



UNITED STATES ENVIRONMENTAL PROTECTION
AGENCY

WASHINGTON, D.C., 20460

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Raymond Rich
Member
Double R Diesel, LLC
3175 NC Highway 210 East
Harrells, NC
28444-8929

Re: Notice of Violation of the Clean Air Act

Dear Mr. Rich:

The United States Environmental Protection Agency (EPA) has investigated and continues to investigate Double R Diesel, LLC (“DRD” or “You”) for noncompliance with the Clean Air Act (“CAA” or “the Act”), 42 U.S.C. §§ 7401-7671q, and its implementing regulations. As summarized in this Notice of Violation, EPA has determined that DRD has offered for sale, or caused the offer for sale of, parts or components for motor vehicle engines that bypass, defeat, or render inoperative devices or elements of design installed on motor vehicles and motor vehicle engines to meet emission standards promulgated under the CAA, and knew or should have known that these parts or components were offered for sale or installed for such use or put to such use. Therefore, You have violated Section 203(a)(3)(B) of the Act, 42 U.S.C. § 7522(a)(3)(B). EPA continues to investigate these violations and other potential violations under the Act and its implementing regulations.

Law Governing Alleged Violations

This Notice of Violation arises under Part A of Title II of the Act, 42 U.S.C. §§ 7521–7554, and the regulations promulgated thereunder. These laws were enacted to reduce air pollution from mobile sources of air pollution. In creating the Act, Congress found, in part, that “the increasing use of motor vehicles . . . has resulted in mounting dangers to the public health and welfare.”¹ Congress’s purpose in creating the Act, in part, was “to protect and enhance the quality of the Nation’s air resources so as to promote the public health and welfare and the productive capacity of its population,” and “to initiate and accelerate a national research and development

¹ CAA § 101(a)(2), 42 U.S.C. § 7401(a)(2).

program to achieve the prevention and control of air pollution.”²

EPA’s allegations concern parts or components for motor vehicles and engines subject to emission standards.³ The Act requires EPA to prescribe and revise, by regulation, standards applicable to the emission of any air pollutant from new motor vehicles or engines that cause or contribute to air pollution, which may reasonably be anticipated to endanger public health or welfare.⁴ As required by the Act, the emission standards “reflect the greatest degree of emission reduction achievable through the application of [available] technology.”⁵ Motor vehicles and engines are subject to specific emission standards for each pollutant, based on a vehicle’s or engine’s class and model year.⁶

Vehicle and engine manufacturers employ many devices and elements of design to meet emission standards. *Element of design* means “any control system (*i.e.*, computer software, electronic control system, emission control system, computer logic), and/or control system calibrations, and/or the results of systems interaction, and/or hardware items on a motor vehicle or motor vehicle engine.”⁷ For example, manufacturers often employ retarded fuel injection timing systems as a primary emission-related element of design to achieve reduction of emissions of oxides of nitrogen (NOx) and particulate matter (PM). Manufacturers also employ certain hardware devices as emission control systems and elements of design to reduce emissions of regulated pollutants into the ambient air. Examples of such devices include sensors, filtration systems such as diesel particulate filters (DPF) systems, also referred to as periodic trap oxidizers, exhaust gas recirculation (EGR) systems, and catalyst devices such as diesel oxidation catalysts (“DOC,” also referred to as “CAT”), NOx adsorption catalysts, and selective catalytic reduction⁸ (SCR) systems. SCR systems apply an aqueous urea, known as diesel emission fluid (DEF), onto a special catalyst, causing a chemical reaction and thereby reducing NOx emissions. Modern vehicles and engines are equipped with devices known as electronic control modules (ECMs), also commonly referred to as electronic control units (ECUs). ECMs or ECUs continuously monitor engine and other operating parameters and control the emission control devices, such as the fueling strategy.

Manufacturers further employ onboard diagnostics, or “OBD,” which comprise of systems that monitor components that can affect the emission performance of a motor vehicle, detect problems with the vehicle’s emission-related systems that could cause the vehicle to fail to comply with the CAA’s emission standards, alert drivers to these problems, and store electronically-generated malfunction information.⁹ If a problem is detected, the OBD system illuminates a warning indicator on the vehicle instrument panel to alert the driver, called a malfunction indicator light or check

² CAA § 101(b)(1)–(2), 42 U.S.C. § 7401(b)(1)–(2).

³ See generally 40 C.F.R. Part 86, Subpart A (setting emission standards for these categories).

⁴ CAA § 202(a)(1) and (3)(B), 42 U.S.C. § 7521(a)(1) and (3)(B).

⁵ CAA § 202(a)(3)(A)(i), 42 U.S.C. § 7521(a)(3)(A)(i).

⁶ See, e.g., heavy-duty diesel engine emission standards at 40 C.F.R. §§ 86.004-11, 86.007-11, 86.099-11.

⁷ 40 C.F.R. § 86.094-2.

⁸ SCR systems include catalyst injection and tank storage components.

⁹ See CAA § 202(m), 42 U.S.C. § 7521(m), requiring EPA to promulgate regulations requiring OBD systems for motor vehicles after 2007; see also 40 C.F.R. §§ 86.005-17, 86.007-17, 86.1806-05, and 86.1806-17.

engine light. The OBD system also records diagnostic trouble codes to provide ease of identification of the emission control problem for mechanics to repair. OBDs may cause an engine power reduction (known as “limp mode”) to prompt repair of a missing or malfunctioning emission- related device or element of design. Given these functions, the OBD is a key part of a motor vehicle’s emission control system.

To ensure that every new motor vehicle or motor vehicle engine sold, offered for sale, imported, delivered for introduction into commerce, or introduced into commerce in the United States (collectively, “introduced into commerce”) satisfies applicable emission standards, EPA runs a certification program for manufacturers. Under this program, EPA issues certificates of conformity (COCs), thereby qualifying motor vehicles and engines for introduction into commerce.¹⁰ To obtain a COC, an original equipment manufacturer (OEM) must submit a COC application to the EPA for each engine family (also referred to as test group) and each model year in which it intends to manufacture or import motor vehicles or engines for introduction into commerce. The COC application must include, among other things, identification of the covered engine family, a description of the motor vehicle or engine and its emission control systems, all auxiliary emission control devices (AECDs)¹¹ and the engine parameters they sense, as well as test results from a test vehicle or engine showing that it satisfies the applicable emission standards.¹² The motor vehicles or motor vehicle engines must then be manufactured exactly as described in the approved COC application, in part to ensure that the emission control systems function as described.

In addition, the Act makes it a violation “for any person to manufacture or sell, or offer to sell, or install, any part or component intended for use with, or as part of, any motor vehicle or motor vehicle engine, where a principal effect of the part or component is to bypass, defeat, or render inoperative any device or element of design installed on or in a motor vehicle or motor vehicle engine in compliance with regulations under 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.”¹³ It is also a violation to cause any of the foregoing acts.¹⁴

The Alleged Violations

EPA has determined that DRD has offered for sale, or caused the offer for sale, of multiple products (commonly referred to as “Defeat Devices”) that have a principal effect of bypassing, defeating, or rendering inoperative emission control devices or elements of design certified to control emissions on motor vehicles or motor vehicle engines. DRD operates the website

¹⁰ 40 C.F.R. § 86.007-30.

¹¹ An AECD is “any element of design which senses temperature, vehicle speed, engine revolutions per minute, transmission gear, manifold vacuum, or any other parameter for the purpose of activating, modulating, delaying, or deactivating the operation of any part of the emission control system.” 40 C.F.R. § 86.082-2.

¹² 40 C.F.R. §§ 86.004-21, 86.007-21, 86.094-21, 86.096-21; *see also* EPA, Advisory Circular Number 24-3: Implementation of Requirements Prohibiting Defeat Devices for On-Highway Heavy-Duty Engines (Jan. 19, 2001).

¹³ CAA § 203(a)(3)(B), 42 U.S.C. § 7522(a)(3)(B).

¹⁴ CAA § 203(a), 42 U.S.C. § 7522(a).

<https://www.doublerdiesel.com> as a platform to sell or offer to sell Defeat Devices. On this website, DRD advertises for sale Defeat Devices which are intended for use with a variety of motor vehicles and motor vehicle engines including, but not limited to, light heavy-duty and medium heavy-duty trucks manufactured by Dodge Ram and Cummins.

“Defeat Device” products offered for sale by DRD fall under one of two categories: (1) Aftermarket Software ECM Programs; and (2) Exhaust Aftertreatment Delete Pipes.

As to the first category, the aftermarket software ECM programs are commonly referred to as a “tune” or “calibration.” These programs are either distributed in a console (commonly referred to as a “tuner” or “programmer”) or transmitted electronically via weblink or email that are designed to modify the vehicle’s original ECM programming or calibrations and/or OBD operation, where a principal effect of the program is to bypass, defeat, or render inoperative devices or elements of design, including EGR, DOC, DPF, SCR, or OBD systems, or fuel injection timing calibrations, installed on or in motor vehicle engines (“Defeat Tuning Products”).

EPA has conducted several reviews of DRD’s website for advertisements of Defeat Devices. During this period, DRD advertised for sale two different products that included the term “deleted” in its product title. Specifically, DRD entitles the products as: (1) “13-18 Cab & Chassis *Deleted* Tuning”; and (2) “13-18 Emissions Tuning to *Deleted* Tuning” (emphasis added). “Deleted Tuning” in the title indicates that the products disable certified emission controls on vehicles. These descriptions identify these products as Defeat Tuning Products.

Further, for four of its products, DRD described in its advertisements that the purpose of the product is to delete emission controls. Specifically DRD advertised the following:

- The “13-18 Cab & Chassis Deleted Tuning” product is “stock HP emission delete tuning;”
- The product description of “13-18 Emissions Tuning to Deleted Tuning” explained that “[t]his retune option is for existing RaceME Ultra / MM3 Tuner customers that need a tuning revision from emissions compliant tuning to delete tuning.”
- The product detail of “19-21 Warp Tuning Option” characterized the product as a “delete tune.”
- DRD explained its preference for selling “13-18 MM3 Tuner - Cab & Chassis” in its product description, stating “We feel it is best to limit our Cab and Chassis tuning options to stock HP emission delete tuning in order to provide the Cab and Chassis owner a more reliable truck for the long term.”

The Product details for all four of the products indicate that the products include delete capabilities that would alter the ECM programming of vehicle or engine.

In some cases, DRD promoted features of its products that bypass a diesel truck’s exhaust system. For example, eight of the products offered for sale described the tuner “to allow customers to change their exhaust systems for something more reliable and free-flowing . . .” The following are names of

products that offered a more “free flowing” exhaust system:

- (1) “22 Warp Tuning Option”;
- (2) “07.5-9 MM3 Tuner - Lite Option”;
- (3) “10-12 MM3 Tuner - Express Option”;
- (4) “10-12 MM3 Tuner - Lite Option”;
- (5) “13-18 MM3 Tuner - Express Option”;
- (6) “13-18 MM3 Tuner - Lite Option”;
- (7) “19-21 MM3 Tuner - Beta Option - Power Tunes Now Included”;
- (8) “22 MM3 Tuner - (PCM Swap Procedure) Beta Option.”

These descriptions indicate that the products are intended to allow the removal of the aftertreatment system containing the DOC, DPF, and/or SCR.

The second category of Defeat Devices offered for sale by DRD is Exhaust Aftertreatment Delete Pipes. This category includes parts or components that physically replace certified exhaust aftertreatment emission control devices or elements of design, such as the DPF, DOC, and/or SCR, from the exhaust system installed on or in a motor vehicle. Double R Diesel advertised for sale twenty-four products that fall within this category on its website. The product description of six products explained that the product would “replace” or “remove” a customer’s existing exhaust system. Three products featured its design has having “No Bungs.” An exhaust pipe with “no bungs” indicates that it could not incorporate exhaust sensors that are part of a stock aftertreatment system and required for the emission control systems, specifically DOC, DPF, and SCR, to operate. In one product, entitled “07.5-12 RAM Pickup 6.7L Cummins DPF Race Pipe, Stainless,” DRD marketed the product as a “DPF Delete Pipe.” The list of the 24 Exhaust Aftertreatment Delete Pipe products that DRD has offered for sale is as follows:

- (1) “07.5-12 RAM Pickup 6.7L Cummins DPF Race Pipe, Stainless”;
- (2) “07.5-12 RAM Pickup 6.7L Cummins DPF Race Pipe”;
- (3) “10-12 RAM Pickup 6.7L Cummins 4” TBE, Aluminized”;
- (4) “10-12 RAM Pickup 6.7L Cummins 4” TBE, Stainless”;
- (5) “10-12 RAM Pickup 6.7L Cummins 4” TBE, W/O Muffler, Stainless”;
- (6) “10-12 RAM Pickup 6.7L Cummins 5” TBE, Aluminized”;
- (7) “10-12 RAM Pickup 6.7L Cummins 5” TBE, Stainless”;
- (8) “10-12 RAM Pickup 6.7L Cummins 5” TBE, W/O Muffler, Stainless”;
- (9) “13-18 RAM Pickup 6.7L Cummins 4” DP Back Race Kit Exhaust W/O Muffler, Aluminized”;
- (10) “13-18 RAM Pickup 6.7L Cummins 4” DP Back Race Kit Exhaust W/O Muffler, Stainless”;
- (11) “13-18 RAM Pickup 6.7L Cummins 4” Exhaust W/Muffler”;
- (12) “13-18 RAM Pickup 6.7L Cummins 4” W/Muffler, Stainless”;
- (13) “13-18 RAM Pickup 6.7L Cummins 5” Exhaust W/O Muffler”;

- (14) “13-18 RAM Pickup 6.7L Cummins 5” Exhaust W/O Muffler, Stainless”;
- (15) “13-18 RAM Pickup 6.7L Cummins 5” Exhaust W/Muffler”;
- (16) “13-18 RAM Pickup 6.7L Cummins 5” Exhaust W/Muffler, Stainless”;
- (17) “13-18 RAM Pickup 6.7L Cummins DPF/SCR Race Pipe”;
- (18) “13-18 RAM Pickup 6.7L Cummins DPF/SCR Race Pipe, Stainless”;
- (19) “19+ RAM Pickup 6.7L Cummins 4” Flexpipe Back Exhaust System – W/Muffler”;
- (20) “19+ RAM Pickup 6.7L Cummins 4” Flexpipe Back Exhaust System – W/Muffler, Stainless”;
- (21) 19+RAM Pickup 6.7L Cummins 5” Flexpipe Back Exhaust System – W/Muffler”;
- (22) 19+ RAM Pickup 6.7L Cummins 5” Flexpipe Back Exhaust System – W/Muffler, Stainless
- (23) 19+ RAM Pickup 6.7L Cummins DPF/SCR Race Pipe”; and
- (24) 19+ RAM Pickup 6.7L Cummins DPF/SCR Race Pipe, Stainless.”

DRD knew or should have known that these products were offered for sale or installed to bypass, defeat, or render inoperative devices or elements of design that control emissions of regulated air pollutants. For example, DRD’s website, <https://www.doublerdiesel.com/>, provides comprehensive instructions on how to install and use its tuner products. DRD published an instructional guide for how to operate the MM3 tuner, which can be accessed by downloading a file. The instructional guide describes how to copy the “stock” ECM file from a vehicle, copy the tunes supplied by DRD, and replace the custom tunes into a customer’s vehicle.

Additionally, the webpage entitled “MM3 Tuner and Questions Answers” indicates that DRD was aware its tuner products would bypass, defeat, or render inoperative devices or elements of design of vehicle or and engine ECM. The following are few examples of questions DRD presented and portions of the answers DRD published on the webpage:

Should I even modify my truck at all?

...

When you add performance parts such as a tuner, exhaust, etc., you must accept the fact that you are taking your truck away from stock condition. This means you could very well be voiding your factory powertrain warranty. When you modify any vehicle from stock, you alone are responsible for any consequence resulting from your modifications. This means if you break or damage something due to modifying your vehicle, you cannot be a “crybaby.” You have to deal with whatever happens at your own time and expense. We at Double R Diesel merely provide you with the parts and tools needed to make your modifications, but you, the customer, are the ones that make modifications, and all liability is on you!

Also, modifying your vehicle can also violate local, state, and Federal Laws. It is your responsibility as the customer to understand what is and is not legal for your area. We are not responsible if you get a citation or fine imposed upon you for illegal modifications to your vehicle. That is your responsibility!

...

Optional Exhaust?

We recommend changing or modifying your exhaust within 30 miles of driving once the truck is programmed with deleted tuning. Failure to do so can quickly clog the factory DPF system.

Off-Road tuning will require DPF removal. We sell many exhaust options should you need an exhaust. Options range from a simple delete pipe to full turbo back systems.

Delete pipes only replace the section of exhaust that contains the DPF, Catalytic Converter, and/or NOx Catalyst. Delete pipes are also the cheapest and easiest option to install.

...

Do we provide instructions on how to remove emissions components?

No, we do not and will not. If you do remove emissions items, you are completely on your own on how to do that. This where you must possess basic mechanical skills enough so to figure out how to remove and replace parts. Google will be your friend for this process.

....

Accordingly, DRD knew or should have known that these products were offered for sale to bypass, defeat, or render inoperative elements of design that control emissions of regulated air pollutants, based upon DRD's status as a custom tune designer, DRD's representations for its services, DRD's published manual and resources, DRD's detailed instructions for installation, and DRD's informational resources about the operation and intended effect of its products on its webpage.

Furthermore, DRD knew or should have known that these defeat device products were offered for sale or installed on "motor vehicles" or "motor vehicle engines." The defeat device products sold or offered for sale, by DRD were designed specifically for the makes and models of Cummins engines. Cummins sought and obtained COCs from the EPA for their motor vehicles or engines. This certification unequivocally demonstrates that these vehicles and engines are "motor vehicles" and "motor vehicle engines" under the Act.

For all of these reasons, DRD knew or should have known that it offered for sale, or installed parts or components for motor vehicles or motor vehicle engines with a principal effect of bypassing, defeating, or rendering inoperative devices or elements of design that control emissions of regulated air pollutants.

Enforcement

EPA may bring an enforcement action for these violations, and other violations it identifies, under its administrative authority or by referring this matter to the United States Department of Justice with a recommendation that a civil complaint be filed in federal district court.¹⁵ Persons violating Section 203(a)(3)(B) of the Act, 42 U.S.C. § 7522(a)(3)(B), are subject to an injunction under Section 204 of the Act, 42 U.S.C. § 7523, and a civil penalty of up to \$5,179 for each violation.¹⁶ Each part or component manufactured, sold, offered for sale, or installed in violation of Section 203(a)(3)(B) is a separate violation. 42 U.S.C. § 7524(a).

Note that the EPA has not completed its investigation to identify and catalogue every Defeat Device sold or offered for sale by DRD. The Agency retains the authority to investigate other possible violations and our investigation of DRD's compliance with the CAA continues. Simultaneously with this Notice of Violation, the Agency is issuing a request for information to DRD pursuant to Sections 114(a)(1) and 208(a) of the CAA, 42 U.S.C. § 7414(a)(1) and 7542(a), to obtain sales and other information regarding

¹⁵ CAA §§ 204 and 205, 42 U.S.C. §§ 7523, 7524.

¹⁶ CAA § 205(a), 42 U.S.C. § 7524(a); 40 C.F.R. § 19.4.

the Defeat Device products identified in this Notice of Violation as well as information regarding additional products DRD has sold or offered for sale.

The EPA requests that you immediately cease sale of the Defeat Device products identified above, as well as any other parts, tunes, or components capable of defeating, bypassing, or rendering inoperative any emission control systems or elements of design of motor vehicles. Thereafter, please provide the following statement, signed by an authorized company official:

I hereby certify that, as of [DATE], all employees of Double R Diesel, LLC, were instructed not to sell any parts, tunes, or components capable of defeating, bypassing, or rendering inoperative any emission control systems or elements of design on motor vehicles, including Cummins engines, and, to the best of my knowledge and belief, Double R Diesel, LLC, has not manufactured or sold, or offered to sell, or installed any such parts since [DATE].

Please provide the requested certification, via courier service or overnight delivery,

to:

Ian Altendorfer
Attorney-Adviser
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency
1200 Pennsylvania Avenue, NW
William Jefferson Clinton Federal Building, Room 1142-C
Washington, D.C. 20460

The EPA is available to discuss this matter with you in further detail upon your request. Please contact Ian Altendorfer, an EPA attorney assigned to this matter, within 14 days of receipt of this Notice of Violation. Mr. Altendorfer can be reached at (202) 564-6032 or altendorfer.ian@epa.gov.

Sincerely,

Digitally signed by
Greene, Mary E
Date: 2023.10.06
09:23:12 -04'00'

Mary E. Greene
Director, Air Enforcement Division
Office of Civil Enforcement

CERTIFICATE OF MAILING

I, Nathan Dancher, certify that on this day I sent this Notice of Violation of the Clean Air Act, by certified mail, return receipt requested to:

Raymond Rich
Member
Double R Diesel, LLC
3175 NC Highway 210 East
Harrells, NC
28444-8929

**NATHAN
DANCHER**  Digitally signed by
NATHAN DANCHER
Date: 2023.10.12
09:51:10 -04'00'

Nathan Dancher
Environmental Engineer
Air Enforcement Division
United States Environmental Protection Agency
Dancher.nathan@epa.gov