

U.S. EPA is Not Letting Off the Gas on Defeat Devices

Jan 11, 2022

Categories:

Publications

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Entities that manufacture or sell aftermarket parts or repair vehicles should take notice of U.S. EPA's continuing crackdown on "defeat devices."

The EPA focuses its enforcement and compliance assurance resources on "the most serious environmental violations" by developing and implementing national program priorities, called National Compliance Initiatives (NCIs). [1]

For the years 2020 through 2023, the EPA has deemed "stopping aftermarket defeat devices for vehicles and engines" one of its six NCIs.

While most media focus is on auto manufacturer cases like the VW diesel issue, the EPA explained that aftermarket defeat devices are a national priority because of "numerous companies and individuals that have manufactured and sold both hardware and software specifically designed to defeat required emissions controls on vehicles and engines used on public roads as well as on nonroad vehicles and engines."[2]

Title II of the Clean Air Act (CAA) authorizes the EPA to set standards applicable to emissions from mobile sources of emissions, including vehicles and engines. In setting such standards, the EPA has implemented a number of "emission controls," such as a requirement that diesel particulate filters and catalysts be installed in the vehicle or engine's exhaust system.

Tampering with the required emission controls is a violation of the CAA. In addition, section 203(a)(3)(B) of the CAA prohibits any person from manufacturing, selling, offering to sell, or installing parts or components whose principal effect is to bypass, defeat, or render inoperative a motor vehicle emission control device or element of design ("defeat device"), where the person knows or should know that the part is being offered for sale or installed for such use.[3]

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Violations of the CAA section 203(a)(3)(B) are subject to hefty civil penalties that range from $3,000 to $5,000 per defeat device.[4] Settlements for violations of section 203(a)(3)(B) have ranged from a few thousand dollars to several million dollars depending on the size of the company and the number of parts involved. According to EPA officials, the agency was involved in more aftermarket cases in 2020 than ever and plans to continue working in all 10 regions and partnering with states to prosecute and prevent future cases.[5]

In the past year alone, the EPA has announced 42 CAA settlements with aftermarket parts manufacturers, marketers, or installers across the country.[6]

For more information, please contact Bill Hayes, Lindsey Bryant, or any attorney with Frost Brown Todd's Automotive industry team.

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[1] National Compliance Initiative: Stopping Aftermarket Defeat Devices for Vehicles and Engines | US EPA
[2] *Id.*
[3] 42 U.S.C. § 7522(a)(3)(B).
[4] 40 C.F.R. § 19.4.
[5] Inside EPA Weekly Report, Vol. 42, *EPA Enforcement Focus Yields Aftermarket-Parts Deals Amid IG Inquiry*, (Sept. 10, 2021).[6] 2021 Clean Air Act Vehicle and Engine Enforcement Case Resolutions | US EPA

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