

Enclosure

CLEAN AIR ACT VEHICLE AND ENGINE EXPEDITED SETTLEMENT AGREEMENT

DOCKET NO. CAA-04-2019-9968(b)

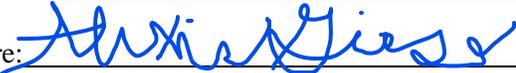
Respondent: Mountain Power Performance
1470 Smokey Park Highway
Candler, NC 28715

1. This Clean Air Act Vehicle and Engine Expedited Settlement Agreement (Agreement) is being entered into by the United States Environmental Protection Agency, Region 4 (EPA), by its delegated official, the Director of the Enforcement and Compliance Assurance Division, and by Respondent, pursuant to Section 205(c)(1) of the Clean Air Act (CAA), 42 U.S.C. § 7524(c)(1).
2. The parties enter into this Agreement in order to settle the civil violation(s) discovered as a result of the inspection(s) specified in Table 1, attached, incorporated into this Agreement by reference. The civil violation(s) that are the subject of this Agreement are described in Table 2, attached, incorporated into this Agreement by reference, regarding the vehicle(s)/engine(s) specified therein.
3. Respondent admits to being subject to the CAA and its associated regulations and that the EPA has jurisdiction over the Respondent and the Respondent's conduct described in Table 2. Respondent neither admits nor denies the findings detailed therein, and waives any objections Respondent may have to the EPA's jurisdiction.
4. Respondent certifies that payment of the penalty has been made in the amount of **\$500**. Respondent has followed the instructions in "CAA Vehicle and Engine Expedited Settlement Agreement Instructions," attached, incorporated into this Agreement by reference. Respondent certifies that the required remediation, specified in Table 3 and incorporated into this Agreement by reference, has been carried out.
5. The findings resulting from the inspection(s) and alleged violation(s) are set forth in Table 1 and Table 2. Upon signing and returning this Agreement to the EPA, Respondent consents to the terms of this Agreement without further notice. Respondent acknowledges that this Agreement is binding on the parties signing below, and becomes effective on the date of the EPA Delegated Official's approving signature.
6. The parties consent to service of this Agreement by electronic delivery at the Respondent's e-mail noted below.

APPROVED BY RESPONDENT:

Name (print): _____

Title (print): _____

Signature:  _____

Email (print): _____

Date: _____

APPROVED BY EPA:

Date: _____

Delegated Official: Carol L. Kemker, Director
Enforcement and Compliance Assurance Division

Table 1 - Information Collection	
Date Information Collected:	Docket Number:
7/31/2017	C A A - 0 4 - 2 0 1 9 -
Respondent Location:	
1470 Smokey Park Highway	9 9 6 8 (b)
City:	Inspector Names:
Candler	Bill Squier, Martha Hamre
State: Zip Code:	EPA Approving Official:
NC 28715	Carol L. Kemker
Respondent:	EPA Enforcement Contact:
Mountain Power Performance	Carrie Griffith

Table 2 - Description of Violations and Vehicles/Engines					
<p>During an inspection conducted in July 2017, the EPA obtained evidence that Mountain Power Performance (Respondent) tampered with the vehicles/engines listed below and sold defeat devices, products listed below which render inoperative emission control systems on EPA-certified motor vehicles and/or motor vehicle engines. It is a violation of Section 203(a)(3)(A) of the CAA, 42 U.S.C. § 7522(a)(3)(A) to tamper with EPA-certified vehicles and engines. It is a violation of Section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B) to sell, offer for sale, or install a defeat device intended for use with EPA-certified motor vehicles and engines. Based on information summarized below, EPA finds that Respondent has committed 39 violations of Section 203(a)(3) of the CAA, 42 U.S.C. § 7522(a)(3).</p>					
Tampered Motor Vehicle/Engine Violations					
Invoice Date	Invoice	Model Year	Make	Model	Tampered Emission Parts or Components
4/4/2017	809	2010	Ford	F250 Super Duty	EGR
7/1/2017	910	2007	Ford	F550 Super Duty	EGR
7/6/2017	987	2012	Dodge	RAM 3500	EGR
7/7/2017	991	2005	Chevrolet	Silverado 3500	EGR
7/13/2017	1002	2013	Dodge	RAM 2500 HD SLT	Aftertreatment
7/22/2017	992	2008	Mercedes	Freightliner M2 Business Class	EGR
7/26/2017	1023	2011	Dodge	RAM 2500	EGR, Aftertreatment
7/25/2017	1024	2006	Ford	Econoline E350 Super Duty	Aftertreatment
7/25/2017	1025	2014	Chevrolet	Silverado 2500 HD LTZ	EGR
7/27/2017	1012	2015	Dodge	RAM 550 HD SLT	EGR, Aftertreatment
4/21/2017	835	2011	Dodge	RAM C&C 3500 HD	Aftertreatment

Defeat Device Violations					
Defeat Device Description	Invoice	Make	Quantity	Sold, installed, and/or offered for sale?	Date(s)
EGR Reroute	809	MPP	1	Sale	4/4/2017
Single Tune	809	H&S	1	Sale	4/4/2017
EGR Reroute	910	MPP	1	Sale	7/1/2017
Tuning	910	MPP	1	Sale	7/1/2017
EGR Reroute	987	MPP	1	Sale	7/6/2017
EFI Live Single Tune	987	HPP	1	Sale	7/6/2017
Single Tow Tune	991	MPP	1	Sale	7/7/2017
EGR Reroute	991	MPP	1	Sale	7/7/2017
EFI Live Tuning	1002	HPP	1	Sale	7/13/2017
Turbo Back Exhaust Kit	1002	Jamo	1	Sale	7/13/2017
EGR Delete Plates	992	MPP	1	Sale	7/22/2017
ECM Custom Tuning	992	MPP	1	Sale	7/22/2017
EFI Live Tuning	1023	HPP	1	Sale	7/26/2017
Turbo Back Exhaust	1023	Jamo	1	Sale	7/26/2017
EGR Reroute	1023	MPP	1	Sale	7/26/2017
EGR Reroute	1024	MPP	1	Sale	7/25/2017
Turbo Back Exhaust Kit	1024	N/A	1	Sale	7/25/2017
EFI Live Custom Tuning	1025	PPEI	1	Sale	7/25/2017
EGR Reroute	1025	MPP	1	Sale	7/25/2017
EFI Live Tuning	1012	HPP	1	Sale	7/27/2017
Turbo Back Exhaust Kit	1012	Flo Pro	1	Sale	7/27/2017
EGR Reroute	1012	MPP	1	Sale	7/27/2017
Single Flash ECM	835	MPP	1	Sale	4/21/2017
Turbo Back Exhaust	835	Flo Pro	1	Sale	4/21/2017
Custom Tow Tune	816	SCT	1	Sale	4/3/2017
EGR Reroute	816	MPP	1	Sale	4/3/2017
EGR Reroute	1034	MPP	1	Sale	7/28/2017
Single Tow Tune	1034	MPP	1	Sale	7/28/2017

Table 3 - Penalty and Required Remediation	
Penalty	\$500 ¹
Required Remediation	In addition to paying the monetary penalty, Respondent must cease and refrain from selling, offering for sale, or installing any device that defeats, bypasses, or otherwise renders inoperative an emission component of any motor vehicle or engine regulated by the EPA. Respondent must cease and refrain from tampering with emission control systems on EPA-certified motor vehicles and engines. Respondent acknowledges receipt of the Compliance Plan attached as Appendix A.

¹ The penalty amount has been determined after consideration of the Respondent's Ability to Pay claim.

CAA VEHICLE AND ENGINE EXPEDITED SETTLEMENT AGREEMENT INSTRUCTIONS

Within 30 days from your receipt of the Agreement, you must pay the penalty as described below:

Payment method 1 – Preferred (electronic): Pay online through the Department of the Treasury using WWW.PAY.GOV. In the Search Public Form field, enter SFO 1.1, click EPA Miscellaneous Payments - Cincinnati Finance Center and complete the SFO Form Number 1.1. The payment shall be identified in the online system with Docket Number listed below.

On the same day after submitting your payment, send an email to cinwd_acctsreceivable@epa.gov and the EPA contact email address noted below. Include in the subject line: “Payment Confirmation for Mountain Power Performance Docket Number CAA-04-2019-9968(b).” Attach a copy of the Agreement and your payment receipt to the email.

Payment method 2 (check): Mail, via CERTIFIED MAIL, a certified check payable to the United States of America marked with Mountain Power Performance, and the Docket Number listed below, with a copy of the Agreement to:

U. S. Environmental Protection Agency
Government Lockbox 979077
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101
Attn: Docket Number CAA-04-2019-9968(b)

Within 30 days from your receipt of the Agreement, you must electronically sign and email griffith.carrie@epa.gov the original signed Agreement and proof of payment (meaning, as applicable, a photocopy of the original certified penalty check or confirmation of electronic payment). Please include in the body of your email the following statement: “The electronic signature on the attached Agreement represents my signature and consent to this Agreement.” If you prefer to physically sign and mail this information via CERTIFIED MAIL, you may contact the EPA at the number listed below to arrange (Note that mailed information must be postmarked within 30 days of your receipt of the Agreement).

If you have any questions or would like to request an extension due to extraordinary circumstances, you may contact Carrie Griffith at (404) 562-9175. The EPA will consider whether to grant an extension on a case-by-case basis where appropriate justification is provided. The EPA will not accept or approve any Agreement returned more than 30 days after the date of your receipt of the Agreement unless an extension has been granted by the EPA. If you believe that the alleged violations are without merit (and you can provide evidence contesting the allegations), you must provide such information to the EPA as soon as possible but no later than 30 days from your receipt of the Agreement.

Unless an extension has been granted in writing by the EPA, if you do not sign and return the Agreement with proof of payment of the penalty amount, the Agreement is automatically withdrawn, without prejudice to the EPA's ability to file an enforcement action for the above or any other violations. Failure to return the Agreement within the approved time does not relieve you of the responsibility to comply fully with the regulations, including correction of the violation(s) specifically identified in the enclosed Tables. If you choose not to enter into this Agreement and fully comply with its terms, the EPA may pursue more formal enforcement measures to correct the violation(s) and seek penalties of up to \$4,819 per violation pursuant to 40 C.F.R. § 19.4.

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 On Board Diagnostic ("OBD") System

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

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

For conduct unrelated to OBD systems, Respondent will have a *reasonable basis* demonstrating that its conductⁱⁱ does not adversely affect emissions. Where the conduct in question is the manufacturing or sale of a part or component, Respondent must have a *reasonable basis* that the installation and use of that part or component does not adversely affect emissions. Respondent will fully document its *reasonable basis*, as specified in the following section, at or before the time the conduct occurs.

Reasonable Bases

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

- A. Identical to Certified Configuration:** Respondent generally has a reasonable basis if its conduct: is solely for the maintenance, repair, rebuild, or replacement of an emissions-related element of design; and restores that element of design to be identical to the certified configuration (or, if not certified, the original configuration) of the vehicle, engine, or piece of equipment.^{iv}
- B. Replacement After-Treatment Systems:** Respondent generally has a reasonable basis if the conduct:
- (1) involves a new after-treatment system used to replace the same kind of system on a vehicle, engine or piece of equipment 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}

ENDNOTES

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 Original Equipment Manufacturer) 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 equipment 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.