Why Feds' Criminal Vehicle Tampering Theory Falls Short

By **Jonathan Martel, Zachary Fayne and Christopher Joseph** (October 3, 2025)

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For decades, the federal government maintained that modifying automotive emissions systems was not a criminal offense.

The mobile sources title of the Clean Air Act — Title II — specifies prohibited acts and civil enforcement authorities, without specifying any criminal penalties.

But in recent years, the government has advanced a novel theory: Reprogramming a vehicle's or engine's onboard diagnostics system, or OBD — a feature required under U.S. Environmental Protection Agency regulations — is a crime under Section 113(c)(2)(C) of the CAA.[1]

That provision makes it a crime when a person knowingly "tampers with" or "renders inaccurate ... any monitoring device or method required to be maintained or followed under" the act.

In January 2021, federal agents searched an auto body shop co-owned by defendant Tracy Coiteux in Washington state to investigate a practice called deleting and tuning.

"Deleting" is defined as removing or blocking components of a vehicle's pollution control system. Deleting causes the OBD system to detect a malfunction and to illuminate a dashboard indicator light.

"Tuning" is defined as adjusting the OBD programming so that the system won't indicate an emissions issue. The government charged Coiteux with a felony under Section 113 for tampering with a monitoring device.

Coiteux had assisted with tuning OBDs. The U.S. District Court for the Western District of Washington ruled as a matter of law that the Section 113 criminal prohibition applies to tuning a vehicle's OBD, and in May 2024, the jury found Coiteux guilty.

Following that verdict, other district courts applied the law the same way, citing Coiteux.[2] Meanwhile, Coiteux appealed her conviction.

The case, now pending in the U.S. Court of Appeals for the Ninth Circuit, is the first appellate test of the government's new theory. The opening appellant brief challenged the district court's conclusion based on the statutory text, legislative intent and fair notice.

We discuss these arguments below. We also raise additional reasons that the government's position is questionable based on the overall language, purpose, context and structure of the Clean Air Act, including that:

- The government's application of the law in this case does not align with the apparent purpose of the CAA's criminal prohibition;

- The government's approach would criminalize tampering with a monitor in a vehicle, while the more significant violations of tampering with emissions controls themselves, and selling high-emitting engines or vehicles, are only subject to civil enforcement; and

- The existence of the mens rea element in Section 203 of the CAA, and the system of civil penalties, suggest that Congress did not intend to make tampering with an OBD monitor a criminal violation.

Appellant's Arguments

Section 113(c)(2)(C) of the CAA establishes a criminal penalty for "[a]ny person who knowingly … falsifies, tampers with, renders inaccurate, or fails to install any monitoring device or method required to be maintained or followed under this chapter."

In appealing the district court's conclusion that this provision covers reprogramming a motor vehicle's OBD, Coiteux argues that there is no maintenance required for OBDs under the CAA. Section 113 only criminalizes tampering with a device "required to be maintained."

While the CAA requires manufacturers to install OBDs in light-duty vehicles and mandates that certain states inspect OBDs in specified nonattainment areas, there is no duty on any person — manufacturer, owner or service station — to maintain an OBD.

Coiteux also argues that OBDs are not monitoring devices. "Monitoring device" is a statutory term rooted in Title I's stationary source regime. A continuous emissions monitoring system, for example, is a monitoring device designed to verify a stationary source's ongoing compliance with emission limits.

An OBD, by contrast, does not measure tailpipe emissions or track emission data. It only flags malfunctions in a vehicle's emissions control system. Treating an OBD as a Title I monitoring device divorces the phrase from its appropriate statutory context.

Coiteux further argues that Congress did not intend for the Title I provision at issue to apply to conduct regulated by Title II, governing motor vehicles and engines. Section 113 authorizes the EPA to make criminal referrals and pay informants for violations of Titles I, III, IV, V and VI — but not Title II.

If Congress had meant to criminalize OBD tampering, the statute would have authorized the EPA to use core criminal-enforcement tools like making criminal referrals and paying informants regarding that conduct. Legislative history also supports that Congress did not intend to criminalize tampering of this kind.

Finally, Coiteux argues that the constitutional right to fair notice and the rule of lenity favor reversal. The EPA and the U.S. Department of Justice treated aftermarket tampering as a civil offense for nearly three decades.

If Section 113 is ambiguous, due process and the rule of lenity call for a narrow reading, especially given the CAA's complexity and the government's sudden turnaround on the issue.

Additional Potential Arguments

Several additional aspects of the text, context, structure and overall purpose of the CAA support reversing the conviction in this case.

First, the government's application of Section 113(c)(2)(C) to tuning a vehicle's OBD system does not align with the purpose of the criminal prohibition.

The provision criminalizes tampering with, rendering inaccurate, or failing to install an "emissions monitoring device or method required to be maintained or followed" at stationary sources, which are regulated differently under the CAA from motor vehicles and engines.

The full text, including the "required to be maintained or followed" language, points to the larger statutory structure applicable to stationary sources and not mobile sources.

CAA requirements generally obligate owners and operators of stationary sources to install and maintain, through regular calibration, monitoring devices that measure emissions directly (a continuous emissions monitor) or indirectly measure operating indicators such as pressure differential across a scrubber (a continuous parametric monitor).[3] "Following" monitoring methods, such as visual opacity checks, serves the same purpose.[4]

Crucially, those same owners and operators who must install and maintain the monitors and follow monitoring methods are subject to limits on emissions — criteria pollutants such as sulfur dioxide or nitrogen oxides and various hazardous air pollutants — and must operate the facility to remain within the limits as shown by the monitoring data.

They are subject to civil and potential criminal penalties for exceedances of the emissions limits if they do not operate the facility to remain in compliance.

Indeed, major sources are subject to permitting requirements that require the owners and operators to self-report exceedances of emissions limits every year. Maintenance of the monitors and following monitoring methods to ensure that they are accurate is fundamental for the government to determine compliance and liability.[5]

Knowingly tampering with the monitors to compromise their accuracy so that the results are inaccurate or misleading undermines this fundamental purpose. In this context, knowingly causing the monitor to be inaccurate is akin to misrepresenting ongoing compliance to the government, a core criminal act under Section 113(c) of the Clean Air Act and more generally under Title 18 of the U.S. Code, Section 1001.

The motor vehicle and engine context is very different. Those regulatory obligations apply to manufacturers of motor vehicles and engines, and require that they design those products to ensure that they comply with the applicable emissions standards for a specified "useful life" period.

The manufacturer must demonstrate such compliance in an application to the EPA for a certificate of conformity, and is prohibited from selling a vehicle or engine that is not covered by such a certificate. The regulatory regime contemplates that the manufacturer, after applying for and obtaining a certificate for the vehicle or engine based on demonstration of compliance for the useful life, then sells and transfers to the customer the vehicle or engine.

Apart from a recall obligation for emissions-related defects, based on warranty or other information, the manufacturer does not have an ongoing legal obligation to operate the vehicle or engine to comply with emissions limits, or to maintain or calibrate an OBD monitor on the vehicle or to follow monitoring methods.

Nor does the customer, who owns and operates the vehicle, have any obligation to maintain the monitoring device or follow a monitoring method or otherwise operate the vehicle so as to comply with emissions limits.

Accordingly, the OBD monitors do not provide fundamental data necessary to determine compliance and liability. Unlike the owners and operators of stationary sources who have all of these obligations, the manufacturers, owners, and operators of vehicles and engines are not required to maintain OBD devices or follow OBD methods.

By the terms of Section 113(c)(2)(C), OBD systems are not monitors required to be maintained or followed under the statute, and the statutory structure and context align with that reading.

Second, the government's interpretation would criminalize the lesser violation of tampering with a monitor used to indicate a malfunction on the dashboard, while the obviously more significant violations of knowingly causing excess emissions by tampering with emissions controls themselves, or even selling high-emitting engines or vehicles not covered by EPA certificates of conformity, are not criminal acts and are only subject to civil enforcement.

Section 203 applies civil penalties to the sale of an uncertified vehicle, installation of defeat devices and tampering with vehicle emissions systems, among other things.[6] EPA guidance remains consistent that none of these prohibited acts are criminal, and the U.S. has not suggested in Coiteux or any other case that they are.

It would be incongruous, to say the least, for Congress to have intended that deleting emissions controls or selling high-emitting uncertified vehicles is not criminal, but tuning the OBD system is. It does not make sense to read the law as criminalizing vehicle monitor tampering while more harmful conduct like deleting emissions controls remains only a civil offense.

Third, it is further revealing that Section 203(a)(3)(A) introduces a mens rea element, and prohibits as a civil offense any person from knowingly removing or rendering inoperative any device or element of design installed in compliance with Title II regulations.

In contrast, civil violations under the Clean Air Act for stationary sources, as specified in Section 113, are uniformly strict liability offenses, omitting any mens rea element.

Moreover, Section 203(a)(3)(A) differentiates the aftermarket, making the civil penalty for a violation of this provision 10 times higher for a manufacturer or dealer than it is for any other person, such as an aftermarket mechanic.[7]

As a result, the government's interpretation of Section 113(c)(2)(C) would mean the same elements — including knowledge — apply to both the civil and the criminal offense of tampering with a monitor, with no differentiation between a manufacturer or dealer and the aftermarket.

Congress should not be presumed to make the same elements punishable both as a felony and through civil penalties, let alone punishable as a felony, notwithstanding the civil

penalty structure that provides a much lower civil penalty for the aftermarket.

The existence of the "knowing" element in Section 203 and the two-track civil penalty structure are further evidence that Congress intended to stop short of making tampering with an OBD monitor a crime and intended to restrict all Title II violations to civil enforcement.

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[1] 42 U.S.C. § 7413(c)(2)(C).

[2] See U.S. v. Carroll, No. 4:21-cr-00532, ECF-421 (E.D. Mo. Sept. 4, 2024) (holding OBDs are "monitoring devices" under the Clean Air Act and allowing § 7413(c)(2)(C) charges, citing the Western District of Washington's decision in Coiteux); U.S. v. Long, No. 2:22-cr-139, ECF-44 (E.D. Va. Nov. 7, 2024) (denying motion to dismiss; concluding §7413(c)(2)(C) reaches OBD tampering and rejecting lenity, citing Coiteux); U.S. v. Easter, No. 4:24-cr-00626, ECF-8 (E.D. Mo. Dec. 4, 2024) (guilty plea to §7413(c)(2)(C) charge based on OBD disablement).

[3] See generally, e.g., 40 C.F.R. § 60.13 (NSPS general monitoring); pt. 60 app. B (CEMS/COMS performance specifications); pt. 60 app. F (quality assurance procedures); § 61.14 (NESHAP monitoring); § 63.8 (MACT/NESHAP monitoring); §§ 70.6(a)(3), 71.6(a)(3) (Title V permit monitoring); pt. 75 (Acid Rain Program CEMS).

[4] See, e.g., 40 C.F.R. pt. 60, app. A-4, Method 9.

[5] See, e.g., U.S. v. Louisiana-Pac. Corp., 908 F. Supp. 835 (D. Colo. 1995); U.S. v. Berkshire Power Co. LLC, No. 3:16-cr-30021, (D. Mass. March 30, 2016); U.S. v. Erie Coke Corp., No. 1:22-cr-00023, (W.D. Pa. Nov. 15, 2022).

[6] 42 U.S.C. § 7522.

[7] 42 U.S.C. § 7524(a).