

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION

<hr/>		
UNITED STATES OF AMERICA,	)	
	)	
	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. <u>3:24-CV-01439</u>
	)	
DIESEL PERFORMANCE PARTS, INC.,	)	
	)	
	)	
	)	
Defendant.	)	
<hr/>		

CONSENT DECREE

## TABLE OF CONTENTS

I.	JURISDICTION AND VENUE .....	2
II.	APPLICABILITY .....	3
III.	DEFINITIONS.....	4
IV.	CIVIL PENALTIES.....	8
V.	COMPLIANCE REQUIREMENTS.....	11
VI.	REPORTING REQUIREMENTS .....	15
VII.	STIPULATED PENALTIES .....	17
VIII.	FORCE MAJEURE .....	21
IX.	DISPUTE RESOLUTION .....	23
X.	INFORMATION COLLECTION AND RETENTION.....	26
XI.	EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS .....	28
XII.	COSTS .....	30
XIII.	NOTICES.....	30
XIV.	EFFECTIVE DATE.....	31
XV.	RETENTION OF JURISDICTION .....	31
XVI.	MODIFICATION .....	32
XVII.	TERMINATION.....	32
XVIII.	PUBLIC PARTICIPATION .....	33
XIX.	SIGNATORIES/SERVICE.....	33
XX.	INTEGRATION .....	34
XXI.	FINAL JUDGMENT .....	34
XXII.	26 U.S.C. SECTION 162(F)(2)(A)(II) IDENTIFICATION.....	34
XXIII.	APPENDICES .....	35

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 Diesel Performance Parts, Inc. (“DPPI”) violated Section 203(a)(3)(B) of the Clean Air Act (“Act” or “CAA”), as amended, 42 U.S.C. § 7522(a)(3)(B), by selling and offering for sale 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)(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 DPPI (“Defendant”) offered for sale and sold numerous Identified Subject Products that bypass, defeat, or render inoperative emissions control systems that were installed on or in Motor Vehicles or Motor Vehicle Engines in compliance with the CAA, including hardware products and electronic software products known as “tunes.”

WHEREAS, the United States asserts that since September 1, 2018, Defendant sold at least 6,858 Identified Subject Products;

WHEREAS, the United States’ Complaint seeks injunctive relief and the assessment of civil penalties for Defendant’s violations of the CAA;

WHEREAS, Defendant does not admit liability for any violations alleged in the Complaint;

WHEREAS, Defendant represents to the United States that shortly after receipt of EPA's October 7, 2019 information request letter, Defendant suspended sales of all Identified Subject Products;

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

WHEREAS, the United States, Defendant, and the DPPI Owner (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) because DPPI is located in and is doing business in this District. For purposes of this Consent Decree, or any action to enforce

this Decree, Defendant and the DPPI Owner consent to the Court's jurisdiction over this Decree or such action and over Defendant and the DPPI Owner, and consent to venue in this judicial district. For purposes of this Consent Decree, Defendant and the DPPI Owner 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 DPPI and the DPPI Owner, 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 DPPI, whether in compliance with the procedures of this Paragraph or otherwise, shall relieve DPPI or the DPPI Owner of their obligation to ensure that the terms of the Decree are implemented, unless (1) the transferee agrees to be substituted for DPPI as a Party under the Decree and thus be bound by the terms thereof and to undertake the obligations required by this Consent Decree, (2) the United States consents to relieve DPPI and the DPPI Owner of their respective obligations, and (3) the Court approves a modification of the Consent Decree (i) substituting the transferee for DPPI; (ii) relieving the DPPI Owner of his obligations, to the extent the United States consents; and (iii) providing that the transferee will implement all the terms of the Consent Decree. The United States may refuse to approve the substitution of the transferee for DPPI if it determines that the proposed transferee does not have the financial or technical ability to comply with the requirements of the Decree. The United States also may refuse to relieve the DPPI Owner of his obligations if it determines he has ownership of or financial interest in the proposed transferee. At least 30 Days prior to such transfer, Defendant or the DPPI Owner 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 Department of Justice in accordance with Section XIII (Notices). Any attempt to transfer ownership or operation of any of Defendant's business(es) without complying with this Paragraph, constitutes a violation of this Decree.

5. Within 30 Days of the Effective Date, Defendant shall provide a copy of this Consent Decree (including all Appendices) to all officers, directors, employees and agents of the Defendant 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. Defendant 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, Defendant and the DPPI Owner shall not raise as a defense the failure by any of DPPI's 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. "CARB" means the California Air Resources Board.
- c. "Complaint" means the complaint filed by the United States in this action.
- d. "Consent Decree" or "Decree" means this Decree and all appendices attached hereto and identified in Section XXIII.

- e. “Date of Lodging” means the day that this Consent Decree was lodged with the Court.
- f. “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.
- g. “Defendant” means DPPI.
- h. “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.
- i. “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.
- j. “DOJ” means the United States Department of Justice and any of its successor departments or agencies.
- k. “DPPI” means Diesel Performance Parts, Inc., a Tennessee corporation with its current principal place of business at 411 Allied Drive, Nashville, Tennessee 37211.
- l. “DPPI Owner” means Mark L. Craig, the current owner of Defendant DPPI, in his individual capacity, and signatory to this Consent Decree.
- m. “Effective Date” shall have the definition provided in Section XIV.
- n. “Emissions-Related Elements of Design” means any part, device, computer software, electronic control system, computer logic, calibration 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. Emissions-Related Elements of Design include, but are not limited to:
  - i. Ammonia sensors;
  - ii. Diagnostic Trouble Codes (DTCs);
  - iii. DOCs;

- iv. DPF differential pressure sensors;
  - v. DPFs;
  - vi. EGRs;
  - vii. Exhaust gas temperature sensors;
  - viii. NACs;
  - ix. NOx sensors;
  - x. OBDs;
  - xi. Oxygen sensors;
  - xii. Particulate Matter (PM) sensors;
  - xiii. SCRs;
  - xiv. Urea quality sensors;
  - 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 Defendant and the DPPI Owner.
  - 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 Defendant to discuss, describe, or explain any of Defendant’s products, in any form, including but not limited to electronic and hardcopy information used in advertisements, information on Defendant’s website(s), 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 42 U.S.C. § 7550(2) and 40 C.F.R. § 85.1703.
- u. “Motor Vehicle Engine” means an internal combustion engine that powers a Motor Vehicle.
- v. “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.
- w. “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.
- x. “Original Equipment Manufacturer” or “OEM” means the manufacturer responsible for the design and production of a motor vehicle or motor vehicle engine.
- y. “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.
- z. “Paragraph” means a portion of this Decree identified by an Arabic numeral.
- aa. “Parties” means the United States, the Defendant, and the DPPI Owner.
- 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 part, component, or product 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) that can be used in Motor Vehicle or Motor Vehicle Engine.
- dd. “Section” means a portion of this Decree identified by a Roman numeral, including all Paragraphs thereunder.
- 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<sub>x</sub> 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).”
- gg. “Technical Support” means a range of services offered by Defendant 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 PENALTY

8. Defendant and the DPPI Owner shall pay the sum of \$320,000.00 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. Defendant and the DPPI Owner are jointly and severally liable for the civil penalty due. This payment shall be made in four equal installments, with the first payment in the amount of \$80,000.00 due 30 Days after the Effective Date, the second payment in the amount of \$80,000.00 due one year after the Effective Date, the third payment in the amount of \$80,000.00

due two years after the Effective Date, and the fourth payment in the amount of \$80,000.00 due three years after the Effective Date. Each installment payment shall include an additional amount for Interest on the total unpaid penalty amount from the Date of Lodging through the date of payment. Nothing in this Consent Decree is intended to prevent Defendant or the DPPI Owner from paying the civil penalty earlier than the schedule set forth above in this Paragraph.

9. The United States' agreement to the amount of the civil penalty required by Paragraph 8 is conditioned upon the veracity and completeness of Defendant's and the DPPI Owner's Financial Information. Defendant and the DPPI Owner hereby certify that the Financial Information is true, accurate, and complete and that there has been no material improvement in their financial condition between the time the Financial Information was submitted and the date of their 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 Defendant's and the DPPI Owner's 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. Defendant and the DPPI Owner shall pay the civil penalty due, together with interest, by FedWire Electronic Funds Transfer ("EFT") to the DOJ account, in accordance with instructions provided to Defendant and the DPPI Owner by the Financial Litigation Unit ("FLU") of the United States Attorney's Office for the Middle District of Tennessee after the Effective Date. The payment instructions provided by the FLU will include a Consolidated Debt Collection System ("CDCS") number, which Defendant and the DPPI Owner shall use to

identify all payments required to be made in accordance with this Consent Decree. The FLU will provide the payment instructions to:

Mark L. Craig  
President  
Diesel Performance Parts, Inc.  
411 Allied Drive  
Nashville, TN 37211  
mark@dieselperformanceparts.com

on behalf of Defendant and himself, as the DPPI Owner. Defendant may change the individual to receive payment instructions on its behalf by providing written notice of such change to DOJ and EPA in accordance with Section XIII (Notices).

11. At the time of payment, Defendant and the DPPI Owner shall send notice that payment has been made: (i) to EPA via email at [cinwd\\_acctsreceivable@epa.gov](mailto:cinwd_acctsreceivable@epa.gov) or via regular mail at EPA Cincinnati Finance Office, 26 W. Martin Luther King Drive, Cincinnati, Ohio 45268; (ii) to DOJ via email or regular mail in accordance with Section XIII; and (iii) to EPA in accordance with Section XIII. Such notice shall state that the payment is for the civil penalty owed pursuant to the Consent Decree in *United States v. Diesel Performance Parts, Inc.* and shall reference the civil action number, CDCS Number, and DOJ case number 90-5-2-1-12539.

12. If Defendant and DPPI Owner fail to make any payment required under Paragraph 8 by the due date, or if Defendant or DPPI Owner becomes the subject of a proceeding under the Bankruptcy Code, 11 U.S.C. §§ 101-1532, all remaining payments and all accrued interest shall be due immediately. Interest shall continue to accrue on any unpaid amounts until Defendant and DPPI Owner pay the total amount due. Interest required under this Paragraph shall be in addition to any stipulated penalties owing under Paragraph 37.

13. Defendant and the DPPI Owner shall not deduct any penalties paid under this Decree in accordance with this Section or Section VII (Stipulated Penalties) in calculating federal income tax.

## V. COMPLIANCE REQUIREMENTS

14. Prohibitions Pertaining to Subject Products. Beginning on the Effective Date, Defendant and the DPPI Owner 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 Defendant and the DPPI Owner.

15. Prohibition on Investment and Ownership. Beginning on the Effective Date, Defendant and the DPPI Owner shall not have any ownership interest in or invest in any person or entity that Defendant and the DPPI Owner know, or with reasonable diligence should know, manufactures, sells, offers to sell, or installs in a Motor Vehicle or Motor Vehicle Engine any Subject Product; nor should Defendant and the DPPI Owner assist any person or entity in manufacturing, selling, offering to sell, or installing any Subject Product in a Motor Vehicle Engine.

16. Destruction of All Subject Products. No later than 30 Days after the Effective Date, Defendant and the DPPI Owner 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, Defendant and the DPPI Owner shall Permanently Delete and/or Destroy all Subject Products forfeited by employees and officers of Defendant pursuant to Paragraph 23. Defendant and the DPPI Owner shall provide to EPA information about all Subject Products deleted or destroyed pursuant to this Paragraph consistent with the requirements in Section VI.

17. Prohibition on Technical Support for All Subject Products. Defendant and the DPPI Owner 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. Defendant shall deny all warranty claims pertaining to any Subject Product.

18. Removal of Subject Products. Notwithstanding the requirements of Paragraph 17, Defendant and the DPPI Owner may assist customers in removing any Subject Products from vehicles on which they were installed and returning such vehicles to the OEM settings. Defendant and the DPPI Owner 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. Defendant and the DPPI Owner 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, Defendant shall revise all Marketing Materials 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 replacing, overwriting, deleting, bypassing, defeating, or rendering inoperative any emission control device or Emissions-Related Element of Design.

21. Notice to All Identified Subject Product Customers. No later than 30 Days after the Effective Date, Defendant shall transmit a notice by U.S. Mail or email that includes the

language specified in Appendix B to each end-use customer to which the Defendant sold an Identified Subject Product on or after October 7, 2019.

22. Notice to Employees. No later than 30 Days after the Effective Date, Defendant 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 Defendant's officers and employees will regularly encounter it. These postings must include both hardcopy postings in a physical location and a company-wide email.

23. Forfeiture of Subject Products Controlled by Defendant's Officers and Employees. No later than 30 Days after the Effective Date, Defendant shall offer to buy back at fair market value all Subject Products in the possession of each officer and employee of the Defendant and all Subject Products installed on any motor vehicle owned or operated by such officers and employees, or under their control. Defendant shall request that all such Subject Products are timely forfeited to an individual designated by Defendant 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, Defendant shall conduct a Clean Air Act Compliance Training Program for all officers, employees, contractors, and consultants with responsibilities for sales, marketing, manufacturing, distribution, research and development, and/or Technical Support of aftermarket parts for Motor Vehicles (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 §§ 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 by videoconference;
  - c. Be at least one hour in length;
  - d. Provide the Trainees with a written summary of all training content, including the information required in Paragraph 24.a; and
  - e. 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. Alternatively, Defendant may certify, in accordance with Paragraph 31, that all employees participated in the training session and received a written summary of all content as required in Paragraph 24.d.

25. Prohibition on Tampering. Defendant and the DPPI Owner 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.

26. Not a Compliance Determination. Defendant and the DPPI Owner 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 Subject Product is covered by a compliance determination (or similar designation) from EPA.

## VI. REPORTING REQUIREMENTS

27. By January 31 and July 31 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, Defendant 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 VII;
- b. As to Subject Products that were deleted or destroyed pursuant to Paragraph 16, 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;
- c. A list of all end-use customers to whom Defendant provided a notification pursuant to Paragraph 21 and a copy of any such notification provided;
- d. A copy of the written notice required to be posted pursuant to Paragraph 22 and a description of the manner and location of posting;
- e. 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 16;
- f. 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 copies of the training acknowledgments signed by the participants;
- g. A copy of any handouts or other presentations given in the Clean Air Act Compliance Training Program; and
- h. 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.

28. If Defendant and the DPPI Owner violates, or has reason to believe that it/he may violate, any requirement of this Consent Decree, Defendant and the DPPI Owner shall notify the United States of such violation and its likely duration, in writing, within 10 business Days of the Day they 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, Defendant and the DPPI Owner shall so state in the report along with the reason(s) why the violation cannot be fully explained. Defendant and the DPPI Owner 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 Defendant and the DPPI Owner became aware of the cause of the violation. Nothing in this Paragraph or the following Paragraph relieves Defendant or the DPPI Owner of the obligation to provide the notice required by Section VIII (Force Majeure).

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

30. All reports shall be submitted to the persons designated in Section XIII (Notices) and shall include the civil action number of this case and the DOJ case number 90-5-2-1-12539.

31. Each report submitted by Defendant under this Section shall be signed by an official of Defendant DPPI, and each report submitted by the DPPI Owner under this Section

shall be signed by him. All submitted reports under this section shall include the following certification:

I certify under penalty of perjury 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 submitting false information, including the possibility of fine and imprisonment for knowing violations.

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

33. The reporting requirements of this Consent Decree do not relieve Defendant 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.

34. 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.

## VII. STIPULATED PENALTIES

35. Defendant and the DPPI Owner 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 VIII (Force Majeure), or reduced or waived by the United States pursuant to Paragraph 42. 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.

<b>Consent Decree Violation</b>	<b>Total Stipulated Penalty</b>
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 Subject Product manufactured, sold, or installed. For each Subject Product thereafter, \$4,500 per Subject Product manufactured, sold, or installed.
Failure to comply with the requirements of Paragraph 15 (Prohibition on Investment and Ownership)	\$1,000 per Day for the first 15 Days of noncompliance; \$2,500 per Day for the 16 <sup>th</sup> through 30 <sup>th</sup> Days of noncompliance; and \$5,000 per Day thereafter.
Failure to comply with the requirements of Paragraph 16 (Destruction of All Subject Products)	\$1,000 per Day for the first 15 Days of noncompliance; \$2,000 per Day for the 16 <sup>th</sup> through 30 <sup>th</sup> Days of noncompliance; and \$4,000 per Day thereafter.
Failure to comply with any requirements of Paragraph 17 (Prohibition on Technical Support for All Subject Products)	\$1,000 per Day for the first 15 Days of noncompliance; \$2,000 per Day for the 16 <sup>th</sup> through 30 <sup>th</sup> Days of noncompliance; and \$2,500 per Day thereafter.
Failure to comply with the requirements of Paragraph 20 (Revision of Marketing Materials)	\$1,000 per Day for the first 15 Days of noncompliance; \$1,500 per Day for the 16 <sup>th</sup> through 30 <sup>th</sup> Days of noncompliance; and \$2,000 per Day thereafter.
Failure to comply with the requirements of Paragraph 21 (Notice to all Identified Subject Product Customers)	\$2,500 per Customer.
Failure to comply with the requirements of Paragraph 22 (Notice to Employees)	\$500 per Day for the first 15 Days of noncompliance; \$1,000 per Day for the 16 <sup>th</sup> through 30 <sup>th</sup> Days of noncompliance; and \$2,000 per Day thereafter.
Failure to comply with the requirements of Paragraph 23 (Forfeiture of Subject Products Controlled by Defendant's Officers and Employees)	\$500 per Day for the first 15 Days of noncompliance; \$1,000 per Day for the 16 <sup>th</sup> through 30 <sup>th</sup> Days of noncompliance; and \$2,500 per Day thereafter.
Failure to comply with the requirements of Paragraph 24 (Training of Employees)	\$750 per trainee, up to a maximum of \$50,000 per calendar year.

Failure to comply with the requirements of Paragraph 25 (Prohibition on Tampering)	\$5,000 per device or Emissions-Related Element of Design that was removed or rendered inoperative.
Violation of any other requirement of this Consent Decree.	\$500 per Day for the first 15 Days of noncompliance; \$1,000 per Day for the 16 <sup>th</sup> through 30 <sup>th</sup> Days of noncompliance; and \$2,500 per Day thereafter

36. Periodic Reports. If Defendant fails to submit a Semi-Annual Report, or fail to submit a complete Semi-Annual Report, as required by Paragraph 27, Defendant and the DPPI Owner shall pay a total stipulated penalty of \$500 per Day for the first 15 Days of noncompliance; \$1,500 per Day for the 16<sup>th</sup> through 30<sup>th</sup> Days of noncompliance; and \$2,500 per Day thereafter.

37. Late Payment of Civil Penalty. If Defendant and the DPPI Owner fail to pay the civil penalty required to be paid under Section IV (Civil Penalty) when due, Defendant and the DPPI Owner shall pay a total stipulated penalty of \$1,000 per Day for each Day that the payment is late.

38. 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.

39. Defendant and the DPPI Owner shall pay stipulated penalties to the United States within 30 Days of a written demand by the United States, unless Defendant and the DPPI Owner invoke the dispute resolution procedures under Section IX (Dispute Resolution) within the 30-Day period.

40. Stipulated penalties shall continue to accrue as provided in Paragraph 38 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, Defendant and the DPPI Owner 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, Defendant and the DPPI Owner 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 40.c, below.
- c. If any Party appeals the District Court's decision, Defendant and the DPPI Owner shall pay all accrued penalties determined to be owing, together with interest, within 15 Days of receiving the final appellate court decision.

41. If Defendant and the DPPI Owner fails to pay stipulated penalties according to the terms of this Consent Decree, Defendant and the DPPI Owner shall be jointly and severally 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 Defendant's and DPPI Owner's failure to pay any stipulated penalties or interest.

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

43. Defendant and the DPPI Owner shall pay stipulated penalties owing to the United States in the manner set forth and with the confirmation notices required by Paragraphs 10 and 11, 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.

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

45. Non-Exclusivity of Remedy. Stipulated penalties are not the United States' exclusive remedy for violations of this Consent Decree. Subject to the provisions of Section XI (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 Defendant's violation of this Decree or applicable law. Where a violation of this Decree is also a violation of statutory or regulatory requirements, Defendant and the DPPI Owner shall be allowed a credit, for any stipulated penalties paid, against any statutory penalties imposed for such violation under the applicable federal requirement.

#### VIII. FORCE MAJEURE

46. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of Defendant or the DPPI Owner, of any entity controlled by Defendant or the DPPI Owner, or of Defendant's or the DPPI Owner's contractors, that delays or prevents the performance of any obligation under this Consent Decree despite Defendant's and the DPPI Owner's best efforts to fulfill the obligation. Given the need to protect public health and welfare and the environment, the requirement that Defendant and the DPPI Owner 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 any delay or non-performance is, and any adverse effects of the delay or non-

performance are, minimized to the greatest extent possible. “Force majeure” does not include financial inability to perform any obligation under this Consent Decree.

47. If any event occurs for which Defendant or the DPPI Owner will or may claim a force majeure, they shall provide notice by electronic submission to EPA. The deadline for the initial notice is three Days after they first knew or should have known that the event would likely delay or prevent performance. Defendant and the DPPI Owner shall be deemed to know of any circumstance of which any contractor of, subcontractor of, or entity controlled by them knew or should have known.

48. If Defendant and the DPPI Owner seeks to assert a claim of force majeure concerning the event, within seven Days after the notice under Paragraph 47, they shall submit a further notice to EPA that includes (a) an explanation and description of the event and its effect on their completion of the requirements of the Consent Decree; (b) a description and schedule of all actions taken or to be taken to prevent or minimize the delay and/or other adverse effects of the event; (c) if applicable, the proposed extension of time for them to complete the requirements of the Consent Decree; (d) their rationale for attributing such delay to a force majeure if they intend to assert such a claim; (e) a statement as to whether, in their opinion, such event may cause or contribute to an endangerment to public health or welfare or the environment; and (f) all available proof supporting the claim that the delay was attributable to a force majeure.

49. Failure to submit a timely or complete notice or claim under Paragraph 47 or 48 regarding an event precludes Defendant and the DPPI Owner from asserting any claim of force majeure regarding that event, provided, however, that EPA may, in its unreviewable discretion, excuse such failure if they are able to assess to their satisfaction whether the event is a force

majeure, and whether Defendant or the DPPI Owner has exercised its/his best efforts under Paragraph 46.

50. After receipt of any claim of force majeure, EPA will notify Defendant and the DPPI Owner of their determination whether they are entitled to relief under Paragraph 46, and, if so, the excuse of, or the extension of time for, performance of the obligations affected by the force majeure. An excuse of, or extension of the time for performance of, the obligations affected by the force majeure does not, of itself, excuse or extend the time for performance of any other obligation.

51. If Defendant or the DPPI Owner elects to invoke the dispute resolution procedures set forth in Section IX (Dispute Resolution), it/he shall do so no later than 15 Days after receipt of EPA's notice. In any such proceeding, Defendant and the DPPI Owner have the burden of proving that they are entitled to relief under Paragraph 46, that their proposed excuse or extension was or will be warranted under the circumstances, and that they complied with the requirements of Paragraphs 46 through 48. If Defendant and the DPPI Owner carry this burden, the delay or non-performance at issue shall be deemed not to be a violation by Defendant and the DPPI Owner of the affected obligation of this Consent Decree identified to EPA and the Court.

## IX. DISPUTE RESOLUTION

52. 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. Defendant's and the DPPI Owner's failure to seek resolution of a dispute under this Section shall preclude Defendant and the DPPI Owner from raising any such issue as a defense to an action by the United States to enforce any obligation of Defendant and the DPPI Owner arising under this Decree.

53. 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 Defendant and the DPPI Owner sends 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, Defendant and the DPPI Owner invokes formal dispute resolution procedures as set forth below.

54. Formal Dispute Resolution. Defendant and/or the DPPI Owner shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by sending DOJ and EPA 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 Defendant's and the DPPI Owner's position and any supporting documentation relied upon by Defendant and the DPPI Owner.

55. The United States will send Defendant and the DPPI Owner its Statement of Position within 45 Days of receipt of Defendant's and the DPPI Owner's 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 Defendant and the DPPI Owner, unless Defendant and the DPPI Owner files a motion for judicial review of the dispute in accordance with the following Paragraph.

56. Judicial Dispute Resolution. Defendant and the DPPI Owner may seek judicial review of the dispute by filing with the Court and serving on the United States, in accordance with Section XIII (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 Defendant's and the DPPI Owner's 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. The motion may not raise any issue not raised in informal dispute resolution pursuant to Paragraph 53, unless the United States raised a new issue of law or fact in its Statement of Position.

57. The United States shall respond to Defendant's and the DPPI Owner's motion within the time period allowed by the Local Rules of this Court. Defendant and the DPPI Owner may file a reply memorandum, to the extent permitted by the Local Rules.

58. Standard of Review.

a. Disputes Concerning Matters Accorded Record Review. Except as otherwise provided in this Consent Decree, in any dispute brought under Paragraph 56 pertaining to any items requiring approval by EPA under this Consent Decree; the adequacy of the performance of work undertaken pursuant to this Consent Decree; and all other disputes that are accorded review on the administrative record under applicable principles of administrative law, Defendant and the DPPI Owner shall have the burden of demonstrating, based on the administrative record, that the position of the United States is arbitrary and capricious or otherwise not in accordance with law.

b. Other Disputes. Except as otherwise provided in this Consent Decree, in

any other dispute brought under Paragraph 56, Defendant and the DPPI Owner shall bear the burden of demonstrating that their position complies with this Consent Decree and better furthers the objectives of the Consent Decree.

59. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of Defendant and the DPPI Owner 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 40. If Defendant and the DPPI Owner does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section VII (Stipulated Penalties).

#### X. INFORMATION COLLECTION AND RETENTION

60. The United States and its authorized representatives, including attorneys, contractors, and consultants, shall have the right of entry into any of Defendant's 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 Defendant's compliance with this Consent Decree.

61. Until two years after the termination of this Consent Decree, unless otherwise specified herein, Defendant and the DPPI Owner 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 their or their contractors' or agents' possession or control, and that relate in any manner to Defendant's and the DPPI Owner's performance of their 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, Defendant and the DPPI Owner shall provide copies of any documents, records, or other information required to be maintained under this Paragraph.

62. At the conclusion of the information-retention period provided in the preceding Paragraph, Defendant and the DPPI Owner 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, Defendant and the DPPI Owner shall deliver any such documents, records, or other information to EPA. Defendant and the DPPI Owner 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 Defendant and the DPPI Owner asserts such a privilege, it/he 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 asserted privilege. 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.

63. Defendant and the DPPI Owner 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 Defendant and the DPPI Owner seeks to protect as CBI, it/he shall follow the procedures set forth in 40 C.F.R. Part 2.

64. 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 Defendant or the DPPI Owner to maintain documents, records, or other information imposed by applicable federal or state laws, regulations, or permits.

#### XI. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

65. This Consent Decree resolves only the civil claims of the United States for the violations alleged in the Complaint filed in this action through the Date of Lodging.

66. 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 65. 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 Defendant’s or the DPPI Owner’s business or any of Defendant’s or the DPPI Owner’s products, whether related to the violations addressed in this Consent Decree or otherwise.

67. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, civil penalties, or other appropriate relief relating to the Defendant’s

or DPPI Owner's operations, Defendant and the DPPI Owner 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 65.

68. This Consent Decree is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. Defendant and the DPPI Owner are responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits; and Defendant's and the DPPI Owner's compliance with this Consent Decree shall be no defense to any action commenced under any such laws, regulations, or permits, except as set forth herein. The United States does not, by its consent to the entry of this Consent Decree, warrant or aver in any manner that Defendant's and the DPPI Owner's 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.

69. This Consent Decree does not limit or affect the rights of Defendant or the DPPI Owner 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 Defendant and the DPPI Owner, except as otherwise provided by law.

70. 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.

## XII. COSTS

71. 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 penalty or any stipulated penalties due but not paid by Defendant and the DPPI Owner.

## XIII. NOTICES

~~72.~~ 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 to the addresses below. If Defendant and the DPPI Owner is/are unable to electronically submit any notice, they shall send the submission to the United States via mail to the address below and immediately contact both the United States and EPA by email to arrange for an alternative delivery to EPA. Any notices that are required by this Consent Decree to be sent to "the United States" should be sent to both the United States and to EPA, as detailed below.

As to the United States by email: eescdcopy.enrd@usdoj.gov  
Re: DJ # 90-5-2-1-12539

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 # 90-5-2-1-12539

As to EPA by email: EPA\_R4\_CAA\_Consent\_Decree\_Reports@epa.gov  
and to Spann.tony@epa.gov

As to Defendant: Diesel Performance Parts, Inc.  
c/o Mark L. Craig  
President  
411 Allied Drive  
Nashville, TN 37211  
mark@dieselperformanceparts.com

As to DPPI Owner: Mark L. Craig  
411 Allied Drive  
Nashville, TN 37211  
mark@dieselperformanceparts.com

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

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

#### XIV. EFFECTIVE DATE

75. 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.

#### XV. RETENTION OF JURISDICTION

76. 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 IX (Dispute Resolution) and XVI (Modification), or effectuating or enforcing compliance with the terms of this Decree.

## XVI. MODIFICATION

77. The terms of this Consent Decree, including any attached Appendices, may be modified only by a subsequent written agreement signed by all the Parties. Appendix A (Identified Subject Products) may be modified upon written agreement by the Parties and shall be considered a non-material change to this Consent Decree. Where the modification constitutes a material change to this Decree, it shall be effective only upon approval by the Court.

78. Any disputes concerning modification of this Decree shall be resolved under Section IX (Dispute Resolution), provided, however, that, instead of the burden of proof provided by Paragraph 58, 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).

## XVII. TERMINATION

79. After Defendant and the DPPI Owner have: (a) completed the requirements of Paragraphs 16, 20, 21, 22, and 23; (b) complied with Paragraphs 14, 15, 17, 18, 19, 24, 25, and 26 for at least three years after the Effective Date; (c) paid the civil penalty required by Section IV, including any accrued Interest; and (d) paid any accrued stipulated penalties as required by this Consent Decree, Defendant and the DPPI Owner may serve upon the United States a Request for Termination, stating that they have satisfied these requirements, together with all necessary supporting documentation.

80. Following receipt by the United States of Defendant's and DPPI Owner's Request for Termination, the Parties shall confer informally concerning the Request and any disagreement that the Parties may have as to whether Defendant and the DPPI Owner 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.

81. If the United States does not agree that the Decree may be terminated, Defendant and the DPPI Owner may invoke Dispute Resolution under Section IX of this Decree. However, Defendant and the DPPI Owner shall not seek Dispute Resolution of any dispute regarding termination until 90 Days after service of their Request for Termination.

#### XVIII. PUBLIC PARTICIPATION

82. 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. Defendant and the DPPI Owner 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 Defendant and the DPPI Owner in writing that it no longer supports entry of the Decree.

#### XIX. SIGNATORIES/SERVICE

83. Each undersigned representative of the Defendant, the DPPI Owner, 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.

84. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis. Defendant and the DPPI Owner agree to accept service of process by

email 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. Defendant agrees to accept service of all pleadings subsequent to the Complaint via Electronic Case Filing. Defendant need not file an answer to the Complaint in this action unless or until the Court expressly declines to enter this Consent Decree.

#### XX. INTEGRATION

85. 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 Decree, no other document, nor any representation, inducement, agreement, understandings, or promise constitutes any part of this Decree or the settlement it represents.

#### XXI. FINAL JUDGMENT

86. 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 Defendant.

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

87. 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 through 25; Section VI (Reporting Requirements), Paragraphs 27 through 31; and Section X (Information Collection and Retention), Paragraphs 60 through 62, is restitution or required to come into compliance with law.

### XXIII. APPENDICES

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

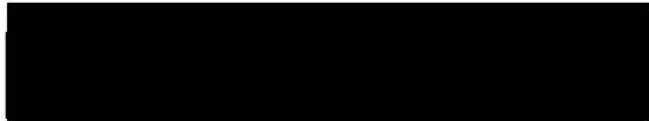
“Appendix A” is a list of Identified Subject Products.

“Appendix B” is language to be included in the notice to customers referenced in Paragraph 20.

“Appendix C” is language to be included in the notice to employees referenced in Paragraph 21.

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

Dated and entered this 30th day of June, 2025.



UNITED STATES DISTRICT JUDGE

We hereby consent to the entry of the Consent Decree in the matter of United States v. Diesel Performance Parts, Inc., 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

12/6/2024  
Date

/s/Rachael Kamons  
RACHAEL KAMONS  
Senior Counsel  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
Washington, DC 20044-7611

We hereby consent to the entry of the Consent Decree in the matter of United States v. Diesel Performance Parts, Inc., subject to public notice and comment:

FOR THE U.S. ENVIRONMENTAL PROTECTION  
AGENCY Region 4:

Date: \_\_\_\_\_

SUZANNE  
RUBINI

Digitally signed by  
SUZANNE RUBINI  
Date: 2024.09.16  
11:04:14 -04'00'

LEIF PALMER  
Regional Counsel  
United States Environmental Protection Agency  
Region 4  
Atlanta, Georgia

OF COUNSEL:

MARIA PFISTER  
Air and EPCRA Law Branch  
Office of Regional Counsel  
United States Environmental Protection Agency  
Region 4  
Atlanta, Georgia

We hereby consent to the entry of the Consent Decree in the matter of United States v. Diesel Performance Parts, Inc.:

FOR DEFENDANT DIESEL PERFORMANCE PARTS, INC.:

11/12/14  
Date:

Mi, —Q /  
President  
Diesel Performance Parts, Inc.  
411 Allied Drive  
Nashville, TN 3721 J

FOR SIGNATORY MARK L. CRAIG

11/12/14  
Date:

. { . — — l  
Nashville, TN 37211  
mark@dieselperformanceparts.com

# **APPENDIX A:**

## **Identified Subject Products**

**Appendix A: Identified Subject Products**

Ref No.	Product Name	Part Number
1	Bully Dog GTX Tuner & Monitor	DER-40460B
2	SCT GTX Tuner & Monitor	DER-40460S
3	Bully Dog BDX Performance Programmer	DER-40470
4	SCT BDX Performance tuner	DER-40490
5	EFI Live AutoCal	AC2
6	EFI Live FlashScan V2 with GM & Dodge Cummins Tuning	FS2-03
7	EFI Live FlashScan V2 for Dodge LATE 2005 -09 5.9L Tuning Software Module	FS2-DC
8	EFI Live FlashScan V2 Tune for GM Duramax and Gas Application	FS2-GM
9	EFI Live FlashScan V2 Tune for GM Duramax and Gas Application	FS-VIN
10	EFI Live FlashScan V2 for Medium and Heavy-Duty Applications	V2HD
11	EzLynk Auto Agent 2.0 Blank	EE00AA2-1
12	PPE 2001-10 Duramax	PPE-111010000
13	PPE 2001-10 Duramax Economy Xcellerator	PPE-111020000
14	PPEI EZ Lynk Auto Agent 2	PPI-EZ-AA-LSP
15	PPEI EZ Lynk Auto Agent 2	PPI-EZ-AA-USP
16	PPEI EZ Lynk Limited Support Pack	PPI-EZ-SUPP-PK-LIMITED
17	5-17 Touch Display Programmer System	WNA-SG2TOUCH
18	Smarty Junior Dodge 2003-07 5.9L	WNA-SJR6
19	Smarty Dodge 1998.5-2002 up to 90hp, 9 power levels	WNA-SO3A
20	Smarty POD Dodge 2003-07 5.9L	WNA-SO6POD
21	Smarty SSR Dodge 2003-07 5.9L	WNA-SSR59
22	AFE Atlas Exhaust System (w/o Muffler), Turbo-Back	AFE-49-02003NM
23	AFE Atlas Exhaust System, Turbo-Back 5.00" Aluminized Steel	AFE-49-02007NM
24	AFE Atlas 4" Aluminized Steel Exhaust Pipe	AFE-49-02010
25	AFE Atlas 4" Aluminized Steel Exhaust Pipe	AFE-49-02011
26	AFE Atlas Exhaust System (w/o Muffler), Turbo-Back 5.00" Aluminized Steel	AFE-49-02030NM
27	Atlas 5" Turbo-Back Aluminized Steel Exhaust System	AFE-49-02047NM-1
28	AFE Atlas Dodge 2013-18 Pick Up 6.7L Down Pipe and intermediate Pipe Aluminized	AFE-49-02050

Ref No.	Product Name	Part Number
29	Atlas Exhaust System 4in Aluminized TB	AFE-49-02054
30	Atlas Exhaust System (W/no Muffler) 4in Aluminized TB	AFE-49-02054NM
31	Dodge Cummins 2013-18 4" Pipe Aluminized	AFE-49-02055
32	AFE Atlas Exhaust System, Turbo-Back 4.00" Aluminized Steel	AFE-49-02058
33	AFE Atlas Exhaust System (w/o Muffler), Turbo-Back 4.00" Aluminized Steel	AFE-49-02058NM
34	AFE Atlas Exhaust System, Down-Pipe Back 4.00" Aluminized Steel	AFE-49-03004
35	AFE Atlas Exhaust System (w/o Muffler), Down-Pipe Back 4.00" Aluminized Steel	AFE-49-03004NM
36	AFE Atlas Exhaust System, Down-Pipe Back 4.00" Aluminized Steel	AFE-49-03006
37	AFE Atlas Exhaust System (w/o Muffler), Down-Pipe Back 4.00" Aluminized Steel	AFE-49-03006NM
38	Ford Diesel Trucks 08-10 6.4L Exhaust Pipe, 4.00" Aluminized Steel	AFE-49-03010
39	AFE Atlas Exhaust Pipe, 4.00" Aluminized Steel	AFE-49-03012
40	AFE Atlas Exhaust System, Down-Pipe Back 5.00" Aluminized Steel	AFE-49-03039NM
41	AFE Atlas Exhaust System, Down-Pipe Back 5.00" Aluminized Steel	AFE-49-03040NM
42	5in Aluminized Steel Down Pipe Back Exhaust System w/Polished Tip	AFE-49-03093
43	5in Aluminized Steel Down-Pipe Back Exhaust System w/o Muffler	AFE-49-03093NM
44	ATLAS 4in Aluminized Steel Race Pipe w/o Muffler	AFE-49-03099NM
45	Check Connection AFE Atlas Exhaust System, Down-Pipe Back 4.00" Aluminized Steel	AFE-49-04003
46	Check Connection AFE Atlas Exhaust System (w/o Muffler), Down-Pipe Back 4.00" Aluminized Steel	AFE-49-04003NM
47	AFE Atlas Exhaust Pipe, 4.00" Aluminized Steel	AFE-49-04014
48	AFE Atlas Exhaust System, 5.00" Aluminized Steel	AFE-49-04033NM
49	Check Connection AFE Atlas Exhaust System, 5.00" Aluminized Steel	AFE-49-04035NM
50	Check Connection AFE GM 2015.5-16 6.6L Duramax 4" Down Pipe Back	AFE-49-04053
51	Check Connection AFE GM 2015.5-16 6.6L Duramax 4" Down Pipe Back	AFE-49-04053NM
52	Check Connection AFE GM 2015.5-16 6.6L Duramax 5" Down Pipe Back No Muffler	AFE-49-04054NM
53	AFE Atlas Exhaust System Down Pipe Back 4.00" Aluminized Steel	AFE-49-04059-1
54	AFE Atlas Exhaust System (W/o Muffler) Down Pipe Back 4.00" Aluminized Steel	AFE-49-04059NM
55	AFE Atlas Exhaust System 5in DP-Back	AFE-49-04060NM
56	GM Duramax 2011-15.5 Pipe Aluminized	AFE-49-04066

Ref No.	Product Name	Part Number
57	GM Duramax 2015.5-16 Pipe Aluminized	AFE-49-04067
58	GM 2007.5-10 V8-6.6L (td) LMM 4" Pipe CC/SB, EC/SB 143.5" Wheelbase ONLY	AFE-49-04079
59	GM 2007.5-10 V8-6.6L (td) LMM 4" Pipe CC/LB, EC/LB 167.7" Wheelbase ONLY	AFE-49-04083
60	Atlas 5in Aluminized Steel Down-Pipe Back Exhaust System w/ Muffler	AFE-49-04087
61	ATLAS 5in Aluminized Steel Down-Pipe Back Exhaust System No Muffler	AFE-49-04087NM
62	GM 6.6L 2017+ 4" Down Pipe back Aluminized	AFE-49-04090
63	GM 6.6L 2017+ 4" Down Pipe Back No Muffler Aluminized	AFE-49-04090NM
64	Titan XD 16-17 V8-5.0L (td) 4in Aluminized Steel Down-Pipe Back Exhaust System w/o Muffler	AFE-49-06127NM
65	Nissan Titan XD	AFE-49-06129NM
66	AFE Large Bore HD Exhaust Race System, Flange-Back 4.00" Stainless Steel	AFE-49-13022
67	AFE Large Bore HD Exhaust System, 4.00" Stainless Steel	AFE-49-14017NM
68	Dodge 2013-+ 6.7L 4" 409 Stainless without Muffler Turbo Back System	AFE-49-22001NM
69	Dodge 2004.5-12 5.9L & 6.7L 4" 409 Stainless without Muffler Turbo Back System	AFE-49-22002NM
70	Dodge 2013-18 4" Stainless Down Pipe and Intermediate Pipe Combo	AFE-49-22005RP
71	Dodge 2013-18 4:" Stainless	AFE-49-22006RP
72	Dodge 2007.5-12 6.7L 4" Stainless Down Pipe and Intermediate Pipe Combo	AFE-49-22007RP
73	Dodge 2007.5-12 6.7L 4" Stainless	AFE-49-22008RP
74	Ford 2017- + 6.7L Power Stroke 4" 409 Stainless without Muffler Down Pipe Back System	AFE-49-23001NM
75	Ford 2011-16 6.7L Power Stroke 4" 409 Stainless without Muffler Down Pipe Back System	AFE-49-23002NM
76	Ford 2008-10 6.4L Power Stroke 4" 409 Stainless without Muffler Down Pipe Back System	AFE-49-23003NM
77	Ford 2017-+ 6.7L 4" Stainless	AFE-49-23006RP
78	Ford 2011-16 6.7L 4" Stainless	AFE-49-23007RP
79	Ford 2008-10 6.4L 4" Stainless	AFE-49-23008RP
80	Duramax 4" 409 Stainless without Muffler Down Pipe Back System 12 65 Lbs	AFE-49-24001NM
81	Duramax 4" 409 Stainless without Muffler Down Pipe Back System	AFE-49-24002NM
82	Duramax 4" 409 Stainless without Muffler Down Pipe Back System	AFE-49-24003NM
83	Duramax 4" 409 Stainless without Muffler Down Pipe Back System	AFE-49-24003NM
84	Duramax 4" 409 Stainless without Muffler Down Pipe Back System	AFE-49-24004NM

Ref No.	Product Name	Part Number
85	Duramax 4" 409 Stainless without Muffler Down Pipe Back System	AFE-49-24004NM
86	4" Stainless RP	AFE-49-24006RP
87	GM 2011-15.5 6.6L 4" Stainless RP Check Flange for 3 Bolt or V Band Clamp	AFE-49-24007RP
88	GM 2007.5-10 6.6L 4" Stainless RP Short Beds only	AFE-49-24008RP
89	GM 2007.5-10 6.6L 4" Stainless Long Beds Only	AFE-49-24009RP
90	GM Colorado/Canyon 2016-19 I4-2.8L (td) 3" 409 Stainless Steel Turbo-Back Exhaust System No Muffler	AFE-49-24010NM
91	AFE MachForce XP Exhaust System, 4.00" Stainless Steel	AFE-49-42009-1
92	AFE MachForce XP Exhaust Pipe, 4.00" Stainless Steel	AFE-49-42020
93	AFE MachForce XP Exhaust Pipe, 4.00" Stainless Steel	AFE-49-42022
94	AFE MachForce XP Exhaust Pipe, 4.00" Stainless Steel	AFE-49-42023
95	AFE MachForce XP Exhaust System (w/ Polished Tip), Turbo-Back 5.00" Stainless Steel	AFE-49-42030-P
96	MACH Force-Xp 5" Turbo-Back Stainless-steel Exhaust System w/6" Black Tip	AFE-49-42047-1B
97	AFE Dodge 2013-17 6.7L Pick Up Down Pipe and Intermediate Pipe Stainless	AFE-49-42050
98	Large Bore HD Exhaust System, Turbo-Back 4.00" Stainless Steel	AFE-49-42054-B
99	RAM Diesel Trucks 13-18 L6-6.7L (td) Leaf and Coil Spring Suspension	AFE-49-42054-P
100	Dodge Cummins 13-18 Pipe Stainless Steel	AFE-49-42055
101	AFE MachForce XP Exhaust Pipe, 4.00" Down-Pipe Only Stainless Steel	AFE-49-43025
102	AFE MachForce XP Exhaust System, 4.00" DP Back Stainless No Muffler Steel	AFE-49-43030NM
103	AFE MachForce XP Exhaust Pipe, 4.00" Stainless Steel	AFE-49-43031
104	AFE MachForce XP Exhaust System, 4.00" Stainless Steel	AFE-49-43035NM
105	AFE MachForce XP Exhaust Pipe, 4.00" Stainless Steel	AFE-49-43036
106	AFE MachForce XP Exhaust System, Down-Pipe Back 5.00" Stainless Steel	AFE-49-43039NM
107	Ford 2011-14 6.7L EXH 4in DPF-Back Duals w/ Black tips	AFE-49-43065-B
108	AFE MachForce XP Exhaust System, 4.00" Stainless Steel	AFE-49-44017-P
109	AFE MachForce XP Exhaust Pipe, 4.00" Stainless Steel	AFE-49-44019
110	AFE MachForce XP Exhaust Pipe, 4.00" Stainless Steel	AFE-49-44021
111	GM Diesel Trucks 2007.5-10 V8-6.6L	AFE-49-44023
112	Check Connection AFE MachForce XP Exhaust System, 4.00" Stainless Steel	AFE-49-44031NM

Ref No.	Product Name	Part Number
113	Check Connection AFE MachForce XP Exhaust System, 4.00" Stainless Steel	AFE-49-44032
114	AFE MachForce XP Exhaust System 5.00" Stainless Steel	AFE-49-44033NM
115	GM 6.6L 2015.5-2016 Large Bore-HD 4" 409 Stainless Steel Down-Pipe Back Exhaust System With 6" Tips	AFE-49-44052-P
116	Check Connection AFE MachForce XP Exhaust System, w/Polished Tip; Down-Pipe Back 4.00" Stainless Steel	AFE-49-44053-P
117	Check Connection MACH Force-Xp 5" DP-Back Stainless-Steel Exhaust System w/6" Polished Tip	AFE-49-44054-P
118	GM Duramax 11-15 Pipe Stainless Steel	AFE-49-44066
119	GM Duramax 15.5-16 Pipe Stainless 30LB 60x10x10	AFE-49-44067
120	Down-Pipe Back Exhaust System w/Polished Tip	AFE-49-46127-P
121	Dodge 2011-12 6.7L SCR (UREA) ONLY Pipe for Cab to Axle	AFE-49-52009RP
122	Dodge 2011-12 6.7L SCR (UREA) ONLY Pipe for Cab to Axle	AFE-49-52010RP
123	Dodge 2013-18 6.7L SCR (UREA) ONLY Pipe for Cab to Axle	AFE-49-52011RP
124	Dodge 2013-18 6.7L SCR (UREA) ONLY Pipe for Cab to Axle	AFE-49-52012RP
125	Dodge 2011-12 Cab & Chassis Only 4" Aluminized Pipe No Muffler	AFE-49-52013RP
126	Dodge 2011-12 Cab & Chassis Pipe with Muffler Aluminized	AFE-49-52014RP
127	Dodge 2013-2018, 6.7L, 3500/4500/5500, Cab & Chassis ONLY 4" Pipe No Muffler	AFE-49-52015RP
128	Dodge 2013-18 Cab & Chassis Pipe with Muffler Aluminized	AFE-49-52016RP
129	Dodge 2011-18 6.7L Cab & Chassis ONLY Turbo Back 5" Aluminized No Muffler	AFE-49-52017NM
130	Dodge 2007.5-10 6.7 Cab/Chassis ONLY Pipe Aluminized	AFE-49-52018RP
131	Bostech GM 6.6L 2007.5+ VIN #6 Van Express/Savannah Performance EGR Cooler	BTH-EGR354-CORE
132	Dodge 2007.5-12 6.7L Stainless Down Pipe and Intermediate Pipe	EWM-D6.71801-409SS
133	Dodge 2013-18 6.7L 409 Stainless 4" Pipe	EWM-D6.71804-409SS
134	Dodge 2007.5-12 6.7L Stainless Pipe	EWM-D6.71806-409SS
135	Dodge 2004.5-12 6.7L 4" Stainless Turbo Back without Muffler	EWM-D6.71811-409SSNM
136	Dodge 2004.5-12 6.7L 5" Stainless Turbo Back without Muffler	EWM-D6.71813-409SSNM
137	Dodge 2004.5-12 6.7L 5" Stainless Turbo Back with Muffler	EWM-D6.71814-409SS
138	Dodge 2013+ 6.7L Coil & Leaf Spring 5" Stainless Turbo Back without Muffler	EWM-D6.71815-409SSNM
139	Dodge 2013+ 6.7L Coil & Leaf Spring 5" Stainless Turbo Back with Muffler 55x22x15 70 LBS	EWM-D6.71816-409SS

<b>Ref No.</b>	<b>Product Name</b>	<b>Part Number</b>
140	Dodge 2007.5-08	EWM-DE6.701
141	Dodge 2009-18 6.7L	EWM-DE6.702
142	Dodge 2009-18 6.7L With Flow Thru Water Tube	EWM-DE6.703
143	Dodge 2013-17 6.7L Cab & Chassis, 2007.5-12 Cab & Chassis Use	EWM-DE6.704
144	Dodge 2007.5-18 Compete	EWM-DE6.705
145	Dodge 2007.5-16 6.7L Cummins	EWM-DTDKIT
146	Ford 2008-10 6.4L 409 Stainless 4" Pipe	EWM-F6.41802-409
147	Ford 2008-10 6.4L Aluminized 4" Pipe	EWM-F6.41802-ALUM
148	Ford 2008-10 6.4L 5" Stainless Down Pipe Back without Muffler	EWM-F6.41819-409SSNM
149	Ford 2008-10 6.4L 5" Stainless Down Pipe back with Muffler	EWM-F6.41820-409SS
150	Ford 2011-19 6.7L 409 Stainless 4" Pipe	EWM-F6.71803-409
151	Ford 2011-19 6.7L 5" 409 Stainless Down Pipe Back with Out Muffler	EWM-F6.71808-409SSNM
152	Ford 2011-19 6.7L 5" 409 Stainless Down Pipe Back with Muffler	EWM-F6.71809-409SS
153	Ford 2003-10 6.0L Complete Kit with Up Pipe	EWM-FE6.001
154	Ford 2003-07 F and 2003-10 E Body Basic, No Up Pipe Included	EWM-FE6.003
155	Ford 2008-10 6.4L Basic	EWM-FE6.401
156	Ford 2008-10 6.4L Complete with Intake Elbow Piping Included	EWM-FE6.402
157	Ford 2011+ 6.7L Complete	EWM-FE6.701
158	Ford 2015-18 6.7L Complete	EWM-FE6.702
159	Ford 2011-14 6.7L	EWM-FE6.703
160	Ford 2011-14 6.7L With Pass Thru Plate Included	EWM-FE6.704
161	GM 2004.5-05 (Some early 2006) 6.6L LLY Basic	EWM-GM6.601
162	GM 2004.5-05 (Some early 2006) LLY Complete with Intercooler Tube	EWM-GM6.602-TUBE
163	GM 2006-07 6.6L LBZ Basic	EWM-GM6.603
164	GM 2006-07 6.6L LBZ Full with Intake Tube	EWM-GM6.603-TUBE
165	GM 2007.5-10 LMM Basic Kit	EWM-GM6.605
166	GM 2011-16 LML Duramax Basic VIN 8th Digit of "8" Only	EWM-GM6.606
167	GM 2011-15.5 V Band Clamp only 6.6L 409 Stainless 4" Pipe	EWM-GM6.61805-409SS
168	GM 2015.5 + 3 Bolt Flange ONLY 6.6L 409 Stainless 4" Pipe	EWM-GM6.61807-409SS

<b>Ref No.</b>	<b>Product Name</b>	<b>Part Number</b>
169	GM 2011-15.5 6.6L 5" Stainless Down Pipe Back without Muffler	EWM-GM6.61821-409SSNM
170	GM-2011-15.5 6.6L 5" Down Pipe Back with Muffler	EWM-GM6.61822-409SS
171	GM 2007.5-10 6.6L 5" Down Pipe Back without Muffler	EWM-GM6.61823-409SSNM
172	GM 2007.5-10 LMM Complete with High Flow Intake Elbow	EWM-GM6.61824-409SS
173	GM 2007.5-10 LMM Complete with High Flow Intake Elbow	EWM-GM6.6LMM0002
174	GM-2007.5-10 6.6L 5" Down Pipe Back with Muffler	EWM-GM6.6MANUPKIT
175	GM 6.6L LB7 2001-04.5 Full Injector to Rail Line Set, Eight Total Lines to do One Complete Engine	EWM-GMLB7-SET*
176	Dodge 2011-12 Cab & Chassis Only 4" Aluminized Pipe No Muffle	THN-21122
177	Dodge 2011-12 6.7L Cab & Chassis ONLY Pipe With Muffler	THN-21123
178	Dodge 2011-12 Cab & Chassis 3500/4500/5500 Series	THN-21124
179	Dodge 2011-12 6.7L Cab & Chassis	THN-21125
180	Dodge 2013-2017, 6.7L, 3500/4500/5500, Cab & Chassis ONLY 4" Race Pipe - No Muffler	THN-21126
181	Dodge 2013-17 Cab & Chassis Race Pipe with Muffler Aluminized	THN-21127
182	Dodge 2013-17 Cab & Chassis Only	THN-21128
183	Dodge 2013-17 Cab & Chassis SCR Urea Pipe	THN-21129
184	Flo Pro Dodge 2007.5-10 6.7 Pipe Aluminized	THN-27123
185	Ford 2008-10 6.4L Up Pipes, Race Only	THN-30800R
186	Dodge 2007.5-10 3500-5500- Cab & Chassis Only	THN-644
187	Flo Pro Dodge 2007.5-10 6.7L Cab and Chassis Turbo Back 5" with Twister Race Muffler	THN-645
188	Dodge 2011-17 Cab & Chassis 5" Aluminized Turbo Back System NO Muffler	THN-654
189	Dodge 2011-17 Cab & Chassis 5" Turbo Back Aluminized With Muffler	THN-655
190	GM 2011 + LML 6.6L 5" Aluminized No Muffler System	THN-664NM
191	2016 Duramax 5" Downpipe Back No Muffler 6.6L, 2500/3500, LML, 4" Race Pipe	THN-671NM Race Pipe
192	Ford 2011-2018 6.7L Dual 5 inch system no muffler	Part # THN-767
193	Ford 2008-10 6.4L Aluminized Two Piece Down Pipe with Band Clamp	Part # THN-846
194	Ford 2011-13 6.7L 4" Down Pipe Back Off Road Automatic Transmission Only	THN-853NB
195	Dodge 2014-16 Eco Diesel1500	THN-863NB

<b>Ref No.</b>	<b>Product Name</b>	<b>Part Number</b>
<b>196</b>	2016-2017, 2.8L - Duramax, Race Exhaust Colorado Canyon, No Bungs, With Muffler .	THN-875
<b>197</b>	Nissan Titan/Cummins 2016-17 Race Down Pipe Back System No Muffler	THN-878NM
<b>198</b>	Dodge 2007.5-09 Ram Cab & Chassis 3500/4500/5500 5 Inch Stainless Turbo Back Exhaust No Muffler	THN-SS644
<b>199</b>	GM 2015.5-16 6.6L Stainless 5" Down Pipe Back Exhaust No Muffler	THN-SS671NM
<b>200</b>	Dodge 2007.5-09 2500/3500 Stainless 4? Turbo Back Dual Exhaust w/o Muffler	THN-SS739NB

# **APPENDIX B:**

## **Notice to Customers**

## **Appendix B: Notice to Customers**

[Print on DPPI LETTERHEAD]

Dear [Customer Name]:

We are writing to make you aware of important changes in the type of products sold by Diesel Performance Parts, Inc. (“DPPI”). According to our records, you purchased certain aftermarket performance products from DPPI. For purposes of this letter, these products are hereinafter referred to as “Subject Products.”

As you may already know, shortly after October 7, 2019, DPPI began suspending all sales of Subject Products. DPPI, suspended those sales because the U.S. EPA alleged that the 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.

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

Sincerely,

Mark L. Craig  
President  
Diesel Performance Parts, Inc.

# **APPENDIX C:**

## **Notice to Employees**

## **Appendix C: Notice to Employees**

### **NOTICE OF CAA PROVISIONS AND CONSENT DECREE IN:**

*United States*

*v.*

*Diesel Performance Parts, Inc.*

TO: ALL OFFICERS, DIRECTORS, AND EMPLOYEES OF DPPI:

Diesel Performance Parts, Inc. (“DPPI”) has 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. DPPI has agreed to cease selling and offering to sell these products and has agreed not to manufacture or install such products in the future.

#### **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

(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**

## **APPENDIX D:**

### **DEFENDANT'S AND DPPI OWNER'S FINANCIAL INFORMATION**

At the request of the United States, Defendant Diesel Performance Parts, Inc. ("DPPI"), DPPI Owner Mark L. Craig, and DPPI affiliate MJC Management LLC ("MJC") provided the following information regarding the ability to pay a civil penalty in this matter:

1. Tax return information for:
  - a. DPPI for tax year 2020 through 2022;
  - b. MJC for tax year 2021; and
  - c. Mark Craig for 2017 through 2021.
2. Other financial information, including:
  - a. DPPI depreciation and amortization reports for 2017 through 2021;
  - b. DPPI Profit and Loss statements for 2022, and January through October 2023;
  - c. DPPI balance sheets for 2021, 2022, and as of November 9, 2023;
  - d. DPPI operating account statement and details for 2022;
  - e. DPPI Paycheck Protection Program (PPP) Loan forgiveness information;
  - f. DPPI credit card statement and details for 2022;
  - g. Mark Craig investment account 1099 for 2019, 2020, 2021, 2022;
  - h. Mark Craig payroll summaries from MJC for 2016 through 2022;
  - i. Mark Craig tax worksheets and supporting documents for 2019;
  - j. MJC Profit and Loss statements for 2017 through 2022;
  - k. MJC balance sheets for 2017 through 2022, as of November 9, 2023;
  - l. MJC operating account transactions for 2020, 2021, 2022; and
  - m. Other related entity tax returns and financial information for 2017 through 2022.

3. Responses to questions posed by the United States, including information related to:
  - a. Corporate structure and history;
  - b. Real property appraisal;
  - c. Corporate payroll summaries and other miscellaneous payments;
  - d. Motor vehicles;
  - e. Asset divisions pursuant to marital dissolution settlement; and
  - f. Other miscellaneous questions regarding assets, liabilities, and any other contingent obligations.