

November 29, 2018

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U.S. Environmental Protection Agency
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Leila Cook
Associate Director
Office of Transportation and Air Quality
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Dear Mr. Belser and Ms. Cook:

On October 23, 2018, representatives of EPA's Office of Transportation and Air Quality and Office of Civil Enforcement briefed members of the National Association of Clean Air Agencies' (NACAA) Mobile Sources and Fuels Committee on the September 2018 "Preview of the Draft 'EPA Tampering Policy' for Stakeholder Awareness."¹ The Committee was invited to provide comments on the preview document by Thanksgiving. NACAA is the national, non-partisan, non-profit association of air pollution control agencies in 40 states, the District of Columbia, four territories and 114 metropolitan areas. The air quality professionals in our member agencies have vast experience dedicated to improving air quality in the U.S. This letter is based upon that experience. The views expressed in this letter do not represent the positions of every state and local air pollution control agency in the country.

EPA states in the preview that, once final, the tampering policy will update EPA's enforcement policy concerning vehicle and engine tampering and aftermarket defeat devices and will supersede and replace several EPA enforcement policies including, among others, the June 25, 1974 Mobile Source Enforcement Memorandum 1A and the August 5, 1986 Sale and Use of Aftermarket Converters policy. EPA did not share a draft of the tampering policy for our review, but from what we can ascertain from the three-page preview document, the policy will not address core issues of concern related to the sale and use of aftermarket catalytic converters for our nation's light-duty fleet – issues that have been raised by many state and local air agencies and organizations, including NACAA, for a number of years.

The effectiveness of aftermarket converters is important to state and local air pollution control agencies in every state in the country due to their role in maintaining the emissions performance of vehicles. States and localities are counting on these parts to control emissions so they can achieve a variety of clean air goals including, among others, attaining and maintaining compliance (upwind and downwind) with health-based National Ambient Air Quality Standards for ozone and fine particulate matter and continuing to reduce levels of hazardous air pollutants. Federal regulations and enforcement policies and adequate enforcement mechanisms are necessary to ensure that aftermarket converters entering the marketplace consistently provide the same level of emission control as provided by the original equipment manufacturer (OEM) converters they replace. Otherwise, the clean cars program will be compromised and substantial emission reductions will be lost. Given the scale of effort and the financial investments behind the clean cars program, as well as the continued need for mobile source emission reductions, it is imperative that EPA address these fundamental issues.

¹ Preview of the Draft "EPA Tampering Policy" for Stakeholder Awareness, U.S. Environmental Protection Agency (September 2018) – http://www.4cleanair.org/sites/default/files/Documents/EPA-Preview_of_draft_Tampering_Policy-for_Stakeholder_Awareness-Sept2018.pdf

In particular, because EPA's 1986 enforcement discretion policy (Sale and Use of Aftermarket Catalytic Converters) has not kept pace with advances in automotive emission controls or reflected the increased mileage accumulation of vehicles over their useful life, federal requirements for aftermarket parts are in need of an update to ensure that light-duty vehicles on the road continue to provide the full clean air benefit for which they were designed throughout their useful life. There are now many noncompliant aftermarket parts offered for sale in the U.S. that do not even meet the outdated performance requirements of EPA's 1986 policy, resulting in increased emissions. For example, cars and light trucks now have a useful life ranging from 120,000 to 150,000 miles, however, the catalytic converters with which they are equipped are warranted for only 80,000 miles and, under the 1986 policy, the aftermarket parts used to replace them have only a 25,000-mile warranty. Key components of an updated policy for aftermarket replacement catalysts include, among others, updated emission performance standards, a longer warranty period, certification, testing and labeling requirements, a phase-out of the use of used catalysts and a robust enforcement and outreach program.

EPA states in the preview document that its forthcoming tampering policy will supersede and replace EPA's 1986 enforcement policy for replacement of catalytic converters "to align with today's state-of-the-art converters." However, EPA makes no mention of the new tampering policy including any of the components identified above. Rather, EPA states specifically in the preview that the tampering policy "creates no obligations on regulated parties, but instead describes how EPA will exercise its enforcement discretion" and that the "centerpiece" of the policy is the articulation of a series of "reasonable bases" for demonstrating that an action does not adversely affect emissions. If a party presents to EPA documentation that it had a reasonable basis for conduct that may be in violation of Clean Air Act Section 203(a)(3) (regarding motor vehicle tampering), EPA will not take enforcement action. Such an approach is concerning to NACAA in that it is inconsistent with how EPA enforces other mobile source regulations.

The timeframe provided by EPA for commenting on the preview document does not allow NACAA to examine it carefully and provide thoughtful comments other than to say that the reasonable bases outlined are open to broad interpretation and the preview does not provide a clear explanation of how conduct related to OBD systems will be addressed. However, our primary comment on the preview document is that NACAA seeks an updated policy on aftermarket catalysts that includes the components we have identified above and ensures full achievement of the emission reductions the vehicles were designed to provide and requests that EPA include this in its forthcoming tampering policy.

We look forward to working with you and other stakeholders to discuss and develop such a policy. If you have questions, please contact either of us or Nancy Kruger, Deputy Director of NACAA.

Sincerely,



Steven E. Flint
(New York)
Co-Chair
NACAA Mobile Sources and Fuels Committee



Eric C. White
(Placer County, CA)
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cc: Phillip Brooks (EPA OECA OCE AED)
Christopher Grundler (EPA OAR OTAQ)