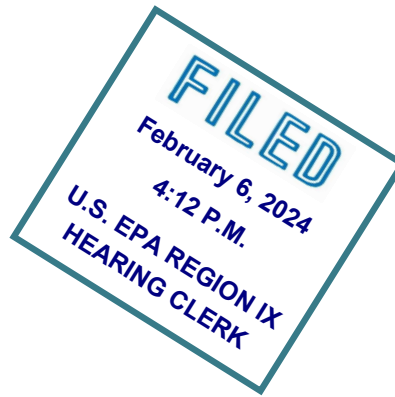


NATHANIEL N. MOORE  
Assistant Regional Counsel  
U.S. Environmental Protection Agency, Region IX  
75 Hawthorne Street  
San Francisco, California 94105  
(415) 972-3899  
Moore.Nathaniel@epa.gov



SYLVIA QUAST  
Regional Counsel  
U.S. Environmental Protection Agency, Region IX

Attorneys for Complainant

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

**In the Matter of:**

**Performance Part**

**El Monte, California**

**Respondent.**

**Docket No. CAA-09-2024-0028**

**CONSENT AGREEMENT AND FINAL ORDER  
PURSUANT TO 40 C.F.R. §§ 22.13 AND 22.18**

**CONSENT AGREEMENT**

**A. Preliminary Statement**

1. This civil administrative penalty assessment proceeding was commenced pursuant to section 205(c)(1) of the Clean Air Act (“CAA”), 42 U.S.C. § 7524(c)(1), and sections 22.13 and 22.18 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (“Consolidated Rules”), as

codified at 40 C.F.R. Part 22. In accordance with 40 C.F.R. §§ 22.13 and 22.18, entry of this Consent Agreement and Final Order (“CAFO”) simultaneously commences and concludes this matter.

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

3. Respondent is Performance Part (“Respondent”), a California corporation that sells and distributes motor vehicle parts throughout the United States. Respondent is headquartered at 4183 Temple City Blvd #A, El Monte, California.

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

### **B. Governing Law**

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

6. The EPA’s allegations in this CAFO concern parts or components for motor vehicles and

engines subject to emission standards. The CAA requires the 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).

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

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

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

10. Vehicle manufacturers employ certain hardware devices as emission control systems to manage and treat exhaust to reduce levels of regulated pollutants from being created or emitted into the ambient air.

11. Exhaust Gas Recirculation (“EGR”) is an emission control technology used as an element of design in motor vehicles to reduce NO<sub>x</sub> emissions, which are formed at high temperatures

caused during fuel combustion. By recirculating exhaust gas through the engine, EGR technology reduces combustion temperatures and NOx emissions.

12. Pursuant to section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B),

The following acts and the causing thereof are prohibited—for any person to manufacture or sell, or offer to sell, or install, any part or component intended for use with, or as part of, any motor vehicle or motor vehicle engine, where a principal effect of the part or component is to bypass, defeat, or render inoperative any device or element of design installed on or in a motor vehicle or motor vehicle engine in compliance with regulations under this subchapter, and where the person knows or should know that such part or component is being offered for sale or installed for such use or put to such use[.]

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

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

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

16. Any person who violates section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B), is subject to a civil penalty of up to \$5,580 for each violation. Section 205(a) of the CAA, 42 U.S.C. § 7524(a), 40 C.F.R. § 19.4, Table 1.

### **C. Allegations**

17. Complainant re-alleges and incorporates by reference herein Paragraphs 1 through 16 of this CAFO.
18. At all times relevant to this CAFO, Respondent was a “person” as defined by section 302(e) of the CAA, 42 U.S.C. § 7602(e).
19. Respondent sells and distributes motor vehicle parts to various individual customers located throughout the United States.
20. On September 10, 2021, pursuant to section 208 of the CAA, 42 U.S.C. § 7542(a), the EPA sent an Information Request to Respondent requesting, among other things, the number of parts and components that Respondent offered for sale or sold since January 1, 2019, through September 10, 2021.
21. As part of the investigation, the EPA also reviewed sales through business-to-consumer e-commerce websites.
22. Based on Respondent’s responses and the information gathered from business-to-consumer e-commerce websites, Respondent sold the parts or components identified in the Appendix to this CAFO (“Subject Parts,” each of which is a “Subject Part”).
23. The Subject Parts were EGR delete kits.
24. Each Subject Part, at all relevant times herein, was intended for use with certified motor vehicles and motor vehicle engines including those manufactured by General Motors Company, Ford Motor Company, and Fiat Chrysler Automobiles U.S. LLC (“Motor Vehicles”).
25. The purpose of these EGR delete kits were to block the EGR port to prevent recirculation

of the exhaust gases.

26. Hardware devices and emission control systems such as EGRs are “device[s] or element[s] of design installed on or in a motor vehicle or motor vehicle engine in compliance with [CAA] regulations” within the meaning of section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B).

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

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

29. On October 5, 2022, the EPA issued a Notice of Violation to Respondent alleging 1,055 potential violations of section 203(a)(3)(B) of the CAA, from January 1, 2019, through September 10, 2021.

30. Respondent’s sale of the Subject Parts constituted 1,055 separate violations of section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B), which prohibits any person from manufacturing, selling, offering to sell, or installing parts or components where a principal effect is to bypass, defeat, or render inoperative a motor vehicle emission control device or element of design, where the person knows or should know that the part is being offered for sale or installed for such use.

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

31. In accordance with 40 C.F.R. § 22.18(b)(2) and for the purpose of this proceeding,

Respondent:

- a. admits the jurisdictional allegations alleged in this CAFO;
- b. neither admits nor denies the specific factual allegations contained within this Consent Agreement;
- c. consents to the assessment of the stated civil penalty below;
- d. consents to the conditions specified in this Consent Agreement; and
- e. waives any right to contest the allegations and its right to appeal the proposed Final Order accompanying this Consent Agreement.

Civil Penalty

32. Respondent claimed it was unable to pay the full penalty as originally proposed and submitted financial information to the EPA to support its claim. Based on those findings, the parties agree to the assessment of a civil penalty in the amount of **four thousand five hundred eighty-eight dollars (\$4,588)** (“Assessed Penalty”) as final settlement of the civil claims against Respondent arising under the CAA as alleged above.

33. Respondent agrees to the following:

- a. Pay the Assessed Penalty within thirty (30) days of the Effective Date of this CAFO.
- b. Pay the Assessed Penalty using any method, or combination of methods, provided on the website <https://www.epa.gov/financial/makepayment>, and identifying the payment with “Docket No. CAA-09-2024-0028.” Within 24 hours of payment of the Assessed Penalty, Respondent agrees to send proof of payment to Yvezee Lapada at [Lapada.Yvezeenikita@epa.gov](mailto:Lapada.Yvezeenikita@epa.gov) and the EPA Region IX Regional Hearing Clerk at [R9HearingClerk@epa.gov](mailto:R9HearingClerk@epa.gov). “Proof of payment” means a copy of the check, confirmation

of credit card or debit card payment, confirmation of wire or automated clearinghouse transfer, or any other information required to demonstrate the payment of the Assessed Payment has been made in accordance with this Consent Agreement. The proof of payment shall be identified with "Docket No. CAA-09-2024-0028."

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

35. If Respondent does not pay the Assessed Penalty within 30 days of the effective date of this CAFO, then Respondent shall pay to the EPA a stipulated penalty in the amount of five hundred dollars (\$500) for each day the default continues plus the remaining balance of the Assessed Penalty upon written demand by the EPA.

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

- a. request the Attorney General to bring a civil action in an appropriate district court to recover: the amount assessed (plus interest at rates established pursuant to 26 U.S.C. § 6621(a)(2)); the United States' enforcement expenses; and a 10 percent quarterly nonpayment penalty, 42 U.S.C. § 7524(c)(6);
- b. refer the debt to a collection agency, credit reporting agency, or the Department of Justice, 42 U.S.C. § 7524(c)(6), 40 C.F.R. §§ 13.13, 13.14, and 13.33;
- c. collect the debt by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the



Internal Revenue Service for offset against income tax refunds, 40 C.F.R. Part 13, Subparts C and H; and

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

Respondent's Certification of Compliance

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

38. Respondent has represented to the EPA that it is no longer manufacturing, selling, or offering for sale the 29 parts listed as Defeat Devices in the Appendix to this Consent Agreement and Final Order.

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

40. The provisions of this CAFO shall apply to and be binding upon Respondent and its officers, directors, employees, agents, trustees, servants, authorized representatives, successors, and assigns. Prior to payment of the Assessed Penalty and providing payment notification in accordance with this CAFO, Respondent must give written notice and a copy of this CAFO to any successors in interest prior to any transfer of ownership or control of any portion of or interest in Respondent. Simultaneously with such notice, Respondent shall

provide written notice of such transfer, assignment, or delegation to the EPA. In the event of any such transfer, assignment, or delegation, Respondent shall not be released from the obligations or liabilities of this CAFO unless the EPA has provided written approval of the release of said obligations or liabilities.

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

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

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

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

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

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

alleged in this Consent Agreement.

46. The civil penalty paid pursuant to this Consent Agreement is not deductible for federal tax purposes.

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

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

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

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

The foregoing Consent Agreement, In the Matter of: Performance Part, EPA Docket No. CAA-09-2024-0028, is hereby stipulated, agreed, and approved for entry:

FOR RESPONDENT:

12/19/23  
Date

  
\_\_\_\_\_  
Van The Tran  
CEO  
Performance Part

The foregoing Consent Agreement, In the Matter of: Performance Part, EPA Docket No. CAA-09-2024-0028, is hereby stipulated, agreed, and approved for entry:

FOR COMPLAINANT:

\_\_\_\_\_  
Date

**KAORU**  
**MORIMOTO**



Digitally signed by KAORU  
MORIMOTO  
Date: 2024.01.29 07:46:52 -08'00'

\_\_\_\_\_  
Kaoru Morimoto  
Assistant Director  
Air, Waste, and Chemicals Branch  
Enforcement and Compliance Assurance Division  
U.S. Environmental Protection Agency, Region IX

**FINAL ORDER**

Complainant and Respondent, having entered into the foregoing Consent Agreement,

IT IS HEREBY ORDERED that this Consent Agreement and Final Order (EPA Docket No. CAA-09-2024-0028) be entered, and that Respondent shall pay a civil penalty in the amount of **FOUR THOUSAND FIVE HUNDRED EIGHTY-EIGHT DOLLARS (\$4,588)** in accordance with the terms of this Consent Agreement and Final Order.

This Consent Agreement and Final Order shall become effective upon filing.

\_\_\_\_\_  
DATE

\_\_\_\_\_  
Beatrice Wong  
Regional Judicial Officer  
U.S. Environmental Protection Agency, Region IX

**APPENDIX**

**Performance Part's violations of CAA § 203 for the period January 1, 2019,  
through September 10, 2021, for the sale of 1,055 EGR Delete Kits**

	<b><u>Part Number</u></b>	<b><u>Description Provided by Performance Part</u></b>	<b><u>Vehicle Group</u></b>	<b><u>Quantity</u></b>
1	PP-9145233775	EGR Delete Kit for 03-10 Ford F-250 F-350 F-450 F-550 6.0L V8 Diesel Turbo	2003-2007 Ford F250/350 - Powerstroke 6.0 L	14
2	PP-9145233812	Ford 6.0 EGR Delete Kit Fuel Pressure Regulator Blue Spring Upgrade	2003-2007 Ford F250/350 - Powerstroke 6.0 L	15
3	PP-9145233874	EGR Delete Kit Engine Oil Cooler w/ Gaskets Kit for Ford 6.0L V8 Diesel Turbo	2003-2007 Ford F250/350 - Powerstroke 6.0 L	45
4	PP-9145233898	Ford 6.0 EGR Delete Kit w/ Gaskets Upgraded High Flow Oil Cooler Kit	2003-2007 Ford F250/350 - Powerstroke 6.0 L	104
5	PP-9145234185	Dodge 6.7 EGR Delete Kit 10-12 Dodge Ram 6.7L 408ci Cummins Diesel Turbo	2007-2012 Dodge Ram - Cummins 6.7 L	157
6	PP-9145234116	6.6 Duramax LMM EGR Delete Kit High Flow Intake Elbow for 07-10 Chevrolet Diesel	2008-2010 Chevy/GMC - LMM Duramax 6.6 L	152
7	PP-9145234178	EGR Delete Kit Throttle Valve Fit 07- 09 Dodge Ram 2500 3500 6.7 Cummins Diesel	2007-2012 Dodge Ram - Cummins 6.7 L	152
8	PP-9145234192	EGR Delete Kit Throttle Valve Delete Fit 10-12 Dodge Ram 2500 3500 6.7 Cummins	2007-2012 Dodge Ram - Cummins 6.7 L	13
9	PP-9145234109	6.6 Duramax LML EGR Delete Kit for 11-15 Chevrolet GMC 6.6 Diesel	2011+ Chevy/GMC - LML Duramax 6.6 L	15
10	PP-9145234093	6.6 Chevy EGR Delete Kit Intake Elbow 2006-04/2007 Chevrolet Silverado 2500 LBZ	2004-2007 Chevy/GMC - LLY/LBZ Duramax 6.6 L	38
11	PP-9145234291	Ford 6.0 EGR Delete Kit Intake Oil Cooler Cylinder Head Gasket 18mm Dowel	2003-2007 Ford F250/350 - Powerstroke 6.0 L	4

	<b><u>Part Number</u></b>	<b><u>Description Provided by Performance Part</u></b>	<b><u>Vehicle Group</u></b>	<b><u>Quantity</u></b>
12	PP-9145234055	6.6 Chevy EGR Delete Kit 2004-2005 Chevrolet Silverado Express 2500 3500 Duramax	2004-2007 Chevy/GMC - LLY/LBZ Duramax 6.6 L	42
13	PP-9145234062	6.6 Chevy EGR Delete Kit 2006-04/2007 Chevrolet Silverado 2500 3500 Duramax LBZ	2004-2007 Chevy/GMC - LLY/LBZ Duramax 6.6 L	1
14	PP-9145234031	Ford 6.4 EGR Delete Kit w/ Intake Elbow 08-10 Ford F-250 F-350 Diesel Turbo	2008-2010 Ford F250/350 - Powerstroke 6.4 L	88
15	PP-9145233850	Ford 6.0 EGR Delete Kit Oil Cooler Blue Spring Upgrade Coolant Filtration System	2003-2007 Ford F250/350 - Powerstroke 6.0 L	35
16	PP-9145234161	Dodge 6.7 EGR Delete Kit 07-09 Dodge Ram 408ci Cummins Diesel Turbo	2007-2012 Dodge Ram - Cummins 6.7 L	6
17	PP-9145234079	6.6 Chevy EGR Delete Kit 05/2007-2010 Chevrolet Silverado 2500 3500 Duramax LMM	2008-2010 Chevy/GMC - LMM Duramax 6.6 L	6
18	PP-9145234208	Ford 6.7 EGR Delete Kit for 11-14 Ford F250 F350 F450 Powerstroke Diesel	2011+ Ford F250/350 - Powerstroke 6.7 L	65
19	PP-9145234123	07-09 Dodge Ram 6.7L 408ci Cummins Diesel Turbo EGR Valve Cooler Delete Kit	2007-2012 Dodge Ram - Cummins 6.7 L	2
20	PP-9145233836	Ford 6.0 EGR Delete Kit Oil Cooler Kit Fuel Pressure Regulated Blue Spring Kit	2003-2007 Ford F250/350 - Powerstroke 6.0 L	37
21	PP-9145234130	EGR Delete Kit Throttle Valve Delete for 07-09 Dodge Ram 2500 6.7 Cummins	2007-2012 Dodge Ram - Cummins 6.7 L	11
22	PP-9145233782	Ford 6.0 EGR Delete Kit Upgraded Oil Cooler Head Gaskets 18mm Dowel Pin	2003-2007 Ford F250/350 - Powerstroke 6.0 L	3
23	PP-9145234154	EGR Delete Kit Throttle Valve Delete for 10-12 Dodge Ram 6.7L Cummins Diesel	2007-2012 Dodge Ram - Cummins 6.7 L	2
24	PP-9145234147	10-12 Dodge Ram 6.7L 408ci Cummins Diesel Turbo EGR Valve Cooler Delete Kit	2007-2012 Dodge Ram - Cummins 6.7 L	8



	<u>Part Number</u>	<u>Description Provided by Performance Part</u>	<u>Vehicle Group</u>	<u>Quantity</u>
25	PP-9145233805	Ford 6.0 EGR Delete Kit Oil Cooler Intake Gasket Cylinder Head Gasket 20mm	2003-2007 Ford F250/350 - Powerstroke 6.0 L	1
26	PP-5393794780	EGR Valve Cooler Delete Kit High Flow Intake Elbow Fit 08-10 Ford 6.4L	2008-2010 Ford F250/350 - Powerstroke 6.4 L	29
27	PP-9145234048	08-10 Ford F-250 F-350 6.4L Powerstroke Diesel Turbo EGR Valve Cooler Delete Kit	2008-2010 Ford F250/350 - Powerstroke 6.4 L	4
28	PP-9145233843	Ford 6.0 EGR Delete Kit Upgraded Oil Cooler Kit Coolant Filtration System	2003-2007 Ford F250/350 - Powerstroke 6.0 L	5
29	PP-9145233881	Ford 6.0 EGR Delete kit Oil Cooler for 03 - 10 FORD E-Series F-Series Diesel	2003-2007 Ford F250/350 - Powerstroke 6.0 L	1
			<b>SUM</b>	1,055

