

**Testimony of Cynthia Giles, Assistant Administrator
Office of Enforcement and Compliance Assurance
and
Janet McCabe, Acting Assistant Administrator
U.S. Environmental Protection Agency
Before the
Subcommittee on Oversight and Investigations
Committee on Energy and Commerce
U.S. House of Representatives**

December 6, 2016

Mr. Chairman, Ranking Member DeGette, distinguished Members of the Subcommittee, I am Cynthia Giles, Assistant Administrator of the U.S. Environmental Protection Agency's Office of Enforcement and Compliance Assurance. I am joined by Janet McCabe, Acting Assistant Administrator in the Office of Air and Radiation. Thank you for the opportunity to testify about the Volkswagen (VW) settlement achieved by the EPA, the Department of Justice and the California Air Resources Board (CARB).

In close coordination with our partners, the EPA achieved a groundbreaking settlement using the authority provided to the EPA by Congress under the Clean Air Act. Our priority from the start was to remedy the damage VW caused when it sent half a million cars onto our roads, emitting amounts of harmful pollution far in excess of reasonably achievable, cost-effective federal standards. These standards are in place to protect the air we breathe, and through this settlement, we are upholding these standards and delivering on our obligation under the Clean Air Act to protect public health for all Americans.

On October 25, 2016, the U.S. District Court for the Northern District of California formally approved the settlement agreement, partially resolving allegations that Volkswagen violated the Clean Air Act by the sale of approximately 500,000 model year 2009 to 2015 motor

vehicles containing 2.0 liter diesel engines equipped with “defeat devices.” The settlement does not resolve pending claims for civil penalties or any claims concerning 3.0 liter diesel vehicles or any potential criminal liability. However, the settlement does hold Volkswagen accountable for its illegal actions, and puts in place remedies for the harm VW caused. The 2.0 liter settlement is made up of three key provisions: 1) VW must offer to buy back or fix the violating cars (if an emissions modification proposal is approved by the EPA and CARB); 2) VW is required to pay \$2.7 billion into a trust account to be used to fund mitigation projects across the country; and 3) VW will invest an additional \$2 billion to promote the development and use of clean vehicle technologies.

Over the course of several years, Volkswagen sold vehicles in the United States that it claimed were “green,” “lower emitting,” and “clean diesel” vehicles. Consumers looking to reduce air pollution purchased these vehicles on the premise that they were clean vehicles. We now know that the vehicles are far from clean. In fact, they emit up to 40 times the allowable levels of NOx pollution. NOx reacts in the atmosphere to form ozone and fine particulate matter which contribute to adverse health effects in communities across the country.

VW’s excess emissions constitute clear and serious violations of the Clean Air Act. This is the nexus of the zero-emission vehicle component of the settlement: the ZEV investment requirement is a court-ordered remedy intended to address the specific harm that VW caused to public health by requiring investments to accelerate the growth of clean transportation and to advance cleaner air in America.

The settlement requires Volkswagen to develop investment plans over a ten-year period totaling \$2 billion nationwide that will increase necessary infrastructure, improve access to ZEVs, and promote education about ZEVs in the United States. "ZEV" means any zero emitting

vehicle, including battery electric vehicles, fuel cell vehicles, and certain on-road plug-in hybrid electric vehicles. This means more people will have opportunities to use ZEVs without having to purchase or lease one, for example through car sharing programs. More drivers of electric cars will find a charge when they need one. And there will be more brand-neutral public outreach efforts across the country about the benefits of ZEVs. Importantly, the agreement does not direct which ZEV technology should be supported. VW makes that determination after considering public input, based on what will most support advances in the ZEV market.

We ensured that the agreement includes strong transparency and accountability measures:

- VW must provide opportunities for stakeholders to provide meaningful input into VW's plans. VW is explicitly required to solicit and consider input from states, municipalities, tribes and other federal agencies before it makes ZEV investment decisions. VW's investment plans will also be available on the internet, and will have to include the evidence and basis for VW's conclusion that the investments will advance use of ZEVs. This robust process of stakeholder input and public transparency will help ensure a credible and effective business investment strategy that will improve air quality in this country and benefit all Americans, regardless of the car they drive.
- VW's ZEV infrastructure investments and its public outreach efforts must be brand neutral. That means that ZEV infrastructure must be accessible to all ZEV vehicles – not just the ones VW makes – utilizing non-proprietary charging equipment. It also means that ZEV outreach cannot feature or favor VW's vehicles. The agreement sets strict limits to make sure VW adheres to this essential requirement so that everyone interested in cleaner transportation – businesses, governments and consumers – will benefit.

- The ZEV investment plan will be updated every 30 months, ensuring that the investments account for changes in ZEV technology and the ZEV market. The updated plans must include comprehensive statements that specify just how the investments will be made, including the locations, schedule, and maintenance, and referencing credible reports and studies that demonstrate that such proposals will advance use of ZEVs in the US. These plans, and the annual reports that VW will prepare to report on its progress, will be publicly available on the internet.

This unprecedented level of transparency will allow researchers, competitors, and other informed commenters to see how effective the investments have been, and to suggest different approaches for the next plan that might work better. We are expecting that the information that VW is required to make public under the agreement will spark some interesting public discussion about the best approaches.

VW's ZEV investments have specific limits and boundaries clearly stated in the settlement. They must be above and beyond whatever investments VW had already planned to make – VW gets no credit for plans already in the works before the EPA made the violations public, or for things that VW has to do to comply with the law. ZEV investments under the agreement have to be directly related to the specific purpose of the agreement, which is to advance use of ZEVs, and certain costs are not allowable, such as legal, administrative, taxes and other costs not directly related to the required categories of investment. An independent third party accountant will review and audit all expenditures to check that VW is meeting all the rules.

All federal, state and local laws, permitting requirements and other provisions apply to VW as they do to any other company. Nothing in the settlement allows VW to do anything that it could not do without the agreement.

The EPA's role in the ZEV investment agreement is limited but essential: the EPA, working with the Department of Justice, will ensure that VW complies with the requirements for stakeholder engagement, that the investments VW makes in infrastructure and outreach are truly brand neutral, and that VW complies with all the terms of the settlement, including that Volkswagen's plan is informed by the input it gets from stakeholders and by the changing market conditions.

This settlement ensures that Volkswagen finally delivers on the promise it made for cleaner air and a cleaner transportation future, in a way that incorporates meaningful input from the many interested stakeholders.

Thank you for the opportunity to testify. We would be happy to answer any questions.