



DEPARTMENT OF JUSTICE

NOTICE OF LODGING OF PROPOSED PARTIAL CONSENT DECREE
UNDER THE
CLEAN AIR ACT

On June 28, 2016, the Department of Justice lodged a proposed Partial Consent Decree with the United States District Court for the Northern District of California in the lawsuit entitled *In re: Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation*, Case No: MDL No. 2672 CRB (JSC), partially resolving Clean Air Act and various California claims (including under the California Health and Safety Code) against Volkswagen Group of America, Inc., and others, concerning certain noncompliant 2.0 liter diesel vehicles. In addition, the Federal Trade Commission ("FTC") filed a related proposed Partial Stipulated Order for Permanent Injunction and Monetary Judgment with Volkswagen ("FTC Order"), and the private Plaintiffs' Steering Committee ("PSC") filed a proposed Consumer Class Action Settlement Agreement and Release ("Class Action Settlement") with Volkswagen with respect to the 2.0 liter diesel vehicles on the same date. The three settlements resolve separate claims but offer coordinated relief.

On January 4, 2016, the United States, on behalf of the Environmental Protection Agency ("EPA") filed a complaint against Volkswagen AG, Volkswagen Group of America, Inc., Volkswagen Group of America Chattanooga Operations, LLC, Audi AG, Dr. Ing. h.c. F. Porsche AG, and Porsche Cars North America, Inc. alleging that the defendants violated Sections 203(a)(1), (2), (3)(A), and (3)(B) of the Clean Air Act ("Act"), 42 U.S.C. §§ 7522(a)(1), (2), (3)(A), and (3)(B), with regard to approximately 500,000 model year 2009 to 2015 motor vehicles containing 2.0 liter diesel engines (2.0 Liter Subject Vehicles) and approximately

80,000 model year 2009 to 2016 motor vehicles containing 3.0 liter diesel engines (3.0 Liter Subject Vehicles). The United States' complaint alleges that each 2.0 and 3.0 Liter Subject Vehicle contains computer algorithms that are prohibited defeat devices that cause the emissions control system of those vehicles to perform differently during normal vehicle operation and use than during emissions testing. The complaint alleges that the defeat devices cause the vehicles, during normal vehicle operation and use, to emit levels of oxides of nitrogen ("NOx") significantly in excess of EPA-compliant levels. The complaint seeks, among other things, injunctive relief to remedy the violations, including mitigation of excess NOx emissions, and civil penalties.

On June 27, 2016, the People of the State of California ("California"), by and through the California Air Resources Board ("CARB") and the California Attorney General filed a complaint against defendants alleging that defendants violated Cal. Health & Safety Code §§ 43106, 43107, 43151, 43152, 43153, 43205, 43211, and 43212; Cal. Code Regs. tit. 13, §§ 1903, 1961, 1961.2, 1965, 1968.2, and 2037, and 40 C.F.R. Sections incorporated by reference in those California regulations; Cal. Bus. & Prof. Code §§ 17200 *et seq.*, 17500 *et seq.*, and 17580.5; Cal. Civ. Code § 3494; and 12 U.S.C. § 5531 *et seq.*, with regard to approximately 71,000 model year 2009 to 2015 motor vehicles containing 2.0 liter diesel engines and approximately 16,000 model year 2009 to 2016 motor vehicles containing 3.0 liter diesel engines, for a total of approximately 87,000 motor vehicles. The California complaint alleges, in relevant part, that the motor vehicles contain prohibited defeat devices and have resulted in, and continue to result in, increased NOx emissions from each such vehicle significantly in excess of CARB requirements, that these vehicles have resulted in the creation of a public nuisance, and that defendants engaged in related conduct that violated unfair competition, false advertising, and consumer protection laws.

This Partial Consent Decree (“Decree”) is entered into between the United States, California, and certain of the defendants, namely, Volkswagen AG, Volkswagen Group of America, Inc., Volkswagen Group of America Chattanooga Operations, LLC, and Audi AG (collectively, “Volkswagen”). The Decree partially resolves the governments’ claims for injunctive relief with respect to the 2.0 Liter Subject Vehicles, by providing remedies for the cars on the road and the environmental harm from the violations. It does not address the governments’ claims, *inter alia*, for prospective injunctive relief to prevent future violations of the same type that are alleged in the complaints, claims for civil penalties, or claims regarding the 3.0 liter Subject Vehicles. Because the Decree only addresses 2.0 Liter Subject Vehicles, and the Porsche defendants only manufacture 3.0 liter diesel vehicles for the United States market, no claims against the Porsche defendants are settled under this Decree.

Under the Decree, Volkswagen must offer all Eligible Owners and Lessees of Eligible Vehicles (all as defined in Appendix A to the Decree) the option to have Volkswagen buy back their cars or to terminate their leases at no cost. In addition, the Decree permits Volkswagen to submit for EPA and CARB review and approval, a proposal for modifying the 2.0 Liter Subject Vehicles to reduce emissions. If EPA and CARB approve an emissions modification for any category of the 2.0 Liter Subject Vehicles, Volkswagen must also offer all Eligible Owners and Lessees of an Eligible Vehicle the additional option of receiving an emissions modification in lieu of a buyback. Volkswagen must achieve a recall rate (through the buyback, lease termination, scrapped vehicles, and the emissions modification option, if approved) of 85% by June 30, 2019. If it fails to do so, Volkswagen must augment the mitigation trust fund discussed below by \$85 million for each 1% that it falls short of the 85% rate. Volkswagen must also achieve a separate 85% recall rate for vehicles in California, and must pay \$13.5 million to the

mitigation trust (solely for mitigation projects in California) for each 1% that it falls short of this target. *See* Decree Section IV.D and Appendices A and B.

In connection with the buyback, Volkswagen must pay Eligible Owners no less than the cost of the retail purchase of a comparable replacement vehicle of similar value, condition and mileage as of September 17, 2015, the day before the existence of the defeat devices was made known to the public (“retail replacement value”). The Decree acknowledges that Volkswagen may satisfy this obligation through offering the payments required by the FTC Order and the Class Action Settlement, which are at least equal to the retail replacement value. The buyback/lease termination program under the Decree remains open for two years after the Decree is entered by the Court. *See* Decree Section IV.A and Appendix A. If EPA and CARB approve an emissions modification, Volkswagen must offer it to consumers indefinitely. *See* Decree Section IV.B and Appendices A and B.

Volkswagen has set aside a defined funding pool for consumer payments associated with the buyback, lease termination, and emissions modification compensation programs pursuant to the requirements of this Decree and the related FTC Order and Class Action Settlement, and may fund consumer payments in connection with buyback, lease termination, and emissions modifications up to \$10,033,000,000.

In addition, under the Decree, Volkswagen must fund a trust over three years in the total amount of \$2.7 billion, which states, Puerto Rico, the District of Columbia, and Indian tribes can use to perform specified NOx mitigation projects. This amount is expected to fund projects to fully mitigate the total, lifetime excess emissions from the 2.0 Liter Subject Vehicles. *See* Decree Section IV.D and Appendix D. The trust will be administered by a trustee to be selected after the Decree is entered.

Finally, Volkswagen must invest \$2 billion over a 10-year period to support the increased use of zero emission vehicle (“ZEV”) technology in the United States, including the development and maintenance of ZEV charging stations and infrastructure. *See* Consent Decree Section IV.C and Appendix C.

The publication of this notice opens a period for public comment on the Partial Consent Decree. Comments concerning the Partial Consent Decree (but not concerning the FTC Order or Class Action Settlement) should be addressed to the Assistant Attorney General, Environment and Natural Resources Division and should refer to *In re: Volkswagen “Clean Diesel” Marketing, Sales Practices, and Products Liability Litigation*, Case No: MDL No. 2672 CRB (JSC), and D.J. Ref. No. 90-5-2-1-11386.

All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by e-mail or by mail:

<i>To submit comments:</i>	<i>Send them to:</i>
By e-mail	pubcomment-ees.enrd@usdoj.gov
By mail	Assistant Attorney General U.S. DOJ – ENRD P.O. Box 7611 Washington, D.C. 20044-7611

The Partial Consent Decree, the FTC Order, and the Class Action Settlement may all be viewed and downloaded from <http://www.cand.uscourts.gov/crb/vwmdl>. During the public comment period, the Partial Consent Decree may also be examined and downloaded at this Justice Department website: <https://www.justice.gov/enrd/consent-decrees>. We will provide a paper copy of the Partial Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to:

Consent Decree Library
U.S. DOJ – ENRD
P.O. Box 7611
Washington, D.C. 20044-7611

For the entire Partial Consent Decree and its appendices, please enclose a check or money order for \$55.25 (25 cents per page reproduction cost) payable to the United States Treasury. For a copy of certain portions of the Partial Consent Decree, please designate which portions are requested, and provide the appropriate amount of money. For the Partial Consent Decree without the exhibits and signature pages, the cost is \$13.50. For Appendix A, the cost is \$3.25. For Appendix B, the cost is \$17.25. For Appendix C, the cost is \$8.50. For Appendix D, the cost is \$10.75.

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[FR Doc. 2016-15858 Filed: 7/5/2016 8:45 am; Publication Date: 7/6/2016]