

**IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF VIRGINIA, ROANOKE DIVISION**

DOUGLAS ELWOOD LINDAMOOD, JR.,)

Plaintiff,)

v.)

SCOTT PRUITT, ADMINISTRATOR OF THE UNITED)
STATES ENVIRONMENTAL PROTECTION AGENCY,)

7:18CV129

VOLKSWAGEN GROUP OF AMERICA, INC.,)

PORSCHE CARS NORTH AMERICA, INC.,)

Defendants.)

COMPLAINT

1. This is a "citizen's suit" brought pursuant to 42 U.S.C. §7604(a). This Court has jurisdiction pursuant to 42 U.S.C. §7604(a). This Court has Federal Question Jurisdiction pursuant to 28 U.S.C. §1331. As this suit seeks enforcement of emission standards or limitations related to moving sources of pollution, venue is proper in any District Court, including this one. 42 U.S.C. §7604(c). Venue is also proper in the Western District of Virginia pursuant to 28 U.S.C. §1391(d) and (e) and pursuant to Western District of Virginia Local Rule 2(b).

2. Douglas Elwood Lindamood, Jr., Plaintiff, is a citizen of Virginia and resides in Roanoke, Virginia. He is the owner of a 2012 Volkswagen Passat, VIN 1WVCN7A39CC054302 which was purchased on February 28, 2012. Mr. Lindamood excluded himself from all class action litigation pending in Multidistrict Litigation 2672 (MDL 2672). Mr. Lindamood gave proper notice of his intent to enforce the Clean Air Act as required by 40 C.F.R. 54.1 *et seq.* on December 8, 2016 and on August 14, 2017.

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3. Volkswagen Group of America, Inc. is the manufacturer and distributor of allegedly "Clean Diesel" vehicles, as is Porsche Cars North America, Inc. Collectively they are responsible for the sale of the following motor vehicles in the United States:

Model Year	EPA Test Group	Make and Model(s)
2009	9VWXV02.035N	VW Jetta, VW Jetta Sportwagen
2009	9VWXV02.0U5N	VW Jetta, VW Jetta Sportwagen
2010	AVWXV02.0U5N	VW Golf, VW Jetta, VW Jetta Sportwagen, Audi A3
2011	BVWXV02.0U5N	VW Golf, VW Jetta, VW Jetta Sportwagen, Audi A3
2012	CVWXV02.0U5N	VW Beetle, VW Beetle Convertible, VW Golf, VW Jetta, VW Jetta Sportwagen, Audi A3
2012	CVWXV02.0U4S	VW Passat
2013	DVWXV02.0U5N	VW Beetle, VW Beetle Convertible, VW Golf, VW Jetta, VW Jetta Sportwagen, Audi A3
2013	DVWXV02.0U4S	VW Passat
2014	EVWXV02.0U5N	VW Beetle, VW Beetle Convertible, VW Golf, VW Jetta, VW Jetta Sportwagen, Audi A3
2014	EVWXV02.0U4S	VW Passat
2015	FVGAV02.0VAL	VW Beetle, VW Beetle Convertible, VW Golf, VW Golf Sportwagen, VW Jetta, VW Passat, Audi A3
2014	EADXT03.02UG	VW Touareg
2015	FPRXT03.0CDD	Porsche Cayenne
2016	GVGAJ03.0NU4	Audi A6 Quattro, A7 Quattro, A8, A8L, and Q5

4. The facts giving rise to this case are admitted by virtue of a Rule 11 Plea Agreement entered in the case of United States v. Volkswagen AG, No. 16-CR-20394,

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filed in the U.S. District Court Eastern District of Michigan. The facts found in what is known as "Exhibit Two" of the Rule 11 Plea Agreement were stipulated to be true, accurate, and admissible in any proceeding. The "Exhibit Two" is attached hereto as Exhibit 1 and is expressly incorporated herein by reference.

5. As described in the attached Exhibit 1, the Defendants illegally manufactured, distributed, and sold in the United States approximately 590,000 vehicles equipped with defeat devices. 42 U.S.C §7522(a)(1) and 40 C.F.R. §86.1854-12(a)(1) prohibits the importation into and sale of a new motor vehicle in the United States unless the vehicle is covered by a valid certificate of conformity. Motor vehicles equipped with defeat devices, such as these described here, cannot be certified. See, EPA, "Advisory Circular Number 24: Prohibition on Use of Emission Control Defeat Device (Dec. 11, 1972)"; See also 40 C.F.R. §§86-1809-01, 86-1809-10, 86-1809-12. "*Vehicles are covered by a certificate of conformity only if they are in all material respects as described in the manufacturer's application for certification...*" 40 C.F.R. §86.1848-10(c)(G). The Certificates of Conformity issued to VW for the vehicles described expressly stated "*This certificate covers only those new motor vehicles or vehicle engines which conform, in all material respects, to the design specifications*" described in the application for that certificate. To date, the EPA has illegally allowed the importation and sale of the Subject Vehicles to exist.

6. The vehicles listed above violate the emission limitations, standards of performance and/or emission standards established by the Clean Air Act and regulations promulgated thereto. These vehicles release up to 40 times above the EPA compliant level, depending on the model and whether the vehicle is driven in the city or highway. This violates the emission standards set in 40 C.F.R. §86.1811-04.

7. These vehicles do not comply with the emission limitations, standards of performance, and/or emission standards because they are equipped with a “defeat device”. 42 U.S.C. §7522(a)(3)(B) and 40 C.F.R. §86.1854-12(a)(3)(ii) prohibits “*any person to manufacture or sell, or offer to sell, or install, any part or component intended for use with, or as part of, any motor vehicle or motor vehicle engine, where a principal effect of the part or component is to bypass, defeat or render inoperative any device or element of design installed on or in a motor vehicle or motor vehicle engine in compliance with regulations under this subchapter, and where the person knows or should know that such part or component is being offered for sale or installed for such use or put to such use.*”

8. The EPA-approved State Implementation Plans of at least 17 States make it illegal to operate a motor vehicle with an inoperable emission system. EPA-approved State Implementation Plans are enforceable as provided by 42 U.S.C. §7604(a). See, North Carolina, ex rel Cooper v. Tennessee Valley Authority, 615 F.3d 291, 299 (4th Cir. 2010) citing Her Majesty the Queen v. City of Detroit, 874 F.2d 332, 335 (6th Cir. 1989).

The EPA-approved State Implementation Plans prohibiting the use of motor vehicles with inoperable emission systems are:

Alabama

Ala. Admin. Code 335-3-9-.04

(3) Other Exhaust Emission Control Systems.

Any other exhaust emission control system, other than air injection or engine modification which is installed or incorporated in a motor vehicle in compliance with Federal motor vehicle pollution control regulations, shall be maintained in good operable conditions as specified by the manufacturer and shall be used at all times that the motor vehicle is operated.

Original: 39 FR 14338

Revision 55 FR 10062

Arizona

Ariz. Admin. Code R18-2-1029

For the purposes of A.R.S. §§ 28-955 and 49-447, a registered motor vehicle shall have in operating condition all emission control devices installed by the vehicle manufacturer to comply with federal requirements for motor vehicle emissions or equivalent after-market replacement parts or devices.

68 FR 2912

Connecticut

Conn. Agencies Regs. 14-164c-4a

(a) Any motor vehicle presented for inspection which is required, pursuant to the regulations of the Commissioner of Environmental Protection as authorized by sections 14-164c and 22a-174 of the Connecticut General Statutes, to be equipped with an "air pollution control system or mechanism," as defined by subsection (a) of section 22a-174-200 of the Regulations of Connecticut State Agencies, shall be deemed to have failed to meet emissions standards if such control system or mechanism is found to have been removed, to have been dismantled or is otherwise inoperable. Such control system or mechanism may be inspected prior to emissions inspection, during emissions inspection, after a vehicle has failed a required emissions inspection, or in connection with on-road testing.

(b) Any motor vehicle not meeting emissions standards pursuant to subsection (a) of this section, whether during periodic emissions inspection or on-road testing, shall be required to pass a reinspection within thirty (30) days of such failure or the owner thereof shall be subject to denial of registration for such vehicle as provided in subsection (n) of section 14-164c of the Connecticut General Statutes.

73 FR 74019

Delaware (applies to Sussex County only)

7 Del. Admin. Code 1126-3.0

Also cited as Code Del. Regs. 7 1000 1126

Effective January 1, 1983, no motor vehicle that is subject to this regulation may be granted registration in the State of Delaware unless the motor vehicle is in compliance with the applicable emissions standards, regardless of its pass/fail status of other tests normally performed at the official inspection station.

75 FR 48566

District of Columbia

18 DCMR Chapter 7

Section 751

751. Compliance with Exhaust Emission Standards

751.1 No motor vehicle shall be allowed to operate on the streets or highways of the District that does not comply with the exhaust emission standards prescribed pursuant to §752, except as provided in this section.

751.2 After December 31, 1982, no owner of a motor vehicle shall operate or allow the operation of a vehicle on the streets and highways of the District that does not comply with the exhaust emission standards prescribed pursuant to §752, except as provided in this section.

64 FR 31498

Georgia (vehicle emissions regulations only apply to certain counties)

Ga. Comp. R. & Regs. 391-3-20-.06

(1) Covered vehicles are expected to meet emission standards at all times. EPD may use remote sensing technology or other methods established by the Director to identify covered vehicles that appear to be producing exhaust emissions in excess of the applicable emission standards. EPD may notify the owner of an identified vehicle to present his or her vehicle for an emission inspection under Rules 391-3-20-.04 and 391-3-20-.05. An owner so notified by EPD must present his or her vehicle for an emission inspection within thirty (30) days. Vehicles which fail such inspection shall be required to be re-inspected and pass such re-inspection as required by Rule 391-3-20-.15.

Original: 62 FR 42916

Revision 67 FR 45909

Revision 68 FR 40786

Hawaii

Haw. Code R. 11-60.1-34

(d) No person shall remove, dismantle, fail to maintain, or otherwise cause to be inoperative any equipment or feature constituting an operational element of the air pollution control system or mechanism of a motor vehicle as required by the provisions of the Act except as permitted or authorized by law. 77 FR 25084

Illinois

Ill. Admin. Code tit. 35, § 240.103

Except as permitted or authorized by law, no person shall fail to maintain in good working order or remove, dismantle or otherwise cause to be inoperative any equipment or feature constituting an operational element of the air pollution control systems or mechanisms of a motor vehicle as required by rules or regulations of the Board and the United States Environmental Protection Agency to be maintained in or on the vehicle.

79 FR 47377

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Maryland

COMAR 11.14.08.06

11.14.08.06 Certificates

C. Fail Certificate.

(1) If a vehicle inspected at a vehicle emissions inspection station does not meet all applicable standards specified in Regulation .09 of this chapter during an inspection, the vehicle is considered not to be in compliance and the contractor shall issue a fail certificate which includes the following information:

(a) The type of failure and the reason for failure; and

(b) A statement indicating any availability of warranty coverage as provided by the Clean Air Act, 42 U.S.C. §7541.

(2) A vehicle issued a fail certificate may be operated through the period of permitted operation.

(3) A person may not operate a vehicle after the end of the period of permitted operation unless a pass certificate or a waiver certificate has been issued for the vehicle or the vehicle owner has been granted a time extension.

68 FR 2208

Minnesota

Minn. R. 7023.0120

No person shall remove, alter, or otherwise render inoperative any air pollution control system.

No person shall operate a motor vehicle unless all air pollution control systems are in place and in operating condition.

No person shall rent, lease, offer for sale, or in any manner transfer ownership of a motor vehicle unless all air pollution control systems are in place and in operating condition.

The requirements of this part shall not restrict or prohibit the removal of any air pollution control system for repair or replacement.

EPA has no notation for a FR citation for this regulation, but states that it is effective for federal purposes as of 7/21/1982.

<https://yosemite.epa.gov/r5/r5ard.nsf/977585e33633852b862575750057311a/712f45796868ba338625756f004c429e!OpenDocument>

Nevada

Nev. Admin. Code 445B.575

1. Except as otherwise provided in this section, a person shall not:
 - (a) Sell, offer to sell, display for sale, operate or permit the operation of or leave standing any motor vehicle which is required by state or federal law to be equipped with a device for the control of pollution unless the device is correctly installed and in operating condition in accordance with the specifications of the vehicle manufacturer and any applicable state or federal statute or regulation.
 - (b) Disconnect, alter or modify any such required device.
- 73 FR 38124

New Jersey

N.J. Admin. Code § 7:27-14.3

- (e) No person shall cause, suffer, allow or permit any emission control apparatus or element of design installed on any diesel-powered motor vehicle or diesel engine to be disconnected, detached, deactivated, or in any other way rendered inoperable or less effective, in respect to limiting or controlling emissions than it was designed to be by the original equipment or vehicle manufacturer, except for the purposes of diagnostics, maintenance, repair or replacement and only for the duration of such operations.
- 74 FR 17781

North Dakota

N.D. Admin. Code 33-15-08-02

1. No person shall intentionally remove, alter, or otherwise render inoperative, exhaust emission control, crankcase ventilation, or any other air pollution control device which has been installed as a requirement of federal law or regulation.
 2. No person shall operate a motor vehicle originally equipped with air pollution control devices as required by federal law or regulation unless such devices are in place and in operating condition.
- 44 FR 63102

Rhode Island

R.I. Code R. 47-1-37:1.12

- (f) Operation of a Non-Complying Vehicle. No person may register or continue to operate on the highways of Rhode Island, a motor vehicle which is subject to the provisions of Rhode Island I/M Program which is not in compliance with the requirements thereof.
- 66 FR 9661

Virginia

9 VAC 5-40-5670. Motor vehicles.

A. Emission control systems.

1. No owner or other person shall cause or permit the removal, disconnection or disabling of a crankcase emission control system or device, exhaust emission control system or device, fuel evaporative emission control system or device, or other air pollution control system or device which has been installed on a motor vehicle in accordance with federal laws and regulations while such motor vehicle is operating in the Commonwealth of Virginia.

2. No owner or other person shall attempt to defeat the purpose of any such motor vehicle pollution control system or device by installing any part or component which is not a standard factory replacement part or component of the device.

3. No motor vehicle or engine shall be operated with the motor vehicle pollution control system or device removed or otherwise rendered inoperable

65 FR 21315

Wisconsin

Wis. Admin. Code NR § 485.06

(1) No person may tamper with or fail to maintain in good working order any air pollution control equipment which has been installed on a motor vehicle by the manufacturer prior to sale unless the person repairs or restores the equipment or replaces the equipment with new identical or comparable tested replacement equipment. Catalytic converters must be original equipment or EPA-certified equipment except as specified in sub.

(2). Air pollution control equipment includes but is not limited to:

(a) Positive crankcase ventilation equipment.

(b) Exhaust emission control equipment.

(c) Evaporative fuel loss control equipment.

(d) Any control equipment operating on principles such as thermal decomposition, catalytic oxidation or reduction, absorption, or adsorption.

78 FR 57501

Wyoming

Wyo. Admin. Code § ENV AQ Ch. 13 s 2

(a) No person shall intentionally remove, alter or otherwise render ineffective or inoperative, exhaust emission control crank case ventilation or any other air pollution control device or system which has been installed on a motor vehicle or stationary internal combustion engine as a requirement of any federal law or regulation.

(b) No person shall operate a motor vehicle or other internal combustion engine originally equipped with air pollution devices or systems as required by any federal law or regulation unless such devices or systems are in place and in operating condition.

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9. 42 U.S.C. §7413 requires the Administrator of the EPA to notify any person who is in violation of any requirement or prohibition of any applicable State Implementation Plan. The Administrator of the EPA has not fulfilled or executed this statutorily-mandated, non-discretionary requirement of the law. The Administrator of the EPA is also under a legal duty created by 42 U.S.C. §7413 to notify the States listed above that the owners and lessees of the Dirty Diesel vehicles are in violation of the requirements or prohibition of that State's applicable Implementation Plan. The Administrator, on information and belief, has failed to fulfill this statutorily-mandated non-discretionary duty. 42 U.S.C. §7413 requires the Administrator to notify the States listed above that there are undisputed violations of those States' applicable State Implementation Plans resulting from a failure of those States to enforce the Plan effectively. The Administrator, on information and belief has failed to perform this statutorily-mandated non-discretionary duty.

10. The Administrator of the Environmental Protection Agency refuses to enforce the Clean Air Act, regulations enacted in the enforcement thereof, and the EPA-approved State Implementation Plans promulgated thereto. The EPA has expressly stated it will not enforce the law and has illegally declared the 590,000 vehicles with defeat devices are legal to sell and legal to operate. See, Press Release dated September 18, 2015, a copy of which is attached hereto as Exhibit 2. The EPA has violated "*The core administrative-law principle that an agency may not rewrite clear statutory terms to suit its own sense of how the statute should operate.*" Utility Air Regulatory Group v. EPA, 134 S.Ct. 2427, 2446 (2014).

11. At no time or place has the Administrator or the EPA informed the owners or lessees of the Subject Vehicles that their vehicles are illegal to import into the United States because of 42 U.S.C. §7522(a)(1) and regulations enacted in enforcement

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thereof; at no time or place has the Administrator or the EPA informed the owners or lessees that the Subject Vehicles are illegal to sell because of 42 U.S.C. §7522(a)(1), 42 U.S.C. §7522(3)(B) and regulations enacted in enforcement thereof; at no time or place has the Administrator or the EPA informed the owners or lessees that the Subject Vehicles are illegal to operate because of exceeding the emission standards set in 40 C.F.R. §86.1811-04; at no time or place has the Administrator or the EPA informed the owners or lessees that the Subject Vehicles are illegal to operate because of the State Implementation Plans of at least 17 States including Alabama, Arizona, Connecticut, Delaware, District of Columbia, Georgia, Hawaii, Illinois, Maryland, Minnesota, Nevada, New Jersey, North Dakota, Rhode Island, Virginia, Wisconsin, and Wyoming as required by 42 U.S.C. §7413. To the contrary, the EPA has openly told the public the vehicles are legal to drive, legal to operate, and that no one will take their cars away from them. The EPA has no authority to change the expressed will of Congress to suit its own political purposes.

12. On information and belief, based on recent published reports, there are approximately 257,304 of the Subject Vehicles currently in use illegally on the roads in the United States. Furthermore, there are approximately 332,696 of the Subject Vehicles which have been removed from use but, on information and belief, remain in the United States, including several thousand Subject Vehicles parked along the James River in Campbell County, Virginia, within the Western District of Virginia.

PRAYER FOR RELIEF

COUNT ONE

13. The allegations of ¶¶ 1-12 are re-pled and incorporated herein by reference.

14. There are approximately 590,000 Subject Vehicles in the United States. These vehicles were brought into the United States illegally because they do not have a valid

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certificate of conformity. Obtaining a valid certificate of conformity is a “*schedule or timetable of compliance*” as the phrase is used in 42 U.S.C. §7604(f)(1). 42 U.S.C. §7602(p) states “*The term ‘schedule and timetable of compliance’ means a schedule of required measures including an enforceable sequence of actions or operations leading to compliance with an emission limitation, other limitation, prohibition or standard.*” Congress “*prohibited*” the importation of new motor vehicles without a certificate of conformity. By promulgation of 40 C.F.R. §86.1854-12 the Administrator “*prohibited*” the importation of new motor vehicles without a valid certificate of conformity. If something is prohibited, it cannot be allowed to exist or to continue. Mr. Lindamood moves the Court for an injunction directing that every Subject Vehicle brought into the United States without a valid certificate of conformity must be removed from the United States at the expense of Volkswagen Group of America, Inc.

COUNT TWO

15. The allegations of ¶¶ 1-12 are re-pled and incorporated herein by reference.

16. The Administrator has information available to him to find that thousands of people have violated and continue to violate the requirements or prohibitions of the State Implementation Plans of Alabama, Arizona, Connecticut, Delaware, District of Columbia, Georgia, Hawaii, Illinois, Maryland, Minnesota, Nevada, New Jersey, North Dakota, Rhode Island, Virginia, Wisconsin, and Wyoming by operating the subject vehicles with inoperable emission systems. 42 U.S.C. §7413 creates a mandatory, non-discretionary duty on the part of the Administrator to notify the person and the State in which the plan applies of such finding. See, 42 U.S.C. §7413(a)(1). Furthermore, the Administrator has a mandatory, non-discretionary duty to notify the State whenever, on the basis of information available to the Administrator, it is known that there are widespread violations of a State Implementation Plan which appear to result from a

failure of the State in which the Plan applies to enforce the Plan effectively. On information and belief, the States of Alabama, Arizona, Connecticut, Delaware, District of Columbia, Georgia, Hawaii, Illinois, Maryland, Minnesota, Nevada, New Jersey, North Dakota, Rhode Island, Virginia, Wisconsin, and Wyoming have agreed not to enforce the terms of their State Implementation Plans by allowing the Subject Vehicles with inoperable emission systems to stay in use on the public roadways.

17. The Plaintiff seeks an injunction compelling the Administrator to utilize the provisions of 40 C.F.R. §85.1803(b)(2) to identify the owners of each Subject Vehicle remaining in use in the States of Alabama, Arizona, Connecticut, Delaware, District of Columbia, Georgia, Hawaii, Illinois, Maryland, Minnesota, Nevada, New Jersey, North Dakota, Rhode Island, Virginia, Wisconsin, and Wyoming. Upon learning the names and addresses of the registered owners of the Subject Vehicles in each of the 17 States, the Plaintiff moves the Court for an injunction compelling the Administrator to notify the person and inform them it is illegal to sell and to operate their Subject Vehicle. The Administrator must be enjoined to inform the person in violation of the penalties applicable to violating the State Implementation Plan, and the Clean Air Act, and that they must take immediate steps to remove their vehicles from use on the roadways of the United States. The Administrator must be enjoined to notify the person in violation that they must report what steps they have taken to remove their Subject Vehicle from use. If the Administrator does not elect to enforce the law after 30-days of such notice, the Plaintiff will issue the required statutory and regulatory notice to the person in violation, and after 60-days from such notice, move to join such person as a party-defendant to this suit to compel compliance with the Clean Air Act pursuant to 42 U.S.C. §7604. The Administrator must be enjoined to report to the Plaintiff all actions he is

taking to comply with 42 U.S.C. §7413 so the Plaintiff can confirm compliance by the Administrator.

COUNT THREE

18. The allegations of ¶¶ 1-12 are re-pled and incorporated herein by reference. The Plaintiff moves the Court for payment of attorney fees and costs associated with and incurred from enforcement of the Clean Air Act. The Plaintiff also moves the Court for all further injunctive relief that law and equity may seem meet.

Respectfully Submitted,

DOUGLAS ELWOOD LINDAMOOD, JR.

By: 

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Counsel for Plaintiff

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
 Douglas Elwood Lindemood, Jr.

(b) County of Residence of First Listed Plaintiff Roanoke, VA
 (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
 James B. Feinman, Esq.
 P.O. Box 697, Lynchburg, VA 24505
 434-846-9603

DEFENDANTS Scott Pruitt, Admin. of the U.S. Environmental Protection Agency; Volkswagen Group of America, Inc.; Porsche Cars North America, Inc.
 County of Residence of First Listed Defendant
 (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

1 U.S. Government Plaintiff

3 Federal Question (U.S. Government Not a Party)

2 U.S. Government Defendant

4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS			
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from Another District (specify) 6 Multidistrict Litigation - Transfer 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
42 U.S.C. § 7604


Brief description of cause: Citizen's Suit to enforce the Clean Air Act.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. **DEMAND \$** _____

CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (See instructions) JUDGE _____ DOCKET NUMBER _____

DATE 3-26-18 SIGNATURE OF ATTORNEY OF RECORD 

FOR OFFICE USE ONLY

RECEIPT # 0423- AMOUNT \$400.00 APPLYING IFP _____ JUDGE Conrad MAG. JUDGE _____

2863913

EXHIBIT 2

STATEMENT OF FACTS

The following Statement of Facts is incorporated by reference as part of the Plea Agreement (the "Agreement") between the United States Department of Justice (the "Department") and Volkswagen AG ("VW AG"). VW AG hereby agrees and stipulates that the following information is true and accurate. VW AG admits, accepts, and acknowledges that under U.S. law it is responsible for the acts of its employees set forth in this Statement of Facts, which acts VW AG acknowledges were within the scope of the employees' employment and, at least in part, for the benefit of VW AG. All references to legal terms and emissions standards, to the extent contained herein, should be understood to refer exclusively to applicable U.S. laws and regulations, and such legal terms contained in this Statement of Facts are not intended to apply to, or affect, VW AG's rights or obligations under the laws or regulations of any jurisdiction outside the United States. This Statement of Facts does not contain all of the facts known to the Department or VW AG; the Department's investigation into individuals is ongoing. The following facts took place during the time frame specified in the Third Superseding Information and establish beyond a reasonable doubt the charges set forth in the criminal Information attached to this Agreement:

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Relevant Entities and Individuals

1. VW AG was a motor vehicle manufacturer based in Wolfsburg, Germany. Under U.S. law, VW AG acts through its employees, and conduct undertaken by VW AG, as described herein, reflects conduct undertaken by employees. Pursuant to applicable German stock corporation law, VW AG was led by a Management Board that was supervised by a Supervisory Board. Solely for purposes of this Statement of Facts, unless otherwise indicated, references in this Statement of Facts to “supervisors” are to senior employees below the level of the VW AG Management Board.

2. Audi AG (“Audi”) was a motor vehicle manufacturer based in Ingolstadt, Germany and a subsidiary approximately 99.55% owned by VW AG. Under U.S. law, Audi AG acts through its employees, and conduct undertaken by Audi AG, as described herein, reflects conduct undertaken by employees.

3. Volkswagen Group of America, Inc. (“VW GOA”) was a wholly-owned subsidiary of VW AG based in Herndon, Virginia. Under U.S. law, VW GOA acts through its employees, and conduct undertaken by VW GOA, as described herein, reflects conduct undertaken by employees.

4. VW AG, Audi AG, and VW GOA are collectively referred to herein as “VW.”

Exh. 2-2

5. "VW Brand" was an operational unit within VW AG that developed vehicles to be sold under the "Volkswagen" brand name.

6. Company A was an automotive engineering company based in Berlin, Germany, which specialized in software, electronics, and technology support for vehicle manufacturers. VW AG owned fifty percent of Company A's shares and was Company A's largest customer.

7. "Supervisor A," an individual whose identity is known to the United States and VW AG, was the supervisor in charge of Engine Development for all of VW AG from in or about October 2012 to in or about September 2015. From July 2013 to September 2015, Supervisor A also served as the supervisor in charge of Development for VW Brand, where he supervised a group of approximately 10,000 VW AG employees. From in or about October 2011, when he joined VW, until in or about July 2013, Supervisor A served as the supervisor in charge of the VW Brand Engine Development department.

8. "Supervisor B," an individual whose identity is known to the United States and VW AG, was a supervisor in charge of the VW Brand Engine Development department from in or about May 2005 to in or about April 2007.

9. "Supervisor C," an individual whose identity is known to the United States and VW AG, was a supervisor in charge of the VW Brand Engine Development department from in or about May 2007 to in or about March 2011.

Exh. 2-3

10. "Supervisor D," an individual whose identity is known to the United States and VW AG, was a supervisor in charge of the VW Brand Engine Development department from in or about October 2013 to the present.

11. "Supervisor E," an individual whose identity is known to the United States and VW AG, was a supervisor with responsibility for VW AG's Quality Management and Product Safety department who reported to the supervisor in charge of Quality Management from in or about 2007 to in or about October 2014.

12. "Supervisor F," an individual whose identity is known to the United States and VW AG, was a supervisor within the VW Brand Engine Development department from in or about 2003 until in or about December 2012.

13. "Attorney A," an individual whose identity is known to the United States and VW AG, was a German-qualified in-house attorney for VW AG who was the in-house attorney principally responsible for providing legal advice in connection with VW AG's response to U.S. emissions issues from in or about May 2015 to in or about September 2015.

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U.S. NOx Emissions Standards

14. The purpose of the Clean Air Act and its implementing regulations was to protect human health and the environment by, among other things, reducing emissions of pollutants from new motor vehicles, including nitrogen oxides (“NOx”).

15. The Clean Air Act required the U.S. Environmental Protection Agency (“EPA”) to promulgate emissions standards for new motor vehicles. The EPA established standards and test procedures for light-duty motor vehicles sold in the United States, including emission standards for NOx.

16. The Clean Air Act prohibited manufacturers of new motor vehicles from selling, offering for sale, introducing or delivering for introduction into U.S. commerce, or importing (or causing the foregoing with respect to) any new motor vehicle unless the vehicle complied with U.S. emissions standards, including NOx emissions standards, and was issued an EPA certificate of conformity.

17. To obtain a certificate of conformity, a manufacturer was required to submit an application to the EPA for each model year and for each test group of vehicles that it intended to sell in the United States. The application was required to be in writing, to be signed by an authorized representative of the manufacturer, and to include, among other things, the results of testing done pursuant to the published Federal Test Procedures that measure NOx emissions, and a description

Exh. 2-5

of the engine, emissions control system, and fuel system components, including a detailed description of each Auxiliary Emission Control Device ("AECD") to be installed on the vehicle.

18. An AECD was defined under U.S. law as "any element of design which senses temperature, vehicle speed, engine RPM, transmission gear, manifold vacuum, or any other parameter for the purpose of activating, modulating, delaying, or deactivating the operation of any part of the emission control system." The manufacturer was also required to include a justification for each AECD. If the EPA, in reviewing the application for a certificate of conformity, determined that the AECD "reduced the effectiveness of the emission control system under conditions which may reasonably be expected to be encountered in normal vehicle operation and use," and that (1) it was not substantially included in the Federal Test Procedure, (2) the need for the AECD was not justified for protection of the vehicle against damage or accident, or (3) it went beyond the requirements of engine starting, the AECD was considered a "defeat device." Whenever the term "defeat device" is used in this Statement of Facts, it refers to a defeat device as defined by U.S. law.

19. The EPA would not certify motor vehicles equipped with defeat devices. Manufacturers could not sell motor vehicles in the United States without a certificate of conformity from the EPA.

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20. The California Air Resources Board ("CARB") (together with the EPA, "U.S. regulators") issued its own certificates, called executive orders, for the sale of motor vehicles in the State of California. To obtain such a certificate, the manufacturer was required to satisfy the standards set forth by the State of California, which were equal to or more stringent than those of the EPA.

21. As part of the application for a certification process, manufacturers often worked in parallel with the EPA and CARB. To obtain a certificate of conformity from the EPA, manufacturers were required to demonstrate that the light-duty vehicles were equipped with an on-board diagnostic ("OBD") system capable of monitoring all emissions-related systems or components. Manufacturers could demonstrate compliance with California OBD standards in order to meet federal requirements. CARB reviewed applications from manufacturers, including VW, to determine whether their OBD systems were in compliance with California OBD standards, and CARB's conclusion would be included in the application the manufacturer submitted to the EPA.

22. In 1998, the United States established new federal emissions standards that would be implemented in separate steps, or Tiers. Tier II emissions standards, including for NOx emissions, were significantly stricter than Tier I. For light-duty vehicles, the regulations required manufacturers to begin to phase in compliance with the new, stricter Tier II NOx emissions standards in 2004 and required

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manufacturers to fully comply with the stricter standards for model year 2007. These strict U.S. NOx emissions standards were applicable specifically to vehicles in the United States.

VW Diesel Vehicles Sold in the United States

23. In the United States, VW sold, offered for sale, introduced into commerce, delivered for introduction into commerce, imported, or caused the foregoing actions (collectively, "sold in the United States") the following vehicles containing 2.0 liter diesel engines ("2.0 Liter Subject Vehicles"):

- a. Model Year ("MY") 2009-2015 VW Jetta;
- b. MY 2009-2014 VW Jetta Sportwagen;
- c. MY 2010-2015 VW Golf;
- d. MY 2015 VW Golf Sportwagen;
- e. MY 2010-2013, 2015 Audi A3;
- f. MY 2013-2015 VW Beetle and VW Beetle Convertible; and
- g. MY 2012-2015 VW Passat.

24. VW sold in the United States the following vehicles containing 3.0 liter diesel engines ("3.0 Liter Subject Vehicles"):

- a. MY 2009-2016 VW Touareg;
- b. MY 2009-2015 Audi Q7;
- c. MY 2014-2016 Audi A6 Quattro;

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- d. MY 2014-2016 Audi A7 Quattro;
- e. MY 2014-2016 Audi A8L; and
- f. MY 2014-2016 Audi Q5.

25. VW GOA's Engineering and Environmental Office ("EEO") was located in Auburn Hills, Michigan, in the Eastern District of Michigan. Among other things, EEO prepared and submitted applications (the "Applications") for a certificate of conformity and an executive order (collectively, "Certificates") to the EPA and CARB to obtain authorization to sell each of the 2.0 Liter Subject Vehicles and 3.0 Liter Subject Vehicles in the United States (collectively, the "Subject Vehicles"). VW GOA's Test Center California performed testing related to the Subject Vehicles.

26. VW AG developed the engines for the 2.0 Liter Subject Vehicles. Audi AG developed the engines for the 3.0 Liter Subject Vehicles and the MY 2013-2016 Porsche Cayenne diesel vehicles sold in the United States (the "Porsche Vehicles").

27. The Applications to the EPA were accompanied by the following signed statement by a VW representative:

The Volkswagen Group states that any element of design, system, or emission control device installed on or incorporated in the Volkswagen Group's new motor vehicles or new motor vehicle engines for the purpose of complying with standards prescribed under section 202 of the Clean Air Act, will not, to the best of the Volkswagen Group's information and belief,

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cause the emission into the ambient air of pollutants in the operation of its motor vehicles or motor vehicle engines which cause or contribute to an unreasonable risk to public health or welfare except as specifically permitted by the standards prescribed under section 202 of the Clean Air Act. The Volkswagen Group further states that any element of design, system, or emission control device installed or incorporated in the Volkswagen Group's new motor vehicles or new motor vehicle engines, for the purpose of complying with standards prescribed under section 202 of the Clean Air Act, will not, to the best of the Volkswagen Group's information and belief, cause or contribute to an unreasonable risk to public safety.

...

All vehicles have been tested in accordance with good engineering practice to ascertain that such test vehicles meet the requirement of this section for the useful life of the vehicle.

28. Based on the representations made by VW employees in the Applications for the Subject Vehicles, EPA and CARB issued Certificates for these vehicles, allowing the Subject Vehicles to be sold in the United States.

29. Upon importing the Subject Vehicles into the United States, VW disclosed to U.S. Customs and Border Protection ("CBP") that the vehicles were covered by valid Certificates by affixing an emissions label to the vehicles' engines. These labels stated that the vehicles conformed to EPA and CARB emissions regulations. VW affixed these labels to each of the Subject Vehicles that it imported into the United States.

30. VW represented to its U.S. customers, U.S. dealers, U.S. regulators and others in the United States that the Subject Vehicles met the new and stricter

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U.S. emissions standards identified in paragraph 22 above. Further, VW designed a specific marketing campaign to market these vehicles to U.S. customers as “clean diesel” vehicles.

VW AG's Criminal Conduct

31. From approximately May 2006 to approximately November 2015, VW AG, through Supervisors A-F and other VW employees, agreed to deceive U.S. regulators and U.S. customers about whether the Subject Vehicles and the Porsche Vehicles complied with U.S. emissions standards. During their involvement with design, marketing and/or sale of the Subject Vehicles and the Porsche Vehicles in the United States, Supervisors A-F and other VW employees:

(a) knew that the Subject Vehicles and the Porsche Vehicles did not meet U.S. emissions standards; (b) knew that VW was using software to cheat the U.S. testing process by making it appear as if the Subject Vehicles and the Porsche Vehicles met U.S. emissions standards when, in fact, they did not; and (c) attempted to and did conceal these facts from U.S. regulators and U.S. customers.

The 2.0 Liter Defeat Device in the United States

32. In at least in or about 2006, VW AG employees working under the supervision of Supervisors B, C, and F were designing the new EA 189 2.0 liter diesel engine (later known as the Generation 1 or “Gen 1”) for use in the United States that would be the cornerstone of a new project to sell passenger diesel

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vehicles in the United States. Selling diesel vehicles in the U.S. market was an important strategic goal of VW AG. This project became known within VW as the "US'07" project.

33. Supervisors B, C, and F, and others, however, realized that VW could not design a diesel engine that would both meet the stricter U.S. NOx emissions standards that would become effective in 2007 and attract sufficient customer demand in the U.S. market. Instead of bringing to market a diesel vehicle that could legitimately meet the new, more restrictive U.S. NOx emissions standards, VW AG employees acting at the direction of Supervisors B, C, and F and others, including Company A employees, designed, created, and implemented a software function to detect, evade and defeat U.S. emissions standards.

34. While employees acting at their direction designed and implemented the defeat device software, Supervisors B, C, and F, and others knew that U.S. regulators would measure VW's diesel vehicles' emissions through standard U.S. tests with specific, published drive cycles. VW AG employees acting at the direction of Supervisors B, C, and F, and others designed the VW defeat device to recognize whether the vehicle was undergoing standard U.S. emissions testing on a dynamometer (or "dyno") or whether the vehicle was being driven on the road under normal driving conditions. The defeat device accomplished this by recognizing the standard drive cycles used by U.S. regulators. If the vehicle's

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software detected that it was being tested, the vehicle performed in one mode, which satisfied U.S. NOx emissions standards. If the defeat device detected that the vehicle was not being tested, it operated in a different mode, in which the effectiveness of the vehicle's emissions control systems was reduced substantially, causing the vehicle to emit substantially higher NOx, sometimes 35 times higher than U.S. standards.

35. In designing the defeat device, VW engineers borrowed the original concept of the dual-mode, emissions cycle-beating software from Audi. On or about May 17, 2006, a VW engineer, in describing the Audi software, sent an email to employees in the VW Brand Engine Development department that described aspects of the software and cautioned against using it in its current form because it was "pure" cycle-beating, i.e., as a mechanism to detect, evade and defeat U.S. emissions cycles or tests. The VW AG engineer wrote (in German), "within the clearance structure of the pre-fuel injection the acoustic function is nearly always activated within our current US'07-data set. This function is pure [cycle-beating] and can like this absolutely not be used for US'07."

36. Throughout in or around 2006, Supervisor F authorized VW AG engineers to use the defeat device in the development of the US'07 project, despite concerns expressed by certain VW AG employees about the propriety of designing and activating the defeat device software. In or about the fall of 2006, lower level

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VW AG engineers, with the support of their supervisors, raised objections to the propriety of the defeat device, and elevated the issue to Supervisor B. During a meeting that occurred in or about November 2006, VW AG employees briefed Supervisor B on the purpose and design of the defeat device. During the meeting, Supervisor B decided that VW should continue with production of the US'07 project with the defeat device, and instructed those in attendance, in sum and substance, not to get caught.

37. Throughout 2007, various technical problems arose with the US'07 project that led to internal discussions and disagreements among members of the VW AG team that was primarily responsible for ensuring vehicles met U.S. emissions standards. Those disagreements over the direction of the project were expressly articulated during a contentious meeting on or about October 5, 2007, over which Supervisor C presided. As a result of the meeting, Supervisor C authorized Supervisor F and his team to proceed with the US'07 project despite knowing that only the use of the defeat device software would enable VW diesel vehicles to pass U.S. emissions tests.

38. Starting with the first model year 2009 of VW's new engine for the 2.0 Liter Subject Vehicles through model year 2016, Supervisors A-D and F, and others, then caused the defeat device software to be installed in the 2.0 Liter Subject Vehicles marketed and sold in the United States.

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The 3.0 Liter Defeat Device in the United States

39. Starting in or around 2006, Audi AG engineers designed a 3.0 liter diesel for the U.S. market. The 3.0 liter engine was more powerful than the 2.0 liter engine, and was included in larger and higher-end model vehicles. The 3.0 liter engine was ultimately placed in various Volkswagen, Audi and Porsche diesel vehicles sold in the United States for model years 2009 through 2016. In order to pass U.S. emissions tests, Audi engineers designed and installed software designed to detect, evade and defeat U.S. emissions standards, which constituted a defeat device under U.S. law.

40. Specifically, Audi AG engineers calibrated a defeat device for the 3.0 Liter Subject Vehicles and the Porsche Vehicles that varied injection levels of a solution consisting of urea and water ("AdBlue") into the exhaust gas system based on whether the vehicle was being tested or not, with less NOx reduction occurring during regular driving conditions. In this way, the vehicle consumed less AdBlue, and avoided a corresponding increase in the vehicle's AdBlue tank size, which would have decreased the vehicle's trunk size, and made the vehicle less marketable in the United States. In addition, the vehicle could drive further between service intervals, which was also perceived as important to the vehicle's marketability in the United States.

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Certification of VW Diesel Vehicles in the United States

41. VW employees met with the EPA and CARB to seek the certifications required to sell the Subject Vehicles to U.S. customers. During these meetings, some of which Supervisor F attended personally, VW employees misrepresented, and caused to be misrepresented, to the EPA and CARB staff that the Subject Vehicles complied with U.S. NOx emissions standards, when they knew the vehicles did not. During these meetings, VW employees described, and caused to be described, VW's diesel technology and emissions control systems to the EPA and CARB staff in detail but omitted the fact that the engine could not meet U.S. emissions standards without using the defeat device software.

42. Also as part of the certification process for each new model year, Supervisors A-F and others certified, and/or caused to be certified, to the EPA and CARB that the Subject Vehicles met U.S. emissions standards and complied with standards prescribed by the Clean Air Act. Supervisors A-F, and others, knew that if they had told the truth and disclosed the existence of the defeat device, VW would not have obtained the requisite Certificates for the Subject Vehicles and could not have sold any of them in the United States.

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Importation of VW Diesel Vehicles in the United States

43. In order to import the Subject Vehicles into the United States, VW was required to disclose to CBP whether the vehicles were covered by valid certificates for the United States. VW did so by affixing a label to the vehicles' engines. VW employees caused to be stated on the labels that the vehicles complied with applicable EPA and CARB emissions regulations and limitations, knowing that if they had disclosed that the Subject Vehicles did not meet U.S. emissions regulations and limitations, VW would not have been able to import the vehicles into the United States. Certain VW employees knew that the labels for the Porsche Vehicles stated that those vehicles complied with EPA and CARB emissions regulations and limitations, when in fact, the VW employees knew they did not.

Marketing of "Clean Diesel" Vehicles in the United States

44. Supervisors A and C and others marketed, and caused to be marketed, the Subject Vehicles to the U.S. public as "clean diesel" and environmentally-friendly, when they knew the Subject Vehicles were intentionally designed to detect, evade and defeat U.S. emissions standards.

45. For example, on or about November 18, 2007, Supervisor C sent an email to Supervisor F and others attaching three photos of himself with

Exh. 2-17

California's then-Governor, which were taken during an event at which Supervisor C promoted the 2.0 Liter Subject Vehicles in the United States as "green diesel."

The Improvement of the 2.0 Liter Defeat Device in the United States

46. Following the launch of the Gen 1 2.0 Liter Subject Vehicles in the United States, Supervisors C and F, and others, worked on a second generation of the vehicle (the "Gen 2"), which also contained software designed to detect, evade and defeat U.S. emissions tests. The Gen 2 2.0 Liter Subject Vehicles were launched in the United States in or around 2011.

47. In or around 2012, hardware failures developed in certain of the 2.0 Liter Subject Vehicles that were being used by customers on the road in the United States. VW AG engineers hypothesized that vehicles equipped with the defeat device stayed in "dyno" mode (i.e., testing mode) even when driven on the road outside of test conditions. Since the 2.0 Liter Subject Vehicles were not designed to be driven for longer periods of time in "dyno" mode, VW AG engineers suspected that the increased stress on the exhaust system from being driven too long in "dyno" mode could be the root cause of the hardware failures.

48. In or around July 2012, engineers from the VW Brand Engine Development department met, in separate meetings, with Supervisors A and E to explain that they suspected that the root cause of the hardware failures in the 2.0 Liter Subject Vehicles was the increased stress on the exhaust system from being

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driven too long in “dyno” mode as a result of the use of software designed to detect, evade and defeat U.S. emissions tests. To illustrate the software’s function, the engineers used a document. Although they understood the purpose and significance of the software, Supervisors A and E each encouraged the further concealment of the software. Specifically, Supervisors A and E each instructed the engineers who presented the issue to them to destroy the document they had used to illustrate the operation of the defeat device software.

49. VW AG engineers, having informed the supervisor in charge of the VW AG Engine Development department and within the VW AG Quality Management and Product Safety department of the existence and purpose of the defeat device in the 2.0 Liter Subject Vehicles, then sought ways to improve its operation in existing 2.0 Liter Subject Vehicles to avoid the hardware failures. To solve the hardware failures, VW AG engineers decided to start the 2.0 Liter Subject Vehicles in the “street mode” and, when the defeat device recognized that the vehicle was being tested for compliance with U.S. emissions standards, switch to the “dyno mode.” To increase the likelihood that the vehicle in fact realized that it was being tested on the dynamometer for compliance with U.S. emissions standards, the VW AG engineers activated a “steering wheel angle recognition” feature. The steering wheel angle recognition interacted with the software by

Exh. 2-19

enabling the vehicle to detect whether it was being tested on a dynamometer (where the steering wheel is not turned), or being driven on the road.

50. Certain VW AG employees again expressed concern, specifically about the expansion of the defeat device through the steering wheel angle detection, and sought approval for the function from more senior supervisors within the VW AG Engine Development department. In particular, VW AG engineers asked Supervisor A for a decision on whether or not to use the proposed function in the 2.0 Liter Subject Vehicles. In or about April 2013, Supervisor A authorized activation of the software underlying the steering wheel angle recognition function. VW employees then installed the new software function in new 2.0 Liter Subject Vehicles being sold in the United States, and later installed it in existing 2.0 Liter Subject Vehicles through software updates during maintenance.

51. VW employees falsely told, and caused others to tell, U.S. regulators, U.S. customers and others in the United States that the software update in or around 2014 was intended to improve the 2.0 Liter Subject Vehicles when, in fact, VW employees knew that the update also used the steering wheel angle of the vehicle as a basis to more easily detect when the vehicle was undergoing emissions tests, thereby improving the defeat device's precision in order to reduce the stress on the emissions control systems.

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The Concealment of the Defeat Devices in the United States – 2.0 Liter

52. In or around March 2014, certain VW employees learned of the results of a study undertaken by West Virginia University's Center for Alternative Fuels, Engines and Emissions and commissioned by the International Council on Clean Transportation (the "ICCT study"). The ICCT study identified substantial discrepancies in the NOx emissions from certain 2.0 Liter Subject Vehicles when tested on the road compared to when these vehicles were undergoing EPA and CARB standard drive cycle tests on a dynamometer. The results of the study showed that two of the three vehicles tested on the road, both 2.0 Liter Subject Vehicles, emitted NOx at values of up to approximately 40 times the permissible limit applicable during testing in the United States.

53. Following the ICCT study, CARB, in coordination with the EPA, attempted to work with VW to determine the cause for the higher NOx emissions in the 2.0 Liter Subject Vehicles when being driven on the road as opposed to on the dynamometer undergoing standard emissions test cycles. To do this, CARB, in coordination with the EPA, repeatedly asked VW questions that became increasingly more specific and detailed, as well as conducted additional testing themselves.

54. In response to learning about the results of the ICCT study, engineers in the VW Brand Engine Development department formed an ad hoc task force to

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formulate responses to questions that arose from the U.S. regulators. VW AG supervisors, including Supervisors A, D, and E, and others, determined not to disclose to U.S. regulators that the tested vehicle models operated with a defeat device. Instead, Supervisors A, D, and E, and others decided to pursue a strategy of concealing the defeat device in responding to questions from U.S. regulators, while appearing to cooperate.

55. Throughout 2014 and the first half of 2015, Supervisors A, D, and E, and others, continued to offer, and/or cause to be offered, software and hardware “fixes” and explanations to U.S. regulators for the 2.0 Liter Subject Vehicles’ higher NOx measurements on the road without revealing the underlying reason – the existence of software designed to detect, evade and defeat U.S. emissions tests.

56. On or about April 28, 2014, members of the VW task force presented the findings of the ICCT study to Supervisor E, whose supervisory responsibility included addressing safety and quality problems in vehicles in production. Included in the presentation was an explanation of the potential financial consequences VW could face if the defeat device was discovered by U.S. regulators, including but not limited to applicable fines per vehicle, which were substantial.

57. On or about May 21, 2014, a VW AG employee sent an email to his supervisor, Supervisor D, and others, describing an “early round meeting” with

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Supervisor A, at which emissions issues in North America for the Gen 2 2.0 Liter Subject Vehicles were discussed, and questions were raised about the risk of what could happen and the available options for VW. Supervisor D responded by email that he was in "direct touch" with the supervisor in charge of Quality Management at VW AG and instructed the VW AG employee to "please treat confidentially" the issue.

58. On or about October 1, 2014, VW AG employees presented to CARB regarding the ICCT study results and discrepancies identified in NOx emissions between dynamometer testing and road driving. In response to questions, the VW AG employees did not reveal that the existence of the defeat device was the explanation for the discrepancies in NOx emissions, and, in fact, gave CARB various false reasons for the discrepancies in NOx emissions including driving patterns and technical issues.

59. When U.S. regulators threatened not to certify VW model year 2016 vehicles for sale in the United States, VW AG supervisors requested a briefing on the situation in the United States. On or about July 27, 2015, VW AG employees presented to VW AG supervisors. Supervisors A and D were present, among others.

60. On or about August 5, 2015, in a meeting in Traverse City, Michigan, two VW employees met with a CARB official to discuss again the discrepancies in

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emissions of the 2.0 Liter Subject Vehicles. The VW employees did not reveal the existence of the defeat device.

61. On or about August 18, 2015, Supervisors A and D, and others, approved a script to be followed by VW AG employees during an upcoming meeting with CARB in California on or about August 19, 2015. The script provided for continued concealment of the defeat device from CARB in the 2.0 Liter Subject Vehicles, with the goal of obtaining approval to sell the Gen 3 model year 2016 2.0 Liter Subject Vehicles in the United States.

62. On or about August 19, 2015, in a meeting with CARB in El Monte, California, a VW employee explained, for the first time to U.S. regulators and in direct contravention of instructions from supervisors at VW AG, that certain of the 2.0 Liter Subject Vehicles used different emissions treatment depending on whether the vehicles were on the dynamometer or the road, thereby signaling that VW had evaded U.S. emissions tests.

63. On or about September 3, 2015, in a meeting in El Monte, California with CARB and EPA, Supervisor D, while creating the false impression that he had been unaware of the defeat device previously, admitted that VW had installed a defeat device in the 2.0 Liter Subject Vehicles.

64. On or about September 18, 2015, the EPA issued a public Notice of Violation to VW stating that the EPA had determined that VW had violated the

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Clean Air Act by manufacturing and installing defeat devices in the 2.0 Liter Subject Vehicles.

The Concealment of the Defeat Devices in the United States – 3.0 Liter

65. On or about January 27, 2015, CARB informed VW AG that CARB would not approve certification of the Model Year 2016 3.0 Liter Subject Vehicles until Audi AG confirmed that the 3.0 Liter Subject Vehicles did not possess the same emissions issues as had been identified by the ICCT study and as were being addressed by VW with the 2.0 Liter Subject Vehicles.

66. On or about March 24, 2015, in response to CARB's questions, Audi AG employees made a presentation to CARB, during which Audi AG employees did not disclose that the Audi 2.0 and 3.0 Liter Subject Vehicles and the Porsche Vehicles in fact contained a defeat device, which caused emissions discrepancies in those vehicles. The Audi AG employees informed CARB that the 3.0 Liter Subject Vehicles did not possess the same emissions issues as the 2.0 Liter Subject Vehicles when, in fact, the 3.0 Liter Subject Vehicles possessed at least one defeat device that interfered with the emissions systems to reduce NOx emissions on the dyno but not on the road. On or about March 25, 2015, CARB, based on the misstatements and omissions made by the Audi AG representatives, issued an executive order approving the sale of Model Year 2016 3.0 Liter Subject Vehicles.

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67. On or about November 2, 2015, EPA issued a Notice of Violation to VW AG, Audi AG and Porsche AG, citing violations of the Clean Air Act related to EPA's discovery that the 3.0 Liter Subject Vehicles and the Porsche Vehicles contained a defeat device that resulted in excess NOx emissions when the vehicles were driven on the road.

68. On or about November 2, 2015, VW AG issued a statement that "no software has been installed in the 3-liter V6 diesel power units to alter emissions characteristics in a forbidden manner."

69. On or about November 19, 2015, Audi AG representatives met with EPA and admitted that the 3.0 Liter Subject Vehicles contained at least three undisclosed AECDs. Upon questioning from EPA, Audi AG representatives conceded that one of these three undisclosed AECDs met the criteria of a defeat device under U.S. law.

70. On or about May 16, 2016, Audi AG representatives met with CARB and admitted that there were additional elements within two of its undisclosed AECDs, which impacted the dosing strategy in the 3.0 Liter Subject Vehicles and the Porsche Vehicles.

71. On or about July 19, 2016, in a presentation to CARB, Audi AG representatives conceded that elements of two of its undisclosed AECDs met the definition of a defeat device.

Exh. 2-26

72. Supervisors A-F and others caused defeat device software to be installed on all of the approximately 585,000 Subject Vehicles and the Porsche Vehicles sold in the United States from 2009 through 2015.

Obstruction of Justice

73. As VW employees prepared to admit to U.S. regulators that VW used a “defeat device” in the 2.0 Liter Subject Vehicles, counsel for VW GOA prepared a litigation hold notice to ensure that VW GOA preserved documents relevant to diesel emissions issues. At the same time, VW GOA was in contact with VW AG to discuss VW AG preserving documents relevant to diesel emissions issues. Attorney A made statements that several employees understood as suggesting the destruction of these materials. In anticipation of this hold taking effect at VW AG, certain VW AG employees destroyed documents and files related to U.S. emissions issues that they believed would be covered by the hold. Certain VW AG employees also requested that their counterparts at Company A destroy sensitive documents relating to U.S. emissions issues. Certain Audi AG employees also destroyed documents related to U.S. emissions issues. The VW AG and Audi AG employees who participated in this deletion activity did so to protect both VW and themselves from the legal consequences of their actions.

Exh. 2-27

74. Between the August 19, 2015 and September 3, 2015 meetings with U.S. regulators, certain VW AG employees discussed issues with Attorney A and others.

75. On or about August 26, 2015, VW GOA's legal team sent the text of a litigation hold notice to Attorney A in VW AG's Wolfsburg office that would require recipients to preserve and retain records in their control. The subject of the e-mail was "Legal Hold Notice – Emissions Certification of MY2009-2016 2.0L TDI Volkswagen and Audi vehicles." The VW GOA legal team stated that VW GOA would be issuing the litigation hold notice to certain VW GOA employees the following day. On or about August 28, 2015, Attorney A received notice that VW GOA was issuing that litigation hold notice that day. Attorney A indicated to his staff on August 31 that the hold would be sent out at VW AG on September 1. Among those at VW AG being asked to retain and preserve documents were Supervisors A and D and a number of other VW AG employees.

76. On or about August 27, 2015, Attorney A met with several VW AG engineers to discuss the technology behind the defeat device. Attorney A indicated that a hold was imminent, and that these engineers should check their documents, which multiple participants understood to mean that they should delete documents prior to the hold being issued.

Exh. 2-28

77. On or about August 31, 2015, a meeting was held to prepare for the September 3 presentation to CARB and EPA where VW's use of the defeat device in the United States was to be formally revealed. During the meeting, within hearing of several participants, Attorney A discussed the forthcoming hold and again told the engineers that the hold was imminent and recommended that they check what documents they had. This comment led multiple individuals, including supervisors in the VW Brand Engine Development department at VW AG, to delete documents related to U.S. emissions issues.

78. On or about September 1, 2015, the hold at VW AG was issued. On or about September 1, 2015, several employees in the VW Brand Engine Development department at VW AG discussed the fact that their counterparts at Company A would also possess documents related to U.S. emissions issues. At least two VW AG employees contacted Company A employees and asked them to delete documents relating to U.S. emissions issues.

79. On or about September 3, 2015, Supervisor A approached Supervisor D's assistant, and requested that Supervisor D's assistant search in Supervisor D's office for a hard drive on which documents were stored containing emails of VW AG supervisors, including Supervisor A. Supervisor D's assistant recovered the hard drive and gave it to Supervisor A. Supervisor A later asked his assistant to throw away the hard drive.

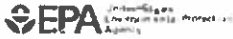
Exh. 2-29

80. On or about September 15, 2015, a supervisor within the VW Brand Engine Development department convened a meeting with approximately 30-40 employees, during which Attorney A informed the VW AG employees present about the current situation regarding disclosure of the defeat device in the United States. During this meeting, a VW AG employee asked Attorney A what the employees should do with new documents that were created, because they could be harmful to VW AG. Attorney A indicated that new data should be kept on USB drives and only the final versions saved on VW AG's system, and then, only if "necessary."

81. Even employees who did not attend these meetings, or meet with Attorney A personally, became aware that there had been a recommendation from a VW AG attorney to delete documents related to U.S. emissions issues. Within VW AG and Audi AG, thousands of documents were deleted by approximately 40 VW AG and Audi AG employees.

82. After it began an internal investigation, VW AG was subsequently able to recover many of the deleted documents.

Exh. 2-30



Newsroom News Releases By Date

EPA, California Notify Volkswagen of Clean Air Act Violations / Carmaker allegedly used software that circumvents emissions testing for certain air pollutants

Release Date: 09/18/2015
Contact Information: Julia P. Valentine, valentine.julia@epa.gov, (202) 564-2663

WASHINGTON — Today, EPA is issuing a notice of violation (NOV) of the Clean Air Act (CAA) to Volkswagen AG, Audi AG, and Volkswagen Group of America, Inc. (collectively referred to as Volkswagen). The NOV alleges that four-cylinder Volkswagen and Audi diesel cars from model years 2009-2015 include software that circumvents EPA emissions standards for certain air pollutants. California is separately issuing an In-Use Compliance letter to Volkswagen, and EPA and the California Air Resources Board (CARB) have both initiated investigations based on Volkswagen's alleged actions.

"Using a defeat device in cars to evade clean air standards is illegal and a threat to public health," said Cynthia Giles, Assistant Administrator for the Office of Enforcement and Compliance Assurance. "Working closely with the California Air Resources Board, EPA is committed to making sure that all automakers play by the same rules. EPA will continue to investigate these very serious matters."

"Working with US EPA we are taking this important step to protect public health thanks to the dogged investigations by our laboratory scientists and staff," said Air Resources Board Executive Officer Richard Corey. "Our goal now is to ensure that the affected cars are brought into compliance, to dig more deeply into the extent and implications of Volkswagen's efforts to cheat on clean air rules, and to take appropriate further action."

As described in the NOV, a sophisticated software algorithm on certain Volkswagen vehicles detects when the car is undergoing official emissions testing, and turns full emissions controls on only during the test. The effectiveness of these vehicles' pollution emissions control devices is greatly reduced during all normal driving situations. This results in cars that meet emissions standards in the laboratory or testing station, but during normal operation, emit nitrogen oxides, or NOx, at up to 40 times the standard. The software produced by Volkswagen is a "defeat device," as defined by the Clean Air Act.

The Clean Air Act requires vehicle manufacturers to certify to EPA that their products will meet applicable federal emission standards to control air pollution, and every vehicle sold in the U.S. must be covered by an EPA-issued certificate of conformity. Motor vehicles equipped with defeat devices, which reduce the effectiveness of the emission control system during normal driving conditions, cannot be certified. By making and selling vehicles with defeat devices that allowed for higher levels of air emissions than were certified to EPA, Volkswagen violated two important provisions of the Clean Air Act.

EPA and CARB uncovered the defeat device software after independent analysis by researchers at West Virginia University working with the International Council on Clean Transportation, a non-governmental organization, raised questions about emissions levels, and the agencies began further investigations into the issue. In September, after EPA and CARB demanded an explanation for the identified emission problems, Volkswagen admitted that the cars contained defeat devices.

NOx pollution contributes to nitrogen dioxide, ground-level ozone, and fine particulate matter. Exposure to these pollutants has been linked with a range of serious health effects, including increased asthma attacks and other respiratory illnesses that can be serious enough to send people to the hospital. Exposure to ozone and particulate matter have also been associated with premature death due to respiratory-related or cardiovascular-related effects. Children, the elderly, and people with pre-existing respiratory disease are particularly at risk for health effects of these pollutants.

VW may be liable for civil penalties and injunctive relief for the violations alleged in the NOV.

The allegations cover roughly 499,000 diesel passenger cars sold in the United States since 2008.

Affected diesel models include:

- Jetta (MY 2009 – 2015)
- Jetta Sportwagen (MY 2009-2014)
- Beetle (MY 2012 – 2015)
- Beetle Convertible (MY 2012-2015)
- Audi A3 (MY 2010 – 2015)
- Golf (MY 2010 – 2015)
- Golf Sportwagen (MY 2015)

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Passat (MY 2012-2015)

It is incumbent upon Volkswagen to initiate the process that will fix the cars' emissions systems. Car owners should know that although these vehicles have emissions exceeding standards, these violations do not present a safety hazard and the cars remain legal to drive and resell. Owners of cars of these models and years do not need to take any action at this time.

More information on EPA's NOV: www3.epa.gov/otaq/cert/violations.htm

More information on CARB's In-Use Compliance Letter: http://www.arb.ca.gov/newsrel/in_use_compliance_letter.htm

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