

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
BEFORE THE ADMINISTRATOR**

**In the Matter of:** )  
 )  
**Borla Performance Industries, Inc.,** ) **Docket No. CAA-R9-2020-0044**  
 )  
**Respondent.** )

**BUSINESS CONFIDENTIALITY ASSERTED**

The exhibits submitted with Respondent’s First Amended Prehearing Exchange contain material claimed to be confidential business information (“CBI”) pursuant to 40 C.F.R. § 2.203(b). The material claimed as CBI are Respondent’s Exhibits RX 85-98. These exhibits contain specific product testing information. These exhibits are therefore filed under seal pursuant to 40 C.F.R. § 22.5(d).

A complete set of all the exhibits and a set from which the exhibits containing CBI are omitted, have been filed with the Office of Administrative Law Judges. If you have any questions, please contact Kent Mayo at (202) 255-3753, or at [kent.mayo@bakerbotts.com](mailto:kent.mayo@bakerbotts.com)

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
BEFORE THE ADMINISTRATOR**

**In the Matter of:** )  
 )  
**Borla Performance Industries, Inc.,** ) **Docket No. CAA-R9-2020-0044**  
 )  
**Respondent.** )

**RESPONDENT’S FIRST AMENDED PREHEARING EXCHANGE**

Borla Performance Industries, Inc. (“Borla” or “Respondent”), through counsel, files this First Amended Prehearing Exchange, consistent with section 22.19 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (“Consolidated Rules”), and with the Prehearing Order issued by the Presiding Officer on October 19, 2020. Respondent may amend or supplement this First Amended Prehearing Exchange as provided by sections 22.19(f) and 22.22(a)(1) of the Consolidated Rules.

Pursuant to the Prehearing Order issued on October 19, 2020, supplements to prehearing exchange submissions may be made without an accompanying Motion to Supplement the Prehearing Exchange if the scheduled hearing is more than 60 days after the date of the supplemental filing. The hearing has not been scheduled. As such, Respondent believes this filing is timely.

Respondent is adding the following potential witness to its Prehearing Exchange:

Jason Isley: Mr. Isley is an active participant in amateur road racing and autocross and has won several Sports Car Club of America national championships since he started competing in 1993. Mr. Isley was also previously employed at Racer Media & Marketing Inc., North America’s largest, independent general interest motorsports publisher. Mr. Isley’s wife, Jennifer

Isley, is also an accomplished racer. Mr. and Mrs. Isley own a converted racing vehicle, a Mazda Miata purchased as a street vehicle and converted by Mr. and Mrs. Isley to a racing-only vehicle with aftermarket parts including a Borla exhaust system part that was included among the Borla parts alleged to be in violation in the instant case. Mr. Isley may testify regarding the steps necessary to convert a street vehicle to a racing vehicle, as well as the specific steps taken to convert the Isley's Miata into a racing-only vehicle, including the installation of the Borla exhaust part, removal of safety and comfort equipment, and other changes made to complete the conversion. Mr. Isley may also testify regarding the use of the vehicle including the transportation of the racing vehicle to and from events/repairs on a trailer and observations regarding other vehicles at the races he has attended.

Respondent is also adding 18 exhibits to its Prehearing Exchange. The RX designations for these exhibits and a corresponding explanation supporting their addition is as follows:

RX 81: This is a new exhibit providing an example of an original equipment manufacturer ("OEM") selling Borla aftermarket parts with disclaimers.

RX 82: This is a new exhibit providing an example of an OEM selling aftermarket parts with disclaimers.

RX 83: This is a new exhibit to provide a description, with photos, of the installation of a Borla part on a racing vehicle.

RX 84: This is a new exhibit to provide photographs of a racing vehicle with Borla parts installed.

RX 85: This is a new exhibit providing additional supporting documentation for emissions testing described in RX 21 and Respondent's Prehearing Exchange at pages 32-33. This document consists of the Vehicle Check-in Form for the testing. Consistent with the treatment of RX 21, this exhibit is being designated as CBI and is therefore filed under seal pursuant to 40 C.F.R. § 22.5(d).

RX 86: This is a new exhibit providing additional supporting documentation for emissions testing described in RX 21 and Respondent's Prehearing Exchange at pages 32-33. This document

consists of the OBD Report, As Received. Consistent with the treatment of RX 21, this exhibit is being designated as CBI and is therefore filed under seal pursuant to 40 C.F.R. § 22.5(d).

RX 87: This is a new exhibit providing additional supporting documentation for emissions testing described in RX 21 and Respondent's Prehearing Exchange at pages 32-33. This document consists of the OBD Report, As Received @2500 RPM. Consistent with the treatment of RX 21, this exhibit is being designated as CBI and is therefore filed under seal pursuant to 40 C.F.R. § 22.5(d).

RX 88: This is a new exhibit providing additional supporting documentation for emissions testing described in RX 21 and Respondent's Prehearing Exchange at pages 32-33. This document consists of the OBD Report, Clear. Consistent with the treatment of RX 21, this exhibit is being designated as CBI and is therefore filed under seal pursuant to 40 C.F.R. § 22.5(d).

RX 89: This is a new exhibit providing additional supporting documentation for emissions testing described in RX 21 and Respondent's Prehearing Exchange at pages 32-33. This document consists of the Post Mileage Accumulation. Consistent with the treatment of RX 21, this exhibit is being designated as CBI and is therefore filed under seal pursuant to 40 C.F.R. § 22.5(d).

RX 90: This is a new exhibit providing additional supporting documentation for emissions testing described in RX 21 and Respondent's Prehearing Exchange at pages 32-33. This document consists of the Post Mileage Accumulation @2500 RPM. Consistent with the treatment of RX 21, this exhibit is being designated as CBI and is therefore filed under seal pursuant to 40 C.F.R. § 22.5(d).

RX 91: This is a new exhibit providing additional supporting documentation for emissions testing described in RX 21 and Respondent's Prehearing Exchange at pages 32-33. This document

consists of the Road Load Determination Printouts. Consistent with the treatment of RX 21, this exhibit is being designated as CBI and is therefore filed under seal pursuant to 40 C.F.R. § 22.5(d).

RX 92: This is a new exhibit providing additional supporting documentation for emissions testing described in RX 21 and Respondent's Prehearing Exchange at pages 32-33. This document consists of the FTP-74 Test Report. Consistent with the treatment of RX 21, this exhibit is being designated as CBI and is therefore filed under seal pursuant to 40 C.F.R. § 22.5(d).

RX 93: This is a new exhibit providing additional supporting documentation for emissions testing described in RX 21 and Respondent's Prehearing Exchange at pages 32-33. This document consists of the Canister Load Report. Consistent with the treatment of RX 21, this exhibit is being designated as CBI and is therefore filed under seal pursuant to 40 C.F.R. § 22.5(d).

RX 94: This is a new exhibit providing additional supporting documentation for emissions testing described in RX 21 and Respondent's Prehearing Exchange at pages 32-33. This document consists of the FTP-75 Test Report. Consistent with the treatment of RX 21, this exhibit is being designated as CBI and is therefore filed under seal pursuant to 40 C.F.R. § 22.5(d).

RX 95: This is a new exhibit providing additional supporting documentation for emissions testing described in RX 21 and Respondent's Prehearing Exchange at pages 32-33. This document consists of the US06 Test Report. Consistent with the treatment of RX 21, this exhibit is being designated as CBI and is therefore filed under seal pursuant to 40 C.F.R. § 22.5(d).

RX 96: This is a new exhibit providing additional supporting documentation for emissions testing described in RX 21 and Respondent's Prehearing Exchange at pages 32-33. This document consists of the SC03 Test Report. Consistent with the treatment of RX 21, this exhibit is being designated as CBI and is therefore filed under seal pursuant to 40 C.F.R. § 22.5(d).

RX 97: This is a new exhibit providing additional supporting documentation for emissions testing described in RX 21 and Respondent's Prehearing Exchange at pages 32-33. This document consists of the OBD Report, Post Test. Consistent with the treatment of RX 21, this exhibit is being designated as CBI and is therefore filed under seal pursuant to 40 C.F.R. § 22.5(d).

RX 98: This is a new exhibit providing additional supporting documentation for emissions testing described in RX 21 and Respondent's Prehearing Exchange at pages 32-33. This document consists of the OBD Report, Post Test @2500 RPM. Consistent with the treatment of RX 21, this exhibit is being designated as CBI and is therefore filed under seal pursuant to 40 C.F.R. § 22.5(d).

Respondent is also filing its First Updated Prehearing Exchange Exhibit Index (RX 00-2) along with the new exhibits.

Dated August 12, 2021

Respectfully submitted,



---

Kent Mayo  
BAKER BOTTS L.L.P.  
700 K Street, NW  
Washington, D.C. 20001  
Phone: (202) 639-1122  
[kent.mayo@bakerbotts.com](mailto:kent.mayo@bakerbotts.com)

Erik S. Jaffe  
SCHAERR | JAFFE LLP  
1717 K St. NW Suite 900  
Washington, D.C. 20006  
(202) 787-1060  
[ejaffe@schaerr-jaffe.com](mailto:ejaffe@schaerr-jaffe.com)

Julie Cress  
BAKER BOTTS L.L.P.  
101 California Street,  
Ste. 3600  
San Francisco, CA 94111  
Phone: (415) 291-6242  
[Julie.cress@bakerbotts.com](mailto:Julie.cress@bakerbotts.com)

**COUNSEL FOR  
RESPONDENT**

## CERTIFICATE OF SERVICE

I, Kent Mayo, hereby certify that on this twelfth day of August 2021, that a true and correct electronic copy of the foregoing Respondent's First Amended Prehearing Exchange and accompanying exhibits was filed and served on the Presiding Officer this day through the Office of Administrative Law Judges' E-Filing System, with the exception of certain exhibits that have been filed under seal. I further certify that a copy of this First Amended Prehearing Exchange with exhibits filed under seal was provided to the Presiding Officer via a file-share system established by the Office of Administrative Law Judges. I further certify that an electronic copy of this First Amended Prehearing Exchange and accompanying exhibits was sent this day by e-mail and links to a file transfer system to the following e-mail addresses for service on Respondent's counsel:

Mark Palermo  
Attorney-Advisor  
United States Environmental Protection Agency, Office of Civil Enforcement  
[palermo.mark@epa.gov](mailto:palermo.mark@epa.gov)

Nathaniel Moore  
Attorney-Advisor  
United States Environmental Protection Agency, Region 9, Office of Regional Counsel  
[moore.nathaniel@epa.gov](mailto:moore.nathaniel@epa.gov)



---

Kent Mayo