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PERSPECTIVE

A Failed System

By Jonathan Michaels

The sad truth is that automakers face little deterrent from U.S. authorities to correctly represent their vehicles' fuel economy standards. The Environmental Protection Agency has long required manufacturers to state a vehicle's fuel economy on the window sticker (officially called the Monroney sticker), but there is no regulatory penal system in place for manufacturers who fail to report correct numbers. The main source of deterrent has been private class actions.

Last week, the EPA took a large step toward changing all of this when it imposed a historic \$350 million fine against Korean automaker Hyundai and its subsidiary Kia for overstating fuel economy standards on 900,000 vehicles sold in the U.S. The fine ended a two-year investigation by the EPA into the automakers' vehicles, and is the largest ever imposed against a manufacturer for overstating fuel economy ratings.

The penalty is being touted by the EPA as a strong movement toward stomping out fuel economy misrepresentation. As Attorney General Eric Holder stated, "This unprecedented resolution with Hyundai and Kia underscores the Justice Department's firm commitment to safeguarding American consumers, ensuring fairness in every marketplace, protecting the environment, and relentlessly pursuing companies that make misrepresentations and violate the law."

However, the event underscores just how broken the system is at protecting the public from unscrupulous manufacturers. The fine was levied under the federal Clean Air Act, a law designed to protect the ozone layer from toxic pollutants. The EPA could not impose a fine for making a material misstatement on the vehicle Monroney sticker — because no such statutory scheme exists. Instead, the EPA had to shoehorn the fine into the Clean Air Act by claiming that Hyundai and Kia understated their vehicles' greenhouse gas emissions by 4.75 million metric tons. This violation enabled the agency to impose a fine.



AP Photo
Attorney General Eric Holder listens at right as Environmental Protection Agency Administrator Gina McCarthy announces fines against Hyundai and Kia.

The \$350 million fine was really a combination of \$100 million in cash, \$50 million to establish an independent fuel economy certification group, and the forfeiture of greenhouse gas emission credits claimed to be worth \$200 million dollars. The case is "historic" because at \$350 million it is the largest of its kind — and really because it is the only of its kind. Virtually every other EPA enforcement case under the Clean Air Act in the last five years involved the unlawful emission of refrigerants into the environment. The classic case is the retailer who has leaky refrigerators, such as Costco recently fined for having faulty refrigerators in half of its stores.

Using the Clean Air Act to address fuel economy misrepresentations is a novel and positive concept. Still, the fine imposed by the U.S. government falls short of the financial impact the class action lawyers could extract from Hyundai and Kia in their private claims. That amount was \$395 million, which raises the question of why are private citizens more capable of policing fuel economy fraud than the federal government.

If there was ever a time when a punitive system was needed, now is it. In today's ecofriendly world, the fight for fuel-efficient supremacy has become fierce, with 40 mpg serving as the benchmark of success. Produce a car that achieves over 40 mpg, and you are in the money; fall short and you lose market relevance.

In 2011, Hyundai and Kia (collectively the fourth largest automaker in the world, after Toyota, General Motors and Volkswagen) launched the "Save the Asterisks" campaign, which touted its vehicles as achieving 40 mpg; unlike their competitors who only offered 40 mpg on specialized, low-volume models.

The marketing campaign worked. As reported by Automotive News, Hyundai's sales in 2011 were up 20 percent, and Kia's sales (its subsidiary) were up 36 percent. However, after receiving numerous complaints from consumers, the EPA launched an investigation that revealed that Hyundai and Kia had overstated their fuel efficiency numbers by as much as six miles per gallon.

Hyundai and Kia initially denied any wrongdoing, issuing a statement that "this case has no merit, as our advertising is accurate and in full compliance with applicable laws and regulations." Later, however, the automakers admitted to misstating the fuel economy on 13 of their nameplates.

The financial impact on American consumers is not insignificant. Consider that the average American drives 13,476 miles per year, and keeps their car for an average of 5.95 years. At a national average of \$3 for a gallon of regular gasoline, the misrepresentation of six miles per gallon results in a consumer spending spend \$1,061 more on gas over the life of the car than expected.

Nor are Hyundai and Kia alone in making misrepresentations. In 2013, Ford admitted that the fuel economy rating on the 2013 C-Max Hybrid was overstated by four miles per gallon. In June 2014, it admitted that six of its cars had overstated fuel economy standards, including the Lincoln MKZ hybrid which was overstated by seven miles per gallon. Ford has been sued in class actions, but not fined by the U.S. government.

Now Mercedes-Benz has joined the fray. Last month, the German automaker was caught by the EPA in a spot-check audit as having overstated the fuel economy standards on the 2013-14 C300 4-matic models. The "C" class is the manufacturer's most popular model.

The EPA has the gumption to prosecute these types of claims. As Holder stated, "This type of conduct quite simply will not be tolerated. And the Justice Department will never rest or waver in our determination to take action against any company that engages in such activities — whenever and wherever they are uncovered." The problem rests in the agency's inability to penalize those it regulates. Until Congress changes this, and gives the EPA the real ability to impose substantial fines for fuel economy misrepresentation, we will continue to see manufacturers abusing the system, and getting away with it all.



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