



Mr. Andrew Wheeler, Administrator
United States Environmental Protection Agency
Mail Code 1101A
1200 Pennsylvania Avenue N. W.
Washington, DC 20460

AUG 28 2019

Connecticut

Dear Administrator Wheeler:

Delaware

The Ozone Transport Commission (OTC) is urging the U.S. Environmental Protection Agency (EPA) to address the longstanding and persistent need to update federal enforcement policy regarding the purchase, installation, and use of vehicle aftermarket catalytic converters (AMCC). This is an important policy for all states, and critical for states close to attainment of the National Ambient Air Quality Standard for ozone. EPA needs to address OTC's concerns and needs to complete its update of this important enforcement policy.

District of Columbia

Maine

The OTC is a multi-state organization created under the Clean Air Act (CAA) and led by Governors and state air official representatives from 12 states and the District of Columbia. Part of OTC's mission is to advise the EPA on finding solutions to the common problem of ground level ozone and precursor pollutants. The Commission ensures public health and welfare protection by identifying practical and cost-effective emissions reduction solutions. Ground-level ozone is a criteria pollutant formed by precursors and transported across state lines. It directly affects the health of more than 66 million people in the northeast and mid-Atlantic region particularly the young, elderly, and persons with compromised health.

Maryland

Massachusetts

New Hampshire

New Jersey

For more than a decade, the OTC has made efforts to collaborate with the EPA on amending the Agency's outdated enforcement policy regarding the purchase, installation, and use of vehicle AMCC. In late 2018, EPA's Office of Enforcement and Compliance Assurance (OECA) and Office of Transportation and Air Quality (OTAQ) offered a Draft Tampering Enforcement Policy that included AMCC (discussed further below). As commented on by OTC¹ and others, the Draft Tampering Policy did not provide adequate performance stringency or sufficient detail to result in an effective, enforceable policy update. It now appears that EPA has discontinued this effort.

New York

Pennsylvania

Rhode Island

Vermont

Virginia

Agreement on Need for Federal Leadership on AMCC

OTC urges EPA to carry out its federal responsibility to update the AMCC enforcement policy to ensure that states can continue to rely on the critical emissions reductions provided by new vehicle emissions requirements.

In June 2009, the OTC formally called upon EPA to amend its enforcement policy on AMCC. In 2011, in dialogue with, and at the request of the EPA, the OTC prepared its recommendation for the redesign of the federal program established in 1986. The new policy would need to reflect advancements in vehicle

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¹ Letter from OTC Executive Director to EPA's Evan Belser/OECA and Leila Cook/OTAQ on EPA Preview of Tampering Policy (and Aftermarket Catalytic Converters); Dec. 31, 2018.

technology, to support more stringent emissions performance, and extend useful life durability requirements. We believe that the OTC and EPA agree that the 1986 enforcement policy is now outdated and that clear emission reductions can be achieved through nationwide AMCC requirements.² Despite these acknowledgements, there remains a pressing need for a comprehensive national AMCC program. Until EPA acts, states seeking improved ozone air quality are only left with California AMCC regulations.

OTC and States Commitments to Cleaner Vehicles

OTC member states have made substantial commitments and investments towards cleaner, new vehicles. Most of the OTC member states have proactively adopted progressive requirements from their mobile sector inventory. These states are relying upon EPA's leadership to ensure these potential benefits are not diminished due to inadequate AMCC performance. Currently, nearly all of the Ozone Transport Region (OTR) member jurisdictions have adopted, through regulation, more stringent new light-duty vehicle standards as set by California. These standards are a key component of our collective ozone attainment and maintenance strategies.

The loss of potential emission reductions due to weaker AMCC performance jeopardizes our commitments to cleaner vehicle programs. The need and benefits of a national AMCC program has been the goal of the OTC, by states outside of the OTC and by most of the aftermarket catalyst industry. In the absence of federal action, two states in the OTR (Maine and New York), have had to proactively develop and implement individual state programs based on the aftermarket catalyst program in California.

Need for EPA and States to Continue to Work on an Updated AMCC Policy

Despite OTC's past efforts to work with EPA to address this issue, there has been no further progress. In late 2018, EPA's OECA and OTAQ staff introduced a motor vehicle tampering policy design concept promising to renew the outdated and ineffective AMCC enforcement policy and program. In this process, EPA engaged states, industry, and other stakeholders in a "Preview of a Tampering Policy." EPA, however, provided only a limited concept, rather than a complete, detailed policy. The OTC, the National Association of Clean Air Agencies (NACAA), The Northeast States for Coordinated Air Use Management (NESCAUM), the Mid-Atlantic Regional Air Management Association (MARAMA), and the aftermarket industry (e.g., Autocare Association) attempted to resolve stated issues with EPA's OECA and OTAQ staff. The OTC leadership also reached out to EPA Regional Administrators and senior staff from EPA Regions I, II, and III. Over this short time-frame OTC voiced concerns that the conceptual tampering policy would not meet the needs of states specifically related to effective enforcement and AMCC durability and performance requirements. EPA initially stated that their policy development efforts would conclude by the end of November 2018.

Notwithstanding EPA's assertion of cooperative federalism, EPA's efforts abruptly ended in November 2018. On both policy and technical merits, the EPA has failed to adequately address the OTC's needs and documented recommendations to establish stringent emission performance and durability requirements. Please find enclosed OTC's comments on EPA's "Preview of a Tampering Policy" that were submitted on December 31, 2018.

Another seven months has passed and there is still no indication that EPA will be moving a revised policy update forward or how EPA will address the OTC states' concerns that have been repeatedly articulated over the years. We are eager for EPA to update its enforcement policy and program in

² Letter from OTC Chair to EPA Administrator on cooperative federalism (including Aftermarket Catalytic Converters); August 20, 2018.

order to realize the emissions benefits that would have a significant impact on public health in the region.

Sincerely,



Shawn M. Garvin
Secretary, Delaware Department of Natural Resources &
Environment Control
OTC Chair

Enclosure

cc: OTC Commissioners and Air Directors
U.S. EPA Regional Administrators for Regions I, II and III



**OZONE
TRANSPORT
COMMISSION**

December 31, 2018

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Connecticut

Delaware

District of Columbia

Maine

Maryland

Massachusetts

New Hampshire

New Jersey

New York

Pennsylvania

Rhode Island

Vermont

Virginia

David C. Foerter
Executive Director

Dear Mr. Belser and Ms. Cook:

Thank you for engaging in a dialogue with the Ozone Transport Commission (OTC) with regard to the U.S. Environmental Protection Agency's (EPA) September 2018 "Preview of the Draft 'EPA Tampering Policy' for Stakeholder Awareness". The OTC has previously shared with you our comments on the "Preview" and is attaching those comments to this letter. The OTC has an extensive record of articulating the need to update existing policy governing aftermarket catalyst converter (AMCC) replacements, and urging EPA to update and strengthen the policy consistent with the advancement in vehicle emission controls over the past several decades.¹ The existing and severely outdated policy² fails to provide oxides of nitrogen (NOx) and other pollutant benefits that could be achieved if more stringent, and achievable, standards were put in place and a robust roll-out and enforcement plan was implemented. OTC continues to recommend that EPA significantly update its regulations and enforcement policies to ensure AMCC achieve the same level of emissions control over the vehicles useful life as the original equipment converters. The policy and programs for AMCC impact all vehicles, all states, and needs to be considered in reducing interstate air pollution. The most efficient means of helping states is for EPA to update its policy to ensure AMCC provide needed emission reductions and air quality improvement.

¹ The OTC states requested that EPA update the AMCC Policy June 2009 and submitted a recommendation for an updated policy to EPA April 8, 2011.

² The current federal AMCC Policy was published on August 5, 1986 (Notice of Proposed Enforcement Policy regarding the "Sale and Use of Aftermarket Catalytic Converters," 51FR 28114) and has not been updated to reflect the significant changes in automotive technologies and vehicle emission standards.

OTC's analysis shows that a properly updated policy, and enforcement of the policy, can significantly reduce NOx emissions both inside and outside the Ozone Transport Region (OTR), and that reducing regional NOx emissions is key to continued progress on ozone. In correspondence to the EPA Administrator on August 21, 2017, the OTC made requests for updating policies and programs governing the AMCC and made specific recommendations.³ The goal of any update of the federal vehicle tampering policy that addresses aftermarket catalyst sales and use, needs to ensure that replacement catalysts will perform over the vehicle's useful life consistent with the original equipment they replace. Properly updating the AMCC policy will ensure the expected emissions from the legacy vehicle fleet, protect investments in cleaner cars, and assist states in meeting and maintaining the ozone health standard. Nearly all the region already takes part in the clean vehicles program, making up the largest concentrated market for these cleaner vehicles outside of California. Aftermarket catalysts manufactured to the best available technology standards are a fundamental component of ensuring sustained emission reductions from the cleaner cars.

While initially encouraged that EPA was updating its policy, OTC is now extremely concerned, based on the preview provided, that the new policy will fall far short of the expectations and needs of the states to address ozone transport, improve air quality, and protect public health. Further, OTC is discouraged that the full document will not be shared for discussion prior to finalization.

The OTC is the regional non-partisan organization created by Congress comprised of twelve states and the District of Columbia working cooperatively along with federal partners to address the transport of ground level ozone that negatively impacts a region of more than 66 million people. Since its creation, the OTC has been tremendously successful in state and federal efforts to reduce ozone concentrations in all member states by acknowledging and driving science and technology towards efficiency, thereby creating a healthier environment for the region. Despite this success, half of OTC's nearly 66 million residents are still breathing air that exceeds the ozone National Ambient Air Quality Standard (NAAQS). The science is clear, additional reductions of NOx are necessary to bring all areas in the region into attainment of the ozone health standards.

The OTC is encouraged that EPA is updating its enforcement policy on vehicle and engine tampering and aftermarket defeat devices and note that there is widespread state and industry support for a strong and meaningful policy update. However, the "Preview" appears to fall short of the OTC's recommendations on record and expectations. At a minimum, the policy should include the requirements that aftermarket catalysts are expected to meet including explicit emission performance levels and what testing requirement manufacturers will be required to meet to demonstrate compliance. In addition, the effectiveness of the policy with regard to AMCCs will depend on a strong outreach and enforcement program and effective methods to identify noncompliant parts, including a parts labeling requirement.

³ OTC letter (Grumbles and Snyder) to EPA Administrator Pruitt, August 21, 2017; Attachment B: OTC Mobile Source Committee Recommended Federal Aftermarket Catalytic Converter Program (FACCP), Section III (page 3), "Main Components of the Recommended Aftermarket Catalytic Converter Program"

In closing, we reaffirm our commitment to work cooperatively with federal, state and industry partners in accomplishing the goal of a meaningful policy update. I look forward to continuing to work with EPA on driving this issue to a successful and mutually acceptable conclusion.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. Foerter', written in a cursive style.

David C. Foerter
Executive Director, OTC

cc: OTC Commissioners and Air Directors

Enclosures a/s

