UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:	)	**Docket No.** CAA-05-2020-0029
	)	
Powerstroke Enginuities LLC	)	**Proceeding to Assess a Civil Penalty**
Houston, Texas	)	**Under Section 205(c)(1) of the Clean Air**
	)	**Act, 42 U.S.C. § 7424(c)(1)**
Respondent.	)	Type text here
	)	

Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 205(c)(1) of the Clean Air Act (the CAA), 42 U.S.C. § 7424(c)(1), and Sections 22.1(a)(2), 22.13(b) and 22.18(b)(2) and (3) 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.

2. Complainant is the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency (EPA), Region 5.

3. Respondent is Powerstroke Enginuities LLC (Respondent or PSE), a limited liability company doing business in Texas.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO and its right to appeal this CAFO.

Statutory and Regulatory Background

9. Title II of the CAA, 42 U.S.C. §§ 7521–7554, was enacted to reduce air pollution from mobile sources. In enacting the CAA, Congress found, in part, that "the increasing use of motor vehicles . . . has resulted in mounting dangers to the public health and welfare." CAA § 101(a)(2), 42 U.S.C. § 7401(a)(2).

10. EPA promulgated emission standards for particulate matter (PM), nitrogen oxides (NO_x), and other pollutants emitted by motor vehicles and motor vehicle engines, including Heavy Duty Diesel Engine (HDDE) trucks, under Section 202 of the CAA, 42 U.S.C. § 7521. *See generally* 40 C.F.R. Part 86. HDDE emission standards "reflect the greatest degree of emission reduction achievable through the application of [available] technology." CAA § 202(a)(3)(A)(i), 42 U.S.C. § 7521(a)(3)(A)(i).

11. Section 203(a)(1) of the CAA, 42 U.S.C. § 7522(a)(1), prohibits a vehicle manufacturer from selling a new motor vehicle in the United States unless the vehicle is covered by a certificate of conformity. 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 and motor vehicle engines conform to applicable EPA requirements governing motor vehicle emissions. The certificate of conformity will include, among other things, a description

of the HDDEs, their emission control systems, all auxiliary emission control devices and the engine parameters monitored.

12. To meet the emission standards in 40 C.F.R. Part 86, HDDE manufacturers employ many devices and elements of design. "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.

13. One element of design that HDDE manufacturers employ is retarded fuel injection timing as a primary emission control device for emissions of oxides of nitrogen (NO_x). Common emission control devices used by HDDE manufacturers include diesel particulate filter (DPF), exhaust gas recirculation (EGR) systems, selective catalytic reduction (SCR) systems, and/or diesel oxidation catalyst (DOC). Additionally, modern HDDEs are equipped with electronic control modules (ECMs), which continuously monitor engine and other operating parameters and control the emission control devices.

14. EPA promulgated regulations for motor vehicles manufactured after 2007 that require HDDE trucks to have onboard diagnostic systems to detect various emission control device parameters and vehicle operations. *See* Section 202(m) of the CAA, 42 U.S.C. § 7521(m), and 40 C.F.R. §§ 86.010-18(o) and 86.1806-05(n).

15. 40 C.F.R. § 86.004-16(a) states that "No new heavy-duty vehicle or heavy-duty engine shall be equipped with a defeat device." 40 C.F.R. § 86.094-2 states that, among other things, a "defeat device" is an auxiliary emission control device (AECD) that "reduces the effectiveness of the emission control system under conditions which may reasonably be expected to be encountered in normal vehicle operation and use, unless: (1) Such conditions are

substantially included in the Federal emission test procedure; (2) The need for the AECD is justified in terms of protecting the vehicle against damage or accident; or (3) The AECD does not go beyond the requirements of engine starting."

16. Section 203(a)(3)(A) of the CAA, 42 U.S.C. § 7522(a)(3)(A), states that it is prohibited "for any person to remove or render inoperative any device or element of design installed on or in a motor vehicle or motor vehicle engine in compliance with regulations under [Title II of the CAA] 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."

17. Section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B), states that it is 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 [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."

18. The EPA may administratively assess a civil penalty, with or without conditions, for violations of section 203(a) of the CAA, 42 U.S.C. § 7522(a). Section 205(c)(1) of the CAA, 42 U.S.C. § 7524(c)(1).

19. EPA may assess a civil penalty of up to $3,750 for each applicable CAA violation that occurred between January 12, 2009 and November 2, 2015, and up to $4,819 for each applicable CAA violation that occurred after November 2, 2015 and for which a penalty is

assessed on or after January 13, 2020, in accordance with Section 205(a) of the CAA, 42 U.S.C. § 7524(a), and 40 C.F.R. Part 19.

Factual Allegations and Alleged Violations

20. Respondent is a limited liability company organized under the laws of the State of Texas with its primary place of business located at 4534 Saunders Road, Houston, Texas (the Facility).

21. Respondent is a person, as that term is defined in Section 302(e) of the CAA. 42 U.S.C. § 7602(e).

22. On June 25, 2018, EPA issued a request for information to Respondent requesting documents related to services and/or parts or components manufactured, sold, or installed by PSE on HDDEs.

23. On October 5, 2018, Respondent provided EPA with a partial response to the June 25, 2018 request for information with supplemental responses on October 23, 2018, and November 9, 2018. Respondent provided invoices and documents related to purchases, sales, and work that impacted emission control devices and elements of design on HDDEs certified to meet applicable motor vehicle and motor vehicle engine emission standards under Title II of the CAA.

24. Based upon the information provided in Respondent's response to the request for information, between September 1, 2015 and June 22, 2018, Respondent sold at least 1,648 parts or components and installed at least 1,223 parts or components on motor vehicles where a principal effect of each part or component was to disable, remove, bypass, defeat, or render inoperative air pollution emission control systems installed on or in diesel-powered motor vehicles and motor vehicle engines in compliance with Title II of the CAA. More specifically, PSE sold, offered to sell, and installed parts and components, such as FLO PRO exhaust kits,

Rudy's EGR Cleaning kits, and H&S Mini Maxx tuners, that removed, disconnected, bypassed or disabled the engine fueling strategy, DOCs, DPFs, EGRs, OBDs, and/or SCR systems, and/or tampered with the emissions-related elements of the ECM. Respondent knowingly removed and/or rendered inoperative devices or elements of design installed on or in a motor vehicle or motor vehicle engine that were installed by the original equipment manufacturer in order to comply with CAA emission standards in violation of Section 203(a)(3)(A) of the CAA, 42 U.S.C. § 7522(a)(3)(A). Further, Respondent sold, offered to sell, and/or installed parts and/or components where a principal effect of the part or component was to bypass, defeat or render inoperative elements of design of those engines in violation of Section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B). Respondent knew or should have known that the work performed on motor vehicles or motor vehicle engines and these parts or components were offered for sale or installed for such use or put to such use.

25. On February 7, 2019, EPA issued a Finding of Violation (FOV) to Respondent for violating Section 203(a)(3)(A) and (a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(A) and (a)(3)(B).

26. On February 27, 2019, representatives from EPA and Respondent held a teleconference to discuss the FOV.

Conditions

27. By the effective date of this CAFO, Respondent shall not manufacture, sell, offer to sell or install any aftermarket defeat devices, including ECM tuning products, where a principal effect of the device is to bypass, defeat, or render inoperative any emission-related device or element of design installed on or in a motor vehicle or motor vehicle engine, and will

not remove or render inoperative any emissions-related device or element of design installed on or in a motor vehicle or motor vehicle engine.

28. By the effective date of this CAFO, Respondent shall not provide technical support, maintenance, repair, or information pertaining to defeat devices and/or tuners for use with motor vehicles or motor vehicle engines.

29. Respondent shall follow the Compliance Plan in Appendix A as a guide to maintain compliance with the CAA. In case of any conflict between the terms of the Compliance Plan and this CAFO, the terms of the CAFO shall govern.

30. Within 30 days of the effective date of this CAFO, Respondent shall permanently destroy any defeat device (i.e., straight pipes, EGR delete kits, etc.), including electronic tuning devices, remaining in Respondent's inventory and/or possession, by compacting or crushing the defeat devices and all of the associated parts and components to render them useless. Respondent shall submit videographic and photographic evidence in the next required report in accordance with paragraph 32.

31. Within 45 days of the effective date of this CAFO, Respondent shall contact all customers on work orders cited in the February 7, 2019 FOV using the Service Recall Letter in Appendix B. Respondent shall provide all parts and labor associated with work performed in response to the Service Recall Letter at no cost to the customer. Respondent shall submit to EPA in the next required report in accordance with paragraph 32 the following information regarding work performed on each vehicle in response to the Service Recall Letter: (1) vehicle owner with contact name, address, and phone number; (2) vehicle make and model and model year; (3) engine manufacturer; (4) engine size (horsepower); (5) emission control equipment reinstalled (e.g., catalyst, DPF, EGR, SCR); (6) cost of reinstallation of emission control equipment per

vehicle (separate parts from labor costs); and (7) copies of all invoices for purchase of reinstallation equipment.

32. Respondent must submit notices and reports required by paragraphs 30 and 31 of this CAFO via electronic mail to yarbrough.cody@epa.gov and r5airenforcement@epa.gov every six months (by the 30th of the month that follows each six-month period) for two years after the effective date of this CAFO.

33. In each report that Respondent submits as provided by this CAFO, it must certify that the report is true and complete by including the following statement signed by one of its officers:

> I certify that I am familiar with the information in this document and that, based on my inquiry of those individuals responsible for obtaining the information, it is true and complete to the best of my knowledge. I know that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

Civil Penalty

34. Based on analysis of the factors specified in Section 205(c) of the CAA, 42 U.S.C. § 7524(c), the facts of this case, Respondent's ability to pay, and Respondent's cooperation and prompt return to compliance, Complainant has determined that an appropriate civil penalty to settle this action is $55,000. EPA has reduced the civil penalty on the basis of information provided by Respondent to support its claims that it is unable to pay a higher civil penalty and remain in business.

35. Respondent must make the payment by an on-line payment. To pay on-line, go to www.pay.gov. Use the Search Public Forms option on the tool bar and enter SFO 1.1 in the search field. Open the form and complete the required fields.

36. Respondent must send a notice of payment that states Respondent's name and the docket number of this CAFO to EPA at the following electronic mail addresses when it pays the penalty: r5airenforcement@epa.gov; yarbrough.cody@epa.gov; dawson.matthew@epa.gov; and whitehead.ladawn@epa.gov.

37. This civil penalty is not deductible for federal tax purposes.

38. If Respondent does not timely pay the civil penalty, EPA may request the Attorney General of the United States to bring an action to collect any unpaid portion of the penalty with interest, nonpayment penalties and the United States enforcement expenses for the collection action under Section 205(c)(6) of the CAA, 42 U.S.C. § 7424(c)(6). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

39. Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury pursuant to 26 U.S.C. § 6621(a)(2). Respondent must pay the United States enforcement expenses, including but not limited to attorneys' fees and costs incurred by the United States for collection proceedings. In addition, Respondent must pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue. This nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter. 42 U.S.C. § 7413(d)(5).

General Provisions

40. The parties consent to service of this CAFO by e-mail at the following e-mail addresses: dawson.matthew@epa.gov (for Complainant), and stewart@hassancables.com (for Respondent).

41. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in this CAFO.

42. The CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

43. This CAFO does not affect Respondent's responsibility to comply with the CAA and other applicable federal, state and local laws. Except as provided in paragraph 41, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

44. Respondent certifies that it is complying fully with Section 203(a)(3)(A) and (a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(A) and (a)(3)(B).

45. This CAFO constitutes an enforcement action for purposes of considering Respondent's compliance history under Section 205 of the CAA, 42 U.S.C. § 7524, in any subsequent enforcement actions.

46. The terms of this CAFO bind Respondent, its successors and assigns.

47. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

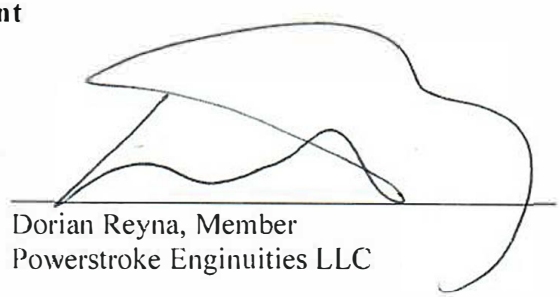
48. Each party agrees to bear its own costs and attorneys' fees in this action.

49. This CAFO constitutes the entire agreement between the parties.

Consent Agreement and Final Order
In the Matter of: **Powerstroke Enginuities LLC**
Docket No. CAA-05-2020-0029

Powerstroke Enginuities LLC, Respondent

6/25/2020
Date



Dorian Reyna, Member
Powerstroke Enginuities LLC

United States Environmental Protection Agency, Complainant

MICHAEL HARRIS
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Date

Michael D. Harris
Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 5

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

ANN COYLE Digitally signed by ANN COYLE Date: 2020.08.11 16:18:06 -05'00'

Date

Ann L. Coyle
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 5

Appendix A:

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 that are in the engine (e.g., fuel injection, exhaust gas recirculation), and those that are in the exhaust (e.g., filters, catalytic convertors, and 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 conduct[ii] 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 and that system is 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.

C. **Emissions Testing:**[v] Respondent generally has a reasonable basis if the conduct:

(1) alters a vehicle, engine, or piece of equipment;

(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.

D. **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]

E. **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]

ENDNOTE

[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 should 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, 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 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 C. 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 D: 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, or 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 E: 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.

Appendix B
Service Recall Letter

NAME
COMPANY (IF APPLICABLE)
STREET ADDRESS
CITY STATE XXXXXX

Re: Service Recall Letter

To Whom It May Concern:

Our records indicate your vehicle(s) (listed below) was serviced by Power Stroke Enginuities (PSE) at least once between September 1, 2015 and June 25, 2018. During your service appointment we removed emission control devices from your vehicle and/or tampered with your vehicle's emission control system.

We are offering to reinstall all emission control devices and restore the emission control system to its original manufacturer's specification at no cost to you.

Vehicle Make Model Year
VIN/License (if available from records)
Any Other Discerning Information

PSE is offering this service under the settlement of the United States Environmental Protection Agency's enforcement action against PSE for violations of Sections 203(a)(3)(A) and 203(a)(3)(B) of the Clean Air Act, by removing emission control devices and tampering the vehicle's emission control system on heavy-duty diesel engines.

Please call [Phone Number] or [any other ways to schedule an appointment?] to schedule your appointment to bring your vehicle in and have us reinstall the emission controls. If you have any questions regarding this letter, please ask for [PSE Representative].

Thank you,
[PSE Representative]