



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4
SAM NUNN ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

SENT VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Jane Graham Craig
915 Quail Valley Drive,
Brentwood, Tennessee 37027

Re: Supplemental Information Request
Pursuant to Section 208(a) Clean Air Act, 42 § U.S.C. 7542(a)

Dear Jane Graham Craig:

Pursuant to Section 208(a) of the Clean Air Act (CAA or the Act), 42 U.S.C. 7542(a), you are hereby required to provide the U.S. Environmental Protection Agency with information relating to Diesel Performance Parts, Inc's (DPPI's) business. The EPA is seeking this information concerning whether DPPI and its owners/predecessor owners were following requirements of Section 203(a) of the Act, 42 U.S.C. § 7522(a), and the applicable motor vehicle regulations at 40 C.F.R. Parts 85, 86, and 1068 during the relevant time period of September 1, 2018, through October 7, 2019.

This is a supplement to EPA's Request for Information issued to DPPI around October 7, 2019, pursuant to Section 208(a) of the CAA, 42 U.S.C. § 7542(a). Under Section 208(a), the Administrator of the EPA may require any person who is subject to the CAA, Title II, Part A - Motor Vehicle Emission and Fuel Standards, Sections 202-219, 42 U.S.C. § 7521-7554, to perform tests and provide information necessary to determine whether the person is acting or has acted in compliance with the CAA and other regulations. The Administrator has delegated this authority to the Director of the Enforcement and Compliance Assurance Division, Region 4.

Please review the following enclosures and complete as appropriate:

- Enclosure 1 Instructions
- Enclosure 2 Definitions
- Enclosure 3 Claiming Confidentiality
- Enclosure 4 Request for Information
- Enclosure 5 Statement of Certification

Please submit the requested information to the EPA electronically, per the instructions contained in Enclosure 1. A response is required **no later than thirty (30) calendar days** after receipt of this letter, unless the EPA, for good extends in writing the deadline for responding to the request.

Failure to provide the information required by this letter is a violation of the Act and may result in one or more of the following actions:

1. Commencement of a civil action seeking compliance with this request pursuant to Section 204 of the Act, 42 U.S.C. § 7523
2. Issuance an administrative penalty order pursuant to Section 205(c) of the Act, 42 U.S.C. § 7424(c)
3. Commencement of a civil action in accordance with Section 205(b) of the Act, 42 U.S.C. § 7524(b)
4. Any other action authorized under the Act.

Under Section 208(c) of the Act, 42 U.S.C. § 7542(c), and pursuant to the regulations found at 40 C.F.R. Part 2, Subpart B, including 40 C.F.R. § 2.301, you are entitled to assert a claim of business confidentiality for any information you provide to the EPA that you regard as confidential business information (CBI). You may request that the EPA treat information as confidential. Any claim of confidentiality must conform to the requirements of 40 C.F.R. § 2.203(b). Note that “emission data,” as defined by 40 C.F.R. § 2.301(a)(2), cannot be claimed as confidential under Section 208(c) of the Act, 42 U.S.C. § 7542(c). For detailed instructions on how to claim confidentiality, please see Enclosure 3. Information you supply under a claim of confidentiality will be treated in accordance with 40 C.F.R. Part 2, Subpart B, and will be disclosed by the EPA only to the extent, and by means of the procedures, set forth in 40 C.F.R. Part 2, Subpart B. If no claim accompanies the information when it is received by the EPA, it may be made available to the public by the EPA without further notice to you. Please note that any confidentiality claim does not remove the need to send that portion of the response to the EPA.

The response to the information requested must include Enclosure 5, Statement of Certification, to be signed and dated by you. This statement certifies that the response submitted to the EPA is complete and contains all documents and information in response to this request, following a complete and thorough review of all information and sources available to you.

This request is not subject to the Paperwork Reduction Act, 44 U.S.C. §§ 3501 – 3520, because it seeks information from specific individuals or entities as part of an investigation.

If you have any questions, please contact Tony Spann at (404) 562-8971 or spann.tony@epa.gov.

Sincerely,

Lamberth,
Larry

Digitally signed by
Lamberth, Larry
Date: 2023.06.13
11:23:06 -04'00'

for

Carol L. Kemker

Director

Enforcement and Compliance Assurance Division

cc: David Garrett, Esq
CHEATHAM, PALERMO & GARRETT
david@cpgarrettlaw.com

Allyssa Raspa
allyssa@cpgfamilylaw.com)

Enclosures

ENCLOSURE 1

Instructions

1. Provide a complete, detailed response, in English, to each Request.
2. Provide a separate response to each and every question, and each and every subpart of a question.
3. Identify each person whom you relied on or consulted with in preparing your responses to each question of this information request. Provide their name, title, job duties and duration of employment with the company. If they are not an employee of the company, identify their employer and provide their name, title, job duties, and duration of employment with their employer.
4. Where a Request allows or requires documents to be provided in response, provide all documents electronically in a file folder specific to that question or subpart and labeled accordingly.
5. When a response is provided in the form of a number, specify the units of measure.
6. Where documents or information necessary for a response is not in your possession, custody, or control, indicate in your response why documents or information are not available or in your possession, custody, or control, and identify any source that either have or is likely to have the information.
7. If you assert any objections in responding to this Information Request, each objection must specifically state the grounds for objecting the request. Include the reason(s), and state whether any responsive materials are being withheld on the basis of that objection.
8. You must promptly supplement your response to any request in Enclosure 4 in the event you learn that you have responsive information not yet produced or if you gain possession, custody, or control of responsive information after responding to this Information Request.
9. Please submit your response to this information request to the EPA electronically. You may submit your response using either the following options: (A) As an attachment sent via email to Tony Spann at spann.tony@epa.gov; or (B) by requesting a link from the EPA for a secure file transfer site where you may upload your response. You may request a link by sending an email to Tony Spann at spann.tony@epa.gov.
10. Please do not submit compressed files (.zip) via email. If you wish to submit compressed files, please select option B.
11. Please do not send documents that you have claimed as confidential business information (CBI) to the EPA by email (option A). If you are submitting documents that you have claimed as CBI, please upload them to the EPA's secure file transfer site (option B).
12. Prior to submitting your response, please send an email to Tony Spann at spann.tony@epa.gov indicating which option or combination of options (A and/or B) you have selected to submit your response to this request.

ENCLOSURE 2

Definitions

1. The term “affiliated organization” or “affiliate” means any organization or entity associated with Diesel Performance Parts, Inc. (DPPI) as an agent, parent organization, predecessor corporation, sister company, subsidiary organization, or any organization or entity acting in lieu of DPPI.
2. The term “DPPI” means Diesel Performance Parts, Inc., located at 411 Allied Drive, Nashville, Tennessee 37211, and any affiliates, predecessors, successors, assignees, agents, employees, representatives, investigators, accountants, auditors, attorneys, experts, consultants, and contractors.
3. The term “element of design” means any control system (e.g., 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, as defined in 40 C.F.R. §§ 86.094-2 and 86.1803-01.
4. The term “electronic control module” or “ECM” means a device that receives inputs from various sensors and outputs signals to control engine, vehicle, or equipment functions. The ECM uses software programming including calculations and tables of information to provide the appropriate outputs. Multiple electronic control modules may be incorporated in a single unit to control various engine, vehicle, or equipment functions. ECM can be a generic term but may refer specifically to the engine control module when discussing emission controls on vehicles and engines. Examples of electronic control modules include, but are not limited to, the Engine Control Module, OBD Control Modules, Powertrain Control Module (“PCM”), Transmission Control Module (“TCM”), Body Control Module (“BCM”) and aftertreatment control module.
5. The term “EM product” means any device or product capable of accessing, altering, or replacing the software programming, calculations, computer logic, tables of information (e.g., fuel timing maps), coding, or other content or information stored within or used by an ECM. EM products include, but are not limited to, programmers, modules, tuners, ECM calibration tools, replacement ECMs, flash tools, or engine management products.
6. The term “emission related parts” means those parts installed for the specific purpose of controlling emissions, or those components, systems, or elements of design which must function properly to assure continued vehicle emission compliance, as defined in 40 C.F.R. § 85.2102.
7. The term “engine tune,” “tune,” or “calibration” means any combination of software programming, calculations, computer logic, tables of information (e.g., fuel timing maps), coding, or other content or information, stored in any form, capable of affecting or controlling an ECM.
8. The term “entity” means any natural person, corporation, partnership, limited liability company, sole proprietorship, joint venture, or any formal or informal group, organization, or association.
9. The term “exhaust product” means exhaust components designed for use downstream from the exhaust port of a motor vehicle engine, and include, but are not limited to EGR block plates, EGR delete kits, EGR reroute kits, exhaust replacement pipes, race pipes, test pipes and straight pipes.

10. The term “exhaust gas recirculation” or “EGR” means systems which redirect, usually by use of an EGR valve, a portion of engine exhaust back into the engine’s combustion chamber to cool and reduce peak combustion temperatures and pressures, thereby reducing the production of nitrogen oxides (“NOx”). The EGR system may include an EGR cooler to cool the recirculated exhaust to further reduce the combustion temperature.
11. The term “information” includes any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, interoffice and intraoffice communications, electronic mail (“email”), instant messages, calendars, contracts, cables, notations of any type of conversation, telephone call, meeting, or other communication, bulletins, printed matter, computer printouts, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, presentations, spreadsheets, and worksheets. The term “information” includes all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments to the foregoing, as well as any attachments or appendices thereto. The term “information” also includes any graphic or oral records or representations of any kind (including, without limitation, photographs, charts, graphs, voicemails, microfiche, microfilm, videotapes, recordings, and motion pictures), electronic and mechanical records or representations of any kind (including, without limitation, tapes, cassettes, disks, computer server files, computer hard drive files, CDs, DVDs, back-up tape, memory sticks, recordings, and removable computer media such as thumb drives, flash drives, memory cards, and external hard drives), and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, electronic format, disk, videotape or otherwise. Information bearing any notation not part of the original text is considered to be separate information. A draft or non-identical copy is separate information within the meaning of this term.
12. The term “manufacture” includes the creation, design, development, alteration, fabrication, production, or programming of a software code, software, hardware, program, element of design, calibration, engine tune, EM product, engine tuner, device, part, or component.
13. The term “MJC” means MJC Management LLC, located at 411 Allied Drive, Nashville, Tennessee 37211, and any affiliates, predecessors, successors, assignees, agents, employees, representatives, investigators, accountants, auditors, attorneys, experts, consultants, and contractors.
14. The term “onboard diagnostics” or “OBD” means systems which monitor components’ emission related systems and assists repair technicians in diagnosing and fixing problems with those emission related systems. If a problem is detected, an OBD system should record a Diagnostic Trouble Code (“DTC”), illuminate a Malfunction Indicator Light (“MIL”) or other warning lamp on the vehicle instrument panel, and/or provide information to the ECM which induces Engine Derate due to malfunctioning or missing emission-related systems.
15. The term “person” includes an individual, corporation, partnership, or association. See Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

16. The term “product” includes any software code, software, hardware, program, element of design, calibration, engine tune, EM product, device, part, or component.
17. The term “you” and “your” means Jane Graham Craig and any assignees, agents, employees, representatives, investigators, accountants, auditors, attorneys, experts, consultants, and contractors. These terms shall also mean any others who are not listed above and are in possession, custody, or control (actual or constructive) of information relevant to this request or information that is otherwise available to Jane Graham Craig, or who may have obtained information for or on behalf of Jane Graham Craig.
18. The term “SCR system” refers to the selective catalytic reduction system, which is an exhaust aftertreatment device designed to reduce NOx emissions by injecting a liquid reagent through a catalyst.
19. The term “service” means any action to change, affect, modify, bypass, render inoperative, remove, download and/or install one or more part(s) or component(s) (e.g., emission control components) or other item(s), including, but not limited to, engine parts, block plates, straight pipes, power packages, computer tuning, calibrations, elements of design, tuners, tunes, software, code, or devices.

All terms not defined in this enclosure have their ordinary meaning, unless such terms are defined in the Clean Air Act and/or its implementing regulations, and in which case the statutory and/or regulatory definitions apply. Words in the singular shall be construed in the plural, and vice versa, where appropriate in the context of a particular question or questions. The terms “and” and “or” shall be construed either conjunctively or disjunctively as necessary to bring within the scope of this information request any information which might otherwise be construed to be outside its scope.

ENCLOSURE 3

Confidential Business Information (CBI) Assertion and Substantiation Requirements

A. Assertion Requirements

You may assert a business confidentiality claim covering part or all of the information, other than emissions data and information or data that is otherwise publicly available, as described in 40 C.F.R. § 2.203(b). If no business confidentiality claim accompanies the information when it is received by the EPA, the EPA may make the information available to the public without further notice. To make a confidentiality claim, submit the requested information and indicate that you are making a claim of confidentiality. Any information over which you make a claim of confidentiality should be marked by placing on or attaching to the information, at the time it is submitted to the EPA, a cover sheet, stamped or typed legend, or other suitable form of notice employing language such as “trade secret” or “proprietary” or “business confidential” and a date if any when the information should no longer be treated as confidential. **You must be specific by page, paragraph, and sentence when identifying the information subject to your claim.** Allegedly confidential portions of otherwise non-confidential documents should be clearly identified. Information covered by such a claim will be disclosed by the EPA only to the extent permitted and by means of the procedures set forth by Section 114(c) of the Act, and 40 C.F.R. Part 2, Subpart B. The EPA will construe the failure to furnish a confidentiality claim with your response to the attached letter as a waiver of that claim, and the information may be made available to the public without further notice to you.

Please segregate personnel, medical and similar files from your responses and include that information on separate sheet(s) marked as “Personal Privacy Information” given that disclosure of such information to the general public may constitute an invasion of privacy.

B. Substantiation Requirements

All confidentiality claims are subject to the EPA verification and must be made in accordance with 40 C.F.R. Part 2, Subpart B¹. You bear the burden of substantiating your confidentiality claim and must satisfactorily show, among other things, that you have taken reasonable measures to protect the confidentiality of the information and that you intend to continue to do so, and that the information is not, and has not been, reasonably obtainable by legitimate means without your consent. Conclusory allegations will be given little or no weight.

Before the EPA makes a final determination regarding your claim of confidentiality, pursuant to 40 C.F.R. Part 2, Subpart B, the EPA will send you a letter asking you to substantiate fully your CBI claim by answering several questions. Your comments in response to these questions will be used by the EPA to determine whether the information has been shown to meet the requirements so as to be entitled to confidential treatment. You must provide the EPA with a response within the number of days set forth in the EPA request letter. Failure to submit your comments within that time will be regarded as a waiver of your confidentiality claim or claims, and the EPA may release the information.

The EPA will ask you to specify which portions of the information you consider confidential. You must be specific by page, paragraph, and sentence when identifying the information subject to your claim. Please note that if a page, document, group, or class of documents claimed by you to be confidential contains a significant amount of information which the EPA determines is not confidential, your confidentiality claim regarding that page, document, group, or class of documents may be denied. For

¹ 40 C.F.R. §2.208(e) conflicts with a holding in *Food Marketing Institute v. Argus Leader Media*, 139 S. Ct. 2356, 2366 (2019) (*Argus Leader*). In light of the *Argus Leader* decision, the Agency will not consider 40 C.F.R. §2.208 (e) in this determination. The Agency anticipates amending 40 C.F.R. §2.208 so that it is consistent with the decision in *Argus Leader*.

each item or class of information that you identify as being confidential, the EPA will ask you to answer the following questions, giving as much detail as possible as conclusory allegations will be given little or no weight in the EPA's determination.

1. What period of time do you request that the information be maintained as confidential, e.g., until a certain date, until the occurrence of a specified event, or permanently? If the occurrence of a specific event will eliminate the need for confidentiality, please specify that event.
2. Information submitted to the EPA becomes stale over time. Why should the information you claim as confidential be protected for the time period specified in your answer to question #1?
3. What measures have you taken to protect the information claimed as confidential? Have you disclosed the information to anyone other than a governmental body or someone who is bound by an agreement not to disclose the information further? If so, why should the information be considered confidential?
4. Is the information contained in any publicly available material such as the Internet, publicly available databases, promotional publications, annual reports, or articles? If so, specify which.
5. Is there any means by which a member of the public could obtain access to the information? Is the information of a kind that you would customarily not release to the public?
6. Has any governmental body decided as to the confidentiality of the information? If so, please attach a copy of the determination.
7. Do you assert that the information is submitted on a voluntary or a mandatory basis? Please explain the reason for your assertion. If you assert that the information is voluntarily submitted information, please explain whether the information is the kind that would customarily not be released to the public.
8. Whether you assert the information as voluntary or involuntary, please address why disclosure of the information would tend to lessen the availability to the EPA of similar information in the future.
9. If you believe any information to be (a) trade secret(s), please so state and explain the reason for your belief. Please attach copies of those pages containing such information with brackets around the text that you claim to be (a) trade secret(s).
10. Explain any other issue you deem relevant (including, if pertinent, reasons why you believe that the information you claim to be CBI is not emission data).

Please note that emission data provided under Section 114 of the Act, 42 U.S.C. § 7414, is *not* entitled to confidential treatment under Section 114(c) of the Act, 42 U.S.C. §7414(c) or 40 C.F.R. Part 2.

“Emission data” means, with reference to any source of emission of any substance into the air - (A) information necessary to determine the identity, amount, frequency, concentration, or other characteristics (to the extent related to air quality) of any emission which has been emitted by the source (or of any pollutant resulting from any emission by the source), or any combination of the foregoing; (B) information necessary to determine the identity, amount, frequency, concentration, or other

characteristics (to the extent related to air quality) of the emissions which, under an applicable standard or limitation, the source was authorized to emit (including, to the extent necessary for such purposes, a description of the manner and rate of operation of the source); and (C) a general description of the location and/or nature of the source to the extent necessary to identify the source and to distinguish it from other sources (including, to the extent necessary for such purposes, a description of the device, installation, or operation constituting the source). 40 C.F.R. §§ 2.301(a)(2)(i)(A), (B) and (C). Information designated confidential will be disclosed by the EPA only to the extent allowed by, and by means of procedures set forth in, 40 C.F.R. Part 2, Subpart B. If you fail to claim the information as confidential, it may be made available to the public without further notice to you.

ENCLOSURE 4

Request For Information

1. Please state the date on which you were first affiliated with DPPI, including as an owner, operator, officer, and/or employee, and the date of separation, if applicable.
2. For each year you drew salary or other income from DPPI, please provide your job title and describe your responsibilities at DPPI.
3. For each year from 2018 through the present, please identify whether you were a shareholder of DPPI, the number of shares you owned, and if you sold and/or transferred your shares, (i) the date(s) of sale/transfer, (ii) the number of shares sold/transferred, and (iii) the individual(s) to whom you sold/transferred the shares.
4. For each year from January 1, 2018, through present, please identify all officers, shareholder(s), employees, and owners and/or operators of DPPI.
5. Provide a detailed written description of the type of business that DPPI operated from September 1, 2018, to December 31, 2019, including, but not limited to, engaging in the manufacture and/or sales of motor vehicle parts and components; and providing services.
6. Describe the type of products that DPPI sold and/or offered to sell from September 1, 2018, to October 7, 2019, including, but not limited to, EM products, exhaust gas recirculation or “EGR” systems; engine tunes, SCR systems; and electronic control module or “ECM” devices.
7. To the extent you assisted with preparing DPPI’s responses to EPA’s October 7, 2019, Request for Information, please describe which questions you assisted with preparing responses.
8. Please state the date on which Anna Craig first became affiliated with DPPI, her role(s) and/or position(s) as an officer, owner, operator, shareholder, and/or employee of DPPI, and the date(s) she held each position.
9. Please state the date on which you were first affiliated with MJC, whether as an owner, operator, officer, and/or employee, and the date of separation, if applicable.

ENCLOSURE 5

STATEMENT OF CERTIFICATION

I certify that I have examined and am familiar with the information in the enclosed documents, including all attachments. I certify that the statements and information are, to the best of my knowledge and belief, true and complete. I am aware that there are significant penalties for knowingly submitting false statements and information, including the possibility of fines or imprisonment pursuant to Section 113(c)(2) of the Act, 42 U.S.C. § 7413(c)(2) and 18 U.S.C. § 1001, 1341 and 1505.

(Signature)

(Printed Name)

(Title)

(Date)