



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

SEP 30 2019

REPLY TO THE ATTENTION OF

VIA E-MAIL
RETURN RECEIPT REQUESTED

Art Martinez, Owner
PSP Diesel, LLC
1215 Iowa Street
South Houston, Texas, 77587
Email: art@pspdiesel.com

Dear Mr. Martinez:

Enclosed is a file-stamped Consent Agreement and Final Order (CAFO) which resolves PSP Diesel, LLC, docket no. CAA-05-2019-0037. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on September 30, 2019.

Pursuant to paragraph 35 of the CAFO, PSP Diesel, LLC must pay the civil penalty in 4 installments with interest within the specified time frame. Your on-line payment must display the case name and case docket number.

Please direct any questions regarding this case to Andre Daugavietis, Associate Regional Counsel at (312) 886-6663.

Sincerely,



Nathan Frank, Chief
Air Enforcement and Compliance Assurance Section (IL/IN)

Enclosure

cc: Ann Coyle, Regional Judicial Officer/via electronic mail
Regional Hearing Clerk/via electronic mail
Andre Daugavietis, Region 5, ORC/via electronic mail
Steve Thompson, Region 6, ECDA /via electronic mail

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:

PSP Diesel, LLC
Art Martinez
South Houston, Texas,

Respondents.



Docket No. CAA-05-2019-0037

Proceeding to Assess a Civil Penalty
Under Section 205(c)(1) of the Clean Air Act,
42 U.S.C. § 7524(c)(1)

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. § 7524(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 Acting Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency (EPA), Region 5.

3. Respondents are PSP Diesel LLC (PSP), a company doing business in Texas and across the United States through online retail sales, and Art Martinez, owner and operator of PSP.

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. Respondents consent 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. Respondents admit the jurisdictional allegations in this CAFO and neither admit nor deny the factual allegations in this CAFO.

8. Respondents waive any 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 their right to appeal this CAFO.

Statutory and Regulatory Background

9. Section 203(a)(1) of the CAA prohibits a vehicle manufacturer from selling a new motor vehicle in the United States unless the vehicle is covered by a certificate of conformity. 42 U.S.C. § 7522(a)(1).

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

11. “Motor vehicle engine” means an engine that is designed to power a motor vehicle.

12. EPA issues certificates of conformity to motor vehicle and motor vehicle engine manufacturers under Section 206(a) of the CAA, 42 U.S.C. § 7525(a), to certify that a particular group of motor vehicles or motor vehicle engines conforms to applicable EPA requirements governing motor vehicle emissions.

13. EPA promulgated emissions standards, under Section 202 of the CAA, 42 U.S.C. § 7521, for particulate matter (PM), nitrogen oxides (NO_x), hydrocarbons (HC), and

other pollutants applicable to motor vehicles and motor vehicle engines, including standards for heavy-duty diesel engines (HDDE). *See generally* 40 C.F.R. Part 86.

14. EPA promulgated regulations for motor vehicles manufactured after 2007 that require HDDE motor vehicles to have onboard diagnostic systems to detect various emission control device parameters and vehicle operations. *See* Section 202(m) of the CAA and 42 U.S.C. § 7521(m).

15. To meet the emission standards in 40 C.F.R. Part 86 and qualify for a certificate of conformity, HDDE motor vehicle manufacturers may utilize devices and elements of design such as Exhaust Gas Recirculation systems (EGRs), Diesel Oxidation Catalysts (DOCs), Diesel Particulate Filters (DPFs), and/or Selective Catalytic Reduction systems (SCRs).

16. Modern HDDE motor vehicles are equipped with electronic control modules (ECMs). ECMs continuously monitor engine and other operating parameters and control the emission control devices and elements of design, such as the engine fueling strategy, EGR system, DOC, DPF, and SCR system.

17. Under Section 202(m) of the CAA, 42 U.S.C. § 7521(m), EPA promulgated regulations for motor vehicles manufactured after 2007 that require HDDE motor vehicles to have numerous devices or elements of design that, working together, can detect problems with the vehicle's emission-related systems, alert drivers to these problems, and store electronically-generated malfunction information. 40 C.F.R. §§ 86.005-17, 86.007-17, 86.1806-05. These devices or elements of design are referred to as "onboard diagnostic systems" or "OBD" systems.

18. Section 203(a)(3) of the CAA makes it unlawful for: "(A) 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 purchasers, 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; or (B) 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 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.”

19. EPA may administratively assess a civil penalty 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).

20. EPA may assess a civil penalty of up to \$3,750 for each applicable CAA violation that occurred after December 6, 2013, through November 2, 2015, and up to \$4,735 for each applicable CAA violation that occurred after November 2, 2015, and assessed on or after February 6, 2019, 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

21. Respondents own and operate PSP Diesel, a limited liability company organized under the laws of the state of Texas.

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

23. On September 22, 2016, EPA’s National Enforcement Investigations Center (NEIC) inspectors conducted a CAA inspection of PSP’s repair shop located at 1402 Missouri

Street in South Houston, Texas. Inspectors documented evidence that PSP removed emission control components from HDDE motor vehicles and evidence that PSP sold and installed parts and components, such as Flo~Pro race pipes, that remove, bypass, defeat, or render inoperative the DOC, DPF and/or SCR emission control systems on registered HDDE motor vehicles, such as Ford and General Motor trucks with Power Stroke and Duramax engines, and ECM tuning products, such as the SCT Performance 7015 X4 Power Flash Programmer, that through the application of custom 'tunes,' have a principal effect of bypassing, defeating, or rendering inoperative HDDE emission control devices or elements of design.

24. On March 9, 2018, EPA sent a written Request for Information (Request) to Respondent PSP pursuant to Section 208 of the CAA addressed to Respondent's repair shop located at 1402 Missouri Street in South Houston, Texas. The Request requested information related to Respondents' purchase, production, sale, distribution, installation, and advertisement of diesel engine motor vehicle and diesel engine parts or components between January 1, 2017 and March 9, 2018.

25. In response to the Request and a July 10, 2018 e-mail sent by EPA to Respondents requesting additional and clarifying information, on May 30, 2018 and August 28, 2018, Respondents provided invoices and documentation related to their purchases, sales, and work that impacted emission control devices and elements of design on HDDE trucks used on public roads.

26. Based on the information provided in Respondents' responses to EPA's Request, between January 1, 2017 and March 16, 2018, Respondents sold and/or installed at least 136 parts or components manufactured by companies such as No Limit Fabrication and Flo~Pro Performance Exhaust that remove, bypass, defeat, or render inoperative the EGR, DOC, DPF,

and/or SCR systems on HDDE trucks. Respondents also sold and/or installed at least 138 parts or components consisting of ECM tuning products manufactured by companies such as BD-POWER, EDGE, EFILive, H&S, PPEI/EZLYNK, and SCT that have a principal effect of bypassing, defeating, or rendering inoperative HDDE emission control devices or elements of design. Additionally, Respondents sold and/or installed over 100 “ODAWG’s Diesel Ported Intakes” and “Re-Route Kits;” which have a principle effect of rendering inoperative the EGR on 2003-2007 Ford 6.0L Power Stroke engines.

27. The parts and/or components sold, offered for sale, and/or installed by PSP are intended for “motor vehicles” as defined by Section 216(2) of the CAA, 42 U.S.C. § 7550(2). Specifically, the parts and/or components are designed for use on makes and models of HDDE motor vehicles, including Ford Power Stroke diesel engine pick-up trucks, for which their respective manufacturers have obtained COCs establishing compliance with CAA emissions standards.

28. EPA alleges that, in violation of Section 203(a)(3)(A) of the CAA, 42 U.S.C. § 7522(a)(3)(A), Respondents knowingly removed and/or rendered inoperative devices or elements of design installed in or on HDDE motor vehicles by installing or modifying software on HDDE ECMs to allow the HDDEs to operate without EGR, DOC, DPF, and/or SCR systems and installing parts or components that removed and/or bypassed EGR, DOC, DPF, and/or SCR systems.

29. EPA alleges that, in violation of Section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B), Respondents sold, offered to sell, and/or installed at least 380 parts or components (known as defeat devices), intended for use with, or as part of, a motor vehicle or motor vehicle engine, where a principal effect of the part or component was to bypass, defeat or

render inoperative elements of design that control emissions, such as the engine fueling strategy, EGR, DOC, DPF, SCR, OBD systems and/or other elements of design on motor vehicles and motor vehicle engines, and that Respondents knew or should have known that such part or component (defeat device) was being offered for sale or installed for such use or put to such use.

30. On September 28, 2018, EPA issued a Finding of Violation (September 28, 2018 FOV) to PSP alleging violations of CAA §§ 203(a)(3)(A) and 203(a)(3)(B). 42 U.S.C. §§ 7522(a)(3)(A) and 7522(a)(3)(B).

31. On November 14, 2018, Respondents and their counsel spoke with EPA representatives by phone to discuss the September 28, 2018 FOV and resolution of this matter. Respondent Art Martinez stated that all parts and components that EPA cited in the September 28, 2018 FOV have been discontinued.

32. Respondent Art Martinez certifies that as of May 14, 2019, PSP Diesel, LLC does not manufacture, sell, offer to sell, or install any part or component that bypasses, defeats, and/or renders inoperative emission control devices or elements of design that were installed on or in motor vehicles or motor vehicle engines to comply with the emission standards promulgated under Title II of the CAA.

33. In agreeing to the terms of this CAFO, including the amount of the civil penalty below, EPA is relying on Respondents' certifications.

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, Respondents' ability to pay, the compliance steps that Respondents have taken and agree to take, Respondents' certifications set forth herein, and Respondents' cooperation in resolving this matter, Complainant has determined that an

appropriate civil penalty to settle this action is \$30,736. EPA has reduced the civil penalty on the basis of information provided by Respondents to support their claims that they are unable to pay a higher civil penalty and remain in business.

35. Respondents must pay the \$30,736 civil penalty in 4 installments with interest as follows: \$8,000 within 30 days of the effective date of this CAFO; \$8,000 within 120 days of the effective date of this CAFO; \$8,000 within 210 days of the effective date of this CAFO; and \$6,981.74 within 300 days of the effective date of this CAFO. Respondents must pay the installments 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. Respondents must send a notice of payment that states Respondents' names and the docket number of this CAFO to EPA at the following addresses when it pays each installment of the penalty:

Attn: Compliance Tracker (ECA-18J)
Air Enforcement and Compliance Assurance Branch
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

Andre Daugavietis (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

Regional Hearing Clerk (E-19J)
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

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

38. If Respondents do not pay timely any installment payment as set forth above, the entire unpaid balance of the civil penalty and any amount required by paragraph 39, below, shall become due and owing upon written notice by EPA to Respondents of the delinquency. 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. § 7524(c)(6)(B). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

39. Respondents 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). Respondents 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, Respondents 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. § 7524(c)(6)(B).

Other Conditions

40. By signing this Consent Agreement, Respondents certify that from the date of their signature, (i) they will not manufacture, sell, offer for sale, 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 (ii) they 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. Toward this end, the Respondents agree to comply with the Compliance Plan attached as

Appendix A of this CAFO. This provision applies to Respondent Art Martinez, even if doing business other than under PSP Diesel, LLC.

41. Respondents certify that as of May 31, 2019 they have not had, and will not have, any defeat device(s) in their inventory and/or possession, including but not limited to ECM tuning products, EGR block plates, etc.

42. Within 14 calendar days from the effective date of this CAFO, Respondents shall post a publicly-accessible announcement about Respondents' settlement with EPA on Respondents' current websites, including "pspdiesel.com" and "pspmotorsports," and Respondents' social media pages, including, but not limited to, all Facebook, Twitter, Pinterest, and Instagram accounts associated with PSP Diesel, LLC. The announcement shall remain posted for at least 30 calendar days from the date the announcement is posted. Respondents shall use the text contained in Appendix B (Announcement), or another notice reviewed and approved by EPA, to provide such announcement. Respondents shall provide EPA with proof of posting the announcement within 30 calendar days from the effective date of this CAFO.

43. Failure to comply with Paragraph 40 of this CAFO, including the requirement to follow the Compliance Plan in Appendix A, may constitute a violation of CAA Section 203(a)(3) and Respondents could be subject to penalties of up to \$4,735 per violation.

General Provisions

44. Respondents waive any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondents may have with respect to any issue of fact or law set forth in this Order, including any right of judicial review under Section 307(b)(1) of the Clean Air Act, 42 U.S.C. § 7607(b)(1).

45. The parties consent to service of this CAFO by e-mail at the following e-mail addresses: daugavietis.andre@epa.gov (for Complainant), and art@pspdiesel.com (for Respondent). The parties waive their right to service by the methods specified in 40 C.F.R. § 22.6.

46. This CAFO resolves only Respondents' liability for federal civil penalties for the violations alleged in this CAFO.

47. The effect of the settlement described in paragraph 46, above, is conditioned upon the accuracy of Respondents' representations to EPA, as memorialized in paragraph 32 of this CAFO.

48. 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.

49. This CAFO does not affect Respondents' responsibility to comply with the CAA and other applicable federal, state and local laws. Except as provided in paragraph 46, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

50. Respondents certify that they are complying fully with CAA § 203(a)(3)(A) and CAA § 203(a)(3)(B).

51. Nothing in this CAFO shall be deemed as an admission in any respect to or by any third party.

52. This CAFO constitutes an "enforcement response" as that term is used in EPA's Clean Air Act Stationary Civil Penalty Policy to determine Respondents' "full compliance history" under Section 205(b) of the CAA, 42 U.S.C. § 7524(b).

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

54. 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.

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

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

57. This CAFO shall become effective after execution of the Final Order by the Regional Judicial Officer and filing with the Regional Hearing Clerk.

**PSP Diesel, LLC and Art Martinez
Respondents**

09-27-2019

Date



Art Martinez, Owner
PSP Diesel, LLC

United States Environmental Protection Agency, Complainant

9-27-19

Date

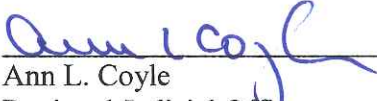
Sara Brunema
for Michael D. Harris
Acting Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 5

Consent Agreement and Final Order
In the Matter of: PSP Diesel, LLC and Art Martinez
Docket No. CAA-05-2019-0037

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.

9/27/19
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."

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 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}

^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, 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:

Announcement

On [Date], PSP Diesel, LLC entered into a settlement with the United States Environmental Protection Agency to resolve alleged violations of Sections 203(a)(3)(A) and 203(a)(3)(B) of the Clean Air Act, by tampering with the emission control devices and selling, offering to sell, and/or installing defeat devices for use with heavy-duty diesel engines.

By signing a consent agreement with U.S. EPA, PSP Diesel, LLC and Art Martinez have certified that they will not manufacture, sell, offer for sale, 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 (ii) they 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.

PSP Diesel, LLC will pay a civil penalty amount of \$30,736 and follow a compliance plan to ensure ongoing compliance with the Clean Air Act requirements at issue.

If you have any questions regarding this announcement, please ask for Art Martinez.

Thank you,
Art Martinez
PSP Diesel, LLC

Consent Agreement and Final Order
In the matter of: PSP Diesel, LLC
Docket Number: CAA-05-2019-0037

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, docket number CAA-05-2019-0037, which was filed on 9/30/2019, in the following manner to the following addressees:

Copy by E-mail to Respondent: Art Martinez
art@pspdiesel.com

Copy by E-mail to Attorney for Complainant: Andre Daugavietis
daugavietis.andre@epa.gov

Copy by E-mail to Attorney for Respondent: Kyle B. Beall
kyle@beall.law

Copy by E-mail to Regional Judicial Officer: Ann Coyle
coyle.ann@epa.gov

Dated:

September 30, 2019 
LaDawn Whitehead
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5