NACAA
national association of clean air agencies

February 11, 2021

Even Belser
Air Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
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U.S. Environmental Protection Agency
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Dear Mr. Belser:

The National Association of Clean Air Agencies (NACAA) offers the following response to the U.S. Environmental Protection Agency's (EPA's) "Notice of Availability of EPA Tampering Policy and Request for Information Regarding 1986 Catalyst Policy,"[1] which was published in the *Federal Register* on December 14, 2020 (85 Fed. Reg. 80,782). NACAA is the national, nonpartisan, non-profit association of air pollution control agencies in 41 states, including 115 local air agencies, the District of Columbia and four territories. The air quality professionals in our member agencies have vast experience dedicated to improving air quality in the U.S. These comments are based upon that experience. The views expressed in these comments do not represent the positions of every state and local air pollution control agency in the country.

On November 29, 2018, NACAA sent a letter to EPA[2] providing comments on the September 2018 "Preview of the Draft 'EPA Tampering Policy' for Stakeholder Awareness."[3] In that letter, NACAA outlined several problems and concerns associated with replacement of original equipment manufacturer (OEM) catalytic converters on light-duty vehicles (LDVs) and, in particular, the inadequacy of the agency's August 5, 1986 enforcement discretion policy (51 Fed. Reg. 28,114), titled "Sale and Use of Aftermarket Catalytic Converters (1986 Catalyst Policy),"[4] which relates to replacement of catalytic converters on gasoline-fueled LDVs that are beyond their emissions warranty. The 2020 EPA Tampering Policy[5] restates and replaces currently applicable statements of

[1] https://www.govinfo.gov/content/pkg/FR-2020-12-14/pdf/2020-27433.pdf
[2] http://www.4cleanair.org/sites/default/files/Documents/NACAA_Comments-EPA_Tampering_Policy-Sept2018_Preview_Doc-112918.pdf
[3] http://www.4cleanair.org/sites/default/files/Documents/EPA-Preview_of_draft_Tampering_Policy-for_Stakeholder_Awareness-Sept2018.pdf
[4] https://www.govinfo.gov/content/pkg/FR-1986-08-05/pdf/FR-1986-08-05.pdf (see pp. 28,114-28,119)
[5] https://www.epa.gov/sites/production/files/2020-12/documents/epatamperingpolicy-enforcementpolicyonvehicleandenginetampering.pdf

enforcement discretion policies with the exception of the 1986 Catalyst Policy. Instead, EPA requests information on the 1986 policy to inform a future decision on whether and how to update or withdraw that policy.

The comments and recommendations provided in this letter are intended to reaffirm NACAA's core issues related to the sale and use of aftermarket catalytic converters for our nation's light-duty fleet – concerns that have been raised by many state and local air agencies and organizations, including NACAA, for a number of years – and provide an updated set of high-level key points and recommendations.

It bears repeating that 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 (PM) and continuing to reduce levels of hazardous air pollutants. Federal regulations and enforcement policies and adequate enforcement mechanisms are necessary to ensure that aftermarket catalytic converters entering the marketplace consistently provide at least the same level of emission control as provided by the OEM converters they replace. Otherwise, the benefits of the clean cars program will be severely compromised and substantial potential emission reductions will be lost. Given the scale of effort and financial investments behind the clean cars program, as well as the continued critical need for mobile source emission reductions nationwide, it is imperative that EPA address these fundamental issues.

Moreover, effective aftermarket catalytic converters are essential to ameliorating adverse air quality impacts in overburdened communities. A robust policy to stem tampering with emission controls and replacement of them with inferior devices supports NACAA's key strategic priority, and recommendation to the new Administration, to "Center Environmental Justice," as reflected in our January 15, 2021 document, "Improving Our Nation's Clean Air Program: Recommendations from the National Association of Clean Air Agencies to President-Elect Biden's and Vice President-Elect Harris' Administration."[6]

EPA recently illustrated the serious effects of tampering and aftermarket catalytic converters with its November 20, 2020 report, "Tampered Diesel Pickup Trucks: A Review of Aggregated Evidence of EPA Civil Enforcement Investigations."[7] In this report, EPA's Air Enforcement Division estimates that over the past decade emission controls have been removed from more than half a million diesel pickup trucks – about 15 percent of the diesel trucks nationally that were originally certified with emission controls. The result will be over 570,000 excess tons of nitrogen oxide emissions and 5,000 tons of PM emissions over the lifetime of these trucks, which is equivalent to adding more than 9 million additional diesel trucks to our nation's roads.

NACAA commends the agency on the 2020 EPA Tampering Policy, which we believe holds promise for significantly reducing motor vehicle emissions. A shortcoming of the policy, however, is that it does not address problems posed by 1986 Catalyst Policy, but we appreciate EPA's request for comments and recommendations so that the agency can take meaningful action to resolve this in the near future. Toward this end, we offer the following recommendations.

First, EPA should recall the antiquated 1986 Catalyst Policy, which undermines the clean cars program and conflicts with the 2020 EPA Tampering Policy. The 1986 Catalyst Policy has not kept pace with

[6] http://www.4cleanair.org/sites/default/files/Documents/NACAA2021PresidentialTransitionDocument-01152021.pdf
[7] https://www.epa.gov/sites/production/files/2021-01/documents/epaaedletterreportontampereddieselpickups.pdf

numerous advances in automotive emission control technology and vehicle emission standards over the years, nor does it reflect the increased mileage accumulation of vehicles over their useful life. 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 warrantied for only 80,000 miles and, under the 1986 Catalyst Policy, the aftermarket parts used to replace them have only a 25,000-mile warranty. Further, the 1986 policy requires that converter manufacturers certify that their devices to reduce engine-out emissions by 30 to 70 percent for a 25,000-mile useful life.

Compare this to requirements for today's vehicles which, to comply with the far more rigorous current emission standards, must meet certification standards requiring catalytic converter efficiencies in excess of 99 percent. EPA has rescinded other prior policies and replaced them with the 2020 Tampering Policy and it should do the same with the 1986 Catalyst Policy. Before recalling the 1986 Catalyst Policy, however, EPA should expeditiously establish a phase-in plan and schedule that will ensure rapid transition from the 1986 Catalyst Policy to compliance with the 2020 Tampering Policy in a way that avoids confusion. The agency should work in close cooperation with state and local air agencies and industry stakeholders to do so. NACAA would be pleased to be part of such an initiative.

Second, in conjunction with recalling the 1986 policy EPA should establish a clear and viable federal certification program for aftermarket catalytic converters under the 2020 Tampering Policy.

Third, EPA should establish a consistent enforcement policy for all types of replacement aftertreatment (e.g., catalytic converters, diesel particulate filters, diesel oxidation catalysts and selective catalytic reduction systems) to safeguard intended emission reductions from all vehicle classes and types, and also establish a rigorous enforcement program for the 2020 Tampering Policy, to be carried out in conjunction with states, taking into consideration limitations under the Clean Air Act. In both cases, such action should ensure collaboration and data sharing between federal, state and local regulators.

Finally, EPA should continue to support state inspection and maintenance programs, including by determining the degree of vehicle aftertreatment tampering across all vehicle classes and accounting for excess emissions that result from tampering in the MOVES model.

We would welcome an opportunity to meet and discuss these recommendations in further detail and look forward to working with you and other stakeholders as the agency takes action on the 1986 Catalyst Policy. If you have questions, please contact either of us or Nancy Kruger, Deputy Director of NACAA.

Sincerely,

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cc: Sarah Dunham (EPA OTAQ)
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