential. *See* 40 C.F.R. § 2.204(e)(2). Pursuant to 40 C.F.R. § 2.205(b)(2), you may request an extension of this deadline. EPA will construe your failure to furnish timely comments as a waiver of your confidentiality claim, consistent with 40 C.F.R. § 2.204(e)(1). Please submit your comments to:

Janice Chan
U.S. Environmental Protection Agency, Region 9
Enforcement Division (ENF-2-1)
75 Hawthorne Street (AIR-5)
San Francisco, CA 94105

Pursuant to 40 C.F.R. § 2.205(c), you are hereby advised that information you submit as part of your comments may be regarded by EPA as entitled to confidential treatment if, when it is received by EPA, it is marked in accordance with 40 C.F.R. § 2.203(b). As required by 40 C.F.R. § 2.204(e)(6), you may assert a business confidentiality claim covering all or part of your response to these questions, as provided in 40 C.F.R. § 2.203(b). Information covered by such a claim will be disclosed by EPA only to

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the extent, and by means of the procedures, set forth in Section 208(c) of the CAA and 40 C.F.R. Part 2. EPA will construe the failure to furnish a confidentiality claim with your comments as a waiver of that claim, and the information may be made available to the public without further notice to you.

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APPENDIX B

Information Requested from Vivid Distributing, LLC dba Vivid Racing

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Vivid Racing and Agency Power must submit the following information to the United States Environmental Protection Agency pursuant to Section 208 of the CAA, 42 U.S.C. § 7542, regarding the sale or offering for sale of certain parts and products.

1. Identify each device, exhaust system, exhaust system component, or any other part (collectively "component," "product," or "device") sold or offered for sale by you during the period from January 1, 2014 through the date of this letter that does any of the following:

   a. changes, affects, or simulates the operation of a motor vehicle's diesel particulate filter (DPF) system or any sensors or signals related to the DPF system;

   b. reads, clears, or prevents the occurrence of vehicle diagnostic trouble codes, or uses any other means to interfere with the proper functioning of the vehicle's on-board diagnostic system to detect and report a malfunctioning, non-functioning, or missing DPF or other emission control device, element of design, or any other Emission Related Component;

   c. replaces, bypasses, defeats, or otherwise renders inoperative a motor vehicle emission control device, element of design, or any other Emission Related Parts.

   Such components may include, but may not be limited to, those described on your website at https://www.vividracing.com/ and https://www.agency-power.com/. Be advised that this request pertains to all components described herein regardless of any claims made by Vivid Racing that a particular component is for testing, maintenance, or race use only, or other similar claims.

2. For each component identified in response to Question 1:

   a. State the Vivid Racing and Agency Power part number and identifying name, the part number and identifying name from the manufacturer (if different), and the vehicle applications by make, model, and year. The list of components provided by you must be organized by the categories: component manufacturer, model, year, part/item number, name/description, and purchase name/description, as shown in the attached Excel workbook in the CD-R enclosed as Appendix E.

   b. i. Describe the function of the component
      ii. State if the component requires elimination of the OEM catalyst or OEM DPF.
      iii. Does the component replace the OEM catalyst or OEM DPF with your catalyst or your DPF?

   c. i. Describe the function of the component and explain in detail how it modifies

the configuration, programming, or operation of the vehicle or engine. Identify any and all ways in which the component may interfere, or is known to interfere, with the proper functioning of any part of the emission control system or on-board diagnostic system installed on the vehicle by the original vehicle manufacturer.

ii. Does the component enable the continued use of the vehicle after a DPF or other emission control device, element of design, or any other Emission Related Component has been altered or removed by clearing diagnostic trouble codes or modifying the operation of any sensors?

d. Describe any and all vehicle activities, uses, or operational scenarios for which Vivid Racing and Agency Power have ever suggested or recommended that the product be used.

e. Identify all diagnostic trouble codes that are in any way related to a vehicle's emission control components or elements of design, which the component is able to read, clear, or prevent the occurrence of. For each trouble code identified: provide a description of the code including, but not limited to, the vehicle conditions that cause it; indicate whether the device can be used to clear the code manually; indicate whether the device can be used to clear the code automatically in any way; and indicate whether the device can prevent the occurrence or re-occurrence of the code. For any codes which the device can prevent from occurring, explain how the device does so.

f. Provide copies of all documentation for each component, including, but not limited to, technical specifications, installation and operating instructions, and warranty information.

g. Identify by name all websites, magazines, trade publications, and any other media in which Vivid Racing and Agency Power advertised the component at any time since January 1, 2014.

h. Indicate whether the component is described by Vivid Racing or Agency Power in any documentation, marketing materials, advertisements, websites, or other media with the following statements or similar language:

- "This product is not intended to be installed on vehicles registered for highway use."
- "This product is intended for TESTING, MAINTENANCE, RACE USE, COMPETITION, OR OFF-ROAD ONLY."

Provide references to all materials containing such statements.

i. State the quantity that was manufactured by or for Vivid Racing or Agency Power during each year from January 1, 2014, through the date of this letter. Identify the name and address of the manufacturer, and the location(s) where the components were manufactured and/or programmed. If the product was not physically manufactured or

CERTIFICATE OF MAILING

I, Tawanna Cathey, certify that I sent a Request for Information pursuant to the Clean Air Act by Certified Mail, Return Receipt Requested, to:

Vivid Distributing, LLC dba Vivid Racing
1429 E. Scott Avenue
Gilbert, AZ 85233

on the 24th day of January 2017.

Tawanna Cathey, Secretary
U.S. EPA

Certified Mail Receipt Number: 70113500000190513220