



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

SEP 30 2004

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

Mr. Joseph Kubsh
Deputy Director
Manufacturers of Emissions Controls Association
1660 L St. NW, Suite 1100
Washington DC, 20036

Dear Mr. Kubsh:

This is in response to your inquiries to the U.S. Environmental Protection Agency (EPA) regarding the sale and use of aftermarket catalytic converters (AMCC) that comply with the State of California "Optional Evaluation Procedures for New Aftermarket Non-Original Equipment Catalytic Converters in Motor Vehicles Equipped With On-Board Diagnostic (OBD-II) Systems" (California AMCC/OBD-II procedures). In those inquiries, you requested clarification of EPA's policy regarding the use of aftermarket converters on motor vehicles outside of California that have been demonstrated to comply with the California AMCC/OBD-II procedures, and you offered to work with EPA to develop a federal AMCC program for OBD-II equipped vehicles.

As you know, EPA issued a Notice of Proposed Enforcement Policy regarding the "Sale and Use of Aftermarket Catalytic Converters," 51 Fed. Reg. 28,114 (Aug 5, 1986) (EPA AMCC policy) that established performance and use criteria for AMCCs, and associated recording keeping and reporting requirements. Under this policy, EPA stated that the sale and installation of AMCCs that met all the requirements of the policy would not be considered a violation of the "tampering prohibition" under Section 203(a)(3) of the Clean Air Act (Act). The EPA AMCC Policy remains in effect today.

The EPA AMCC Policy does not address or contain demonstration or performance requirements for vehicles equipped with OBD-II. In response to industry requests for clarification regarding the applicability of the EPA AMCC Policy to OBD-II equipped vehicles, EPA issued a letter on August 2, 2000. That letter stated that AMCCs meeting the requirements of the EPA AMCC policy may be installed on vehicles equipped with OBD-II systems. However, if the Malfunction Indicator Light (MIL) illuminates and the OBD-II code indicates a failure of the AMCC during the 25,000 mile AMCC warranty period, the AMCC must be covered under warranty. This interpretation remains in effect for any AMCC meeting the requirements of the EPA AMCC policy.

The California AMCC/OBD-II procedures, published in December, 2001 on an interim basis, contain significant new testing, aging, reporting and auditing requirements to ensure the performance and durability of such converters. AMCCs meeting this policy may be installed on OBD-II vehicles without incurring liability under the California tampering prohibition.

We believe the California AMCC/OBD-II procedure is at least as stringent as the EPA AMCC policy, and probably is more stringent. As a result, we believe that compliance with the California AMCC/OBD-II procedures is equivalent to compliance with the EPA AMCC policy. Therefore, on an interim basis, EPA will allow the sale and installation outside of California of AMCCs that have been approved by California under their AMCC/OBD-II procedures. Under this interim policy, EPA will not issue separate approvals of these AMCCs. However, manufacturers of these AMCCs must submit to EPA copies of the California approval, and copies of all information required to be submitted to California under their procedures, including information on testing, production audits and corrective actions proposed. This information must be sent to Steve Albrink, EPA Certification and Compliance Division (6403J), 1200 Pennsylvania Ave. NW, Washington, DC, 20460.

Thus, manufacturers and installers have two options for AMCCs that may be installed on OBD-II vehicles outside of California:

- AMCCs that meet the requirements of the EPA AMCC policy, provided the AMCC warranty is honored when the OBD-II system indicates a catalyst malfunction during the 25,000 mile warranty period; and
- AMCCs that meet the requirements of the California AMCC/OBD-II procedures, provided the AMCC warranty is honored when the OBD-II system indicates a catalyst malfunction during the 25,000 mile warranty period, and provided that the information described above is submitted to EPA.

EPA will evaluate the California procedures more fully to determine if any or all of these procedures and requirements should be required for AMCCs used outside of California. We will contact you for further discussions on this subject. If you have further questions, please contact Ms. Anne Wick of my staff at 202-564-2063.

Sincerely



George Lawrence, Chief
Mobile Source Enforcement Branch
Air Enforcement Division