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Union of Concerned Scientists criticizes RPM Act as “another diesel gate”

Describing it as an emissions scandal on par with or worse than those plaguing European diesel car manufacturers, the Union of Concerned Scientists this month decried the RPM Act as state-sanctioned emissions cheating, a claim that backers of the act – designed to exempt race cars from emissions controls – say they disagree with.

“There is a way to (ensure emissions defeat devices remain off public roads) that doesn’t impact people who want to race,” said Jonna Hamilton, the Clean Vehicles Program representative in Washington for the Union of Concerned Scientists. “But we don’t think the RPM Act as it’s currently drafted does that, and that’s what we take issue with.”

Stuart Gosswein, senior director for federal government affairs for the Specialty Equipment Market Association – the automotive aftermarket organization backing the RPM Act – said there’s “a twisting of perception” that the RPM Act is about anything other than motorsports. “The RPM Act is very narrow in scope... it simply says that vehicles used in competition are not within the jurisdiction of the Clean Air Act and the EPA,” he said. “We’re not trying to do anything nefarious.”

Echoing complaints about the RPM Act that environmentalists and a handful of U.S. representatives raised in a Congressional subcommittee hearing last month, Hamilton said the Union of Concerned Scientists doesn’t intend to put a stop to racing or to the sales of emissions defeat devices to racers. “If people want to modify their car and use it on a racetrack, it isn’t going to have that big of an impact,” she said. “It’s an important hobby too.”

However, the current state of affairs, in which manufacturers of racing parts simply declare their parts are for off-road use only, doesn’t cut it, she said. “Just saying you shouldn’t do it while selling to those people who do it is not sufficient – clearly these off-road parts are still being sold to people using them on the street.”

As an example, she pointed to the EPA’s 2015 settlement with H&S Performance, a Utah-based company which “manufactured and sold performance tuners, exhaust replacement pipes and exhaust gas recirculation delete kits” designed for GM, Ford, and Dodge diesel trucks. The more than 114,000 such defeat devices the company sold resulted in more than 71,000 excess tons of nitrogen oxide (about double the amount released by diesel gate vehicles, according to Hamilton) and a \$1 million civil penalty for the company.

Gosswein said SEMA already actively works to shut down illegal activity in the aftermarket industry. “We want the bad products out,” he said, pointing to the H&S Performance case as an example of the enforcement mechanisms in place working like they should to prosecute companies that sell emissions defeat devices for on-road use.

“The EPA’s proper role is to look over the shoulder of manufacturers and distributors and installers, to make sure that what they’re selling is proper and for the proper use,” he said.

Still, while Gosswein said he doesn’t agree that the RPM Act creates a loophole, as was argued last month, he said he and other SEMA representatives will likely work with Congressional



representatives to revisit the language of the RPM Act to clarify their intentions.

One possibility that both Hamilton and Gosswein raised is to take a closer look at applying California's either-or approach – which specifically defines a competition vehicle as one not allowed to operate on public roads – nationwide.

Originally introduced in March 2016 and then re-introduced in both the House of Representatives (H.R. 350) and Senate (S. 203) this January, the Recognizing the Protection of Motorsports Act arose out of a dispute between the Environmental Protection Agency and the Specialty Equipment Market Association over a proposed EPA rule from July 2015 that prohibited tampering with emissions equipment even if those vehicles “are used solely for competition.” While the EPA removed that language in later drafts of that rule, SEMA representatives claimed that the agency continues to assert authority over aftermarket parts destined for competition vehicles.

The existing law that the EPA seeks to amend, 40 CFR Section 86.1854-12(a)(3), prohibits anybody from removing, disabling, or bypassing emissions equipment on a motor vehicle, including its owner. Nowhere in that section does it exempt anybody building a competition vehicle from fines for removing emissions equipment. However, SEMA and its supporters have pointed to committee notes from the drafting of the 1970 amendments to the Clean Air Act that seem to support a competition exemption.

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