

United States of America v. Power Performance Enterprises Inc. and Kory Blaine Willis

ATTACHMENT A

PROPOSED CONSENT DECREE

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAKE CHARLES DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

**POWER PERFORMANCE
ENTERPRISES, INC. and
KORY BLAINE WILLIS,**

Defendants.

Civil Action No. _____

CONSENT DECREE

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WHEREAS, Plaintiff United States of America, on behalf of the United States Environmental Protection Agency (“EPA”), has filed a Complaint in this action concurrently with this Consent Decree, alleging that Power Performance Enterprises, Inc. (“PPEI”) and Kory B. Willis violated Section 203 of the Clean Air Act (“Act”), as amended, 42 U.S.C. § 7522, by manufacturing, selling, offering for sale, or installing certain motor vehicle parts or components, the principal effect of which is to bypass, defeat, or render inoperative a motor vehicle emission-control device or element of design;

WHEREAS, Section 203(a)(3)(A) of the Act, 42 U.S.C. § 7522(a)(3)(A), prohibits any person from knowingly removing or rendering inoperative any device or element of design installed on or in a motor vehicle or motor vehicle engine in compliance with regulations under Title II of the Act after sale and delivery to the ultimate purchaser;

WHEREAS, Section 203(a)(3)(B) of the Act, 42 U.S.C. § 7522(a)(3)(B), prohibits any person from manufacturing, selling, offering for sale, or installing, 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 Title II of the Act, 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;

WHEREAS, the Complaint alleges that Mr. Willis and PPEI manufactured, sold, or installed numerous subject aftermarket performance products, the effect of which is to bypass, defeat, or render inoperative a device or element of design installed on or in motor vehicles or motor vehicle engines to control the emission of pollutants;

WHEREAS, the United States’ Complaint seeks injunctive relief and the assessment of

civil penalties;

WHEREAS, both Mr. Willis and PPEI deny any liability to the United States arising out of the conduct, transactions, or occurrences alleged in the Complaint and Consent Decree;

WHEREAS, on September 13, 2019, Mr. Willis and PPEI represented to the United States that, as of 2:00 PM Central Time on September 16, 2019, PPEI's website would halt sales of products that remove or bypass the EGR system, aftermarket race exhaust systems that remove after-treatment systems, and tuning products that disable or allow removal of Stock emissions control systems;

WHEREAS, the United States has reviewed Financial Information regarding the Defendants' ability to pay a civil penalty in this matter and, based on that information, has determined that the Defendants have a limited ability to pay a civil penalty in this matter; and

WHEREAS, the United States, Mr. Willis and PPEI (collectively, the "Parties") recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and will avoid litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest;

NOW, THEREFORE, before the taking of any testimony, without the adjudication or admission of any issue of fact or law except as provided in Section I (Jurisdiction and Venue), and with the consent of the parties, it is hereby ADJUDGED, ORDERED, AND DECREED as follows:

I. JURISDICTION AND VENUE

1. The Court has jurisdiction over the subject matter of this action and the Parties pursuant to 28 U.S.C. §§ 1331, 1345, 1355, and Sections 204 and 205 of the Act, 42 U.S.C. §§ 7523 and 7524.

2. Venue in this Court is proper pursuant to Sections 204 and 205 of the Act, 42 U.S.C. §§ 7523 and 7524, and 28 U.S.C. §§ 1391(b) and 1395(a). For purposes of this Consent Decree, or any action to enforce this Decree, Mr. Willis and PPEI consent to the Court's jurisdiction over this Decree or such action and over Mr. Willis and PPEI, and consent to venue in this judicial district. For purposes of this Consent Decree, Mr. Willis and PPEI agree that the Complaint states claims upon which relief may be granted pursuant to Sections 203, 204, and 205 of the Act, 42 U.S.C. §§ 7522, 7523, and 7524.

II. APPLICABILITY

3. The obligations of this Consent Decree are binding upon the United States, and apply to and are binding upon Defendants, jointly and severally, and on any successors, assigns or other entities or persons otherwise bound by law.

4. No transfer of ownership or operation of any of Defendants' businesses, whether in compliance with the procedures of this Paragraph or otherwise, shall relieve Defendants of their obligation to ensure that the terms of the Decree are implemented unless (a) the transferee agrees to undertake the obligations required by this Decree and to be substituted for one or both of the Defendants as a Party under the Decree and thus be bound by the terms thereof, (b) the United States consents to relieve Defendants of its/their obligations, and (c) the Court approves the substitution. The United States may refuse to approve the substitution of the transferee for one or both Defendants if it determines that the proposed transferee does not have the financial or technical ability to comply with the requirements of the Decree. At least 30 Days prior to any transfer of ownership or operation of any Defendants' businesses that are engaged in manufacturing, selling, offering to sell, distributing or installing any Subject Product, PPEI or Mr. Willis shall provide a copy of this Consent Decree to the proposed transferee and shall simultaneously provide written notice of the prospective transfer, together with a copy of the

proposed written agreement, to EPA and to the United States in accordance with Section XIV (Notices). Any attempt to transfer ownership or operation of any of Defendants' businesses that are engaged in manufacturing, selling, offering to sell, distributing or installing any Subject Product, without complying with this Paragraph, constitutes a violation of this Decree.

5. Within 30 Days of the Effective Date, Defendants shall provide a copy of this Consent Decree (including all Appendices) to all officers, directors, employees and agents of the Defendants whose duties might reasonably include compliance with any provision of this Decree, as well as to any contractor retained to perform work required under this Consent Decree. Defendants shall condition any such contract upon performance of the work in conformity with the terms of this Consent Decree.

6. In any action to enforce this Consent Decree, Defendants shall not raise as a defense the failure by any of its officers, directors, employees, agents, or contractors to take any actions necessary to comply with the provisions of this Consent Decree.

III. DEFINITIONS

7. Terms used in this Consent Decree that are defined in the Act or in regulations promulgated in accordance with the Act shall have the meanings assigned to them in the Act or such regulations, unless otherwise provided in this Decree. Whenever the terms set forth below are used in this Consent Decree, the following definitions shall apply:

- a. "Act" means the Clean Air Act, as amended, 42 U.S.C. § 7401 *et seq.*
- b. "Authorized Dealer" means any third-party authorized by Defendants to sell products, including any wholesale distributor.
- c. "CARB Executive Order" or "CARB EO" means an official exemption issued by the California Air Resources Board ("CARB") exempting an aftermarket product from the prohibitions of Section 27156 of the California Vehicle Code.
- d. "Complaint" means the complaint filed by the United States in this action.

- e. “Complete Application” means an application for a CARB Executive Order that has been submitted to CARB and contains all forms and information, including the results of emissions testing, required by CARB at the time the application is submitted.
- f. “Conditionally Exempt Product” means any Product for which Defendants have satisfied all of the requirements set forth in Section VI.
- g. “Configuration” means any unique combination of motor vehicle, motor vehicle engine, vehicle or engine systems, vehicle or engine parameters, and Products.
- h. “Consent Decree” or “Decree” means this Decree and all appendices attached hereto and identified in Section XXIV.
- i. “Day” means a calendar day unless expressly stated to be a business day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next business day.
- j. “Defendants” means Power Performance Enterprises, Inc. (“PPEI”), a Louisiana corporation with its current principal place of business at 6096 Candice Lane, Lake Charles, LA 70615, and Kory B. Willis, an individual and owner and president of PPEI.
- k. “Diesel Oxidation Catalyst System” or “DOC” means any oxidation catalyst used to reduce emissions from diesel-fueled vehicles and equipment, including all hardware, components, parts, sensors, subassemblies, software, firmware, auxiliary emission control devices (“AECDS”), and calibrations that collectively constitute the system for implementing this strategy.
- l. “Diesel Particulate Filter System” or “DPF” means all hardware, components, parts, sensors, subassemblies, software, firmware, AECDS, calibrations, and other Emissions-Related Elements of Design that collectively constitute the system for controlling emissions of particulate matter by trapping such particulates in a filter and periodically oxidizing them through thermal regeneration of the filter.
- m. “Effective Date” shall have the definition provided in Section XV.
- n. “Emissions-Related Elements of Design” means any part, device or element of design installed on or in a motor vehicle or motor vehicle engine by an OEM for the specific purpose of controlling emissions or which must function properly to assure continued vehicle emission compliance, including but not limited to:
 - i. OBDs;
 - ii. Diagnostic Trouble Codes;
 - iii. Oxygen sensors;

- iv. NOx sensors;
 - v. Ammonia sensors;
 - vi. PM sensors;
 - vii. Urea quality sensors;
 - viii. Exhaust gas temperature sensors;
 - ix. DPF differential pressure sensors;
 - x. EGRs;
 - xi. DOCs;
 - xii. SCRs;
 - xiii. DPFs;
 - xiv. NACs;
 - xv. Engine calibrations that affect engine combustion (e.g., fuel injection timing, multiple injection patterns, fuel injection mass for each injection event, fuel injection pressure, boost pressure, EGR flowrate, mass air flowrate, EGR cooler bypassing); and
 - xvi. All other parts, devices or elements of design installed in compliance with Title II of the Act and its regulations.
- o. “EPA” means the United States Environmental Protection Agency and any of its successor departments or agencies.
- p. “Exhaust Gas Recirculation System” or “EGR” means all hardware, components, parts, sensors, subassemblies, software, firmware, AECDs, and calibrations that collectively constitute the system for controlling NOx emissions by recirculating a portion of engine exhaust gas into the cylinders of an engine.
- q. “Financial Information” means the documentation identified in Appendix D, which was submitted to the United States by the Defendants.
- r. “Identified Subject Products” means the Products identified in Appendix A.
- s. “Marketing Materials” means all materials or communications containing or conveying information that is generated or controlled by the Defendants to discuss, describe, or explain any of Defendants’ products, in any form, including but not limited to electronic and hardcopy information used in advertisements, training materials, online videos (e.g., YouTube), social media webpages (e.g., Facebook, Instagram) and user manuals or guides.

- t. “Motor Vehicle” has the meaning provided in 42 U.S.C. § 7550(2) and 40 C.F.R. § 85.1703.
- u. “NOx Adsorber Catalyst System” or “NAC” means the strategy for controlling NOx emissions from partial lean burn gasoline engines and from diesel engines by adsorbing the NOx emissions onto a catalyst substrate during lean combustion followed by periodic regeneration of the substrate during short, richer-than-stoichiometric combustion, together with all hardware, components, parts, sensors, subassemblies, software, firmware, AECDs, and calibrations that collectively constitute the system for implementing this control strategy.
- v. “On-Board Diagnostics System” or “OBD” means the strategy for monitoring the functions and performance of the emission control system and all other systems and components that must be monitored under 13 Cal. Code. Regs. §§ 1968.1 and 1968.2, for identifying and detecting malfunctions of such monitored systems and components, and for alerting the driver of such potential malfunctions by illuminating the malfunction indicator light (“MIL”), together with all hardware, components, parts, sensors, subassemblies, software, firmware, AECDs, and calibrations that collectively constitute the system for implementing this strategy.
- w. “Original Equipment Manufacturer” or “OEM” means the manufacturer responsible for the design and production of a motor vehicle or motor vehicle engine.
- x. “Other Subject Products” means any motor vehicle Product: (i) a principal effect of which is to bypass, defeat, or render inoperative a motor vehicle emission control device or Emissions-Related Element of Design; (ii) that enables an Emissions-Related Element of Design to be removed, disabled or bypassed, (iii) that interferes with the function of, or allows the removal of, one or more Emissions-Related Elements of Design; (iv) that modifies one or more Emissions-Related Elements of Design; or (v) that is materially similar to any of the Identified Subject Products.
- y. “PPEI” means Power Performance Enterprises, Inc., a Louisiana corporation with its current principle place of business at 6096 Candice Lane, Lake Charles, LA 70615.
- z. “Paragraph” means a portion of this Decree identified by an Arabic numeral.
- aa. “Parties” means the United States and the Defendants.
- bb. “Permanently Delete and/or Destroy” means (a) in the case of hardware, to crush the device and all of its parts or components to render them useless; and (b) in the case of software, firmware, tunes, calibrations or other programming, to completely and permanently erase all programming and information.
- cc. “Product” means any motor vehicle or engine part or component including, but not limited to, hardware, software, firmware, tunes, calibrations or other

programming (and devices on which such software, firmware, tunes, calibrations or other programming are loaded). Products include Subject Products (i.e., Identified Subject Products and Other Subject Products) and Conditionally Exempt Products.

- dd. “Section” means a portion of this Decree identified by a Roman numeral.
- ee. “Selective Catalytic Reduction System” or “SCR” means all hardware, components, parts, sensors, sub-assemblies, software, firmware, AECDs, calibrations, and other elements of design that collectively constitute the system for controlling NO_x emissions through catalytic reduction using an ammonia-based diesel exhaust fluid (“DEF”) as the reducing agent, including without limitation all hardware, components, parts, sensors, subassemblies, software, firmware, AECDs, calibrations, and other Elements of Design relating to (1) the DEF storage tank; (2) the DEF injectors, (3) the dosing control unit, and (4) the SCR catalysts assembly.
- ff. “Subject Product(s)” means, collectively, all “Identified Subject Product(s)” and all “Other Subject Product(s)”. Conditionally Exempt Products are not Subject Products.
- gg. “Technical Support” means a range of services offered by Defendants to customers or dealers involving the provision of assistance or advice on the use, installation, or repair of products. Technical Support includes, but is not limited to, software or firmware updates, upgrades, or patches; communications in or concerning product owners’ and users’ manuals; and answers to specific questions provided by phone, on-line, or in person.
- hh. “United States” means the United States of America, acting on behalf of EPA.

IV. CIVIL PENALTIES

8. Defendants shall pay the sum of \$1,550,000 as a civil penalty, together with interest accruing from the date on which the Consent Decree is lodged with the Court, at the rate specified in 28 U.S.C. § 1961 (“Interest”), as of the date of lodging. Defendants are jointly and severally liable for the civil penalties due. This payment shall be made in three consecutive annual payments, with the first payment in the amount of \$516,667.00 due 30 Days after the Effective Date, the second payment in the amount of \$516,667.00 due one year after the Effective Date, and the third payment in the amount of \$516,666.00 due two years after the Effective Date. Defendants shall include with each installment payment an additional amount

for Interest on the total unpaid penalty amount from the Date of Lodging through the date of payment.

9. The United States' agreement to the amount of the civil penalty required by Paragraph 8 is based on the Financial Information. Defendants hereby certify that the Financial Information is true, accurate, and complete and that there has been no material improvement in the Defendants' financial condition between the time the Financial Information was submitted and the date of the Defendants' execution of this Consent Decree. Notwithstanding any other provision of this Consent Decree, the United States reserves the right to reinstitute or reopen this action, or to commence a new action seeking relief other than as provided in this Consent Decree, if the Defendants' Financial Information is false, or in any material respect, inaccurate or incomplete. This right is in addition to any other rights and causes of action, civil or criminal, that the United States may have under law or equity in such event.

10. Defendants shall pay the civil penalties due by FedWire Electronic Funds Transfer ("EFT") to the United States Department of Justice in accordance with written instructions to be provided to Defendants, following entry of the Consent Decree, by the Financial Litigation Unit ("FLU") of the United States Attorney's Office for the Western District of Louisiana. The payment instructions provided by the FLU will include a Consolidated Debt Collection System ("CDCS") number, which Defendants shall use to identify all payments required to be made in accordance with this Consent Decree. The FLU will provide the payment instructions to:

Kory Willis, President
Power Performance Enterprises, Inc.
6096 Candice Lane
Lake Charles, LA 70615

on behalf of Defendants. Defendants may change the individual to receive payment instructions on their behalf by providing written notice of such change to the United States and EPA in accordance with Section XIV (Notices).

11. At the time of each payment, Defendants shall send notice that the payment has been made: (i) to EPA via email at cinwd_acctsreceivable@epa.gov or via regular mail at EPA Cincinnati Finance Office, 26 W. Martin Luther King Drive, Cincinnati, Ohio 45268; (ii) to the United States via email or regular mail in accordance with Section XIV (Notices); and (iii) to EPA in accordance with Section XIV. Such notice shall state that the payment is for the civil penalties owed pursuant to the Consent Decree in *United States v. Power Performance Enterprises, Inc. and Kory B. Willis*, and shall reference the civil action number, CDCS Number, and DOJ case number 90-5-2-1-11865.

12. Defendants shall not deduct any penalties paid under this Decree in accordance with this Section or Section VIII (Stipulated Penalties) in calculating federal income tax.

13. Acceleration of Payments.

a. Defendants shall have the option (at their sole discretion) to pay any of the amounts required by Paragraph 8 above before they are due. Prior to making any such pre-payment, Defendants shall contact the FLU for a determination regarding the amount of Interest to be included with the payment.

b. If the Defendant fails to pay any payment required by Paragraph 8 above by the required due date, all remaining payments and all accrued Interest shall become due immediately upon such failure. Interest shall continue to accrue on any unpaid amounts until the total amount due has been received. Interest required by this Paragraph shall be in addition to any stipulated penalties owed pursuant to Paragraph 40.

c. In the event of any sale, assignment, transfer, or other disposition (including by consolidation, merger, or reorganization) of all or substantially all of the assets of PPEI or of a controlling interest in PPEI, unless the United States has agreed in writing that Defendants' payment obligations under Paragraph 8 shall be assumed in such transaction, all remaining payments and all accrued Interest shall be due immediately. Interest will continue to accrue on any unpaid amounts until Defendants pay the total amount due. Interest required under this Paragraph is in addition to any stipulated penalties owed under Paragraph 40.

d. If the Defendant becomes a debtor in a case filed under Title 11 of the United States Code, 11 U.S.C. 101 et seq., all remaining payments and all accrued Interest shall be due immediately. Interest will continue to accrue on any unpaid amounts until Defendants pay the total amount due. Interest required under this Paragraph is in addition to any stipulated penalties owed under Paragraph 40.

V. COMPLIANCE REQUIREMENTS

14. Prohibitions Pertaining to Subject Products. Defendants shall not manufacture, sell, offer to sell, or install any Subject Product either directly or through any other business owned by, operated by, or affiliated, in whole or in part, with Mr. Willis or PPEI. Any Product for which Defendants have satisfied the requirements set forth in Section VI to be a Conditionally Exempt Product is not a Subject Product.

15. Destruction of All Subject Products. No later than 30 Days after the Effective Date, Defendants shall Permanently Delete and/or Destroy all Subject Products in their possession and control, including those Subject Products available through any proprietary or cloud system. No later than 60 Days after the Effective Date, Defendants shall Permanently Delete and/or Destroy all Subject Products forfeited by employees and officers of Defendants pursuant to Paragraph 23. Defendants shall provide to EPA information about all Subject

Products deleted or destroyed pursuant to this Paragraph consistent with the requirements in Section VII.

16. Prohibition on Technical Support for All Subject Products. Defendants shall not offer or make available any Technical Support or other information (including Marketing Materials) pertaining to the installation, manufacture, sale, use, or repair of any Subject Product. Defendants shall deny all warranty claims pertaining to any Subject Product.

17. Instructions to Authorized Dealers. No later than 30 Days after the Effective Date, Defendants shall (a) notify all Authorized Dealers that Defendants are no longer honoring warranty claims pertaining to any Subject Product and that Defendants are no longer supplying Technical Support pertaining to the installation, manufacture, sale, use or repair of any Subject Product; and (b) instruct all Authorized Dealers to refuse to honor any warranty claims pertaining to any Subject Product and to refuse to supply any Technical Support or other information (including Marketing Materials) pertaining to the installation, manufacture, sale, use, or repair of any Subject Product.

18. Notwithstanding the requirements of Paragraphs 16 and 17, Defendants and any Authorized Dealers may assist customers in removing any Subject Products from vehicles on which they were installed and returning such vehicles to the OEM settings. Defendants and any Authorized Dealers may provide Technical Support to customers that does not involve the installation, manufacture, sale, use or repair of Subject Products.

19. Prohibition on Transfer of Intellectual Property. Defendants shall not offer for sale, sell, convey, or otherwise transfer in any way the design, source code, technology, manufacturing process, or other intellectual property associated with any Subject Product, except

as part of a submission to CARB or in response to a request from EPA, DOJ or another federal law enforcement office.

20. Revision of Marketing Materials. No later than 30 Days after the Effective Date, Defendants shall revise all Marketing Materials for Subject Products to ensure that such materials do not include any information, including but not limited to instructions or demonstrations, that pertains or relates in any way to deleting, bypassing, defeating, or rendering inoperative any emission control device or Emissions-Related Element of Design.

21. Notice to all Identified Authorized Dealers and Subject Product Customers. No later than 30 Days after the Effective Date, Defendants shall transmit a notice by U.S. Mail or e-mail that includes the language specified in Appendix B to (a) each Authorized Dealer and (b) each end-use customer to which the Defendants sold an Identified Subject Product on or after September 1, 2013.

22. Notice to Employees. No later than 30 Days after the Effective Date, Defendants shall post a written notice of applicable Clean Air Act prohibitions, incorporating language contained in Appendix C to this Decree, in conspicuous locations, both physical and electronic, where Defendants' officers and employees will regularly encounter it. These postings must include both hardcopy postings in a physical location and on-line, electronic postings.

23. Forfeiture of Subject Products Controlled by Defendants' Officer and Employees. No later than 30 Days after the Effective Date, Defendants shall offer to buy back at fair market value all Subject Products in the possession of each officer and employee of the Defendants and all Subject Products installed on any motor vehicle owned or operated by such officers and employees, or under his or her control. Defendants shall request that all such Subject Products

are timely forfeited to an individual designated by Defendants and identified to EPA for such purpose.

24. Training of Employees. No later than 30 Days after the Effective Date, and continuing on an annual basis thereafter, Defendants shall conduct a Clean Air Act Compliance Training Program for all officers, employees, contractors and consultants (hereinafter, “trainees”). The Training Program shall:

- a. Include detailed information regarding:
 - i. The Compliance Requirements set forth in Section V of this Consent Decree;
 - ii. The acts prohibited by Section 203(a)(3) of the Act, 42 U.S.C. § 7522(a)(3), including the statutory language of Section 203(a)(3);
 - iii. The categories of potentially liable persons under the Act, including individuals;
 - iv. The relevant maximum civil penalties for each violation of Section 203(a)(3)(A) and 203(a)(3)(B), as adjusted for inflation in 40 C.F.R. Part 19; and
 - v. The acts prohibited by Section 113(c)(2) of the Act, 42 U.S.C. § 7413(c)(2), including the statutory language of that Section and the criminal penalties set forth therein.
- b. Be conducted in person or, for trainees who work remotely or have health conditions that foreclose in-person attendance, by video;
- c. Provide the trainees with a written summary of all training content, including the information required in Paragraph 24(a); and
- d. Require all trainees to acknowledge, in writing, that they participated in the training session and received a written summary of all content as required by this Paragraph 24(c).

25. Prohibition on Tampering. Defendants shall not remove or render inoperative any device or Emissions-Related Element of Design installed on or in a motor vehicle or motor vehicle engine in compliance with the Act.

VI. CONDITIONALLY EXEMPT PRODUCTS

26. For purposes of this Consent Decree only, and subject to Paragraphs 27 through 30, a Product is a Conditionally Exempt Product if it satisfies the requirements set forth in (a) or (b) of this Paragraph:

- a. A CARB EO has been issued for the Product; or
- b. Defendants have submitted to CARB a Complete Application for a CARB EO that covers and applies to the Product.

27. Notwithstanding any other provision of this Consent Decree, a Product shall cease to be a Conditionally Exempt Product if:

- a. CARB denies, or Defendants withdraw, the Complete Application for a CARB EO that pertains to the Product. For the purposes of this sub-Paragraph, “denies” shall mean any communication from CARB indicating that the application is not or will not be approved.
- b. The Complete Application that pertains to the Product is still pending two or more years after its initial submission. EPA may, in its unreviewable discretion, extend this two-year timeframe upon the written request of the Defendants; or
- c. The Complete Application that pertains to the Product is invalidated or revoked for any reason.

28. Notwithstanding any other provision of this Consent Decree, a Product is not a Conditionally Exempt Product if:

- a. Any documentation or information provided to CARB or to EPA related to the Product is materially incorrect or inaccurate;
- b. The Product is marketed using identification other than that shown in the associated Complete Application or CARB EO;
- c. The Product is marketed for a configuration other than that listed in the associated Complete Application or CARB EO.

29. If a Subject Product ceases to be Conditionally Exempt for any reason, Defendants shall (i) immediately cease manufacturing, selling, and installing that Product; (ii) remove that Product from Defendants’ website(s); (iii) notify all Authorized Dealers, in writing,

that continued sale of that Product violates the Act; and (iv) take other reasonable efforts to remove that Product from commerce.

30. Product Labeling. Defendants shall label each Conditionally Exempt Product with a permanent label or other marker that contains the Product manufacturer's name, the Product name and a unique identifier. Defendants shall situate the label or other marking such that it remains visible or readily accessible after the Product is installed. For Conditionally Exempt Products that are only available as downloadable software, Defendants shall maintain a publicly accessible webpage that includes, for each such Product, the Product manufacturer's name, the Product name, a unique identifier, an EO number if applicable, and the status of any EO application.

31. Not a Compliance Determination. Defendants shall not state or imply in any way or in any forum that, as a result of compliance with any aspect of this Consent Decree, any Product is covered by a compliance determination (or similar designation) from EPA. For the avoidance of doubt, Defendants may provide prospective purchasers information related to the CARB Executive Orders it has applied for or obtains in relation to any Products.

VII. REPORTING REQUIREMENTS

32. By January 31st and July 31st of each year after the Effective Date, and continuing on a semi-annual basis until termination of this Decree, and in addition to any other express reporting requirements of this Decree, Defendants shall submit a semi-annual progress report for the preceding six months, covering January 1 through June 30 or July 1 through December 31, as applicable. The semi-annual progress report shall include, but is not limited to, the following:

- a. A statement regarding the status of the payment of (i) the civil penalties and associated Interest pursuant to Paragraph 8 and (ii) any stipulated penalties owing pursuant to Section VIII;
- b. A complete copy of all information submitted to CARB as part of an application

for a CARB EO during the reporting period, including the date of the initial submission, all emission test data and any CARB EO application changes, denials, or withdrawals;

- c. A complete copy of any CARB EO obtained during the reporting period;
- d. A list of all Products that Defendants believe qualify as Conditionally Exempt Products and a basis therefor;
- e. As to Subject Products that were deleted or destroyed pursuant to Paragraph 15, a list of all hardware products, including product names, type, serial numbers, and date of destruction; and a list of all software, data, or other information that was destroyed or deleted, including the type of software, data or other information and the date of destruction or deletion;
- f. A list of all Authorized Dealers to whom Defendants provided instructions pursuant to Paragraph 17 and a copy of any such instructions provided;
- g. A list of all Authorized Dealers and end-use customers to whom Defendants provided a notification pursuant to Paragraph 21 and a copy of any such notification provided;
- h. A copy of the written notice required to be posted pursuant to Paragraph 22 and a description of the manner and location of posting;
- i. A list of all products forfeited in accordance with Paragraph 23, the name of the individual to whom the products were delivered for forfeiture, and documentation of the destruction or deletion of such products as set forth in Paragraph 15;
- j. A list of all officers, employees, contractors and consultants who participated in the Clean Air Act Compliance Training Program during the reporting period, pursuant to Paragraph 24 and a copies of the training acknowledgments signed by the participants; and
- k. A description of any noncompliance with the requirements of this Consent Decree, including an explanation of the violation's likely cause and of the specific remedial steps taken, or to be taken, to resolve and/or minimize such violation, and the specific steps to be taken to prevent such further violations.

33. If Defendants violate, or have reason to believe that either Defendant may violate, any requirement of this Consent Decree, Defendants shall notify the United States of such violation and its likely duration, in writing, within 10 business Days of the Day Defendants first became aware of the violation, with an explanation of the violation's likely cause and of the specific remedial steps taken, or to be taken, to prevent or minimize such violation. If the cause

of a violation cannot be fully explained at the time the report is due, Defendants shall so state in the report along with the reason(s) why the violation cannot be fully explained. Defendants shall investigate the cause of the violation and shall then submit an amendment to the report, including a full explanation of the cause of the violation, within 30 Days of the Day Defendants became aware of the cause of the violation. Nothing in this Paragraph or the following Paragraph relieves Defendants of the obligation to provide the notice required by Section IX (Force Majeure).

34. Whenever any violation of this Consent Decree or any other event affecting Defendants' performance under this Decree may pose an immediate threat to public health or welfare or to the environment, Defendants shall notify EPA orally or by electronic means as soon as possible, but no later than 24 hours after Defendants first knew of the violation or event. This procedure is in addition to the requirements set forth in the preceding Paragraph.

35. All reports shall be submitted to the persons designated in Section XIV (Notices) and shall include the civil action number of this case and the DOJ case number, 90-5-2-1-11865.

36. Each report submitted by Defendants under this Section shall be signed by an official of Defendant PPEI and by Defendant Kory Willis individually, and include the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I have no personal knowledge that the information submitted is other than true, accurate, and complete. I am aware that there are significant penalties for intentionally submitting false information, including the possibility of fine and imprisonment for knowing violations.

37. This certification requirement does not apply to emergency or similar notifications where compliance would be impractical.

38. The reporting requirements of this Consent Decree do not relieve Defendants of any reporting obligations required by the Act or implementing regulations, or by any other federal, state, or local law, regulation, permit, or other requirement.

39. Any information provided in accordance with this Consent Decree may be used by the United States in any proceeding to enforce the provisions of this Consent Decree and as otherwise permitted by law.

VIII. STIPULATED PENALTIES

40. Defendants shall be liable for stipulated penalties to the United States for violations of this Consent Decree as specified in the table below, unless excused under Section IX (Force Majeure), or reduced or waived by the United States pursuant to Paragraph 47. A violation includes failing to perform any obligation required by the terms of this Decree, including any work plan or schedule approved under this Decree, according to all applicable requirements of this Decree and within the specified time schedules established by or approved under this Decree.

Consent Decree Violation	Stipulated Penalty
Manufacture, sell, offer to sell, or install any Subject Product, in violation of the requirements of Paragraph 14 (Prohibitions pertaining to Subject Products)	For the first 100 Subject Products, \$2,500 per unit of Subject Product manufactured, sold, or installed, or two times the gross amount received for each unit, whichever is greater. For each Subject Product thereafter, \$4,500 per unit of Subject Product manufactured, sold, or installed, or two times the gross amount received for each unit, whichever is greater.

Failure to comply with any requirement of Paragraph 15 (Destruction of all Subject Products)	\$500 per Day for the first 15 Days of noncompliance; \$1,000 per Day for the 16 th through 30 th Days of noncompliance; and \$2,000 per Day thereafter.
Failure to comply with the requirements of Paragraph 16 (Prohibition on Technical Support for all Subject Products)	\$2,500 per violation.
Failure to comply with the requirements of Paragraph 17 (Instruction to Authorized Dealers)	\$350 per Day for the first 15 Days of noncompliance; \$1,000 per Day for the 16 th through 30 th Days of noncompliance; and \$2,500 per Day thereafter.
Failure to comply with the requirements of Paragraph 19 (Prohibition on transfer of Intellectual Property)	\$50,000 per transfer or two times the gross amount received from the transfer, whichever is greater.
Failure to comply with the requirements of Paragraph 20 (Revision of Marketing Materials)	\$350 per Day for the first 15 Days of noncompliance; \$1,000 per Day for the 16 th through 30 th Days of noncompliance; and \$2,500 per Day thereafter.
Failure to comply with the requirements of Paragraph 21 (Notice to all Identified Subject Product customers)	\$2,000 per customer or Dealer.
Failure to comply with the requirements of Paragraph 22 (Notice to employees)	\$350 per Day for the first 30 Days of noncompliance; \$2,000 per Day thereafter.
Failure to comply with the requirements of Paragraph 23 (Forfeiture of Subject Products Controlled by Officers and Employees)	\$350 per Day for the first 30 Days of noncompliance; and \$4,000 per Day thereafter.
Failure to comply with the requirements of Paragraph 24 (Training of employees)	\$500 per employee not trained.

Manufacture, sell, offer to sell, or install any Product, on the basis that it is a Conditionally Exempt Product, in violation of any of the requirements in Paragraphs 27 through 30.	For the first 100 Products, \$2,500 per unit of Product manufactured, sold, or installed, or two times the gross amount received for each unit, whichever is greater. For each Product thereafter, \$4,500 per unit of Product manufactured, sold, or installed, or two times the gross amount received for each unit, whichever is greater.
Violation of any other requirement of this Consent Decree	\$350 per day for the first 30 Days of noncompliance and \$2,500 per Day thereafter.

41. Periodic Reports. If Defendants fail to submit a Semi-Annual Report, or fail to submit a complete Semi-Annual Report, as required by Paragraph 32, Defendants shall pay a stipulated penalty of \$1,000 per Day for the first 30 Days of noncompliance and \$2,500 per Day thereafter.

42. Late Payment of Civil Penalty. If Defendants fail to pay the civil penalties required to be paid under Section IV (Civil Penalties) when due, Defendants shall pay a stipulated penalty of \$1,000 per Day for each Day that the payment is late.

43. Stipulated penalties under this Section shall begin to accrue on the Day after performance is due or on the Day a violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily completed or until the violation ceases. Stipulated penalties shall accrue simultaneously for separate violations of this Consent Decree.

44. Defendants shall pay stipulated penalties to the United States within 30 Days of a written demand by the United States, unless Defendants invoke the dispute resolution procedures under Section X (Dispute Resolution) within the 30-Day period.

45. Stipulated penalties shall continue to accrue as provided in Paragraph 43 during any Dispute Resolution, but need not be paid until the following:

- a. If the dispute is resolved by agreement of the Parties or by a decision of EPA that is not appealed to the Court, Defendants shall pay accrued penalties determined to be owing, together with interest, to the United States within 30 Days of the effective date of the agreement or the receipt of EPA's decision or order.
- b. If the dispute is appealed to the Court and the United States prevails in whole or in part, Defendants shall pay all accrued penalties determined by the Court to be owing, together with interest, within 30 Days of receiving the Court's decision or order, except as provided in Paragraph 45(c), below.
- c. If any Party appeals the District Court's decision, Defendants shall pay all accrued penalties determined to be owing, together with interest, within 15 Days of receiving the final appellate court decision.

46. If a Defendant fails to pay stipulated penalties according to the terms of this Consent Decree, the Defendant shall be liable for interest on such penalties, as provided for in 28 U.S.C. § 1961, accruing as of the date payment became due. Nothing in this Paragraph limits the United States from seeking any remedy otherwise provided by law for Defendants' failure to pay any stipulated penalties or interest.

47. The United States may, in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due it under this Consent Decree.

48. Defendants shall pay stipulated penalties owing to the United States in the manner set forth and with the confirmation notices required by Paragraph 10, except that the transmittal letter shall state that the payment is for stipulated penalties and shall state for which violation(s) the penalties are being paid.

49. The payment of stipulated penalties and/or interest pursuant to this Section shall not alter in any way Defendants' obligation to complete the performance of the requirements of this Consent Decree.

50. Stipulated penalties are not the United States' exclusive remedy for violations of this Consent Decree. Subject to the provisions of Section XII (Effect of Settlement/Reservation of Rights), the stipulated penalties provided for in this Consent Decree shall be in addition to any

other rights, remedies, or sanctions available to the United States for Defendants' violation of this Decree or applicable law. Where a violation of this Decree is also a violation of relevant statutory or regulatory requirements, Defendants shall be allowed a credit, for any stipulated penalties paid, against any statutory penalties imposed for such violation under the applicable federal requirement.

IX. FORCE MAJEURE

51. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of Defendants, of any entity controlled by Defendants, or of Defendants' contractors, which delays or prevents the performance of any obligation under this Consent Decree despite Defendants' best efforts to fulfill the obligation. The requirement that Defendants exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event (a) as it is occurring and (b) following the potential force majeure, such that the delay and any adverse effects of the delay are minimized. "Force majeure" does not include Defendants' financial inability to perform any obligation under this Consent Decree.

52. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, Defendants shall provide notice by electronic transmission to EPA, within 72 hours of when Defendants first knew that the event might cause a delay to the addresses provided in Section XIV (Notices). Within seven Days thereafter, Defendants shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Defendants' rationale for attributing such delay to a force majeure event if it intends to assert such a claim;

and a statement as to whether, in the opinion of Defendants, such event may cause or contribute to an endangerment to public health, welfare, or the environment. Defendants shall include with any notice all available documentation supporting the claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude Defendants from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. Defendants shall be deemed to know of any circumstance of which Defendants, any entity controlled by Defendants, or Defendants' contractors knew or should have known.

53. If EPA agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. EPA will notify Defendants in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

54. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify Defendants in writing of its decision.

55. If a Defendant elects to invoke the dispute resolution procedures set forth in Section X (Dispute Resolution), it shall do so no later than 15 Days after receipt of EPA's notice. In any such proceeding, Defendants shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and

that Defendants complied with the requirements of Paragraphs 51 and 52. If Defendants carry this burden, the delay at issue shall be deemed not to be a violation by Defendants of the affected obligation of this Consent Decree identified to EPA and the Court.

X. DISPUTE RESOLUTION

56. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. Defendants' failure to seek resolution of a dispute under this Section shall preclude Defendants from raising any such issue as a defense to an action by the United States to enforce any obligation of Defendants arising under this Decree.

57. Informal Dispute Resolution. Any dispute subject to Dispute Resolution under this Consent Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when Defendants send the United States a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed 20 Days from the date the dispute arises, unless that period is modified by written agreement. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States shall be considered binding unless, within 10 Days after the conclusion of the informal negotiation period, Defendants invoke formal dispute resolution procedures as set forth below.

58. Formal Dispute Resolution. Defendants shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by serving on the United States a written Statement of Position regarding the matter in dispute. The Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting Defendants' position and any supporting documentation relied upon by Defendants.

59. The United States shall serve its Statement of Position within 45 Days of receipt of Defendants' Statement of Position. The United States' Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the United States. The United States' Statement of Position shall be binding on Defendants, unless Defendants file a motion for judicial review of the dispute in accordance with the following Paragraph.

60. Defendants may seek judicial review of the dispute by filing with the Court and serving on the United States, in accordance with Section XIV (Notices), a motion requesting judicial resolution of the dispute. The motion must be filed within 10 Days of receipt of the United States' Statement of Position under the preceding Paragraph. The motion shall contain a written statement of Defendants' position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree.

61. The United States shall respond to Defendants' motion within the time period allowed by the Local Rules of this Court. Defendants may file a reply memorandum, to the extent permitted by the Local Rules.

62. Standard of Review. Except as otherwise provided in this Consent Decree, in any other dispute brought under Paragraph 58, Defendants shall bear the burden of demonstrating that their position complies with this Consent Decree, and that Defendants are entitled to relief under applicable principles of law. The United States reserves the right to argue that its position is reviewable only on the administrative record and must be upheld unless arbitrary and capricious.

63. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of Defendants under this Consent Decree, unless and until final resolution of the dispute so provides. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first Day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 45. If Defendants do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section VIII (Stipulated Penalties).

XI. INFORMATION COLLECTION AND RETENTION

64. The United States and its representatives, including attorneys, contractors, and consultants, shall have the right of entry into any of Defendants' business facilities, at all reasonable times, upon presentation of credentials, to:

- a. Monitor the progress of activities required under this Consent Decree;
- b. Verify any data or information submitted to the United States in accordance with the terms of this Consent Decree;
- c. Inspect records and any product(s) regulated under Title II of the Act or the regulations promulgated thereunder;
- d. Obtain documentary evidence, including photographs, software, or other data or information; and
- e. Assess Defendants' compliance with this Consent Decree.

65. Until two years after the termination of this Consent Decree, unless otherwise specified herein, Defendants shall retain, and shall instruct their contractors and agents to preserve, all non-identical copies of all documents, records, or other information (including documents, records, or other information in electronic form) in their or their contractors' or agents' possession or control, or that come into its or its contractors' or agents' possession or control, and that relate in any manner to Defendants' performance of its obligations under this Consent Decree. This information-retention requirement shall apply regardless of any contrary

corporate or institutional policies or procedures. At any time during this information-retention period, upon request by the United States, Defendants shall provide copies of any documents, records, or other information required to be maintained under this Paragraph.

66. At the conclusion of the information-retention period provided in the preceding Paragraph, Defendants shall notify the United States at least 90 Days prior to the destruction of any documents, records, or other information subject to the requirements of the preceding Paragraph and, upon request by the United States, Defendants shall deliver any such documents, records, or other information to EPA. Defendants may assert that certain documents, records, or other information is privileged under the attorney-client privilege or any other privilege recognized by federal law. If Defendants assert such a privilege, they shall provide the following: (a) the title of the document, record, or information; (b) the date of the document, record, or information; (c) the name and title of each author of the document, record, or information; (d) the name and title of each addressee and recipient; (e) a description of the subject of the document, record, or information; and (f) the privilege asserted by Defendants. However, no documents, records, or other information created or generated in accordance with the requirements of this Consent Decree shall be withheld on grounds of privilege.

67. Defendants may also assert that information required to be provided under this Section is protected as Confidential Business Information (“CBI”) under 40 C.F.R. Part 2. As to any information that Defendants seek to protect as CBI, Defendants shall follow the procedures set forth in 40 C.F.R. Part 2.

68. This Consent Decree in no way limits or affects any right of entry and inspection, or any right to obtain information, held by the United States pursuant to applicable federal or state laws, regulations, or permits, nor does it limit or affect any duty or obligation of Defendants

to maintain documents, records, or other information imposed by applicable federal or state laws, regulations, or permits.

XII. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

69. This Consent Decree resolves the civil claims of the United States for the violations alleged in the Complaint filed in this action through the date of lodging.

70. The United States reserves all legal and equitable remedies available to enforce the provisions of this Consent Decree. This Consent Decree does not limit the rights of the United States to obtain penalties or injunctive relief under the Act or implementing regulations, or under other federal laws, regulations, or permit conditions, except as expressly specified in Paragraph 69. The United States further reserves all legal and equitable remedies to address any imminent and substantial endangerment to the public health or welfare or the environment arising as a result of Defendants' business or any of Defendants' products, whether related to the violations addressed in this Consent Decree or otherwise.

71. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, civil penalties, or other appropriate relief relating to the Defendants' operations, Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case, except with respect to claims that have been specifically resolved under Paragraph 69.

72. This Consent Decree is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. Defendants are responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits. The United States does not, by its consent to the entry of this Consent Decree,

warrant or aver in any manner that Defendants' compliance with any aspect of this Consent Decree will result in compliance with provisions of the Act, or with any other provisions of federal, State, or local laws, regulations, or permits.

73. This Consent Decree does not limit or affect the rights of Defendants or of the United States against any third parties, not party to this Consent Decree, nor does it limit the rights of third parties, not party to this Consent Decree, against Defendants, except as otherwise provided by law.

74. This Consent Decree shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Consent Decree.

XIII. COSTS

75. The Parties shall bear their own costs of this action, including attorneys' fees, except that the United States shall be entitled to collect the costs (including attorneys' fees) incurred in any action necessary to collect any portion of the civil penalties or any stipulated penalties due but not paid by Defendants.

XIV. NOTICES

76. Unless otherwise specified in this Decree, whenever notifications, submissions, statements of position, or communications are required by this Consent Decree (referred to as "notices" in this section), they shall be made electronically or as described below, unless such notices are unable to be uploaded to the CDX electronic system (in the case of EPA) or transmitted by email in the case of any other recipient. For all notices to EPA, Defendants shall register for the CDX electronic system and upload such notices at <https://cdx.gov/epa-home.asp>. Any notice to EPA that cannot be uploaded or electronically transmitted via email shall be provided in writing to the address below:

As to the United States by email: eescdcopy.enrd@usdoj.gov
Re: DJ # 90-5-2-1-11994

As to the United States by mail: EES Case Management Unit
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Re: DJ # 90-5-2-1-11865

As to EPA: Director, Air Enforcement Division
Office of Civil Enforcement
US EPA Headquarters, MC 2242A
1200 Pennsylvania Avenue, NW
Washington, DC 20460

As to Defendants: Kory Willis, President
Power Performance Enterprises, Inc.
6096 Candice Lane
Lake Charles, LA 70615

77. Any Party may, by written notice to the other Parties, change its designated notice recipients or notice addresses provided above.

78. Notices submitted under this Section shall be deemed submitted upon mailing, unless otherwise provided in this Consent Decree or by mutual agreement of the Parties in writing.

XV. EFFECTIVE DATE

79. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court or a motion to enter the Consent Decree is granted, whichever occurs first, as recorded on the Court's docket.

XVI. RETENTION OF JURISDICTION

80. The Court shall retain jurisdiction over this case until termination of this Consent Decree, for the purpose of resolving disputes arising under this Decree or entering orders modifying this Decree, under Sections X (Dispute Resolution) and XVII (Modification), or effectuating or enforcing compliance with the terms of this Decree.

XVII. MODIFICATION

81. The terms of this Consent Decree, including any attached appendices, may be modified only by a subsequent written agreement signed by all the Parties. Where the modification constitutes a material change to this Decree, it shall be effective only upon approval by the Court.

82. Any disputes concerning modification of this Decree shall be resolved under Section X (Dispute Resolution), provided, however, that, instead of the burden of proof provided by Paragraph 62, the Party seeking the modification bears the burden of demonstrating that it is entitled to the requested modification in accordance with Federal Rule of Civil Procedure 60(b).

XVIII. TERMINATION

83. After Defendants have: (a) completed the requirements of Paragraphs 15, 17, 20, 21, 22, 23 and 24; (b) complied with Paragraphs 14, 16, 19, and 25 for at least five years after the Effective Date; (c) paid the civil penalties required by Section IV, including any accrued Interest; and (d) paid any accrued stipulated penalties as required by this Consent Decree, Defendants

may serve upon the United States a Request for Termination, stating that Defendants have satisfied these requirements, together with all necessary supporting documentation.

84. Following receipt by the United States of Defendants' Request for Termination, the Parties shall confer informally concerning the Request and any disagreement that the Parties may have as to whether Defendants have satisfactorily complied with the requirements for termination of this Consent Decree. If the United States agrees that the Decree may be terminated, the Parties shall submit, for the Court's approval, a joint stipulation terminating the Decree.

85. If the United States does not agree that the Decree may be terminated, Defendants may invoke Dispute Resolution under Section X of this Decree. However, Defendants shall not seek Dispute Resolution of any dispute regarding termination until 90 Days after service of its Request for Termination.

XIX. PUBLIC PARTICIPATION

86. This Consent Decree shall be lodged with the Court for a period of not less than 30 Days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations indicating that the Consent Decree is inappropriate, improper, or inadequate. Defendants consent to entry of this Consent Decree without further notice and agree not to withdraw from or oppose entry of this Consent Decree by the Court or to challenge any provision of the Decree, unless the United States has notified Defendants in writing that it no longer supports entry of the Decree.

XX. SIGNATORIES/SERVICE

87. Each undersigned representative of the Defendants and the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice

certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party he or she represents to this document.

88. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis. Defendants agree to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons. Defendants need not file an answer to the Complaint in this action unless or until the Court expressly declines to enter this Consent Decree.

XXI. INTEGRATION

89. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Decree and supersedes all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. Other than the deliverables that are subsequently submitted pursuant to this Consent Decree, no other document, nor any representation, inducement, agreement, understandings, or promise constitutes any part of this Decree or the settlement it represents.

XXII. FINAL JUDGMENT

90. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court as to the United States and Defendants.

XXIII. 26 U.S.C. SECTION 162(f)(2)(A)(ii) IDENTIFICATION

91. For purposes of the identification requirement of Section 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), performance of Section II (Applicability), Paragraph 5; Section V (Compliance Requirements), Paragraphs 14 – 25; Section VI

(Conditionally Exempt Products), Paragraphs 26 – 30; Section VII (Reporting Requirements), Paragraphs 32 – 36; and Section XI (Information Collection and Retention), Paragraphs 64 – 66, is restitution or required to come into compliance with law.

XXIV. APPENDICES

92. The following Appendices are attached to and part of this Consent Decree:

“Appendix A” is a list of Identified Subject Products.

“Appendix B” is language to be included in the notice to customers referenced in Paragraph 21.

“Appendix C” is language to be included in the notice to employees referenced in Paragraph 22.

“Appendix D” is a general description of the Financial Information submitted by the Defendants.

Dated and entered this ____ day of _____, 2022.

UNITED STATES DISTRICT JUDGE

We hereby consent to the entry of the Consent Decree in the matter of United States v. Power Performance Enterprises Inc. and Kory B. Willis, subject to public notice and comment:

FOR THE UNITED STATES OF AMERICA:

TODD KIM
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice

NICOLE
VEILLEUX Digitally signed by
NICOLE VEILLEUX
Date: 2022.03.01
08:28:05 -05'00'

Date

NICOLE VEILLEUX
Senior Counsel
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Washington, DC 20044-7611
Nicole.veilleux@usdoj.gov
202-616-8746 (office)
202-532-3348 (cell)

BRANDON BONAPARTE BROWN
United States Attorney
Western District of Louisiana

JERRY EDWARDS (#30242)
Assistant United States Attorney
300 Fannin Street, Suite 3201
Shreveport, Louisiana 71101-3068
(318) 676-3614 // Fax: (318) 676-3642
Email: jerry.edwards@usdoj.gov

We hereby consent to the entry of the Consent Decree in the matter of United States v. Power Performance Enterprises Inc. and Kory B. Willis subject to public notice and comment:

FOR THE U.S. ENVIRONMENTAL PROTECTION
AGENCY:

Date: _____

LAWRENCE STARFIELD

Digitally signed by
LAWRENCE STARFIELD
Date: 2022.02.25
13:47:39 -05'00'

LAWRENCE E. STARFIELD
Acting Assistant Administrator
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency
Washington, DC 20460

ROSEMARIE A. KELLEY
Director, Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency
Washington, DC 20460

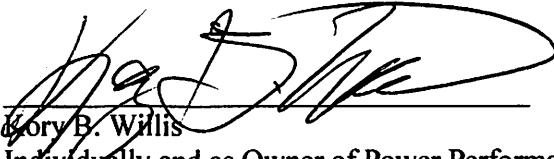
MARY E. GREENE
Director, Air Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency
Washington, DC 20460

EDWARD KULSCHINSKY
Air Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency
Washington, DC 20460

We hereby consent to the entry of the Consent Decree in the matter of United States v. Power Performance Enterprises Inc. and Kory B. Willis:

FOR DEFENDANTS KORY B. WILLIS AND POWER
PERFORMANCE ENTERPRISES, INC.:

2/10/22
Date:


Kory B. Willis
Individually and as Owner of Power Performance
Enterprises, Inc.
6096 Candice Lane
Lake Charles, LA 70615

APPENDIX A:

Identified Subject Products

Appendix A: Identified Subject Products

Ref No.	Product Name	Item Code
1	2007.5 - 2016 Dodge Cummins EGR Bypass (non C&C only) 213000	213000
2	2010 - 2012 Sinister 6.7L Cummins EGR Delete	SD-EGRD-6.7C-10
3	2011 - 2014 6.7L FORD POWERSTROKE EGR BYPASS	No-Limit-Fab-67-EGRD-11-14
4	2011 - 2017 6.7L FORD POWERSTROKE EGR BYPASS	No-Limit-Fab-67-EGRD-17
5	2013- 2016 Cummins 3500 - 5500 EGR Bypass kit (C&C Only) 213020	213020
6	2015 - 2016 6.7L FORD POWERSTROKE EGR BYPASS	MPD-67-EGRD-15-16
7	2017 6.7L FORD POWERSTROKE EGR BYPASS	No-Limit-Fab-67-EGRD-17
8	Chevrolet Cruze Diesel EGR Delete Kit	Chevrolet Cruze Diesel EGR Delete Kit
9	DRP LML EGR Bypass kit	DRP - 75120
10	DRP LML EGR Delete Without Passenger side Up Pipe.	DRP - 75110
11	DRP LML EGR Delete Without Passenger side Up Pipe	DRP - 75110
12	Hardway Performance 2013+ 6.7 Cummins Compound Turbo Kit - Stage I	HWPS1
13	LML EGR BYPASS KIT	SDP-1045
14	LML EGR Delete	EGRD-WITH-UP-PIPE
15	LML Max Flow Bridge, Coldside Tube, Turbo Inlet, Cold Air Intake.	PPEI-Max-Flow-Piping
16	LML Max Flow Bridge, Hot Side, Coldside Tube, Turbo Inlet, Cold Air Intake.	PPEI-Max-Flow-Piping
17	MDP 2011 - 2014 6.7L FORD POWERSTROKE EGR BYPASS	MPD-67-EGRD-11-14

Ref No.	Product Name	Item Code
18	MDP 2011 - 2016 6.7L FORD POWERSTROKE EGR BYPASS	MPD-67-EGRD
19	Orion Diesel EGR Delete for Dodge Cummins 6.7L 2007.5-2012	ORD-EGRD-6.7C-07-12
20	Orion Diesel EGR Delete for Dodge Cummins 6.7L 2013-2017	ORD-EGRD-6.7C-13-17
21	Package Deal - LML EGR Delete (EZ LYNK)	EGRD-WITH-UP-PIPE-1.2
22	PPEI LML Max Flow Bridge, Hot Side tube, Cold side Tube, Turbo Inlet, Cold Air Intake	PPEI-Max-Flow-Piping
23	Sinister Diesel EGR Delete Kit (Uses Aftermarket 1/8" NPT EGT Probe) for Ford Powerstroke 2011-2014 6.7L SD-EGRD-6.7P-NPT	SD-EGRD-6.7P-NPT
24	Sinister Diesel EGR Delete Kit for GM Duramax 2011-2012 6.6L LML	SD-EGRD-LML
25	Sinister Diesel EGR Delete Kit for GM Duramax 2011-2015 6.6L LML	SD-EGRD-LML
26	11-17 Ford 6.7L Powerstroke FloPro SS753NB Dual 4" Stainless Downpipe Back Exhaust	SS753NB
27	11-17 Powerstroke (Automatic) 4" Downpipe Back DUALS NO MUFFLER Aluminized - Part #753NB	753NB
28	2001 - 2007 Duramax 6.6L Flopro 4" Turbo Back Exhaust with Muffler	801
29	2001-2007 Duramax 5" exhaust no muffler.	601NM
30	2011 - 2012 Cummins C&C Exhaust System	21122
31	2013 - 2017 Cummins C&C Exhaust System	21126
32	2013 + Cummins Flo~Pro 4" Aluminized with Muffler Coil Spring kit 1874	1874
33	2013 + Cummins Flo~Pro 4" Aluminized without Muffler Coil Spring kit 1873	1873
34	2013 + Cummins Flo~Pro 4" Stainless Steel with Muffler	SS1874

Ref No.	Product Name	Item Code
	Coil Spring kit SS1874	
35	2013 + Cummins Flo~Pro 4" Stainless Steel without Muffler Coil Spring kit SS1873	SS1873
36	2013 + Cummins Flo~Pro 5" Aluminized with Muffler Coil Spring kit 1674	1674
37	2013 + Cummins Flo~Pro 5" Aluminized without Muffler Coil Spring kit 1673	1673
38	2013 + Cummins Flo~Pro 5" Stainless Steel with Muffler Coil Spring kit SS1674	SS1674
39	2013 + Cummins Flo~Pro 5" Stainless Steel without Muffler Coil Spring kit SS1673	SS1673
40	2015.5 - 2016 LML Duramax 4" Stainless Steel FloPro Exhaust With Muffler SS871	SS871
41	2015.5+ LML Duramax 5" Stainless Steel exhaust with muffler	SS671
42	2015.5+ LML Duramax 5" Stainless Steel exhaust without muffler	ss671nm
43	2015.5+ LML Duramax 5" Stainless Steel exhaust without muffler SS671NM	SS671NM
44	2016 - 2017 Nissan Titan XD 5.0 Cummins Flo~Pro Delete Pipe 879	879
45	2016-2017, 2.8L Duramax, 3" Cat & DPF Race Pipes Race Exhaust No Bungs, With Muffler	875
46	3" Cat & DPF Race Pipes 2014-2017, 3.0L Jeep ECODIESEL, Race Exhaust (876)	876
47	4" MBRP Down Pipe Back Exhaust System w/ Front Pipe w/o Muffler 07-10 Chevy/GMC 2500/3500	C6004PLM
48	4" MBRP Down Pipe Back Exhaust System w/o Bungs w/ Muffler & Tip 304SS 11-16 Ford F250/350/450 6.7L	C6262304
49	4" MBRP Down Pipe Back Exhaust System w/o Bungs w/ Muffler AL 11-15 Chevy/GMC 2500/3500 HD	C6044P

Ref No.	Product Name	Item Code
50	4" MBRP Down Pipe Back Exhaust System w/o Bungs w/ Muffler and Tip 304SS 11-15 Chevy/GMC 2500/3500	C6044304
51	4" MBRP Down Pipe Back Exhaust System w/o Bungs w/ Muffler-P Series 11-16 Ford F250/350/450 6.7L	C6262P
52	4" MBRP Down Pipe Back Exhaust System w/o Bungs w/ Muffler-P Series 17 Ford F250/350/450 6.7L	C6292P
53	4" MBRP Down Pipe Back Exhaust System w/o Bungs w/o Muffler AL 11-15 Chevy/GMC 2500/3500 HD	C6044PLM
54	4" MBRP Down Pipe Back Exhaust System w/o Bungs w/o Muffler-PLM Series 11-16 Ford F250/350/450 6.7L	C6260PLM
55	4" MBRP Down Pipe Back Exhaust System w/o Bungs w/o Muffler-PLM Series 17 Ford F250/350/450 6.7L	C6292PLM
56	4" MBRP Down Pipe Back Race System Chev/GMC 2007-2010	C6004P
57	4" MBRP Pipe w/o Bungs AL 07-12 Dodge 2500/3500 6.7L	CDAL437
58	4" MBRP Pipe w/o Bungs AL 11-15 GM/Chevy 2500/3500 HD	CGMAL426
59	4" MBRP Pipe w/o Bungs AL 11-16 Ford F250/350/450 6.7L	CFAL458
60	4" MBRP Pipe w/o Bungs AL 17-UP Ford F250/350/450 6.7L	CFAL461
61	4" MBRP Pipe w/o Bungs T409 11-16 Ford F250/350/450 6.7L	CFS9458
62	5" MBRP Down Pipe Back Exhaust System w/o Bungs w/o Muffler 409 SS 11-15 Chevy/GMC 2500/3500 HD	C6048SLM
63	5" MBRP Down Pipe Back Exhaust System w/o Bungs w/o Muffler AL 11-15 Chevy/GMC 2500/3500 HD	C6048PLM
64	5" MBRP Down Pipe Back Exhaust System w/o Bungs w/o Muffler-PLM Series 11-16 Ford F250/350/450 6.7L	C6280PLM
65	5" MBRP Down Pipe Back Exhaust System w/o Muffler AL 07-10 Chevy/GMC 2500/3500	C6020PLM

Ref No.	Product Name	Item Code
66	5" MBRP Turbo Back Exhaust System w/o Bungs w/ Muffler AL 13-16 Dodge 2500/3500 w/ Coil or L Spring	C6147P
67	5" MBRP Turbo Back Exhaust System w/o Bungs w/o Muffler 409 13-16 Dodge 2500 w/ Coil or Leaf Spring	C6147SLM
68	5" MBRP Turbo Back Exhaust System w/o Bungs w/o Muffler AL 13-16 Dodge 2500 w/ Coil or Leaf Spring	C6147PLM
69	Chevrolet Cruze Diesel Down Pipe	Chevrolet Cruze Diesel Down Pipe
70	Dodge Cummins 2007 - 2009 Flo~Pro 1636 5" Exhaust With Muffler	1636
71	Dodge Cummins 2007 - 2009 Flo~Pro 1639 5" Exhaust With Out Muffler	1639
72	Dodge Cummins 2007 - 2009 Flo~Pro 1836 4" Exhaust with muffler	1836
73	Dodge Cummins 2007 - 2009 Flo~Pro 1839 4" Exhaust With Out Muffler	1839
74	Dodge Cummins 2007 - 2012 Flo~Pro 835NB Race Pipes	835NB
75	Dodge Cummins 2010 - 2012 Flo~Pro 1648 5" Exhaust With Muffler	1648
76	Dodge Cummins 2010 - 2012 Flo~Pro 1649 5" Exhaust With Out Muffler	1649
77	Dodge Cummins 2010 - 2012 Flo~Pro 1848 4" Exhaust With Muffler	1848
78	Dodge Cummins 2010 - 2012 Flo~Pro 1849 4" Exhaust With Out Muffler	1849
79	Dodge Cummins 2011 - 2012 Flo~Pro 21123 C&C Race Pipe With Muffler	21123
80	Dodge Cummins 2011 - 2014 Flo~Pro 21122 C&C Race Pipe Without Muffler	21122
81	Dodge Cummins 2011 - 2014 Flo~Pro 21123 C&C Race Pipe With Muffler	21123

Ref No.	Product Name	Item Code
82	Dodge Cummins 2011 - 2014 Flo~Pro 21124 C&C Cab to Axle Length Equal to 60" Fits 2011+ Dodge Cab and Chassis	21124
83	Dodge Cummins 2011 - 2014 Flo~Pro 21125 C&C Cab to Axle Lengths Greater than 60" Fits 2011+ Dodge Cab and Chassis	21125
84	Dodge Cummins 2013 - 2015 Flo~Pro 1670 5" With Muffler No Bungs	1670
85	Dodge Cummins 2013 - 2015 Flo~Pro 1869 4" Exhaust Without Muffler	1869
86	Dodge Cummins 2013 - 2015 Flo~Pro 1869 4" Exhaust Without Muffler	1849
87	Dodge Cummins 2013 - 2015 Flo~Pro 1870 4" Exhaust With Muffler No Bungs	1870
88	Dodge Cummins 2013 - 2015 Flo~Pro 5" Exhaust Without Muffler No Bungs - 1669	1669
89	Dodge Cummins 2013 - 2015 Flo~Pro 868NB Race Pipes	868NB
90	Dodge Cummins 2013 - 2017 Flo~Pro 868NB Race Pipes	868NB
91	Dodge ECO Diesel 3.0L 2014 - 2015 FLO~PRO 863NB 3" DOWNPIPE BACK SINGLE SYSTEM WITHOUT MUFFLER	863NB
92	Dodge ECO Diesel 3.0L 2014 - 2015 FLO~PRO 863NM 3" DOWNPIPE BACK SINGLE SYSTEM WITHOUT MUFFLER	863NB
93	Flo Pro 27123 07-10 Dodge 6.7L Cab & Chassis DPF Delete Pipe	27123
94	Flo~Pro 2007.5 - 2010 GM DURAMAX CAB & CHASSIS 6.6L 4" DPF RACE KIT - REG CAB - 851	851
95	Flo~Pro 2011 - 2015 Duramax 6.6L LML Flopro 4" CAT & DPF Delete Kit with Adapter SS862	SS862
96	Flo~Pro 645 - 5" EXHAUST NO BUNGS WITH MUFFLER C&C 2007-2010, 6.7L Cummins	645

Ref No.	Product Name	Item Code
	3500/4500/5500	
97	Flo~Pro 655 - 5" EXHAUST NO BUNGS WITH MUFFLER 2011-2012, 6.7L, 3500/4500/5500, Cab & Chassis, Race Exhaust	655
98	Flo~Pro 655 - 5" EXHAUST NO BUNGS WITH MUFFLER 2011-2017, 6.7L, 3500/4500/5500, Cab & Chassis, Race Exhaust	655
99	Flo~Pro 764 5" Aluminized Turbo Back Duals Fits 11-15 Chevy/GMC Duramax	764
100	Flo~Pro SS634NM 5" Stainless downpipe back exhaust w/o muffler 07-10 6.6L Duramax LMM	SS634NM
101	Flo~Pro SS871NM 4"Stainless Downpipe Back Exhaust W/O Muffler 15.5+ Duramax	SS871NM
102	Flopro 2015.5+ Cat/DPF Delete Pipes (872)	872
103	Flopro 4" Aluminized Nissan Titan XD 5.0 Cummins exhaust with muffler (878)	878
104	Flopro 4" STAINLESS DOWNPIPE BACK SINGLE RACE EXHAUST SS834	ss834
105	Flopro 4" Stainless Steel Nissan Titan XD 5.0 Cummins exhaust with muffler (ss878)	ss878
106	Flopro 5" Aluminized Nissan Titan XD 5.0 Cummins exhaust with muffler (678)	678
107	Flopro 5" Aluminized Nissan Titan XD 5.0 Cummins exhaust WITHOUT muffler (678nm)	678nm
108	Flopro 5" Stainless Steel Nissan Titan XD 5.0 Cummins exhaust WITHOUT muffler (ss678nm)	ss678nm
109	FloPro SS1670 5" Stainless Steel Exhaust With Muffler 2013-2016 Cummins	SS1670
110	Ford 6.4L Powerstroke 2008 - 2010 Flo~Pro 832NB 4" Exhaust with muffler	832NB
111	Ford 6.4L Powerstroke 2008 - 2010 Flo~Pro 833NB 4"	833NB

Ref No.	Product Name	Item Code
	Exhaust With Out muffler	
112	Ford 6.4L Powerstroke 2008 - 2010 Flo~Pro 837NB Race Pipes	837NB
113	Ford 6.7L Exhaust (Package Deal)	SS653NB
114	Ford 6.7L Powerstroke 2011 - 2015 Flo~Pro 653NB 5" Exhaust With Out Muffler	653NB
115	Ford 6.7L Powerstroke 2011 - 2015 Flo~Pro 857NB Race Pipes	857NB
116	Ford 6.7L Powerstroke 2011 - 2016 Flo~Pro 652NB 5" Exhaust With Muffler	652NB
117	Ford 6.7L Powerstroke 2011 - 2016 Flo~Pro 653NB 5" Exhaust With Out Muffler	653NB
118	Ford 6.7L Powerstroke 2011 - 2016 Flo~Pro 852NB 4" Exhaust With Muffler	852NB
119	Ford 6.7L Powerstroke 2011 - 2016 Flo~Pro 853NB 4" Exhaust With Out Muffler	853NB
120	Ford 6.7L Powerstroke 2011 - 2016 Flo~Pro SS652NB 5" Exhaust With Muffler	SS652NB
121	Ford 6.7L Powerstroke 2011 - 2016 Flo~Pro SS653NB 5" Exhaust Without Muffler	SS653NB
122	Ford 6.7L Powerstroke 2011 - 2016 Flo~Pro SS852NB 4" Exhaust With Muffler	SS852NB
123	Ford 6.7L Powerstroke 2011 - 2016 Flo~Pro SS853NB 4" Exhaust Without Muffler	SS853NB
124	Ford 6.7L Powerstroke 2011 - 2017 Flo~Pro 652NB 5" Exhaust With Muffler	652NB
125	Ford 6.7L Powerstroke 2011 - 2017 Flo~Pro 653NB 5" Exhaust With Out Muffler	653NB
126	Ford 6.7L Powerstroke 2011 - 2017 Flo~Pro 852NB 4" Exhaust With Muffler	852NB

Ref No.	Product Name	Item Code
127	Ford 6.7L Powerstroke 2011 - 2017 Flo~Pro 853NB 4" Exhaust With Out Muffler	853NB
128	Ford 6.7L Powerstroke 2011 - 2017 Flo~Pro 857NB Race Pipes	857NB
129	GM 6.6 DURAMAX 2011 - 2015 FLO~PRO SS664 5" STAINLESS EXHAUST WITH MUFFLER	SS664
130	GM 6.6 DURAMAX 2011 - 2015 FLO~PRO SS664NM 5" STAINLESS EXHAUST WITHOUT MUFFLER	SS664NM
131	GM 6.6 DURAMAX 2011 - 2015 FLO~PRO SS864 4" STAINLESS EXHAUST WITH MUFFLER	SS864
132	GM 6.6L Duramax 2007.5 - 2010 Flo~Pro 634 5" Exhaust With Muffler	634
133	GM 6.6L Duramax 2007.5 - 2010 Flo~Pro 634NM 5" Exhaust With Out Muffler	634NM
134	GM 6.6L Duramax 2007.5 - 2010 Flo~Pro 634NM 5" Exhaust With Out Muffler	634
135	GM 6.6L Duramax 2007.5 - 2010 Flo~Pro 834 4" Exhaust With Muffler	834
136	GM 6.6L Duramax 2007.5 - 2010 Flo~Pro 834NM 4" Exhaust With Out Muffler	834NM
137	GM 6.6L Duramax 2011 - 2015 Flo~Pro 664 5" Exhaust With Muffler	664
138	GM 6.6L Duramax 2011 - 2015 Flo~Pro 664NM 5" Exhaust With Out Muffler	664NM
139	GM 6.6L Duramax 2011 - 2015 Flo~Pro 862 Race Pipes	862
140	GM 6.6L Duramax 2011 - 2015 Flo~Pro 864 4" Exhaust With Muffler	864
141	GM 6.6L Duramax 2011 - 2015 Flo~Pro 864NM 4" Exhaust With Out Muffler	864NM
142	GM 6.6L Duramax 2011 - 2015 Flo~Pro SS864NM 4" Exhaust With Out Muffler	SS864NM

Ref No.	Product Name	Item Code
143	GM 6.6L Duramax 2015.5 + FLO~PRO 671 5" DOWNPIPE BACK SINGLE SYSTEM WITH MUFFLER	671
144	GM 6.6L Duramax 2015.5 + FLO~PRO 671NM 5" DOWNPIPE BACK SINGLE SYSTEM WITHOUT MUFFLER	671NM
145	GM 6.6L Duramax 2015.5 + FLO~PRO 771 4" DOWNPIPE BACK DUAL SYSTEM WITHOUT MUFFLER 771	771
146	GM 6.6L Duramax 2015.5 + FLO~PRO 871 4" DOWNPIPE BACK SINGLE SYSTEM WITH MUFFLER 871	871
147	GM 6.6L Duramax 2015.5 + FLO~PRO 871NM 4" DOWNPIPE BACK SINGLE SYSTEM WITHOUT MUFFLER 871NM	871NM
148	LML Down Pipe (2011 - 2014)	GM8427
149	Package Deal LML 11-15 Duramax Exhaust	664NM
150	2001 - 2010 Duramax PPEI Autocal	10073
151	2006 - 2009 CSP5 Tuning	10059
152	2006 - 2009 Cummins PPEI AutoCal	10066
153	2010 - 2012 6.7L CSP5 Tuning	10214
154	2010 - 2012 6.7L Cummins Single Tune	10015
155	2010 - 2012 6.7L Cummins Tune Pack	10214
156	2010 - 2012 Cummins Package Deal	CMDPD
157	2010 - 2012 Cummins Single Tune AutoCal	10029
158	2010-2015 Cummins CSP4 & CSP5 Upgrade	6.7CSP5
159	2013 - 2015 6.7L CSP4 Tuning	10207
160	2013 - 2015 6.7L Cummins Single Tune	10090
161	2013 - 2015 6.7L Cummins Tune Pack	10207, 10208, 10209, 10214, 10215, 10216, 10218

Ref No.	Product Name	Item Code
162	2013 - 2015 Cummins Single Tune AutoCal	10022
163	2013 - 2016 Cummins Package Deal	CMEPD
164	2013 - 2017 Cummins Package Deal	CMEPD
165	6L50 TCM Tuning - 2.8L Duramax	6L50-TCM
166	6L50 TCM Tuning - 2.8L LWN Duramax	6L50-TCM
167	Intentionally left blank	
168	Bench Flash	BF
169	Big Rig Tuning	Big-Rig-Tuning
170	CSP5 - Level 1	CSP5 LEV 1
171	CSP5 - Level 2	CSP5 LEV 2
172	CSP5 - Level 3	CSP5 LEV 3
173	CSP5 Upgrade	CSP5A Upgrade-CW, CSP5Upgrade, 10275, CSP5A Upgrade, 10277, 10276
174	Cummins 6.7 - Level 1 - 3 Tune Pack	Cummins 6.7 Level 1 - 3 Tune Pack
175	Cummins Single Tune - Stock/Built Trans	Cummins Single Tune
176	Cummins Version 1.2 CSP Update	v1.2 Upgrade
177	Dealer Only - EZ LYNK Support Profile Packs / Single Support Profiles	Dealer-EZ-Lynk-Support- Profiles
178	DSP5 - Level 1	DSP5 - Level 1, DSP5 - Level 1 Switch
179	DSP5 - Level 2	DSP5 - Level 2, DSP5 - Level 2 Switch
180	DSP5 - Level 3	DSP5 - Level 3, DSP5 - Level 3 Switch
181	DSP5 Tuning	10043

Ref No.	Product Name	Item Code
182	Duramax Single Tune - Stock/Built Trans	10489
183	Duramax Single Tune - Stock/Built Trans	10489
184	ECO Diesel ECM Tuning	ECODiesel
185	Emissions Upgrade	10290
186	EZ LYNK With PPEI Support Pack	SUPPORT-PACK-DEFAULT-1
187	H&S XRT All You Need	109006, 109006R, 109006-L1
188	LML EZ LYNK Package Deal	LML EZ LYNK Package
189	LML Package Deal	LMLPD
190	LML Single Tune	10311
191	LML Single Tune AutoCal	10036
192	LML Tune - 5 pack	10304
193	LMM Package Deal	LMMPD
194	LVL 1 Package Tune Exhaust & Lift Pump	LVL1
195	MCC Single Tune	10221
196	MCC Tuning - Level 1	209007B
197	MCC Tuning - Level 2	209007B
198	MCC Tuning - Level 3	209007B
199	Mini with All You Need	209007B, 209007R
200	MM	209007
201	PPEI 2010 - 2012 Cummins 6.7L AutoCal	10155
202	PPEI 2013 - 2015 Cummins 6.7L AutoCal	10109
203	PPEI Autocal - Level 1	ATC Level 1
204	PPEI Autocal - Level 2	ATC Level 2
205	PPEI Autocal - Level 3	ATC Level 3

Ref No.	Product Name	Item Code
206	PPEI Autocal - LML - Level 2	PPEI Autocal - LML - Level 2
207	PPEI Autocal - LML - Level 3	PPEI Autocal - LML - Level 3
208	PPEI Autocal - LML Tuning	10318
209	PPEI Cummins 6.7L AutoCal	PPEI6.7L
210	PPEI Support Profile(s)	Dealer PPEI Support Pack
211	Single Tune AutoCal 2001 - 2010 Duramax	10083
212	2017+ 5" Ford 409SS Race Exhaust No Muffler With Tip	F507DB-MD
213	2017+ 5" Ford 409SS Race Exhaust With Muffler With Tip	F507DB
214	2003.5-2007 5" Ford 409SS Race Exhaust No Muffler With Tip	F503TB-MD
215	2003.5-2007 5" Ford 409SS Race Exhaust With Muffler With Tip	F503TB
216	2011+ 4" Ford 409SS Competition Race Pipe (Front and mid section with gaskets, bolts and clamps)	F005RP
217	2008-2010 4" Ford 409SS Competition Race Pipe (Front and mid section with gasket, bolts and clamps)	F004RP
218	2003-2007 4" Ford 409SS Race Exhaust No Muffler With Tip	F003TB-MD
219	2003-2007 4" Ford 409SS Race Exhaust With Muffler With Tip	F003TB
220	2003-2004 5" Dodge 409SS Race Exhaust No Muffler With Tip	D502TB-MD
221	2003-2004 5" Dodge 409SS Race Exhaust With Muffler With Tip	D502TB
222	2007.5- 2019 4" Dodge 409SS Competition Race Pipe (Downpipe and mid section with clamps)	D004RP
223	2015.5-2016 4" GM 409SS Competition Race Pipe (3-bolt Flange)(Front and mid section with clamps)	C005RP

Ref No.	Product Name	Item Code
224	2011-2015 4" GM 409SS Competition Race Pipe (V-Band Flange)(Front and mid section with clamps)	C004RP
225	2007.5-2010 4" GM 409SS Competition Race Pipe Short Bed (With gaskets and bolts) Front pipe not included	C003RPS
226	2007.5-2010 4" GM 409SS Competition Race Pipe Long Bed (With gaskets and bolts) Front pipe not included	C003RPL
227	2008-2010 5" Ford Aluminized Race Exhaust No Muffler No Tip	AF504DB-MD
228	2008-2010 5" Ford Aluminized Race Exhaust With Muffler No Tip	AF504DB
229	2003.5-2007 5" Ford Aluminized Race Exhaust No Muffler No Tip	AF503TB-MD
230	2003.5-2007 5" Ford Aluminized Race Exhaust With Muffler No Tip	AF503TB
231	2008-2010 4" Ford Aluminized Competition Race Pipe (Front and mid-section with gasket, bolts and clamps)	AF004RP
232	2003-2007 4" Ford Aluminized Race Exhaust No Muffler No Tip	AF003TB-MD
233	2003-2007 4" Ford Aluminized Race Exhaust With Muffler No Tip	AF003TB
234	2003-2004 5" Dodge Aluminized Race Exhaust No Muffler No Tip	AD502TB-MD
235	2003-2004 5" Dodge Aluminized Race Exhaust With Muffler No Tip	AD502TB
236	2003-2004 4" Dodge Aluminized Race Exhaust No Muffler No Tip	AD002TB-MD
237	2003-2004 4" Dodge Aluminized Race Exhaust With Muffler No Tip	AD002TB
238	2007.5-2010 5" GM Aluminized Race Exhaust With Muffler No Tip	AC503DB
239	2017+ 5" Ford Aluminized Race Exhaust No Muffler No Tip	AF507DB-MD

Ref No.	Product Name	Item Code
240	2017+ 5" Ford Aluminized Race Exhaust With Muffler No Tip	AF507DB
241	2011-2016 5" Ford Aluminized Race Exhaust No Muffler No Tip	AF505DB-MD
242	2011-2016 5" Ford Aluminized Race Exhaust With Muffler No Tip	AF505DB
243	2013-2019 5" Dodge Aluminized Race Exhaust No Muffler No Tip	AD506TB-MD
244	2013-2019 5" Dodge Aluminized Race Exhaust With Muffler No Tip	AD506TB
245	2010-2012 5" Dodge Aluminized Race Exhaust No Muffler No Tip	AD505TB-MD
246	2010-2012 5" Dodge Aluminized Race Exhaust With Muffler No Tip	AD505TB
247	2007.5-2009 5" Dodge Aluminized Race Exhaust No Muffler No Tip	AD504TB-MD
248	2007.5-2009 5" Dodge Aluminized Race Exhaust With Muffler No Tip	AD504TB
249	2004.5-2007 5" Dodge Aluminized Race Exhaust No Muffler No Tip	AD503TB-MD
250	2004.5-2007 5" Dodge Aluminized Race Exhaust With Muffler No Tip	AD503TB
251	2015.5-2016 5" GM Aluminized Race Exhaust No Muffler (3 Bolt Flange) No Tip	AC505DB-MD
252	2015.5-2016 5" GM Aluminized Race Exhaust With Muffler (3 Bolt Flange) No Tip	AC505DB
253	2011-2015 5" GM Aluminized Race Exhaust No Muffler (V-Band Flange) No Tip	AC504DB-MD
254	2011-2015 5" GM Aluminized Race Exhaust With Muffler (V-Band Flange) No Tip	AC504DB
255	2007.5-2010 5" GM Aluminized Race Exhaust No Muffler No Tip	AC503DB-MD

Ref No.	Product Name	Item Code
256	2001-2007 5" GM Aluminized Race Exhaust No Muffler No Tip	AC502DB-MD
257	2001-2007 5" GM Aluminized Race Exhaust With Muffler No Tip	AC502DB
258	2011-2019 4" Ford Aluminized Race Exhaust No Muffler No Tip	AF005DB-MD
259	2011-2019 4" Ford Aluminized Race Exhaust With Muffler No Tip	AF005DB
260	2013-2019 4" Dodge Aluminized Race Exhaust No Muffler No Tip	AD006TB-MD
261	2013-2019 4" Dodge Aluminized Race Exhaust With Muffler No Tip	AD006TB
262	2010-2012 4" Dodge Aluminized Race Exhaust No Muffler No Tip	AD005TB-MD
263	2010-2012 4" Dodge Aluminized Race Exhaust With Muffler No Tip	AD005TB
264	2007.5-2009 4" Dodge Aluminized Race Exhaust No Muffler No Tip	AD004TB-MD
265	2007.5-2009 4" Dodge Aluminized Race Exhaust With Muffler No Tip	AD004TB
266	2015.5-2016 4" GM Aluminized Race Exhaust No Muffler (3 Bolt Flange) No Tip	AC005DB-MD
267	2015.5-2016 4" GM Aluminized Race Exhaust With Muffler (3 Bolt Flange) No Tip	AC005DB
268	2011-2015 4" GM Aluminized Race Exhaust No Muffler (V-Band Flange) No Tip	AC004DB-MD
269	2011-2015 4" GM Aluminized Race Exhaust With Muffler (V-Band Flange) No Tip	AC004DB
270	2007.5-2010 4" GM Aluminized Race Exhaust No Muffler No Tip	AC003DB-MD
271	2007.5-2010 4" GM Aluminized Race Exhaust With Muffler No Tip	AC003DB

Ref No.	Product Name	Item Code
272	2001-2007 4" GM Aluminized Race Exhaust No Muffler No Tip	AC002DB-MD
273	2001-2007 4" GM Aluminized Race Exhaust With Muffler No Tip	AC002DB
274	2011+ 4" Ford Aluminized Competition Race Pipe (Front and mid-section with gaskets, bolts and clamps)	AF005RP
275	2007.5- 2019 4" Dodge Aluminized Competition Race Pipe (Downpipe and mid-section with clamps)	AD004RP
276	2017+ 4" GM Aluminized Competition Race Pipe (4-Bolt Flange)(Front and mid-section with clamps)	AC006RP
277	2015.5-2016 4" GM Aluminized Competition Race Pipe (3-Bolt Flange)(Front and mid-section with clamps)	AC005RP
278	2011-2015 4" GM Aluminized Competition Race Pipe (V-Band Flange)(Front and mid-section with clamps)	AC004RP
279	2007.5-2010 4" GM Aluminized Competition Race Pipe Long Bed (With gaskets and bolts)	AC003RPL
280	2007.5-2010 4" GM Aluminized Competition Race Pipe Short Bed (With gaskets and bolts)	AC003RPS
281	2011-2016 5" Ford 409SS Race Exhaust No Muffler With Tip	F505DB-MD
282	2011-2016 5" Ford 409SS Race Exhaust With Muffler With Tip	F505DB
283	2008-2010 5" Ford 409SS Race Exhaust No Muffler With Tip	F504DB-MD
284	2008-2010 5" Ford 409SS Race Exhaust With Muffler With Tip	F504DB
285	2013-2019 5" Dodge 409SS Race Exhaust No Muffler With Tip	D506TB-MD
286	2013-2019 5" Dodge 409SS Race Exhaust With Muffler With Tip	D506TB
287	2010-2012 5" Dodge 409SS Race Exhaust No Muffler With Tip	D505TB-MD

Ref No.	Product Name	Item Code
288	2010-2012 5" Dodge 409SS Race Exhaust With Muffler With Tip	D505TB
289	2007.5-2009 5" Dodge 409SS Race Exhaust No Muffler With Tip	D504TB-MD
290	2007.5-2009 5" Dodge 409SS Race Exhaust With Muffler With Tip	D504TB
291	2004.5-2007 5" Dodge 409SS Race Exhaust No Muffler With Tip	D503TB-MD
292	2004.5-2007 5" Dodge 409SS Race Exhaust With Muffler With Tip	D503TB
293	2015.5-2016 5" GM 409SS Race Exhaust No Muffler (3 Bolt Flange) With Tip	C505DB-MD
294	2015.5-2016 5" GM 409SS Race Exhaust With Muffler (3 Bolt Flange) With Tip	C505DB
295	2011-2015 5" GM 409SS Race Exhaust No Muffler (V-Band Flange) With Tip	C504DB-MD
296	2011-2015 5" GM 409SS Race Exhaust With Muffler (V-Band Flange) With Tip	C504DB
297	2007.5-2010 5" GM 409SS Race Exhaust No Muffler With Tip	C503DB-MD
298	2007.5-2010 5" GM 409SS Race Exhaust With Muffler With Tip	C503DB
299	2001-2007 5" GM 409SS Race Exhaust No Muffler With Tip	C502DB-MD
300	2001-2007 5" GM 409SS Race Exhaust With Muffler With Tip	C502DB
301	2011-2019 4" Ford 409SS Race Exhaust No Muffler With Tip	F005DB-MD
302	2011-2019 4" Ford 409SS Race Exhaust With Muffler With Tip	F005DB
303	2008-2010 4" Ford 409SS Race Exhaust No Muffler With Tip	F004DB-MD

Ref No.	Product Name	Item Code
304	2008-2010 4" Ford 409SS Race Exhaust With Muffler With Tip	F004DB
305	2013-2019 4" Dodge 409SS Race Exhaust No Muffler With Tip	D006TB-MD
306	2013-2019 4" Dodge 409SS Race Exhaust With Muffler With Tip	D006TB
307	2010-2012 4" Dodge 409SS Race Exhaust No Muffler With Tip	D005TB-MD
308	2010-2012 4" Dodge 409SS Race Exhaust With Muffler With Tip	D005TB
309	2007.5-2009 4" Dodge 409SS Race Exhaust No Muffler With Tip	D004TB-MD
310	2007.5-2009 4" Dodge 409SS Race Exhaust With Muffler With Tip	D004TB
311	2004.5-2007 4" Dodge 409SS Race Exhaust No Muffler With Tip	D003TB-MD
312	2004.5-2007 4" Dodge 409SS Race Exhaust With Muffler With Tip	D003TB
313	2015.5-2016 4" GM 409SS Race Exhaust No Muffler (3 Bolt Flange) With Tip	C005DB-MD
314	2015.5-2016 4" GM 409SS Race Exhaust With Muffler (3 Bolt Flange) With Tip	C005DB
315	2011-2015 4" GM 409SS Race Exhaust No Muffler (V-Band Flange) With Tip	C004DB-MD
316	2011-2015 4" GM 409SS Race Exhaust With Muffler (V-Band Flange) With Tip	C004DB
317	2007.5-2010 4" GM 409SS Race Exhaust No Muffler With Tip	C003DB-MD
318	2007.5-2010 4" GM 409SS Race Exhaust With Muffler With Tip	C003DB
319	2001-2007 4" GM 409SS Race Exhaust No Muffler With Tip	C002DB-MD

Ref No.	Product Name	Item Code
320	2001-2007 4" GM 409SS Race Exhaust With Muffler With Tip	C002DB
321	EZ LYNK Custom Tuning	EZ-SUPP-PK-UNLIMITED
322	EZ LYNK Custom Tuning	EZ-SUPP-PK-LIMITED
323	EZ LYNK AutoAgent w/ Custom Tuning	EZ-XWS-UNLIMITED
324	EZ LYNK AutoAgent w/ Custom Tuning	EZ-XWS-LIMITED

APPENDIX B:

Notice to Customers

Appendix B: Notice to Customers and Authorized Dealers

[Print on PPEI LETTERHEAD]

Dear [Customer Name or Authorized Dealer Name]:

We are writing to make you aware of important changes in the type of products sold by Power Performance Enterprises, Inc. (“PPEI”) and Mr. Kory Willis. According to our records, you purchased certain PPEI aftermarket performance products. For purposes of this letter, these products are hereinafter referred to as “Subject Products.”

As you may already know, starting in 2019 PPEI and Mr. Willis began suspending all manufacturing and sales of Subject Products. PPEI and Mr. Willis suspended those sales because the U.S. EPA alleged that the manufacture and sale of Subject Products violated the Clean Air Act’s prohibition against motor vehicle parts or components that allow for bypassing, defeating or rendering inoperative any emissions control system or element of design on a vehicle. *See* 42 U.S.C. §7522(a)(3). Emissions control systems include the diesel particulate filter, exhaust gas recirculation system, catalysts, and onboard diagnostic system.

PPEI and Mr. Willis recently entered into a civil judicial settlement with EPA to resolve disputes regarding its manufacturing, sale and installation of Subject Products. Although PPEI and Mr. Willis have not admitted liability for violating the Clean Air Act, as part of the settlement, they have agreed that, among other things, they will no longer (1) manufacture, sell, or install the Subject Products or (2) provide technical support (e.g., telephone support, online/chat support, warranty support) for the Subject Products. PPEI and Mr. Willis have also agreed to provide you with this notice.

PPEI and Mr. Willis’s settlement with the U.S. EPA specifically allows for PPEI and Mr. Willis to continue selling products covered by Executive Orders issued by the California Air Resources Board (“CARB”) or certain pending applications for CARB Executive Orders.

Sincerely,

Kory Blaine Willis

APPENDIX C:

Notice to Employees

Appendix C: Notice to Employees

NOTICE OF CAA PROVISIONS AND CONSENT DECREE IN:

United States

v.

Power Performance Enterprises Inc. and Kory Blaine Willis

TO: ALL OFFICERS, DIRECTORS, AND EMPLOYEES OF PPEI or Mr. Kory Willis:

PPEI and Mr. Willis have entered into a civil judicial settlement with the federal government regarding the manufacture, sale, and installation of certain aftermarket performance products that the United States Environmental Protection Agency (“EPA”) alleged violated the Clean Air Act. Section 203 of the Clean Air Act prohibits the manufacture, sale, and installation of parts or components where a principal effect of the part or component is to bypass, defeat, or render inoperative emission control devices or elements of design, such as diesel particulate filters, exhaust gas recirculation systems, and onboard diagnostic system. PPEI and Mr. Willis have agreed to cease manufacturing, selling and offering to sell these products.

42 U.S. Code Section 7522

(a) Enumerated prohibitions

The following acts and the causing thereof are prohibited—

(3)(A) for any person to remove 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 prior to its sale and delivery to the ultimate purchaser, or for any person knowingly to remove or render inoperative any such device or element of design after such sale and delivery to the ultimate purchaser; or

(3)(B) 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

Anyone who undertakes any of the actions prohibited by Section 7522(a)(3)(A) or (B) of the Clean Air Act, or who offers for sale, sells, conveys, or otherwise transfers in any way the design, technology, or manufacturing processes or techniques used to manufacture the products identified above may be subject to a civil action under the Clean Air Act.

APPENDIX D:

Financial Information

Financial Documentation Provided by PPEI and Mr. Willis

Financial Documentation
PPEI Sales Ledger, 8/15/2013 through 10/28/2015
Responses to CAA Section 208 Information Requests
Federal Tax Return Filing for CIPIA Inc, 2017, 2018
Federal Tax Return Filing for Custom Calibrations Inc. f/k/a HPP Tuning Inc., 2016-2019
Federal Tax Return Filing for Kinder Rental Fun Jumps Inc, 2016-2019
Federal Tax Return Filing for KoryWillis.com, 2018, 2019
Federal Tax Return Filing for PowerEnergyGroup.com, 2018, 2019
Federal Tax Return Filing for Power Management Group, 2017, 2018
Federal Tax Return Filing for PPEI, 2013-2019
Federal Tax Return Filing for Kory B. Willis, 2013-2019
Federal Tax Return Filing for Infinite Limits, LLC, 2019
QuickBooks Export of Pro Forma Profit and Loss for PPEI, January - November 2020
QuickBooks Export of Pro Forma Profit and Loss for PPEI, January - December 2019
PPEI - Profit & Loss Detail - October 2019 through May 2021
PPEI - Profit & Loss - October 2019 through May 2021
Email correspondence, market valuation reports, and appraisal reports re: property valuation
Cayman Islands Bank Statements
Microsoft Excel summary of current balances of certain bank accounts
Investment Account statements
Bank Statements
Bank Statements (Loans)
Bank Statements (Mortgages)
SBA Disaster Loan statement
SBA PPP Loan Statement
PPP Application form
Divorce agreement for property valuation
Spreadsheet summary of Cayman Island Units purchase and anticipated sales prices
Cayman property sales documentation
Documentation related to PPEI's additional obligations with respect to R&D and testing costs
Combined Cash Flow Detail for PPEI and All Related Entities (April 2020 – March 2021)

Financial Documentation
Cayman Islands Yearly Expense Estimate
Annual to Actual Loans Listing