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April 5, 2022

VIA CERTIFIED MAIL

Harley-Davidson of Salt Lake City, LLC  
Joseph L. Timmons, Jr., Registered Agent  
2928 S State Street  
Salt Lake City, UT 84115

Northern Utah Power Sports, LLC  
Joseph L. Timmons, Jr., Registered Agent  
2928 S State Street  
Salt Lake City, UT 84115

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Salt Lake City, UT 84115

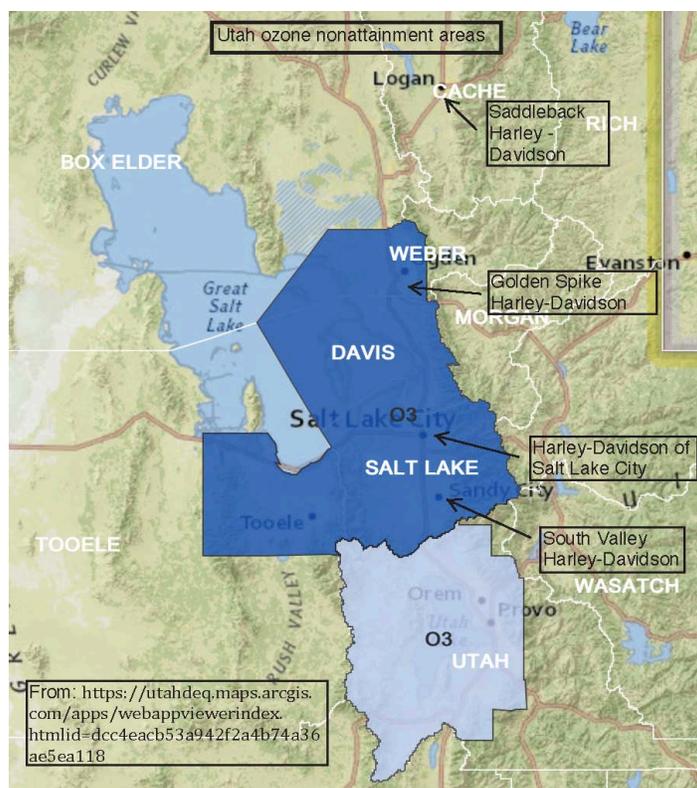
Dear Intermountain Harley and Mr. Timmons,

We are writing on behalf of the non-profit group Utah Physicians for a Healthy Environment (“Physicians”) to provide notice that they intend to file suit against you for significant and ongoing federal air and noise pollution violations. The suit will be brought against Harley-Davidson of Salt Lake City, LLC (d/b/a Harley-Davidson of Salt Lake City and South Valley Harley-Davidson Shop), Northern Utah Power Sports, LLC (d/b/a Golden Spike Harley-Davidson and Saddleback Harley-Davidson) (collectively, “Intermountain Harley”), and Joseph L. Timmons, Jr., member, manager and responsible corporate officer of Intermountain Harley, for their removal of pollution control devices in motorcycles, their sale and installation of emission and noise control defeat parts, and their ownership and use of tampered motorcycles, in violation of the federal Clean Air Act (“CAA”), the federal mobile source regulations, the federally-enforceable Utah State Implementation Plan (“Utah SIP”), and the federal Noise Control Act (“NCA”) as described below.

## **I. Introduction**

Excessive air and noise pollution from tampered motorcycles represents a significant threat to public health and welfare in Utah and beyond. Stock, unmodified motorcycles already produce more harmful air pollution than cars or SUVs on a per-mile

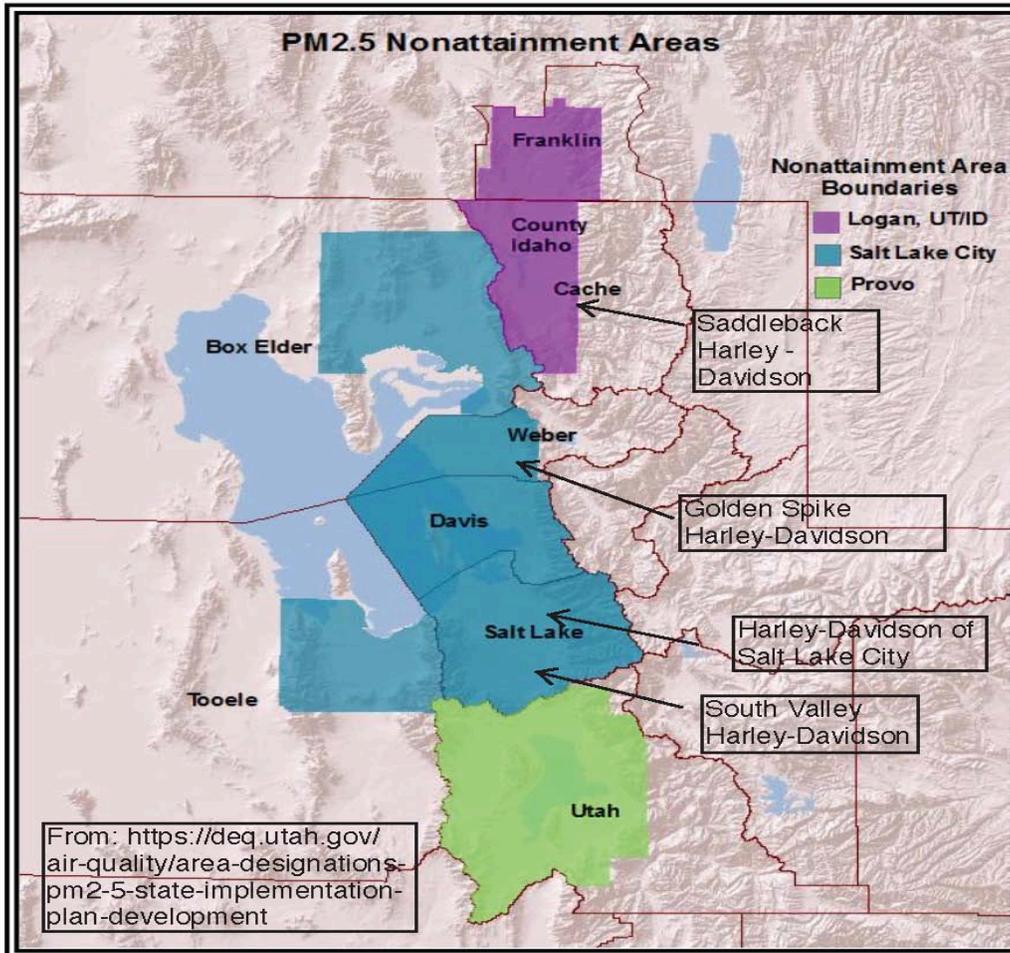
basis.<sup>1</sup> Adding to that disparity, motorcycles that have had their original equipment manufacturer (“OEM”) catalytic converters replaced by a hollow exhaust pipe, and their electronic pollution control calibrations hacked — acts we allege Intermountain Harley has performed, enabled and/or perpetuated — causes those motorcycles to produce harmful emissions of hydrocarbons and nitrogen oxides (“NO<sub>x</sub>”) at a rate at least twice that of unmodified (“stock”) motorcycles. All told, emissions of these pollutants from one illegally tampered motorcycle on a per-kilometer basis is equivalent to the combined emissions from 80 modern SUVs. These excess emissions contribute<sup>2</sup> disproportionately to the “nonattainment” status of Utah’s polluted, unhealthy air.<sup>3</sup>



<sup>1</sup> The federal Class III ( $\geq 280\text{cc}$ ) motorcycle emission limit for hydrocarbons and NO<sub>x</sub> currently in effect is 40 times greater than the current federal limit for cars and SUVs. Compare the highway motorcycle HC+NO<sub>x</sub> fleet average limit of 0.8 g/km (40 C.F.R. § 86.410-2006(a)(2)) to the highway car and SUV approximate HC and NO<sub>x</sub> fleet average limit of 0.0162 g/km (40 C.F.R. § 86.1811-17).

<sup>2</sup> “Highway motorcycles contribute to ozone and particulate matter (PM) nonattainment, as well as other types of pollution impacting human health and welfare.” 69 Fed. Reg. 2398 (January 15, 2004).

<sup>3</sup> Excess hydrocarbons and NO<sub>x</sub> emitted by illegally modified motorcycles contribute to the Wasatch Front’s inability to attain health-based ambient air quality standards for ozone and PM<sub>2.5</sub>. See Utah Dep’t of Env’tl Quality, Web Mapping Nonattainment Locator, <https://utahdeq.maps.arcgis.com/apps/webappviewer/index.html?id=dcc4eacb53a942f2a4b74a36ae5ea118>.



Furthermore, the replacement of OEM mufflers in motorcycles with much louder, often completely hollow aftermarket exhaust pipes — acts we also allege Intermountain Harley has caused to be performed, enabled and/or perpetuated — causes those motorcycles to be two to more than four times as loud as stock, untampered motorcycles.

Although Harley-Davidson Motor Co. attests to EPA each year that the motorcycles it manufactures comply with federal air pollution standards through the use of sophisticated pollution control equipment and software, and is also required to comply with federal noise emission standards through the use of damping mufflers and other methods, Intermountain Harley has been profiting by removing catalytic converters and defeating electronic emission control calibrations from those motorcycles, selling new and used motorcycles without their required catalytic converters and compliant mufflers, and selling aftermarket parts to the same effect, increasing harmful air and noise pollution in Utah. The result? The public is left to pay for the pain and suffering of diseases such as asthma, emphysema, lung cancer, cardiovascular disorders and cognitive impairment. In submitting this letter of intent to sue, Physicians seek to protect the public health by announcing their objective to enforce the law.

## II. The Law

### A. Air Pollution Control Tampering Prohibitions

#### 1. Federal Clean Air Act Pollution Control Anti-Tampering Provisions

Pursuant to the Clean Air Act at 42 U.S.C. § 7521, the U.S. 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 CAA § 7521(a)(1):

The [EPA] 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, including emission standards for on-road motorcycles at 40 C.F.R. §§ 86.401-97 – 86.448-2006.

CAA § 7522(a)(1) prohibits manufacturers from selling new motorcycles in the United States unless the manufacturer demonstrates to EPA that each of its motorcycles meets its applicable emission limits promulgated pursuant to CAA § 7521 and has been granted a certificate of conformity (“COC”). A COC issued pursuant to CAA § 7525(a) confirms EPA’s finding that the motorcycle meets all applicable emission limits at the time of original sale, and will continue to meet such limits during its useful life.

To ensure continuous compliance with CAA § 7521 emission standards, CAA § 7522(a)(3) and 40 C.F.R. § 86.1854-12(a)(3) prohibit the before- and aftermarket tampering of emission control systems on EPA-certified vehicles. The applicable provisions of CAA § 7522(a) are set forth below:<sup>4</sup>

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

(3)(A) . . . 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 regulations under this subchapter prior to its sale and delivery to the ultimate purchaser, or for any person knowingly<sup>5</sup> to remove

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<sup>4</sup> The provisions of 40 C.F.R. § 86.1854-12(a)(3)(i) and (ii) read similarly.

<sup>5</sup> “Knowingly” in this context means “voluntarily and intentionally, and not by mistake or accident.” *United States v. Mac’s Muffler Shop, Inc.*, No. CIV.A. C85-138R, 1986 WL 15443 (N.D. Ga. Nov. 4, 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

or render inoperative any such device or element of design after such 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 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.

Any manufacturer, dealer or person who removes any device or element of design in a motorcycle *prior* to its sale and delivery to the ultimate purchaser, or knowingly does the same *after* such sale, violates CAA § 7522(a)(3)(A) and 40 C.F.R. § 86.1854-12(a)(3)(i), and is subject currently to a civil penalty of up to \$51,796 for each violation after November 2, 2015 and assessed on or after January 12, 2022 for each vehicle illegally modified. CAA § 7524(a); 40 C.F.R. § 19.4; 87 Fed. Reg. 1678 (January 12, 2022).

Any other person who violates CAA § 7522(a)(3)(A) and 40 C.F.R. § 86.1854-12(a)(3)(i) is subject to a civil penalty of up to \$5,179 for each violation after November 2, 2015 and assessed on or after January 12, 2022, for each illegally modified motorcycle. CAA § 7602(e) defines the term “person” as including “an individual, corporation, partnership, [or] association.”

Any person who manufactures, sells or installs any part or component where a principal effect of the part or component is to by-pass, defeat or render inoperative any device or element of design in a motorcycle violates CAA § 7522(a)(3)(B) and 40 C.F.R. § 86.1854-12(a)(3)(ii), and is subject to a civil penalty of up to \$5,179 for each violation after November 2, 2015 and assessed on or after January 12, 2022, for each illegal part or component manufactured, advertised, sold or installed pursuant to CAA § 7524(a).

The purpose of CAA § 7522(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.

For example, if any person knowingly removes, or causes to be removed, a catalytic converter from an EPA-certified motorcycle, such tampering violates CAA § 7522(a)(3)(A) and 40 C.F.R. § 86.1854-12(a)(3)(i). Likewise if any person manufactures, sells or installs, or causes to be manufactured, sold or installed, an exhaust system that by-passes, defeats or renders inoperative the motorcycle’s catalytic converter, those acts represent violations of CAA § 7522(a)(3)(B) and 40 C.F.R. § 86.1854-12(a)(3)(ii).<sup>6</sup>

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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.

<sup>6</sup> In *United States v. Mac’s Muffler Shop*, 1986 WL 15443 (N.D. Ga. Nov. 4, 1986), the United States brought a successful CAA § 7522(a)(3)(B) enforcement action to enjoin and penalize

## 2. Utah SIP Air Pollution Control Anti-Tampering Provisions

Utah's federally-enforceable plan to implement the Clean Air Act ("Utah SIP") requires the owner or operator of any motor vehicle subject to federal emission standards – including motorcycles – to maintain in operable condition any system or device for the control of emissions in such vehicle and to use any such system or device at all times the vehicle is operated. The Utah SIP also prohibits any person from removing or making inoperable any emission control system or device or any part thereof unless an equally effective system or device or part thereof is installed.

Utah SIP regulation R307-201-2, 40 C.F.R. § 52.2320(c)(59), states:

### **R307-201-2. Automobile Emission Control Devices.**

Any person owning or operating any motor vehicle or motor vehicle engine registered in the State of Utah on which is installed or incorporated a system or device for the control of crankcase emissions or exhaust emissions in compliance with the Federal motor vehicle rules, shall maintain the system or device in operable condition and shall use it at all times that the motor vehicle or motor vehicle engine is operated. No person shall remove or make inoperable within the State of Utah the system or device or any part thereof, except for the purpose of installing another system or device, or part thereof, which is equally or more effective in reducing emissions from the vehicle to the atmosphere.<sup>7</sup>

The term "person" in the Utah SIP includes an "individual, trust, firm, estate, company, corporation, partnership, association, state, state or federal agency or entity, municipality, commission, or political subdivision of a state." Utah Admin. Code R307-101-2, 40 C.F.R. § 52.2320(c)(67), (83); 73 Fed. Reg. 51222 (September 2, 2008), 81 Fed. Reg. 4959 (January 1, 2016).

Any person who violates Utah SIP regulation R307-201-2 is subject to a penalty of up to \$109,024 per day for: (1) owning or operating a motorcycle without all of its emission control systems and devices in operable condition, and (2) removing or making inoperable any emission control system or device or any part thereof from a motorcycle for each violation after November 2, 2015 and assessed on or after January 12, 2022. CAA §§ 7604(a) & 7413(b); 40 C.F.R. § 19.4; 87 Fed. Reg. 1678 (January 12, 2022).

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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*." *Id.* at \*9.

<sup>7</sup> See [https://www.epa.gov/sites/production/files/2018-01/documents/table\\_c\\_ut\\_r307-201\\_emission\\_standards\\_general\\_emission\\_standards.pdf](https://www.epa.gov/sites/production/files/2018-01/documents/table_c_ut_r307-201_emission_standards_general_emission_standards.pdf).

### 3. Citizen Enforcement of CAA and Utah SIP Pollution Control Anti-Tampering Laws

Pursuant to CAA § 7604(a)(1), citizens are entitled to bring suit to enjoin and penalize violations of emission standards or limitations. The anti-tampering provisions set forth in Utah SIP regulation R307-201-2, CAA § 7522(a)(3)(A) and (B), and 40 C.F.R. § 86.1854-12(a)(3)(i) and (ii) are emission standards as defined at CAA § 7602(k), and are standards of performance as defined at CAA § 7602(l), because:

- Requiring the retention and effectiveness of motorcycle emission control systems limits the emission of air pollutants on a continuous basis;
- Prohibiting the ownership and operation of motorcycles without all of their emission control systems intact, and prohibiting the sale and installation of aftermarket defeat parts, assures the continuous reduction of emissions from motorcycles; and
- Protecting a motorcycle's emission related components, identified in its COC, from modification or removal ensures the continuous reduction of emissions over the useful life of the vehicle.<sup>8</sup>

In short, the purpose of the anti-tampering provisions is to limit the quantity, rate, or concentration of emissions of air pollutants on a continuous basis by requiring the retention and effectiveness of emission control equipment whose job it is to continuously reduce emissions. An anti-tampering requirement prohibiting the removal or defeat of an emission control device, such as a catalytic converter, that is designed to reduce emissions on a continuous basis, is a standard that assures the reduction of emissions on a continuous basis. *UPHE v. Diesel Power Gear, LLC*, 21 F.4th 1229 (10th Cir. 2021); *UPHE v. Diesel Power Gear, LLC*, 2020 WL 4282148 (D. Utah, March 6, 2020); *UPHE v. TAP Worldwide, LLC*, No. 2:19-CV-00628-DBB, --- F. Supp. 3d. ---, 2022 WL 219556 (D. Utah Jan. 25, 2022).

#### **B. Noise Pollution Control Tampering Prohibitions**

##### Federal Noise Control Act Anti-Tampering Provisions

Section 4905 of the federal Noise Control Act, 42 U.S.C. § 4901 et seq. ("NCA"), required the EPA to promulgate noise control requirements for any product identified as a major source of noise. On May 28, 1975, EPA identified motorcycles as a major source of noise. 43 Fed. Reg. 10822 (March 15, 1978). As a consequence, and pursuant to NCA § 4905(c), EPA was required to issue regulations applicable to motorcycles that:

set limits on noise emissions from such product and shall be a standard which in the Administrator's judgment, based on criteria published under section 4904 of this title, is requisite to protect the public health and welfare,

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<sup>8</sup> The emission control requirements in Parts 1 and 2 of the manufacturer's COC application are incorporated into each COC pursuant to 40 C.F.R. § 86.1843-01(a), (c) and (d), as well as all emission-related components and electronic calibrations, *id.* § 86.1844-01(e)(1) & (2), covered by the COC, *id.* § 86.1848-10(c)(1), (2), & (6).

taking into account the magnitude and conditions of use of such product (alone or in combination with other noise sources), the degree of noise reduction achievable through the application of the best available technology, and the cost of compliance.

EPA complied with this mandate, promulgating, for example, a noise limit for street and off-road motorcycles of 83 decibels applicable to model years 1983-1985, and a noise limit of 80 decibels applicable to model years 1986 and thereafter. 40 C.F.R. § 205.152. The EPA regulations also include a rule that each manufacturer place a “readily visible” permanent label on each motorcycle stating the vehicle meets EPA noise regulations, and identifies a model specific code that must match the same code reflected on a permanent, “readily visible” label on the vehicle’s muffler. 40 C.F.R. §§ 205.158, 205.168-1 and 205.169.

To ensure initial and continuous compliance with these noise control requirements, NCA § 4909(a) provides,

Except as otherwise provided in subsection (b), the following acts or the causing thereof are prohibited:

(1) In the case of a manufacturer, to distribute in commerce any new product manufactured after the effective date of a regulation prescribed under section 4905 of this title which is applicable to such product, except in conformity with such regulation. [Violations of the referenced noise regulations at 40 C.F.R. §§ 205.152 (motorcycles) and 205.166 (exhaust systems) are subject to a civil penalty of \$41,219 for each new product each day. 42 U.S.C. § 4910(a)(2) and (b).]

(2)(A) The removal or rendering inoperative by any person, other than for purposes of maintenance, repair, or replacement, of any device or element of design incorporated into any product in compliance with regulations under section 4905 of this title [40 C.F.R. § 205.152 and § 205.166], prior to its sale or delivery to the ultimate purchaser or while it is in use, or (B) the use of a product after such device or element of design has been removed or rendered inoperative by any person.

(3) In the case of a manufacturer, to distribute in commerce any new product manufactured after the effective date of a regulation prescribed under section 4907(b) of this title (requiring information respecting noise) which is applicable to such product, except in conformity with such regulation. [Violations of the labeling requirements at 40 C.F.R. §§ 205.158 and 205.169 are subject to a civil penalty of \$4,219 per violation per day pursuant to 42 U.S.C. § 4910(a)(2).]

(4) The removal by any person of any notice affixed to a product or container pursuant to regulations prescribed under section 4907(b) of this title [labeling requirements at 40 C.F.R. §§ 205.158 and 205.169], prior to sale of the product to the ultimate purchaser.

(5) The importation into the United States by any person of any new product in violation of a regulation prescribed under section 4908 of this title which is applicable to such product. [Subject to civil penalty per 42 U.S.C. § 4910(a)(2).]

The following definitions are set forth in the NCA at 42 U.S.C. § 4902:

(3) The term “product” means any manufactured article or goods or component thereof;

(4) The term “ultimate purchaser” means the first person who in good faith purchases a product for purposes other than resale.

(5) The term “new product” means (A) a product the equitable or legal title of which has never been transferred to an ultimate purchaser, or (B) a product which is imported or offered for importation into the United States and which is manufactured after the effective date of a regulation under section 4905 or 4907 of this title which would have been applicable to such product had it been manufactured in the United States.

(6) The term “manufacturer” means any person engaged in the manufacturing or assembling of new products, or the importing of new products for resale, or who acts for, and is controlled by, any such person in connection with the distribution of such products.

(8) The term “distribute in commerce” means sell in, offer for sale in, or introduce or deliver for introduction into, commerce.

In the motorcycle noise emission regulations at 40 C.F.R. § 205.152, the term “tampering” is defined as

(26) *Tampering* means the removal or rendering inoperative by any person, other than for purposes of maintenance, repair, or replacement, of any device or element of design incorporated into any product in compliance with regulations under section 6 [NCA § 4905], prior to its sale or delivery to the ultimate purchaser or while it is in use; or the use of a product after such device or element of design has been removed or rendered inoperative by any person.

The owner’s manuals for motorcycles manufactured by Harley-Davidson state the following acts are “presumed to constitute tampering” under the NCA:

1. Replacing the muffler(s) and/or the entire exhaust system with parts not certified to be noise legal for street use.
2. Removing or modifying the muffler internal baffles in any way.
3. Replacing the air intake/cleaner assembly with one not certified to be noise legal for street use.
4. Modifying the air intake/cleaner assembly in such a way as to make the vehicle no longer noise legal for street use.

Pursuant to NCA § 4911(a)(1), citizens can sue any person alleged to be in violation of a “noise control requirement.” According to NCA § 4911(f), “the term ‘noise control requirement’ means paragraph (1), (2), (3), (4), or (5) of section 4909(a),” set forth above.

District Courts have jurisdiction “to restrain such person from violating such noise control requirement.” 42 U.S.C. § 4911(a).

Pursuant to NCA § 4911(a), Physicians are entitled to bring suit against Intermountain Harley to enforce noise violations and to seek civil penalties for such violations. The NCA provides for civil penalties against manufacturers (including persons who assemble and distribute in commerce non-compliant new products) of up to \$41,219 for each violation of NCA § 4909(a)(1) and (3) occurring each day after November 2, 2015 and assessed on or after January 12, 2022. NCA § 4902; 40 C.F.R. § 19.4; 87 Fed. Reg. 1678 (Jan. 12, 2022).

### **III. Clean Air Act and Utah SIP Air Pollution Violations**

Intermountain Harley has violated, and continues to violate, the CAA and Utah SIP by removing emission control devices in new and used motorcycles, selling or causing the sale of emission control defeat parts, and owning and/or operating motorcycles with emission control devices removed and/or emission control defeat parts installed. These violations have resulted in excess emissions from motorcycles at the expense of the health of Utah residents and visitors, including members of Utah Physicians for a Healthy Environment.

#### **A. Removal of emission control devices in violation of the Clean Air Act and Utah SIP**

Intermountain Harley has repeatedly violated, and continues to violate, the CAA and the Utah SIP by: (1) removing or making inoperable emission control systems or devices in motorcycles [Utah SIP regulation R307-201-2], (2) causing the removal or the rendering inoperative of emission control devices and elements of design in motorcycles prior to their sale and delivery to the ultimate purchaser [CAA § 7522(a)(3)(A), EPA regulation 40 C.F.R. § 86.1854-12(a)(3)(i)], and (3) knowingly causing the removal or the rendering inoperative of emission control devices and elements of design in motorcycles after their sale and delivery to the ultimate purchaser [*id.*]. The service shops at each of the four Intermountain Harley dealerships located in Salt lake City, Sandy, Riverdale, and Logan have repeatedly performed such work.

#### **B. Selling emission control defeat parts in violation of the Clean Air Act**

Intermountain Harley has repeatedly sold, and continues to sell, in violation of CAA § 7522(a)(3)(B) and 40 C.F.R. § 86.1854-12(a)(3)(ii), a large number of parts and components where a principal effect of the part or component is to bypass, defeat, or render inoperative emission control devices and/or elements of design installed on or in EPA-certified motorcycles, where Intermountain Harley knows or should know that these parts and components are being sold to be put to such use.

## 1. Sales of illegal exhaust defeat parts.

Through its internet site <https://www.shoputahharley.com>, and its Utah dealerships, Intermountain Harley has sold, and continues to sell, illegal exhaust parts for street motorcycles that enable the removal of pollution control devices. For example, Intermountain Harley currently sells, and has repeatedly sold over the last five years, at least 38 separate aftermarket exhaust parts for Harley-Davidson street motorcycles made by Vance & Hines and other companies.

These aftermarket exhaust parts either replace the motorcycle's entire OEM exhaust system including header pipes, catalytic converters and mufflers (herein "full exhaust") or remove the OEM catalyts and mufflers (herein "slip-ons"). A principal effect of the full exhaust parts is to bypass, defeat and/or render inoperative federally required catalytic converters to the extent they are located in mufflers, combiner junctions or header pipes. As a result, they are illegal. A principal effect of the slip-on parts is to bypass, defeat and/or render inoperative federally required catalytic converters to the extent they are co-located with mufflers. As a result, they also are illegal.

An example of a full exhaust system sold by Intermountain Harley is the Vance & Hines Pro Pipe, part number 17589. Priced at \$849.99, the Pro Pipe system fits the Harley-Davidson Street Bob, touting "a massive 4½ inch stepped megaphone to provide the

The screenshot shows a web browser window with the URL [www.shoputahharley.com/products/vance-hines-pro-pipe-vh0319](https://www.shoputahharley.com/products/vance-hines-pro-pipe-vh0319). The page title is "Vance & Hines Pro Pipe Exhaust for Harley". The Harley-Davidson logo is visible, along with the text "SALT LAKE · SANDY · OGDEN · LOGAN". The navigation menu includes "HOME", "PARTS & ACCESSORIES", "MEN'S", "WOMEN'S", "GIFTS & COLLECTIBLES", "AFTERMARKET", and "SCRATCH & DENT". The breadcrumb trail is "Home » Aftermarket Motorcycle Exhaust » Vance & Hines Pro Pipe". The product image shows a Harley-Davidson motorcycle with the Vance & Hines Pro Pipe exhaust system installed. The price is listed as "Our Price: \$849.99". There is an "Add to Cart" button. Below the button, it says "Most items ship within 3-4 business days". There are social media buttons for "Tweet", "Like 0", and "Save". The "Product Details" section states: "Pro Pipe is the quintessential performance 2-1 system for the new Milwaukee-Eight powered Softail. Recognized by its sharp V-profile header and distinctive welded collector heat shield, Pro Pipe features a massive 4-1/2 inch stepped megaphone to provide the volume velocity for making power." The list of features includes: "Broad Torque Curve", "Large Merge Collector", "4-1/2 Inch Stepped Megaphone", and "Quiet and Competition Baffles Available". The part number is "Vance & Hines P/N: 17589". The fitment is "Fits 2018 Softail Fat Boy". A disclaimer at the bottom reads: "NOT LEGAL FOR SALE OR USE IN CALIFORNIA ON ANY POLLUTION CONTROLLED MOTOR VEHICLES".

volume velocity for making power.” To deliver this result, in violation of the Clean Air Act, the Pro Pipe replaces the Street Bob’s two OEM mufflers, both containing pollution reducing catalysts, with a single exhaust pipe without any catalyst.<sup>9</sup>

An example of a slip-on exhaust system sold by Intermountain Harley is the Vance & Hines Eliminator 300, part number 16722. Priced at \$549.99, the Eliminator 300 fits the Harley-Davidson Fat Boy and other Softail models. In violation of the Clean Air Act, the Eliminator 300 replaces the Fat Boy’s two OEM mufflers, both containing pollution reducing catalysts, with two “slip-on” pipes without any catalysts.<sup>10</sup>

The Vance & Hines, Two Brothers Racing, Cobra and Rinehart aftermarket exhaust pipes, applicable to past and present model year Harley-Davidson motorcycles currently advertised for sale by Intermountain Harley are set forth in **Exhibit A**. These and similar exhaust systems that effect the removal of a motorcycle’s originally installed catalyst(s) with a defeat pipe cause the receiving motorcycle to emit significantly greater amounts of air pollution than an untampered motorcycle.

A principal effect of the aftermarket exhaust pipes described above is to bypass, defeat and/or render inoperative the federally required pollution-reducing catalysts on EPA-certified motorcycles. Intermountain Harley knew or should have known that these types of defeat pipes would be put to such use on street bikes. Therefore, each such defeat pipe sold by Intermountain Harley applicable to a catalyst-controlled motorcycle over the last five years constitutes a separate violation of CAA § 7522(a)(3)(B) and 40 C.F.R. § 86.1854-12(a)(3)(ii). Intermountain Harley continues to sell such exhaust pipes and thus continues to be in violation of CAA § 7522(a)(3)(B) and 40 C.F.R. § 86.1854-12(a)(3)(ii).

## 2. Sales of defeat parts in motorcycles at dealerships

Intermountain Harley also sells aftermarket defeat parts as part of new and used motorcycles. These parts include illegal defeat pipes, air intakes, and electronic “tuners.”

For example, Intermountain Harley recently sold a 2018 Street Bob with Vance & Hines aftermarket exhaust. The emission controls on the 2018 Street Bob included catalysts in both of the motorcycle’s mufflers. The Vance & Hines exhaust pipes installed in this motorcycle do not include catalysts and therefore are illegal defeat parts because they caused the removal of the catalysts. Intermountain Harley has repeatedly sold defeat exhaust parts in similar new and used motorcycles.

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<sup>9</sup> Although the Street Bob is plainly a street bike by its very name, the Vance & Hines installation instructions for Pro Pipe part number 17589 state: “FOR CLOSED COURSE COMPETITION USE ONLY. NOT INTENDED FOR STREET USE.” This incongruous statement does not excuse Intermountain Harley or Vance & Hines from liability. Rather, it shows they are fully aware they are marketing illegal products for street motorcycles.

<sup>10</sup> <https://www.shoputahharley.com/products/vance-hines-eliminator-300-exhaust-vh0301>.

## 2018 HARLEY-DAVIDSON STREET BOB

Used Motorcycles • Harley-Davidson

Accessed 12/26/2021



[www.harleydavidsonofsaltlakecity.com/Motorcycles-Harley-Davidson-Street](http://www.harleydavidsonofsaltlakecity.com/Motorcycles-Harley-Davidson-Street)

Intermountain Harley has also repeatedly sold illegal aftermarket software or “tunes” in new and used motorcycles. Aftermarket defeat pipes, such as those made by Vance & Hines and sold by Intermountain Harley, alter the air/fuel ratio of a motorcycle once installed. According to Vance & Hines in support of its FuelPak electronic reprogrammer, this necessitates the deletion and editing of electronic emission control settings in the motorcycle’s on-board computer:

Your fuel injected Harley-Davidson® is equipped with an ECU (electronic control unit) that’s programmed to deliver fuel to the motor based on an air/fuel ratio for a stock air filter and stock exhaust system. When you install a performance exhaust system, your airflow changes, so you need a fuel management system that adjusts your air/fuel ratio to match the changes.

<https://www.fuelpakfi.com/aboutfuelpak.html>

Electronic aftermarket fuel management systems (or so-called “tuners”), such as the Vance & Hines Fuelpak or Harley-Davidson’s Screaming Eagle Pro Street Tuner, have been sold by Intermountain Harley as part of new and used motorcycles. Because these tuners can be used to install software that modifies the air/fuel ratios and other emission control calibrations in motorcycles to enable the use of illegal defeat pipes, their sale and use for this purpose represents a separate violation of CAA § 7522(a)(3)(B) and 40 C.F.R. § 86.1854-12(a)(3)(ii).

Over the last five years Intermountain Harley has repeatedly sold illegal aftermarket exhaust pipes and aftermarket tuners and software in new and used motorcycles. Because a principal effect of these parts is to bypass, defeat and/or render inoperative the federally-required pollution-reducing catalysts on EPA-certified motorcycles, and because

Intermountain Harley knows or should know that their aftermarket exhaust pipes and tuners will be put to such use, Intermountain Harley has been and continues to be in violation of CAA § 7522(a)(3)(B) and 40 C.F.R. § 86.1854-12(a)(3)(i). Therefore, each such defeat pipe sold and/or installed by Intermountain Harley in a catalyst-controlled motorcycle over the last five years constitutes a separate violation of CAA § 7522(a)(3)(B) and 40 C.F.R. § 86.1854-12(a)(3)(ii). Intermountain Harley continues to sell such exhaust pipes and thus continues to be in violation of CAA § 7522(a)(3)(B) and 40 C.F.R. § 86.1854-12(a)(3)(ii).

C. Ownership and operation of motorcycles with emissions control devices removed and emissions control defeat parts installed in violation of Utah's Clean Air Act SIP

Intermountain Harley has also repeatedly violated, and continues to violate, Utah SIP Regulation R307-201-2 by repeatedly owning and/or operating motorcycles without maintaining in operable condition all federally required systems and devices for the control of emissions at all times the motorcycles are operated. Each day each new and used motorcycle Intermountain Harley has owned and operated in the last five years that did not have all of its emission control devices installed and operational constitutes a separate violation of Utah SIP Regulation R307-201-2. Examples of motorcycles that Intermountain Harley has owned and operated, and may currently own and operate, are set forth in **Exhibit B**. Each day of such ownership and operation is a separate offense with respect to each motorcycle.

#### IV. Noise Control Act Violations

Intermountain Harley has violated, and continues to be in violation of NCA § 4909(a)(1) by assembling motorcycles, prior to their sale to an ultimate purchaser, with non-OEM parts that (1) produce noise in excess of the standards at 40 C.F.R. § 205.152 and (2) which are not lawfully labeled in compliance with 40 C.F.R. § 205.158, 40 C.F.R. § 205.164(a) and (b) and 40 C.F.R. § 205.169, and thereafter selling those motorcycles to ultimate purchasers.

Intermountain Harley has violated, and continues to be in violation of NCA § 4909(a)(2)(A), by removing or rendering inoperative noise control devices and/or elements of design from motorcycles prior to sale or while in use, and has violated, and continues to violate NCA § 4909(a)(2)(B) by using motorcycles after their noise control devices or elements of design have been removed.

Intermountain Harley has violated, and continues to be in violation of, NCA § 4909(a)(3) by assembling motorcycles, prior to their sale to an ultimate purchaser, with non-OEM exhaust components that are not lawfully labeled in compliance with 40 C.F.R. § 205.158, 40 C.F.R. § 205.164(a) and (b) and 40 C.F.R. § 205.169, and thereafter selling those motorcycles to ultimate purchasers.

Intermountain Harley has violated, and continues to be in violation of NCA § 4909(a)(4) by removing the OEM exhaust component on motorcycles that contains the original Motorcycle Exhaust System Noise Emission Control Information label required by

40 C.F.R. § 205.164(a) and (b) and 40 C.F.R. § 205.169, and not replacing it with an equivalent exhaust component that includes a label that matches the model specific code of the motorcycle consistent with 40 C.F.R. § 205.158.

All of the violations above have resulted in excess noise emissions from motorcycles at the expense of the health and well-being of Utah residents and visitors, including members of Utah Physicians for a Healthy Environment.

For example, Intermountain Harley has caused to be removed the labeled OEM exhaust systems on new motorcycles prior to their sale, and on used motorcycles after their sale, and replaced (or perpetuated the absence of) the OEM exhaust systems with unlabeled, non-compliant aftermarket exhaust systems. Intermountain Harley has caused, and continues to cause, the removal of federally required noise pollution control equipment from multiple motorcycles. The service shops at each of the four Intermountain Harley dealerships located in Salt Lake City, Sandy, Riverdale, and Logan have performed such work.

Intermountain Harley service shops' removal of noise control devices and/or elements of design through the sale and/or installation of aftermarket defeat pipes violate the NCA for one or more of the following reasons:

- the modified motorcycles exceed their federal noise pollution limits;
- the exhaust systems in the modified motorcycles no longer have their original mufflers with their original noise emission label, baffling, expansion chambers, and other noise reducing devices and elements of design;
- the exhaust systems in the modified motorcycles no longer include one or more noise reducing catalytic converters;
- the aftermarket defeat pipes fail to exhibit any applicable noise emission label required by NCA §§ 4907(b), 4909(a)(3) and 40 C.F.R. § 205.169;
- the aftermarket defeat pipes include a label that states it is only to be used for closed-course racing, but the motorcycle is for street use and is, or will be, licensed for such use.

A sampling of motorcycles with noise control defeat parts that Intermountain Harley has advertised and sold, can be found in **Exhibit B**.

## **V. Timmons Liability**

As the responsible corporate officer of Intermountain Harley, Mr. Timmons had a positive duty to seek out and remedy the violations described in this letter, and, more importantly, a duty to implement measures that would have insured the violations did not occur in the first place.

Mr. Timmons knew or should have known of the facts giving rise to the CAA and NCA violations set forth above and had the authority to prevent and correct such violations. Therefore, Mr. Timmons is personally liable for each of the CAA and NCA violations described in this letter.

## **VII. 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.

## **VIII. Warning**

Pursuant to Federal Rule of Civil Procedure 37(e), we advise Intermountain Harley and Mr. Timmons to take no action to destroy or remove any evidence—physical, electronic, or otherwise—related to the allegations in this notice letter and, additionally, 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 § 76-8-510.5. Any effort to avoid the reach of the law through intimidation is also a federal offense. 18 U.S.C. § 1512.

## **IX. Conclusion**

Intermountain Harley has repeatedly violated, and continues to violate, CAA § 7522 and Utah SIP Regulation 307-201-2 by removing and defeating emission control systems on motorcycles. Intermountain Harley has repeatedly violated, and continues to violate, CAA § 7522 by selling defeat parts. Intermountain Harley has repeatedly violated, and continues to violate, Utah SIP Regulation 307-201-2 by owning and operating motorcycles with missing or inoperable emissions control systems or devices. Intermountain Harley's violations described above are causing the excessive discharge of harmful pollutants in a region already plagued by unhealthy air.

Intermountain Harley has also violated, and continues to be in violation of, NCA § 4909(a)(1) by selling new motorcycles that do not meet their applicable noise emission standards, and NCA § 4901(a)(3) by selling new motorcycles that do not have a conforming noise control label. Intermountain Harley has also violated, and continues to be in violation of, NCA § 4909(a)(2)(A) by removing or rendering inoperative noise control devices or elements of design in new and used motorcycles, including but not limited to exhaust systems, and NCA § 4909(a)(2)(B) by using motorcycles from which noise control devices or elements of design have been removed. Intermountain Harley has also violated, and continues to be in violation of, NCA § 4909(a)(4) by removing the OEM noise control label on exhaust components in new motorcycles prior to their sale and not replacing them with exhaust components with matching labels equivalent to the OEM exhaust components.

Pursuant to CAA § 7604 and NCA § 4911, Physicians intend to seek an injunction requiring Intermountain Harley to stop its illegal activities and to pay a civil penalty to the U.S. Treasury for at least its last five years of violations of the CAA and the NCA. Physicians also intend to seek an order that requires Intermountain Harley to retrieve, either directly or through sufficient financial incentives, all vehicles modified and/or sold with defeat parts, and to restore with stock OEM equipment all emissions control devices, components,

and ECM settings in such vehicles, and to retrieve, either directly or through sufficient financial incentives, all defeat parts sold and to effect their replacement with stock OEM parts, and to take other measures to reduce the emission of harmful air pollutants and to compensate for and offset the past and future excess air pollution and noise caused by Intermountain Harley's illegal acts.

Utah Physicians for a Healthy Environment (UPHE) is located at 423 West 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 Intermountain Harley's illegally modified motorcycles and by other illegally modified motorcycles using parts sold by Intermountain Harley. Excessive NO<sub>x</sub>, hydrocarbons, and other pollutants discharged from such vehicles along the Wasatch Front and throughout Utah have injured, and continue to injure, UPHE members by contributing to and exacerbating the area's unhealthful air, including the area's unhealthful ozone and PM<sub>2.5</sub> nonattainment status. Excessive noise discharged by such vehicles along the Wasatch Front and throughout Utah has injured, and continues to injure, UPHE members by contributing to and exacerbating unhealthy levels of noise.

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 offer above, or would otherwise like to discuss a settlement of this matter prior to the initiation of litigation, please contact the attorneys below.

Yours Sincerely,

/s Reed Zars  
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<p>Kathleen ("KC") Becker, Regional Administrator EPA Region 8 Environmental Protection Agency 1595 Wynkoop St. Denver, CO 80202-1129</p>
<p>Governor Spencer Cox Utah State Capitol Complex 350 North State Street, Suite 200 PO Box 142220 Salt Lake City, Utah 84114-2220</p>
<p>Bryce Bird, Director Utah Division of Air Quality Multi Agency State Office Building 195 North 1950 West Salt Lake City, Utah 84116</p>

cc by First Class Mail:

<p>Rachelle Blackham, MPH Davis County Health Department P.O. Box 618 Farmington, UT 84025</p>	<p>Royal DeLegge Environmental Health Director Salt Lake County 788 East Woodoak Lane Murray, UT 84107</p>
<p>Harley-Davidson of Salt Lake City 2928 S State St. Salt Lake City, UT 84115</p>	<p>Bear River Health Department 655 East 1300 North Logan, UT 84341</p>

South Valley Harley-Davidson 8886 Sandy Pkwy Sandy, UT 84070	Weber/Morgan Health Department 477 23rd Street Ogden, UT 84401
Golden Spike Harley-Davidson 5152 1500 W Riverdale, UT 84405	
Saddleback Harley-Davidson Shop 445 Main St. Logan, UT 84321	