

ONE HUNDRED FOURTEENTH CONGRESS
Congress of the United States
House of Representatives

COMMITTEE ON ENERGY AND COMMERCE

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November 1, 2016

The Honorable Gina McCarthy
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Ave, N.W.
Washington, DC 20460

Dear Administrator McCarthy:

We write regarding the Partial Consent Decree in the matter of *In Re: Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation*, Case No: MDL No. 2672 CRB (JSC), particularly with respect to irrevocable Mitigation Trust and its corresponding terms in the body of the Consent Decree.

The Partial Consent Decree requires Volkswagen AG, Audi AG, Volkswagen Group of America, Inc., and Volkswagen Group of America Chattanooga Operations, LLC (collectively, VW or "Settling Defendants") to establish an irrevocable Mitigation Trust and to make \$2.7 billion available for Eligible Mitigation Actions to "fully mitigate the total, lifetime excess NOx emissions" from the non-compliant VW vehicles at issue in the litigation.¹ Appendix D sets out the form of the Environmental Mitigation Trust Agreement.²

According to the Partial Consent Decree, the \$2.7 billion figure is the amount that the parties decided would be at least sufficient to mitigate excess NOx emissions from the "lifetime" of the vehicles. The Environmental Protection Agency presumably calculated this figure to include the amount of excess NOx emissions from non-compliant vehicles operated in the past, as well as the future potential emissions of this class of vehicles.

The committee held a hearing on initial questions about Volkswagen's emissions cheating more than a year ago, on October 8, 2015. At that hearing, Christopher Grundler, the

¹ *In Re: Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation*, Case No: MDL No. 2672 CRB (JSC), Proposed Partial Consent Decree at 5.

² *Id.* at App. D.

Director of the Office of Transportation and Air Quality at EPA, testified that the non-compliant vehicles emitted “up to forty times” the allowable limit of emissions.³ He testified further that the agency would be determining the impacts of the excess emissions and would “do whatever we can to serve the committee’s work” when asked by a Member to supply the analysis when completed.⁴ Following the hearing, the committee asked EPA to provide a detailed explanation or description of any assessment EPA has conducted to evaluate the real-world effects of these emissions. EPA declined to comment at that time due to the ongoing investigation.⁵

As the settlement is now final, we write to renew our request. Accordingly, and pursuant to Rules X and XI of the U.S. House of Representatives, we ask that you respond to the following questions by November 15, 2016.

1. Please explain the policy considerations that led to the proposal that VW make \$2.7 billion available for Eligible Mitigation Actions.
2. Please provide a detailed summary of the calculations used to determine that \$2.7 billion is the appropriate amount that VW make available to Eligible Mitigation Actions. This summary should include the amount of excess NOx emissions from each category of non-compliant vehicles, the approximate number of vehicles in each category, and any other information relevant to the calculation.

We appreciate your prompt response to this request. Please contact Charles Ingebretson of the majority committee staff at (202) 225-2927 with any questions.

Sincerely,



Fred Upton
Chairman



Tim Murphy
Chairman
Subcommittee on Oversight
and Investigations

cc: The Honorable Frank Pallone, Jr., Ranking Member
Committee on Energy and Commerce

The Honorable Diana DeGette, Ranking Member
Subcommittee on Oversight and Investigations

³ *Volkswagen’s Emissions Cheating Allegations: Initial Questions: Hearing before the Subcomm. on Oversight & Investigations of the H. Comm. on Energy & Commerce*, 114th Cong. 55 (2015) (statement of Christopher Grundler, Dir., Office of Transp. & Air Quality, Office of Air & Radiation, Env’tl. Prot. Agency).

⁴ *Id.* at 75.

⁵ *Id.* at 127-128 (Letter from Nichole Distefano, Associate Administrator, Env’tl. Prot. Agency, to Hon. Tim Murphy, Chairman, Subcomm. on Oversight & Investigations, H. Comm. on Energy & Comm. (Mar. 22, 2015)).