

March 31, 2016

Administrator Gina McCarthy
U.S. Environmental Protection Agency
Air and Radiation Docket and Information Center
Docket ID No. EPA-HQ-OAR-2014-0827
Mail Code: 28221T
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Administrator Mark R. Rosekind
U.S. Department of Transportation
National Highway Traffic Safety Administration
Docket ID No. NHTSA-2014-0132
Docket Management Facility, M-30
1200 New Jersey Avenue, SE
Washington, DC 20590

Re: Docket ID Nos. EPA-HQ-OAR-2014-0827 and NHTSA-2014-0132

Dear Administrators McCarthy and Rosekind:

The Northeast States for Coordinated Air Use Management (NESCAUM)¹ submits these comments in response to the joint *Notice of Data Availability (NODA)* issued by the U. S. Environmental Protection Agency (EPA) and the U.S. Department of Transportation National Highway Traffic Safety Administration (NHTSA) on March 2, 2016 associated with the proposed rule – *Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles – Phase 2* (81 Fed. Reg. 10822). NESCAUM's comments are limited to issues raised in a December 28, 2015 comment on the Phase 2 rule from the Specialty Equipment Market Association (SEMA) related to the use of certified light-duty motor vehicles for competition racing.

At issue is proposed new text in 40 C.F.R. §§ 86.1854-12² intended by EPA to clarify the existing statutory and regulatory distinction between *nonroad vehicles* and *certified motor vehicles* as it relates to disabling or tampering with air pollution control devices:

Certified motor vehicles and motor vehicle engines and their emission control devices must remain in their certified configuration even if they are used solely

¹ NESCAUM is an association of the state air quality agencies in the six New England States, New Jersey, and New York. This letter reflects the majority views of NESCAUM as a state membership organization. Individual NESCAUM member states may hold views different from the NESCAUM states' majority consensus.

² EPA has proposed a corresponding amendment applicable to certified heavy-duty engines and vehicles in 40 CFR § 1037.601(a)(3), 80 Fed. Reg. 40650.

for competition or if they become nonroad vehicles or engines; anyone modifying a certified vehicle or motor vehicle engine for any reason is subject to the tampering and defeat device prohibitions[.] 80 Fed. Reg. 40565 (July 13, 2015).

In its comments, SEMA asserts that the proposed regulatory text represents a significant EPA policy change and, insofar as it would ban the conversion of motor vehicles originally designed and certified for onroad use into race cars, is contrary to congressional intent.

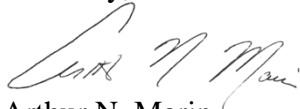
NESCAUM supports the proposed amendments, which are consistent with the Clean Air Act and do not change any existing EPA requirements or enforcement policy.

SEMA suggests that the proposed regulatory amendments will expose owners of modified motor vehicles converted solely for nonroad competition to enforcement actions and civil penalties. This suggestion is at odds with EPA's track record. EPA can and has consistently exercised its enforcement discretion by targeting *manufacturers* of defeat devices that sell their illegal products to vehicle owners who continue to drive their cars on public roads.³ The agency has not indicated any intention of expanding its enforcement effort to competition car owners or hobbyists.

In areas of the Northeast, as well as elsewhere in the nation, air quality does not meet national health-based air quality standards. Sales of aftermarket parts that defeat emission controls to owners of certified motor vehicles still operating on public roads further degrade air quality. Under present circumstances, EPA's enforcement approach to tampering with pollution control devices is a practical and straightforward application of the rule of law.

Thank you for the opportunity to provide comments on the Notice of Data Availability.

Sincerely,



Arthur N. Marin
Executive Director

³ See, e.g., *United States of America v. Edge Products, LLC*, <https://www.epa.gov/sites/production/files/documents/edgeproducts-cd.pdf> ; *United States of America v. Casper Electronics, Inc.*, <https://www.epa.gov/sites/production/files/2013-09/documents/casper-cd.pdf>.