**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**
**REGION 7**
11201 Renner Boulevard
Lenexa, Kansas 66219

FEB 2 4 2020

**CERTIFIED MAIL**
**RETURN RECEIPT REQUESTED**
Article No.: 7014 1200 0000 6123 0528

Mr. Kasey Kroeker
Kroeker Farms Ekotuning, LLC
13 Mastre Drive
P.O. Box 679
Grant, Nebraska 69140

Dear Mr. Kroeker:

**Request to Provide Information Pursuant to the Clean Air Act**

The U.S. Environmental Protection Agency requests certain information from you and/or Kroeker Farms Ekotuning, LLC (doing business as Performax Ag Tuning, Kroeker Ag Services and/or Ekotuning Nebraska) (herein referred to as "Kroeker Farms Ekotuning") about your operations in Nebraska. Appendix A provides the instructions needed to answer this information request. Appendix B specifies the information that you must submit. You must send this information to us within 30 calendar days after you receive this request.

We are issuing this information request under Section 208(a) of the Clean Air Act, 42 U.S.C. § 7542(a). Section 208(a) authorizes the Administrator of the EPA to require the submission of information from any person who is subject to the requirements for moving sources under Parts A and C of Subchapter II of the CAA, 42 U.S.C. §§ 7521-7554; 7581-7590. The Administrator has delegated this authority to the Director of the Enforcement and Compliance Assurance Division, U.S. EPA Region 7.

Based on the information currently available to the EPA, Kroeker Farms Ekotuning manufactures, sells, and/or installs vehicle engine parts or components and is subject to Section 208(a) of the CAA. We are requesting this information to determine whether you have complied with Section 203 of the CAA, 42 U.S.C. § 7522, and the regulations promulgated under Subchapter II of the CAA, 42 U.S.C. §§ 7521-7590.

Kroeker Farms Ekotuning must send all required information to:

Lisa Gotto
Compliance Officer
U.S. EPA Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219

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Kroeker Farms Ekotuning must submit all required information under an authorized signature with the required certification found at Appendix C.

As explained more fully in Appendix D, you may assert a claim of business confidentiality under 40 C.F.R. Part 2, Subpart B for any part of the information you submit to us. Information subject to a business confidentiality claim is available to the public only to the extent, and by means of the procedures, set forth at 40 C.F.R. Part 2, Subpart B. If you do not assert a business confidentiality claim when you submit the information, the EPA may make this information available to the public without further notice. You should be aware, moreover, that pursuant to Section 208(c) of the CAA and 40 C.F.R. § 2.301(a) and (f), emissions data are not entitled to confidential treatment. Appendix D provides additional information regarding the meaning and scope of the term "emissions data."

This information request is not subject to the Paperwork Reduction Act, 44 U.S.C. § 3501 *et seq.*, because it seeks collection of information from specific individuals or entities as part of an administrative action or investigation.

The EPA may use any information submitted in response to this request in an administrative, civil or criminal action. Failure to comply fully with this information request may subject Kroeker Farms Ekotuning to an enforcement action under Section 205 of the CAA, 42 U.S.C. § 7524.

You should direct any questions about this information request to Lisa Gotto at 913-551-7210 or *gotto.lisa@epa.gov.*

Sincerely,

David Cozad
Director
Enforcement and Compliance Assurance Division

Enclosures

cc: Performax Ag Tuning (d/b/a Ekotuning Nebraska)
Kasey Kroeker
13 Mastre Drive
Grant, Nebraska 69140-3114

## Appendix A

When providing the information requested in Appendix B, use the following instructions and definitions.

### Instructions

1. Provide a separate narrative response to each question and subpart of a question set forth in Appendix B.

2. Precede each answer with the number of the question to which it corresponds.

3. Indicate on each document produced, or in some other reasonable manner, the number of the question to which it corresponds, and paragraph number if any.

4. When a response is provided in the form of a number, specify the units of measure of the number in a precise manner.

5. Where information or documents necessary for a response are neither in your possession nor available to you, indicate in your response why the information or documents are not available or in your possession, and identify any source that either possesses or is likely to possess the documents or information.

6. If information not known or not available to you as of the date of submission later becomes known or available to you, you must supplement your response. Moreover, should you find at any time after the submission of your response that any portion of the submitted information is false or incorrect, you must notify the EPA as soon as possible.

### Electronic Submissions

To aid in our electronic recordkeeping efforts, we request that you provide all documents responsive to this information request in an electronic format according to paragraphs 1 through 6, below. These submissions are in lieu of hard copy.

1. Provide all responsive documents in searchable Portable Document Format or similar format, unless otherwise requested in specific questions. Submitters providing secured PDFs should also provide unsecured versions for the EPA use in repurposing text.

2. When specific questions request data in electronic spreadsheet form, provide the data and corresponding information in editable Excel format, and not in image format. If Excel format is not available, then the format should allow for data to be used in calculations by a standard spreadsheet program such as Excel.

3. Provide submission on physical media such as compact disk, flash drive or another similar item.

4. Provide a table of contents for each compact disk or flash drive containing electronic documents submitted in response to our request so that each document can be accurately identified in relation to your response to a specific question. *We recommend the use of electronic file folders organized by question number.* In addition, each compact disk or flash drive should be labeled appropriately (*e.g.*, Company Name, Disk 1 of 4 for Information Request Response, Date of Response).

5. Documents claimed as confidential business information must be submitted on separate disks/drives apart from the non-confidential information. This will facilitate appropriate records management and appropriate handling and protection of the CBI. Please follow the instructions in Appendix C for designating information as CBI.

6. Certify that the attached files have been scanned for viruses and indicate what program was used.

**Definitions**

All terms used in this information request have their ordinary meaning unless such terms are defined in the CAA, 42 U.S.C. §§ 7401 *et seq.*, or the applicable mobile source regulations, including those at 40 C.F.R. Parts 85, 86, 89, 1039, and 1068, unless otherwise provided in this information request.

1. The terms "document" and "documentation" means any object that records, stores, or presents information, and includes: email; writings; memoranda; contracts; agreements; records; or information of any kind, whether handwritten or typed, or in computer format, memory, or storage device, or in hardcopy. All documents in hard copy shall also include attachments to or enclosures with any document.

2. The terms "Kroeker Farms Ekotuning, LLC" or "you" or "your" includes any assumed business names (*e.g.*, Performax Ag Tuning, Kroeker Ag Services, Ekotuning Nebraska), agents, representatives, employees, contractors, or other entities that performed work or acted in any way on behalf of, are related to, or acted at the direction of Kasey Kroeker or Kroeker Farms Ekotuning, LLC.

3. The term "catalysts" refers to systems, such as catalytic converters, that contain parts or chemical elements which increase the rate of a chemical reaction but are not one of the original reactants or final products, i.e., are not consumed or chemically altered in the reaction. Catalysts consist of a flow-through structure that is coated with an active metal catalyst and surrounded by a stainless-steel housing.

4. The term "diesel particulate filter" or "DPF" refers to an exhaust after-treatment emission control component that physically traps particulate matter and removes it from the exhaust stream, typically using a porous ceramic or cordierite substrate or metallic filter.

5. The term "electronic control module" or "ECM" means a device that receives inputs from various sensors and outputs signals to control engine, vehicle, or equipment functions. ECM programming relies on calculations and tables of information to provide appropriate outputs. ECM can be a generic term but may refer specifically to the engine control module when discussing emission controls on vehicles and engines. ECMs may be incorporated separately with multiple units or may be combined into a single unit.

6. 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 calibration, and/or the results of systems interaction, and/or hardware item on a motor vehicle or motor vehicle engine, as defined in 40 C.F.R. § 86.094-2.

7. The term "emission control component" means any part or component and its associated fluids, sensors, signals, components, and control systems that function primarily for emission control and whose deviation from original manufacturer specifications and/or failure may increase emissions.

8. The term "exhaust gas recirculation" or "EGR" refers to an emission control component that directs a portion of engine exhaust back into the engine's combustion chamber in order to control combustion temperatures and pressures, thereby reducing the production of nitrogen oxides. The EGR system may include a cooler, which cools the recirculated exhaust.

9. The term "on-board diagnostics" or "OBD" refers to an ECM that monitors emission control and emission-control components and systems along with certain engine components, such as the fuel delivery system and the engine control module. When the OBD detects a malfunction or deterioration that could affect emissions a sufficient amount, it illuminates a malfunction indicator light and produces diagnostic trouble codes to aid in repair.

10. The term "part or component" includes any part or component intended for use with, or as part of, a vehicle, equipment, or vehicle engine (*e.g.*, ECM, element of design, calibration map, tuner, or software that is installed on or designed for use in such vehicles or engines).

11. The term "product" or "products" shall mean, part or component, or other item(s), including, but not limited to, engine parts, block plates, straight pipes, power packages, computer tuning, calibrations, elements of design, tuners, tunes, software coding, or devices, that are manufactured (i.e., created, written, programmed, fabricated, produced, assembled or modified), purchased, imported, distributed, downloaded, offered for sale, sold, provided, and/or installed.

12. The term "selective catalytic reduction" or "SCR" refers to an emission control component that includes systems (the diesel exhaust fluid tank, urea quality sensor, DEF injection system, SCR catalyst(s), and other associated sensors), which inject a reductant, such as DEF, into the exhaust stream where it reacts with catalysts to convert $NO_x$ emissions to nitrogen gas and water.

13. The term "service" means any action to change, affect, modify, bypass, render inoperative, remove, download and/or install one or more part(s) or component(s) (*e.g.*, emission control components) or other item(s), including, but not limited to, engine parts, block plates, straight pipes, power packages, computer tuning, calibrations, elements of design, tuners, tunes, software, code, or devices.

14. The term "tuner" means any device or product capable of accessing and altering, overriding, or replacing the software programming, calculations, computer logic, tables of information *(e.g.*, fuel timing maps), code, or other content stored within or used by an ECM.

## Appendix B

## Information You Are Required to Submit to the EPA

Kroeker Farms Ekotuning, LLC and Kasey Kroeker must submit the following information pursuant to Section 208(a) of the CAA, 42 U.S.C. § 7542(a), as it relates to activities at any location owned, leased, and/or operated by Kroeker Farms Ekotuning, LLC or its customers and any products or services that Kroeker Farms Ekotuning, LLC manufactured, offered for sale, sold, provided, and/or installed from **February 14, 2018 to the date of this request**:

1. Identify all persons consulted or who provided information in responding to this information request, including his/her title(s) and relationship to Kroeker Farms Ekotuning, LLC (*e.g.*, employee, contractor).

2. List, in an **electronic, unlocked spreadsheet**, by product/service number and identifying product/service name, each product or service that:

   (a) Defeats, deletes, deactivates, bypasses, renders inoperative, or allows for the removal of any emission control component, element of design, or emission related part including, but not limited to, the DPF system, EGR system, catalyst system, OBD, SCR (including DEF systems), or sensors, signals, or records related to such systems;

   (b) Simulates, or can be programmed to simulate, the operation of any emission control component and/or related parts including, but not limited to, the DPF system, EGR system, catalyst, OBD, SCR (including DEF systems), or sensors, signals, or records related to these systems; and/or

   (c) Modifies, or can be programmed to modify, engine operating parameters, such as injection timing, fuel pressure, air/fuel ratio, fuel quantity, and/or pulse width, emission control parameters, or OBD functions including, but not limited to, those parameters sensed or controlled by the ECM.

3. For each product or service identified in response to Request 2, above, provide the following information in an **electronic, unlocked spreadsheet**:

   (a) The product or service number;

   (b) The identifying product or service name;

   (c) The product manufacturer's name and address;

   (d) The product supplier's name and address (if different than manufacturer's) as listed on the shipping label(s) associated with the product's original packaging or revealed in conjunction with the products' transmission by electronic means;

(e) The type of vehicle for which the product is designed, used, or sold, including the make(s), model(s), model year(s), engine type(s), engine year(s), vehicle identification number, tractor/equipment serial number, and expected use(s) (*e.g.*, agriculture, construction equipment, on-road diesel, etc.);

(f) For each product, a description of what the product does and how the product operates, and for each product that includes services, a description of the service and which other products are involved in the service or provided contemporaneously;

(g) Indicate whether each product or service can alter, disable, allow and/or bypass:

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

(h) The quantity of each product that was purchased and/or imported by you each calendar year (or partial year if full year not yet available);

(i) The quantity of each product that was manufactured or produced by you for sale each calendar year (or partial year if full year not yet available);

(j) The quantity of each product or service that was sold/distributed by you each calendar year (or partial year if full year not yet available); and

(k) The quantity of each product or service that was installed or performed by you each calendar year (or partial year if full year not yet available).

4. For each product or service identified in response to Request 2, above, provide the following:

(a) A list of media and/or locations through/at which Kroeker Farms Ekotuning, LLC, has advertised and/or provided product operating or installation instructions (*e.g.*, website, social media, newspaper, flyers, verbal offers, trucking shows, conventions etc.), specifying the name of the media and/or date of truck show or convention;

(b) A list of the Universal Resource Locators for any website or social media page that you use or have used to advertise and/or provide product operating or installation instructions for any of the products and/or facilitate sales;

(c) Copies of any advertisements to sell, distribute, or install each product or service, including advertisements on websites, flyers (*e.g.* hard copy), and in other media; and

(d) Copies of any installation or operation instructions, guides, or manuals for each product or service.

5. For each product or service identified in response to Request 2, above, provide copies of all receipts or invoices or any other documents, organized by calendar year, for any and all products or services that were:

(a) Purchased by you;

(b) Manufactured or produced by you;

(c) Distributed and/or sold by you; and/or

(d) Installed or performed by you.

6. For each product or service identified in response to Request 2, above, provide copies of any disclaimers, waivers, notices or releases of liability, assumption of risk and/or indemnity agreements, etc. signed by Kroeker Farms Ekotuning, LLC, or its customers, dealers, distributors, and/or any manufacturers. Provide any and all documents relating to knowledge, liability and/or risk associated with the removal and/or modification of emission control components and/or engine parameters (as described in Request 2(a), (b), and (c), above). These documents are sometimes referred to as "liability waivers."

7. For each product or service identified in response to Request 2, above, state whether you or any other entity conducted tests measuring emissions of hydrocarbons, carbon monoxide, $NO_x$, and/or PM, including tests that measure the impact of the product on a vehicle's emission control components, elements of design, or output power. For each test, provide the following:

(a) A description of the test, including identification of the component and vehicle, U.S. EPA engine family, name of the vehicle, test equipment, test protocols, and calibration procedures; and

(b) A copy of the test report which includes the date and location of the test, the name and position of the person who conducted the test, and the test results.

8. For each product or service identified in response to Request 2, above, state whether you or the manufacturer applied for an Executive Order to the California Air Resources Board and provide a copy of the application for each product. State whether each component received an Executive Order exempting the component from California's emission control system anti-tampering law, California Vehicle Code § 27156. If the component received an Executive Order, provide the Executive Order number and state whether the California Air Resources Board required you to change the component or application in order to receive approval.

9. Provide the name and address of each location where you have stocked and/or are currently stocking each of the products identified in response to Request 2, above. The term "stocked" or "stocking" shall mean the temporary or long-term storage of materials for potential use, sale, or delivery. This definition includes the storage of materials within warehouses, vehicles, and/or shipping containers, as well as storage of software.

10. Provide any agreements and/or contracts with the sellers, wholesalers, distributors, and/or manufacturers of the products or services for each product or service identified in response to Request 2, above, that you provide, sell, or install on any vehicles.

11. Provide the name and addresses of any Kroeker Farms Ekotuning, LLC, agents, subsidiaries or affiliates of any kind and the role and relationship of each such agent, subsidiary, or affiliate with respect to Kroeker Farms Ekotuning, LLC. List all assumed business names used by Kroeker Farms, LLC and Kasey Kroeker.

## Appendix C

### Statement of Certification

Kroeker Farms Ekotuning is submitting the enclosed documents in response to the EPA's Section 208 request for information to determine whether Kroeker Farms Ekotuning, LLC, is following the Clean Air Act.

> I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine or imprisonment.

_____
(Signature)

_____
(Title)

_____
(Date)

## Appendix D

## Confidential Business and Personal Privacy Information Assertion Requirements

You may assert a business confidentiality claim covering any parts of the information requested in the attached Appendix B, as provided in 40 C.F.R. § 2.203(b).

Emission data provided under Section 208 of the CAA, 42 U.S.C. § 7542, is not entitled to confidential treatment under 40 C.F.R. Part 2.

"Emission data" means, with reference to any source of emissions of any substance into the air:

> Information necessary to determine the identity, amount, frequency, concentration or other characteristics (to the extent related to air quality) of any emission which has been emitted by the source (or of any pollutant resulting from any emission by the source), or any combination of the foregoing;
>
> Information necessary to determine the identity, amount, frequency, concentration or other characteristics (to the extent related to air quality) of the emissions which, under an applicable standard or limitation, the source was authorized to emit (including to the extent necessary for such purposes, a description of the manner and rate of operation of the source); and
>
> A general description of the location and/or nature of the source to the extent necessary to identify the source and to distinguish it from other sources (including, to the extent necessary for such purposes, a description of the device, installation, or operation constituting the source).

40 C.F.R. § 2.301(a)(2)(i)(A), (B) and (C).

To make a confidentiality claim, submit the requested information and indicate that you are making a claim of confidentiality. Any document for which you make a claim of confidentiality should be marked by attaching a cover sheet stamped or typed with a caption or other suitable form of notice to indicate the intent to claim confidentiality. The stamped or typed caption or other suitable form of notice should employ language such as "trade secret" or "proprietary" or "company confidential" and indicate a date, if any, when the information should no longer be treated as confidential. Information covered by such a claim will be disclosed by the EPA only to the extent permitted and by means of the procedures set forth at Section 208(c) of the CAA and 40 C.F.R. Part 2. Allegedly confidential portions of otherwise non-confidential documents should be clearly identified. The EPA will construe the failure to furnish a confidentiality claim with your response to the information request as a waiver of that claim, and the information may be made available to the public without further notice to you.

### Determining Whether the Information Is Entitled to Confidential Treatment

All confidentiality claims are subject to the EPA verification and must be made in accordance with 40 C.F.R. § 2.208, which provides in part that you must satisfactorily show: that you have taken reasonable measures to protect the confidentiality of the information and that you intend to continue to do so, that the information is not and has not been reasonably obtainable by legitimate means without your consent

and that disclosure of the information is likely to cause substantial harm to your business's competitive position.

Pursuant to 40 C.F.R. Part 2, Subpart B, the EPA may at any time send you a letter asking that you support your confidential business information claim. If you receive such a letter, you must respond within the number of days specified by the EPA. Failure to submit your comments within that time would be regarded as a waiver of your confidentiality claim or claims, and the EPA may release the information. If you receive such a letter, the EPA will ask you to specify which portions of the information you consider confidential by page, paragraph and sentence. Any information not specifically identified as subject to a confidentiality claim may be disclosed to the requestor without further notice to you. For each item or class of information that you identify as being CBI, the EPA will ask that you answer the following questions, giving as much detail as possible:

1. For what period do you request that the information be maintained as confidential, *e.g.*, until a certain date, until the occurrence of a special event, or permanently? If the occurrence of a specific event will eliminate the need for confidentiality, please specify that event.

2. Information submitted to the EPA becomes stale over time. Why should the information you claim as confidential be protected for the time period specified in your answer to question number 1?

3. What measures have you taken to protect the information claimed as confidential? 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 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 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 why release of the information is likely to cause 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 effects. How could your competitors make use of this information to your detriment?

7. Do you assert that the information is submitted on a voluntary or a mandatory basis? Please explain the reason for your assertion. If you assert that the information is voluntarily submitted information, explain whether and why disclosure of the information would tend to lessen the availability to the EPA of similar information in the future.

8. Is there any other information you deem relevant to the EPA's determination regarding your claim of business confidentiality?

If you receive a request for a substantiation letter from the EPA, you bear the burden of substantiating your confidentiality claim. Conclusory allegations will be given little or no weight in the determination. In substantiating your CBI claim(s), you must bracket all text so claimed and mark it "CBI." Information so designated will be disclosed by the EPA only to the extent allowed by and by means of the procedures set forth in 40 C.F.R. Part 2, Subpart B. If you fail to claim the information as confidential, it may be made available to the public without further notice to you.

**Certificate of Mailing**

I certify that a true and correct copy of the foregoing Section 208 Request for Information was sent this day in the following manner to the following addressees:

Copy via Certified Mail, Return Receipt Requested to Respondent:

Kroeker Farms Ekotuning, LLC
13 Mastre Drive
P.O. Box 679
Grant, Nebraska 69140

Copy via First Class Mail to:

Performax Ag Tuning (d/b/a Ekotuning Nebraska)
Mr. Kasey Kroeker
13 Mastre Drive
Grant, Nebraska 69140-3114

Dated this _____ day of _____, _____.

_____
Signed