



**THE ATTORNEY GENERAL  
OF TEXAS**

**JIM MATTOX  
ATTORNEY GENERAL**

October 17, 1990

Mr. Steve N. Spaw, P.E.  
Executive Director  
Texas Air Control Board  
6330 HWY. 290 East  
Austin, Texas 78723

LO-90-76

Dear Mr. Spaw:

You inform us that the Environmental Protection Agency has asked the Texas Air Control Board to conduct "covert audits of motor vehicle inspection stations to enforce state and federal regulations regarding the operating condition of pollution control equipment on motor vehicles." You explain that such audits would require an investigator to tamper with a vehicle's pollution control equipment before submitting the vehicle for inspection. See generally Health & Safety Code § 382.022 (authority of Air Control Board to conduct investigations). You ask whether such tampering would be in violation of two rules of the Air Control Board.

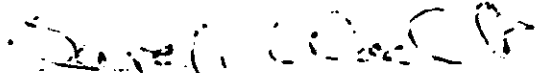
One of those rules prohibits a person from removing or making inoperable "any system or device used to control emissions from a motor vehicle." 31 T.A.C. § 114.1(b). The other prohibits a person from operating a motor vehicle that does not comply with certain emission control requirements "as evidenced by a currently valid inspection certificate affixed to the vehicle windshield." Id. § 114.3(a). You have brought to our attention no state or federal statute that contains similar provisions.

Because the rules you ask about contain no exceptions, an Air Control Board investigator who tampered with a vehicle's emission control device and then drove the vehicle might technically act in violation of those rules. See generally id. §§ 382.081 - 382.091 (penalties). Because they are rules of the board, however, the board is free to amend the rules to permit the type of investigation in question.

Again, there may be provisions of state or federal law that contain similar prohibitions. If so, please bring them

to our attention. We would be happy to consider your question in light of any such provisions.

Yours very truly,



Sarah Woelk  
Assistant Attorney General  
Opinion Committee

SW/lcd

Ref.: RQ-2100  
ID# 10302