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**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION IX  
75 HAWTHORNE STREET  
SAN FRANCISCO, CALIFORNIA 94105**

<b>In the Matter of:</b>	)	<b>Docket No. CAA-09-2023-0033</b>
	)	
<b>Maxon Performance Parts Corp.</b>	)	<b>CONSENT AGREEMENT AND</b>
	)	<b>FINAL ORDER PURSUANT TO</b>
<b>Pennsauken, New Jersey</b>	)	<b>40 C.F.R. §§ 22.13 AND 22.18</b>
	)	
<b>Respondent.</b>	)	
<hr/>	)	

**I. CONSENT AGREEMENT**

**A. Preliminary Statement**

1. This is a civil administrative penalty assessment proceeding brought under section 205(c)(1) of the Clean Air Act (“CAA” or the “Act”), 42 U.S.C. § 7524(c)(1), and sections 22.13 and 22.18 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (“Consolidated Rules”), as codified at 40 C.F.R. Part 22. In accordance with 40 C.F.R. §§ 22.13 and 22.18, entry of this Consent Agreement and Final Order (“CAFO”) simultaneously commences and concludes this matter.

2. Complainant is the Assistant Director of the Air, Waste & Chemicals Branch of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency Region IX (the “EPA”), who has been duly delegated the authority to commence and settle civil administrative penalty proceedings under section 205(c)(1) of the CAA, 42 U.S.C. § 7424(c)(1).

3. Respondent is Maxon Performance Parts Corp. (“Respondent”), a New Jersey corporation distributing motor vehicle parts headquartered at 7950B National Highway in Pennsauken, New Jersey.

4. Complainant and Respondent, having agreed that settlement of this action is in the public interest, consent to the entry of this CAFO without adjudication of any issues of law or fact herein, and Respondent agrees to comply with the terms of this CAFO.

#### **B. Governing Law**

5. This proceeding arises under Part A of Title II of the CAA, CAA §§ 202-219, 42 U.S.C. §§ 7521-7554, and the regulations promulgated thereunder. These laws aim to reduce emissions from mobile sources of air pollution, including particulate matter (“PM”), non-methane hydrocarbons (“NMHC”), oxides of nitrogen (“NOx”), and carbon monoxide (“CO”). In creating the CAA, Congress found, in part, that “the increasing use of motor vehicles . . . has resulted in mounting dangers to the public health and welfare.” CAA § 101(a)(2), 42 U.S.C. § 7401(a)(2).

6. EPA’s allegations in this CAFO concern parts or components for motor vehicles and engines subject to emission standards. The CAA requires EPA to prescribe and revise, by regulation, standards applicable to the emission of any air pollutant from new motor vehicles or engines that cause or contribute to air pollution which may reasonably be anticipated to

endanger public health or welfare. *See* CAA § 202(a)(1) and (3)(B), 42 U.S.C. § 7521(a)(1) and (3)(B). As required by the CAA, the emission standards must “reflect the greatest degree of emission reduction achievable through the application of [available] technology.” CAA § 202(a)(3)(A)(i), 42 U.S.C. § 7521(a)(3)(A)(i).

7. Under Section 202 of the CAA, 42 U.S.C. § 7521, EPA has promulgated emission standards for PM, NMHC, NO<sub>x</sub> and CO that are applicable to motor vehicles and motor vehicle engines based on a vehicle’s or engine’s class and model year. *See generally* 40 C.F.R. Part 86.

8. Section 203(a)(1) of the CAA prohibits a vehicle manufacturer from selling a new motor vehicle in the United States unless the vehicle is covered by a certificate of conformity. 42 U.S.C. § 7522(a)(1).

9. The EPA issues certificates of conformity to vehicle manufacturers under section 206(a) of the CAA, 42 U.S.C. § 7525(a), to certify that a particular group of motor vehicles conforms to applicable EPA requirements governing motor vehicle emissions.

10. The application for a certificate of conformity must describe, among other things, the emissions-related elements of design of the motor vehicle or motor vehicle engine. *See* 40 C.F.R. § 86.1844-01.

11. “Element of design” is defined in 40 C.F.R. §§ 86.094-2 and 86.1803-01 as “any control system (i.e., computer software, electronic control system, emission control system, computer logic), and/or control system calibrations, and/or the results of systems interaction, and/or hardware items on a motor vehicle or motor vehicle engine.”

12. EPA-certified motor vehicles and motor vehicle engines include a variety of hardware, software devices (tuners) and software (tunes) or elements of design that control emissions of

air pollutants.

13. Vehicle manufacturers employ certain hardware devices as emission control systems to manage and treat exhaust to reduce levels of regulated pollutants from being created or emitted into the ambient air and meet the emission standards in 40 C.F.R. Part 86. Such devices include diesel particulate filters (“DPF”), exhaust gas recirculation (“EGR”), diesel oxidation catalysts (“DOC”), catalytic converters, and selective catalytic reduction (“SCR”).

- a. EGR is an element of design in diesel-fueled motor vehicles that reduces NO<sub>x</sub> emissions, which are formed at the high temperatures caused during fuel combustion. By recirculating exhaust gas through the engine, EGR reduces engine temperatures and NO<sub>x</sub> emissions.
- b. DOC is an element of design in diesel-fueled motor vehicles that reduces PM emissions and may reduce NMHC and CO emissions by routing exhaust through a precious metal coated honeycomb structure that causes a catalytic reaction that breaks down pollutants into less harmful components.
- c. Catalytic converter is an element of design in gasoline-fueled motor vehicles that reduces NMHC, CO and/or NO<sub>x</sub> by routing exhaust through a precious metal coated honeycomb structure that causes a catalytic reaction that breaks down pollutants into less harmful components.
- d. DPF is an element of design in diesel-fueled motor vehicles that reduces PM emissions by collecting soot contained in engine exhaust gas. Proper operation of the DPF requires periodic regeneration of the filter to prevent accumulated PM from clogging the filter.
- e. SCR is an element of design that reduces NO<sub>x</sub> emissions by chemically

converting exhaust gas that contains NOx into nitrogen and water through the injection of diesel exhaust fluid.

14. Pursuant to Section 203(a)(3)(B) of CAA, 42 U.S.C. § 7522(a)(3)(B),

The following acts and the causing thereof are prohibited—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[.]

15. “Person” is defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e), to include “an individual, corporation, partnership, association, State, municipality, political subdivision of a State, and any agency, department, or instrumentality of the United States and any officer, agent or employee thereof.”

16. “Motor vehicle” is defined in Section 216(2) of the CAA, 42 U.S.C. § 7550(2), as “any self-propelled vehicle designed for transporting persons or property on a street or highway.”

17. Any person who violates Section 203(a)(3)(B) of CAA, 42 U.S.C. § 7522(a)(3)(B), is subject to a civil penalty of up to \$5,179 for each violation. CAA § 205(a), 42 U.S.C. § 7524(a), 40 C.F.R. § 19.4, Table 1.

### **C. Allegations**

18. Complainant re-alleges and incorporates by reference herein Paragraphs 1 through 17 of this CAFO.

19. At all times relevant to this CAFO, Respondent was a “person” as defined by Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

20. Respondent sells and distributes motor vehicle parts to various individual customers

located throughout the United States.

21. On November 12, 2021, EPA issued an information request pursuant to Section 208(a) of the CAA, 42 U.S.C. § 7542(a), to Respondent regarding hardware and software that Respondent sold and/or offered for sale from June 1, 2019.

22. In Respondent's response to EPA's information request, Respondent indicated that it sold and/or offered for sale at least one hundred forty-eight (148) parts or components ("Subject Parts," each of which is a "Subject Part") between June 1, 2019, and November 12, 2021, as identified in the Appendix to this CAFO.

23. The Subject Parts consist of one hundred thirty-three (133) EGR delete hardware parts and fifteen (15) throttle valve delete kits.

24. Hardware devices and emission control systems such as DPFs, EGRs, DOCs, catalytic converters, and SCRs, are "device[s] or element[s] of design installed on or in a motor vehicle or motor vehicle engine in compliance with [CAA] regulations" within the meaning of Section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B).

25. Each Subject Part is, and at all relevant times herein was, intended for use with certified motor vehicles and motor vehicle engines including those manufactured by Ford Motor Company, Fiat Chrysler Automobiles US LLC, and General Motors Company motor vehicles ("Motor Vehicles").

26. Each Subject Part contains at least one component that permits users to bypass, defeat, or render inoperative devices (including DPF, EGR, DOC, catalytic converter, and/or SCR) or element(s) of design installed on or in these Motor Vehicles.

27. A principal effect of each Subject Part is to bypass, defeat, or render inoperative device(s) and/or element(s) of design that were installed on Motor Vehicles.

28. Respondent knew or should have known that each Subject Part was being offered for sale or installed for such use or put to such use.

29. Respondent's sales and/or offers for sale of one hundred forty-eight (148) Subject Parts between June 1, 2019, and November 12, 2021, constitute one hundred forty-eight (148) violations of Section 203(a)(3)(B) of CAA, 42 U.S.C. § 7522(a)(3)(B).

#### **D. Terms of Consent Agreement**

30. In accordance with 40 C.F.R. § 22.18(b)(2) and for the purpose of this proceeding, Respondent: a) admits that EPA has jurisdiction over the subject matter alleged in this CAFO and over Respondent; b) neither admits nor denies the specific factual allegations contained in Section I.C of this CAFO; c) consents to the assessment of a civil penalty as stated below; d) consents to the conditions specified in this CAFO; e) waives any right to contest the allegations set forth in Section I.C of this CAFO; and f) waives its rights to appeal the proposed Order contained in this CAFO.

#### Civil Penalty

31. Respondent agrees to the assessment of a civil penalty in the amount of thirty thousand dollars (\$30,000) ("Assessed Penalty") as final settlement of the civil claims against Respondent arising under the CAA as alleged in Section I.C of this CAFO. The EPA has reduced the civil penalty on the basis of information produced by Respondent demonstrating its inability to pay a higher civil penalty.

32. Respondent agrees to pay the Assessed Penalty within thirty (30) days of the Effective Date of this CAFO.

33. Respondent agrees to pay the Assessed Penalty using any method, or combination of methods, provided on the website <https://www.epa.gov/financial/makepayment>, and

identifying the payment with “Docket No. CAA-09-2023-0033” Within 24 hours of payment of the Assessed Penalty, Respondent agrees to send proof of payment to Nathan Dancher at dancher.nathan@epa.gov and the EPA Region 9 Regional Hearing Clerk at R9HearingClerk@epa.gov. “Proof of payment” means a copy of the check, confirmation of credit card or debit card payment, confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate the payment of the Assessed Payment has been made in accordance with this CAFO. The proof of payment shall be identified with “Docket No. CAA-09-2023-0033.”

34. Payments of the above civil administrative penalty shall not be used by Respondent or any other person as a tax deduction from Respondent’s federal, state, or local taxes.

35. If Respondent does not pay the Assessed Penalty within 30 days of the effective date of this CAFO, then Respondent shall pay to EPA a stipulated penalty in the amount of one thousand dollars (\$1,000) for each day the default continues plus the remaining balance of the Assessed Penalty upon written demand by EPA.

36. If Respondent fails to timely pay any portion of the penalty due under this CAFO, EPA may:

- a. request the Attorney General to bring a civil action in an appropriate district court to recover: the amount assessed; interest at rates established pursuant to 26 U.S.C. § 6621(a)(2); the United States’ enforcement expenses; and a 10 percent quarterly nonpayment penalty, 42 U.S.C. § 7524(c)(6);
- b. refer the debt to a credit reporting agency or a collection agency, 42 U.S.C. § 7524(c)(6), 40 C.F.R. §§ 13.13, 13.14, and 13.33;
- c. collect the debt by administrative offset (i.e., the withholding of money payable



by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, 40 C.F.R. Part 13, Subparts C and H; and

- d. suspend or revoke Respondent's licenses or other privileges granted by EPA, or suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds, 40 C.F.R. § 13.17.

#### Respondent's Certification of Compliance

37. Respondent certifies that, to the best of its knowledge, Respondent is complying fully with section 203(a)(3) of the CAA, 42 U.S.C. § 7522(a)(3), as of the date of its signing this Consent Agreement.

38. Respondent is aware of EPA's November 23, 2020 "Tampering Policy: The EPA Enforcement Policy on Vehicle and Engine Tampering and Aftermarket Defeat Devices under the Clean Air Act."

39. The provisions of this CAFO shall apply to and be binding upon Respondent and its officers, directors, employees, agents, trustees, servants, authorized representatives, successors, and assigns. Prior to payment of the Assessed Penalty and providing payment notification in accordance with this CAFO, Respondent must give written notice and a copy of this CAFO to any successors in interest prior to any transfer of ownership or control of any portion of or interest in Respondent. Simultaneously with such notice, Respondent shall provide written notice of such transfer, assignment, or delegation to EPA. In the event of any such transfer, assignment, or delegation, Respondent shall not be released from the obligations or liabilities of this CAFO unless EPA has provided written approval of the release of said

obligations or liabilities.

40. By signing this CAFO, Respondent acknowledges that this CAFO will be available to the public and agrees that this CAFO does not contain any confidential business information or personally identifiable information.

41. By signing this CAFO, the undersigned representative of Complainant and the undersigned representative of Respondent each certify that he or she is fully authorized to execute and enter into the terms and conditions of this CAFO and has the legal capacity to bind the party he or she represents to this CAFO. This CAFO may be signed in counterparts, and its validity shall not be challenged on that basis.

42. By signing this CAFO, Respondent certifies that the information it has supplied concerning this matter was at the time of submission true, accurate, and complete for each such submission, response, and statement. Respondent acknowledges that there are significant penalties for submitting false or misleading information, including the possibility of fines and imprisonment for knowing submission of such information, under 18 U.S.C. § 1001.

43. Each party agrees to bear its own costs and attorney's fees in this action.

#### **E. Effect of Consent Agreement and Final Order**

44. In accordance with 40 C.F.R. § 22.18(c), completion of the terms of this CAFO resolves only Respondent's liability for federal civil penalties for the violations and facts alleged in Section I.C of this CAFO.

45. Nothing in this CAFO shall relieve Respondent of the duty to comply with all applicable provisions of the Act and other federal, state, or local laws or statutes, nor shall it restrict EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or

local permit.

46. This CAFO constitutes the entire agreement between the parties and supersedes any prior agreements or understandings, whether written or oral, among the parties with respect to the subject matter hereof.

#### **F. Effective Date**

47. Respondent and Complainant agree to issuance of the attached Final Order. Upon filing, EPA will transmit a copy of the filed CAFO to the Respondent. This CAFO shall become effective after execution of the Final Order by the Regional Judicial Officer on the date of filing with the Regional Hearing Clerk.

The foregoing Consent Agreement In the Matter of: Maxon Performance Parts Corp., Docket No. CAA-09-2023-0033 is hereby stipulated, agreed, and approved for entry:

FOR RESPONDENT, MAXON PERFORMANCE PARTS CORP.:

3/24/2023  
Date

Lihua Shen  
Name  
Title  
Maxon Performance Parts Corp.

In the Matter of: Maxon Performance Parts Corp. 12  
Consent Agreement and Final Order

The foregoing Consent Agreement In the Matter of: Maxon Performance Parts Corp., Docket No. CAA-09-2023-0033 is hereby stipulated, agreed, and approved for entry:

FOR COMPLAINANT:

**KAORU MORIMOTO** Digitally signed by  
KAORU MORIMOTO  
Date: 2023.04.03  
10:49:49 -07'00'

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Kaoru Morimoto, Assistant Director  
Enforcement & Compliance Assurance  
Division  
U.S. Environmental Protection Agency,  
Region 9

## II. FINAL ORDER

Complainant and Respondent, having entered into the foregoing Consent Agreement,  
IT IS HEREBY ORDERED that this CAFO (Docket No. CAA-09-2023-0033) be  
entered, and that Respondent shall comply with the terms set forth in the Consent Agreement.  
This Consent Agreement and Final Order shall become effective upon filing.

**STEVEN  
JAWGIEL** Digitally signed by  
STEVEN JAWGIEL  
Date: 2023.04.04  
11:50:34 -07'00'

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STEVEN L. JAWGIEL      Date  
Regional Judicial Officer  
U.S. EPA, Region IX

**APPENDIX**

**Maxon Performance Parts Corp.  
Violations of Section 203(a)(3)(B), 42 U.S.C. § 7522(a)(3)(B)  
For the Sale of 148 Parts or Components Between June 1, 2019, and November 12, 2021**

Maxon Performance Parts Corp. Part Number	Identifying Name of Part from Maxon Performance Parts Corp.	Quantity
EG31901	6.0L Powerstroke Diesel Complete EGR Bypass and Delete Kit For 2003-2010 Ford	62
EG31908	6.7L Cummins Diesel EGR Valve Cooler Delete Kit for 2010-2016 Dodge Ram 2500	9
EG31909	6.7L Diesel Cummins EGR Valve Cooler Delete Kit For 07-09 Dodge Ram 2500 3500 L6	2
EG31924	Black EGR Valve Cooler Delete Kit for 2011-2014 Ford F250 F350 6.7L Powerstroke Diesel	26
EG31926	Silver EGR Valve Delete Kit & Intake Elbow For 2008-2010 Ford 6.4L Powerstroke Diesel	2
EG31939	Black EGR Valve Delete Kit & Intake Elbow For 2008-2010 Ford 6.4L Powerstroke Diesel	1
EG31944	EGR Delete Cooler Valve Kit Turbo Diesel For 2004.5-2005 GM 6.6L Duramax LLY	18
EG31952	Silver Throttle Valve Delete Kit for 2007-2017 Dodge Ram L6 Turbo 6.7L Cummins Diesel	5
EG31954	Black Throttle Valve Delete Kit for 2007-2017 Dodge Ram L6 Turbo 6.7L Cummins Diesel	10
EG31983	Black Intake Tube Bridge & EGR Valve Cooler Delete Kit for 11-15 GM 6.6L LML Duramax	5
EG31992	6.7L Cummins Diesel EGR Cooler Delete Kit for 2013-2018 Dodge Ram 2500 3500 4500	8
<b>TOTAL</b>		<b>148</b>

## CERTIFICATE OF SERVICE

I hereby certify the original copy of the foregoing Consent Agreement and associated Final Order in the matter of Maxon Performance Parts Corp. (Docket No. CAA-09-2023-0033) was filed with the Regional Hearing Clerk, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, and that a true and correct copy of the same was sent by electronic mail to the following parties:

**RESPONDENT**

Lihua Shen  
Registered Agent  
Maxon Performance Parts Corp.  
7950B National Highway  
Pennsauken, NJ 08110-1412  
Maxonautocorp.ca@gmail.com

**COMPLAINANT**

Catherine Schluter  
Assistant Regional Counsel (ORC 2-1)  
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75 Hawthorne Street  
San Francisco, CA 94105  
Schluter.Catherine@epa.gov

**Tu, Ponly** Digitally signed by Tu,  
Ponly  
Date: 2023.04.04  
12:56:01 -07'00'

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Ponly J. Tu	Date
Regional Hearing Clerk	
U.S. EPA – Region IX	