

ONE HUNDRED FOURTEENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6115
Majority (202) 225-2927
Minority (202) 225-3641

December 21, 2016

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

Dear Administrator McCarthy:

Thank you for having your designees appear before the Subcommittee on Oversight and Investigations on Tuesday, December 6, 2016, to testify at the hearing entitled "Volkswagen's Emissions Cheating Settlement: Questions Concerning ZEV Program Implementation."

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for ten business days to permit Members to submit additional questions for the record, which are attached. The format of your responses to these questions should be as follows: (1) the name of the Member whose question you are addressing, (2) the complete text of the question you are addressing in bold, and (3) your answer to that question in plain text.

To facilitate the printing of the hearing record, please respond to these questions with a transmittal letter by the close of business on Wednesday, January 4, 2017. Your responses should be mailed to Elena Brennan, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, DC 20515, and e-mailed in Word format to Elena.Brennan@mail.house.gov.

Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,



Tim Murphy
Chairman
Subcommittee on Oversight and Investigations

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

Attachment

Attachment 1—Additional Questions for the Record

The Honorable Tim Murphy

1. Please provide a list and description of all prior EPA settlements or enforcement actions that permit the party responsible for a violation to establish a new business or generate revenue as part of the settlement or enforcement action.
2. What role will EPA play to ensure existing and future infrastructure markets remain competitive?
 - a. How does EPA intend to evaluate how projects approved under the National ZEV Investment Plan will affect the existing electric vehicle infrastructure marketplace, including but not limited to any negative effects on existing electric vehicle infrastructure manufacturers or service providers?
 - i. If so, what criteria will EPA use to conduct these evaluations?
 - ii. If not, please explain why not.
3. Under the terms of Appendix C, Volkswagen (“VW”) is permitted to obtain revenue from the ZEV Investments. If VW decides to create and manage a network through these ZEV investments, they could potentially obtain rich data on consumer and market trends.
 - a. While the terms of the consent decree prevent VW from installing infrastructure or distributing promotional materials that feature or advantage their brands, if VW, or a subsidiary, collects data from the ZEV Infrastructure installed under the terms of the partial consent decree, can they use that information to inform or execute marketing and sales strategies for VW brand vehicles, including the many electric vehicle models the company intends to introduce in coming years?
4. The Partial Consent decree requires VW to include in its Annual National ZEV Investment Reports data about the utilization rates of new ZEV infrastructure, “including the percentage of time that each connector is attached to a vehicle, energy dispensed per charger per day, and any other metrics that indicate the maximum, minimum, and average utilization of a charging station, including trends in usage over time.”
 - a. Does the Partial Consent Decree put any limitation on other types of data that VW can collect about the new ZEV infrastructure, such as customer information?
 - b. Does the Partial Consent Decree require VW to publish annually any other types of data gathered from customers or ZEV infrastructure other than utilization rate information?

- c. Does the Partial Consent Decree require VW to publish any data collected from ZEV infrastructure – including but not limited to utilization rate information – prior to the release of each year’s Annual National ZEV Investment Report? If not, can VW monetize this information in the period of time in which it is not publically available?
5. In EPA’s November 18, 2016 response to the Committee, Ms. Giles noted that the Office of Transportation and Air Quality (“OTAQ”) would be working closely with the Office of Enforcement and Compliance (“OECA”) in overseeing implementation of the partial consent decree.
 - a. What specific role or resources will OTAQ provide to assist with oversight of Appendix C?
 - b. Will any other federal offices or agencies – other than the Department of Justice – have a role monitoring or guiding the implementation of Appendix C?
6. In EPA’s response to the Committee’s November 1, 2016 letter on the ZEV Investment, Ms. Giles highlighted the stakeholder outreach VW is required to conduct under the terms of the Partial Consent Decree as a means for ensuring transparency and accountability in VW’s investment decisions. The response stated “EPA intends to ensure Volkswagen conduct a robust process for public input and accept comment from relevant stakeholders before any decisions are made.”

However, under the terms of the Partial Consent Decree, VW is only required to seek input from “States, municipal governments, federally-recognized Indian Tribes and federal agencies,” and is under no obligation to act upon the suggestions it receives in the course of this outreach.

At the hearing, Ms. Giles reiterated EPA’s expectation that VW would solicit input from all interested stakeholders. She added that in addition to soliciting comment, VW has to consider the input and describe how they considered the input in their plan.

- a. If VW is not required to act on comments received from stakeholders, how does this stakeholder outreach process provide accountability?
- b. Even if VW follows or goes beyond the requirements of the partial consent decree, solicits comments from all stakeholders, considers those comments and documents their consideration, they are under no obligation to act on the comments.
 - i. How does EPA intend to evaluate VW’s consideration of the input they receive from stakeholders?
 - ii. How does EPA intend to respond if VW documents their consideration of the comments from stakeholders but does not act on those comments?

7. In October, Christopher Grundler of the Office of Transportation and Air Quality stated that EPA “would be glad to meet and confer with interested parties and get their input as we review the plan.” Does EPA plan to meet and confer with parties other than Volkswagen to receive input on its National ZEV Investment plan?
 - a. *[If yes]*: How would that work? Does EPA plan to provide copies of Volkswagen’s draft National ZEV Investment plan to interested parties? And how would EPA even provide input received this way to Volkswagen, given the “limited” role of EPA described in the written testimony?

[If no]: Please explain Mr. Grundler’s comments that EPA will meet and confer with interested parties to receive their input.
 - b. Does EPA plan to reach out to interested parties to obtain input on the ZEV Investment Commitment in any other ways?
 - i. If so, what is the process for this?
8. One of the stakeholders that VW is required to include in their national outreach plan is federal agencies.
 - a. What federal agencies does EPA expect to be incorporated into VW’s outreach and why?
 - b. Under the terms of the partial consent decree, can VW invest in projects at federal agencies or locations? For example, if an agency wants to install charging infrastructure at a specific federal workplace or facility, can VW provide that infrastructure?
 - i. If so, how is this managed under federal contracting requirements?
 - c. Can VW invest in projects that support or benefit federal programs and initiatives? For example, can VW invest in projects that support the recently announced Highway Corridors, as requested by Congress under the FAST Act?
9. On December 2, 2016, the California Air Resources Board (“CARB”) held a public input workshop regarding implementation of California’s allocation of the ZEV Investment Commitment.
 - a. Does EPA intend to conduct similar public outreach?
 - i. If so, when will this occur and how will it be done?
 - ii. If not, why not?

In conjunction with that workshop, CARB released the state's "Guiding Principles" for the VW ZEV Investments. These included areas such as ensuring that investments are "complimentary and additional" to those already being made, prioritizing public ZEV infrastructure and public awareness to complement the state's ZEV Action Plan, the inclusion of investments in hydrogen fueling, and that investments do not "interfere with or undermine established and emerging businesses in the market place"

- b. Does EPA intend to develop and publicize similar guiding principles for the National ZEV Investment?
 - i. If so, who is responsible for developing this guidance and when will it be released?
 - ii. If not, why not? Please explain why EPA's process differs from that utilized by CARB.

10. In EPA's November 18, 2016 response to the Committee, Ms. Giles stated that the ZEV Investment is "intended to address the adverse effects of VW's violations on air quality by supporting technologies that are actually clean." In the same letter Ms. Giles also stated that the partial settlement would "offset the broader harm to the clean vehicle market through investments in ZEV infrastructure, access and education."

Further, at the hearing, Ms. Giles explained that the NOX Mitigation Trust and ZEV Investment Commitment are "designed to address separate harms."¹ She stated, "the mitigation portion is to make up for pollution caused, and the ZEV portion is to address the fact that they sold dirty vehicles claiming they were clean."² She later testified that the third part of the settlement agreement – the part not involving vehicles on the road or NOx emissions – "is to remedy the damage caused to the marketplace." Finally, in her written testimony Ms. Giles noted that "the ZEV investment requirement is a court-ordered remedy intended to address the specific harm VW caused to public health" by requiring investments in clean transportation.

- a. What is the purpose of the ZEV Investment Commitment? Is it intended to address air quality, harm to the clean vehicle market, or public health?
- b. If, as Ms. Giles indicated at the hearing, the ZEV Investment is intended to address harm to the clean vehicle market, please explain how harm to the market is tied to the Clean Air Act.
- c. Ms. Giles also noted that consumers purchased these vehicles on the premise that they were clean. This implies that the ZEV investment remedy is connected to consumer deception.

¹ *Volkswagen's Emissions Cheating Settlement: Questions Concerning ZEV Program Implementation: Hearing before Subcomm. on Oversight & Investigations, H. Comm. on Energy & Commerce 114th Cong. 14 (2016) (unofficial transcript on file with Committee).*

² *Id.*

- i. Is the ZEV investment intended to address consumer deception?
 - 1. *[If yes]*: Please clarify how a remedy for consumer deception is tied to the Clean Air Act and not the relevant FTC anti-deceptive marketing practices violations.
 - ii. What are the attributes for “clean vehicles” EPA used in its assessment of the impact of VW’s violations?
 - iii. Aside from excess NOx emissions, what are the attributes of the VW vehicles that caused EPA to state the vehicles sold were “dirty” vehicles?
11. The purpose of the ZEV Investment Commitment is stated broadly in the preamble to Appendix C as “direct[ing] \$2 billion of investments over a period of up to 10 years into actions that will support increased use of zero emission vehicle (“ZEV”) technology in the United States.”
- a. Please describe what EPA believes are the goals for developing infrastructure for the electric vehicle industry in the United States.
 - b. Please describe the current state of investment in ZEV infrastructure and why those investments are expected to be insufficient over the next ten years.
 - c. Please describe the amount of additional infrastructure expected to be developed through the implementation of the proposed ZEV Investment Commitment.
12. In April 2015, the National Academies released a report titled “Overcoming Barriers to Deployment of Plug-in Electric Vehicles.” Notably, this report recommended against any additional direct federal investment in new public charging infrastructure and highlighted the need for more research on the relationship between charging infrastructure availability and consumer adoption of EVs. The report did, however, note vehicle cost as a significant impediment to adoption, and highlighted specific factors – such as battery size and performance – as critical to addressing this challenge.
- a. Is EPA aware of this report by the National Academies?
 - b. Does EPA agree with the finding in the report that, prior to committing significant resources to public charging infrastructure, it is important to answer questions such as what type of infrastructure is needed and where?
 - c. Recognizing that the ZEV Investment commitment is not a direct federal investment, one of its stated purposes is to advance the use of ZEVs. Does EPA believe that a large investment in EV infrastructure will have a greater benefit to adoption of ZEV vehicles than, for example, if the settlement required VW to fund non-proprietary research into more efficient and effective batteries?

13. Section 1.10.1 of the ZEV Investment Commitment defines an “infrastructure” investment as one “addressing an existing need or supporting a reasonably anticipated need.”

- a. Please explain the criteria EPA will use to determine whether there is an “existing need” or a “reasonably anticipated need” for proposed infrastructure investments.

14. The Fixing America’s Surface Transportation (FAST) Act, enacted in December 2015, required the Secretary of Transportation to designate “alternate fuel” corridors. The Department of Transportation did that last month, announcing 55 routes spanning 35 states. How will EPA consider the directives of the FAST Act and the “alternative fuel” corridors when overseeing the ZEV Investment Commitment?

15. The Committee seeks further clarity on how EPA calculates the cost of mitigation projects in settlements, given discrepancies between the VW settlement and another settlement involving defeat devices.

In 1998, EPA reached a \$1 billion settlement with seven manufacturers for the sale of 1.3 million heavy duty diesel engines that contained a defeat device. In addition to a civil penalty, the settlement included \$850 million to replace or repair the affected engines and more than \$100 million for projects to reduce NOx emissions, including R&D on new technologies and fuels. At the time, EPA announced that the 1.3 million engines “emitted more than 1.3 million tons of excess NOx in 1998 alone[.]” That amounted to six percent of annual NOx emissions from all cars, trucks and industrial sources, “equivalent to the NOx emissions from an additional 65 million cars being on the road.” EPA added that the settlement would “prevent 75 million tons of [NOx] air pollution over the next 27 years...more than the total U.S. NOx emissions for three years.”

In response to Questions for Record from the Committee’s October 2015 hearing on VW, EPA noted that “[t]he vast majority of NOx from on-road vehicles comes from heavy-duty trucks and gasoline vehicles” and that “NOx emissions from light-duty diesel cars and trucks contribute less than 0.1 percent of NOx pollution from on-road vehicles.”

The VW settlement involves a fraction of the light-duty diesel fleet – already a small portion of U.S. NOx emissions – and yet the Mitigation Trust, alone, almost triples the entire 1998 heavy duty diesel settlement, which involved more than double the number of affected engines.

- a. When investigating emissions violations, how does EPA evaluate and quantify the environmental harm that requires mitigation?
- b. Is this consistent across all sources? If not, why not?

c. Are we to assume that less than 500,000 VW light-duty diesels emitted more NOx than 1.3 million heavy duty diesel engines?

i. If not, how do you explain the differences in these settlements?

16. In response to the VW violations, EPA began conducting additional confirmatory testing on all diesel vehicles in an effort to identify any additional concerns or potential violations across the light-duty diesel fleet. At the time of the Committee's initial hearing on VW, an employee in your office, Mr. Grundler, testified that the testing had just commenced but committed to keeping the Committee informed of your progress and results. In addition, he also testified that he did not have concerns with diesel technology in general and did not expect to find widespread problems.

a. What is the current status of the additional confirmatory testing initiated by EPA in the wake of the VW violations?

b. In the course of this testing, has EPA identified any other defeat devices or violations of the Clean Air Act?

i. *[If yes]*: What did you discover and what action did the agency take?

ii. *[If no]*: In that case, has the agency informed the public about these results?

1. If not, why not?

c. Based on the results of this testing, do you believe diesel technology remains a viable option for automakers to improve fuel economy and reduce emissions?

The Honorable Markwayne Mullin

1. Electric vehicles qualify for grants that are worth 75 percent of their cost when acquired by a private fleet or business but other clean technologies receive only 25 percent. Why do electric vehicles receive a much higher level of funding than other clean vehicle technologies?
2. Under the DERA Program, 35 percent is provided to offset the cost for private fleets that purchase a new replacement vehicle powered by a low-NOx engine. The settlement only provides 25 percent for these same trucks or vehicles. Why doesn't the EMT provide the 35 percent allowed by the DERA program for new low-NOx engines?
3. New natural gas trucks have been certified to emission standards that are 90 percent cleaner than today's emission standard for NOx. Even though these trucks are much cleaner than current diesel vehicles, they receive the same level of funding under the

settlement. Why isn't there any differentiation in the level of funding for technology that is much cleaner?

4. The DERA program provides funding to offset up to 45 percent of the cost of a new electric vehicle, but the settlement fund provides 75 percent for private fleets. Why was the funding level for private fleets increased so significantly in the case of electric vehicles but not for other clean technologies?
5. The Environmental Mitigation Trust allows beneficiaries to use settlement funds to pay for fueling infrastructure for electric vehicles but not for other alternative fuels like propane or natural gas. Why are funds provided only for electric vehicle charging stations but not infrastructure for other clean fuel vehicles?
6. EPA's November 18, 2016 letter to Chairman Upton and Subcommittee Chairman Murphy indicates that the ZEV Trust Fund is intended to "address the broader harm to the clean vehicle market."
 - a. Were electric vehicles the only clean vehicle technology harmed by Volkswagen's actions?
 - b. What evidence is available to suggest this is the case and was the harm limited to light duty vehicles?