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

JAN 28 2019

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Diesel Race Parts LLC
d/b/a Deviant Race Parts
c/o Jayme Kemmish, Member
11783 N. Warren St.
Hayden, ID 83835

Diesel Race Parts LLC
d/b/a Deviant Race Parts
c/o Jayme Kemmish, Registered Agent
119 E. Garden Ave.
Cour d'Alene, ID 83814

Re: Notice of Violation of the Clean Air Act

Dear Ms. Kemmish:

The U.S. EPA has investigated and continues to investigate Diesel Race Parts LLC., d.b.a. Deviant Race Parts ("DRP"), 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 DRP manufactured, sold, or offered for sale parts or components for motor vehicles and engines with a principal effect of bypassing, defeating, or rendering inoperative devices or elements of design of those engines that were installed by the original equipment manufacturer in order to comply with CAA emission standards. The EPA has also determined that DRP 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, DRP 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's 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 ("DPF") and exhaust gas recirculation ("EGR").

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]

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

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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).

(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

Based on evidence gathered during an inspection on September 15, 2016, and through an Information Request issued May 18, 2018, under Section 208 of the Clean Air Act, DRP manufactured, sold, or offered for sale from January 1, 2017, to May 17, 2018, 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"). This hardware, when used, bypasses or disables elements of design that motor vehicle manufacturers employ to meet emission standards. DRP manufactured, offered for sale, or sold products that allow the removal and replacement of the original manufacturers' EGR systems and associated throttle body valves, as well as products that allow the replacement of the original manufacturers' crank case emission controls resulting in those emissions being vented to the atmosphere.

A principal effect of these products is to bypass, defeat, or render inoperative devices or elements of design that control emissions of regulated air pollutants. DRP manufactured, offered for sale, or sold products that rendered the original manufacturers' EGR, throttle body valve and crank case emission control systems inoperative and allowed for the removal of EGR, throttle body valve and crank case emission control components. As stated above, emission control hardware are elements of design that manufacturers employ to meet emission standards.

DRP manufactured, sold, or offered for sale at least 29,289 EGR removal products described by the company as allowing "a consumer to remove the factory installed EGR system in a vehicle that came equipped with that system from the factory" or as allowing the customer to remove the factory installed throttle body valve that works with the engine's EGR system. DRP manufactured, sold, or offered for sale at least 5,626 crank case emission control system removal

[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.

products. Many of these are described by the company as allowing the customer to "route spent crank case gas to atmosphere."

DRP knew or should have known that these products were offered for sale or installed to bypass, defeat, or render inoperative devices or elements of design that control emissions of regulated air pollutants. As an example, the instructions provided by DRP for Part No. 95100[13] describe how to physically remove the EGR system including, but not limited to, the EGR motor, temperature sensor and EGR cooler, and include photographs of an example engine during the EGR removal process. Additionally, several of the crank case emission control system removal products clearly state that installation by the customer will result in emissions from the crank case being emitted to the atmosphere instead of being controlled[14].

Furthermore, DRP knew or should have known that these products were offered for sale or installed on "motor vehicles" or "motor vehicle engines." DRP's response to EPA's Information Request stated that the products were designed and marketed for use on a specific make, model, and year of Cummins, FCA, GM, or Ford motor vehicle or engine.[15] 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."

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[13] https://www.alligatorperformance.com/media/catalog/product/d/e/deviant_ford_6.7_egr_upgrade_instructions.pdf
[14] One example is http://www.deviantraceparts.com/Deviant_75200_LML_PCV_Re_Route_W_Plug_p/75200.htm
[15] Cummins engines were used in Dodge brand motor vehicles manufactured by FCA.

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.[16] Persons violating Section 203(a)(3)(B) of the Act, 42 U.S.C. § 7522(a)(3)(B), are subject to injunctive measures under Section 204 of the Act, 42 U.S.C. § 7523, and a civil penalty of up to $4,619 for each violation.[17]

The EPA is available to discuss this matter with you in further detail, upon your request. Please contact Julie Vergeront, the EPA attorney assigned to this matter, within 14 days of receipt of this Notice of Violation. Ms. Vergeront can be reached at (206) 553-1497 or vergeront.julie@epa.gov.

Sincerely,

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

cc: Murray Feldman, Holland & Hart
Emily Schilling, Holland & Hart

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