

**BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION X**

In the Matter of:

GREASY GREG'S, LLC,  
POSEY'S MECH-ELEC REPAIR LLC,  
&  
GREG S. POSEY,

Lewiston, Idaho,

Respondents.

DOCKET NO. CAA-10-2022-0123

**COMPLAINT AND NOTICE OF  
OPPORTUNITY FOR HEARING**

Proceeding pursuant to Section 205(c) of the  
Clean Air Act, 42 U.S.C. § 7524(c).

**I. PRELIMINARY STATEMENT/INTRODUCTION**

1.1. This Administrative Complaint and Notice of Opportunity for Hearing (“Complaint”) is issued under the authority vested in the Administrator of the United States Environmental Protection Agency (“EPA”) by Section 205(c)(1) of the Clean Air Act (CAA), 42 U.S.C. § 7524(c)(1).

1.2. The Administrator has delegated the authority pursuant to Section 205(c) of the CAA, 42 U.S.C. § 7524(c), to issue administrative complaints for violations of the CAA to the Regional Administrator for EPA Region 10 who in turn has delegated this authority to the

Director of the Enforcement and Compliance Assurance Division, EPA Region 10  
("Complainant").

1.3. Greasy Greg's, LLC; Posey's Mech-Elec Repair LLC; and Greg S. Posey ("Respondents") are hereby notified that Complainant alleges that Respondents violated the provisions identified herein and seeks the assessment of a civil penalty. This Complaint also provides notice of Respondents' opportunity to request a hearing.

## **II. STATUTORY AND REGULATORY BACKGROUND**

### **EPA's CAA Title II Information Gathering Authorities**

2.1. The term "person" as defined at Section 302(e) of the CAA, 42 U.S.C. § 7602(e), includes 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.

2.2. In accordance with Section 208(a) of the CAA, 42 U.S.C. § 7542(a), "Every manufacturer of new motor vehicles or new motor vehicle engines, and every manufacturer of new motor vehicle or engine parts or components, and other persons subject to the requirements of this part or part C, shall establish and maintain records, perform tests where such testing is not otherwise reasonably available under this part and part C (including fees for testing), make reports and provide information the Administrator may reasonably require to determine whether the manufacturer or other person has acted or is acting in compliance with this part and part C and regulations thereunder, or to otherwise carry out the provision of this part and part C, and

shall, upon request of an officer or employee duly designated by the Administrator, permit such officer or employee at reasonable times to have access to and copy such records.”

2.3. In accordance with Section 203(a)(2)(A) of the CAA, 42 U.S.C. § 7522(a)(2)(A), “The following acts and the causing thereof are prohibited— . . . for any person to fail or refuse to permit access to or copying of records or to fail to make reports or provide information required under [Section 208 of the CAA, 42 U.S.C. § 7542].”

### **CAA Title II, Part A**

2.4. Part A of Title II of the CAA, 42 U.S.C. §§ 7521–7554, and the regulations promulgated thereunder were enacted to reduce air pollution from mobile sources, including particulate matter (“PM”), non-methane hydrocarbons (“NMHC”), oxides of nitrogen (“NO<sub>x</sub>”), 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.” Section 101(a)(2) of the CAA, 42 U.S.C. § 7401(a)(2).

2.5. Complainant’s allegations here 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* Sections 202(a)(1) and (3)(B) of the CAA, 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.” Section 202(a)(3)(A)(i) of the CAA, 42 U.S.C. § 7521(a)(3)(A)(i).

2.6. Section 216(2) of the CAA, 42 U.S.C. § 7550(2), defines “motor vehicle” as “any self-propelled vehicle designed for transporting persons or property on a street or highway.” *See also* 40 C.F.R. § 85.1703 (further defining “motor vehicle”).

2.7. 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 applicable to motor vehicles and motor vehicle engines, including heavy-diesel duty trucks, based on a vehicle’s or engine’s class and model year. *See generally* 40 C.F.R. Part 86.

*EPA’s Certificate of Conformity Program for New Motor Vehicles and Motor Vehicle Engines*

2.8. Section 203(a)(1) of the CAA, 42 U.S.C. § 7522(a)(1), prohibits a manufacturer of motor vehicles or motor vehicle engines from selling, offering to sell, importing, or introducing or delivering for introduction into commerce any new motor vehicle or motor vehicle engine in the United States unless the motor vehicle or motor vehicle engine is covered by a certificate of conformity. EPA issues certificates of conformity to motor vehicle and motor vehicle engine manufacturers (also known as “original equipment manufacturers” or “OEMs”) under Section 206(a) of the CAA, 42 U.S.C. § 7525(a), to certify that a particular group of motor vehicles or motor vehicle engines conforms to applicable EPA requirements governing motor vehicle emissions.

2.9. To obtain a certificate of conformity for a given motor vehicle or motor vehicle engine family, the original equipment manufacturer must demonstrate that such motor vehicle or motor vehicle engine will not exceed established emission standards for PM, NMHC, NO<sub>x</sub>, CO, and other pollutants. 40 C.F.R. §§ 86.004-21, 86.1844-01. The application for a certificate of

conformity must include, among other things, identification of the covered engine family, a description of the motor vehicle or engine and its emission control systems, all auxiliary emission control devices (“AECDs”) and the engine parameters they monitor, as well as test results from a test vehicle or engine showing that it meets the applicable emission standards. 40 C.F.R. §§ 86.004-21, 86.007-21, 86.094-21, 86.1844-01.

2.10. Once issued by EPA, a certificate of conformity covers only those new motor vehicles or motor vehicle engines that conform in all material respects to the specifications provided to EPA in the certificate of conformity application for such vehicles or engines. 40 C.F.R. § 86.1848-01(c)(6).

#### *Emissions-Related Elements of Design*

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

2.12. An “emission control system” is a “unique group of emission control devices, auxiliary emission control devices, engine modifications and strategies, and other elements of design designated by the Administrator [of EPA] used to control exhaust emission of a vehicle.” 40 C.F.R. § 86.1803-01.

2.13. An AECD is “any element of design which senses temperature, vehicle speed, engine RPM, transmission gear, manifold vacuum, or any other parameter for the purpose of

activating, modulating, delaying, or deactivating the operation of any part of the emission control system.” 40 C.F.R. §§ 86.082-2, 86.1803-01.

2.14. To meet the emission standards in 40 C.F.R. Part 86 and qualify for a certificate of conformity, motor vehicle and motor vehicle engine manufacturers use a variety of hardware and software devices and elements of design. These elements of design, which collectively make up the emission control system, are referred to in this Complaint as “Emissions-Related Elements of Design.”

2.15. Modern motor vehicles are equipped with Electronic Control Units (“ECUs”), which are on-board computer systems that run the software that monitors and controls vehicle operations, including the operations of the Emissions-Related Elements of Design. Emissions-Related Elements of Design generally include both the specific hardware described below, and the ECU or ECUs and software that control operation of that hardware.

2.16. Manufacturers employ certain hardware devices, including Exhaust Gas Recirculation Systems (“EGR Systems”) and aftertreatment systems, 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.

2.17. An EGR system reduces NO<sub>x</sub> emissions by recirculating a portion of engine exhaust back through the engine’s cylinders, thereby lowering the combustion temperature and reducing NO<sub>x</sub> production. The EGR system is an Emissions-Related Element of Design and is a “device or element 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).

2.18. “Aftertreatment” means any “system, component, or technology mounted downstream of the exhaust valve . . . whose design function is to reduce emissions in the engine exhaust before it is exhausted to the environment.” 40 C.F.R. § 1068.30.

2.19. Aftertreatment systems consist of hardware installed in the stock exhaust system, as well as software that runs on one or more ECUs and directs operation of the hardware components. Diesel Particulate Filters (“DPFs”), Diesel Oxidation Catalysts (“DOCs”), Selective Catalytic Reduction (“SCR”) Systems, and NOx Adsorber Catalysts (“NACs”) are Aftertreatment systems that can be used alone, or in combination with each other or with other Emissions-Related Elements of Design, to control the emission of pollutants.

2.20. A DPF is a filter that captures soot from engine exhaust, thereby decreasing PM emissions. By design, soot that collects in the DPF is periodically burned off by elevated exhaust temperatures in a process referred to as active or passive regeneration. The DPF is a “device or element 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), and also an Emissions-Related Element of Design.

2.21. A DOC is a precious-metal coated, flow-through honeycomb structure. As exhaust gas passes through the DOC, the coating of precious metal causes a catalytic reaction that breaks down CO and NMHCs in the exhaust into their less harmful components. The DOC is a “device or element 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), and also an Emissions-Related Element of Design.

2.22. An SCR system (a/k/a “catalytic converter or “catalyst”) reduces NO<sub>x</sub> emissions by chemically converting exhaust gas that contains NO<sub>x</sub> into nitrogen and water through the injection of diesel exhaust fluid, typically composed of urea. The SCR is a “device or element 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), and also an Emissions-Related Element of Design.

2.23. A NAC (a/k/a “NO<sub>x</sub> trap”) reduces NO<sub>x</sub> emissions by chemically adsorbing NO<sub>x</sub> from exhaust gas. The NAC is a “device or element 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), and also an Emissions-Related Element of Design.

2.24. In addition to emission control hardware, various elements of design incorporated into motor vehicles, such as fuel mass, fuel injection pressure, and fuel injection timing, can affect the quantity of regulated pollutants that are created by the diesel engine. As an example, original equipment manufacturers of heavy-duty diesel trucks generally employ retarded fuel injection timing as an emission control method for NO<sub>x</sub>. See 59 Fed. Reg. 23,264 at 23,418 (May 5, 1994) (“[I]njection timing has a very significant impact on NO<sub>x</sub> emission rates, with advanced timing settings being associated with higher NO<sub>x</sub> . . .”).

2.25. Modern vehicles and engines are also equipped with electronic control modules (“ECMs”) and onboard diagnostic systems (“OBDs”). ECMs are devices that receive inputs from various sensors and outputs signals to control engine, vehicle, or equipment functions. ECMs continuously monitor engine and other operating parameters to manage the operation of the



emission control systems and elements of design, such as fuel injection timing. The OBD detects and reports malfunctions of emission-related elements of design through a network of sensors installed throughout a motor vehicle or motor vehicle engine. Section 202(m) of the CAA, 42 U.S.C. § 7521(m); *see* 40 C.F.R. §§ 86.007-17, 86.010-18, 86.1806-05.

2.26. The ECM is a “device or element 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), and also an Emissions-Related Element of Design.

2.27. The OBD is a “device or element 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), and also an Emissions-Related Element of Design.

#### *Certified Stock Calibrations*

2.28. OEMs install a suite of pre-set calibrations for operational parameters (“Certified Stock Calibrations”); these calibrations control all aspects of vehicle and engine operation including combustion, performance, and operation of EGR and Aftertreatment systems. The Certified Stock Calibrations for a particular engine or vehicle operate together to control the formation and emission of pollutants. OEMs program the ECUs with Certified Stock Calibrations and disclose them to EPA on their application for a certificate of conformity for each vehicle model, because the Certified Stock Calibrations are an important part of a motor vehicle’s overall emissions control strategy.

2.29. The types of Certified Stock Calibrations relevant to this Complaint include:

2.29.1. Calibrations that affect the operation of Aftertreatment systems (the DPF, DOC, SCR, or NAC);

2.29.2. Calibrations that affect engine combustion, performance, and operation (e.g., air-fuel ratio, fuel injection timing, fuel quantity, fuel injection pressure, and fuel injection pulse width and temperature (the EGR)), which are critical elements of the OEM's strategy to control the formation of pollutants in the engine; and

2.29.3. Calibrations that affect OBD detection, warning, and recording of malfunctions.

2.30. Each of the above-listed types of Certified Stock Calibration is an "element 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), and also an Emissions-Related Element of Design.

*Aftermarket Products that Bypass, Defeat, or Render Inoperative Emissions-Related Elements of Design*

2.31. Third parties manufacture, sell, and offer for sale products for use with existing motor vehicles that are designed to enhance the vehicle's power, performance, or fuel economy. In some cases, these products achieve their purpose through a design that bypasses, defeats, or renders inoperative OEM-installed Emissions-Related Elements of Design. These products are referred to in this Complaint as "defeat devices." These products fall into two broad categories: hardware and software.

2.32. Some aftermarket products are designed to physically interfere with, or remove, Emissions-Related Elements of Design through the addition of new or replacement hardware to a motor vehicle. The following types of aftermarket hardware products are relevant to this Complaint:

2.32.1. EGR Delete Hardware Products. Some aftermarket hardware products interfere with or remove (“delete”) the EGR System. Examples of such products include “blocker plates,” “EGR valve deletes,” and “EGR cooler deletes.” These products are collectively referred to in this Complaint as “EGR Delete Hardware Products.”

2.32.2. Exhaust Replacement Pipes. Some aftermarket hardware products physically alter or remove some or all of a vehicle’s Aftertreatment systems by changing, removing, or replacing essential physical elements of the DPF, DOC, SCR, or NAC. This often involves removing the vehicle’s entire exhaust system, in which the Aftertreatment systems are installed, and installing a replacement with no Aftertreatment. Examples include “straight pipes” and “race pipes.” These products are collectively referred to in this Complaint as “Exhaust Replacement Pipes.”

2.33. Other aftermarket products consist of software that is uploaded into a motor vehicle’s ECUs and alters or overwrites the vehicle’s Certified Stock Calibrations. An individual piece of such software is commonly referred to as a “Tune,” derived from its intended purpose of “tuning” the vehicle’s performance.

2.34. Tunes can be stored and transmitted in numerous ways, including electronically through email and through electronic storage devices (hereinafter, “Tuners”).

2.35. The following general categories of Tunes modify or replace Certified Stock Calibrations in ways relevant to this Complaint:

2.35.1. Tunes that modify or replace Certified Stock Calibrations relating to Aftertreatment systems: the DPF, DOC, SCR, or NAC, as well as signals or records related to these systems;

2.35.2. Tunes that modify or replace Certified Stock Calibrations related to engine combustion, performance, and operation (e.g., air-fuel ratio, fuel injection timing, fuel quantity, fuel injection pressure, and fuel injection pulse width and temperature); and

2.35.3. Tunes that modify or replace Certified Stock Calibrations related to OBD functions in order to prevent the generation of diagnostic trouble codes, prevent the malfunction indicator light from illuminating, and prevent the OBD from putting the vehicle into “limp-home mode.”

2.36. A single Tune can change or overwrite multiple types of Certified Stock Calibrations. For example, a Tune that deletes EGR System functions will also typically modify OBD functions so that the EGR System deletion will not be detected.

2.37. Multiple Tunes are often bundled together and sold as a single product.

2.38. Products that include Tunes that bypass, defeat, or render inoperative Emissions-Related Elements of Design are collectively referred to in this Complaint as “Defeat Tune Products.”

2.39. Section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B), makes the following act or the causing thereof unlawful: “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 [Title II of the CAA], 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.” It is also a violation for any person to cause any of the acts listed above.

### **Penalties for Violations of the CAA**

2.40. Any person who violates Section 203(a)(2) of the CAA, 42 U.S.C. § 7522(a)(2), is subject to a civil penalty of up to \$51,796 for each day of violation. Section 205(a) of the CAA, 42 U.S.C. § 7524(a); 40 C.F.R. § 19.4, Table 1.

2.41. Any person who violates Section 203(a)(3) of CAA, 42 U.S.C. § 7522(a)(3), is subject to injunctive relief under Section 204 of CAA, 42 U.S.C. § 7523, and a civil penalty of up to \$5,179 for each violation. Section 205(a) of the CAA, 42 U.S.C. § 7524(a); 40 C.F.R. § 19.4, Table 1.

### **III. GENERAL ALLEGATIONS**

#### **Greasy Greg’s, LLC**

3.1. Respondent Greasy Greg’s, LLC is a limited liability company organized under the laws of the State of Idaho.

3.2. Greasy Greg’s, LLC is a person as that term is defined by Section 302(e) of the CAA, 42 U.S.C. § 7602(e), and, therefore, subject to the requirements and prohibitions of Title II of the CAA.

3.3. Greasy Greg's, LLC was formed as a limited liability company on January 20, 2021.

3.4. Greg S. Posey is the sole organizer, member, manager, and registered agent of Greasy Greg's, LLC.

### **Posey's Mech-Elec Repair LLC**

3.5. Respondent Posey's Mech-Elec Repair LLC was a limited liability company organized under the laws of the State of Idaho.

3.6. Posey's Mech-Elec Repair LLC was a person as that term is defined by Section 302(e) of the CAA, 42 U.S.C. § 7602(e), and, therefore, subject to the requirements and prohibitions of Title II of the CAA.

3.7. Posey's Mech-Elec Repair LLC was formed as a limited liability company on March 26, 2009.

3.8. Greg S. Posey was the sole organizer, manager, member, and registered agent of Posey's Mech-Elec Repair LLC.

3.9. Posey's Mech-Elec Repair LLC was dissolved on December 21, 2020.

3.10. At no time relevant to this Complaint did Posey's Mech-Elec Repair LLC in a record notify EPA of its dissolution in accordance with the requirements of Idaho Statutes 30-25-704.

3.11. At no time relevant to this Complaint did Posey's Mech-Elec Repair LLC publish notice of its dissolution or request persons having claims against the company to present them in accordance with such notice, in accordance with the requirements of Idaho Statutes 30-25-705.

## **Greg S. Posey**

3.12. Respondent Greg S. Posey is an individual and a person as that term is defined by Section 302(e) of the CAA, 42 U.S.C. § 7602(e), and, therefore, subject to the requirements and prohibitions of Title II of the CAA.

3.13. At all times relevant to this Complaint, Greg S. Posey had ultimate decision-making authority and was directly involved in the operations of Greasy Greg's, LLC.

3.14. At all times relevant to this Complaint, Greg S. Posey had ultimate decision-making authority and was directly involved in the operations of Posey's Mech-Elec Repair LLC.

3.15. At all times relevant to this Complaint, Greasy Greg's, LLC, Posey's Mech-Elec Repair LLC, and Greg S. Posey have shared the same physical address and the same mailing address.

### **EPA's Requests for Information Pursuant to Section 208(a) of the CAA**

3.16. On September 15, 2020, EPA issued Posey's Mech-Elec Repair LLC an information request under the authority of Section 208(a) of the CAA, 42 U.S.C. § 7542(a) ("Information Request #1").

3.17. Information Request #1 required Posey's Mech-Elec Repair LLC to provide the specified information and documents within 45 days of receipt of the request.

3.18. Information Request #1 stated in part:

3.18.1. "Please contact EPA within 15 days of your receipt of this request if you need additional time to respond."

3.18.2. “Failure to timely respond fully and truthfully to this Information Request may subject you to a civil action pursuant to Section 205(b) of the CAA, 42 U.S.C. § 7524(b), as well as additional inquires. Pursuant to Sections 208 and 307 of the CAA, 42 U.S.C. §§ 7542, 7607, EPA may request additional information, inspections or depositions. In addition, providing false, fictitious, fraudulent statements or representations may subject you to criminal penalties under 18 U.S.C. § 1001. Your response to this Information Request may be used by EPA in administrative, civil or criminal proceedings.”

3.19. Information Request #1 was delivered to Posey’s Mech-Elec Repair LLC via United States Postal Service (“USPS”) certified mail on September 18, 2020.

3.20. Neither Posey’s Mech-Elec Repair LLC nor Mr. Posey contacted EPA within 15 days of receiving Information Request #1.

3.21. On November 8, 2020, EPA case officer Charlotte Papp held a telephone conversation with Mr. Posey.

3.22. During the November 8, 2020, telephone conversation Mr. Posey agreed to provide the information requested in Information Request #1 by January 1, 2021.

3.23. On January 28, 2021, EPA sent a letter to Mr. Posey and Posey’s Mech-Elec Repair LLC via USPS certified mail (“January 28 Letter”). The January 28 Letter stated in part:

3.23.1. “By this letter, I am extending the response deadline for EPA’s information request to provide you with additional time to provide a response. Your response is, accordingly, due by no later than 14 days from the date of this letter.”

3.23.2. “Failure to respond to an information request duly issued pursuant to Section 208(a) of the CAA is a continuing violation of Section 203(a)(2)(A) of the CAA,



42 U.S.C. 7522(a)(2)(A) and may result in an assessment of a civil penalty pursuant to CAA § 205(a), 42 U.S.C. § 7524(a).”

3.24. The January 28 Letter was returned to EPA.

3.25. On March 8, 2021, EPA mailed the January 28 Letter via USPS certified mail to Mr. Posey and Posey’s Mech-Elec Repair LLC (“March 8 Mailing”).

3.26. Greg S. Posey refused delivery of the March 8 Mailing.

3.27. On March 11, 2021, the USPS attempted to deliver the March 8 Mailing to Mr. Posey and Posey’s Mech-Elec Repair LLC (“March 11 Delivery Attempt”).

3.28. Greg S. Posey refused delivery of the March 11 Delivery Attempt.

3.29. On August 17, 2021, EPA issued Greasy Greg’s, LLC; Posey’s Mech-Elec Repair LLC; and Greg S. Posey an information request under the authority of Section 208(a) of the CAA, 42 U.S.C. § 7542(a) (“Information Request #2”).

3.30. Information Request #2 required Greasy Greg’s, LLC; Posey’s Mech-Elec Repair LLC; and Greg S. Posey to provide the specified information and documents as soon as possible, but no later than 14 days from the date of Information Request #2.

3.31. On September 6, 2021, Mr. Posey was personally served Information Request #2.

**Respondents’ Failure to Respond to EPA’s Requests for Information Pursuant to Section 208(a) of the CAA**

3.32. At no time relevant to this Complaint has Posey’s Mech-Elec Repair LLC responded to Information Request #1.

3.33. At no time relevant to this Complaint has Posey’s Mech-Elec Repair LLC responded to Information Request #2.

3.34. At no time relevant to this Complaint has Greasy Greg's, LLC responded to Information Request #2.

3.35. At no time relevant to the Complaint has Respondent Greg S. Posey responded to Information Request #2.

3.36. As the sole manager of, and individual with ultimate decision-making authority over, Posey's Mech-Elec Repair LLC, Greg S. Posey caused Posey's Mech-Elec Repair LLC to not respond to Information Request #1 and Information Request #2.

3.37. As the sole manager of, and individual with ultimate decision-making authority over, Greasy Greg's, LLC, Greg S. Posey caused Greasy Greg's, LLC to not respond to Information Request #2.

### **Defendants' Acquisition of Defeat Devices**

3.38. Between at least January 23, 2013, and August 26, 2020, inclusive, Posey's Mech-Elec Repair LLC acquired at least 51 products consisting of EGR Delete Hardware Products, Exhaust Replacement Pipes, and Defeat Tune Products.

3.39. Between at least January 23, 2013, and August 26, 2020, inclusive, Greg S. Posey acquired at least 100 products consisting of EGR Delete Hardware Products, Exhaust Replacement Pipes, and Defeat Tune Products.

3.40. The 151 EGR Delete Hardware Products, Exhaust Replacement Pipes, and Defeat Tune Products acquired by Posey's Mech-Elec Repair LLC and Greg S. Posey as alleged in Paragraphs 3.38 and 3.39, above, are collectively referred to herein as the Products.

3.41. At all times relevant to this Complaint, the Products were a part or component intended for use with, or as part of, any motor vehicle or motor vehicle engine.

3.42. At all times relevant to this Complaint, the principal effect of the Products was 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 CAA.

3.43. At all times relevant to this Complaint, Posey's Mech-Elec Repair LLC and Greg S. Posey knew or should have known that the principal effect of the Products was 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 CAA.

#### **IV. VIOLATIONS**

4.1. The allegations in Paragraphs 3.1 through 3.43 are incorporated by reference and realleged herein.

#### **Count 1: Failure to provide information required under Section 208(a) of the CAA, 42 U.S.C. § 7542(a)**

4.2. Pursuant to Section 203(a)(2)(A) of the CAA, 42 U.S.C. § 7522(a)(2)(A), Respondents were prohibited from the following acts and the causing thereof: failing or refusing to permit access to or copying of records or failing to make reports or provide information required under Section 208 of the CAA, 42 U.S.C. § 7542.

4.3. On September 15, 2020, EPA issued Posey's Mech-Elec Repair LLC Information Request #1.

4.4. Greg S. Posey and Posey's Mech-Elec Repair LLC received Information Request #1.

4.5. Pursuant to Section 208(a) of the CAA, 42 U.S.C. § 7542(a), Posey's Mech-Elec Repair LLC was required to provide EPA the information requested by Information Request #1.

4.6. At no time relevant to this Complaint has Posey's Mech-Elec Repair LLC provided EPA the information requested by Information Request #1.

4.7. As the sole manager of, and individual with ultimate decision-making authority over, Posey's Mech-Elec Repair LLC, Greg S. Posey caused Posey's Mech-Elec Repair LLC to not provide EPA the information requested by Information Request #1.

4.8. On August 17, 2021, EPA issued Greasy Greg's, LLC; Posey's Mech-Elec Repair LLC; and Greg S. Posey Information Request #2.

4.9. Respondents received Information Request #2.

4.10. Pursuant to Section 208(a) of the CAA, 42 U.S.C. § 7542(a), Greasy Greg's, LLC; Posey's Mech-Elec Repair LLC; and Greg S. Posey were required to provide EPA the information requested by Information Request #2.

4.11. At no time relevant to this Complaint have either Greasy Greg's, LLC; Posey's Mech-Elec Repair LLC; or Greg S. Posey provided EPA with the information requested by Information Request #2.

4.12. As the sole manager of, and individual with ultimate decision-making authority over, Greasy Greg's, LLC and Posey's Mech-Elec Repair LLC, Greg S. Posey caused Greasy Greg's, LLC and Posey's Mech-Elec Repair LLC to not provide EPA the information requested by Information Request #2.

4.13. Therefore, between at least February 11, 2021, and the present, Respondents have failed to provide information required under Section 208(a) of the CAA, 42 U.S.C. § 7542(a), in violation of Section 203(a)(2)(A) of the CAA, 42 U.S.C. § 7522(a)(2)(A).

**Count 2: Selling or Offering to Sell Motor Vehicle Defeat Device**

4.14. Pursuant to Section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B), Respondents were prohibited from the following acts and the causing thereof: selling, offering to sell, or installing any part or component intended for use with, or as part of, any motor vehicle or motor vehicle engine, and the principal effect of the part or component was 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 CAA, and where Respondents know or should know that such part or component is being offered for sale or installed for such use or put to such use.

4.15. Between at least January 23, 2013, and the present, Posey's Mech-Elec Repair LLC sold or offered to sell one or more of the Products.

4.16. Between at least January 23, 2013, and the present, Greg S. Posey sold or offered to sell one or more of the Products.

4.17. As the sole manager of, and individual with ultimate decision-making authority over, Posey's Mech-Elec Repair LLC, Greg S. Posey caused Posey's Mech-Elec Repair LLC to sell or offer to sell one or more of the Products.

4.18. The Products were intended for use with, or as part of, any motor vehicle or motor vehicle engine.

4.19. The principal effect of the Products was 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 CAA.

4.20. Posey's Mech-Elec Repair LLC and Greg S. Posey knew or should have known that the principal effect of the Products was 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 CAA.

4.21. Therefore, between January 23, 2013 and the present, Respondents Posey's Mech-Elec Repair LLC and Greg S. Posey violated Section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B), by selling or offering to sell one or more parts or components intended for use with, or as part of, any motor vehicle or motor vehicle engine, and the principal effect of the part or component was 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 CAA, and Respondents Posey's Mech-Elec Repair LLC and Greg S. Posey knew or should have known that such parts or components were offered for sale for such use or put to such use.

## V. PROPOSED PENALTY

5.1. Sections 205(a) and (c) of the CAA, 42 U.S.C. § 7524(a) and (c), authorize the Administrator of EPA to assess a civil administrative penalty of not more than \$25,000 per day of violation for violations of Section 203(a)(2) of the CAA, 42 U.S.C. § 7522(a)(2). Pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. 101-410, as amended, and

its implementing regulation, the Civil Monetary Penalty Inflation Adjustment Rule, codified at 40 C.F.R. Part 19, the statutory maximum civil penalty has subsequently been raised to \$51,796 per day of violation. Section 205 of the CAA; 40 C.F.R. § 19.4, Table 1.

5.2. Sections 205(a) and (c) of the CAA, 42 U.S.C. § 7524(a) and (c), authorize the Administrator of EPA to assess a civil administrative penalty of not more than \$2,500 for violations of Section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B). Pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. 101-410, as amended, and its implementing regulation, the Civil Monetary Penalty Inflation Adjustment Rule, codified at 40 C.F.R. Part 19, the statutory maximum civil penalty has subsequently been raised to \$5,179 for each violation. Section 205 of the CAA; 40 C.F.R. § 19.4, Table 1.

5.3. Complainant requests that a civil penalty up to the maximum amount permitted by law as described in Paragraphs 5.1 and 5.2, above, be assessed for each day of violation alleged in Count 1 and the violation alleged in Count 2 in Section IV of this Complaint.

5.4. Pursuant to 40 C.F.R. § 22.14(a)(4)(ii), Complainant is not proposing a specific penalty at this time, but will do so at a later date after an exchange of information has occurred. *See* 40 C.F.R. § 22.19(a)(4).

5.5. Section 205(c)(2) of the CAA, 40 U.S.C. § 7524(c)(2), states: “In determining the amount of any civil penalty assessed under this subsection, the Administrator shall take into account the gravity of the violation, the economic benefit or savings (if any) resulting from the violation, the size of the violator’s business, the violator’s history of compliance with [Title II of the CAA], action taken to remedy the violation, the effect of the penalty on the violator’s ability to continue in business, and such other matters as justice may require.”

5.6. To develop a proposed penalty for the violations alleged in this Complaint, EPA will take into account the particular facts and circumstances of this case with specific reference to the *January 2021 Clean Air Act Title II Vehicle & Engine Civil Penalty Policy* (“Penalty Policy”).

5.7. Pursuant to 40 C.F.R. § 22.14(a)(4)(ii), an explanation of the severity of the violations alleged in this Complaint is set forth below.

5.8. The Penalty Policy provides a method for calculating civil administrative penalties to ensure that: (1) penalties are assessed in accordance with the CAA in a fair and consistent manner, (2) penalties are appropriate for the gravity of the violation, (3) penalties are sufficient to deter both individual violators and the regulated community as a whole from committing violations, (4) economic incentives for noncompliance are eliminated, and (5) compliance is expeditiously achieved and maintained.

5.9. In accordance with the Penalty Policy, civil administrative penalties are divided into two fundamental components: the economic benefit penalty component accounts for the economic benefit or savings resulting from the violation and the gravity penalty component accounts for the gravity of the violation, action taken to remedy the violation, the size of the violator’s business, the violator’s history of compliance, and other matters such as the violator’s degree of culpability and cooperation.

5.10. Consistent with Section 205(c)(2) of the CAA, 40 U.S.C. § 7524(c)(2), and the Penalty Policy, the Complainant’s proposed penalty will take into consideration Respondents’ size of business, history of compliance, culpability, and cooperation. With respect to cooperation, Complainant’s penalty demand will reflect Respondents’ noncooperation. As



alleged in paragraphs 3.16 through 3.37 and 4.2 through 4.13, Respondents have on several occasions evaded Complainant's lawful attempts to acquire information and unlawfully withheld information to which Complainant is entitled.

5.11. *Count 1: Failure to provide information required under Section 208(a) of the CAA, 42 U.S.C. § 7542(a).* This violation is ongoing. Respondents have not realized a significant economic benefit from this violation. With respect to the gravity penalty component, failure to respond to an EPA information request is one of the most egregious violations because it significantly impairs EPA's ability to administer the regulatory program and poses a high risk of excess emissions going undiscovered. Respondents have not responded to EPA's information requests.

5.12. *Count 2: Selling or Offering to Sell Motor Vehicle Defeat Device.* Respondents realized an economic benefit in the form of profits from the illegal sale of one or more defeat devices. With respect to the gravity component, defeat devices create the potential for harm by changing or removing a vehicle or engine's emission-related devices or elements of design so they no longer match the configuration certified by the original manufacturer. These violations undermine the certification program and are likely to result in emission increases. Respondents have not remediated the violation.

## **VI. OPPORTUNITY TO REQUEST A HEARING AND FILE ANSWER**

6.1. Respondents have the right to request a hearing on the issues raised in this Complaint. Any such hearing would be conducted in accordance with 40 C.F.R. Part 22 ("Part 22 rules"). A copy of the Part 22 rules accompanies this Complaint. A request for a hearing must be incorporated in a written answer filed with the Regional Hearing Clerk within 30 days of

service of this Complaint. In its answer, Respondents may contest any material fact contained in the Complaint. Respondents may also contest the appropriateness of the proposed penalty.

6.2. In accordance with 40 C.F.R. § 22.15, the answer shall directly admit, deny, or explain each of the factual allegations contained in the Complaint with regard to which Respondents have any knowledge and shall state: (1) the circumstances or arguments alleged to constitute the grounds of defense, (2) the facts which Respondents dispute, (3) the basis for opposing any proposed relief, and (4) whether a hearing is requested. Where Respondents have no knowledge as to a particular factual allegation and so state, the allegation is deemed denied.

6.3. Any failure of Respondents to admit, deny, or explain any material fact contained in the Complaint will constitute an admission of that allegation.

6.4. An original and one copy of Respondents' Answer, including any request for hearing, must be sent to the Regional Hearing Clerk using one of the following methods:

Electronically:

Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 10  
R10\_RHC@epa.gov

By Mail:

Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 10  
1200 Sixth Avenue, Suite 155  
Mail Stop: 11-C07  
Seattle, Washington 98101  
Tel: 206-553-1632

The attached June 3, 2020 Standing Order from U.S. Environmental Protection Agency, Region 10 authorizes electronic service of certain Part 22 documents, including the Respondents' Answer to this Complaint.

6.5. A copy of Respondents' Answer, including any request for hearing, must also be sent:

Electronically:

Brett Dugan, Assistant Regional Counsel  
U.S. Environmental Protection Agency, Region 10  
Dugan.brett@epa.gov

By mail:

Brett Dugan, Assistant Regional Counsel  
U.S. Environmental Protection Agency, Region 10  
1200 Sixth Avenue, Suite 155  
Mail Stop: 11-C07  
Seattle, Washington 98101  
Tel: 206-553-8562

**VII. FAILURE TO FILE AN ANSWER**

7.1. To avoid a default order being entered pursuant to 40 C.F.R. § 22.17, Respondents must file a written Answer to this Complaint with the Regional Hearing Clerk within thirty (30) days after service of this Complaint.

**VIII. INFORMAL SETTLEMENT CONFERENCE**

8.1 Whether or not Respondents requests a hearing, Respondents may request an informal settlement conference to discuss the facts of this case, the proposed penalty, and the possibility of settling this matter. To request such a settlement conference, Respondents should contact:

Brett Dugan, Assistant Regional Counsel  
U.S. Environmental Protection Agency, Region 10  
206-553-8562  
Dugan.brett@epa.gov

8.2 Note that a request for an informal settlement conference does not extend the 30-day period for filing a written answer to this Complaint, nor does it waive Respondents' right to request a hearing.

8.3 Respondents are advised that pursuant to 40 C.F.R. § 22.8, after the Complaint is issued, the Consolidated Rules of Practice prohibit any *ex parte* (unilateral) discussion of the merits of these or any other factually related proceedings with the Administrator, the Environmental Appeals Board or its members, the Regional Judicial Officer, the Presiding Officer, or any other person who is likely to advise these officials in the decision on this case.

FOR COMPLAINANT, U.S. ENVIRONMENTAL PROTECTION AGENCY:

\_\_\_\_\_  
EDWARD J. KOWALSKI, Director  
Enforcement and Compliance Assurance Division  
EPA Region 10

Dated: \_\_\_\_\_

PARTY DESIGNATED TO RECEIVE SERVICE ON BEHALF OF THE COMPLAINANT:

Brett S. Dugan, Assistant Regional Counsel  
U.S. Environmental Protection Agency  
Region 10, MS 11-C07  
1200 Sixth Avenue, Suite 155  
Seattle, WA 98101  
Tel: 206-553-8562  
Email: Dugan.brett@epa.gov