

Vehicle tampering

EPA heightens aftermarket defeat device enforcement

INTERVIEWED BY SUE OSTROWSKI

As vehicle emissions continue to represent the largest contributor to air pollution, the Environmental Protection Agency is becoming more vigilant about prosecuting manufacturers of the parts designed to decrease the effectiveness of emissions controls, and those who use them. And if your business has these parts installed on your vehicles or other equipment, you could be at risk of fines, or jail time — even if you're not aware that tampering has occurred.

“The EPA has been, and will continue to, look seriously at tampering with vehicle emissions controls and has issued guidance to clarify its approach and requirements,” says Julie Domike, shareholder at Babst Calland. “The transportation sector is a huge source of emissions, and the EPA is signaling it is working with the states to step up enforcement, taking a closer look at vehicles that have been tampered with for the purpose of increasing fuel economy and decreasing down time.”

Smart Business spoke with Domike and Gina Falaschi, an associate at Babst Calland, about the crackdown on the use of aftermarket defeat devices and how businesses can ensure they remain in compliance with the Clean Air Act.

WHY IS THE EPA INCREASING ITS ENFORCEMENT OF TAMPERING AND THE USE OF DEFEAT DEVICES?

The EPA reports that more than 550,000 diesel trucks have had emissions controls tampered within the last 10 years, increasing emissions equating to having 9 million additional diesel vehicles on the road. With a goal of reducing emissions, pursuing illegal tampering is much more palatable to states than limiting the use of vehicles. While the EPA has arguably the most robust

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WEBSITE: For more information on EPA compliance on tampering and aftermarket defeat devices, contact Domike or Falaschi or visit www.babstcalland.com.

enforcement authority for new vehicles and engines, it is looking to states and associations that deal with air quality issues to take on cases involving tampering with vehicles once they are in use.

The new EPA memo doesn't come in a vacuum — the agency has been stepping up enforcement the past few years. The last guidance document was issued in 1974, when onboard diagnostics and sophisticated control equipment didn't exist. Today, there are more ways of tampering with vehicles, including shutting down software in addition to physically changing the hardware.

The agency isn't just pursuing businesses and individuals who drive vehicles that have been tampered with. It is also going after manufacturers of the devices people put on vehicles, looking at online forums and trade magazines to identify who is selling and who is purchasing. Many of these sellers are advertising things that are clearly illegal, but may be unaware of just how illegal they are.

HOW CAN BUSINESSES PROTECT THEMSELVES?

Make it clear in a written policy that tampering is not acceptable and that compliance with the Clean Air Act is a stated goal in the maintenance and operation of vehicles. Ensure employees are trained on the Clean Air Act and that mechanics are aware that tampering is prohibited.

However, even establishing a consistent,

reasonable basis that you are actively trying to prevent tampering, no matter how well executed, may not be enough if the EPA or the state comes calling. To ensure compliance, buy only aftermarket parts stamped with a California Executive Order number. The state has its own program to certify aftermarket parts sold and installed won't affect emissions. EPA's guidance recognizes that program and accepts an Executive Order as a reasonable basis to believe those parts will not impact emissions.

WHAT OTHER STEPS CAN BUSINESSES TAKE TO ENSURE THEIR VEHICLES AND OTHER EQUIPMENT ARE COMPLIANT?

Have an independent inspector audit your vehicles to ensure no tampering has occurred. And for businesses that buy used vehicles or other equipment, it's critical to have them inspected before taking possession, because ignorance is not a defense. For example, an auction house was found liable for selling tampered vehicles, and the state also pursued the dealerships that bought those vehicles.

Failure to ensure your vehicles and equipment are in compliance to save a few thousand dollars a year is penny wise and pound foolish. The cost of defending a case and the resulting hefty fines will cost far more than you save and can put you out of business — and even land you in jail. ●