

DAVID H. KIM
Assistant Regional Counsel
United States Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, California 94105
(415) 972-3882

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SYLVIA QUAST
Regional Counsel
United States Environmental Protection Agency, Region IX

Attorneys for Complainant

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

_____)	Docket No. CAA-09-2019- <u>0047</u>
In the Matter of:)	
JAMO Performance Exhaust, LLC)	CONSENT AGREEMENT AND
Respondent)	FINAL ORDER PURSUANT TO
_____)	40 C.F.R. §§ 22.13 and 22.18

I. CONSENT AGREEMENT

A. PRELIMINARY STATEMENT

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

accordance with 40 C.F.R. §§ 22.13 and 22.18, entry of this Consent Agreement and Final Order (“CAFO”) simultaneously initiates and concludes this matter.

2. Complainant is the Assistant Director of the Air, Waste & Analysis Branch of the Enforcement and Compliance Assurance Division, United States Environmental Protection Agency, Region IX (the “EPA”), who has been duly delegated the authority to initiate and settle civil administrative penalty proceedings under section 205(c)(1) of the Act, 42 U.S.C. § 7524(c)(1). EPA Delegation 7-19 (January 18, 2017); EPA, Region 9 Redefinition R9-7-19 (October 5, 2017); Memorandum from Mike Stoker, Regional Administrator, Region 9, to all Region 9 supervisors and employees re: General Temporary Redefinition of Authority due to Organizational Realignment (May 15, 2019).
3. Respondent is JAMO Performance Exhaust, LLC, a motor vehicle parts manufacturer and distributor based in North Las Vegas, Nevada.
4. Complainant and Respondent, having agreed that settlement of this action is in the public interest, consent to the entry of this CAFO without adjudication of any issues of law or fact herein, and Respondent agrees to comply with the terms of this CAFO.

B. GOVERNING LAW

5. This proceeding arises under Part A of Title II of the CAA, CAA §§ 202-219, 42 U.S.C. §§ 7521-7554, and the regulations promulgated thereunder. These laws aim to reduce emissions from mobile sources of air pollution, including hydrocarbons and oxides of nitrogen (“NO_x”).
6. Section 203(a)(3)(A) of CAA, 42 U.S.C. § 7522(a)(3)(A), prohibits any person from knowingly removing or rendering inoperative any device or element of design installed

on or in a motor vehicle or motor vehicle engine in compliance with the CAA emission requirements after sale and delivery to the ultimate purchaser.

7. Violations of CAA section 203(a)(3)(A) by any person other than a manufacturer or dealer are subject to civil penalties of up to \$4,735 per tampering pursuant to section 205 of the CAA, 42 U.S.C. § 7524 and 40 C.F.R. Part 19.
8. Section 203(a)(3)(B) of CAA, 42 U.S.C. § 7522(a)(3)(B), prohibits any person from manufacturing, selling, offering to sell, or installing parts or components whose 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.
9. Violations of CAA section 203(a)(3)(B) are subject to civil penalties of up to \$4,735 per defeat device pursuant to section 205 of the CAA, 42 U.S.C. § 7524 and 40 C.F.R. Part 19.
10. Section 302(e) of the CAA, 42 U.S.C. § 7602(e), defines “person” as “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.”
11. The CAA requires EPA to prescribe and revise, by regulation, standards applicable to the emission of any air pollutant from new motor vehicles or new motor vehicle engines which cause or contribute to air pollution, which may reasonably be anticipated to endanger public health or welfare. CAA § 202(a)(1) and (3)(B), 42 U.S.C. § 7521(a)(1) and (3)(B).
12. Highway motor vehicles are one category of motor vehicles for which the EPA has promulgated emission standards. See 42 U.S.C. § 7521; see generally 40 C.F.R. Part 86.

13. 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.”
14. As required by the CAA, the highway motor vehicle standards “reflect the greatest degree of emission reduction achievable through the application of [available] technology.”
Section 202(a)(3)(A)(i) of CAA, 42 U.S.C. § 7521(a)(3)(A)(i). Accordingly, EPA has established increasingly stringent highway motor vehicle emission standards at 40 C.F.R. Part 86.
15. Highway motor vehicle manufacturers employ many devices and elements of design to meet these emission standards. Certain hardware devices serve as emission control systems to manage and treat exhaust from highway motor vehicles, in order to reduce levels of regulated pollutants from being created or emitted into the ambient air. Such devices include catalytic converters.

C. ALLEGED VIOLATIONS OF LAW

16. Respondent manufactures and sells aftermarket exhaust parts to various distributors and individual customers located throughout the United States.
17. On May 16, 2017, EPA inspectors inspected Respondent’s facility in North Las Vegas, Nevada.
18. On September 25, 2017, EPA sent an information request pursuant to section 208(a) of the CAA, 42 U.S.C. § 7542(a), to Respondent regarding products Respondent manufactured and sold since January 1, 2014.
19. Based on Respondent’s October 25, 2017 response to EPA’s information request and information gathered during EPA’s inspection of Respondent’s facility on May 16, 2017,

EPA alleges that Respondent manufactured and sold various exhaust systems for highway motor vehicles (the “Devices”) identified in Appendix A of this CAFO.

20. Prior to the installation of the Devices, one or more catalytic converters must be removed from the highway motor vehicles for which they were designed.
21. The Devices were designed and marketed for use on various highway motor vehicles, and intended to bypass, defeat, or render inoperative emission related devices or elements of design that are installed on those motor vehicles to meet the CAA emission standards.
22. Between January 1, 2014 and September 25, 2017, Respondent manufactured and/or sold 4,236 Devices to distributors and individual customers located throughout the United States.
23. The manufacture, sale, offering for sale, or installation of a device that bypasses, defeats, or renders inoperative a vehicle’s emission control systems is prohibited under section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B). EPA alleges that Respondent has committed approximately 4,236 violations of section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B), by selling or offering for sale the Devices.
24. In 2019, Respondent submitted financial information to EPA which supports Respondent’s claim that it could not afford to pay a full penalty for the alleged violations.

D. TERMS OF CONSENT AGREEMENT

25. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent:
 - a. admits that EPA has jurisdiction over the subject matter alleged in this CAFO and over Respondent;
 - b. neither admits nor denies the specific factual allegations contained in Section I.C of this CAFO;
 - c. consents to the assessment of a civil penalty under this Section, as stated below;

- d. consents to the conditions specified in this CAFO;
- e. waives any right to contest the allegations set forth in Section I.C of this CAFO;
and
- f. waives its rights to appeal the proposed Order contained in this CAFO.

Civil Penalty

26. In exchange for a release of liability for the civil claims alleged herein, Respondent agrees to:

- a. pay the civil penalty of TEN THOUSAND DOLLARS (\$10,000) (“EPA Penalty”) according to the terms of this CAFO; and
- b. pay the EPA Penalty using any method, or combination of methods, provided on the website <http://www2.epa.gov/financial/additional-instructions-making-payments-epa>, and identifying each and every payment with “Docket No. CAA-09-2019-____.” Within 24 hours of the payment of the EPA Penalty, send proof of payment to Janice Chan at:

Mail Code (ECAD-2-1)
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105

and at Chan.janice@epa.gov (“proof of payment” means, as applicable, a copy of the check, confirmation of credit card or debit card payment, confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to the EPA requirements, in the amount due, and identified with “Docket No. CAA-09-2019-____”).

27. If Respondent fails to pay the civil administrative penalty specified in Paragraph 26 of this CAFO within 30 days of entry of this CAFO, then Respondent shall pay to EPA a stipulated penalty in the amount of FIVE HUNDRED DOLLARS (\$500.00) for each day the default continues plus the remaining balance of the penalty sum specified in Paragraph 26 upon written demand by EPA.
28. If Respondent fails to timely pay any portion of the penalty assessed under this CAFO, EPA may:
- a. request the Attorney General to bring a civil action in an appropriate district court to recover: the amount assessed; interest at rates established pursuant to 26 U.S.C. § 6621(a)(2); the United States' enforcement expenses; and a 10 percent quarterly nonpayment penalty, 42 U.S.C. § 7413(d)(5);
 - b. refer the debt to a credit reporting agency or a collection agency, 42 U.S.C. § 7413(d)(5), 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, or (ii) suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds, 40 C.F.R. § 13.17.
29. 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. Respondent must give written notice and a copy of this CAFO to any successors in interest prior to any transfer of ownership or control of any portion of or interest in Respondent. Simultaneously with such notice, Respondent shall provide written notice of such transfer, assignment, or delegation to EPA. In the event of any such transfer, assignment, or delegation, Respondent shall not be released from the obligations or liabilities of this CAFO unless EPA has provided written approval of the release of said obligations or liabilities.

30. 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.
31. 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.
32. 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.
33. By signing this CAFO, Respondent certifies that it is currently in compliance with section 203(a)(3) of the CAA, 42 U.S.C. § 7522(a)(3) and Appendix B.

34. Each party shall bear its own attorney's fees, costs, and disbursements incurred in this proceeding.

E. EFFECT OF CONSENT AGREEMENT AND ATTACHED FINAL ORDER

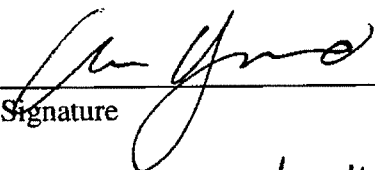
35. In accordance with 40 C.F.R. § 22.18(c), completion of the terms of this CAFO resolves only Respondent's liability for federal civil penalties for the violations and facts specifically alleged above.
36. Penalties paid pursuant to this CAFO shall not be deductible for purposes of federal taxes.
37. This CAFO constitutes the entire agreement and understanding of the parties and supersedes any prior agreements or understandings, whether written or oral, among the parties with respect to the subject matter hereof.
38. Nothing in this CAFO shall relieve Respondent of the duty to comply with all applicable provisions of the Act and other federal, state, or local laws or statutes, nor shall it restrict EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.

F. EFFECTIVE DATE

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

The foregoing Consent Agreement in the Matter of JAMO Performance Exhaust, LLC, Docket No. CAA-09-2019-____, is hereby stipulated, agreed, and approved for Entry.

FOR RESPONDENT:

 _____
Signature Date

Printed Name: Alex Uyeno

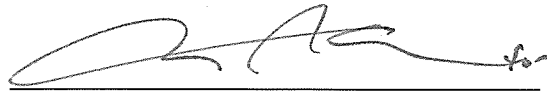
Title: General Manager

Address: 2710 Loser Rd Suite 8
North Las Vegas, NV 89030

FOR COMPLAINANT:

June 19 2019

DATE



A handwritten signature in black ink, appearing to read 'Claire Trombadore', is written over a horizontal line. The signature is stylized and includes a small flourish at the end.

Claire Trombadore
Assistant Director
Enforcement and Compliance Assurance Division
United States Environmental
Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105

APPENDIX A

UPC Code	JAMO SKU	DESCRIPTION	violative parts sold 2014-2017
647166235022	C002DB	2001-2007 GM 4" Race Exhaust with Muffler	8
647166235039	C002DB-MD	2001-2007 GM 4" Race Exhaust No Muffler	9
647166235084	C003DB	2007.5-2010 GM 4" Race Exhaust with Muffler	89
647166235091	C003DB-MD	2007.5-2010 GM 4" Race Exhaust No Muffler	58
647166235107	C004DB	2011-2015 GM 4" Race Exhaust with Muffler (V-Band Flange)	436
647166235114	C004DB-MD	2011-2015 GM 4" Race Exhaust No Muffler (V-Band Flange)	208
647166236029	C005DB	2015.5+ GM 4" Race Exhaust with Muffler (3 bolt Flange)	91
647166236036	C005DB-MD	2015.5+ GM 4" Race Exhaust No Muffler (3 bolt Flange)	13
647166235459	C502DB	2001-2007 GM 5" Race Exhaust with Muffler	5
647166235466	C502DB-MD	2001-2007 GM 5" Race Exhaust No Muffler	10
647166235510	C503DB	2007.5-2010 GM 5" Race Exhaust with Muffler	32
647166235527	C503DB-MD	2007.5-2010 GM 5" Race Exhaust No Muffler	45
647166235541	C504DB	2011-2015 GM 5" Race Exhaust with Muffler (V-band Style)	100
647166235558	C504DB-MD	2011-2015 GM 5" Race Exhaust No Muffler (V-band flange)	154
647166235572	C505DB	2015.5+ GM 5" Race Exhaust with Muffler (3 bolt flange)	43
647166235589	C505DB-MD	2015.5+ GM 5" Race Exhaust No Muffler Kit (3 bolt flange)	91
647166235152	D002TB	2003-2004 Dodge 4" Race Exhaust with Muffler	7
647166235169	D002TB-MD	2003-2004 Dodge 4" Race Exhaust No Muffler	3
647166235176	D003TB	2004.5-2007 Dodge 4" Race Exhaust with Muffler	28
647166235183	D003TB-MD	2004.5-2007 Dodge 4" Race Exhaust No Muffler	17
647166235213	D004TB	2007.5-2009 Dodge 4" Race Exhaust with Muffler	137
647166235220	D004TB-MD	2007.5-2009 Dodge 4" Race Exhaust No Muffler	57

UPC Code	JAMO SKU	Description	Violative parts sold 2014-2017
647166235244	D005TB	2010-2012 Dodge 4" Race Exhaust with Muffler	222
647166235251	D005TB-MD	2010-2012 Dodge 4" Race Exhaust No Muffler	106
647166235275	D006TB	2013-2017 Dodge 4" Race Exhaust with Muffler	103
647166235282	D006TB-MD	2013-2017 Dodge 4" Race Exhaust No Muffler	45
647166235626	D502TB	2003-2004 Dodge 5" Race Exhaust with Muffler	2
647166235633	D502TB-MD	2003-2004 Dodge 5" Race Exhaust No Muffler	3
647166235640	D503TB	2004.5-2007 Dodge 5" Race Exhaust with Muffler	31
647166235657	D503TB-MD	2004.5-2007 Dodge 5" Race Exhaust No Muffler	6
647166235688	D504TB	2007.5-2009 Dodge 5" Race Exhaust with Muffler	55
647166235695	D504TB-MD	2007.5-2009 Dodge 5" Race Exhaust No Muffler	47
647166235718	D505TB	2010-2012 Dodge 5" Race Exhaust with Muffler	115
647166235725	D505TB-MD	2010-2012 Dodge 5" Race Exhaust No Muffler	110
647166235749	D506TB	2013-2017 Dodge 5" Race Exhaust with Muffler	170
647166235756	D506TB-MD	2013-2017 Dodge 5" Race Exhaust No Muffler	151
647166235336	F003TB	2003.5-2007 Ford 4" Race Exhaust with Muffler	57
647166235343	F003TB-MD	2003.5-2007 Ford 4" Race Exhaust No Muffler	58
647166235374	F004DB	2008-2010 Ford 4" Race Exhaust with Muffler	172
647166235381	F004DB-MD	2008-2010 Ford 4" Race Exhaust No Muffler	138
647166235404	F005DB	2011-2017 Ford 4" Race Exhaust with Muffler	317
647166235411	F005DB-MD	2011-2017 Ford 4" Race Exhaust No Muffler	185
647166235817	F503TB	2003.5-2007 Ford 5" Race Exhaust with Muffler	17
647166235824	F503TB-MD	2003.5-2007 Ford 5" Race Exhaust No Muffler	37
647166235831	F504DB	2008-2010 Ford 5" Race Exhaust with Muffler	49
647166235848	F504DB-MD	2008-2010 Ford 5" Race Exhaust No Muffler	66
647166235862	F505DB	2011-2017 Ford 5" Race Exhaust with Muffler	123
647166235879	F505DB-MD	2011-2017 Ford 5" Race Exhaust No Muffler	211

Total

4,236

APPENDIX B

Compliance Plan to Avoid Illegal Tampering and Aftermarket Defeat Devices

This document explains how to help ensure compliance with the Clean Air Act's prohibitions on tampering and aftermarket defeat devices. The document specifies what the law prohibits, and sets forth two principles to follow in order to prevent violations.

The Clean Air Act Prohibitions on Tampering and Aftermarket Defeat Devices

The Act's prohibitions against tampering and aftermarket defeat devices are set forth in section 203(a)(3) of the Act, 42 U.S.C. § 7522(a)(3), (hereafter "§ 203(a)(3)"). The prohibitions apply to all vehicles, engines, and equipment subject to the certification requirements under sections 206 and 213 of the Act. This includes all motor vehicles (e.g., light-duty vehicles, highway motorcycles, heavy-duty trucks), motor vehicle engines (e.g., heavy-duty truck engines), nonroad vehicles (e.g., all-terrain vehicles, off road motorcycles), and nonroad engines (e.g., marine engines, engines used in generators, lawn and garden equipment, agricultural equipment, construction equipment). Certification requirements include those for exhaust or "tailpipe" emissions (e.g., oxides of nitrogen, carbon monoxide, hydrocarbons, particulate matter, greenhouse gases), evaporative emissions (e.g., emissions from the fuel system), and onboard diagnostic systems.

The prohibitions are as follows:

"The following acts and the causing thereof are prohibited--"

Tampering: CAA § 203(a)(3)(A), 42 U.S.C. § 7522(a)(3)(A), 40 C.F.R. § 1068.101(b)(1): "for any person to remove or render inoperative any device or element of design installed on or in a [vehicle, engine, or piece of equipment] 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;"

Defeat Devices: CAA § 203(a)(3)(B), 42 U.S.C. § 7522(a)(3)(B), 40 C.F.R. § 1068.101(b)(2): "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 [vehicle, engine, or piece of equipment], 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 [vehicle, engine, or piece of equipment] 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."

Section 203(a)(3)(A) prohibits tampering with emission controls. This includes those controls and sensors that are in the engine (e.g., fuel injection, exhaust gas recirculation), and those that are in the exhaust (e.g., filters, catalysts, oxygen sensors). Section 203(a)(3)(B) prohibits (among other things) aftermarket defeat devices, including hardware (e.g., certain modified exhaust pipes) and software (e.g., certain engine tuners and other software changes).

The EPA's longstanding view is that conduct that may be prohibited by § 203(a)(3) does not warrant enforcement if the person performing that conduct has a documented, reasonable basis for knowing that the conduct does not adversely affect emissions. *See* Mobile Source Enforcement Memorandum 1A (June 25, 1974).

The EPA evaluates each case independently, and the absence of such reasonable basis does not in and of itself constitute a violation. When determining whether tampering occurred, the EPA typically compares the vehicle after the service to the vehicle's original, or "stock" configuration (rather than to the vehicle prior to the service). Where a person is asked to perform service on an element of an emission control system that has already been tampered, the EPA typically does not consider the service to be illegal tampering if the person either declines to perform the service on the tampered system or restores the element to its certified configuration.

Below are two guiding principles to help ensure Respondent commits no violations of the Act's prohibitions on tampering and aftermarket defeat devices.

Principle 1: Respondent Will Not Modify any OBD System

Respondent will neither remove nor render inoperative any element of design of an OBD system.ⁱ Also, Respondent will not manufacture, sell, offer for sale, or install any part or component that bypasses, defeats, or renders inoperative any element of design of an OBD system.

Principle 2: Respondent Will Ensure There is a Reasonable Basis for Conduct Subject to the Prohibitions

For conduct unrelated to OBD systems, Respondent will have a *reasonable basis* demonstrating that its conductⁱⁱ does not adversely affect emissions.

Where the conduct in question is the manufacturing or sale of a part or component, Respondent must have a *reasonable basis* that the installation and use of that part or component does not adversely affect emissions.

Respondent will fully document its *reasonable basis*, as specified in the following section, at or before the time the conduct occurs.

Reasonable Bases

This section specifies several ways that Respondent may document that it has a “reasonable basis” as the term is used in the prior section. In any given case, Respondent must consider all the facts including any unique circumstances and ensure that its conduct does not have any adverse effect on emissions.ⁱⁱⁱ

- A. Identical to Certified Configuration:** Respondent generally has a reasonable basis if its conduct: is solely for the maintenance, repair, rebuild, or replacement of an emissions-related element of design; and restores that element of design to be identical to the certified configuration (or, if not certified, the original configuration) of the vehicle, engine, or piece of equipment.^{iv}
- B. Replacement After-Treatment Systems:** Respondent generally has a reasonable basis if the conduct:
- (1) involves a new after-treatment system used to replace the same kind of system on a vehicle, engine or piece of equipment beyond its emissions warranty; and
 - (2) the manufacturer of that system represents in writing that it is appropriate to install the system on the specific vehicle, engine or piece of equipment at issue.
- D. Emissions Testing:**^v Respondent generally has a reasonable basis if the conduct:
- (1) alters a vehicle, engine, or piece of equipment; and
 - (2) emissions testing shows that the altered vehicle, engine, or piece of equipment will meet all applicable emissions standards for its full useful life; and
 - (3) where the conduct includes the manufacture, sale, or offering for sale of a part or component, that part or component is marketed only for those vehicles, engines, or pieces of equipment that are appropriately represented by the emissions testing.
- E. EPA Certification:** Respondent generally has a reasonable basis if the emissions-related element of design that is the object of the conduct (or the conduct itself) has been certified by the EPA under 40 C.F.R. Part 85 Subpart V (or any other applicable EPA certification program).^{vi}
- F. CARB Certification:** Respondent generally has a reasonable basis if the emissions-related element of design that is the object of the conduct (or the conduct itself) has been certified by the California Air Resources Board (“CARB”).^{vii}

i. *OBD system* includes any system which monitors emission-related elements of design, or that assists repair technicians in diagnosing and fixing problems with emission-related elements of design. If a problem is detected, an OBD system must record a diagnostic trouble code, illuminate a malfunction indicator light or other warning lamp on the vehicle instrument panel, and provide information to the engine control unit such as information that induces engine derate (as provided by the OEM) due to malfunctioning or missing emission-related systems. Regardless of whether an element of design is commonly considered part of an OBD system, the term “OBD system” as used in this Appendix includes any element of design that monitors, senses, measures, receives, reads, stores, reports, processes or transmits any information about the condition of or the performance of an emission control system or any component thereof.

ii. Here, the term *conduct* means: all service performed on, and any change whatsoever to, any emissions-related element of design of a vehicle, engine, or piece of equipment within the scope of § 203(a)(3); the manufacturing, sale, offering for sale, and installation of any part or component that may alter in any way an emissions-related element of design of a vehicle, engine, or piece of equipment within the scope of § 203(a)(3), and any other act that may be prohibited by § 203(a)(3).

iii. General notes concerning the Reasonable Bases: Documentation of the above-described reasonable bases must be provided to EPA upon request, based on the EPA’s authority to require information to determine compliance. CAA § 208, 42 U.S.C. § 7542. The EPA issues no case-by-case pre-approvals of reasonable bases, nor exemptions to the Act’s prohibitions on tampering and aftermarket defeat devices (except where such an exemption is available by regulation). A reasonable basis consistent with this Appendix does not constitute a certification, accreditation, approval, or any other type of endorsement by EPA (except in cases where an EPA Certification itself constitutes the reasonable basis). No claims of any kind, such as “Approved [or certified] by the Environmental Protection Agency,” may be made on the basis of the reasonable bases described in this Policy. This includes written and oral advertisements and other communication. However, if true on the basis of this Appendix, statements such as the following may be made: “Meets the emissions control criteria in the United States Environmental Protection Agency’s Tampering Policy (2016) in order to avoid liability for violations of the Clean Air Act.” There is no reasonable basis where documentation is fraudulent or materially incorrect, or where emissions testing was performed incorrectly.

iv. Notes on Reasonable Basis A: The conduct should be performed according to instructions from the original manufacturer (OEM) of the vehicle, engine, or equipment. The “certified configuration” of a vehicle, engine, or piece of equipment is the design for which the EPA has issued a certificate of conformity (regardless of whether that design is publicly available). Generally, the OEM submits an application for certification that details the designs of each product it proposes to manufacture prior to production. The EPA then “certifies” each acceptable design for use, in the upcoming model year. The “original configuration” means the design of the emissions-related elements of design to which the OEM manufactured the product. The appropriate source for technical information regarding the certified or original configuration of a product is the product’s OEM. In the case of a replacement part, the part manufacturer should

represent in writing that the replacement part will perform identically with respect to emissions control as the replaced part, and should be able to support the representation with either: (a) documentation that the replacement part is identical to the replaced part (including engineering drawings or similar showing identical dimensions, materials, and design), or (b) test results from emissions testing of the replacement part. In the case of engine switching, installation of an engine into a different vehicle or piece of equipment by any person would be considered tampering unless the resulting vehicle or piece of equipment is (a) in the same product category (e.g., light-duty vehicle) as the engine originally powered and (b) identical (with regard to all emissions-related elements of design) to a certified configuration of the same or newer model year as the vehicle chassis or equipment. Alternatively, Respondent may show through emissions testing that there is a reasonable basis for an engine switch under Reasonable Basis D. Note that there are some substantial practical limitations to switching engines. Vehicle chassis and engine designs of one vehicle manufacturer are very distinct from those of another, such that it is generally not possible to put an engine into a chassis of a different manufacturer and have it match up to a certified configuration.

v. Notes on emissions testing: Where the above-described reasonable bases involve emissions testing, unless otherwise noted, that testing must be consistent with the following. The emissions testing may be performed by someone other than the person performing the conduct (such as an aftermarket parts manufacturer), but to be consistent with this Appendix, the person performing the conduct must have all documentation of the reasonable basis at or before the conduct. The emissions testing and documentation required for this reasonable basis is the same as the testing and documentation required by regulation (e.g., 40 C.F.R. Part 1065) for the purposes of original EPA certification of the vehicle, engine, or equipment at issue. Accelerated aging techniques and in-use testing are acceptable only insofar as they are acceptable for purposes of original EPA certification. The applicable emissions standards are either the emissions standards on the Emission Control Information Label on the product (such as any stated family emission limit, or FEL), or if there is no such label, the fleet standards for the product category and model year. To select test vehicles or test engines where EPA regulations do not otherwise prescribe how to do so for purposes of original EPA certification of the vehicle, engine, or equipment at issue, one must choose the “worst case” product from among all the products for which the part or component is intended. EPA generally considers “worst case” to be that product with the largest engine displacement within the highest test weight class. The vehicle, engine, or equipment, as altered by the conduct, must perform identically both on and off the test(s), and can have no element of design that is not substantially included in the test(s).

vi. Notes on Reasonable Basis E: This reasonable basis is subject to the same terms and limitations as EPA issues with any such certification. In the case of an aftermarket part or component, there can be a reasonable basis only if: the part or component is manufactured, sold, offered for sale for, and installed on the vehicle, engine, or equipment for which it is certified; according to manufacturer instructions; and is not altered or customized, and remains identical to the certified part or component.

vii. Notes on Reasonable Basis F: This reasonable basis is subject to the same terms and limitations as CARB imposes with any such certification. The conduct must be legal in

California under California law. However, in the case of an aftermarket part or component, the EPA will consider certification from CARB to be relevant even where the certification for that part or component is no longer in effect due solely to passage of time.

II. FINAL ORDER

EPA Region IX and JAMO Performance Exhaust, LLC, having entered into the foregoing Consent Agreement,

IT IS HEREBY ORDERED that this CAFO (Docket No. CAA-09-2019-0047) be entered, and Respondent shall pay a civil administrative penalty in the amount of TEN THOUSAND DOLLARS (\$10,000) in exchange for a release of liability for the civil claims alleged herein and otherwise comply with the terms set forth in the CAFO.

07/01/19

DATE



STEVEN JAWGIEL
Regional Judicial Officer
United States Environmental
Protection Agency, Region IX

CERTIFICATE OF SERVICE

I certify that the original of the fully executed Consent Agreement and Final Order in the matter of JAMO Performance Exhaust, LLC (Docket No. **CAA-09-2019-0047**) was filed with the Regional Hearing Clerk, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, and that a true and correct copy of the same was sent to the following parties:

A copy was mailed via CERTIFIED MAIL to:

Alec Uyeno
General Manager
JAMO Performance Exhaust, LLC
2710 Losee Road, Suite 8
North Las Vegas, NV 89030

CERTIFIED MAIL NUMBER: 7010 0290 0000 7117 0753

An additional copy was hand-delivered to the following U.S. EPA case attorney:

David Kim
Assistant Regional Counsel (ORC-2)
U.S. EPA, Region IX
75 Hawthorne Street
San Francisco, CA 94105

Steven Armsey
Regional Hearing Clerk (Printed)
U.S. EPA, Region IX

Steven Armsey
Regional Hearing Clerk Signature

2019.7-3
Date