

IN THE DISTRICT COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF CLARK

STATE OF WASHINGTON,

Plaintiff,

v.

NICHOLAS AKERILL,

Defendant.

No. 222261P

AFFIDAVIT OF PROBABLE CAUSE

AFFIDAVIT BY CERTIFICATION:

The undersigned certifies that I am an Assistant Attorney General for the State of Washington and make this affidavit in that capacity; that criminal charges have been filed against the above-named defendant in this cause, and I believe probable cause exists for the arrest of the defendant on the charges because of the following facts and circumstances. This information is not based upon any independent or personal knowledge of these events, unless specifically noted.

The following is based on sworn reports, statements, and items provided by law enforcement, and not on personal knowledge. The purpose of this affidavit is to establish probable cause for the crime charged, not to summarize the entire case.

**DIESEL EMISSION CONTROL SYSTEM**

Diesel engine vehicle emission control systems are designed to limit the discharge of air pollutants from the internal combustion engine and other components. Removing those

1 devices by installing various aftermarket parts, known as defeat devices, increases emissions  
2 of air pollutants, including particulate matter, hydrocarbons, and oxides of nitrogen.  
3 Increased emissions of these air pollutants has been linked to: premature death in people with  
4 heart or lung disease, nonfatal heart attacks, irregular heartbeat, aggravated asthma,  
5 decreased lung function, and increased respiratory symptoms, such as irritation of the  
6 airways, coughing or difficulty breathing. According to a study by the Environmental  
7 Protection Agency's (EPA) Air Enforcement Division, "known sales of defeat devices for  
8 certain diesel trucks after 2009 and before 2020 resulted in more than 570,000 tons of excess  
9 NOx and 5,000 tons of excess particulate matter (PM) over the lifetime of the trucks."

10 The Washington Clean Air Act prohibits a person from removing or rendering  
11 inoperable any component or change any element of design of a motor vehicle, including  
12 making adjustments outside the range of manufacturer's specifications that could affect the  
13 amount of air contaminants emitted from that vehicle. When vehicles are modified to defeat  
14 the emission control systems, the most common areas on the vehicle that are modified  
15 include: the on-board diagnostic system (OBD); diagnostic trouble codes (DTCs); sensors for  
16 oxygen, oxides of nitrogen (NOx), ammonia, particulate matter (PM), urea quality, and  
17 exhaust gas temperature; diesel particulate filters (DPFs) and their sensors; exhaust gas  
18 recirculation (EGR) systems; diesel oxidation catalysts (DOCs); selective catalytic reduction  
19 (SCR) systems; NOx adsorber catalyst (NAC) systems; and engine calibrations that affect  
20 engine combustion (e.g., fuel injection or ignition timing, injection pattern, fuel injection  
21 mass for each injection event, fuel injection pressure, EGR flowrate, mass air flowrate, EGR  
22 cooler bypassing).

### 23 **RPM NORTHWEST**

24 RPM Northwest is an auto repair business located in Ridgefield, Washington. On  
25 May 12, 2021, RPM owners Sean and Tracy Coiteux, along with one of their former  
26 employees, Nicholas Akerill, were federally indicted for conspiracy to violate the federal

1 Clean Air Act (18 U.S.C. § 371). During the associated federal investigation by the EPA  
2 Criminal Investigation Division (EPA CID), it was determined that RPM Northwest provided  
3 services that illegally modified diesel vehicles' emissions control systems.

4 To conceal the unlawful diesel emission control activities, RPM would not expressly  
5 refer to "deletes" or "tunes" on their invoices. Instead, RPM's invoices referred to the work  
6 as an "upgrade," which was sometimes accompanied by a "D" or a "T," denoting that the  
7 work performed was a delete or tune, respectively. To further conceal the unlawful activities,  
8 Akerill and the owners, Sean and Tracy Coiteux, agreed that they would not discuss deletes  
9 or tunes with customers over the telephone; that they would not advertise these services; and  
10 that they would discourage customers from discussing RPM's tune and delete services on  
11 social media.

12 On January 20, 2021, federal agents from EPA CID executed a search warrant on the  
13 business premises of RPM Northwest. Pursuant to the warrant, EPA CID seized information  
14 related to the alteration and removal of emission control systems of diesel trucks. Some of  
15 the items seized were invoices generated by RPM Northwest regarding work they performed  
16 on diesel vehicles at their shop in Ridgefield. Federal agents from EPA CID also interviewed  
17 the owners and some of RPM Northwest's employees regarding their knowledge and  
18 activities in removing or modifying the factory-installed emissions control systems. Based on  
19 invoices seized, it appears that between about January 1, 2018 and January 20, 2021, RPM  
20 illegally modified the emission control system of approximately 375 diesel trucks and  
21 collected fees totaling \$536,447 for that service.

22 Matthew Blewett, a former RPM Northwest mechanic, was interviewed by EPA CID  
23 Special Agents. During that interview, Blewett explained "Upgrade-DTM," as used within  
24 RPM invoices, refers to modifying a diesel vehicle's emission system. Specifically, DTM  
25 stands for "Delete, Tune, and Muffler." During the investigation, it was determined that  
26 "Tune" refers to reprogramming the diesel truck's on-board diagnosis system (OBDS) from

1 detecting that the emissions control equipment have been removed. Blewett said that the  
2 tuning of the diesel vehicles were always done by Akerill using his cellphone. Altering the  
3 vehicle's computer programming can impair how clean the diesel burns thus increasing the  
4 exhaust particulates into the atmosphere.

5 During the search warrant execution on January 20, 2021, EPA-CID Special Agents  
6 interviewed RPM Northwest employee Damien Peach. During his interview, Peach explained  
7 that the term "Delete" meant that the employees would remove emissions control hardware  
8 from the truck. Peach also stated that Akerill and another RPM employee were the two  
9 primarily responsible for emission modification work. Peach said that all of the parts orders  
10 go through Akerill or the owners of RPM. Peach also said that all of the employees go to  
11 Akerill, and if Akerill does not have an answer, he goes to the owners. Peach admitted that  
12 the last emissions modification he did at RPM was Monday, January 18, 2021. Peach  
13 explained that he worked on a Dodge Ram. Peach added block plates, a five-position switch,  
14 and he modified the DPF on the exhaust system. Peach said that they have to put in a tune for  
15 the five-position switch to work and that Akerill did the tune for that truck prior to Peach  
16 working on it.

#### 17 **AKERILL'S CONDUCT AT RPM**

18 Nicholas Akerill was hired by RPM in June 2017. While employed by RPM, Akerill  
19 was a service writer, service manager, and general manager for the company. During the  
20 entire period of Akerill's employment at RPM, he and RPM's owners agreed that RPM  
21 would regularly perform modifications known as "deletes" and "tunes" on diesel trucks in  
22 exchange for a fee paid by the customer. Depending on the year of the vehicle, type of tune  
23 used, and the particular hardware modifications to the emissions control equipment, RPM  
24 typically charged customers between \$1,000 and \$2,000 to delete and tune a truck.

25 As shop manager, Akerill regularly directed RPM employees to perform deletes on  
26 diesel trucks. Akerill did so at the direction of, and with the full knowledge and agreement of

1 the owners Sean and Tracy Coiteux. After the diesel trucks were deleted, Akerill personally  
2 tuned the trucks' OBDs by downloading tuning software and tune files onto his cell phone or  
3 a computer, and then using the phone or computer to reprogram or tamper with the  
4 OBD. Akerill performed this tuning at the direction of, and with the full knowledge and  
5 agreement of, Sean and Tracy Coiteux.

#### 6 **SEARCH OF MODIFIED VEHICLES**

7 During a review of the invoices seized under the federally authorized search warrant,  
8 it was determined that RPM had several customers that had the emission control devices  
9 modified on more than one diesel vehicle. In early 2022 Charlotte Papp, an EPA inspector,  
10 conducted an inspection on seven diesel trucks that were serviced by RPM. The invoice for  
11 each of the vehicles inspected indicated that either an Upgrade DTM or Upgrade Exhaust  
12 was performed by RPM.

13 According to Inspector Papp, each of the diesel vehicles' emission control systems  
14 were illegally modified. Specifically, none of the diesel trucks inspected had after-treatment  
15 technology present. The OC, DPF and SCR appeared to have all been completely removed  
16 and replaced with a "straight pipe," meaning no exhaust inhibitors. Each of these  
17 modifications or deletions to the truck's emission control system is a violation the  
18 Washington Clean Air Act and increases the amount of pollution released into the  
19 environment.

#### 20 **CONDITIONS OF RELEASE**

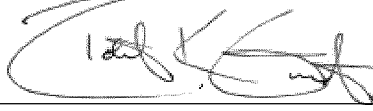
21 The State has no objection to release on personal recognizance provided they notify  
22 the State of any change of address, and have no new criminal law violations.

23 I certify (or declare) under the penalty of perjury under the laws of the State of  
24 Washington that the foregoing is true and correct.

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1 ROBERT W. FERGUSON  
2 Attorney General

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4 ROBERT K. GRANT, WSBA #40449  
5 Assistant Attorney General

6 DATED this 9th day of September 2022, at the Attorney General's Office in King  
7 County, Washington.  
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