

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil No. <u>8:24-cv-1791</u>
	)	
WHITE’S DIESEL	)	COMPLAINT
PERFORMANCE IN. d/b/a	)	
WHITE’S DIESEL	)	
PERFORMANCE INC., AND	)	
WHITE’S DIESEL,	)	
	)	
Defendant.	)	
_____	)	

The United States of America (the “United States”), by the authority of the Attorney General and at the request of the Administrator of the United States Environmental Protection Agency (“EPA”), files this Complaint and alleges:

NATURE OF ACTION

1. This is a civil action brought under the Clean Air Act (“CAA”), 42 U.S.C. §§ 7522–24, and 7542, seeking civil penalties against White’s Diesel Performance In. d/b/a White’s Diesel Performance Inc. and White’s Diesel (collectively, “White’s Diesel” or “Defendant”) for violations of Sections 203(a)(3)(A) and (B) of the CAA related to White’s Diesel’s sale of and offer to

sell aftermarket products that bypass, defeat, or render inoperative emission controls installed on motor vehicles or motor vehicle engines in violation of the CAA. Defendant has also directly installed defeat devices on certified motor vehicles in violation of the CAA, an act known as “tampering.”

2. Disabling emissions controls from vehicles presents a serious threat to human health. Such emissions are linked to premature death and cause heart and lung disease, heart attacks, and aggravated asthma, among other serious illnesses. To prevent this threat, the CAA imposes stringent standards for the emission of air pollutants from vehicles and prohibits the manufacture, sale, and installation of any device intended to disable vehicle controls designed to comply with those emissions standards. 42 U.S.C. §§ 7521(a), 7522(a).

3. Additionally, White’s Diesel failed to make timely reports and provide complete information in response to EPA’s request for information (the “RFI”) issued pursuant to CAA Section 208(a), 42 U.S.C. § 7542(a).

DEFENDANT

4. Defendant White’s Diesel, a company that services motor vehicles and sells motor vehicle parts, is a Florida Profit Corporation with its principal office located at 602 Church Street, Nokomis, Sarasota County, Florida. White’s Diesel has conducted business under the following names: “White’s Diesel Performance In.”, “White’s Diesel Performance Inc.”, and “White’s Diesel.”

5. White's Diesel is a "person" within the meaning of Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

JURISDICTION AND VENUE

6. This Court has jurisdiction over the subject matter of and the parties to this action pursuant to Sections 204 and 205 of the CAA, 42 U.S.C. §§ 7523 and 7524, and 28 U.S.C. §§ 1331 (Federal Question), 1345 (United States as Plaintiff), and 1355 (Fine, Penalty, or Forfeiture).

7. Venue is proper in the Middle District of Florida pursuant to 28 U.S.C. §§ 89(b), 1391(b)(2), 1391(c)(2), and 1395(a), as well as Sections 204 and 205 of the CAA, 42 U.S.C. §§ 7523 and 7524, because it is the judicial district in which the Defendant is located and conducts business and is the judicial district in which the violations alleged herein occurred.

CAA STATUTORY AND REGULATORY BACKGROUND

8. This action arises under CAA Title II, Part A, Sections 202 - 219, 42 U.S.C. §§ 7521-7554, and the regulations promulgated thereunder relating to the control of emissions of air pollution from motor vehicles and their engines. These provisions are often referred to as the mobile source provisions of the CAA.

A. Statutory and Regulatory Overview

9. Title II, Part A of the CAA and the regulations promulgated thereunder establish stringent standards for the emission of air pollutants from

motor vehicles and their engines that “cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare.” 42 U.S.C. § 7521(a).

10. CAA Section 203(a), 42 U.S.C. § 7522(a), sets forth prohibited acts.

11. CAA Section 203(a)(3)(A), 42 U.S.C. § 7522(a)(3)(A), commonly known as the “tampering provision,” prohibits tampering with the pollution control equipment on motor vehicles.

12. CAA Section 203(a)(3)(B), 42 U.S.C. § 7522(a)(3)(B), commonly known as the “defeat device provision,” prohibits the manufacturing, offering to sell, selling, or installing of aftermarket parts or components that defeat a vehicle’s emissions controls.

13. Together, the tampering and aftermarket defeat device prohibitions in CAA Sections 203(a)(3)(A) and (B) ensure that pollution control devices operate continuously and are not removed, defeated, or bypassed.

14. Despite this prohibition, some companies manufacture and sell products designed to change motor vehicles’ performance by bypassing, defeating, or rendering inoperative certain pollution control equipment (*i.e.*, “aftermarket defeat devices”). Some of these aftermarket defeat devices are physically installed in vehicles to change, remove, or replace emissions controls, while others are

software products which are electronically installed using defeat devices that plug into a vehicle to reprogram the computer systems.

B. EPA's Certificate of Conformity for New Motor Vehicles and Motor Vehicle Engines

15. Manufacturers of new motor vehicles or motor vehicle engines must apply for and obtain a certificate of conformity ("COC") from EPA to sell, offer to sell, or introduce or deliver for introduction into commerce any new motor vehicle or motor vehicle engine in the United States. 42 U.S.C. § 7522(a)(1).

16. To obtain a COC, the original equipment manufacturer ("OEM") must demonstrate that the motor vehicle or motor vehicle engine will conform to established emissions standards for the relevant pollutants during the motor vehicle or motor vehicle engine's useful life. 42 U.S.C. § 7525(a)(2); *see* 40 C.F.R. §§ 86.007-30(a)(1)(i), 86.1848-01(a)(1).

17. The COC application must include a description of the motor vehicle's emission control system and fuel system components. 40 C.F.R. §§ 86.094-21(b)(1), 86.1844-01(d)–(e).

18. Once issued by EPA, a COC covers only those new motor vehicles or motor vehicle engines that conform in all material respects to the specifications provided to EPA in the COC application for such vehicles or engines. 40 C.F.R. § 86.1848-01(c)(6).

C. Acts Prohibited by Section 203 of the Clean Air Act

19. Section 203(a)(3)(A) of the CAA, 42 U.S.C. § 7522(a)(3)(A), states that the following acts are prohibited:

“for any person to remove or render inoperative any device or element of design installed on or in a motor vehicle or motor vehicle engine in compliance with the regulations [promulgated under Title II of the CAA] 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.”

20. Section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B), states that the following acts are prohibited:

“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 [promulgated 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.”

21. Section 203(a) also prohibits any person from causing a violation of Section 203(a)(3)(A) or (B). 42 U.S.C. § 7522(a).

22. Any person violating Section 203(a)(3)(A) or (B) of the CAA, 42 U.S.C. § 7522(a)(3)(A) or (B), or causing a violation thereof, is subject to injunctive relief and civil penalties of up to \$5,761 for each violation occurring after November 2, 2015, and assessed on or after December 27, 2023, in

accordance with Section 205(a) of the CAA, 42 U.S.C. § 7524(a) as modified by 40 C.F.R. § 19.4 (2023).

23. Each part or component manufactured, sold, offered for sale, or installed in violation of Section 203(a)(3)(B) of the CAA, 42 U.S.C.

§ 7522(a)(3)(B), is a separate violation of Section 203(a)(3)(B), 42 U.S.C.

§ 7522(a)(3)(B).

24. Section 208(a) of the CAA, 42 U.S.C. § 7542(a), requires a person subject to Title II, Part A to make reports and provide information that EPA may reasonably require to determine whether the person has acted or is acting in compliance with Title II, Part A of the CAA.

25. Under Section 203(a)(2)(A) of the CAA, 42 U.S.C. § 7522(a)(2)(A), a person's failure to provide information required under Section 208 is a prohibited act subject to a penalty of \$57,617 per day of violation, 42 U.S.C. § 7524(a) as modified by 40 C.F.R. § 19.4 (2023).

26. This Court, pursuant to CAA Section 204(a), 42 U.S.C. § 7523(a), has jurisdiction "to restrain violations" of CAA Section 203(a), 42 U.S.C. § 7522(a).

D. Emissions-Related Elements of Design

27. An "element of design" is "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 and 86.1803-01 (General Compliance Provisions for Control of Air Pollution from New and In-Use Light-Duty Vehicles, Light-Duty Trucks, and Heavy-Duty Vehicles).

28. An “emission control system” is a “unique group of emission control devices, auxiliary emission control devices, engine modifications and strategies, and other elements of design designated by the Administrator [of EPA] used to control exhaust emissions of a vehicle.” 40 C.F.R. § 86.1803-01.

29. OEMs install a variety of software and hardware elements of design and emission control systems in motor vehicles and motor vehicle engines to monitor and control emissions of pollutants in order to comply with the CAA and the regulations promulgated thereunder and to obtain a COC. These elements of design and emission control systems are hereinafter referred to in this Complaint as “Emissions-Related Elements of Design.”

30. Emissions-Related Elements of Design generally include both the specific hardware described in Paragraphs 33-36 below and the software that controls operation of that hardware.

31. Motor vehicles are equipped with “Electronic Control Units” or “ECUs” (a/k/a an “engine control module” or “ECM”), which are on-board

computer systems that run software that monitors and controls vehicle operations, including the operation of Emissions-Related Elements of Design.

32. Motor vehicles are also equipped with auxiliary software and hardware emission control devices (“AECDs”) which are Emissions-Related Elements of Design that sense temperature, motive speed, engine revolutions per minute, transmission gear, or any other parameter for the purpose of activating, modulating, delaying, or deactivating the operation of any part of a motor vehicle’s emission control system. 40 C.F.R. § 1037.801.

33. Exhaust Gas Recirculation System. Diesel engines produce high combustion temperatures that result in the production of nitrogen oxides (“NO_x”). An Exhaust Gas Recirculation (“EGR”) System reduces NO_x emissions by recirculating a portion of engine exhaust gas back through the engine’s cylinders, thereby lowering combustion temperature and reducing NO_x formation. The EGR System includes but is not limited to the EGR cooler, throttle valve, other valves, piping, flanges and gaskets as well as various other hardware, parts, sensors, subassemblies, AECDs, ECU software (calibrations) and other components that collectively constitute the system for implementing this emissions control strategy. The EGR System is a “device or element of design installed on or in a motor vehicle or motor vehicle engine in compliance with [CAA] regulations” within the

meaning of Section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522 (a)(3)(B), and is also an “Emissions-Related Element of Design.”

34. Aftertreatment Systems. As an alternative or in addition to EGRs, OEMs typically equip motor vehicles with one or more Aftertreatment Systems “whose design function is to reduce emissions in the engine exhaust before it is exhausted to the environment.” *See* 40 C.F.R. § 1068.30. A motor vehicle’s Aftertreatment System consists of hardware installed in the stock exhaust system, as well as software that runs on one or more ECUs and directs operation of the hardware components. Diesel Particulate Filters (“DPFs”), Diesel Oxidation Catalysts (“DOCs”), and Selective Catalytic Reduction (“SCR”) Systems are components of the Aftertreatment System that OEMs may employ to control the emission of pollutants.

a. Diesel Particulate Filters (“DPFs”). A DPF is a filter that captures soot from engine exhaust, thereby decreasing particulate matter emissions. By design, soot that collects in the DPF is periodically burned off by elevated exhaust temperatures in a process referred to as active or passive regeneration. The DPF includes all hardware, parts, sensors, subassemblies, AECDs, ECU software (calibrations), and other components that collectively constitute the system for implementing this emissions control strategy. The DPF is a “device or element of design

installed on or in a motor vehicle or motor vehicle engine in compliance with [CAA] regulations” within the meaning of Section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B), and is also an Emissions-Related Element of Design.

b. Diesel Oxidation Catalysts (“DOCs”). A DOC (a type of “catalytic converter” or “catalyst”) is a precious-metal coated, flow-through honeycomb structure. As exhaust gas passes through the DOC, the coating of precious metal causes a catalytic reaction that breaks down carbon monoxide and non-methane hydrocarbons in the exhaust into their less harmful components. The DOC includes all hardware, parts, sensors, subassemblies, AECDs, ECU software (calibrations), and other components that collectively constitute the system for implementing this emissions control strategy. The DOC is a “device or element of design installed on or in a motor vehicle or motor vehicle engine in compliance with [CAA] regulations” within the meaning of Section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B), and is also an Emissions-Related Element of Design.

c. Selective Catalytic Reduction (“SCR”) System. A SCR system (a type of “catalytic converter” or “catalyst”) reduces NO_x emissions by chemically converting exhaust gas that contains NO_x into nitrogen and

water through the injection of diesel exhaust fluid, composed of urea and deionized water. The SCR includes all hardware, parts, sensors, subassemblies, AECDs, ECU software (calibrations) and other components, that collectively constitute the system for implementing this emissions control strategy. The SCR is a “device or element of design installed on or in a motor vehicle or motor vehicle engine in compliance with [CAA] regulations” within the meaning of Section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B), and is also an Emissions-Related Element of Design.

35. Certified Stock Calibrations. OEMs install a suite of pre-set software calibrations for operational parameters (“Certified Stock Calibrations”). These calibrations control all aspects of vehicle and engine operation including combustion, performance, and operation of EGR and Aftertreatment Systems. The Certified Stock Calibrations for a particular engine operate together to minimize and/or control the formation and emission of pollutants and ensure the motor vehicle or motor vehicle engine can meet applicable emissions requirements in the CAA and regulations promulgated thereunder. These calibrations are disclosed in the COC for each vehicle because the Certified Stock Calibrations are an important part of a motor vehicle’s overall emissions control strategy. *See* 40 C.F.R. § 86.1844-01(e)(2) (requiring that fuel pump flow rate, fuel pressure, engine speed,

EGR exhaust gas flow rate, and basic engine timing be included in the COC application). Each Certified Stock Calibration is an “element of design installed on or in a motor vehicle or motor vehicle engine in compliance with [CAA] regulations” within the meaning of Section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B), and is also an Emissions-Related Element of Design.

36. On-Board Diagnostics System. The CAA requires OEMs to install an On-Board Diagnostics System (“OBD”) on motor vehicles. 42 U.S.C. § 7521(m). The OBD monitors, detects, reports, and records malfunctions of monitored Emissions-Related Elements of Design and other components through the controller area network installed throughout the motor vehicle or motor vehicle engine. 40 C.F.R. §§ 86.007-17, 86.010-18, 86.1806-05. The OBD monitors sensor inputs for malfunction or deterioration that could cause a vehicle to fail to comply with CAA emissions standards and may command the ECU to alter vehicle operation so that malfunctions can be corrected. The OBD includes hardware, parts, sensors, subassemblies, AECDs, ECU software (calibrations) and other components that collectively constitute the system. The OBD is a “device or element of design installed on or in a motor vehicle or motor vehicle engine in compliance with [CAA] regulations” within the meaning of Section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B), and is also an Emissions-Related Element of Design.

a. CAA regulations require that when the OBD detects a malfunction of an emissions-related system or component, it must illuminate the vehicle's malfunction indicator light ("MIL" a/k/a "check engine light") on the dashboard. *See* 40 C.F.R. § 86.1806-05(b)-(d).

b. CAA regulations require that once the MIL has been illuminated, the OBD must record a diagnostic trouble code ("DTC"). 40 C.F.R. § 86-1806-05(e). The OBD stores DTCs that service personnel can read in order to diagnose and repair a vehicle and government inspectors can download to verify a vehicle's compliance with emissions standards.

c. The OBD may also prompt a driver to correct a problem by altering vehicle performance, such as by putting the vehicle into "limp-home mode." *See* 40 C.F.R. § 86.010-2. In limp-home mode, the ECU commands the engine to downgrade performance so that the driver is aware that there is a problem with the emission control system, while permitting the vehicle to be driven (albeit slowly) to a service station. *See, e.g.,* 40 C.F.R. § 86.004-25(b)(6)(ii) (requiring the vehicle performance to deteriorate to a point unacceptable for typical driving when diesel exhaust fluid replenishment is required).

E. Types of Aftermarket Defeat Devices at Issue in this Case

37. Third parties manufacture and sell products designed to change motor vehicles' performance (typically seeking gains in horsepower or fuel economy) by bypassing, defeating, or rendering inoperative OEM-installed Emission-Related Elements of Design ("Aftermarket Defeat Devices").

38. Some Aftermarket Defeat Devices are physically installed in vehicles to change, remove, or replace emissions controls.

39. Other Aftermarket Defeat Devices are software products (i.e., performance tunes or delete tunes) that are electronically installed using tuning devices that plug into a vehicle's OBD port to reprogram the computer systems.

40. Aftermarket Defeat Devices "bypass, defeat, or render inoperative" Emissions-Related Elements of Design within the meaning of Section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B). The Aftermarket Defeat Devices relevant to this Complaint fall into the following three categories: EGR Delete Hardware Products, Aftertreatment Delete Hardware Products, and Tuning Products.

41. EGR Delete Hardware Products. Some aftermarket hardware products physically replace, modify, bypass, render inoperative, facilitate deletion or partial deletion of, and/or interfere with components of the EGR System. These include, but are not limited to, exhaust manifolds that do not incorporate EGR ports designed for an engine with exhaust manifolds that contain EGR ports, plates that block the EGR system (known as "block off plates"), and hardware to force

the throttle valve to remain fully open, which inhibits EGR flow (referred to as “throttle valve delete” equipment). These products are collectively referred to in this Complaint as “EGR Delete Hardware Products.”

42. Aftertreatment System Delete Hardware Products. Some aftermarket hardware products physically alter some or all components of a motor vehicle’s Aftertreatment System by replacing, modifying, bypassing, rendering inoperative, facilitating deletion or partial deletion of, or interfering with essential physical elements of the DPF, DOC, or SCR. This often involves removing the Aftertreatment System installed by the OEM and replacing it with a “straight pipe” or “race pipe.” The replacement hardware does not contain emission controls such as DPF, SCR, and DOC. These products are collectively referred to in this Complaint as “Aftertreatment System Delete Hardware Products.”

43. Tuning Products. Other aftermarket products consist of software that is uploaded into a motor vehicle’s ECUs and replaces, modifies, bypasses, renders inoperative, facilitates deletion or partial deletion of, overwrites, and/or interferes with one or more of a motor vehicle’s or motor vehicle engine’s Certified Stock Calibrations. An individual piece of such software is commonly referred to as a “tune,” derived from its intended purpose of “tuning” the vehicle’s performance. The tunes relevant to this Complaint are referred to hereinafter as “Delete Tunes.”

a. There are various methods by which Delete Tunes may be programmed into the vehicle. Tunes may be uploaded from a handheld tuning device or from a smartphone or laptop to which they are uploaded by email, or through cloud-based technology.

b. A single Delete Tune can alter, disable, bypass, delete and/or over-write multiple Certified Stock Calibrations and types of Certified Stock Calibrations. For example, a tune that disables the EGR also typically changes OBD-related calibrations so that the EGR deletion will not be detected. Multiple tunes and types of tunes are often sold together as a single product.

GENERAL ALLEGATIONS

Sale of Illegal Products

44. At all relevant times herein, White's Diesel sold, and/or offered to sell, or caused the selling or offering to sell of products intended for use in "motor vehicles" as that term is defined by the CAA, 42 U.S.C. § 7550(2), and regulations promulgated thereunder at 40 C.F.R. § 85.1703.

45. At all relevant times herein, Defendant sold and/or offered to sell, or caused the selling, or offering to sell of the following types of Aftermarket Defeat Devices: EGR Delete Hardware Products, Aftertreatment Hardware Products, and Delete Tunes.

46. At all relevant times herein, White's Diesel sold and/or offered to sell, and/or caused the selling, or offering to sell at least 443 EGR Delete Hardware Products and Aftertreatment Hardware Products, and at least 305 Delete Tunes.

47. At all relevant times herein, EGR Delete Hardware Products, Aftertreatment Hardware Products, and Delete Tunes that White's Diesel sold, and/or offered to sell, or that White's Diesel caused to be sold, or offered for sale, had a principal effect of bypassing, defeating, and/or rendering inoperative Emission-Related Elements of Design.

Installation of Illegal Products

48. In at least 46 instances, White's Diesel installed or caused to be installed hardware and/or tuning devices, thereby rendering inoperative the emission control components present in the vehicle configuration in violation of Section 203(a)(3)(A) of the CAA, and White's Diesel knew that such installations would have this effect. White's Diesel installed such devices on a variety of motor vehicles including Ford, Chevrolet, and Dodge pickup trucks.

Failure to Provide Requested Information

49. EPA identified White's Diesel as a target for potential CAA Title II enforcement after it viewed suspicious activities concerning White's Diesel on the Internet. For example, EPA case officers saw photos of tampered vehicles and

aftermarket defeat devices for sale on White's Diesel's Facebook page and read customer reviews describing how White's Diesel installed or sold defeat devices.

50. EPA issued the RFI, dated November 8, 2019, via United States Parcel ("UPS"), to White's Diesel under Section 208(a) of the CAA, 42 U.S.C. § 7542(a), requesting information and documents, including copies of White's Diesel's invoices reflecting sales and work performed on diesel motor vehicles over a one year period, from approximately November 8, 2018, to November 8, 2019, to allow EPA to evaluate White's Diesel's compliance with CAA Sections 203(a)(3)(A) and (B), 42 U.S.C. §§ 7522(a)(3)(A) and (B).

51. The RFI stated that White's Diesel's response was due within 30 days of receipt of the RFI.

52. White's Diesel received the RFI via UPS on November 13, 2019.

53. EPA also sent the RFI via email to Mr. Jake C. White on November 14, 2019. Mr. White is the owner and President of White's Diesel. EPA's email to Mr. White detailed White's Diesel's receipt of the RFI on November 13, 2019, and White's Diesel's deadline to respond to the RFI by December 13, 2019.

54. On December 5, 2019, White's Diesel through its legal counsel, requested a 90-day extension to respond to the RFI. EPA granted a 45-day extension. As a result, White's Diesel's new deadline for responding to the RFI was February 3, 2020.

55. White's Diesel did not respond to the RFI by February 3, 2020.

56. On several occasions by phone and email to White's Diesel's legal counsel between February 6, 2020, and September 2, 2020, EPA inquired about the status of White's Diesel's delinquent response to the RFI.

57. EPA heard from White's Diesel's counsel regarding its response to the RFI by way of an email, dated September 14, 2020, stating that White's Diesel and its counsel would "re-group on this and get back to [EPA]."

58. White's Diesel provided an incomplete response on June 1, 2022, and still has not provided a complete response to the RFI.

**FIRST CLAIM FOR RELIEF
(Selling EGR Delete Hardware Products)**

59. Plaintiff realleges and incorporates by reference the preceding paragraphs as if fully set forth herein.

60. From October 1, 2018, to November 8, 2019, White's Diesel sold and/or offered to sell, and/or caused the sale and/or offer to sell, at least 140 EGR Delete Hardware Products.

61. A principal effect of EGR Delete Hardware Products is, and at all relevant times herein was, to bypass, defeat, or render inoperative a motor vehicle's EGR System.

62. White's Diesel knew or should have known that each of White's Diesel's EGR Delete Hardware Products was being offered for sale or installed for such use or put to such use.

63. Each unit of EGR Delete Hardware Products that White's Diesel sold, and/or offered to sell, or that Defendant caused to be sold, or offered to sell, is a separate violation of Section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B). 42 U.S.C. § 7524(a).

64. White's Diesel's violations as alleged in this Count resulted in excess emissions from motor vehicles of various air pollutants.

65. For each violation of Section 203(a)(3)(B), White's Diesel is liable to the United States for civil penalties, and, if needed, injunctive relief.

SECOND CLAIM FOR RELIEF
(Selling Aftertreatment System Delete Hardware)

66. Plaintiff realleges and incorporates by reference the preceding paragraphs as if fully set forth herein.

67. From October 1, 2018, to November 8, 2019, White's Diesel sold, and/or offered to sell, and/or caused the sale or offered to sell at least 303 Aftertreatment System Delete Hardware Products that bypass, defeat, and/or render inoperative one or more Aftertreatment Systems.

68. A principal effect of each of Defendant's Aftertreatment System Delete Hardware Products is, and at all relevant times herein was, to bypass, defeat, or render inoperative a motor vehicle's Aftertreatment System.

69. White's Diesel knew or should have known that each of White's Diesel's Aftertreatment System Delete Hardware Products was being offered for sale or installed for such use or put to such use.

70. Each unit of Aftertreatment System Delete Hardware Products that White's Diesel sold or offered to sell, or that Defendant caused to be sold or offered to sell, is a separate violation of Section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B). 42 U.S.C. § 7524(a).

71. White's Diesel's violations as alleged in this Count resulted in excess emissions from motor vehicles of various air pollutants.

72. For each violation of Section 203(a)(3)(B), White's Diesel is liable to the United States for civil penalties, and, if needed, injunctive relief.

THIRD CLAIM FOR RELIEF (Selling Delete Tunes)

73. Plaintiff realleges and incorporates by reference the preceding paragraphs as if fully set forth herein.

74. From October 1, 2018, to November 8, 2019, White's Diesel sold and/or offered to sell, and/or caused the sale and/or offered to sell at least 309 performance tunes and tuning devices (aka Delete Tunes).

75. Each performance tune and tuning device sold by White's Diesel is intended to alter a motor vehicle's calibrated operating parameters and/or interfere with the OBD System of a motor vehicle such that the vehicle is able to operate without intact emissions controls.

76. Each performance tune and tuning device sold by White's Diesel has the potential to tamper with emissions parts or components in violation of CAA Section 203(a)(3)(B).

77. A principal effect of each of Defendant's Delete Tunes is, and at all relevant times herein was, to bypass, defeat or render inoperative a Certified Stock Calibration related to a motor vehicle's EGR System, Aftertreatment System, engine operation and combustion, and/or OBD System.

78. White's Diesel knew or should have known that each of White's Diesel's Delete Tunes was being offered for sale or installed for such use or put to such use.

79. Each copy of a Delete Tune that White's Diesel sold or offered to sell, or that Defendant caused to be sold or offered for sale, is a separate violation of Section 203(a)(3)(B) of the CAA. 42 U.S.C. § 7524(a).

80. White's Diesel's violations as alleged in this Count resulted in excess emissions from motor vehicles of various air pollutants.

81. For each violation of Section 203(a)(3)(B), White's Diesel is liable to the United States for civil penalties, and, if needed, injunctive relief.

**FOURTH CLAIM FOR RELIEF
(Removing or Rendering Inoperative Emissions-Related
Devices or Elements of Design)**

82. Plaintiff realleges and incorporates by reference the preceding paragraphs as if fully set forth herein.

83. From October 1, 2018, to November 8, 2019, White's Diesel installed, or caused persons (including, but not limited to, its employees) to install aftermarket defeat devices and/or tuning devices in at least 46 motor vehicles.

84. White's Diesel's installation of EGR Delete Hardware Products, Aftertreatment System Delete Hardware Products, and/or Delete Tunes (or the causing thereof) removes or renders inoperative devices or elements of design installed on or in motor vehicles in compliance with the regulations promulgated under Title II of the CAA.

85. White's Diesel knew that the installation of EGR Delete Hardware Products, Aftertreatment System Delete Hardware Products, and/or Delete Tunes removed or rendered inoperative devices or elements of design installed on or in motor vehicles or motor vehicle engines in compliance with the regulations promulgated under Title II of the CAA.

86. White's Diesel knew that the products it installed on Ford, GM, and Dodge diesel pickup trucks were intended to defeat emission controls because it advertised that it offers "performance modifications to improve vehicle drivability & dependability for towing applications," and uses known aftermarket defeat device brands including Anarchy Diesel and FloPro.

87. Installation of EGR Delete Hardware Products, Aftertreatment System Delete Hardware Products, and/or Delete Tunes by, or caused by, White's Diesel on each motor vehicle or motor vehicle engine constitutes a separate violation of Section 203(a)(3)(A) and (B) of the CAA, 42 U.S.C. § 7522(a)(3)(A) and (B).

88. White's Diesel's violations as alleged in this Count resulted in excess emissions from motor vehicles of various air pollutants.

89. For each violation of Section 203(a)(3)(A), Defendant is liable to the United States for civil penalties, and, if needed, injunctive relief.

**FIFTH CLAIM FOR RELIEF
(Failure to Provide Information)**

90. Plaintiff realleges and incorporates by reference the preceding paragraphs as if fully set forth herein.

91. White's Diesel is a person subject to Part A (Motor Vehicle Emission and Fuel Standards) of Title II of the CAA who EPA reasonably believes may have information, including information for EPA to determine whether White's Diesel acted and/or is acting in compliance with CAA Section 203(a), which is necessary

for the information-gathering purposes set forth in CAA Section 208(a), 42 U.S.C. § 7542(a).

92. EPA issued the RFI to White's Diesel pursuant to its statutory authority under Section 208(a) of the CAA, 42 U.S.C. § 7542(a), on November 8, 2019. After EPA agreed to an extension, the response was due on February 3, 2020.

93. White's Diesel failed to, as required by Section 203(a), 42 U.S.C. § 7522(a), "make reports or provide information required under Section 208."

94. The RFI, which seeks relevant and reasonable information, was issued for the lawful purpose of carrying out EPA's responsibilities for enforcing the CAA, including its authority under Title II, Part A of the Act – Motor Vehicle Emission and Fuel Standards, Sections 202-219, 42 U.S.C. §§ 7521-7554, to determine whether a person is acting or has acted in compliance with this Part.

95. The RFI was limited in scope and specifically required White's Diesel to provide information about certain parts or components that White's Diesel offered for sale, sold, or installed over a one-year period and other information relevant to White's Diesel's compliance with the CAA.

96. White's Diesel's response to the RFI was due to EPA no later than February 3, 2020.

97. White's Diesel provided an incomplete response on June 1, 2022, and still has not provided a complete response to the RFI. The length of the violation is 849 days from February 3, 2020, through June 1, 2022.

98. White's Diesel has failed to fully provide EPA responsive information and documents requested in the RFI.

99. As a result, White's Diesel failed to comply with CAA Section 208(a), 42 U.S.C. § 7542(a).

100. Pursuant to CAA Section 205(a), White's Diesel is subject to the imposition of civil penalties, and, if needed, injunctive relief.

PRAYER FOR RELIEF

WHEREFORE, the United States of America respectfully requests that this Court:

1. Assess civil penalties against White's Diesel for its failure to timely provide to EPA information and documents responsive to the RFI in an amount up to \$57,617 per day for each violation occurring after November 2, 2015, where penalties are assessed on or after December 27, 2023, pursuant to CAA Section 205(a), 42 U.S.C. § 7524(a), as modified by 40 C.F.R. § 19.4 (2023).

2. Assess civil penalties against White's Diesel for selling and/or offering to sell, and/or causing the, sale and/or offer to sell 752 aftermarket defeat devices, including 443 defeat hardware and 309 performance tunes and tuning

devices, in an amount up to \$5,761 for each device sold after November 2, 2015, where penalties are assessed on or after December 27, 2023, in accordance with Section 205(a) of the CAA, 42 U.S.C. § 7524(a) as modified by 40 C.F.R. § 19.4 (2023).

3. Assess civil penalties against White's Diesel for 46 instances of tampering with emission controls by removing them or by installing defeat devices, in an amount up to \$5,761 for each instance that occurred after November 2, 2015, where penalties are assessed on or after December 7, 2023, in accordance with Section 205(a) of the CAA, 42 U.S.C. § 7524(a) as modified by 40 C.F.R. § 19.4 (2023).

4. If Defendant continues to sell, offer to sell, or install defeat devices, Plaintiff reserves the right to seek an injunction including but not limited to prevention of future sales or installations, or destruction of existing inventory.

5. Award the costs of this action to the United States.

6. Grant the United States such other relief as the Court may deem just and proper.

Respectfully Submitted,

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U.S. Department of Justice

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