



4410-15

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree under the Clean Air Act

On September 12, 2019, the Department of Justice lodged a proposed consent decree with the United States District Court for the District of Utah in the lawsuit entitled *United States of America v. Performance Diesel, Inc.*, Civil Action No. 4:19-cv-00075-DN.

The lawsuit seeks injunctive relief and civil penalties against Defendant Performance Diesel, Inc. (“PDI”) for violations of Sections 203(a)(3)(A) and (B) of the Clean Air Act, 42 U.S.C. §§ 7522(a)(3)(A) and (B). The United States alleges that Defendant manufactured, sold, and in some cases installed at least 5,549 aftermarket products that have a principal effect of bypassing, defeating, or rendering inoperative emission controls installed on motor vehicles or motor vehicle engines, and that Defendant knew or should have known that these products would be put to such use. In both the complaint and proposed consent decree, these aftermarket products are referred to as “subject products.” Subject products do not include products that are covered by an Executive Order (“EO”) issued by the California Air Resources Board (“CARB”) or a pending “complete application” for a CARB EO.

Under the proposed consent decree, Defendant would pay a civil penalty and implement measures to comply with the Clean Air Act. For instance, subject to a narrowly tailored exception for research and development, Defendant is prohibited from manufacturing, selling, or installing subject products. For any product that would otherwise qualify as a subject product, Defendant must demonstrate a reasonable basis that the product will not adversely affect vehicles emissions. Moreover, Defendant must (1) destroy all subject products (except those retained for research and development); (2) stop providing technical support for subject products; (3) revise its marketing materials; (4) provide notice to its employees and customers; (4) require its

employees to forfeit any subject products; and (5) provide annual employee training. Defendant must also pay \$1,100,000 in civil penalties based upon its demonstrated inability to pay a higher penalty. The proposed consent decree would resolve all Clean Air Act claims alleged by the United States against Defendant through the date the United States filed the complaint.

The publication of this notice opens a period for public comment on the consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States of America v. Performance Diesel, Inc.*, D.J. Ref. No. 90-5-2-1-11994. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by e-mail or by mail:

<i>To submit comments:</i>	<i>Send them to:</i>
By e-mail	pubcomment-ees.enrd@usdoj.gov
By mail	Assistant Attorney General U.S. DOJ – ENRD P.O. Box 7611 Washington, D.C. 20044-7611

During the public comment period, the consent decree may be examined and downloaded at this Justice Department website: <https://www.justice.gov/enrd/consent-decrees>. We will provide a paper copy of the consent decree upon written request and payment of reproduction costs. Please mail your request and payment to:

Consent Decree Library
U.S. DOJ – ENRD
P.O. Box 7611
Washington, D.C. 20044-7611

Please enclose a check or money order for \$12.25 (25 cents per page reproduction cost) payable to the United States Treasury.

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