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

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

FEB 14 2019

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ATTENTION:

Bart's Parts and Service, Inc.
265 US 11
Champlain, New York 12919

Mr. Herbert Bartemy
For: Bart's Parts and Service, Inc.
114 Bedard Rd.
Sheldon, Vermont 05483

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

The United States Environmental Protection Agency ("EPA") hereby requires Bart's Parts and Service, Inc. ("Bart's Parts") and any of its parent organizations, affiliated organizations, predecessors, successors, and assignees (collectively "You"),[1] to provide the information requested below.

EPA issues this Information Request under Section 208(a) of the Clean Air Act ("CAA"), 42 U.S.C. § 7542(a). Under Section 208(a), the Administrator of the 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. The Administrator has delegated this authority to the undersigned Chief of the Vehicle and Engine Enforcement Branch in the Air Enforcement Division, Office of Enforcement and Compliance Assurance.

Appendix A provides definitions. Appendix B provides instructions for Your responses to this Information Request. Appendix C specifies the information that You must provide. Appendix D provides information about asserting a claim of confidentiality over information You provide in response to this Information Request. Appendix E contains the form with which You are required to certify the truth and completeness of Your response.

You must submit this information to the EPA representative listed below within thirty

[1] *See* definition 5 in Appendix A.

(30) calendar days from the date of this Information Request. Please carefully review the instructions, definitions, and specific Requests as You prepare Your response. If You anticipate being unable to fully respond to this Information Request by this deadline, You must contact Julian Velez at (212) 637-3464, or velez.julian@epa.gov, within fifteen (15) days of the date of this Information Request and, with an appropriate justification, request an extension of time to answer some or all of the Requests below. If timely submitted, the EPA will review Your request and may extend the time in which Your response must be provided.

Failure to provide the requested information may result in 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. Pursuant to Sections 208 and 307 of the CAA, 42 U.S.C. §§ 7542(a)–(b), 7607(a), EPA may request additional information, inspections, or depositions. It is important that Your responses be clear, accurate, organized, and complete. EPA will regard any information that is misleading, false, incomplete, or provided without regard to its accuracy as a violation of the CAA and/or criminal statutes.

Under Section 208(a) of the Clean Air Act ("CAA"), 42 U.S.C. § 7542(a), and by this letter, once delivered, You are required to maintain all information, records, or reports in Your possession, custody, or control related to the manufacture, sale, offering for sale, or installation by You of any part or component, including any product, that changes, affects, bypasses, defeats, replaces, or renders inoperative any device or element of design related to vehicle or engine emissions, including but not limited to any electronic control module, onboard diagnostic system, exhaust gas recirculation system, diesel particulate filter, selective catalytic reduction system, and sensors, signals, or records related to these devices or elements of design. Such information, records, or reports include but are not limited to paper or electronic files related to advertisements, webpages, invoices, or correspondence.

You may be entitled to assert a business confidentiality claim covering all or part of the information provided in response to this Information Request as specified in the Confidentiality of Business Information ("CBI") regulations, 40 C.F.R. Part 2, Subpart B. You must specify the page, paragraph, and sentence when identifying the information subject to Your CBI claim. Appendix D of this Information Request provides process and substantiation requirements for asserting business confidentiality claims. EPA may, without further notice, provide the public with any information not subject to a CBI claim.

EPA may use any information provided in response to this Information Request in an administrative, civil, or criminal action.

Please provide all requested information, via United States mail, courier service, or overnight delivery, to:

Julian Velez
U.S. Environmental Protection Agency – Region 2
290 Broadway, 21st Floor
New York, NY 10007

Questions concerning this Information Request should be directed to Julian Velez at (212) 637-3464 or by email at velez.julian@epa.gov.

Evan Belser
Chief
Vehicle and Engine Enforcement Branch
Air Enforcement Division
Office of Civil Enforcement

Appendix A
Definitions

All terms used in this Information Request will have their ordinary meaning unless such terms are defined below or in the CAA, 42 U.S.C. §§ 7401–7671q, or the regulations found at 40 C.F.R. Parts 85, 86, 89, 90, 1036, 1037, 1039, 1048, 1051, and 1068, in which case they shall have their meanings as defined therein.

1. The term "information" includes any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, interoffice and intraoffice communications, electronic mail ("email"), instant messages, calendars, contracts, cables, notations of any type of conversation, telephone call, meeting, or other communication, bulletins, printed matter, computer printouts, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, presentations, spreadsheets, and worksheets. The term "information" includes all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments to the foregoing, as well as any attachments or appendices thereto. The term "information" also includes any graphic or oral records or representations of any kind (including, without limitation, photographs, charts, graphs, voicemails, microfiche, microfilm, videotapes, recordings, and motion pictures), electronic and mechanical records or representations of any kind (including, without limitation, tapes, cassettes, disks, computer server files, computer hard drive files, CDs, DVDs, back-up tape, memory sticks, recordings, and removable computer media such as thumb drives, flash drives, memory cards, and external hard drives), and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, electronic format, disk, videotape or otherwise. Information bearing any notation not part of the original text is considered to be separate information. A draft or non-identical copy is separate information within the meaning of this term.

2. The term "entity" means any natural person, corporation, partnership, limited liability company, sole proprietorship, joint venture, or any formal or informal group, organization or association.

3. The term "person" includes an individual, corporation, partnership, or association. *See* Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

4. A reference to any entity by name includes the entity and any of the entity's affiliated organizations,[2] predecessors, successors, and assignees.

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[2] *See* definition 6, below.

5. The terms "You," "Your," or "Bart's Parts" refer, collectively, to Bart's Parts and Service, Inc., and any of its parent organizations, affiliated organizations, predecessors, successors, and assignees.

6. The term "affiliated organization" means any organization or entity associated with another entity as an agent, parent organization, predecessor corporation, subsidiary organization, or any organization or entity acting in lieu of another entity.

7. The words "and" and "or" shall be construed either conjunctively or disjunctively, as required by the context, to bring within the scope of these requests any information that might be deemed outside their scope by any other construction.

8. The word "all" shall be construed to mean all or any, and the word "any" shall be construed to mean all or any.

9. The term "manufacturer" shall include any person engaged in the manufacturing or assembling of products identified in response to this Request for Information.

10. The term "vehicle" refers to both a vehicle and a vehicle engine.

11. The term "applications" means all vehicle or engine configurations with which a product is compatible or may be used.

12. The term "emission related parts" means those parts installed for the specific purpose of controlling emissions, or those components, systems, or elements of design which must function properly to assure continued vehicle emission compliance, as defined in 40 C.F.R. § 85.2102.

13. The term "element of design" means any control system (e.g., 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, as defined in 40 C.F.R. §§ 86.094-2 and 86.1803-01.

14. The terms "electronic control unit," "electronic control module," or "ECM" mean a device that receives inputs from various sensors and puts out signals to control engine, vehicle, or equipment functions. The ECM uses software programming including calculations and tables of information to provide the appropriate outputs. Multiple electronic control modules may be incorporated in a single unit to control various engine, vehicle, or equipment functions. ECM is used in this Information Request as a generic term, but may refer specifically to the engine control module when discussing emission controls on vehicles and engines. Examples of ECMs include, but are not limited to, the Engine Control Module, OBD Control Modules, Powertrain Control Module ("PCM"), Transmission Control Module ("TCM"), Body Control Module ("BCM") and aftertreatment control module.

15. The term "engine tuner" or "tuner" means any device or product capable of accessing,

altering, or replacing the software programming, calculations, computer logic, tables of information (e.g., fuel timing maps), coding, or other content or information stored within or used by an ECM.

16. The term "engine tune" or "tune" means any combination of software programming, calculations, computer logic, tables of information (e.g., fuel timing maps), coding, or other content or information, stored in any form, capable of affecting or controlling an ECM.

17. The term "product" includes any software code, software, hardware, program, element of design, calibration, tune, tuner, device, part, or component.

18. The terms "selective catalytic reduction" or "SCR" includes systems that reduce Nitrogen Oxides ("NO_x") emissions by chemically converting exhaust gas that contains NO_x to Nitrogen Gas ("N_2") and water through the injection of diesel exhaust fluid.

19. The terms "onboard diagnostics" or "OBD" includes systems that monitor, detect, and report malfunctions of all monitored emission-related parts and elements of design through a network of sensors installed throughout a motor vehicle or motor vehicle engine. If an OBD detects a problem it responds by, among other things, recording a Diagnostic Trouble Code ("DTC"), illuminating a Malfunction Indicator Light ("MIL") or other warning lamp on the vehicle instrument panel, and/or providing information to the ECM which induces engine derate due to malfunctioning or missing emission-related systems.

20. The terms "exhaust gas recirculation" or "EGR" includes systems that reduce NO_x emissions by recirculating exhaust gas through the engine, thereby reducing engine temperature and NO_x emissions.

21. The term "diesel particulate filter," "DPF" or "DPF system" refers to a part or element of design that reduces the level of particulate matter ("PM") contained in engine exhaust gas by passing the gas through a filtration system.

22. The term "manufacture" includes the creation, design, development, alteration, fabrication, production, or programming of a software code, software, hardware, program, element of design, calibration, engine tune, engine tuner, device, part, or component.

23. The term "catalysts" means systems or devices which increase the rate of a chemical reaction but are not one of the original reactants or final products, *i.e.*, the catalyst is not consumed or altered in the reaction. The term "catalysts" includes emission control catalysts that are exhaust aftertreatment devices such as diesel oxidation catalysts ("DOCs") and NOx adsorption catalysts ("NACs").

Appendix B
Instructions for Responses

1. Provide a complete, detailed response, in English, to each Request in Appendix C below.

2. If, in responding to these Requests, You encounter any ambiguities when construing a Request or definition, in Your response describe the matter believed to be ambiguous and the construction used in responding. Words used in the plural shall also be taken to mean and include the singular. Words used in the singular shall also be taken to mean and include the plural. All verbs shall be construed to include all tenses.

3. Where a Request allows or requires documents to be provided in response, provide all documents electronically in a folder specific to that question or subpart and labeled accordingly. Provide copies of documents, not original documents.

4. For each response, please provide the number of the Request to which it responds and identify each person who provided information that was used to prepare that answer. For each document produced, please provide the number of the Request to which it responds.

5. When a response is provided in the form of a number, specify the units of measure.

6. Where documents or information necessary for a response is not in Your possession, custody, or control, indicate in Your response why such documents or information are not available or in Your possession, custody, or control, and identify any source that either possesses or is likely to possess such information.

7. Where You have previously submitted information to the EPA that is responsive to any of the Requests set forth in Appendix C, re-submit that information in accordance with these instructions (Appendix B). Identify the material that was previously provided, the date on which it was provided, how the information was provided (e.g., electronically, fax, mail), and the individual at the EPA to whom it was provided.

8. Please provide Your response to this Information Request in electronic form on a disk (CD or DVD media, or a USB flash memory drive). All responsive documents and materials (e.g., copies of print media, audio, and visual material) must be provided as an accurate and legible copy in searchable format, number stamped in sequential order (e.g., BATES stamped). Where spreadsheets are responsive to a Request, produce them in unlocked electronic spreadsheet format, such as .xlsx or .csv (locked files or PDF versions of a spreadsheet are unacceptable). Please contact Julian Velez if You have any questions about this instruction.

9. You must promptly supplement Your response to any Request in Appendix C in the event You learn that You possess responsive information not yet produced or if You gain possession, custody, or control of responsive information after responding to this Information Request.

Appendix C
Information Request

Provide the following information to EPA, pursuant to Section 208 of the CAA, 42 U.S.C. § 7542.

1. In an **electronic, unlocked Excel-compatible spreadsheet** list each product that Bart's Parts manufactured, sold, installed, or offered for sale during the period January 1, 2016, through the date of this Information Request, that, individually or in conjunction with other products, permanently or temporarily:

    a. bypasses, defeats, renders inoperative, removes, deletes, replaces, or interferes with a motor vehicle's emission related parts, including but not limited to the EGR system, DPF system, DOC, OBD system, SCR system (including DEF systems), or any sensors, signals, or records related to those systems; or

    b. bypasses, defeats, renders inoperative, removes, deletes, replaces, reprograms, overwrites, or interferes with a motor vehicle's ECM, software programming, or calibrations (such as, but not limited to, modification to fuel injection timing, fuel pressure, pulse width, etc).

    Examples of such products include, but are not limited to, tuners, tunes (e.g. Diesel Spec Inc. tunes), EGR delete kits, DPF delete kits, block off plates, re-route plates, re-route pipes, performance exhaust systems, delete pipes, race pipes, straight pipes, upgrade pipes, delete kits, or upgrade kits.

2. In an **electronic, unlocked Excel-compatible spreadsheet**, for each product identified in response to Request 1 above, provide the following information:

    a. the product number;
    b. the identifying product name;
    c. the product manufacturer's name and address;
    d. the product supplier's name and address(es) (if different than manufacturer's) as listed on the shipping label(s) associated with the product's original packaging;
    e. Your average purchase price;
    f. Your average sale price;
    g. the quantity <u>purchased</u> by you during the period January 1, 2016, through the date of this Information Request;
    h. the quantity <u>sold</u> by You during the period January 1, 2016, through the date of this Information Request; and
    i. the quantity <u>installed</u> by You during the period January 1, 2016, through the date of this Information Request.
    j. Identify which of the following the product allows:

        i. to alter, disable and/or allow the removal of the EGR;
        ii. to alter, disable and/or allow the removal of a DPF;

iii. to alter, disable and/or allow the removal of a catalyst;
iv. to alter, disable and/or allow the removal of a SCR system;
v. to alter fuel timing;
vi. to alter engine calibrations for fuel injection pulse width;
vii. to alter engine calibrations for fuel injection pressure;
viii. to alter engine calibrations for air/fuel ratio during the combustion process;
ix. to alter engine calibrations for fuel quantity (amount of fuel injected into the cylinder per stroke); and/or
x. to bypass or alter OBD parameters to prevent DTCs or MILs from being recorded or illuminated.

3. For each purchase, sale or install identified in response to Request 2 above, provide a copy of each associated invoice and/or receipt (e.g. invoices/receipts of products purchased from Diesel Spec Inc.).

4. Provide the location of any and all warehouses or storage facilities where Bart's Parts stores products or inventory.

5. Identify all persons consulted or who provided information in responding to this information request including the title(s) of the individual and their relation to Bart's Parts (e.g., employee, contractor) and the request(s) to which each individual responded or provided information.

Appendix D
Confidential Business Information

An entity may assert a business confidentiality claim covering all or part of the information provided 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, entities 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." 40 C.F.R. § 2.201(e).

Information covered by a claim of business confidentiality will be disclosed by the 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 a failure to furnish a business confidentiality claim with a response to this Information Request as a waiver of that claim, and the information may be made available to the public without further notice.

Pursuant to 40 C.F.R. § 2.301(h), the EPA possesses the authority to disclose to any authorized representative of the United States information which might otherwise be entitled to confidential treatment. To assist in its review and analysis, the EPA may disclose information provided in response to this Information Requests to an EPA contractor, the Eastern Research Group, under contract number EP-W-15-006. An entity may submit any comments to the EPA with its assertion of a business confidentiality claim.

To assert a business confidentiality claim, an entity must place on (or attach to) all information subject to the claim 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 it provides its response to this Information Request. Allegedly confidential portions of otherwise non-confidential documents should be clearly identified, and may be provided separately to facilitate identification and handling by the EPA. An entity should indicate whether confidential treatment is only required until a certain date or until the occurrence of a certain event.

The criteria the EPA will use in determining whether material claimed 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 an entity 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 it has taken reasonable measures to protect the confidentiality of the information and that it intends to continue to do so, (3) the information is not and has not been reasonably obtainable by legitimate means without its consent, and (4) the disclosure of the information is likely to cause substantial harm to its business's competitive edge. *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 an entity asserts a claim of business confidentiality in connection with information and documents forwarded in response to this Information Request, in accordance with 40 C.F.R. § 2.204(e)(4), it must answer the following questions with respect to any information or document for which it asserts a claim of business confidentiality:

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

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.

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 that harm, 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 the EPA's determination of Your business confidentiality claim that is not covered in the preceding requests? If so, You may provide such additional explanation.

An entity must furnish responses to the above questions concurrent with its response to this Information Request if it has 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), an entity may request an extension of this deadline.

The EPA will construe a failure to furnish timely responses to the above questions as a waiver of any confidentiality claim, consistent with 40 C.F.R. § 2.204(e)(1). Please provide responses to:

Julian Velez
U.S. Environmental Protection Agency – Region 2
290 Broadway, 21st Floor
New York, NY 10007

Pursuant to 40 C.F.R. § 2.205(c), be hereby advised that information provided as part of any comments may be entitled to confidential treatment if, when it is received by the 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), an entity may assert a business confidentiality claim covering all or part of its response to these Requests, as provided in 40 C.F.R. § 2.203(b). Information covered by such a business confidentiality claim will be disclosed by the 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. The EPA will construe the failure to furnish a confidentiality claim with the comments as a waiver of that claim, and the information may be made available to the public without further notice.

Appendix E
Statement of Certification

You are submitting the enclosed documents in response to the U.S. Environmental Protection Agency's ("EPA") Information Request, issued pursuant to Section 208(a) of the Clean Air Act, to determine compliance with the Clean Air Act and its affiliated regulations.

I certify that I am fully authorized by Bart's Parts and Service, Inc., and its parent organizations, affiliates, predecessors, successors, and assignees, to provide the above information on its behalf to EPA.

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.

Date: _____

Name (Printed): _____

Signature: _____

Title: _____

CERTIFICATE OF MAILING

I, Edward Kulschinsky, certify that on this day I sent this Request for Information Under § 208(a) of the Clean Air Act, 42 U.S.C. § 7542(a), by Certified Mail, return receipt requested, and by Certified Mail without return receipt requested, to:

Bart's Parts and Service, Inc.
265 US 11
Champlain, New York 12919

Mr. Herbert Bartemy
For: Bart's Parts and Service, Inc.
114 Bedard Rd.
Sheldon, Vermont 05483

Date: 2/14/2019

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