

**Testimony of Justin A. Savage
Partner, Global Co-Leader of Environmental, Health, and Safety Practice and Co-Leader
of Automotive and Mobility Sector Team, Sidley Austin LLP**

**Before the U.S. House of Representatives Committee on Oversight and Government
Reform, Subcommittee on Federal Law Enforcement**

hearing on

**From Protection to Persecution: EPA Enforcement Gone Rogue Under the Biden
Administration**

September 16, 2025

Chairman Higgins, Ranking Member Lee, and Members of the Subcommittee,

Thank you for the opportunity to testify today. It is a privilege and a responsibility. My name is Justin Savage. I am a partner at the law firm Sidley Austin where I am the Global Co-Leader of the Environmental, Health, and Safety Practice and Co-Leader of the Automotive and Mobility Sector Team.

The views I share are my own and do not represent those of my colleagues, my law firm, our clients, or any other person or organization.

I. Background and Practice

I have been practicing environmental law for nearly 30 years. Over the course of my career, I have worked in both private practice as well as government service. For nearly a decade, I served as a trial attorney, and later as senior counsel, at the U.S. Department of Justice's Environment and Natural Resources Division. At the Justice Department, I represented the U.S. Environmental Protection Agency (EPA) in complex enforcement cases against a broad range of companies — including, but not limited to, electric utilities, oil and gas companies, and mining companies — across the country under the Clean Air Act (CAA), the Clean Water Act (CWA), the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), and other major environmental statutes. I consider myself privileged to have worked with such talented people at EPA and the Justice Department, many of whom are my friends and colleagues today. My service at the Justice Department shaped my deep appreciation for civil service — and for the importance of clear statutory authority and fair enforcement.

After my time at the Justice Department, I transitioned back into private practice representing clients across heavily regulated industries, including the automotive, energy, chemical, and mining industries. I have advised Fortune 100 companies, mid-sized manufacturers, and small entrepreneurs facing government investigations, environmental compliance challenges, and environmental litigation. My work has spanned civil and criminal enforcement defense, internal and agency investigations, and strategic counseling. My practice often requires balancing environmental compliance with the realities of innovation and technical feasibility. I represent several companies and individuals in the aftermarket auto industry, including the Specialty

Equipment Market Association (SEMA), the trade association for the aftermarket industry. In addition to client advocacy, I frequently speak and write on Justice Department and EPA enforcement trends, including the increasing overlap of civil and criminal enforcement.

In recognition of my work, I have received accolades from a variety of major legal publications. I am ranked Band 1 by Chambers USA in Washington, D.C. for environmental law and Band 3 by Chambers USA in the automotive category. I have received awards from Law360 (Environmental “MVP” for 2018 and 2024) and Lawdragon (“500 Global Leaders in Crisis Management” for 2025). When still at the Justice Department, I had the honor of serving as an instructor at the Justice Department’s National Advocacy Center where I taught hundreds of Assistant U.S. Attorneys and other agency lawyers on topics that included trial advocacy, evidence, and the Clean Air Act over the course of several years.

Environmental law is complex in both a legal and technical sense. One thing has remained constant through nearly three decades of practicing in this field: my role has been to help my clients — whether they are private companies or government agencies — navigate environmental law with clarity and foresight, while safeguarding the fairness and integrity of enforcement. But I’ve seen several recent instances where environmental law has been weaponized and distorted through administrative reinterpretation and overreach, particularly the rise of criminal prosecutions targeting small businesses and individuals for tampering with so-called on-board diagnostic (OBD) systems, i.e., the check engine lights in cars and trucks. This so-called OBD tampering theory reverses a decades-old EPA guidance and would make it a felony when a driver continues driving with a check-engine light.

To be clear, EPA and the Justice Department have many talented and dedicated leaders and career civil servants who care deeply about the law, act in good faith, and are excellent representatives of the United States and its agencies. But it is important to enforce the laws as written to ensure a level playing field and provide fair notice to regulated industries and individuals of their compliance obligations.

Today, I will focus my remarks on:

- The surge of criminal environmental enforcement under the Biden Administration against small automotive industry players for OBD tampering and the lack of statutory authority under the CAA for those criminal prosecutions; and
- The impact of this weaponization of environmental enforcement on small automotive aftermarket companies and individuals, despite clear due process concerns and double standards.

As I will discuss today, this disturbing trend has created an environment where companies and individuals cannot reasonably determine their compliance requirements. It has contributed to the government regulating through enforcement rather than congressional mandate or properly promulgated administrative rules. And, overall, it has decreased confidence in our justice system by creating an unequal playing field and stifling innovation.

II. Weaponization of CAA Aftermarket Tampering Enforcement

Overreach in environmental law enforcement can be seen across sectors. Energy producers and manufacturers targeted for environmental enforcement within the past few years have been subject to new readings of statutory and regulatory requirements by enforcement teams that use those creative readings as attempts to coerce hundreds and millions of dollars in changes to facilities and secure injunctive relief provisions — e.g., inspection and monitoring obligations — not found in any statute or regulation. But one of the clearest examples of the impact of administrative overreach is the aftermarket automotive sector, where conduct historically enforced as a civil matter now serves as the justification for criminal liability, and the brunt of the impact is borne by individuals and small businesses.

A. Background on the Automotive Aftermarket Industry and On-Board Diagnostic Systems

The aftermarket automotive industry is the secondary market of the automobile industry that deals with the manufacture, distribution, retail, and installation of motor vehicle parts, equipment, and accessories after the original sale by the automaker. Any replacement, modification, or add-on that happens after the motor vehicle leaves the dealership lot when you buy a new car is part of the aftermarket.

While there are some large companies involved in the aftermarket industry, several companies in this space are small entrepreneurs that generate a modest revenue per year through the sale and installation of aftermarket hard parts like tires, batteries, suspension upgrades, sound systems, and other parts geared towards cheaper alternatives to parts made by original equipment manufacturers, customization, vehicle performance, and vehicle longevity. There can also be software upgrades to vehicles, referred to as “tunes,” that can improve fuel efficiency and other lawful applications.

These businesses typically run on tight profit margins and are not large household name brands that can sustain millions of dollars in costs to defend against aggressive enforcement. Rather, these are often the types of businesses that are run out of garages by hardworking people looking to make ends meet.

This is a sector where the American Dream can still be reached. Businesses can be started in home garages and grow into thriving businesses that stretch across states, providing hundreds — if not thousands — of jobs and investments, and support in communities.

The government’s concerns focus on selling hard parts or tunes that act as “defeat devices” for emissions control systems within the meaning of CAA Section 203(a)(3)(A) and its implementing regulations — and selling, distributing, or installing such products can constitute CAA “tampering.”¹ Tuning software can also circumvent on-board diagnostic (OBD) systems, which are computerized diagnostic tools that monitor whether emissions-control components are working properly. OBD systems trigger a “check engine” light and store diagnostic codes when

¹ See 42 U.S.C. § 7522(a)(3)(A) & (a)(3)(B) and 40 C.F.R. § 86.1803-01.

malfunctions of emissions components occur; OBD systems do not themselves control the emissions of a motor vehicle.

It is not disputed that defeat devices are generally prohibited by the CAA. What *is* disputed, however, is whether EPA and the Justice Department can prosecute the sale, distribution, or installation of such products criminally, even if the actual software or hardware makes relatively minor adjustments to a motor vehicle.

B. The Clean Air Act's Framework and Structure

Congress passed the Clean Air Act in 1970.² The CAA is divided into several subchapters called “Titles.” Title I regulates emissions from “stationary sources” such as power plants and factories.³ In contrast, Title II is entitled “Emissions Standards for Moving Sources,” and it regulates pollutants from mobile sources, including “motor vehicles” such as cars and trucks, as well as “nonroad vehicles” such as tractors and forklifts.⁴ Title I and Title II have distinct requirements for their respective regulation of stationary sources and the regulation of mobile sources. Namely, Title I and Title II have separate requirements for the establishment of emissions and performance standards (Section 111 and 112 vs. Section 202), recordkeeping and reporting (Section 114 vs. Section 208) and enforcement (Section 113 vs. Section 205).⁵

Under Section 203 of Title II, Congress made it illegal for any person to knowingly “remove or render inoperative any device or element of design installed on or in a motor vehicle or motor vehicle engine in compliance with regulations ... after such sale and delivery to the ultimate purchaser.”⁶ This is known as the tampering prohibition for motor vehicles. Likewise, Congress made it illegal to “manufacture or sell, or offer to sell, or install, any part or component intended for use with, or as part of, any motor vehicle or motor vehicle engine, where a principal effect of the part or component is to bypass, defeat, or render inoperative any device or element of design installed on or in a motor vehicle or motor vehicle engine.”⁷ This is known as the defeat device prohibition for motor vehicles.

Under Section 205, any “manufacturer or dealer” who violates the tampering provision “shall be subject to a civil penalty of not more than \$25,000.” Meanwhile, any other person accused of tampering with motor vehicle emissions control units — including aftermarket parts distributors — is subject to a \$2,500 penalty.⁸ There are **no** criminal provisions in Title II.

² 42 U.S.C. § 7401 *et seq.*

³ 42 U.S.C. §§ 7401-7515; *see e.g.*, 42 U.S.C. § 7411(a)(3) (the term “stationary source” means “any building, structure, facility, or installation which emits or may emit any air pollutant.”); *id.* § 7412(a)(3) (incorporating definition of stationary source from 7411(a)(3)).

⁴ 42 U.S.C. §§ 7521-7590; *see also* 42 U.S.C. § 7550(2) (definition of “motor vehicle”); *id.* § 7550(10) (definition of “nonroad engine”); § 7550(11) (definition of “nonroad vehicle”).

⁵ For reference, the connection between relevant sections of the CAA and title 42 of the U.S. Code are as follows: Section 111 (§ 7411); Section 112 (§ 7412); Section 113 (§ 7413); Section 114 (§ 7414); Section 202 (§ 7521); Section 203 (§ 7522); Section 205 (§ 7524); Section 208 (§ 7542).

⁶ *Id.* § 7522(a)(3)(A).

⁷ *Id.* § 7522(a)(3)(B).

⁸ *Id.* § 7524(a). The CAA’s maximum penalties are adjusted by EPA each year to account for inflation. *See* EPA, Civil Monetary Penalty Inflation Adjustment, 90 Fed. Reg. 1,375 (Jan. 8, 2025) (updating maximum penalties under § 7524(a) from \$25,000 and \$2,500 to \$59,114 and \$5,911).

The omission of criminal provisions was deliberate. Congress gave EPA strong tools under CAA Title I for stationary sources, specifically CAA Section 113(c)(2)(C), to pursue owners and operators for civil *and* criminal sanctions. But legislative history supports that Congress chose a civil liability regime only for motor vehicles, recognizing the vast number of actors involved and the complexity of regulating millions of cars, trucks, and other vehicles.⁹

C. EPA’s Novel Charging Theory

EPA and the Justice Department recently began criminally prosecuting aftermarket businesses for CAA OBD tampering under CAA Section 113(c)(2)(C) in Title I. Under Section 113(c)(2)(C), any person who knowingly “falsifies, tampers with, renders inaccurate, or fails to install any monitoring device or method required to be maintained or followed under this chapter” is subject to “a fine pursuant to title 18 or by imprisonment for not more than 2 years, or both.”

The CAA itself does not define the term “monitoring device required to be maintained.” But in the very next section — Section 114, which provides information collection requirements — Congress made clear that monitoring requirements for motor vehicles should be governed by separate provisions in Title II of the Act. Specifically, Section 114 grants EPA the authority to:

require any person who owns or operates any emission source, who manufactures emission control equipment or process equipment, who the Administrator believes may have information necessary for the purposes set forth in this subsection, or who is subject to any requirement of this chapter **(other than a manufacturer subject to the provisions of section 7525(c) or 7542 of this title with respect to a provision of subchapter II of this chapter)** ... to install, use, and maintain such monitoring equipment...”¹⁰

Congress’s carveout in Section 114 further supports that it did not intend to authorize EPA to charge CAA motor vehicle violations as crimes under Section 113(c)(2)(C).

Until recently, there had been no meaningful cases of CAA aftermarket tampering being charged criminally. For decades prior, EPA consistently interpreted “monitoring device” under Section 113(c)(2)(C) to apply only to stationary sources of air pollution regulated under Title I of the CAA — e.g., emissions monitoring equipment at refineries, chemical manufacturing plants, coal plants and similar locations where owners and operators of those facilities are required to maintain the monitors of their stacks. The below visual shows a diagram of a typical monitoring device installed on a stationary source, also known as a continuous emission monitoring system (CEMS). In the

⁹ See, e.g., H.R. Rep. No. 95-294, at *69–70 (May 12, 1977), as reprinted in 1977 U.S.C.C.A.N. 1077, 1147, 1977 WL 16034 (noting within 1977 CAA Amendments Report that in the 1970 Amendments, “no criminal sanctions were provided for violation of mobile source-related regulations. On the other hand, the stationary source enforcement provisions (section 113 of the act) authorized injunctive relief and the imposition of criminal penalties.”); see also David Currie, *The Mobile-Source Provisions of the Clean Air Act*, 46 Univ. Chicago L. Rev. 811, 872 n.383 (1979) (“The enforcement provisions of section 113, including administrative orders and criminal sanctions, do not apply to motor vehicle violations.”).

¹⁰ 42 U.S.C. § 7414(a)(1)(C) (emphasis added).

visual, the CEMS is attached to, but separate from, the stack and directly monitors emissions data from the stack using various probes and sensors.

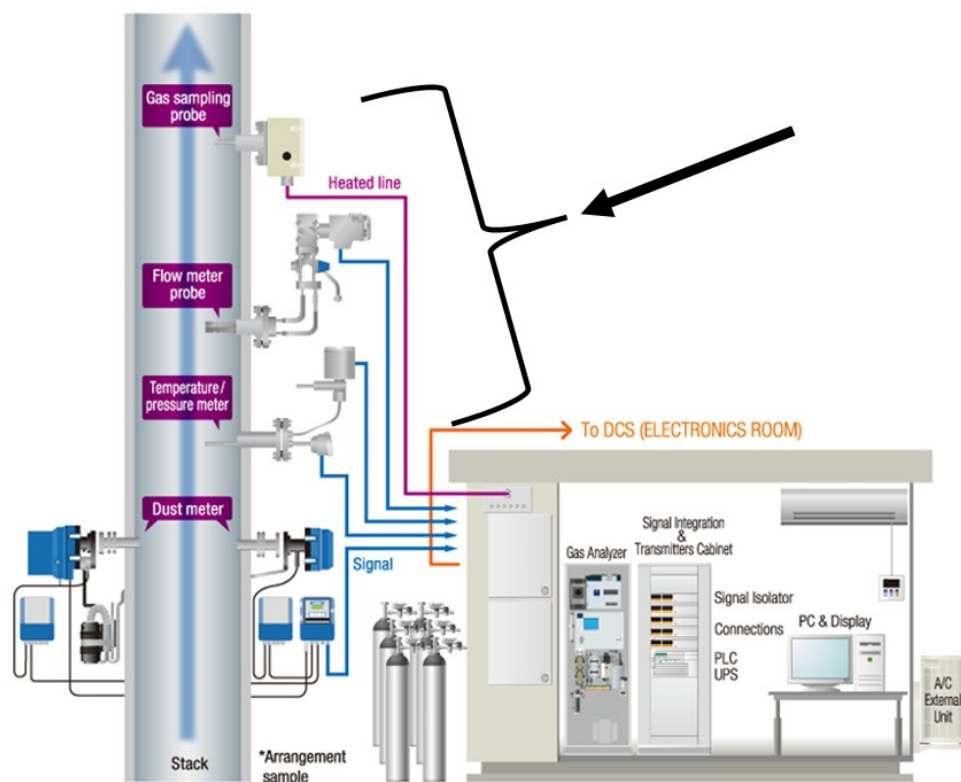


Figure 1: EPA Example of Extractive CEMS, Air Emissions Guidance Notes on CEMS maintenance and operation requirements (AG13), EPA Office of Environment Enforcement, at Figure 3 (Dec. 2021).

Owners and operators of stationary sources are then *legally required* to report data collected and recorded by the CEMS to EPA under the CAA and EPA’s implementing regulations for stationary sources.¹¹ The purpose of such emissions reporting is to ensure that individual stationary sources are operating at permitted levels at all times; owners and operators of stationary sources that emit more than the permitted amount of emissions are subject to fines and potentially enforcement actions. The criminal liability established in CAA Section 113(c)(2)(C) for tampering with monitoring devices like CEMS is a natural progression of the CAA’s requirements — tampering with these devices or modifying the results is akin to lying to the government.

OBD systems, on the other hand, *do not* monitor and record emissions released by a motor vehicle into the environment. The OBD system only collects operating data from sensors associated with components of the vehicle’s emissions control system that are fed into a central computer, also called an Engine Control Unit, and evaluates the data to determine if the underlying components are operating properly. The purpose of the OBD system is to identify whether an emissions-related component is failing to perform as designed and, thus, needs replacement. It is not intended to collect real-time data on motor vehicle tailpipe emissions. The below visual illustrates how OBD

¹¹ See, e.g., 40 C.F.R. § 63.655(i) (requiring petroleum refineries to retain records including those of the “monitoring device”).

systems only feed into a connection port that attaches to a scan tool. This scan tool then informs one of which component is failing — it does not read or scan tailpipe emissions.

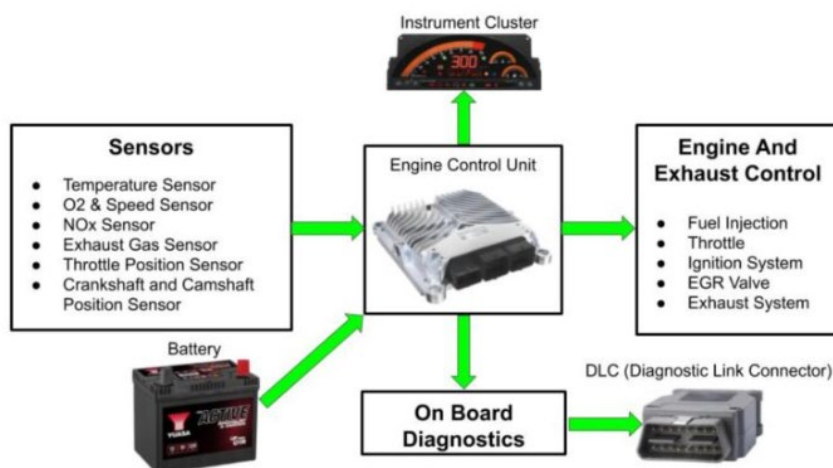


Figure 2: Microcontroller Tips, What is the onboard diagnostic system, OBDII?, at Figure 1 (June 21, 2022), <https://www.microcontrollertips.com/what-is-the-onboard-diagnostics-system-obdii-faq/>.

EPA’s novel charging theory for prosecuting aftermarket cases conflates these two systems and relies on the assertion that OBD systems are “monitoring devices,” despite the lack of actual emissions monitoring conducted. This reading goes beyond the text, structure, and history of the CAA, as well as EPA’s regulations, practice, and longtime interpretation.

Indeed, EPA’s charging theory produces the absurd result that driving a car with a check engine light is felony. As noted, EPA relies on Section 113(c)(2) of the Act to prosecute OBD tampering, which only applies to “monitors required to be maintained or followed.” Nothing in the CAA requires auto service providers to maintain or follow OBD monitors. And if an OBD is required to be maintained or followed, drivers who fail to immediately halt driving upon seeing a check engine light would face a felony. This puts the onus on everyday people to maintain these devices, most of whom do not even know that OBD systems exist in their cars and trucks, or risk criminal prosecution. Moreover, EPA’s charging theory makes it a crime to tune cars and trucks at all — even before the engine is turned on or the vehicle is driven on the highway. No other federal motor vehicle law is comparable.

EPA itself recognized that the CAA did not authorize tampering violations to be charged as a crimes in a 1993 enforcement memorandum entitled “New Criminal Enforcement Responsibilities Under 1990 Clean Air Act Amendment.”¹² In that memorandum, EPA’s Acting Director of the Criminal Enforcement Division explicitly stated that “[t]he 1990 [Clean Air] Act [Amendments] **continued the exclusion of Subchapter II violations from criminal penalties**” and “[a]utomobile dealer or repair shop tampering with automotive air emission systems still can not be prosecuted criminally under the CAA.”¹³ Congress’s own research branch, the Congressional

¹² EPA, Memorandum from Kathleen A. Hughes, Acting Director of the Criminal Enforcement Counsel Division to Regional Criminal Enforcement Counsels I–X, *New Criminal Enforcement Responsibilities Under 1990 Clean Air Act Amendment* (Apr. 19, 1993) (1993 Guidance), attached as Exhibit A.

¹³ *Id.* at 5–6 (emphasis added).

Research Service (CRS), similarly noted this lack of statutory authorization for criminal liability as recently as 2016: “Part A of Title II of the CAA, which deals with emissions standards for moving sources, *does not provide for criminal penalties.*”¹⁴

The relevant provisions of the CAA have not been amended since the 1990 CAA Amendments discussed in EPA’s 1993 Guidance. Yet, EPA abruptly pivoted by beginning to charge aftermarket tampering cases as crimes and, further, in late 2020 with an EPA Office of Enforcement and Compliance Assurance (OECA) “Enforcement Alert” on this subject. The alert stated: “It is a crime to knowingly falsify, tamper with, render inaccurate, or fail to install any ‘monitoring device or method’ required under the Clean Air Act, including a vehicle’s on-board diagnostic system.”¹⁵ EPA provided no justification for the change in enforcement policy and no discussion of why the CAA — nearly 30 years after EPA’s 1993 Guidance — suddenly allowed for the criminal prosecution of these cases.

D. Skyrocketing Numbers of Criminal Aftermarket Tampering Enforcement Cases

Criminal prosecutions of CAA aftermarket tampering cases have risen sharply. In August 2023, EPA’s OECA announced its new National Enforcement and Compliance Initiatives (NECIs) and reported on its prior NECIs that it determined were successful. One such NECI — which was initiated in Fiscal Year (FY) 2020 — was focused on “addressing serious violations [of aftermarket defeat devices] through both civil and criminal enforcement actions.”¹⁶ OECA reported that EPA had met the goals of the original NECI and, as of the date of publication, had resolved over 130 aftermarket tampering cases.¹⁷ Yet despite the announcement of returning the aftermarket-focused NECI to the “core enforcement program,” and thus ending the emphasis through a national initiative, the number of criminal aftermarket tampering cases continued to spike.

The visuals below show the approximate number of criminal aftermarket cases initiated per year and per administration, respectively.¹⁸ Note that even with EPA’s purported end of emphasis on enforcement of aftermarket cases in FY 2023, the number of criminal cases initiated still increased by approximately 60%.

¹⁴ See CRS, *Volkswagen, Defeat Devices, and the Clean Air Act: Frequently Asked Questions*, Report No. R44372, at 9 (updated Sept. 1, 2016), https://www.congress.gov/crs_external_products/R/PDF/R44372/R44372.9.pdf.

¹⁵ EPA, *Enforcement Alert, Aftermarket Defeat Devices and Tampering are Illegal and Undermine Vehicle Emissions Controls*, at 4–5 (Dec. 2020) <https://www.epa.gov/sites/default/files/2020-12/documents/tamperinganddefeatdevices-enfalert.pdf>.

¹⁶ EPA, Memorandum from D. Uhlmann, *FY 2024 – 2027 National Enforcement and Compliance Initiatives*, at 6 (Aug. 17, 2023), <https://www.epa.gov/system/files/documents/2023-08/fy2024-27necis.pdf>.

¹⁷ *Id.*

¹⁸ The data is based on publicly available information announced by EPA. The numbers include cases in which the government charged defendants with actual tampering in violation of CAA Section 113(c)(2)(C), as well as ancillary charging theories like conspiracy to violate the CAA and aiding and abetting.

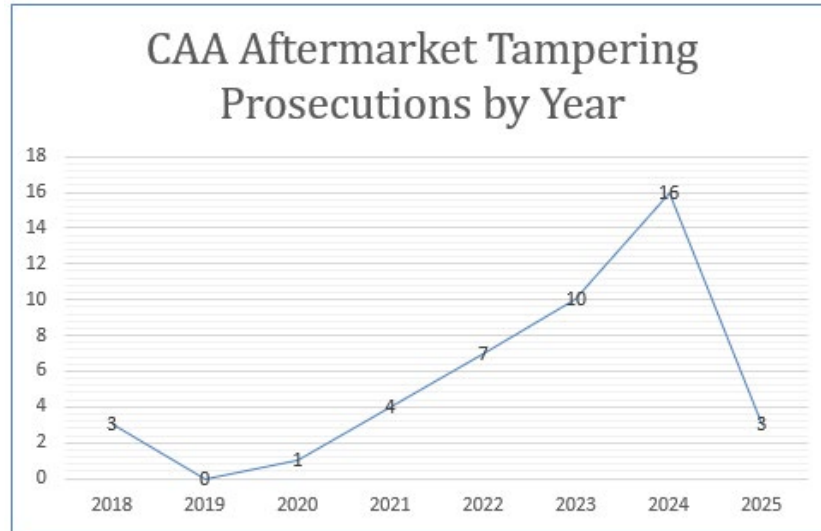


Figure 3: CAA Aftermarket Tampering Prosecutions by Year

Note that two of the cases initiated in 2018 arose from the same circumstances — the alleged tampering via the installation of defeat devices in trucks owned by a company called Rockwater Northeast LLC — while the third case initiated in 2018 was eventually dismissed on the government’s motion.¹⁹ The single case initiated in 2020 was the prosecution of Rockwater Northeast LLC as an entity following the prosecutions of individuals in 2018.²⁰

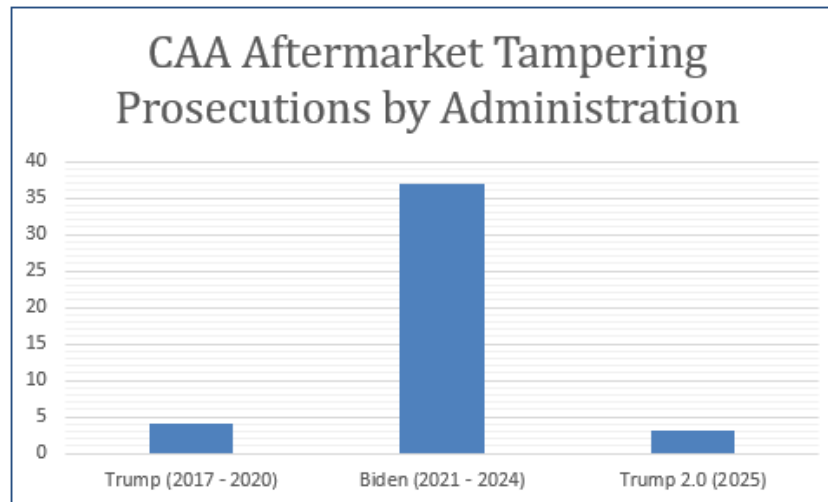


Figure 4: CAA Aftermarket Tampering Prosecutions by Administration

¹⁹ *United States v. Mellott*, No. 4:18-cr-00267 (M.D. Penn. 2018) (related to Rockwater Northeast); *United States v. Rexer*, No. 4:18-cr-00174 (M.D. Penn. 2018) (related to Rockwater Northeast); *United States v. Diamond Environmental Services*, Judgment and Order Dismissing the Superseding Indictment, 3:18-cr-05382 (S.D. Cal. Oct. 26, 2020) (dismissed on the government’s motion when it was determined that the trucks in question were not regulatorily required to have OBD systems installed at all).

²⁰ *United States v. Rockwater Northeast LLC*, No. 4:20-cv-00230 (M.D. Penn. 2020).

E. Promoting Civil Compliance

Stretching back to 1974, EPA has recognized that the public should be able to modify their vehicles, providing that there is a “reasonable basis” to conclude that there is no adverse effect on emissions performance of the vehicle. This policy, referred to as Memo 1A or the tampering policy, has facilitated compliance for decades by requiring emissions testing, engineering analysis, and other steps to show reasonable emissions compliance.²¹

However, EPA’s historic approach to compliance has recently come under attack in two ways. First, EPA’s novel OBD charging theory has unnecessarily injected uncertainty and risk into an area primarily policed through civil enforcement for decades. This uncertainty and risk results in unnecessarily penalizing people, rather than providing clear guidance and helping the industry as a whole understand its compliance requirements.

Second, EPA has increasingly pushed small businesses and individuals to comply with California Air Resources Board (CARB) procedures for ensuring that an aftermarket part or software does not adversely affect emissions. Several civil consent decrees require companies to obtain so-called CARB Executive Orders (EOs) in order to bring products to market anywhere nationally, rather than just in California. The CARB process for aftermarket EOs, while perhaps well-meaning, can be arduous and costly. And the willingness of CARB to administer this program for internal combustion engines vehicles may reasonably be called into question by its policies and objectives, as illustrated by Figure 5 below.



Figure 5: Depiction of a fossilized gas station at CARB’s Riverside, California facility

Instead, there may be several viable private sector certifications that provide a reasonable assurance that vehicle modifications do not adversely affect emissions. Companies can self-certify and provide documentation of their compliance efforts, which has been the approach for safety

²¹ EPA, Office of Enforcement and General Counsel, *Mobile Source Enforcement Memorandum No. 1A, Interim Tampering Enforcement* (June 25, 1974), https://www.epa.gov/sites/default/files/documents/tamper-memo1a_0.pdf; see also EPA, *EPA Tampering Policy: The EPA Enforcement Policy on Vehicle and Engine Tampering and Aftermarket Defeat Devices under the Clean Air Act* (Nov. 23, 2020), <https://www.epa.gov/sites/default/files/2020-12/documents/epatamperingpolicy-enforcementpolicyonvehicleandenginetampering.pdf>.

compliance in the auto sector for decades, including the Federal Motor Vehicle Safety Standards. Not every company has the resources and expertise to perform the testing or engineering work to comply. In that circumstance, SEMA, the trade association for the aftermarket industry, offers several services for compliance assistance. SEMA Garage, for example, performs emissions testing and other engineering services. That process at SEMA Garage can result in a SEMA Certified Emissions product (SC-E), which allows manufacturers to verify that a product meets the reasonable basis for compliance required under EPA’s Tampering Policy. Companies want to be in compliance with legal requirements — these type of viable private certifications can provide the assurance that they now lack due, in part, to EPA’s novel enforcement theory.

III. Impacts of Weaponization of CAA Aftermarket Enforcement

The weaponization of environmental enforcement has real-world consequences that go far beyond academic debates over statutory interpretation and Congressional intent. It undermines due process, conflicts with established regulatory framework to create absurd and uneven outcomes, and creates double standards that fall hardest on individuals and small businesses. I see some of these consequences in other areas of environmental enforcement, too.

A. Due Process Considerations

Fundamental notions of due process require that no punishment can be imposed without clear notice.²² Confusion created by the government through inconsistent public statements as to the proper interpretation of the law is central to the question of whether defendants have clear notice of their alleged criminal conduct.²³ Where administrative overreach and overcriminalization combine, it is impossible for the accused to determine that their conduct creates criminal liability because — as once admitted by the very agency alleging wrongdoing — the governing statute does not actually provide authority for criminal enforcement. At a certain point with aftermarket cases, EPA made a policy decision to use CAA Section 113(c)(2)(C) as a catch-all felony hook for OBD-related tampering, without fair warning to regulated entities, despite the established legal principle that Congress “does not alter the fundamental details of a regulatory scheme in vague terms or ancillary provisions — it does not, one might say, hide elephants in mouseholes.”²⁴

B. Conflict with Existing Statutory Schemes to Produce Absurd Results

In addition to the reality that EPA’s OBD-related charging theory essentially retroactively criminalizes conduct, the theory also puts individuals and small businesses at risk of felony charges for disabling a single check engine light while manufacturers who sell millions of potentially noncompliant vehicles a year are subject to relatively modest civil penalties. Decades ago, EPA delegated its regulatory authority over OBD to the State of California, specifically CARB.²⁵ EPA’s approval allows vehicle manufacturers to rely on OBD certification received from California in lieu of the required federal OBD certification, which is what every manufacturer does

²² *United States v. Hoechst Celanese Corp.*, 128 F.3d 216, 224 (4th Cir. 1997).

²³ *Nat’l Parks Conserv. Ass’n v. Tenn. Valley Auth.*, 618 F. Supp. 2d 815, 832 (E.D. Tenn. 2009).

²⁴ *Whitman v. Am. Trucking Ass’n*, 531 U.S. 457, 468 (2001).

²⁵ See, e.g., 42 U.S.C. § 7543(b); California State Motor Vehicle Pollution Control Standards; Waiver of Federal Preemption; Decision, 61 Fed. Reg. 53,371 (Oct. 11, 1996).

in order to be able to sell their products in all 50 states.²⁶ This means, practically speaking, every passenger car and truck in the U.S. that must have an OBD system has received a CARB approval of its OBD system.

The government’s new interpretation of Section 113(c)(2)(C) cannot be reconciled with the EPA-approved California regulations that allow sales of passenger cars and trucks without all of the required OBD sensors, upon payment of a civil fine. More specifically, EPA-approved CARB regulations allow California to grant “deficiencies” to manufacturers that allows them to certify vehicles for sale and distribution even if portions of the vehicles’ OBD system cannot effectively sense and diagnose certain components in the emissions control system.²⁷ In fact, CARB permits vehicle manufacturers of “non-complying [OBD] systems” to pay a civil fine of \$25 – \$50 per vehicle sold in California for every OBD parameter that does not work, with a maximum penalty of \$500 per vehicle. As a result, CARB will still certify a vehicle even if upwards of 20 individual OBD monitors cannot detect a failed part within the emissions control system, or even if “a required monitoring strategy is completely absent from the OBD system” altogether.²⁸

C. Devastating Legal Consequences Felt by Individuals and Small Business Owners

Small businesses and individual entrepreneurs bear the brunt of enforcement. As explained above, the aftermarket parts industry is largely composed of modest operations. Many are run from small garages to support their families, serving customer demand for non-original engine manufacturer alternatives, with tight margins. These are not companies who keep extensive legal teams on retainer or maintain sufficient funds to absorb years of extensive litigation or criminal investigations.

While larger companies may be able to successfully stay out of court, they are also less likely to be targeted for relatively minor infractions based on other considerations. In fact, EPA’s criminal charging theory appears to have been a favorite weapon of the Biden administration to pursue truck enthusiasts who, coincidentally, are overwhelmingly supporters of President Trump. Regardless of possible political motivations, the effects of the criminalization of aftermarket tampering cases are most felt by individuals and small entrepreneurs whose entire lives are put into jeopardy for conduct that EPA itself repeatedly characterized as resulting in civil liability only.

By way of example, Jonathan Long, a U.S. Navy Sailor with 20 years of service and no prior criminal record, had his family home raided at dawn by armed law enforcement executing a no-knock warrant to question him about his truck repair business that he single-handedly ran out of his garage.²⁹ That raid led to the government bringing *six* felony charges under the CAA,³⁰ posing substantial risk to Mr. Long’s retirement and other benefits (not to mention to his freedom), after the armed agents violated his Fifth Amendment rights when they continued to question him in a custodial interrogation even after he asked to speak to a lawyer. After extensive litigation, Mr. Long agreed to a misdemeanor for accessory after the fact assistance but he was still sentenced to

²⁶ See, e.g., 40 C.F.R. § 86.1806-05(j) (2024) (referred to as the California OBD II compliance option).

²⁷ See 13 Cal. Code Regs. tit. 13, § 1968.2(k).

²⁸ *Id.* § 1968.2(k)(2), (3).

²⁹ See Indictment, *United States v. Long*, No. 2:22-CR-00139 (E.D. Va. Nov. 16, 2022).

³⁰ *Id.*

12 months of probation, three months of home confinement, and a \$88,514 criminal fine that he and his wife will be paying off for years to come.

The government also pursued Joshua Davis, a Republican commissioner on the County Board of Woodford County, Illinois, a supporter of President Trump who had no prior criminal record. Mr. Davis, who owns a small truck business, was subject to the threat of ruinous civil penalties and multiple felonies in two different venues.³¹ EPA’s official investigation file (received through a FOIA request) contained copious evidence of Mr. Davis’ political statements — which had no relevance whatsoever to the charges levied against him.

Aaron Rudolf — a North Carolina entrepreneur, small business owner, and father to a young child — was similarly pursued in both North Carolina and Washington, DC for alleged civil violations and criminal felony charges, respectively.³² During Mr. Rudolf’s sentencing hearing, the Judge negatively called out this apparent forum shopping—as well as the civil nature of the violation and the “unusual” parallel civil settlement over the same conduct that “[felt like] the Government is getting two pounds of flesh.”³³ As with Mr. Long and Mr. Davis, Mr. Rudolf had no prior criminal record and has a long history of service to his community, as reflected in his recent efforts to rescue victims of Hurricane Helene in Ashville and in the court order terminating Mr. Rudolf’s probation early, where the judge noted Mr. Rudolf’s “extraordinarily beneficial” community service.³⁴ But in press releases about the settlement and plea, EPA demonized Mr. Rudolf as someone “willing to pollute the environment so that they can personally profit.”³⁵

Brian George and Mike Mitchell, the owners of Sinister Diesel, small diesel business in Roseville, California, who similarly had no prior criminal record and supported numerous jobs and charities in their community were also persecuted and threatened with criminal liability. Mr. George and Mr. Mitchell had the company’s General Counsel meet with EPA to understand what sales were lawful. The agency declined to provide that guidance. Instead, the government began a large undercover criminal investigation, using tactics more commonly employed against drug dealers such as hidden cameras and wiretapped calls. The government eventually dropped its threats to indict Mr. George and Mr. Mitchell due to a lack of evidence, but imposed financially burdensome terms in both a consent decree and plea agreement for the company in the Eastern District of California.

Another example is the case of Tracy Coiteux. She is a wife and mother of two boys, one of whom tragically died in 2022, as well as a stepdaughter, and she co-owns a family-run auto-body shop with her husband in LaCenter, Washington. She is not a mechanic, but today she is a felon because she assisted with “tuning” trucks’ software. Her conduct notably happened between 2018 and 2020, before the government ever made a public statement suggesting it now viewed this conduct as a federal crime. And her case is now on appeal before the Ninth Circuit and will likely be the

³¹ See Information, *United States v. Davis*, No. 1:21-CR-00076 (W.D.N.C. Sept. 16, 2022).

³² See Information, *United States v. Rudolf*, No. 1:23-cr-00391 (D.D.C. Nov. 9, 2023).

³³ Excerpt of Sentencing Transcript, *United States v. Rudolf*, No. No. 1:23-cr-00391 (D.D.C. Apr. 12, 2024), attached as Exhibit B.

³⁴ Order, *United States v. Rudolf*, No. No. 1:23-cr-00391 (D.D.C. Aug. 1, 2025), attached as Exhibit C.

³⁵ EPA, Press Release, *North Carolina Auto Parts Seller and its Owner to Pay \$10M for Making, Selling and Installing Emissions Defeat Devices on Motor Vehicles* (Sept. 10, 2024).

first case in which an appellate court directly addresses whether OBDs are required to be maintained under the CAA, and whether modifying an OBD is a crime.³⁶

These cases illustrate how small business owners have been dragged into criminal enforcement through aggressive charging — even when their means are limited and their records are clean. The CAA gives EPA civil and criminal enforcement tools, but importantly, there is no clear congressional authorization under the CAA to prosecute aftermarket tampering as a crime. Yet enforcement authorities have increasingly used threats of criminal prosecution — backed by devastating criminal fines, undercover sting operations, and literal prison time — to force small aftermarket part entrepreneurs into compliance with a theory that is not based in statute or regulation.

IV. Conclusion

The protection of human health and the environment is an important and noteworthy cause. EPA and similar agencies, however, can safeguard public health and the environment *without* sacrificing the rule-of-law that enables small businesses and individuals to understand and meet their obligations. Americans deserve clean air and water but it should not have to come at the expense of unjustified environmental enforcement — especially unjustified criminal enforcement. I urge the Subcommittee to continue to evaluate the impact of overzealous federal environmental law enforcement and carefully consider its impact on small businesses and individuals like those in the aftermarket automotive sector.

³⁶ See *United States v. Tracy Coiteux*, No. 24-6945 (9th Cir. 2025).

Exhibit A



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

CAA
B23

OFFICE OF ENFORCEMENT

APR 19 1992

MEMORANDUM

SUBJECT: New Criminal Enforcement Responsibilities Under 1990
Clean Air Act Amendments

FROM: Kathleen A. Hughes, Acting Director
Criminal Enforcement Counsel Division

Kathleen A. Hughes

TO: Regional Criminal Enforcement Counsels, I - X
Dale Boll, Director, CID

I. INTRODUCTION

The 1990 Clean Air Act Amendments (Pub.L. 101-549, November 15, 1990, 104 Stat. 2399), which became effective on November 15, 1990, will have a significant impact upon the number and types of Clean Air Act criminal investigations. The primary focus of criminal cases under the prior CAA was upon violations of the National Emission Standards for Hazardous Air Pollutants (NESHAP) regulations governing asbestos removal procedures.

Regulations pursuant to the 1990 Clean Air Act Amendments (the 1990 Act) are now final as to certain aspects of this legislation. Others will likely be emerging from the regulatory pipeline in an accelerated pace. CAA criminal cases will inevitably extend beyond the present realm of asbestos violations and involve groundbreaking and challenging investigations and prosecutions of new statutory provisions and their progeny regulations. The CAA was, and indisputably remains, the most complex of the environmental statutes administered by the Agency. A detailed understanding of the CAA regulatory schemes may only be required in the context of specific investigations. Nonetheless, it is imperative that those involved in the criminal enforcement program be conceptually aware of these regulatory developments in order to identify new areas appropriate for criminal enforcement. Networking with air program personnel is essential to facilitate expanded criminal enforcement in this area.

II. ENHANCED CAA CRIMINAL ENFORCEMENT PROVISIONS

The enhanced criminal enforcement provisions of the 1990 Act are summarized below. (The United States Code and CAA cite

for the enforcement provision of the CAA is CAA § 113, 42 U.S.C. § 7413 et seq. A copy of this section is attached. Subsequent CAA cites are found in the end notes.)

- (1) The 1990 Act added a felony, punishable by up to five years of imprisonment, for various knowing violations, including violations of NESHAP standards, state implementation plans, new source performance standards, stratospheric ozone protection, and acid rain control requirements, emergency orders, and any rule or permit issued pursuant to the CAA.¹
- (2) The 1990 Act added a felony, punishable by up to two years imprisonment, for knowing falsification of records or failure to report, or tampering with monitoring equipment.² The legislative history indicates that this provision is not intended to penalize "inadvertent errors". For criminal sanctions to apply, a source owner or operator must be on notice of the record-keeping, information, or monitoring requirements in question, 1990 Cong. & Admin. News 3867.
- (3) The 1990 Act added a felony punishable by up to fifteen years of imprisonment for the knowing release of certain hazardous air pollutants that knowingly endangers a person.³
- (4) The 1990 Act added a misdemeanor, punishable by up to one year of imprisonment, for the negligent release into the ambient air of either CAA enumerated hazardous air pollutants or hazardous substances designated pursuant to Section 302 of the Emergency Planning and Community Right-To-Know Act (42 U.S.C. § 11002) that negligently endangers a person.⁴
- (5) The 1990 Act added a misdemeanor, punishable by up to one year imprisonment, for knowingly failing to pay a fee owed the U.S. under the CAA.⁵
- (6) Lastly, the 1990 Act added a citizen award provision for information leading to a criminal conviction, a judicial or administrative civil penalty.⁶

III. THE ELEMENT OF CRIMINAL INTENT

Some nuances of these 1990 Act provisions warrant special mention, raising issues which counsel and Special Agents need to consider. First, new language concerning the definition of "operator" affects criminal liability.⁷ Owners and operators of stationary sources are assigned specific compliance responsibilities with regard to certain CAA provisions, such as

hazardous air pollutants and new stationary source standards of performance.⁸ Congress wanted criminal responsibility of an owner or operator to be limited to senior management and corporate officers, except in instances where the criminal violation was of a "knowing and willful" magnitude of intent. Accordingly, the term "operator" was clarified to explicitly include senior management personnel and corporate officers. Excluded as "operators", except in those instances of "willful and knowing" violations, are lesser employees who are:

- (1) stationary engineers or technicians responsible for the operation, maintenance, repair, or monitoring of equipment and facilities, and
- (2) who often have supervisory and training duties, but who are not senior management or a corporate officer.

New language in CAA § 113(h), 42 U.S.C. § 7413(h), qualifies the general CAA definition of "person" for purposes of criminal enforcement.⁹ First, the section provides that only for purposes of the CAA negligent endangerment offense, a person cannot be convicted for a violation if:

- (1) it occurred as part of the employee's (undefined) "normal activities" as an employee; and
- (2) the employee was not a part of senior management or a corporate officer.

For purposes of all other CAA criminal subsections, an employee cannot be convicted unless the government can prove;

- (1) the criminal violation was either committed "knowingly and willfully"; OR
- (2) if the violation was committed only "knowingly," the defendant can avoid conviction if it is established:
 - (a) that the violation occurred as part of his "normal activities"; and
 - (b) that he was "acting under orders from the employer."¹⁰

The statutory history of the 1990 CAA addressed the matter of knowledge derived from self-audits. House Conference Report No. 101-952 recommended that the CAA criminal penalties not be applied in a situation where a person, acting in good faith, promptly reports the results of an audit and promptly acts to correct any deviation. It stated, "Knowledge gained by an individual solely in conducting an audit or while attempting to correct any deficiencies identified in the audit or the audit

report itself should not ordinarily form the basis of the intent which results in criminal penalties." 1990 Cong. & Admin. News 3879.

IV. STATUS OF IMPLEMENTING THE 1990 CAA AMENDMENTS

It is more effective in understanding the criminal enforcement aspects of the 1990 Act to focus on the amendments in the context of the pertinent subject matters as addressed by the CAA:

Subchapter I, Part A, which concerns air quality and emission limitations;
Subchapter II, which governs mobile sources;
Subchapter IV, which concerns acid rain;
Subchapter V, which sets out the permit program; and
Subchapter VI, which concerns stratospheric ozone protection.¹¹

A. SUBCHAPTER I: Air Quality Standards

The CAA Subchapter, Part A (Title I), entitled: "Air Quality and Emission Limitations" warrants special criminal enforcement attention.¹² There are three important subject covered here: state implementation plans, standards of performance for stationary sources, and hazardous air pollutants.

1. State Implementation Plans: The 1990 Act allows EPA to define the boundaries of "nonattainment" areas and classify them according to the severity of the geographical area's air pollution problems. States must establish state implementation programs (SIPs) toward the attainment of National Ambient Air Quality Standards (NAAQS) for the state's nonattainment areas. Note that the CAA provides that any SIP requirement in effect as of November 15, 1990 remains in effect until revised.¹³ Congress indicated an awareness that the 30-day notice of SIP violation requirement should be inapplicable to criminal actions since such notice would provide an opportunity for violators to frustrate the purposes of the Act, for example, by leaving the jurisdiction or by destroying evidence, 1990 Cong. & Admin. News 3747. Nonetheless, the notice language remained in the conference committee bill and ultimately in the CAA as enacted.¹⁴

2. Standards for Stationary Sources: The most immediate impact of the 1990 Act as to criminal enforcement in this area is the five-year felony penalty provided for violations of new stationary source standards of performance where formerly only misdemeanor sanctions were available.¹⁵

Although EPA may delegate authority to the states to enforce performance standards, the EPA retains concurrent authority to enforce these standards.¹⁶ Regulations governing specific

stationary sources (over 70 different types of economic activity have standards of performance), are set out at 40 C.F.R. Part 60. Congress enacted a new provision mandating that performance standards be set for solid waste incinerators and that such standards be incorporated into their operating permits.¹⁷ Of equal importance is the two-year felony now available for knowing falsification of required compliance monitoring data and tampering with monitoring equipment since self-reporting will be a large part of CAA compliance monitoring.¹⁸

3. Hazardous Air Pollutants: Title III of the 1990 Act specifically named 189 hazardous air pollutants ("HAPs"), which will be the subject of national emission standards (NESHAPs).¹⁹ Extensive regulations dealing with source categories of these pollutants are in the process of being issued and finalized.²⁰ Note that although states may seek delegation of authority to enforce these type of federal requirements, EPA also retains clear authority to federally enforce HAP emission standards.²¹ States may implement their own programs, but they must be at least as stringent as federal requirements.

The objective of the HAP regulations is to identify maximum achievable control technology (MACT) through a process of regulatory development involving the regulated and environmental community and the Agency. If EPA judges that it is not feasible to prescribe or enforce an emission standard for a designated HAP, EPA may require, akin to the asbestos work practice regulations, a work practice standard involving a specified design, equipment, work practice, or operational standard or some combination thereof.²² This further clarifies the government's basis to enforce work practice standards in lieu of emissions standards, which had been an issue of contention in asbestos NESHAP enforcement cases.

B. SUBCHAPTER II: Motor Vehicles and Fuels

CAA Subchapter II (Title II), titled, "Emission Standards For Moving Vehicles," deals with motor vehicles (mobile sources) and fuels.²³ Although the focus is primarily on motor vehicles, EPA is authorized to also issue regulations governing emissions from nonroad engines and vehicles such as chain saws, dirt motorcycles, and lawn mowers.²⁴

The 1990 Act continued the exclusion of Subchapter II violations from criminal penalties.²⁵ However, related violations may warrant criminal enforcement consideration. For instance, the 1990 Act set stringent requirements for the sulphur content of motor vehicle diesel fuels and the benzene content of motor vehicle gasoline.²⁶ Refiners and blenders will be required to certify that their fuels meet such standards. Previously, falsifications of such certifications were prosecuted as violations of the general false statement criminal provision of

Title 18.²⁷ Now, they can be prosecuted on the basis of the enhanced (a two year felony versus the old maximum of six months imprisonment) false certification provision, which applies to all CAA reporting and recordkeeping requirements.²⁸

Automobile dealer or repair shop tampering with automotive air emission systems still can not be prosecuted criminally under the CAA since the mobile source regulations impose various compliance certification responsibilities only on automobile manufacturers and not on the dealers.²⁹ But note that dealers and repair shops can be prosecuted, as discussed below, for failing to comply with the new CFC air conditioning regulations.

C. SUBCHAPTER IV: Acid Rain

The 1990 Act added a new Subchapter IV (Title IV) concerning the acid rain problem titled, "Acid Deposition Control." ³⁰ Through a system of allowances for the sulfur dioxide emissions from utilities, as well as requirements intended to reduce nitrous oxide emissions from boilers, the 1990 Act was designed to rectify the acid rain problem. An eventual overall national limit (8.90 million tons) for the emission of sulfur dioxide is set by statute.³¹

Each utility is issued an annual allotment of allowances and has the option of either lowering their sulphur emissions for covered plants to meet their limit or of purchasing additional "allowances" (one allowance equals authority to emit one ton of sulfur dioxide) to cover emissions in excess of what is allotted for the plant. Starting in 1995, 261 power plant units will be covered and by the year 2000, smaller power plants, and other sources will be covered. Not holding allowances for any excess will cost a source \$2,000 per ton of excess emission. If a utility emits lower emissions than it is allotted, it can either bank the difference between its allotment and its actual emissions in order to cover future excesses or can sell these earned allowances on the open market. The authority to auction allowances, starting in March 1993, has been officially delegated by EPA to the Chicago Board of Trade. The final acid deposition control regulations were published in the Federal Register on January 11, 1993.

The financial incentive for falsification of emission and other data under this new scheme is clearly heightened. Such fraudulent violations are within the CAA felony prohibition against knowingly making any false material statement or omitting material information from any CAA document required by EPA or a state to be maintained or filed.³²

D. SUBCHAPTER V: Operating Permits

A major change in the CAA were the 1990 amendments adding

the new CAA Subchapter V (Title V), "Permits," which established an operating permits program to incorporate all applicable CAA regulatory requirements.³³ The CAA's permitting program will be similar to the CWA's NPDES permitting program, which has been the source of many good/criminal cases. A CAA permit may incorporate HAP emission, as well as acid rain and NAAQS SIP requirements. Air pollution sources subject to the program must obtain five-year permits from the state permitting authority and will have to provide compliance certifications signed by "a responsible official".³⁴ The certifications will state that "based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete."³⁵

Enforcement focus will shift from the SIPs to violations of specific permit conditions by permit holders since the permit will collect in one document all of a source's obligations under the CAA. The final regulations prescribing the structure and procedures for delegated state permit programs have been finalized. They were published in the Federal Register on July 21, 1992 and will be codified in 40 CFR Part 70. The states are now in the process of establishing permit programs. They have until November 15, 1993 to submit their programs for EPA approval and EPA is allowed a one year review period.³⁶ When these programs become operational, more extensive guidance on their enforcement implications will be issued.

As noted above, a 30-day notice of violation to the state and person is a prerequisite for criminal enforcement of a violation of a SIP. However, since such notice is not required for criminal enforcement of a permit condition, a violation of a SIP requirement can be criminally prosecuted without such notice if it is incorporated as a condition of the permit. In contrast, a notice of a violation is required to bring an administrative or civil enforcement action for a violation any permit condition.³⁷

E. SUBCHAPTER VI: Stratospheric Ozone Protection

The last major section of the CAA added in 1990 was designed to deal with remedying the depletion of the stratospheric ozone layer. The objective of this Subchapter VI (Title VI) is to phase out use and production of ozone depleting substances, including chlorofluorocarbons (CFCs) and any other substances that the Administrator finds causes significant harmful effects on the stratospheric ozone layer.³⁸ The CFC regulatory program will be akin to the TSCA regulatory program to eliminate PCBs from the environment. There are CFC labeling regulations (published in the Federal Register on February 11, 1993), regulations for recycling motor vehicle CFCs (issued on July 14, 1992), and for residential and commercial appliances (to be issued by the end of April 1993), and safe disposal regulations are in the process of being finalized by the Agency.³⁹

CAA § 608, 42 U.S.C. § 7671g, governs the release of regulated refrigerants in the course of maintenance, service, repair, or disposal of appliances or industrial process refrigeration. Proposed regulations implementing Section 608 were published on December 10, 1992. The first step of what is designated the National Recycling and Emission Reduction Program is the statutory prohibition, as of July 1, 1992, of the knowing venting of ozone depleting refrigerants from appliances and industrial process refrigeration systems into the environment.⁴⁰ The Interim Enforcement Guidance on this prohibition, which is attached, sets out factors in identifying possible knowing violations of CAA Section 608(c). Although this section prohibits the disposal of CFCs "in a manner which permits such substance to enter the environment," the disposal of refrigerators or other appliances containing ozone depleting refrigerants will not be the subject of enforcement actions until appropriate regulations are issued.

Motor vehicle air conditioners are addressed by a separate CAA provision.⁴¹ As part of this statutory scheme, regulations have been issued governing the servicing of automotive air conditioners.⁴² The object of the regulations is to prevent the release to the environment of refrigerants used in motor vehicle air conditioners (MVACs) that contain CFCs in either a liquid or gaseous state. Accordingly, the regulations require all persons who are paid to perform service ("do-it-yourself" repairs are excluded) on MVACs to use EPA approved recovery equipment so that the refrigerant can be contained and can be sent off-site for reclamation or recycled on-site. Technicians working on MVACs are required to be trained and certified as to the proper use of approved refrigerant recycling equipment. Each MVAC facility will have to certify to EPA that their training and equipment meets applicable regulatory standards.

cc: Earl E. Devaney, Director, OCE
OE Air Enforcement Division Attorneys
John B. Rasnic, Director, OAR
Stationary Source Compliance Division

ENDNOTES:

1. CAA § 113(c)(1), 42 U.S.C. § 7413 (c)(1).
2. CAA § 113(c)(2), 42 U.S.C. § 7413(c)(2).
3. CAA § 113(c)(5), 42 U.S.C. § 7413(c)(5).
4. CAA § 113(c)(4), 42 U.S.C. § 7413(c)(4).

5. CAA § 113(c)(3), 42 U.S.C. § 7413(c)(3). See also CAA § 113(c)(1), 42 U.S.C. § 7413(c)(1), which makes it a felony offense to knowingly violate a requirement for the payment of any fee owed the U.S. under the CAA.
6. CAA § 113(f), 42 U.S.C. § 7413(f).
7. CAA § 113(h), 42 U.S.C. § 7413(h).
8. CAA § 112, 42 U.S.C. § 7412, which includes NESHAPs and CAA § 111, 42 U.S.C. § 7411, which deals with stationary sources.
9. CAA § 302(e), 42 U.S.C. § 7602(e).
10. In other words, if the government can prove the violation was knowing and willful, it does not have to negate either of these two elements. But if proof shows only a knowing violation, then a factual issue arises involving whether the commission of the crime was pursuant to company orders and whether such environmental misconduct was part of the defendant's normal work routine.

It has not been uncommon for defendants to offer such arguments to justify environmental wrongdoing. The 1990 Act represents an instance where Congress gave statutory recognition to such issues. The practical effect of this new language will have to await judicial interpretation since the terms "knowing" and "knowing and willful" are not defined in the United States criminal code, but are distinguished through extensive case law. The terms "knowing and willful" have been interpreted in the context of other federal statutes (for instance, the odometer tampering statute, 15 U.S.C. § 1990(a)) and the Presidential threat statute, 18 U.S.C. § 871, as meaning an intentional violation of a known legal duty, United States v. Studna, 713 F.2d 416, 418 (8th Cir. 1983). The Supreme Court interpreted the term "willfully" alone as requiring the government to prove actual knowledge of the pertinent legal duty and to negate a defendant's claim of a good faith belief that he was not violating the law due to a misunderstanding of its requirements, Cheek v. United States, 498 U.S. ___, 112 L.Ed.2d 617, 111 S.Ct. 604 (1991). Although the holding was limited to criminal tax violations because the proliferation of tax law and regulations has made it difficult for the average citizen to know and comprehend the extent and duties imposed by tax laws, a similar argument might be made with reference to environmental statutes and regulations.

11. Since agents and attorneys most often rely on the CAA as codified in the United States Code, in particular as published by the West Publishing Company, the sections of

the CAA are referred to by the code headings, e.g., the CAA is Chapter 85 of the code and the different subject areas are addressed in subchapters, rather than the statutory headings, e.g., titles.

12. CAA §§ 101 - 131, 42 U.S.C. §§ 7401 - 7431.
13. CAA § 110(n), 42 U.S.C. § 7410(n).
14. CAA § 113(c)(1), 42 U.S.C. § 7413(c)(1).
15. CAA § 111, 42 U.S.C. § 7411.
16. CAA § 111(c), 42 U.S.C. § 7411(c).
17. CAA § 129, 42 U.S.C. § 7429.
18. CAA § 113(c)(2), 42 U.S.C. § 7413(c)(2).
19. CAA § 112(b), 42 U.S.C. § 7412(b).
20. For example one type of HAP (Perchloroethylene) generated by one source category (dry cleaning facilities) are the subject of this type of regulation. Other forthcoming regulations have a broader focus such as emissions of several hazardous air pollutants by the entire chemical manufacturing industry, which will be added to Part 63 of 40 C.F.R.
21. CAA § 112(l)(1), 42 U.S.C. § 7412(l)(1) provides delegated state enforcement authority. CAA § 112(l)(7), 42 U.S.C. § 7412(l)(7) provides concurrent federal enforcement authority.
22. CAA § 112(h)(1), 42 U.S.C. § 7412(h)(1).
23. CAA §§ 202 - 250, 42 U.S.C. §§ 7521 - 7590.
24. CAA § 213, 42 U.S.C. § 7547.
25. CAA § 202, 42 U.S.C. § 7521, is not among the sections enumerated as being covered by the CAA criminal provision, CAA § 113(c)(1), 42 U.S.C. § 7413(c)(1).
26. CAA § 211(i), (k), 42 U.S.C. § 7545(i), (k).
27. 18 U.S.C. § 1001.
28. CAA § 113(c)(2), 42 U.S.C. § 7413(c)(2).
29. 40 C.F.R. § 86 et seq.

30. CAA §§ 401 - 416, 42 U.S.C. §§ 7651 - 7651o
31. CAA § 403(a)(1), 42 U.S.C. § 7651b(1)
32. CAA § 113(c)(2), 42 U.S.C. § 7413(c)(2).
33. CAA §§ 501 - 507, 42 U.S.C. §§ 7661 - 7661f.
34. 40 C.F.R. § 70.6(c)(1).
35. 40 C.F.R. § 70.5(d).
36. States agencies administering EPA approved CAA permit programs are required to have adequate enforcement authority. Acceptable state criminal penalties can be as little as a maximum \$10,000 fine, however, with no imprisonment, 40 C.F.R. § 70.11.
37. CAA § 113(a)(1), 42 U.S.C. § 7413(a)(1).
38. CAA §§ 601 - 618, 42 U.S.C. §§ 7671 - 7671q.
39. Pursuant to CAA § 602(c), 42 U.S.C. § 7671a(c), the EPA Administrator on January 18, 1993 added methyl bromide to the list of Class I ozone-depleting chemicals. This chemical substance is the principal ingredient of a extensively used pesticide. Its production and importation will be phased out by the year 2000. Indicative of the multi-media approach to environmental protection, the use of this pesticide will be phased out under the CAA rather than canceling its registration because of its adverse effects on the environment under FIFRA § 6(b), 7 U.S.C. § 136d(b).
40. CAA § 608(c), 42 U.S.C. § 7671g(c).
41. CAA § 609, 42 U.S.C. § 7671h.
42. 40 C.F.R. Part 82.

Exhibit B

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

* * * * *

1		
2		
3	UNITED STATES OF AMERICA,	) Criminal Action
4	Plaintiff,	) No. 23-00391
5	vs.	)
6	AARON LUCAS ROSKIN RUDOLF,	) Washington, D.C.
7	Defendant.	) April 12, 2024
8	* * * * *	) 10:02 a.m.

TRANSCRIPT OF SENTENCING HEARING
BEFORE THE HONORABLE TREVOR N. McFADDEN
UNITED STATES DISTRICT JUDGE

APPEARANCES:

14	FOR THE GOVERNMENT:	STEPHEN J. FOSTER, ESQ.
15		U.S. DEPARTMENT OF JUSTICE
16		ENVIRONMENTAL CRIMES SECTION
17		Post Office Box 7611
18		Washington, D.C. 20530
19		JENNIFER L. BLACKWELL, ESQ.
20		U.S. ATTORNEY GENERAL'S OFFICE FOR
21		THE DISTRICT OF COLUMBIA
22		555 Fourth Street, Northwest
23		Washington, D.C. 20530
24	FOR THE DEFENDANT:	CLAIRE J. RAUSCHER, ESQ.
25		WOMBLE BOND DICKINSON (US), LLP
		301 South College Street
		Suite 3500
		Charlotte, North Carolina 28202
		CATHLEEN O. GALLAGHER, ESQ.
		WOMBLE BOND DICKINSON (US), LLP
		2001 K Street, Northwest
		Suite 400 South
		Washington, D.C. 20006

FOR U.S. PROBATION: JESSICA REICHLER

REPORTED BY: LISA EDWARDS, RDR, CRR
Official Court Reporter
United States District Court for the
District of Columbia
333 Constitution Avenue, Northwest
Room 6706
Washington, D.C. 20001
(202) 354-3269

1 MR. FOSTER: December 7, 2016, your Honor.

2 THE COURT: Okay. And then help me understand
3 what's going on with the civil case.

4 MR. FOSTER: Your Honor, my understanding is that
5 the civil case, as counsel indicated in the letter, is in
6 the midst of reaching what seems to be a resolution. My
7 understanding is the resolution is not final and that it is
8 with respect to civil enforcement claims under the Clean Air
9 Act.

10 It is based down in North Carolina.

11 THE COURT: So is there any relationship between
12 that case and this?

13 MR. FOSTER: Well, the statutes are different.
14 The criminal statute is with respect to tampering with a
15 monitoring device. The statute in the civil enforcement
16 case, although it does overlap to some extent with the type
17 of conduct that is involved in the criminal case here, there
18 are technically two different statutes.

19 THE COURT: But it's the same conduct? It's about
20 this tampering with these diesel gauges or --

21 MR. FOSTER: The general conduct is similar. The
22 conduct I would say in the criminal case we're focusing on
23 here, the 300 installations, is a narrower subset of conduct
24 from that of the civil enforcement case, as I understand it.

25 THE COURT: Okay. So "subset" to me suggests that

1 this is part of what you're also going after the Defendant
2 for on the civil case?

3 MR. FOSTER: Well, I think to some extent that is
4 fair, your Honor. I am not a member of that civil
5 enforcement team. And so how they might characterize it or
6 how it might be characterized in the resolution in that
7 case, I'm not sure I can speak to that exactly.

8 But you are correct in that the involvement of
9 devices existed in both cases. For that reason, there is --
10 I would say to some extent there is an overlap.

11 THE COURT: Okay. And then I will let you give
12 your allocution. But why is this criminal case here and not
13 down in district court where the Defendant is from?

14 MR. FOSTER: Your Honor, in terms of how we have
15 charged it here, we noted that there was a publicly
16 available website that allowed the Defendant to advertise
17 his services here in the District of Columbia and that
18 individuals could in theory then bring -- engage in
19 conspiratorial conduct or conduct that would result in a
20 deletion with the truck that was based here.

21 THE COURT: That would be true anywhere in the
22 country, right?

23 MR. FOSTER: Yes, sir, it would. I believe so.

24 THE COURT: Yes. So my question stands: Why
25 here? This feels to me like forum shopping. That's

1 something the department has been very opposed to in other
2 circumstances. Why here and not back where he's from?

3 MR. FOSTER: Well, your Honor, we've also
4 referenced the fact that the EPA air enforcement division is
5 based in Washington, D.C., which is where the request for
6 information was issued out of.

7 Other than that, and the references that we have
8 in the information to the District of Columbia and the
9 advertisements, we don't have further information in the
10 record. But the parties have agreed that a waiver of venue
11 was appropriate for purposes of reaching a negotiated
12 resolution here.

13 THE COURT: I'll hear your allocution, sir.

14 MR. FOSTER: Your Honor, the Defendant stands
15 before the Court now having pled guilty to the conspiracy to
16 violate the Clean Air Act.

17 Consistent with the plea agreement in this case,
18 the Government recommends that the Court impose a sentence
19 that includes three components. The first is a period of
20 imprisonment at the lower end of the sentencing guidelines.

21 The second: the agreed-to fine of \$600,000.

22 THE COURT: Do you agree that would be an upward
23 variance?

24 MR. FOSTER: The fine in this case, your Honor?

25 THE COURT: Yes.

1 There are still trucks being driven that could be tampered
2 with and there is still the potential to make money from
3 deleting those trucks.

4 In sum, we submit that a sentence including a
5 period of imprisonment appropriately balances the relevant
6 sentencing considerations. For all these reasons, we
7 respectfully request that the Court impose the recommended
8 sentence.

9 Thank you.

10 THE COURT: Do you agree with the defense report
11 that says that, you know, customers would be coming in
12 asking the Defendant to do this because these features were
13 often creating engine problems for the trucks and otherwise
14 hindering the truck's performance?

15 MR. FOSTER: Your Honor, I am familiar, dealing
16 with this type of case, that maintenance issues are one of
17 the motivating reasons people will delete their trucks.

18 We would submit that a countervailing point is
19 that the EPA in its mission to protect the air quality has
20 required that these trucks have emission control components
21 within them. And so there's a need to have those maintained
22 as part of owning that truck.

23 And so we would submit that it is not an
24 appropriate step to go ahead and delete a truck simply
25 because of a maintenance issue.

1 THE COURT: And so are these people violating the
2 law, or is it just the Defendant? Like is it illegal to
3 possess a vehicle that has been deleted? Or what is the
4 crime?

5 MR. FOSTER: Your Honor, the crime here is
6 tampering with the monitoring device that's required under
7 the Clean Air Act.

8 And in this case, it is the on-board diagnostic
9 system which is part of a computer system. So the crime is
10 the tampering, not -- I'm unfamiliar with mere possession
11 triggering the statute.

12 THE COURT: But they would probably be
13 co-conspirators or something?

14 MR. FOSTER: I think that that is a fair
15 assessment, your Honor.

16 THE COURT: Thank you, Mr. Foster.

17 MR. FOSTER: Yes, sir.

18 THE COURT: Ms. Rauscher, do you wish to be heard
19 on the application of the factors set forth in 3553(a), make
20 a sentencing recommendation or otherwise argue for a
21 variance?

22 MS. RAUSCHER: Yes, your Honor. Good morning
23 again.

24 As your Honor knows, I am from North Carolina.
25 And I appreciate being able to practice here *pro hac vice*.

1 I'm not originally from North Carolina. I moved
2 there 30 years ago from Philadelphia. But I was born and
3 raised in New Jersey, where pickup trucks were not a big
4 thing. In fact, New Jersey is the state with the least
5 percentage of pickup trucks in the country.

6 I will tell you I've learned more about diesel
7 pickup trucks in the last five years.

8 But in North Carolina and in the South and in the
9 Midwest and areas like that, pickup trucks are very
10 prevalent.

11 And why is that? Because they're people's
12 livelihood. They're farmers and construction workers and
13 various people who haul things. So they have them.

14 And so, you know, in North Carolina, we see them
15 all the time. And I think that's one of the drivers why
16 things occurred in this case.

17 In addition, North Carolina is of course the heart
18 of NASCAR country. NASCAR was born in North Carolina. The
19 racing industry is large. And in racing, there are diesel
20 trucks that were raced. They're allowed to be raced as an
21 exception to the statute.

22 So it's a different climate in North Carolina than
23 I would say, for example, in New Jersey, where I grew up.

24 And so your Honor, you know, was talking about the
25 individuals and why they did this.

1 I think it was important for me to note to the
2 Court that they didn't do that because they wanted to
3 pollute. They did this, they asked for these things to be
4 removed, because their trucks were not functioning properly.

5 I also remember when catalytic converters came in
6 many years ago when I was young, and my family bought a car
7 with one. It didn't work as well as without. But over
8 time, it's gotten better. It's gotten better.

9 But in this case, those folks who have diesel
10 trucks -- and you saw I had a letter from an expert who
11 worked at Ford Motor Company and understands the issues.
12 There were legitimate reasons why people did it. It
13 diminished the engine life; it created soot in the filters
14 that essentially could stop the trucks from functioning.

15 There are lesser fuel economy, especially in the
16 '80s, for example, when fuel was so expensive. I mean, it
17 was problematic for everybody. Right? And then it
18 diminished performance.

19 And I'm not saying this, your Honor, to diminish
20 that this is considered a crime, that tampering is
21 considered a crime. But I think you have to understand why
22 it happened and why there was such a demand.

23 THE COURT: And so are most of these trucks racing
24 trucks or just kind of normal people whose pickup trucks
25 aren't working correctly?

1 MS. RAUSCHER: I would submit to the Court the
2 majority of individuals who have trucks, these are the
3 farmers, the construction workers. In fact, one of the
4 trucks that was deleted at the garage was an FBI agent. I
5 mean, these are people who want a better performance. For
6 better or for worse, that's what happened.

7 And, you know, things have changed a bit now
8 because the Government quite frankly has gone after the
9 large distributors and installers. In fact, when Mr. Rudolf
10 was cooperating, all the people he dealt with have already
11 pled guilty or have consent decrees or whatever. So they
12 have really made a dent in this industry.

13 In addition, the new pickup trucks are \$70,000 and
14 above. And if you do this, you vitiate the warranty. So
15 there's a lot less people who are going to do it. And quite
16 frankly, the emissions control devices are better. Detroit
17 finally got it. They had to make it better. And that
18 happens over time.

19 So in this case, that's why -- I just think it's
20 important to understand the background. I don't want your
21 Honor to think and people to think that all these people who
22 did this did it because they wanted to add more pollution to
23 the air. That's just not what it was. But it's a crime.
24 We admit it. My client has admitted what he did.

25 THE COURT: And so it looks -- I'm not super-good

1 at math here. But it looks like people are paying \$10,000
2 or something for this?

3 MS. RAUSCHER: A thousand dollars. Because it was
4 \$300,000 plus double for the Alternative Fines Act, so
5 that's why it's 600,000. It's going to be \$1,000 to come in
6 because there was parts. It's not easy to do. You've got
7 to remove pipes, redo the computer systems. It's not an
8 easy thing to do. So that's why it's a little more
9 expensive than a normal tune-up.

10 I know your Honor's read all the material. But I
11 think it's important to note, you know, Mr. Rudolf started
12 selling after-market parts -- he actually started slowly in
13 high school, got into it in college, quit college and
14 started doing this full-time.

15 And he built a business. And he really not only
16 worked hard then, but he works hard today.

17 He is the key man at Rudy's Performance. He
18 determines what parts are bought. He determines volume. He
19 does all that work himself. And he runs the show. I mean,
20 he's got someone who heads up sales and he's got a few
21 other -- a lot of people in the warehouse. They have a huge
22 warehouse where they have the parts and they send them out
23 through shipping.

24 But he's the brains of the operation. He runs it.
25 He's tried over the years to get people to assist him.

1 Unfortunately, what folks want to do is they want to copy
2 his model. They want to do what he does. That's been very
3 problematic for him. In fact, one person did leave and he's
4 now a competitor.

5 So he hasn't been really sharing the wealth, as I
6 would say in the business. And it's much to his credit, but
7 also he works really hard all the time.

8 That's one of the things that you saw from the
9 letters: His employees really respect him and really like
10 him. And he does a lot for them. They have incredible
11 benefits. He provides a great work environment.

12 I had a picture of the garage in the sentencing
13 memorandum. I wished -- I should have -- if you had seen
14 the inside and what he provides for the employees, there's a
15 fitness room. And it's just really a really good place to
16 work, especially for a garage. You can almost eat off the
17 floors. I mean that. It's really impressive.

18 But he has a really good business. And he has
19 built that business and he continues to do well.

20 Your Honor wanted to know a little bit more about
21 the civil and the criminal cases. And they are different.
22 I don't represent him in the civil matter, but I'm obviously
23 involved in the civil matter because it could impact on the
24 criminal matter.

25 But the civil matter much more is concentrated on

1 the sales of the various equipment, whereas this case is the
2 installations that happened in the garage.

3 And I will tell you that you've heard this case
4 has been ongoing for a long time. The EPA-civil contacted
5 Rudy's in 2016. But it wasn't a criminal investigation at
6 all; it was civil.

7 And I will tell you over the years there was a
8 tremendous legal battle and argument over whether in fact
9 the sale of these devices is covered by the Clean Air Act.

10 I just brought this because these 22 letters and
11 presentations, et cetera, over the years are where the
12 arguments were made that that case was not warranted.

13 But last week, the decision was made to settle it,
14 to end it. And as I put in my submission yesterday, he has
15 agreed to pay \$10 million. And that money -- he will be
16 selling property and divesting his investments, et cetera.
17 It's pretty significant.

18 But he wants this to end. It's been going on for
19 a long time.

20 THE COURT: You're saying the sale was -- there
21 was a question about that. I take it there's no question
22 about the installation being a violation?

23 MS. RAUSCHER: Correct. Well, I also will tell
24 you, your Honor, that the Supreme Court right now has a case
25 in front of it. And a lot of pundits think that *Chevron* may

1 be overturned. If it does, it will then look into the
2 specific ability of agencies such as EPA to expand statutes.

3 THE COURT: I'm familiar with *Chevron*.

4 MS. RAUSCHER: And, you know, three years from
5 now, it may be a whole different world. This may not
6 actually be a crime, because -- but the decision was made
7 not to pursue that avenue.

8 THE COURT: But you agree that in a sense the
9 Government is double-counting here, that they have gone
10 after him criminally for a subset of the violations that
11 they've also gone after him civilly for?

12 MS. RAUSCHER: That's correct, because it's
13 tampering. So of course if you're tampering with the
14 engine, I think that's appropriate.

15 Sales is sales tampering. And that's really how
16 that all goes into the argument.

17 But the final touches are being put on the consent
18 decree, is my understanding right now. The \$10 million was
19 agreed to. And it will be paid. He will divest himself of
20 his assets to do it. He's been given three years to do
21 that.

22 THE COURT: Speaking of which, how long does your
23 client need to pay the \$600,000?

24 MS. RAUSCHER: He said he could pay it in the next
25 several months. Correct? About three months. He just has

1 THE COURT: Thank you, sir.

2 Sir, you can remain at the podium.

3 I've assessed the particular facts of this case in
4 light of the relevant 3553(a) factors and I now want to
5 provide remarks for the record and for you, sir, about my
6 considerations in regard to the nature of the offense and
7 your history and characteristics and the other relevant
8 factors.

9 Your conduct here occurred over several years. It
10 involved tampering with over at least 300 vehicles.

11 I have no doubt that this conduct did have a
12 negative impact on the environment. I think Mr. Foster
13 comprehensively lays out the very harmful impacts from
14 pollution on not only the individuals directly involved, but
15 more disturbingly in many ways anybody -- the rest of us who
16 are breathing that air, who don't get a choice in the matter
17 and who are impacted by those decisions, frankly, by your
18 actions.

19 On the other hand, I think there are several
20 mitigating factors here. I think that -- something your
21 father mentioned that I hadn't really focused on is that
22 this conduct occurred back when you were in your 20s and
23 really is -- while you've gone very far very fast, I can
24 understand how someone in his 20s may not necessarily be
25 fully focused on all of the regulations that maybe

1 theoretically he should have.

2 I also think this is what lawyers call an extreme
3 case of a *malum prohibitum*, not a *malum in se*, offense.
4 This really feels to me more like a regulatory violation
5 than truly felonious conduct.

6 And I also do give you credit for your voluntary
7 withdrawal from illegal conduct and the fact that this is a
8 circumstance -- I don't think the Government has really
9 disputed Ms. Rauscher's information that these are customers
10 who are coming with vehicles, many of which were not even
11 working properly and that you were trying to help.

12 I'm also required to consider your broader history
13 and characteristics. Of course, you have no criminal
14 history. I think that's an important factor.

15 I've read those letters that describe you as a
16 hard worker, a thoughtful boss, the descriptions from
17 Ms. Rauscher and your father of your fatherhood, of the care
18 that you take with your son.

19 I also appreciate your remarks here about your
20 remorse. Those strike me as heartfelt and sincere. I am
21 not worried that you're going to commit this crime again.
22 I'm certainly convinced that you've realized what you did
23 was wrong and don't want to be in a situation like this
24 again.

25 I'm going to vary downward from the sentencing

1 guidelines. I do that for the following reasons: First,
2 I'm actually varying upward on the fine to issue the fine
3 that the parties agree on, but that is significantly higher
4 than what the guideline range would otherwise require.

5 I think a significant fine is appropriate here in
6 that this was an offense -- kind of a monetary offense and
7 one that you certainly benefited from financially. I think
8 there is an appropriateness of the punishment fitting the
9 crime here in the significant fine that the parties have
10 agreed on, but I think the fact that I am varying so
11 significantly upwards on the fine does need to be considered
12 in terms of whether incarceration or home detention is also
13 appropriate.

14 I also am taking into account the fact that there
15 is a civil case here that you're going to be settling. This
16 does feel to me kind of like the Government is getting
17 two pounds of flesh from you. I think they're allowed to do
18 that. But I think this is certainly quite unusual for
19 somebody to be sentenced for criminal conduct that he is
20 also being required to handle civilly by the same Department
21 of Justice. And I think I can take that into account in
22 ensuring that you are not being punished more significantly
23 than necessary. And I'm also varying downward in light of
24 what I take to be your sincere remorse.

25 Ms. Rauscher points out the significant negative

1 impacts that this case has already had on you and what a
2 felony of course means for anyone.

3 Sir, you are an example for your community. I
4 don't know if you feel that way or not, but there is
5 certainly a spotlight on you as someone who is an employer,
6 someone who's been so financially successful. It's
7 important that someone in your position be a good example
8 for everyone. Obviously, that spotlight does have negative
9 side effects here in that the Government is watching you in
10 a way that they're not watching the 300 people who came in
11 to get your services.

12 It also struck me, hearing you talk a few moments
13 ago, that you in many ways embody the American dream.
14 Someone who at such a young age was able to launch such a
15 successful business that is really a beautiful picture of
16 the American dream.

17 Of course, the American dream is also about second
18 chances. And so as you talk about how your son will think
19 about you and how other people will think of you, I hope you
20 realize that part of our culture and our spirit is one of
21 forgiveness and second chances. I'm hopeful and confident
22 that you will go on to make your son proud, your family
23 proud, as I'm sure they already are of you, and that you
24 will be a good example for your community in the future.

25 I will now impose the sentence.

1 As to Count 1, it is the judgment of the Court
2 that you, Aaron Rudolf, are hereby sentenced to 36 months of
3 probation, a \$600,000 fine and a \$100 special assessment.

4 Within 72 hours of sentencing, you shall report in
5 person to the probation office in the district where you are
6 authorized to reside.

7 While on supervision, you shall abide by the
8 following mandatory conditions as well as the standard
9 conditions of supervision listed in the most recent revision
10 of the Judgment in a Criminal Case Form AO 245B, which are
11 imposed to establish the basic expectations for your conduct
12 while on supervision.

13 The mandatory conditions include: You must not
14 commit another federal, state or local crime; you must not
15 unlawfully possess a controlled substance; you must refrain
16 from any unlawful use of a controlled substance. I'm
17 waiving any drug testing requirement in light of the fact
18 that there's no suggestion that that's an issue here. You
19 must cooperate in the collection of DNA as directed by the
20 probation office.

21 You shall also comply with the following special
22 conditions: You must complete 60 hours of community service
23 within 24 months. The probation office will supervise the
24 participation in the program by approving the program. You
25 must provide written verification of completed hours to the

1 probation office.

2 You must provide the probation office with access
3 to any requested financial information and authorize the
4 release of any financial information.

5 The probation office may share financial
6 information with the United States Attorney's Office.

7 Having assessed the Defendant's ability to pay,
8 payment of the total criminal monetary penalties is due as
9 follows:

10 Your payments shall be in equal monthly
11 installments of at least \$200,000 to commence within 30 days
12 after the date of this judgment.

13 The financial obligations are payable to the Clerk
14 of the Court for the U.S. District Court for the District of
15 Columbia.

16 Within 30 days of any change of address, you shall
17 notify the Clerk of the Court of the change until such time
18 as the financial obligation is paid in full.

19 The probation office shall release the presentence
20 investigation report to all appropriate agencies, which
21 includes the United States Probation Office in the approved
22 district of residence, in order to execute the sentence of
23 the Court.

24 I'm also directing you to follow the special
25 conditions as indicated in Attachment A to your plea

1 agreement, which both sides have agreed to. I'm directing
2 you to follow the full terms of that attachment during the
3 period of your Probation.

4 Pursuant to 18 USC 3742, you have the right to
5 appeal the sentence imposed by this Court if the period of
6 imprisonment is longer than the statutory maximum or the
7 sentence departs upward from the applicable sentencing
8 guideline range. If you choose to appeal, you must file any
9 appeal within 14 days after the Court enters judgment.

10 As defined in 28 USC 2255, you also have the right
11 to challenge the conviction entered or sentence imposed if
12 new and currently unavailable information becomes available
13 to you or on a claim that you received ineffective
14 assistance of counsel in entering a plea of guilty to the
15 offense of conviction or in connection with your sentencing.

16 If you are unable to afford the cost of an appeal,
17 you may request permission from the Court to file an appeal
18 without cost to you.

19 Are there any objections to the sentence imposed
20 that are not already noted on the record? Mr. Foster?

21 MR. FOSTER: No, your Honor.

22 THE COURT: And Ms. Rauscher?

23 MS. RAUSCHER: No, your Honor.

24 THE COURT: Anything further from the parties?

25 Mr. Foster?

1 MR. FOSTER: No, your Honor.

2 THE COURT: Ms. Rauscher?

3 MS. RAUSCHER: No, your Honor.

4 THE COURT: Thanks, folks.

5 Good luck to you, sir.

6 THE PROBATION OFFICER: Your Honor, is there
7 location monitoring?

8 THE COURT: There's no location monitoring.
9 You'll transfer jurisdiction, but not -- you're going to
10 transfer supervision, but not jurisdiction.

11 THE PROBATION OFFICER: Yes.

12 THE COURT: Thanks, folks.

13 (Proceedings concluded.)
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATE

I, LISA EDWARDS, RDR, CRR, do hereby
certify that the foregoing constitutes a true and accurate
transcript of my stenographic notes, and is a full, true,
and complete transcript of the proceedings produced to the
best of my ability.

Dated this 22nd day of April, 2024.

/s/ Lisa Edwards, RDR, CRR
Official Court Reporter
United States District Court for the
District of Columbia
333 Constitution Avenue, Northwest
Washington, D.C. 20001
(202) 354-3269

Exhibit C

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA,

v.

AARON LUCAS ROSKIN RUDOLF,

Defendant.

Case No. 1:23-cr-391 (TNM)

ORDER

Aaron Rudolf has served 15 months of his 36-month probation sentence and moves for early termination. Because Rudolf has been a model probationer, the Court grants his request.

In 2023, Rudolf pled guilty to one count of conspiracy to violate the Clean Air Act in violation of 18 U.S.C. § 371 and 42 U.S.C. § 7413(c)(2)(C). *See* Plea Agreement, ECF No. 8. The Court sentenced him to 36 months of probation, 60 hours of community service, and a \$600,000 fine. Judgment, ECF No. 22. Rudolf has completed these requirements and now moves for early termination of his probation. Mot. Terminate, ECF No. 24. The Government takes no position on his motion but agrees that a hearing is unnecessary. Response, ECF No. 25.

Courts have discretion to terminate a defendant’s probation early if, after considering the relevant factors in 18 U.S.C. § 3553(a), the court finds that early termination “is warranted by the conduct of the defendant and the interest of justice.” 18 U.S.C. § 3564(c). In felony cases, the defendant must serve at least one year on probation to be eligible for early termination. *Id.*

The Court is satisfied that Rudolf’s conduct and the interest of justice warrant early termination of his probation. Looking to the relevant sentencing factors, Rudolf’s history and characteristics weigh in his favor. *See* 18 U.S.C. § 3553(a)(1). As his Presentence Investigation Report (“PSR”) documented, Rudolf was a zero-point offender with no prior convictions who accepted responsibility for his misconduct. PSR, ECF No. 17, ¶¶ 35–39.

Rudolf has taken his sentence seriously and moved swiftly to satisfy his probation conditions. He exceeded his fine payment schedule, paying off the full \$600,000 in his first month. Mot. Terminate at 2. Continued probation is not necessary for him to feel the full deterrent effect of his now-paid fine. *See* 18 U.S.C. § 3553(a)(2)(B). He has also completed all 60 hours of community service well in advance of the 24-month deadline. *See* Judgment at 4. And his community service has been extraordinarily beneficial to the public. He piloted a helicopter he owns to transport cancer patients in need of special medical treatment. Mot. Terminate at 2. And he also used it to deliver aid to North Carolina communities battered by Hurricane Helene. *Id.* This prompt and significant community service speaks volumes about Rudolf's rehabilitative efforts and his respect for the Court's Judgment.

More, Rudolf does not need probation-imposed educational or vocational training to be a productive member of society. *See* 18 U.S.C. § 3553(a)(2)(D). He continues to run an automotive business in North Carolina, employing dozens of people in his community. Rudolf has also ensured his employees received emissions compliance training, reducing the risk of any future Clean Air Act violations. *See* Mot. Terminate Exs., ECF No. 24-2, at 10–24. So continued probation is not necessary to protect society. *See* 18 U.S.C. § 3553(a)(2)(C).

In short, after considering the § 3553(a) factors, Rudolf's conduct, and the interest of justice, the Court finds that early termination of Rudolf's probation is warranted.

For these reasons, it is **ORDERED** that Defendant's [24] Motion for Early Termination of Probation is **GRANTED**.

SO ORDERED.

Dated: August 1, 2025

/s/
TREVOR N. McFADDEN, U.S.D.J.