



June 13, 2023

The Honorable Michael S. Regan
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, DC 20460

RE: Request for clarification from the EPA that agricultural equipment manufacturer-imposed restrictions on independent repair are not required by the Clean Air Act

Dear Administrator Regan,

On behalf of National Farmers Union (NFU), I write to request the U.S. Environmental Protection Agency (EPA) respond to and clarify public statements by certain groups that are misleadingly invoking the Clean Air Act (CAA) as justification for limiting consumers' Right to Repair farm equipment. The independent repair of emissions control systems is *not* illegal under the CAA, contrary to the claims of some equipment manufacturers and dealers. Instead, the CAA *requires* independent repair access.

NFU is a grassroots farm organization representing family farmers, ranchers, and their communities nationwide. Since 1902, NFU has worked to ensure that farm families and their communities are respected, valued, and enjoy economic prosperity and social justice.

NFU policy supports farmers' Right to Repair their farm equipment, including self-repair, independent repair, or through repair services offered by the equipment manufacturer or equipment dealer. Because farm equipment manufacturers prevent farmers or independent mechanics from completing certain repairs without direct provision by the manufacturer or certified dealer, NFU has pursued various legislative, administrative, and other remedies to ensure farmers have adequate, fair, and legal access to the repair options of their choosing.

NFU and other repair advocates have supported Right to Repair legislation, which would restore repair parity by guaranteeing that farmers and independent mechanics have comprehensive access

to the repair materials provided by manufacturers to their dealers. Such legislation routinely includes limitations on illegal equipment modification.”¹

For example, we strongly supported the recently passed “Consumer Right to Repair Agricultural Equipment” Act, Colorado HB23-1011, which states that “An independent repair provider or owner is not authorized to make modifications to agricultural equipment that permanently deactivate any safety notification system or bring the equipment out of compliance with safety or emissions laws or to engage in any conduct that would evade emissions, copyright, trademark, or patent laws.” NFU supports these limitations.

In their opposition to Right to Repair legislation, equipment manufacturers and dealers have invoked EPA regulations and the CAA – specifically related to tampering with emissions control systems – as justification for their need to restrict repair. We believe these manufacturer and dealer associations are inaccurately interpreting and/or misrepresenting what the CAA requires.

For example, a representative for the North American Equipment Dealers Association (NAEDA), in testimony before the Colorado Senate Agricultural & Natural Resources Committee, stated that they cannot allow independent repair of the emissions systems in farmers’ equipment “because we’re prohibited from doing so by federal statute.” By giving farmers access to this kind of repair, he reasoned, Colorado HB23-1011 “would be directly in conflict with the Clean Air Act.” During a hearing in the Nebraska legislature, a representative for John Deere similarly stated that they are liable to the EPA under the CAA regarding emissions controls, and thus must restrict repair.²

It is simply false to state that the CAA is incompatible with independent repair of agricultural equipment. While the CAA under 40 CFR 1068.101(b)(1) limits tampering³, the CAA states that this prohibition does not apply when “You need to repair the engine/equipment and you restore it to proper functioning when the repair is complete” and in other cases if proper functioning of emissions controls is restored. Moreover, 40 CFR 1068.101(b)(2) states that it is illegal to “knowingly manufacture, sell, offer to sell, or install, any component that bypasses, impairs, defeats, or disables the control of emissions of any regulated pollutant.”⁴ Thus, if the manufacturer’s own repair materials and tools, which Right to Repair reforms and legislation would provide to farmers and

¹ See for example Colorado General Assembly HB23-1011 “Consumer Right to Repair Agricultural Equipment”: <https://leg.colorado.gov/bills/hb23-1011> and https://leg.colorado.gov/sites/default/files/2023a_1011_signed.pdf.

² Transcript Prepared by Clerk of the Legislature Transcribers Office, Judiciary Committee, February 25, 2021, LB543, <https://drive.google.com/file/d/1JMOx92QM1P3r9aMFIDSFmZOY7oUuQx0H/view>.

³ “You may not remove or render inoperative any device or element of design installed on or in engines/equipment in compliance with the regulations prior to its sale and delivery to the ultimate purchaser. You also may not knowingly remove or render inoperative any such device or element of design after such sale and delivery to the ultimate purchaser.”

⁴ [https://www.ecfr.gov/current/title-40/chapter-I/subchapter-U/part-1068/subpart-B/section-1068.101#p-1068.101\(b\)\(2\)](https://www.ecfr.gov/current/title-40/chapter-I/subchapter-U/part-1068/subpart-B/section-1068.101#p-1068.101(b)(2)).

independent mechanics, allow for the bypassing of emissions controls, then the manufacturers themselves would be violating the CAA.

Additionally, 40 CFR 1039.125(f) requires tractor manufacturers to “State clearly in [its] written maintenance instructions that a repair shop or person of the owner’s choosing may maintain, replace, or repair emission-control devices and systems.”⁵ The CAA suggests independent repair access is required, contrary to the statements from equipment manufacturer and dealer representatives.

We are asking the EPA to clarify that manufacturer-imposed restrictions on independent repair are not required by the CAA, and Right to Repair legislation that clearly continues to prohibit illegal tampering of emissions control systems, is compatible with the requirements in CAA statute and regulations.

Thank you for your consideration and we look forward to your response. If you have any questions or would like to discuss NFU’s position and request, please contact Aaron Shier, Government Relations Director, at ashier@nfudc.org or at 202-554-1600.

Sincerely,

A handwritten signature in black ink, appearing to read "Rob Larew". The signature is fluid and cursive, with the first name "Rob" being more prominent than the last name "Larew".

Rob Larew
President

⁵ [https://www.ecfr.gov/current/title-40/chapter-I/subchapter-U/part-1039/subpart-B/section-1039.125#p-1039.125\(f\)](https://www.ecfr.gov/current/title-40/chapter-I/subchapter-U/part-1039/subpart-B/section-1039.125#p-1039.125(f)).