

II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), issuance of this Consent Agreement commences this proceeding, which will conclude when the Final Order becomes effective.

2.2. The Director of the Enforcement and Compliance Assurance Division, EPA Region 10 (“Complainant”) has been delegated the authority pursuant to Section 205(c)(1) of the CAA, 42 U.S.C. § 7524(c)(1), to sign consent agreements between EPA and the party against whom an administrative penalty for violations of the CAA is proposed to be assessed.

2.3. EPA and the United States Department of Justice jointly determined, pursuant to 42 U.S.C. § 7524(c)(1) and 40 C.F.R. § 19.4, that this matter, although it involves a penalty assessment above \$385,535, is appropriate for an administrative penalty action.

2.4. Part III of this Consent Agreement contains a concise statement of the factual and legal basis for the alleged violations of the CAA together with the specific provisions of the CAA and the implementing regulations that Respondents are alleged to have violated.

III. ALLEGATIONS

CAA Title II, Subpart A

3.1. Part A of Title II of the CAA, 42 U.S.C. §§ 7521–7554, and the regulations promulgated thereunder were enacted to reduce air pollution from mobile sources, including particulate matter (“PM”), non-methane hydrocarbons (“NMHC”), oxides of nitrogen (“NO_x”), and carbon monoxide (“CO.”). In creating the CAA, Congress found, in part, that “the

increasing use of motor vehicles . . . has resulted in mounting dangers to the public health and welfare.” CAA § 101(a)(2), 42 U.S.C. § 7401(a)(2).

3.2. EPA’s allegations here concern parts or components for motor vehicles and engines subject to emission standards. The CAA 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. See CAA § 202(a)(1) and (3)(B), 42 U.S.C. § 7521(a)(1) and (3)(B). As required by the CAA, the emission standards must “reflect the greatest degree of emission reduction achievable through the application of [available] technology.” CAA § 202(a)(3)(A)(i), 42 U.S.C. § 7521(a)(3)(A)(i).

3.3. Section 216(2) of the CAA, 42 U.S.C. § 7550(2), defines “motor vehicle” as “any self-propelled vehicle designed for transporting persons or property on a street or highway.” See also 40 C.F.R. § 85.1703 (further defining “motor vehicle”).

3.4. Under Section 202 of the CAA, 42 U.S.C. § 7521, EPA has promulgated emission standards for PM, NMHC, NO_x, and CO applicable to motor vehicles and motor vehicle engines, including heavy-diesel duty trucks, based on a vehicle’s or engine’s class and model year. See generally 40 C.F.R. Part 86.

3.5. Section 203(a)(1) of the CAA, 42 U.S.C. § 7522(a)(1), prohibits a manufacturer of motor vehicles or motor vehicle engines from selling, offering to sell, importing, or introducing or delivering for introduction into commerce any new motor vehicle or motor vehicle engine in the United States unless the motor vehicle or motor vehicle engine is covered by a certificate of conformity. EPA issues certificates of conformity to motor vehicle and motor vehicle engine manufacturers (also known as “original equipment manufacturers” or “OEMs”)

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.

3.6. To obtain a certificate of conformity for a given motor vehicle or motor vehicle engine family, the original equipment manufacturer must demonstrate that such motor vehicle or motor vehicle engine will not exceed established emission standards for PM, NMHC, NOX, CO, and other pollutants. 40 C.F.R. §§ 86.004-21, 86.1844-01. The application for a certificate of conformity 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”) and the engine parameters they monitor, as well as test results from a test vehicle or engine showing that it meets the applicable emission standards. 40 C.F.R. §§ 86.004-21, 86.007-21, 86.094-21, 86.1844-01.

3.7. An AECD is “any element of design which senses temperature, vehicle speed, engine RPM, 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, 86.1803-01.

3.8. “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.” 40 C.F.R. §§ 86.094-2, 86.1803-01.

3.9. To meet the emission standards in 40 C.F.R. Part 86 and qualify for a certificate of conformity, motor vehicle and motor vehicle engine manufacturers use a variety of hardware and software devices and elements of design.

3.10. Manufacturers employ certain hardware devices as emission control systems to manage and treat exhaust to reduce levels of regulated pollutants from being created or emitted into the ambient air and meet the emission standards in 40 C.F.R. Part 86. Such devices include exhaust gas recirculation ("EGR"), diesel particulate filters ("DPFs"), and selective catalytic reduction ("SCR"). For example:

- a. EGR is an element of design in diesel-fueled motor vehicles that reduces NO_x emissions, which are formed at the high temperatures caused during fuel combustion. By recirculating exhaust gas through the engine, EGR reduces engine temperature and NO_x emissions. Heavy-duty diesel OEMs generally design and build motor vehicles and motor vehicle engines using EGR systems to meet NO_x standards. See 40 C.F.R. §§ 86.004-11, 86.007-11.
- b. DPF is an element of design in diesel-fueled motor vehicles that reduces PM emissions by collecting soot contained in engine exhaust gas. Proper operation of the DPF requires periodic regeneration of the filter to prevent accumulated PM from clogging the filter. Heavy-duty diesel OEMs began designing and building highway trucks using DPFs in 2007 in order to meet more stringent PM emission standards. See 40 C. F.R. § 86.007-11.
- c. SCR is an element of design that reduces NO_x emissions by chemically converting exhaust gas that contains NO_x into nitrogen and water through the injection of diesel exhaust fluid. Diesel exhaust fluid ("DEF") must be periodically refilled, which requires sensors in the DEF tank to ensure that SCR is properly controlling NO_x emissions. Heavy-duty diesel OEMs

generally design and build trucks using SCR systems in order to meet current NO_x standards. 40 C.F.R. § 86.007-11.

3.11. In addition to emission control hardware, various elements of design incorporated into motor vehicles, such as fuel mass, fuel injection pressure, and fuel injection timing, can affect the quantity of regulated pollutants that are created by the diesel engine. As an example, original equipment manufacturers of heavy-duty diesel trucks generally employ retarded fuel injection timing as an emission control method for NO_x. See 59 Fed. Reg. 23,264 at 23,418 (May 5, 1994) (“[I]njection timing has a very significant impact on NO_x emission rates, with advanced timing settings being associated with higher NO_x ...”).

3.12. Modern vehicles and engines are also equipped with electronic control modules (“ECMs”) and onboard diagnostic systems (“OBDS”). ECMs are devices that receive inputs from various sensors and outputs signals to control engine, vehicle, or equipment functions. ECMs continuously monitor engine and other operating parameters to manage the operation of the emission control systems and elements of design, such as fuel injection timing. The OBD detects and reports malfunctions of emission-related elements of design through a network of sensors installed throughout a motor vehicle or motor vehicle engine. CAA § 202(m), 42 U.S.C. § 7521(m); see 40 C.F.R. §§ 86.007-17, 86.010-18, 86.1806-05.

3.13. Section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B), makes it unlawful 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 [Title II of the CAA], 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.” It is also a violation for any person to cause any of acts listed above. CAA § 203(a), 42 U.S.C. § 7522(a).

3.14. Any person who violates Section 203(a)(3) of CAA, 42 U.S.C. § 7522(a)(3), is subject to injunctive relief under Section 204 of CAA, 42 U.S.C. § 7523, and a civil penalty of up to \$4,876 for each violation. CAA § 205(a), 42 U.S.C. § 7524(a); 40 C.F.R. § 19.4, Table 1.

General Allegations

3.15. Respondent Premier Performance, LLC is organized under the laws of the State of Delaware, with its principal place of business in Idaho.

3.16. Respondent RallySport Direct, LLC is organized under the laws of the State of Delaware, with its principle place of business in Utah.

3.17. Respondent JB Automotive, LLC is organized under the laws of the State of Delaware, with its principle place of business in Iowa.

3.18. Respondent Stage 3 Motorsports, LLC is organized under the laws of the State of Delaware, with its principle place of business in Arizona.

3.19. Respondents are wholesalers, distributors and/or retail sellers or installers of aftermarket automotive parts. Respondent JB Automotive is also a manufacturer of aftermarket automotive parts.

3.20. Respondents are each a “person” as defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

3.21. On February 13, 2019, EPA issued an information request (“Information Request”) to Respondents under the authority of Section 208 of the CAA, 42 U.S.C. § 7542, requiring the submission of, among other things, information related to Respondents’ manufacture, sale, offer for sale, and installation of parts, components, and services (products)

which bypass, defeat, or render inoperative any emission control component, element of design, or emissions related part or component.

3.22. Respondents have advised EPA that it began stopping the sale of certain alleged defeat devices marketed for “Competition Use Only” in March 2019 and have implemented work practice standards and procedural safeguards to prevent the sale of alleged defeat devices in the United States.

3.23. Respondents have also advised EPA that they have engaged with the aftermarket automotive parts industry, including manufacturers and vendors, to improve compliance processes across the industry.

Violations

Defeat Devices

3.24. Based on Respondents’ response to EPA’s Information Request and other available information, from January 1, 2017 to approximately February 13, 2019, Respondents manufactured, sold, or offered for sale at least 64,299 parts or components designed and marketed for use with or as part of motor vehicles or motor vehicle engines. This includes:

PRODUCT	QUANTITY
EGR Delete Hardware	29,682
Exhaust Aftertreatment Delete Hardware	2,464
Tuning Products	21,965 ¹
Crankcase Ventilation Delete Hardware	7,117
Throttle Valve Delete	390
Delete Package	8
Air Pump Delete Hardware	1,209
Tumble Generator Valve (“TGV”) Delete Parts	1,464
Total	64,299

3.25. These parts and components were designed and marketed for use on, and thus intended for use with or as part of, makes and models of motor vehicles and motor vehicle engines manufactured by entities such as Cummins Inc.; FCA US LLC and its predecessors; General Motors Co.; and Ford Motor Co.

¹ This total excludes SCT 5015 and 7015 tuners sold after August 2018. See United States v. Derive Systems, Inc., et al, Civil Action No. 1:18-cv-2201 (D. DC Sept. 24, 2018).

3.26. These motor vehicles and motor vehicle engines were designed for transporting persons or property on a street or highway, and therefore are subject to motor vehicle and motor vehicle engine emission standards under CAA Title II, Subpart A, 42 U.S.C. §§ 7521–7554.

3.27. The original equipment manufacturer of these motor vehicles and motor vehicle engines sought and obtained certificates of conformity from EPA, thereby certifying that the motor vehicles and motor vehicle engines demonstrated compliance with applicable federal emission standards, including design configurations using elements of design such as fuel timing, EGRs, DPFs, SCRs, and OBD systems.

3.28. The parts and components referred to in Paragraph 3.24 above, when installed in or on motor vehicles, bypass, defeat, or render inoperative devices or elements of design that motor vehicle and motor vehicle engine manufacturers employ to meet emission standards in regulations promulgated under CAA Title II, Subpart A, 42 U.S.C. §§ 7521–7554.

3.29. Respondents knew or should have known that these parts or components were sold or offered for sale or installed to bypass, defeat, or render inoperative devices or elements of design that motor vehicle and motor vehicle engine manufacturers employ to meet emission standards in regulations promulgated under CAA Title II, Part A, 42 U.S.C. §§ 7521–7554.

3.30. Therefore, from January 1, 2017 through February 13, 2019, Respondents committed at least 64,299 violations of Section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B).

3.31. Under Section 205(a) of the CAA, 42 U.S.C. § 7524(a), and 40 C.F.R. Part 19, EPA may assess a civil penalty of up to \$4,876 for each violation that occurred on or after November 2, 2015.

IV. TERMS OF SETTLEMENT

4.1. Respondents admit the jurisdictional allegations of this Consent Agreement.

4.2. Respondents neither admit nor deny the specific factual allegations and legal conclusions contained in this Consent Agreement.

4.3. In determining the amount of penalty to be assessed, EPA has taken into account the factors specified in Section 205(c)(2) of the CAA, 42 U.S.C. § 7524(c)(2). In light of the nature of the violations, Respondents' actions to address the violations, and Respondents' cooperation and willingness to settle this matter without litigation and in accordance with the Clean Air Act Mobile Source Civil Penalty Policy, EPA has determined and Respondents agree that an appropriate penalty to settle this action is \$3,000,000 (the "Assessed Penalty").

4.4. Respondents agree to pay the Assessed Penalty within 30 days of the effective date of the Final Order.

4.5. Payments under this Consent Agreement and the Final Order may be paid by check (mail or overnight delivery), wire transfer, ACH, or online payment. Payment instructions are available at: <http://www2.epa.gov/financial/makepayment>. Payments made by a cashier's check or certified check must be payable to the order of "Treasurer, United States of America" and delivered to the following address:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

Respondents must note on the check the title and docket number of this action.

4.6. Concurrently with payment, Respondents must serve photocopies of the check, or proof of other payment method, described in Paragraph 4.5 on the Regional Hearing Clerk and EPA Region 10 at the following addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10, Mail Stop 11-C07
1200 Sixth Avenue, Suite 155
Seattle, Washington 98101
R10_RHC@epa.gov

John Keenan
U.S. Environmental Protection Agency
Region 10, Mail Stop 20-C04
1200 Sixth Avenue, Suite 155
Seattle, Washington 98101
Keenan.john@epa.gov

4.7. If Respondents fail to pay any portion of the Assessed Penalty in full by its due date, the entire unpaid balance of penalty and accrued interest shall become immediately due and owing. If such a failure to pay occurs, Respondents may be subject to a civil action pursuant to Section 205(c)(6) of the CAA, 42 U.S.C. § 7524(c)(6), to collect the Assessed Penalty under the CAA. In any collection action, the validity, amount, and appropriateness of the Assessed Penalty shall not be subject to review.

4.8. If Respondents fail to pay any portion of the Assessed Penalty in full by its due date, Respondents shall be responsible for payment of the following amounts:

a. Interest. Any unpaid portion of the Assessed Penalty shall bear interest at the rate established pursuant to 26 U.S.C. § 6621(a)(2) from the effective date of the Final Order, provided, however, that no interest shall be payable on any portion of the Assessed Penalty that is paid within 30 days of the effective date of the Final Order contained herein.

b. Attorneys' Fees, Collection Costs, Nonpayment Penalty. Pursuant to 42 U.S.C. § 7524(c)(6), should Respondents fail to pay the Assessed Penalty and interest

on a timely basis, Respondents shall also be required to pay the United States' enforcement expenses, including attorneys' fees and costs for collection proceedings, and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be in an amount equal to ten percent of the aggregate amount of Respondents' outstanding penalties and nonpayment penalties which are unpaid as of the beginning of such quarter.

4.9. The Assessed Penalty, including any additional costs incurred under Paragraph 4.8, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

4.10. The undersigned representative of each Respondent certifies that he or she is authorized to enter into the terms and conditions of this Consent Agreement and to bind such Respondent to this document.

4.11. The undersigned representative of each Respondent also certifies that, as of the date of such Respondent's signature of this Consent Agreement, such Respondent is complying fully with Section 203(a)(3) of the CAA, 42 U.S.C. § 7522(a)(3).

4.12. As a condition of settlement, Respondents agree to the following: By signing this Consent Agreement, the undersigned representative of each Respondent certifies that from the date of such Respondent's signature: (i) it 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 in violation of Section 203(a)(3)(A) of the CAA, 42 U.S.C. § 7522(a)(3)(A); and (ii) it will not manufacture, sell, offer for sale, or install any part or component, including those described in Paragraph 3.24 above, in violation of Section 203(a)(3)(B) of the CAA, 42, U.S.C.

§ 7522(a)(3)(B). Toward this end, Respondents are aware of EPA’s November 23, 2020 “Tampering Policy: The EPA Enforcement Policy on Vehicle and Engine Tampering and Aftermarket Defeat Devices under the Clean Air Act.”

4.13. Except as described in Paragraph 4.8, each party shall bear its own costs and attorneys’ fees in bringing or defending this action.

4.14. For the purposes of this proceeding, Respondents:

a. expressly waive any affirmative defenses and the right to contest the allegations contained in this Consent Agreement and to appeal the Final Order;

b. acknowledge that this Consent Agreement and the Final Order will be available to the public and agree that it does not contain any confidential business information or any personally identifiable information;

c. certify that the information they have supplied concerning this matter was at the time of submission true, accurate, and complete; and

d. acknowledge that there are significant penalties for knowingly submitting false, fictitious, or fraudulent information, including the possibility of fines and imprisonment (see 18 U.S.C. § 1001).

4.15. The provisions of this Consent Agreement and the Final Order shall bind Respondents and their respective agents, servants, employees, successors, and assigns.

4.16. Respondents consent to the issuance of any specified compliance or corrective action order, to any conditions specified in this Consent Agreement, and to any stated permit action.

4.17. The above provisions in Part IV are STIPULATED AND AGREED upon by Respondents and EPA Region 10.

DATED:

FOR RESPONDENT
PREMIER PERFORMANCE, LLC

Michael Sinoway  Digitally signed by Michael Sinoway
Date: 2021.02.02 12:22:21 -07'00'

MIKE SINOWAY, Chief Executive Officer

DATED:

FOR RESPONDENT
RALLYSPORT DIRECT, LLC

Michael Sinoway  Digitally signed by Michael Sinoway
Date: 2021.02.02 12:22:38 -07'00'

MIKE SINOWAY, Chief Executive Officer

DATED:

FOR RESPONDENT
JB AUTOMOTIVE, LLC

Michael Sinoway  Digitally signed by Michael Sinoway
Date: 2021.02.02 12:22:51 -07'00'

MIKE SINOWAY, Chief Executive Officer

DATED:

FOR RESPONDENT
STAGE 3 MOTORSPORTS, LLC

Michael
Sinoway

Digitally signed by
Michael Sinoway
Date: 2021.02.02
12:23:08 -07'00'

MIKE SINOWAY, Chief Executive Officer

DATED:

FOR COMPLAINANT:

EDWARD
KOWALSKI

Digitally signed by
EDWARD KOWALSKI
Date: 2021.02.02
16:21:28 -08'00'

EDWARD J. KOWALSKI, Director
Enforcement and Compliance Assurance Division
EPA Region 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	DOCKET NO. CAA-10-2021-0039
)	
Premier Performance, LLC; RallySport)	FINAL ORDER
Direct, LLC; JB Automotive, LLC; and Stage)	
3 Motorsports, LLC)	
)	
)	
Respondents.)	

1.1. The Administrator has delegated the authority to issue this Final Order to the Regional Administrator of EPA Region 10, who has redelegated this authority to the Regional Judicial Officer in EPA Region 10.

1.2. The terms of the foregoing Consent Agreement are ratified and incorporated by reference into this Final Order. Respondents are ordered to comply with the terms of settlement.

1.3. The Consent Agreement and this Final Order constitute a settlement by EPA of all claims for civil penalties under the CAA for the violations alleged in Part III of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(a), nothing in this Final Order shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order does not waive, extinguish, or otherwise affect Respondents' obligations to comply with all applicable provisions of the CAA and regulations promulgated or permits issued thereunder and any applicable implementation plan requirements.

1.4. This Final Order shall become effective upon filing with the Regional Hearing Clerk.

SO ORDERED this _____ day of _____, 2021.

RICHARD
MEDNICK

Digitally signed by
RICHARD MEDNICK
Date: 2021.02.03
13:37:07 -08'00'

RICHARD MEDNICK
Regional Judicial Officer
EPA Region 10

Certificate of Service

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER, In the Matter of: Premier Performance, LLC; RallySport Direct, LLC; JB Automotive, LLC; and Stage 3 Motorsports, LLC, Docket No.: CAA-10-2021-0039** was filed with the Regional Hearing Clerk and served on the addressees in the following manner on the date specified below:

The undersigned certifies that a true and correct copy of the document was delivered to:

Julie Vergeront
U.S. Environmental Protection Agency
Region 10, Mail Stop 11-C07
1200 Sixth Avenue, Suite 155
Seattle, Washington 98101
Vergeront.julie@epa.gov

Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt to:

Justin A. Savage
Attorney for
Premier Performance, LLC; RallySport Direct, LLC;
JB Automotive, LLC; and Stage 3 Motorsports, LLC
Sidley Austin LLP
jsavage@sidley.com

DATED this ____ day of _____, 2021

TERESA
YOUNG

Digitally signed by
TERESA YOUNG
Date: 2021.02.04
11:00:24 -08'00'

TERESA YOUNG
Regional Hearing Clerk
EPA Region 10