

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.**

In the Matter of:

FREEDOM PERFORMANCE, LLC,

Respondent

Docket No.
CAA-HQ-2019-8362

**COMPLAINANT’S RESPONSE TO THE DECEMBER 16, 2019 ORDER ON
COMPLAINANT’S MOTION FOR DEFAULT JUDGMENT AND ORDER**

Introduction

1. On December 16, 2019, the Presiding Officer ordered the Director of the Air Enforcement Division (“Complainant”) of the United States Environmental Protection Agency’s (“EPA’s”) Office of Enforcement and Compliance Assurance to submit further explanation or documentation in support of Complainant’s proposed penalty, including as to the horsepower of the vehicles in which Respondent’s violative defeat devices were designed to be installed. Complainant hereby submits the information and statement in accordance with the December 16, 2019 Order.
2. As indicated in Complainant’s Motion for Default Judgment and Order in this proceeding, Complainant used the EPA penalty policy “Clean Air Act Mobile Source Civil Penalty Policy – Vehicle and Engine Certification Requirements” (Jan. 16, 2009) (“Penalty Policy”) to calculate a proposed penalty.
3. The Penalty Policy’s gravity component reflects, among other things, the actual or potential harm from the violations and, in turn, focuses on “whether the activity of the violator actually resulted in, or was likely to result in, the emission of a pollutant in violation of the standards specified for the particular vehicles or engines at issue.” Penalty Policy at 11. In assessing actual or potential

harm, the Penalty Policy's penalty calculation methodology considers the amount of emissions from engines or vehicles affected by violation as proportional to the engine's size. *Id.* at 12. The Penalty Policy uses horsepower as a measurement of engine size. *Id.* at 12, 16. In the case of violations of the defeat device prohibition, the gravity is calculated based on the horsepower of the vehicles or engines of which the defeat devices are installed or intended to be installed. *Id.* at 22.

4. As alleged in the Complaint, the Respondent, Freedom Performance, LLC ("Respondent" or "Freedom") sold violative defeat devices were designed and marketed for use for several models of heavy-duty diesel engine trucks manufactured by Ford, Dodge, and GMC/Chevy. Complaint ¶¶ 111, 121, and 130 and Appendix A. To calculate the proposed penalty under the Penalty Policy, Complainant used an estimate of 350 horsepower rating for these motor vehicles.
5. The Declaration of Victor Aguilar is attached to this Statement as Attachment 1 ("Declaration"). A thorough analysis of the motor vehicle model year ranges and model types affected by Respondent's violations indicate that using a horsepower rating of 350 in the penalty calculation for all violations alleged in the Complaint is appropriate.
6. Mr. Aguilar is employed as an Environmental Engineer with the EPA's Vehicle and Engine Enforcement Branch ("VEEB"), is a credentialed vehicle and engine inspector for the EPA, and provides support activities for the EPA's enforcement investigation of automotive aftermarket companies concerning the manufacturing of potential defeat devices.
7. As described in his declaration, Mr. Aguilar conducted an analysis of Respondent's sales information concerning the violative defeat devices, the facts alleged in the Complaint, and government and original equipment manufacturer ("OEM") documents regarding the model year ranges and model types of motor vehicles for which Respondent's violative defeat devices were designed to be installed. He compiled information concerning the various horsepower ratings of

such motor vehicles into an Excel spreadsheet, entitled “HP Analysis Spreadsheet,” attached as Attachment 2 to this Statement (“Spreadsheet”). This information came from various EPA, California Air Resources Board, and OEM documents as described and identified in the Declaration and Spreadsheet. Mr. Aguilar then calculated a weighted average horsepower of all of the model year ranges and model types of motor vehicles affected by Respondent’s violative defeat devices.

8. The Declaration explains that a weighted average horsepower of all motor vehicles affected by Respondent’s violations is 359 horsepower. The Declaration provides Mr. Aguilar’s explanation of how he calculated this value.
9. As Complainant’s proposed penalty calculation uses 350 horsepower for assessing gravity penalty for the violations in the Complaint, and the weighted average horsepower of the motor vehicles affected by the violations has been determined by Complainant to be 359 horsepower, the use of 350 horsepower in the penalty calculation is substantiated and conservative.
10. As stated by Mr. Aguilar in the Declaration, the weighted average of 359 horsepower is a valid conservative estimate of horsepower for the penalty calculation because he used government, OEM, and other sources of information to confirm the horsepower ratings of the various model years and model types of motor vehicles in each of the categories in Table 1 of the Declaration, which represents the population of motor vehicles affected by Freedom’s defeat devices. Where multiple horsepower ratings were applicable to different model years or model types in a single vehicle category, Mr. Aguilar used the most conservative number. Finally, Mr. Aguilar determined that a weighted average is a more accurate representation of the average horsepower rating of the vehicles that Freedom’s aftermarket products could be installed on, because use of a weighted average accounts for the uneven distribution of violative defeat devices that pertain to each individual vehicle category.

11. Additionally, Mr. Aguilar reviewed the advertisements recited in the Complaint for defeat devices sold by Freedom. As indicated in the Declaration, Mr. Aguilar's review of advertisements for Freedom's defeat devices indicate that most of them are advertised to be specifically designed to increase horsepower of the affected vehicles. Also, as indicated in the Declaration, Mr. Aguilar is aware, from his work at the EPA, that most defeat devices are purchased by users to obtain horsepower increases on their vehicles. Based upon this information, Mr. Aguilar indicated in the Declaration the use of 350 horsepower for the penalty calculation is even more conservative, as it is the weighted average horsepower of the affected vehicles prior to installation of defeat devices on the affected vehicles, and one would expect the horsepower would typically increase as a result of installation of defeat devices.

Documents and Statements Ordered by The Presiding Officer

12. Declaration of Victor Aguilar: Complainant attaches the Declaration, dated January 16, 2020, as Attachment 1.
13. HP Analysis Spreadsheet: Complainant attaches the HP Analysis Spreadsheet, dated January 16, 2020, prepared by Mr. Aguilar, as Attachment 2.
14. Underlying Sources of Information Concerning Horsepower Rating: Complainant attaches the government, OEM, and other documents Mr. Aguilar relied upon to determine horsepower ratings for the various categories of affected motor vehicles and motor vehicle engines. A list of these documents are as follows:
 - a. Attachment 3 – 2005 Engine GM LLY CARB EO 5GMXH06.6590.
 - b. Attachment 4 – 2006 Engine GM LLW CARB EO 6GMXH06.6590.
 - c. Attachment 5 – 2007 Engine GM LMM CARB EO 7GMXH06.6590.
 - d. Attachment 6 – 2008 Engine GM LMM CARB EO 8GMXH06.6590.
 - e. Attachment 7 – 2009 Engine GM LMM CARB EO 9GMXH06.6590.

- f. Attachment 8 – 2011 Engine GM LGH CARB EO BGMXH06.6590.
- g. Attachment 9 – 2012 Engine GM LGH CARB EO CGMXH06.6590.
- h. Attachment 10 – 2013 Engine GM LGH CARB EO DGMXH06.6590.
- i. Attachment 11 – 2015 Engine GM LGH CARB EO FGMXH06.6590.
- j. Attachment 12 – 2016 Engine GM LGH CARB EO GGMXH06.6590.
- k. Attachment 13 – 2015 GMC Sierra 2500HD LML Specifications Press Release.
- l. Attachment 14 – 2015 GMC Sierra 3500HD LML Specifications Press Release.
- m. Attachment 15 – 2016 2500 Chevrolet Silverado HD Specifications Press Release.
- n. Attachment 16 – 2016 3500 Chevrolet Silverado HD Specifications Press Release.
- o. Attachment 17 – 2016 2500 GMC Sierra HD Specifications Press Release.
- p. Attachment 18 – 2016 3500 GMC Sierra HD Specifications Press Release.
- q. Attachment 19 – DuramaxHub.com – Duramax LLY Specs & Info.
- r. Attachment 20 – DuramaxHub.com – Duramax LBZ Specs & Info.
- s. Attachment 21 – DuramaxHub.com – Duramax LLM Specs & Info.
- t. Attachment 22 – DuramaxHub.com – Duramax LML Specs & Info.
- u. Attachment 23 – DuramaxHub.com – Duramax LGH Specs & Info.
- v. Attachment 24 – GMC Pressroom (<https://media.gmc.com>) – 2011 Sierra 3500 HD.
- w. Attachment 25 – GMC Pressroom (<https://media.gmc.com>) – 2011 Sierra 2500 HD .
- x. Attachment 26 – GMC Pressroom (<https://media.gmc.com>) – GMC Sierra 2500 HD and 3500 HD – 2011.
- y. Attachment 27 – Chevrolet Pressroom (<https://media.gm.com>) Chevrolet Silverado HD – 2011.
- z. Attachment 28 – Chevrolet Pressroom (<https://media.gm.com>) Chevrolet Silverado HD – 2011 At a Glance.

- aa. Attachment 29 – GMC Pressroom (<https://media.gmc.com>) GMC Sierra 2500 HD – 2012.
- bb. Attachment 30 -- GMC Pressroom (<https://media.gmc.com>) – Sierra 3500 HD – 2012.
- cc. Attachment 31 – GMC Pressroom (<https://media.gmc.com>) – GMC Sierra 2500 HD – 2012.
- dd. Attachment 32 – Chevrolet Pressroom (<https://media.gm.com>) – Chevrolet Silverado HD – 2012.
- ee. Attachment 33 – Chevrolet Pressroom (<https://media.gm.com>) – 2012 Silverado 3500HD.
- ff. Attachment 34 – Chevrolet Pressroom (<https://media.gm.com>) – Chevrolet Silverado HD – 2012.
- gg. Attachment 35 -- Chevrolet Pressroom (<https://media.gm.com>) – 2011 Silverado 3500 HD.
- hh. Attachment 36 – GMC Pressroom (<https://media.gmc.com>) – GMC Sierra 2500 HD Denali – 2013.
- ii. Attachment 37 -- GMC Pressroom (<https://media.gmc.com>) – 2013 GMC Sierra 3500 HD Specifications.
- jj. Attachment 38 – GMC Pressroom (<https://media.gmc.com>) – GMC Sierra 2500 HD Denali – 2013.
- kk. Attachment 39 – Chevrolet Pressroom (<https://media.gm.com>) – Chevrolet Silverado 2500 HD – 2013.
- ll. Attachment 40 – Chevrolet Pressroom (<https://media.gm.com>) – 2013 Silverado 3500 HD.

- mm. Attachment 41 – Chevrolet Pressroom (<https://media.gm.com>) – Chevrolet Silverado 2500 HD – 2013.
- nn. Attachment 42 – GMC Pressroom (<https://media.gmc.com>) – GMC Sierra HD 2014
- oo. Attachment 43 – GMC Pressroom (<https://media.gmc.com>) – 2014 GMC Sierra 3500 HD Specifications.
- pp. Attachment 44 – Chevrolet Pressroom (<https://media.gm.com>) – Chevrolet Silverado 2500HD – 2014.
- qq. Attachment 45 – Chevrolet Pressroom (<https://media.gm.com>) – 2014 Chevrolet Silverado 3500HD Specifications.
- rr. Attachment 46 – Chevrolet Pressroom (<https://media.gm.com>) – Chevrolet Silverado 2500 HD – 2014.
- ss. Attachment 47 – GMC Pressroom (<https://media.gmc.com>) – GMC Sierra HD – 2014.
- tt. Attachment 48 – 2005 Ford F250-350 CARB EO 5NVXH0.0AED.
- uu. Attachment 49 – 2007 Ford F250-350 CARB EO 6NVXH06.0AED.
- vv. Attachment 50 – 2008 Ford F250-350 CARB EO 6NVXH06.4AGC.
- ww. Attachment 51 – 2006 Ford F250-350 COC 6NVXH06.0AED.
- xx. Attachment 52 – 2008 Ford F250-350 CARB EO 7NVXH06.4AGC.
- yy. Attachment 53 – 2008 Ford F250-350 CARB EO 8NVXH06.4AGC.
- zz. Attachment 54 – 2009 Ford F250-350 CARB EO 8NVXH06.4AGC.
- aaa. Attachment 55 – 2008 Ford F250-350 COC 8NVXH06.4AGC.
- bbb. Attachment 56 – 2009 Ford F250-350 CARB EO 9NVXH06.4AGC.
- ccc. Attachment 57 – 2010 Ford F250-350 CARB EO 9NVXH06.4AGC.
- ddd. Attachment 58 – 2009 Ford F250-350 COC 9NVXH06.4AGC.

- eee. Attachment 59 – 2011 Ford F250-350 CARB EO BFMXD06.761A.
- fff. Attachment 60 – 2011 Ford F350-450 CARB EO BFMXD06.771C.
- ggg. Attachment 61 – 2011 Ford F250-350 COC BFMXD06.761A.
- hhh. Attachment 62 – 2011 Ford F250-350 CSI BFMXD06.761A.
- iii. Attachment 63 – 2011 Ford F350-450 COC BFMXD06.771C.
- jjj. Attachment 64 – 2011 Ford F350-450 CSI BFMXD06.771C.
- kkk. Attachment 65 – 2012 Ford F250-350 COC CFMXD06.761A.
- lll. Attachment 66 – 2012 Ford F250-350 CSI CFMXD06.761A.
- mmm. Attachment 67 – 2012 Ford F250-350 CARB EO CFMXD06.761A.
- nnn. Attachment 68 --2012 Ford F350-450 COC CFMXD06.771C.
- ooo. Attachment 69 – 2012 Ford F350-450 CSI CFMXD06.771C.
- ppp. Attachment 70 -- 2012 Ford F350-450 CARB EO CFMXD06.771C.
- qqq. Attachment 71 – 2013 Ford F250-350 COC DFMXD06.761A.
- rrr. Attachment 72 – 2013 Ford F250-350 CSI DFMXD06.761A.
- sss. Attachment 73 -- 2013 Ford F250-350 CARB EO DFMXD06.261A.
- ttt. Attachment 74 – 2013 Ford F350-450 COC DFMXD06.771C.
- uuu. Attachment 75 —2013 Ford F350-450 CSI DFMXD06.771C.
- vvv. Attachment 76 – 2013 Ford F350-450 CARB EO DFMXD06.771C.
- www. Attachment 77 – 2014 Ford F250-350 COC EFMXD06.761A.
- xxx. Attachment 78 – 2014 Ford F250-350 CSI EFMXD06.761A.
- yyy. Attachment 79 – 2014 Ford F250-350 CARB EO EFMXD06.761A.
- zzz. Attachment 80 – 2014 Ford F350-450 COC EFMXD06.771C.
- aaaa. Attachment 81 – 2014 Ford F350-450 CSI EFMXD06.771C.
- bbbb. Attachment 82 – 2014 Ford F350-450 CARB EO EFMXD06.771C.

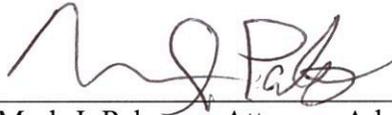
- cccc. Attachment 83 – 2015 Ford F250-350 COC FFMXD06.761B.
- dddd. Attachment 84 – 2015 Ford F250-350 CSI FFMXD06.761B.
- eeee. Attachment 85 – 2015 Ford F350-450 COC FFMXD06.771D.
- ffff. Attachment 86 – 2015 Ford F250-350 CARB EO FFMXD06.761B.
- gggg. Attachment 87 – 2015 Ford F350-450 CSI FFMXD06.771D.
- hhhh. Attachment 88 – 2015 Ford F350-450 CARB EO FFMXD06.771D.
- iiii. Attachment 89 – Power Stroke Horsepower & Torque by Model Year -
www.powerstrokehub.com.
- jjjj. Attachment 90 – 6.0L Power Stroke Diesel Specs & Info –
www.powerstrokehub.com.
- kkkk. Attachment 91 – 6.4L Power Stroke Diesel Specs & Info –
www.powerstrokehub.com.
- llll. Attachment 92 – 6.7L Power Stroke Diesel Specs & Info –
www.powerstrokehub.com.
- mmmm. Attachment 93 – Power Stroke Diesel – Power and Pride Part 1 –
www.powerstrokediesel.com.
- nnnn. Attachment 94 – Power Stroke Diesel – Power and Pride Part 2 –
www.powerstrokediesel.com.
- oooo. Attachment 95 – Emissions Guide and Certification – www.fleet.ford.com.
- pppp. Attachment 96 – Ford Power Stroke Engine – Wikipedia – en.wikipedia.org.
- qqqq. Attachment 97 – 2010 Ram 2500 CSI ACEXD06.78VV.
- rrrr. Attachment 98 – 2010 Ram 3500 CSI ACEXD06.78WW.
- ssss. Attachment 99 – 2011 Ram 2500 COC Application BCEXD06.78VV (CBI).
- tttt. Attachment 100 – 2011 Ram 3500 COC Application BCEXD06.78VV (CBI).

- uuuu. Attachment 101 — 2012 Ram 2500 CSI CCEXD06.78VV.
- vvvv. Attachment 102 – 2012 Ram 3500 CSI CCEXD06.78WV.
- www. Attachment 103 – 2013 Ram 3500 CSI DCEXD06.78WV.
- xxxx. Attachment 104 – 2013 Ram 2500-3500 CSI DCEXD06.78VV.
- yyyy. Attachment 105 – 2014 Ram 2500 CSI ECEXD06.78WV.
- zzzz. Attachment 106 2014 Ram 3500 CSI ECEXD06.78WV.
- aaaa. Attachment 107 – 2015 Ram 2500-3500 CSI FCEXD06.78VV.
- bbbb. Attachment 108 – 2015 Ram 3500 CSI FCEXD06.78WV.
- cccc. Attachment 109 – 2016 Ram 2500-3500 COC GCEXD06.78VV.
- dddd. Attachment 110 – 2016 Ram 2500-3500 CSI GCEXD06.78VV.
- eeee. Attachment 111 – 2016 Ram 3500 COC GCEXD06.78WV.
- ffff. Attachment 112 – 2016 Ram 3500 CSI GCEXD06.78WV.
- gggg. Attachment 113 – Cummins B Series engine – Wikipedia – en.wikipedia.org.
- hhhh. Attachment 114 – 5.9 L 24v Cummins ISB Specs – www.cumminshub.com.
- iiii. Attachment 115 – 6.7 L Cummins ISB Turbodiesel Specs – www.cumminshub.com.
- jjjj. Attachment 116 – 6.7 L Cummins Emissions Systems Explained – www.cumminshub.com

15. In her Order, the Presiding Officer requests a detailed explanation, and any documents in support of the proposed penalty, “including as to the horsepower of the vehicles in which Respondent’s violative devices were designed to be installed.” Complainant hereby submits the Declaration, Spreadsheet, and the documents identified in Paragraph 14 above in response to her Order. With respect to webpage documents relied upon by Mr. Aguilar in his analysis, the Spreadsheet identifies the website addresses for such documents in the Spreadsheet.

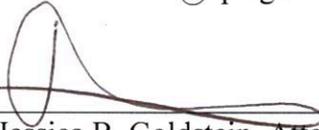
1/16/20
Date

Respectfully Submitted,



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CERTIFICATE OF SERVICE

I certify that the foregoing Complainant's Response to the December 16, 2019 Order on Complainant's Motion for Default Judgment and Order, dated January 16, 2020, and its Attachments (with the exception of Attachments 99 and 100 which are to be handled as Confidential Business Information ("CBI"), *In the Matter of Freedom Performance, LLC*, CAA-HQ-2019-8362, was filed electronically with the EPA Office of Administrative Law Judges using the EPA E-File Portal, and two copies of Attachments 99 and 100 were filed under seal this day by hand delivery with the EPA Office of Administrative Law Judges at the address listed below, with a copy for public disclosure filed electronically at the website provided therefor:

U.S. Environmental Protection Agency
Office of Administrative Law Judges
Ronald Reagan Building, Rm. M1200
1300 Pennsylvania Ave., N.W.
Washington, DC 20460

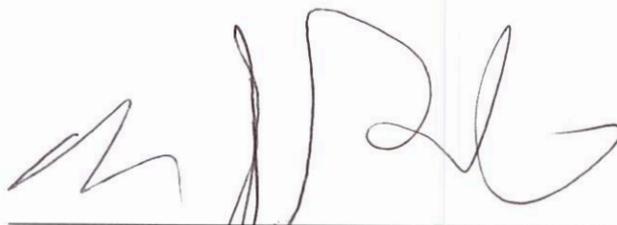
I certify that I sent by United States Postal Service one copy of the foregoing documents (with the exception of Attachments 99 and 100, which are third-party CBI), to Respondent Freedom Performance, LLC, at the following addresses:

Geoffrey Kemper, Registered Agent
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Sarasota, FL 34234

Geoffrey Kemper, Title Manager
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