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Another Day, Different Party: The EPA Taking to Task VW by way of the Clean Air Act (“CAA”), 42 U.S.C. §7401 et seq.

Yesterday, the U.S. Environmental Protection Agency (EPA) issued its [Second Notice of Violation \(NOV\)](#) to Volkswagen AG, Audi AG, Porsche AG, Volkswagen Group of America, Inc., and Porsche Cars North America, Inc., setting forth in pertinent part that, “the EPA has determined that VW manufactured and installed defeat devices in certain model year 2014 - 2016 diesel light duty vehicles equipped with 3.0 liter engines [wherein] these defeat devices bypass, defeat, or render inoperative elements of the vehicles’ emission control system that exist to comply with CAA emission standards.” The collection of relevant EPA NOVs, history and press release can be located [here](#). As many [outlets](#) are reporting, VW is publicly denying the EPA’s contentions in its latest NOV.

Although the EPA cites a litany of statutory regulations, standards, and other environmental based guidance, the [gist](#) of the EPA’s issuance of this latest NOV is largely based upon the Clean Air Act’s very specific and explicit prohibition that makes it a violation to “for any person to manufacture or sell, an 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 that 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 in compliance with regulations under this subchapter, and where the person knows or should know that such part or component is being offered for sale or installed for such use or put to such use.” See CAA § 203(a)(3)(B), 42 U.S.C. § 7522(a)(3)(B); 40 C.F.R. § 86.1854-12(a)(3)(iii).

What may or may not be known to VW or other interested parties for that matter, is that the EPA for decades, has been using such relevant language in the CAA as the primary basis to assert regulatory enforcement actions against automobile manufacturers, dealerships, and distributorships, for purposes of seeking to impose civil penalties, fines, and compliance. See e.g. Jerome Ostrov, *Inspection and Maintenance of Automotive Pollution Controls: A Decade Long Struggle Among Congress, EPA, and the States*, 8 Harv. Envtl. L. Rev. 139 (1984). In the case of United States v. Haney Chevrolet, Inc., 371 F. Supp. 381 (M.D. Fl. 1974), the EPA sought an enforcement action and civil penalties against an automobile dealer for very similar allegations in the VW matter, where the defendant company had removed “the original carburetor and its accompanying idle speed solenoid from that Corvette and replacing the carburetor without replacing the idle speed solenoid and knowingly rendering inoperative the transmission controlled spark system on the Corvette [wherein] each of these devices or systems is alleged to be an emission control device or element of design which was installed on the Corvette by the manufacturer in compliance with the regulations promulgated by the Administrator of the Environmental Protection Agency pursuant to Title II of the Clean Air Act.” Id. at 383. Additionally, in the case of United States v. Mac's Muffler Shop, Inc., 1986 U.S. Dist. LEXIS 18108, 25 ERC (BNA) 1369 (N.D. GA. 1986), the EPA filed a civil enforcement action against a muffler shop and the owner, alleging that they removed catalytic converters from motor vehicles, constituting various violations of the CAA.

The recent NOV issued by the EPA is nothing new, rather involves the expected type of regulatory, compliance and civil enforcement based measures the agency has been actively engaged in for quite some time, albeit on a significantly much larger and grandeur scale in the case of VW.

About Us

Robert N. Wilkey, Esq. is the Principal Attorney of Wilkey Legal Consultants, LLC (“WLC”) located in Exton, PA, with over a decade of class action, mass tort, and complex civil litigation, including environmental legal regulatory, administrative, and compliance work, including the representation of Plaintiff landowners against coal fired power plants and natural gas drilling companies, specifically involving issues related to fly-ash exposure, air and groundwater contamination, environmental personal injury based claims, economic property diminution and loss of use and enjoyment claims, remediation, fracking, medical monitoring, citizen suits, and other contamination and environmental related claims.

Mr. Wilkey holds a BA/MPP from Brigham Young University and a JD from the University of Iowa College of Law, and currently provides regulatory, legal, and consultation and litigation services to individuals, corporations, industry, non-profits, school districts, and government entities.

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