

NEW RISK ALERT: (CMI)

Cummins Implies Emissions Scandal is Over, Contradicts Itself in Footnote

New language in latest 10-K reveals engine maker may be fined despite claiming it expects no additional inquiries.

Published February 12, 2021

This alert compares the language used in the company's latest filing with the period before. [Research](#) suggests changes in language, particularly in the risk factor section, is a powerful indicator of future performance. Companies that change filing language, according to research, underperform those that don't by 30-50 basis points per month for the following year.

Cummins Implies SEC & DOJ Scrutiny is Over

Regulators recently caught Cummins, a diesel engine manufacturer, installing “defeat devices” on engines included in popular Dodge Ram pickup trucks. Defeat devices— or software that detects when engines are being tested for emissions— help the engine “cheat” to pass the tests.

Following similar highly publicized incidents, the EPA and regulators in California zeroed in on Cummins. In its 2019 annual report, Cummins disclosed the run-in with the EPA and revealed it had also told on itself to other regulators without naming them:

“In addition, we voluntarily disclosed our formal internal review to our regulators and other agencies and have been working cooperatively with them to ensure a complete and thorough review.”

In its 2020 [10-K](#), Cummins not only identifies the regulator to which it voluntarily reached out, but also revealed it had discussed the matter with the nation's top law enforcement agency:

*“In addition, we voluntarily disclosed our formal internal review to the regulators and to other government agencies, **the Department of Justice (DOJ) and the Securities and Exchange Commission (SEC)**, and worked cooperatively with them to ensure a complete and thorough review.”*

Shortly thereafter, Cummins seems to suggest that voluntarily disclosing the issue to the SEC and DOJ— and recalibrating the software so engines can no longer cheat emissions tests— had paid off and that the matter was behind the company:

*“We fully cooperated with the DOJ's and the SEC's information requests and inquiries and, **based on recent communications with these agencies, we do not expect further inquiries.**”*

The implication that the scandal is in the rear view mirror is disingenuous. In fact, the scope of the investigation into Cummins has widened.

Footnotes Appear to Contradict Cummins' Hint That Scandal is Over

The initial investigation was focused on model year 2019 Dodge Ram 2500 and 3500 engines. However, filings reveal the probe has widened to other model years. Even more troubling, in a footnote Cummins seemingly contradicts its earlier statement that it expects no further inquiries on the matter and discloses it may ultimately be penalized:

*“...**we cannot predict the final outcome of this review and these regulatory processes, and we cannot provide assurance that the matter will not have a materially adverse impact on our results of operations and cash flows.**”*

The expansion of the probe and the possibility of a fine were also disclosed the year prior. We're highlighting them here as they appear to contradict the connotation in the new disclosure that implies no further inquiries on the matter.

In reality, Cummins is likely to hear again from regulators as others accused of similar behavior have:

- Volkswagen paid \$25 billion in penalties for installing emissions cheat devices
- Daimler paid \$1.5 billion in penalties over its emission cheating technology
- Fiat Chrysler paid nearly \$1 billion in penalties for similar activity

It's incomprehensible that Cummins will never again hear from authorities on the matter. The statement is crafted carefully though and only asserts that Cummins doesn't expect further inquiries from the DOJ and SEC. But Cummins' confidence that the SEC will remain hands-off seems optimistic. The SEC charged Volkswagen and its ex-CEO. It also brought legal action against Fiat Chrysler.

The statement could prove accurate though if the company is punished by authorities or regulators other than the DOJ and SEC. If this winds up the case, Cummins' statement will technically be accurate according to the letter of the law, if not the spirit. The implication on page 13 of Cummins' 2020 annual report conveys a much different message to investors than its footnote on page 100.