



## UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

**AUG - 4 2023**

THE ADMINISTRATOR

Mr. Rob Larew  
President  
National Farmers Union  
20 F Street NW, Suite 300  
Washington, D.C. 20001

Dear Mr. Larew:

I would like to thank you for your letter written on behalf of the members of the National Farmers Union requesting clarification of the obligations of manufacturers to not impede independent repair of agricultural equipment. The Clean Air Act and the U.S. Environmental Protection Agency's implementing regulations clearly support repair by parties other than manufacturers.

I am happy to offer clarification because, as your letter well notes, the EPA and the Clean Air Act allow owners to repair emission-related components of their products to proper functioning. Section 203(a) of the Clean Air Act provides that:

No action with respect to any device or element of design ... shall be treated as a prohibited act ... if (i) the action is for the purpose of repair or replacement of the device or element, or is a necessary and temporary procedure to repair or replace any other item and the device or element is replaced upon completion of the procedure, and (ii) such action thereafter results in the proper functioning of the device or element....

Crucially, the Clean Air Act makes no distinction between repair by a manufacturer versus another party. Actions that qualify as repair or replacement are allowed under the Clean Air Act regardless of who makes them. Moreover, nothing in the Clean Air Act or the EPA's regulations limits a manufacturer's ability to provide service tools and information to consumers and independent repair facilities for the purpose of repairing their equipment.

The Clean Air Act denotes Congress' concern about the ways in which manufacturers might impede the ability of other parties to repair regulated equipment and puts in place safeguards to prevent that from happening. For instance, the act prohibits manufacturers from writing their service instructions (which, by separate provision, manufacturers must provide) in a way that steers end users away from independent repairers. Specifically, Section 207(c)(3) prohibits service instructions from including:

any condition on the ultimate purchaser's using, in connection with such vehicle or engine, any component or service... which is identified by brand, trade, or corporate name; or directly or indirectly distinguishing between service performed by the franchised dealers of such manufacturer or any other service establishments with which such manufacturer has a commercial relationship, and service performed by independent

automotive repair facilities with which such manufacturer has no commercial relationship.

The same Clean Air Act provision seeks to ensure that the owners of equipment know of their options for independent repair by requiring that the:

manufacturer shall provide in boldface type on the first page of the written maintenance instructions notice that maintenance, replacement, or repair of the emission control devices and systems may be performed by any automotive repair establishment or individual.

The EPA's implementing regulations reiterate these safeguards and directly apply them to nonroad engines. They also make explicit that a manufacturer cannot condition its warranty on service by a franchise dealer or someone with which the manufacturer has a commercial relationship. See 40 C.F.R. section 1039.125(f).

Your letter also discusses the important anti-tampering provisions of the Clean Air Act, and your concern that certain manufacturers may be mischaracterizing the implications of those provisions for independent repair. The act prohibits anyone from removing or rendering inoperative any device or element of design of the emissions control system in regulated equipment. See Section 203(a)(3)(A).

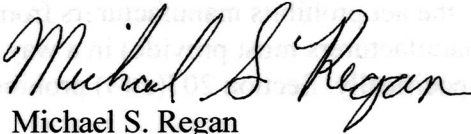
For example, removing a catalyst from an exhaust pipe or providing software or information that would facilitate tampering with an emissions control system are violations of the Clean Air Act. The act provides authority to enforce against tampering regardless of whether it is done by the manufacturer, the end user or another party. The act, implementing regulations and the EPA's policy and practice are aligned in preventing tampering not by limiting access to independent repair, but rather by enforcing the prohibition against tampering against any party that does so.

I appreciate your letter and its providing us an opportunity to again address this important issue. Like the National Farmers Union and its members, the EPA believes barriers to the proper repair and maintenance of nonroad equipment is harmful to the environment. We support efforts by anyone to enact legislation clarifying that independent repair is allowable, provided such efforts continue to clearly prohibit illegal tampering of emissions control systems.

If you have questions about this response, my colleague Rod Snyder, senior advisor for Agriculture, would be very pleased to assist you and is available at (202) 503-5749 or [snyder.rodney@epa.gov](mailto:snyder.rodney@epa.gov).

In the meantime, I offer you and your members warmest regards.

Sincerely yours,

  
Michael S. Regan