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July 27, 2016

VIA CERTIFIED MAIL

Diesel Brothers  
1955 S 1800 W  
Woods Cross, UT 84087

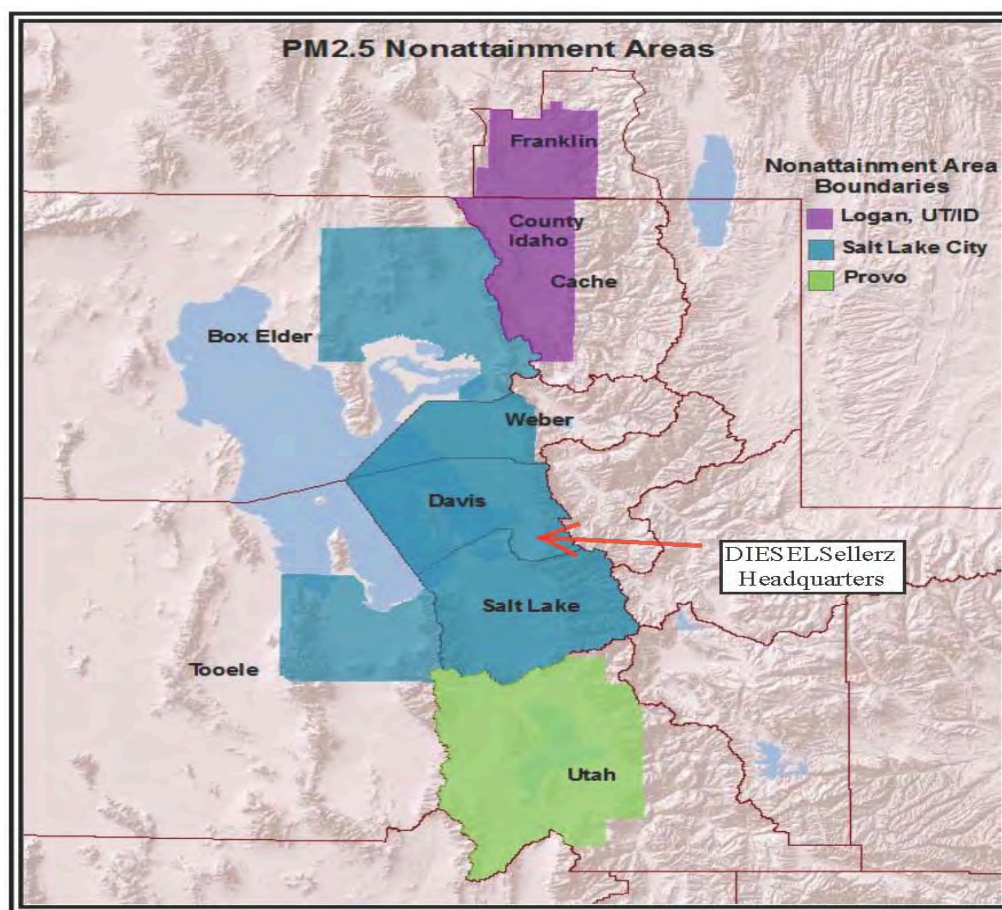
Dear Diesel Brothers,

We are writing on behalf of the Utah Physicians for a Healthy Environment (UPHE) to notify you of UPHE's intent to file suit against DIESELSellerz.com LLC, Diesel Power Gear LLC, 4X4 Anything LLC, Sparks Motors LLC, David W. Sparks ("Heavy D"), David Kiley ("Diesel Dave"), Joshua Stuart ("Red Beard") and Keaton Hoskins ("The Muscle") (individually and collectively, "Diesel Brothers"), for significant, repeated and ongoing violations of Section 203 of the Clean Air Act ("the Act") by removing and defeating emission control systems on diesel vehicles, advertising and selling such vehicles, and selling parts with the same purpose, at the expense of the health and well-being of all Utahns.



## I. Introduction

As a group of admittedly talented technicians, you have created a growing business transforming lawful, emission compliant vehicles into illegal, pollution-belching “bad ass” trucks. To what purpose? More horsepower, and apparently the chance to send a plume of black smoke (“rolling coal”) on hapless pedestrians and hybrid vehicle owners. At what cost? A ten- to over 30-fold increase in emissions of fine particulate matter and oxides of nitrogen (NO<sub>x</sub>)<sup>1</sup> from each vehicle, disproportionately contributing to the “nonattainment” status of Utah’s most polluted, unhealthy air.<sup>2</sup>

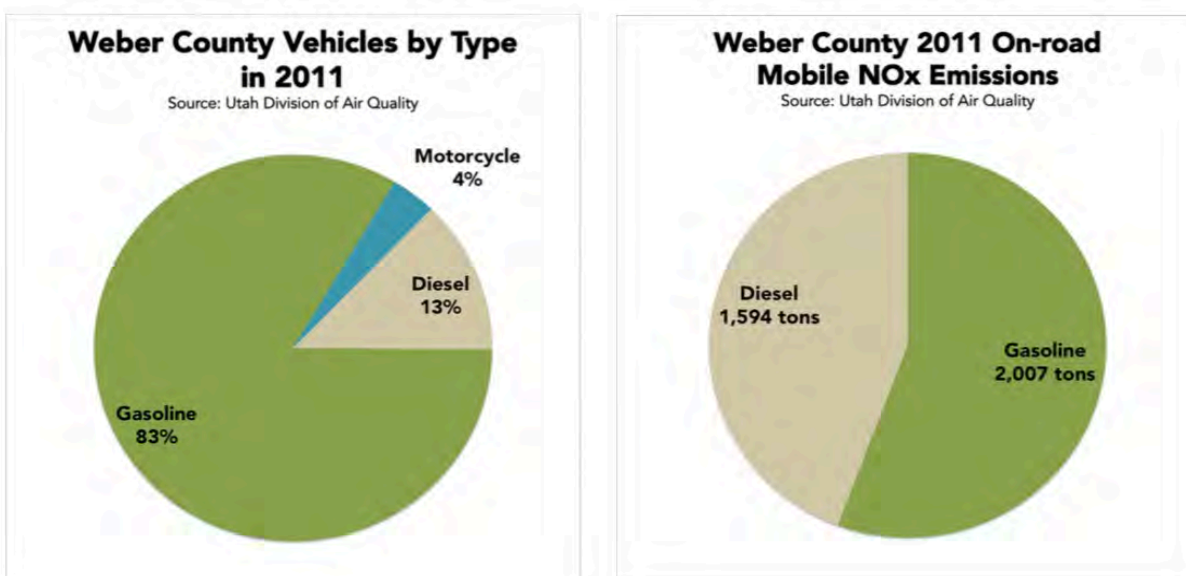


Presumptively stock, unmodified diesel vehicles already disproportionately pollute Utah’s air. According to a 2015 modeling analysis by the Utah Division of Air Quality (DAQ), although only 13 percent of the vehicles registered in Weber County in 2011 had

<sup>1</sup> “Diesel engines emit nitrous oxides (“NO<sub>x</sub>”), non-methane hydrocarbons, and particulate matter (“PM”), all of which are harmful to the environment and human health . . .” *National Petrochemical & Refiners Ass’n v. E.P.A.* 287 F.3d 1130, 1134 (D.C. Cir. 2002).

<sup>2</sup> Excess particulate matter and NO<sub>x</sub> emitted by illegally modified trucks contribute directly to Greater Salt Lake City’s failure to attain health-based ambient air quality standards for PM<sub>2.5</sub>. [http://www.deq.utah.gov/ProgramsServices/programs/air/emissionsinventories/docs/2013/03Mar/NONATTAINMENT\\_MAP.pdf](http://www.deq.utah.gov/ProgramsServices/programs/air/emissionsinventories/docs/2013/03Mar/NONATTAINMENT_MAP.pdf)

diesel engines, those vehicles emitted 44 percent of all on-road NO<sub>x</sub> emissions in the County. And that is assuming all of the diesel vehicles are in compliance with applicable emission standards, which they plainly are not.



Once pollution-regulated diesel engines and exhaust systems are modified for performance, their stock emissions can quickly multiply. Volkswagen's pre-market software changes alone caused NO<sub>x</sub> emissions from millions of its diesel vehicles to increase by over 40 times the applicable federal standard. Your aftermarket modifications performed on domestic diesel trucks, that create more smoke and power, can have similar results. According to a 2013 study conducted by Davis County and the University of Utah, an increase in opacity of emissions (density of smoke) from diesels is directly correlated to a significant jump in fine particulate matter. For diesel vehicles that did not pass the Davis County opacity test, for example, emissions of particulate matter in the 1.0 - 2.0 micron range was 100 times that of the diesel vehicles that passed the test.<sup>3</sup> In other words, the black smoke that one sees spewing from the tailpipes or stacks of "tuned" and "deleted" trucks is almost entirely respirable and hazardous to one's health.<sup>4</sup> Further, that black smoke certainly is exacerbating the Wasatch Front's particulate matter (PM) 2.5 micron nonattainment (unhealthy air) status.

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<sup>3</sup> See Powerpoint Slide No. 12 in 2013 Davis County/Worldwide Environmental Products Inc. presentation: [obdclearinghouse.com/index.php?body=get\\_file&id=1727](http://obdclearinghouse.com/index.php?body=get_file&id=1727)

<sup>4</sup> This is consistent with the California Air Resources Board (CARB) 1998 finding that "[a]lmost all of the diesel particle mass is in the fine particle range of 10 microns or less in diameter (PM<sub>10</sub>). Approximately 94 percent of the mass of these particles are less than 2.5 microns in diameter. Because of their small size, these particles can be inhaled and a portion will eventually become trapped within the small airways and alveolar regions of the lung." CARB Report on Diesel Exhaust, April 22, 1998, available at: <http://www.arb.ca.gov/toxics/dieseltac/de-fnds.htm>

Although diesel truck manufacturers such as Ford, Dodge and GMC design and install thousands of dollars of pollution control equipment and software in each of their modern trucks to meet federal emission standards, Diesel Brothers have been reversing that progress with the turn of a wrench and the click of a touchpad. The public is left to pay for the pain and suffering of air pollution related diseases such as asthma, emphysema and lung cancer.<sup>5</sup> In submitting this letter of intent to sue, UPHE seeks to protect the public health, guided by the ethical standards of the Utah Medical Association “to prevent sickness whenever possible, to alleviate suffering, to cure sickness and disease insofar as it is humanly possible, and to prolong meaningful life.”<sup>6</sup>

Pursuant to Section 304(a)(1) of the Act, 42 U.S.C. §7604(a)(1), UPHE is entitled to bring suit to enforce emission violations and to seek civil penalties for such violations. The Act provides for civil penalties of up to \$37,500 for each violation per day. 42 U.S.C. § 7604(a); 42 U.S.C. § 7413(e); 42 U.S.C. § 7524(a); 40 C.F.R. § 19.2; 42 U.S.C. § 7413(b); 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701; 69 Fed.Reg. 7121 (Feb. 13, 2004). To the extent required by the Act at 42 U.S.C. § 7604(a)(1), we therefore are writing to notify you that unless this matter is otherwise fully resolved, UPHE intends to file suit in the applicable federal district court anytime 60 days after the postmark date of this letter to enjoin and penalize the violations described below.

## **II. The Law**

### **A. Mobile Source Emission Standards**

Pursuant to Section 202(a) of the Act, the Environmental Protection Agency (“EPA”) promulgates air pollution emission standards for all new vehicles offered for sale in the United States to protect public health and welfare. As set forth at 42 U.S.C. § 7521(a)(1):

The Administrator shall by regulation prescribe (and from time to time revise) in accordance with the provisions of this section, standards applicable to the emission of any air pollutant from any class or classes of new motor vehicles or new motor vehicle engines, which in his judgment cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare.

In accordance with this directive, EPA has promulgated emission standards for on- and off-road vehicles and motorcycles by model year, weight and fuel type. 40 C.F.R. Part 86. Of particular relevance to this matter, EPA has promulgated emission standards for heavy duty diesel vehicles at 40 C.F.R. § 86.099-11 (model year 1999 and later), 40 C.F.R. § 86.004-11 (model year 2004 and later), and § 86.007-11 (model year 2007 and later). EPA has also promulgated emission standards for complete heavy-duty vehicles at

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<sup>5</sup> According to the U.S. EPA, diesel exhaust is “likely to be carcinogenic to humans.” U.S. EPA, 2002. Health Assessment Document for Diesel Engine Exhaust, [https://cfpub.epa.gov/si/si\\_public\\_record\\_report.cfm?dirEntryId=29060&simpleSearch=1&searchAll=diesel](https://cfpub.epa.gov/si/si_public_record_report.cfm?dirEntryId=29060&simpleSearch=1&searchAll=diesel)

<sup>6</sup> [https://www.utahmed.org/wcm/\\_About/Economic\\_Code.aspx](https://www.utahmed.org/wcm/_About/Economic_Code.aspx)

40 C.F.R. § 86.1816-05 (model year 2005 and later, 65 Fed.Reg. 59970, October 6, 2000), § 86.1816-08 (model year 2008 and later, 66 Fed.Reg. 5190, January 18, 2001), and § 86.1816-18 (model year 2018 and later, 79 Fed.Reg. 23721, April 28, 2014).

Pursuant to Section 202(m) of the Act, 42 U.S.C. § 7521(m), EPA also has promulgated regulations that require heavy duty diesel trucks to detect problems with the vehicle's emission-related systems, alert owners, repair shops and inspection agencies to these problems, and store malfunction information electronically. These devices or elements of design are referred to as on-board diagnostic or "OBD systems." 40 C.F.R. § 86.1806-05, 65 Fed.Reg. 59,896, 59,900-59,901 (October 6, 2000).

Section 203(a)(1) of the Act; 42 U.S.C. § 7522(a)(1), prohibits a vehicle manufacturer from selling a new motor vehicle in the United States unless the vehicle is covered by a certificate of conformity (COC). EPA issues COCs to vehicle manufacturers pursuant to Section 206(a) of the Act, 42 U.S.C. § 7525(a), to certify that a particular class of motor vehicles meets all applicable emission limits at the time of original sale, and will continue to meet such limits during its useful life.

#### **B. Violation of Mobile Source Emission Standards by Tampering or Defeating Emission Control Systems.**

To ensure sustained compliance with Section 202 emission standards, Section 203 of the Act prohibits the aftermarket tampering or use of defeat devices to compromise or render inoperative emission control systems on EPA-certified vehicles. The applicable provisions of Section 203(a) are set forth below:

(a) Enumerated prohibitions. The following acts and the causing thereof are prohibited—

(3)(A) . . . for any person knowingly<sup>7</sup> 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 regulations under this subchapter] after [the vehicle's] sale and delivery to the ultimate purchaser; or

(3)(B) 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

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<sup>7</sup> "Knowingly" in this context means "voluntarily and intentionally, and not by mistake or accident." *United States v. Mac's Muffler Shop, Inc.*, 1986 U.S. Dist. LEXIS 18108; 25 ERC (BNA) 1369 (N.D. Ga. 1986); *United States v. Haney Chevrolet, Inc.*, 371 F.Supp. 381, 384 (M.D. Fla. 1974). This interpretation of the Act was explicitly adopted by Congress when it amended the Act in 1977. See H.R. No. 95-294, 95th Cong., 1st Sess. at 297, *reprinted in* 1977 U.S. Code Cong. & Adm. News 1077, 1377.

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;

The purpose of Section 203(a)(3)(B) is “to assure that vehicle emission control systems will function as intended during the time the vehicle is in use.” H.R. Rep. No. 95-294. 95th Cong., 1st Sess. at 297, *reprinted in* 2977 U.S. Code Cong. & Adm. News 1077, 1376.

According to Section 205(a) of the Act, 42 U.S.C. § 7524(a), any manufacturer or dealer who sells a new vehicle in violation of Section 203(a)(3)(A) is subject to a civil penalty of up to \$37,500 for each illegally modified vehicle or engine. Any other person who violates Section 203(a)(3)(A) is subject to a civil penalty of up to \$3,750 for each illegally modified vehicle or engine each day it is operated. According to Section 205(a), any person who violates Section 203(a)(3)(B) is subject to a civil penalty of up to \$3,750 for each illegal part or component manufactured, advertised, sold or installed. Citizens may seek civil penalties, payable to the Federal Treasury, pursuant to Section 304(a) and (f). The figures above reflect adjustments required by the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, Pub.L. No. 101-410, enacted October 5, 1990; 104 Stat. 890 (1990), amended by the Debt Collection Improvements Act of 1996, 31 U.S.C. § 3701; Pub.L. No. 104-134, enacted April 26, 1996; 110 Stat. 1321-373. 73 Fed.Reg. 75340, 75345 (Dec. 11, 2008); 40 C.F.R. Part 19.

If any person intentionally removes or hollows out a diesel particulate filter (DPF) from an EPA-certified diesel truck, such tampering amounts to a *per se* violation of the truck’s tailpipe emission standards and therefore is prohibited by Section 203(a)(3)(A). Likewise if any person intentionally replaces the truck’s required DPF with a hollow straight pipe and renders inoperative the truck’s computerized DPF failure warning system, the manufacturing and installation of such defeat devices amount to *per se* violations of the truck’s tailpipe emission standards and are prohibited by Section 203(a)(3)(B).<sup>8</sup>

### III. The Violations

Diesel Brothers have significantly, repeatedly and intentionally violated, and continue to violate, Section 203(a)(3)(A) of the Act by removing or rendering inoperative emission control systems on diesel vehicles, including but not limited to diesel particulate filters, catalytic converters, selective catalytic reduction systems and exhaust gas

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<sup>8</sup> In *U.S. v. Mac’s Muffler Shop*, 1986 U.S. Dist. LEXIS 18108; 25 ERC (BNA) 1369 (N.D. Ga. 1986), the United States brought a successful CAA Section 203(a)(3)(B) enforcement action to enjoin and penalize the Defendant’s removal of catalytic converters. According to the court, “[T]he automobile emission regulations at issue are intended to reduce emission of pollutants into the air. Defendants’ removal of the primary pollution control device on motor vehicles necessarily increased emissions of pollutants into the atmosphere, and constituted injury to the public *per se*.”

recirculation equipment. Diesel Brothers have also significantly, repeatedly and intentionally violated, and continue to violate, Section 203(a)(3)(B) of the Act by manufacturing, advertising, selling and installing parts and components designed to bypass, defeat, and/or render inoperative emission control systems on diesel vehicles. By their actions, Diesel Brothers have caused diesel vehicles to operate without the emission control systems required by EPA's applicable COC pursuant to Section 206 of the Act, and to discharge pollutants in violation of their applicable Section 202 federal emission standards.

#### **A. Tampering and Defeating Emission Controls on Diesel Vehicles**

The available evidence suggests that Diesel Brothers have directly, and through various agents, subcontractors, sponsors and customers, caused the illegal tampering of hundreds of diesel vehicles through the removal of federally-required pollution control equipment. These activities have taken place at the DIESELSellerz.com complex, 1955 S 1800 W, Woods Cross, Utah, and at off-site locations including but not limited to Industrial Injection, 2858 South 300 West, Salt Lake City, Utah, SSS Diesel Performance, North Main, Spanish Fork, Utah, and StarLite Diesel, 218 West 3620 South, Salt Lake City, Utah.

Through various websites, including but not limited to DIESELSellerz.com, facebook.com and idriveutahtrucks.com, Diesel Brothers also advertise for sale hundreds of illegally modified vehicles. Dieselsellerz.com is promoted as "the worlds largest diesel marketplace." The available evidence also suggests that Diesel Brothers have manufactured, sold, offered to sell and installed a large number of parts and components as part of a vehicle, where a principal effect of the part or component is to bypass, defeat, or render inoperative federally-required pollution control equipment and systems.

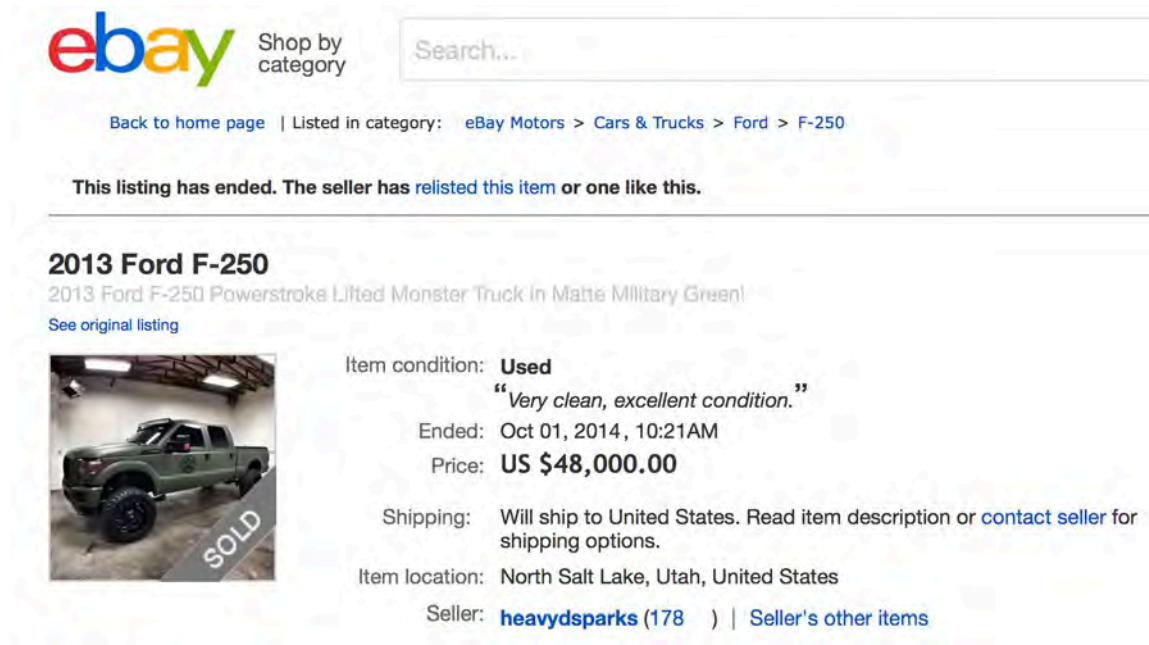
Many of these illegally modified vehicles are operating in Utah, and are discharging excessive amounts of pollution into the air of the state. Because Diesel Brothers have removed or defeated some or all of the federally-required emission control systems in these vehicles, the modified vehicles emit harmful pollutants -- including oxides of nitrogen (NO<sub>x</sub>) and particulate matter -- at rates ten times or greater than applicable federal emission standards. Excessive pollution emitted by these illegally modified vehicles exacerbates the already poor air quality throughout the Wasatch Front and represents a threat to public health. A small sampling of diesel trucks that Diesel Brothers have illegally tampered, and in which Diesel Brothers have installed and sold defeat devices, follows.<sup>9</sup>

Example #1: In 2014 Diesel Brothers obtained a 2013 Ford F250 diesel truck, removed most if not all of its required pollution control equipment, and then resold the truck. The truck was advertised as a "full delete," which, in the parlance of this and similar illegal operations, means Diesel Brothers removed the truck's full complement of pollution

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<sup>9</sup> That Diesel Brothers is extensively engaged in the diesel modification business is undisputed. For example, a Diesel Brothers promotional video posted by Heavy D on Facebook on December 24, 2014, displays more than 50 separate truck images under the title, "Wow...2014 has been a busy year. This is just a small portion of the vehicles that I've owned/built this year." **Exhibit A.**

control equipment including the diesel oxidation catalyst (DOC), diesel particulate filter (DPF) and selective catalytic reduction/urea injection system (SCR). Diesel Brothers reprogrammed the truck's engine control module with an "H&S tune" to defeat the on-board diagnostic (OBD) system emissions and safety features, allowing the truck to exceed its emission limits without activating any malfunction lights or causing an engine derating.<sup>10</sup>



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This listing has ended. The seller has [relisted this item](#) or [one like this](#).

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**2013 Ford F-250**  
2013 Ford F-250 Powerstroke Lifted Monster Truck in Matte Military Green!  
[See original listing](#)



Item condition: **Used**  
"Very clean, excellent condition."  
Ended: Oct 01, 2014, 10:21AM  
Price: **US \$48,000.00**

Shipping: Will ship to United States. Read item description or [contact seller](#) for shipping options.

Item location: North Salt Lake, Utah, United States  
Seller: [heavydsparks \(178\)](#) | [Seller's other items](#)

2013 Ford F-250  
Powerstroke 6.7  
30k miles  
Leather  
8" Lift  
37" Toyo MT's  
22" Fuel Hostage Wheels  
54" DPG Roof Mount Light Bar  
Full DPF Delete with H&S Tune  
Full Tint Including Windshield  
Soft Bed Cover  
Full Olive Drab Green Wrap, White Factory Paint Under Wrap

<sup>10</sup> A Diesel Brothers promotional video showing the pollution attributes of this truck may be found at **Exhibit B**. The video was posted by Heavy D on Facebook under the title, "Having a bad day? Watch this and I guarantee you'll feel better."



Example #2: In 2013 Diesel Brothers obtained a “bone stock” 2012 Dodge Ram 2500 SLT diesel truck, removed its post-combustion pollution control equipment, and advertised the truck as a sweepstakes prize open to the purchasers of their diesel performance parts and branded attire. Diesel Brothers modified the truck’s original exhaust system using a five-inch diameter Diamond Eye “turbo-back” straight pipe, meaning the vehicle’s DOC, NO<sub>x</sub> absorption catalyst (NAC) and DPF were removed and replaced with a hollow pipe. Diesel Brothers defeated the OBD system by installing an illegal H&S Mini Maxx tuner<sup>11</sup> that allowed the truck to exceed its emission limits without activating any malfunction lights or triggering an engine derating.<sup>12</sup>



## DETAILS

  
H&S  
Mini Maxx  
[<https://hsperformance.com/>]

  
DIAMOND EYE  
5" Turbo Back Exhaust Black Tip  
[<http://www.diamondeyeperformance.com/index.php>]

<http://dieselgiveawayz.com/bd1.html>

<sup>11</sup> More than a year earlier, on May 30, 2012, EPA had served H&S Performance (located in St. George, Utah) with a Notice of Violation for selling the Mini Maxx programmer as an illegal defeat device. **Exhibit C.** EPA’s action was widely reported in the trade press. **Exhibit D.** Nevertheless, Diesel Brothers continued to install unlawful H&S defeat devices, touting them as “hands down one of the best you can get.” **Exhibit E.**

<sup>12</sup> A Diesel Brothers promotional video showing the ability of this modified truck to “roll coal” on a Prius may be found at **Exhibit F.**

Example #3: In 2015-2016 Diesel Brothers “fully deleted” the pollution control equipment on a 2013 GMC Denali 2500 HD diesel truck. The pollution control equipment on a 2013 GMC Denali 2500 HD, required by EPA’s 2012 COC, included a CAT, DPF and SCR. Diesel Brothers’ “fully deleted” Denali was subsequently offered for sale by idriveutahtrucks. Diesel Brothers reprogrammed the truck’s engine control module with “EFI Live tuning”<sup>13</sup> to defeat the OBD system emissions and safety features, allowing the truck to exceed its emission limits without activating any malfunction lights or causing an engine derating.



<https://th-th.facebook.com/idriveutahtrucks/>

Example #4: Diesel Brothers also created, and currently manage, what they claim to be the “world’s largest diesel marketplace” at <https://classifieds.dieselsellerz.com/diesel>. Diesel Brothers’ website is a virtual emporium of illegally modified diesel trucks, offering for sale hundreds of “fully deleted” and other emissions compromised vehicles nationwide. **Exhibit H.**

As described above, Diesel Brothers have violated, and continue to violate, Section 203(a)(3)(A) of the Act, and its implementing regulations, by removing or rendering inoperative emission control systems on diesel vehicles, and Section 203(a)(3)(B) of the Act, and its implementing regulations, by manufacturing, advertising, selling and installing parts and components designed to bypass, defeat, and/or render inoperative emission control systems on diesel vehicles. Pursuant to Section 304 Diesel Brothers are liable for penalties and remedial injunctive relief with respect to each and every such vehicle they have illegally modified, and each and every such illegal part they have installed, for at least the last five years. Prohibitory injunctive relief is also warranted to stop Diesel Brothers from performing such acts in the future. By their actions, Diesel Brothers have caused a large number of diesel vehicles to operate without the emission control systems required by EPA’s applicable COC pursuant to Section 206 of the Act, and to discharge pollutants in

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<sup>13</sup> After H&S Performance LLC succumbed to EPA and California Air Resources Board penalties, **Exhibit G**, Diesel Brothers moved to an overseas supplier of illegal programmers, EFI Live, located in New Zealand. <https://www.efilive.com>.

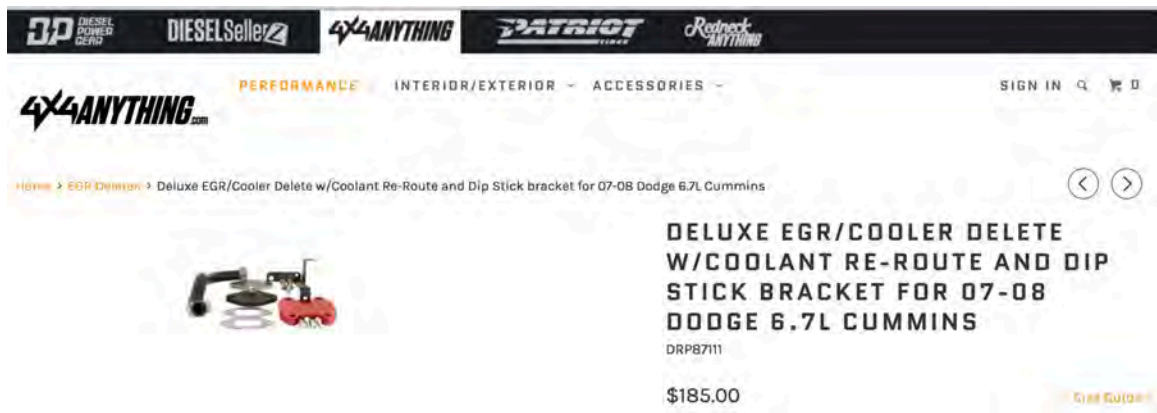
violation of their applicable Section 202 federal emission standards. Pursuant to Section 304 Diesel Brothers is liable for penalties and injunctive relief with respect to each and every vehicle they have modified in contravention of EPA's applicable COC, each and every vehicle they have caused to exceed its applicable emission standards, and each and every illegal part they have installed, for at least the last five years.

## B. Illegal Sale of Defeat Devices

In violation of Section 203(a)(3)(B) of the Act, Diesel Brothers also have advertised and sold, and continue to advertise and sell, a large number of parts and components where a principal effect of the part or component is to bypass, defeat, or render inoperative devices and/or elements of design installed on or in EPA-certified diesel vehicles, where Diesel Brothers knows or should know that these parts and components are being offered for sale to be put to such use. Through their internet site dieselpowergear.com, Diesel Brothers have sold, and continue to sell, illegal EGR delete kits and illegal straight exhaust pipes to replace pollution control equipment, as described below.

### 1. Illegal Delete Kits

Diesel Brothers currently advertises and sells at least 29 illegal exhaust gas recirculation (EGR) delete kits on dieselpowergear.com. **Exhibit I.** EGR is an emissions control device on diesel trucks that returns a small portion of exhaust gas back into the combustion chamber to reduce ignition temperatures and thus NO<sub>x</sub> emissions. Eliminating the EGR creates a hotter, more powerful engine -- and significantly higher emissions of lung-damaging NO<sub>x</sub>. To prevent the OBD system from sensing, and reporting as missing, the "deleted" EGR "require[s] the use of an EGR Delete Capable Programmer or Tuner," as Diesel Brothers explain in one of their EGR delete ads below.



The screenshot shows a product listing on the website 4x4Anything.com. The page header includes logos for '3P DIESEL POWER GEAR', 'DIESELseller', '4x4ANYTHING', 'PATRIOT', and 'Redneck ANYTHING'. The main navigation bar features '4x4ANYTHING.com', 'PERFORMANCE', 'INTERIOR/EXTERIOR', and 'ACCESSORIES'. A breadcrumb trail reads 'Home > EGR Delete > Deluxe EGR/Cooler Delete w/Coolant Re-Route and Dip Stick bracket for 07-08 Dodge 6.7L Cummins'. The product image shows a black metal bracket and a red dipstick. The product title is 'DELUXE EGR/COOLER DELETE W/COOLANT RE-ROUTE AND DIP STICK BRACKET FOR 07-08 DODGE 6.7L CUMMINS'. The product ID is 'DRP8711' and the price is '\$185.00'. A 'Buy Now!' button is visible in the bottom right corner.

This kit completely removes the EGR Cooler, Crossover Tube and Actuator to clean up the engine bay and eliminate soot buildup in the intake tract.

Features:

Custom DRP engraved and anodized EGR Blocker Plate

Coolant hose re-routes coolant into head instead of block off plug

DRP's innovative dip stick bracket provides a locating point for the back pressure tube mount (competitors kits only locate the dip stick and the PCV tubes)

All necessary gaskets, bolts, and billet coolant plug for bolt on installation

Pre-Tapped manifold block off plate for EGT Probe installation

3 out of 5 Wrenches for installation (1 being the easiest)

Will Require The Use of an EGR Delete Capable Programmer or Tuner.

<http://dieselpowergear.com/collections/egr-deletes/products/drp87111-deluxe-egrcooler-delete-wcoolant-re-route-and-dip-stick-bracket-for-07-08-dodge-67l-cummins>

Because the principal effect of the EGR delete kits marketed by Diesel Brothers is to bypass, defeat and/or render inoperative the EGR device on EPA-certified diesel vehicles, and because Diesel Brothers knows or should know that their EGR delete kits will be put to such use, Diesel Brothers have been and continue to be in violation of Section 203(a)(3)(B) of the Act.

## 2. Illegal Exhaust Kits

Diesel Brothers currently advertise and sell over 200 aftermarket exhaust systems, many of which are illegal because their principal effect is to bypass, defeat and/or render inoperative post-combustion emission control systems. **Exhibit J.** Offered for sale as “turbo back” or “CAT/DPF delete,” the principal purpose of these hollow exhaust pipes is to bypass, defeat and/or render inoperative federally-required emission control devices such as catalytic converters, diesel particulate filters and selective catalytic reduction systems. For example, Diesel Brothers advertise the “turbo back” exhaust system below, designed for 2007.5 to 2010 Duramax 6.6 liter diesel trucks, as ready-made for those seeking to delete both the catalytic converter and diesel particulate filter in these vehicles.

The screenshot shows a product page for a 'FLO-PRO 4" TURBO BACK 07.5-10 DURAMAX 6.6L' exhaust system. The page features a navigation bar with logos for '3P DIESEL POWER GEAR', 'DIESEL SELLER 2', '4x4 ANYTHING', 'PATRIOT', and 'Retracked ANYTHING'. Below the navigation bar, there are tabs for 'PERFORMANCE', 'INTERIOR/EXTERIOR', and 'ACCESSORIES'. The product title is 'FLO-PRO 4" TURBO BACK 07.5-10 DURAMAX 6.6L' with a model number 'SS834'. The price is listed as '\$520.00'. There is a quantity selector and an 'ADD TO CART' button. Below the product information, there is a note: 'GM 2007.5-2010/6.6L/2500-3500/LMM/EC-CC/SB-LB/DUALLY/ 4 IN DOWN PIPE BACK CAT DPF DELETE WM NB SS'. The page also includes a breadcrumb trail: 'Home > Exhaust > Flo-Pro 4" Turbo Back 07.5-10 Duramax 6.6L'.

<http://dieselpowergear.com/collections/exhaust/products/ss834-flo-pro-4-turbo-back-075-10-duramax-66l>

Because the principal effect of most of the exhaust kits marketed by Diesel Brothers is to bypass, defeat and/or render inoperative the federally-required emission control systems on EPA-certified diesel vehicles, and because Diesel Brothers know or should know that their exhaust kits will be put to such use, Diesel Brothers have been and continue to be in violation of Section 203(a)(3)(B) of the Act.

As described above, Diesel Brothers have violated, and continue to violate, Section 203(a)(3)(B) of the Act, and its implementing regulations, by advertising and selling parts and components, including but not limited to EGR delete and exhaust kits, designed to bypass, defeat, and/or render inoperative emission control systems on diesel vehicles. Pursuant to Section 304 Diesel Brothers are liable for penalties and remedial injunctive relief with respect to each and every such illegal part and component they have advertised, and each and every such illegal part and component they have sold, for at least the last five years. Prohibitory injunctive relief is also warranted to stop Diesel Brothers from advertising and selling illegal parts and components in the future. By their actions, Diesel Brothers have caused a large number of diesel vehicles to operate without the full suite of emission control systems required by EPA's applicable COC pursuant to Section 206 of the Act, and to discharge pollutants in violation of their applicable Section 202 federal emission standards. Pursuant to Section 304 Diesel Brothers are liable for penalties and injunctive relief with respect to each and every part and component they have sold in contravention of EPA's applicable COC for each vehicle in which that part or component was installed, and for each and every vehicle such part or component has caused each vehicle to exceed its applicable emission standards, for at least the last five years.

#### **IV. Offer to review information.**

To the extent you have evidence that shows, contrary to the allegations in this letter, that you are in full compliance with all applicable requirements we urge you to provide it to us so that we may potentially avoid, or at least limit, litigation on these issues.

#### **V. Warning**

Pursuant to Fed.R.Civ.P. Rule 37(e), we advise Diesel Brothers to take no action to destroy or remove any evidence, physical, electronic or otherwise, related to the allegations in this notice letter, and, alternatively, to take all steps necessary to preserve such evidence. The spoliation of evidence is no small infraction. It is a federal criminal offense to corruptly alter, destroy, mutilate, or conceal a record, document, or other object, or attempt to do so, with the intent to impair the object's integrity or availability for use in an official proceeding. 18 U.S.C. § 1512. Utah state law contains a similar prohibition. Utah Code Section 76-8-510.5. Efforts to avoid the reach of the law through intimidation is also a federal offense. 18 U.S.C. § 1512.

## VI. Conclusion

Diesel Brothers have repeatedly and extensively violated Section 203 of the Clean Air Act by removing and defeating emission control systems on diesel vehicles, and selling parts with the same purpose, causing the excessive discharge of harmful pollutants in a region already plagued by unhealthy air.

Pursuant to Section 304, UPHE intends to seek an injunction requiring Diesel Brothers to stop its illegal activities with the greatest expedition, and to pay a civil penalty to the U.S. Treasury for at least its last five years of violations of the Clean Air Act. UPHE also intends to seek an order that requires Diesel Brothers to recall, and restore to stock all emissions devices, components and ECM settings in all of its illegally modified vehicles, to recall and restore to stock all vehicles modified using Diesel Brothers' illegal parts, and to take other measures to reduce the emission of air pollutants to compensate for and offset the pollution caused by Diesel Brothers' illegal acts.

The address of UPHE is 423 W. 800 South, Suite A108, Salt Lake City, Utah 84101. UPHE has individual members who have been, and continue to be, injured by the excessive, repeated and unlawful emissions emitted from Diesel Brothers' illegally modified diesel vehicles and by other illegally modified diesel vehicles using parts sold by Diesel Brothers. Excessive NO<sub>x</sub>, particulate matter and other pollutants discharged from such vehicles throughout the Wasatch Front have injured, and continue to injure, UPHE members by contributing to, and exacerbating, the area's unhealthful air, including the area's unhealthful PM<sub>2.5</sub> nonattainment status.

If you have any questions regarding the allegations in this notice, believe any of the foregoing information to be in error, wish to discuss the exchange of information consistent with the suggestion above, or would otherwise would like to discuss a settlement of this matter prior to the initiation of litigation, please contact the attorneys below.

Yours Sincerely,



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Bryce Bird, Director Division of Air Quality Multi Agency State Office Building 195 North 1950 West Salt Lake City, Utah 84116	B&W Auto LLC Registered Agent for Sparks Motors LLC 1955 S 1800 W #2 Woods Cross, UT 84087
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David Kiley 1955 S 1800 W Woods Cross, UT 84087	

## Exhibits Provided on CD

**Exhibit A:** Promotional video posted by Heavy D on facebook on December 24, 2014, titled "Wow...2014 has been a busy year. This is just a small portion of the vehicles that I've owned/built this year."

Also available at: <https://www.facebook.com/Heavydsparks/videos/1519437541671255/>

**Exhibit B:** Promotional video posted by Heavy D on facebook on September 18, 2014, under the title, "Having a bad day? Watch this and I guarantee you'll feel better."

Also available at: <https://www.facebook.com/Heavydsparks/videos/1474049386210071/>

**Exhibit C:** May 30, 2012 EPA Notice of Violation to H&S Performance LLC

Also available at: [http://static.ow.ly/docs/H&S NOV May 2012\\_Myb.pdf](http://static.ow.ly/docs/H&S NOV May 2012_Myb.pdf)

**Exhibit D:** January 24, 2013 Hardworkingtrucks.com H&S enforcement story.

Also available at: <http://www.hardworkingtrucks.com/epa-fines-dpf-delete-manufacturers-millions/>

**Exhibit E:** Diesel Brothers Built Diesel #1 video, Diamond Eye 'turbo back" exhaust, and H&S tuner "hands down one of the best you can get."

Also available at: <http://dieselpowergear.com/bd1.html> and [https://www.youtube.com/watch?v=45hzL5tMr7s&feature=youtu.be&list=PLMoAVp8oHCFIKV7sRBCP0\\_h8XajhEA-Nk](https://www.youtube.com/watch?v=45hzL5tMr7s&feature=youtu.be&list=PLMoAVp8oHCFIKV7sRBCP0_h8XajhEA-Nk)

**Exhibit F:** Diesel Brothers Built #1 video "2012 Cummins Giveaway Truck Smokes Out Prius Paul."

Also available at: <https://www.youtube.com/watch?v=R9poJWSwchU>

**Exhibit G:** August 6, 2014 California Air Resources Board v. H&S Stipulated Settlement, and December 17, 2015 EPA v. H&S Consent Agreement.

Also available at: [http://www.arb.ca.gov/enf/casesett/sa/hands\\_judgment.pdf](http://www.arb.ca.gov/enf/casesett/sa/hands_judgment.pdf)

Also available at: <https://www.epa.gov/sites/production/files/2016-01/documents/hascafo.pdf>

**Exhibit H:** Sampling of modified trucks offered for sale on DieselSellerz.com.

Also available at: <https://classifieds.dieselsellerz.com/diesel/search/trucks>

**Exhibit I:** Diesel Brothers EGR delete kits.

Also available at: <http://dieselpowergear.com/collections/egr-deletes>

**Exhibit J:** Diesel Brothers exhaust kits.

Also available at: <http://dieselpowergear.com/collections/exhaust>