



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
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The Honorable Tim Murphy
Chairman
Committee on Energy and Commerce
Subcommittee on Oversight and Investigations
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Enclosed please find the U.S. Environmental Protection Agency's responses to the Subcommittee's questions for the record following the December 6, 2016, hearing titled "Volkswagen's Emissions Cheating Settlement: Questions Concerning ZEV Implementation."

I hope this information is helpful to you and the members of the Subcommittee. If you have further questions, please contact me or your staff may contact [REDACTED] in my office at [REDACTED]

Sincerely,

[REDACTED]
Nichole Distefano
Associate Administrator

Enclosure

**U.S. Environmental Protection Agency
Responses to Questions for the Record
Hearing: “Volkswagen’s Emissions Cheating Settlement: Questions Concerning ZEV Program
Implementation”
Subcommittee on Oversight and Investigations
Committee on Energy and Commerce
U.S. House of Representatives
December 6, 2016**

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.

Response: Many of EPA’s settlements require remedies for the harms caused by the violations, and do not specify how the defendant will accomplish the work required. A defendant can set up a separate entity to accomplish the work; that is generally not specified in the settlement agreement.

The list of EPA settlements that require injunctive relief is many thousands of cases long. Information about cases resolved by the EPA since 1998 is available on EPA’s website: <https://cfpub.epa.gov/enforcement/cases/index.cfm?templatePage=3>.

The ZEV investment requirement is a remedy specifically tailored to the harm caused by Volkswagen. Because there has not previously been a case involving exactly this kind of harm, the EPA has not had a remedy of exactly this type before. See Response to Question 10, below, for a description of the harm at issue in this case.

Volkswagen remains subject to all federal and state laws, including laws regarding competitive behavior. The first partial consent decree (“Decree” or “Settlement”) in no way enables Volkswagen to participate in the ZEV market in a way it, or any other company, could not have done outside an enforcement case. With that said, the ZEV investment requirement will be a business investment made by Volkswagen. Nothing in the Settlement prevents Volkswagen from obtaining revenue from ZEV-related investments. Volkswagen could have decided to make these investments even without this enforcement case.

Injunctive relief is about remedying the harm, not penalizing the violator. The first partial consent decree does not address penalties. Penalties are payments to the United States Treasury. Note that since the December 6 hearing, the United States lodged a second partial consent decree to address the remaining vehicles not addressed by the first partial consent decree. The United States also lodged a third partial consent decree to impose a civil penalty and to secure measures to prevent future violations. A complete description of these settlements is available at: <https://www.epa.gov/enforcement/volkswagen-clean-air-act-civil-settlement>.

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.

Response: The Decree includes controls on the work that Volkswagen will undertake as part of the ZEV investments. Volkswagen is required to solicit and consider input; the company must adhere to specified and detailed creditable cost guidance in order to have its expenditures credited toward the settlement amount; the charging infrastructure must be accessible to all vehicles utilizing non-proprietary connectors; and plans must be developed for each of four 30-month investment cycles. In addition, there are strong accountability provisions including an obligation to comply with all laws, the same as any other company must do. If Volkswagen engages in any anti-competitive behavior, it can be held to account in the same way any other company could. Volkswagen cannot do anything under the Decree that it could not have done without EPA's enforcement action. There are also public transparency requirements that will provide the public, and participants in the market, considerable information on Volkswagen's activities, and allow them to comment and make suggestions on Volkswagen's plans, so Volkswagen's competitors will have a much bigger window into Volkswagen's operations than is true of any other company.

The EPA does not make the investment decisions; EPA's role is to ensure that Volkswagen follows all of the requirements of the Decree. The EPA will not be evaluating, nor would it be appropriate to evaluate, the impact of Volkswagen's investments on individual companies. The provisions of the Decree that are summarized above are intended to ensure an accountable process for Volkswagen's investment decisions and implementation.

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?

Response: The Settlement does not allow Volkswagen to do anything that it could not do as a business decision as a private company. However, it does obligate Volkswagen to account publicly for its investments, a requirement that does not apply to other companies in this sector. See also EPA's response to questions 1 and 2 above.

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?

Response: The information that Volkswagen is required to include in its annual reports is listed in Appendix C of the Decree. That includes the information mentioned in your question, as well as other information on costs. The Decree does not limit the other activities in which Volkswagen can engage, except that Volkswagen is required to comply with all applicable laws in conducting these investments. Volkswagen cannot do anything that other companies engaging in the same business activity cannot legally do. One key difference is that while other companies are not required to publish data of the type that Volkswagen will have to publish, Volkswagen will be required to make that information available to the public annually.

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?

Response: OECA will be overseeing implementation of the Decree, as it does for all EPA enforcement resolutions. If OECA has questions about the program that would assist it in monitoring compliance, it will raise those questions with the program experts in OTAQ, again as it does for all consent decree implementation. For example, OTAQ support will be essential in assessing Volkswagen’s proposed emissions modifications pursuant to Appendix B of the Decree.

Other federal agencies are specifically mentioned as entities from whom Volkswagen must solicit input on the investment plans. Volkswagen is required to consider input from those agencies and will likely find federal agencies’ analyses of ZEV infrastructure needs and suggested corridors useful in making investment decisions. If in the course of overseeing compliance OECA has specific questions on which other agencies have expertise, OECA will solicit input from other agencies as needed, as we do with all enforcement cases. Other agencies will not have a role in monitoring or

guiding the implementation of Appendix C, except as provided in the provisions requiring Volkswagen to solicit input from other federal agencies.

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?

Response: Volkswagen has already commenced outreach for the development of its first investment plan, and that outreach invites comments from all entities, not just the ones listed in the Decree. Conducting the required outreach is an obligation of the Decree that the EPA intends to ensure is met.

The Decree also requires Volkswagen to consider the input, and to explain how they considered that input in their plan. The Decree does not require Volkswagen to change investment plans based on comments received; it requires only that Volkswagen consider them and explain in a public document how they considered them. The EPA expects that the comments will provide useful input, and also that a diversity of comments will be submitted, many of which do not agree with each other. Volkswagen has the obligation to make the investment decisions, but also to consider the comments in reaching its decisions. Ensuring adherence to this requirement is part of the oversight of the Decree that the EPA will be doing. This public transparency is the foundation of accountability. As with all enforcement oversight of settlements, in determining compliance, the EPA evaluates the actions of the defendant against the terms of the consent decree. The Decree is clear that the investment decisions ultimately are made by Volkswagen.

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?

Response: Mr. Grundler’s comment that the EPA would meet and confer with other parties was made before he fully reviewed the Decree. The Decree as entered is clear that the EPA does not have a role in the investment decisions beyond ensuring that Volkswagen meets the requirements listed in the Decree. The EPA will not be conducting meetings with outside parties about the implementation of this Settlement.

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?

Response: The EPA expects that Volkswagen will solicit input from other federal agencies that have potentially relevant expertise, such as the Department of Transportation and the Department of Energy. If Volkswagen wishes to install infrastructure at a federal location, all federal contracting requirements would apply.

The Decree requires Volkswagen to solicit input from other federal agencies, and the EPA expects that such input would include the rationale and ideas described by the Department of Transportation in the designation of alternative fuel corridors under the FAST Act. The EPA anticipates that Volkswagen would consider such thoughtful efforts as very relevant and useful in developing its investment plan. Ultimately the investment decisions are made by Volkswagen, subject to the

constraints contained in the Decree. Volkswagen can receive credit only for investments and for costs that meet the Decree's criteria. The federal government does not direct Volkswagen's investments.

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.

Response: The EPA does not intend to hold public input workshops. Volkswagen and others can certainly learn from the information presented in the California workshops, as well as information presented to Volkswagen through its public website. Under the Decree CARB is free to conduct its role as the state sees fit, and what is done in California does not have to be done elsewhere. Volkswagen certainly will learn from its experiences in California, and that learning may well inform investment decisions made by Volkswagen in other places, but the Decree is clear that the investment decisions are solely Volkswagen's to make. The requirements that govern Volkswagen's investments are already laid out in detail in the Decree. The EPA will not be providing any guidance; the Decree contains the terms that the EPA will enforce through its oversight.

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.
 - 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?

Response: The purpose of the ZEV investment requirement is to remedy the adverse impacts from Volkswagen’s Clean Air Act violations and further the purposes of the Clean Air Act by requiring support of truly green vehicles. Consumers purchased these vehicles in part on the basis that they were advertised as “clean” and “green.” Those consumers, properly informed, would likely have instead purchased a vehicle that was actually clean, and that includes ZEVs. This settlement attempts to remedy the harm caused by Volkswagen’s violations of the Clean Air Act, and address the fact that the population of vehicles on the road today, and related infrastructure, are likely different from what it would have been had Volkswagen not violated. The Court found that the ZEV provisions furthered the purpose of the Clean Air Act, and were fair, reasonable and in conformance with applicable laws.

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.*

The ZEV provisions are not about consumer deception; there are separate consumer remedies that are part of a separate settlement that address that issue. EPA's settlement is about clean air, and the ZEV and mitigation provisions address the harm to clean air and clean vehicle markets that Volkswagen caused by marketing its dirty vehicles as clean.

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.

Response: The purpose of Appendix C is to support the market for zero emissions vehicles in the United States, leading to cleaner air. Many entities that have publicly stated views on the ZEV portion of the settlement acknowledged that the lack of ZEV infrastructure is one of the significant barriers to greater adoption of zero emission vehicles. The amount of infrastructure expected to be developed under the Decree is the amount that can be accomplished by the portion of the \$2 billion that is allocated to ZEV infrastructure development by the Decree. The Decree creates an expenditure obligation, bounded by strict limits on what investments qualify.

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?

Response: The Decree does not include any federal investment in ZEV infrastructure. One hundred percent of the investment will be undertaken by a private party. The ZEV infrastructure investment

is not intended to nor could it conceivably address every barrier to ZEV adoption in the United States. It is intended to require investment in ZEV infrastructure.

Another significant barrier to ZEV adoption highlighted by the National Academies report is lack of consumer awareness and knowledge about plug-in electric vehicles. The Decree requires Volkswagen to make significant investments in public education and outreach, which will help address this barrier.

The National Academies report is one of the authoritative reviews considering what the barriers are to increased adoption of ZEVs in the United States. While under the Decree Volkswagen makes the investment decisions, the Decree also requires Volkswagen to explain its investment decisions, and how it expects those investments to further adoption of ZEVs, specifically noting that Volkswagen should consider relevant research and studies. In addition, the plan is required to be updated every 30 months, allowing it to be changed to reflect both the changing market and new information about what types of infrastructure most support greater adoption of ZEVs.

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.

Response: Volkswagen is required to explain what the current needs and reasonably anticipated needs are as part of its submission.

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?

Response: Volkswagen is required to consider input from other federal agencies in developing its plan, and the EPA would expect that the initial alternative fuel corridor designations and other work under the FAST Act would be particularly relevant to Volkswagen’s investment choices. As the Decree explicitly states however, the investment decisions are Volkswagen’s to make.

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?

Response: Every settlement is based on the facts and the law of each particular case, as well as the solutions acceptable to the parties in a negotiated settlement. There is not one formula that determines appropriate injunctive relief, including mitigation; each case is based on the facts and the applicable law.

The eligible projects under the mitigation trust have a range of cost effectiveness. Each state that elects to become a beneficiary will decide how to implement the mitigation trust in its state and what combination of projects best serve the people of the state. For example, replacing higher polluting diesel school buses may cost more than some other options for reducing NOx, but states may nevertheless opt to spend money on that option because it has the additional benefit of protecting those most vulnerable to ozone pollution—children and the elderly. In addition, determining the appropriate mitigation in an enforcement case involves many factors, of which the amount of illegal pollution is just one. What opportunities exist to reduce pollution, the cost of reducing that pollution in different locations, the differing situation among states and many other factors are relevant. All settlements are the result of negotiation, so the agreement of the parties in an arm’s length negotiation is also an important factor in determining the scope of any settlement agreement.

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?

Response: It is essential that the EPA maintain an active compliance and oversight presence and to constantly adjust our protocols in ways that manufacturers can not anticipate. In September, 2015, just after announcing the VW violations, the EPA informed manufacturers that the agency would expand its confirmatory testing process to screen for defeat devices. The EPA has done just that, and it was this program that helped to uncover the defeat devices in the 3.0 liter Volkswagen vehicles.

At the same time, the vast majority of manufacturers both foreign and domestic have demonstrated through extensive Agency testing that their vehicles do comply with stringent emission standards in all types of normal vehicle operation. This reinforces our determination to continue to apply rigorous oversight, to change up our testing as circumstances and technologies change, and to hold manufacturers accountable if we do find issues. [GC1]

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?

Response: Under the Decree, clean technologies receive a range of funding levels, depending on the capital costs of the technology, the emissions produced by the technology, and the status of the beneficiary (government or non-government owned). EPA drew from its experience administering DERA, and negotiated the terms of the Decree with a goal to make the best use of the money to reduce emissions while providing flexibility for state selection of projects.

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?

Response: The Decree is separate and apart from the DERA Program. The DERA Program has program elements, specifications and parameters based on its authorizing statute and program goals and therefore the percentages of funding offered will vary.

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?

Response: Compressed Natural Gas (CNG) engines are certified to the same 2010 EPA emissions standard for NOx as diesel engines. The Decree does not provide different funding options for CNG compared to other types of engines so that beneficiaries have flexibility to select projects that suit their goals.

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?

Response: The Decree is separate and apart from the DERA Program. The DERA Program has program elements, specifications and parameters based on its authorizing statute and program goals and therefore the percentages of funding offered will vary.

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?

Response: The Mitigation Trust allows states to put mitigation funds toward other lower emissions technologies. The eligible projects specifically include replacing diesel emission sources with cleaner technologies to reduce NOx, and these specifically include both propane and natural gas. In addition to these provisions, states can also use up to 15% of the funds to support ZEV infrastructure. ZEV infrastructure includes both electric charging and hydrogen fueling.

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?

Response: The definition of zero emission vehicle used in the Decree includes both electric and hydrogen vehicles. The mitigation trust provisions of Appendix D allow states to select emissions reducing technologies to replace diesel engines. The Appendix C provisions are about zero emitting vehicles. In its enforcement cases, the EPA tailors the remedy to the facts of a particular case, and focuses the remedy on the particular harm.

The Decree includes controls on the work that Volkswagen will undertake as part of the ZEV investments. Volkswagen is required to solicit and consider input; the company must adhere to specific and detailed creditable cost guidance; the charging infrastructure must be accessible to all

vehicles utilizing non-proprietary connectors; and plans must be developed for each of four 30-month investment cycles. In addition, there are strong accountability provisions including an obligation to comply with all laws, the same as any other company must do. If Volkswagen engages in any anti-competitive behavior, it can be held accountable in the same way any other company could. Volkswagen cannot do anything under the Decree that it could not have done without EPA's enforcement action. There are also public transparency requirements that will provide the public, and participants in the market, considerable information on Volkswagen's activities, and allow them to comment and make suggestions on Volkswagen's plans, so Volkswagen's competitors will have a much bigger window into Volkswagen's operations than is true of any other company.

The EPA does not make the investment decisions; EPA's role is to ensure that Volkswagen follows all of the requirements of the Decree. The EPA will not be evaluating, nor would it be appropriate to evaluate, the impact of Volkswagen's investments on individual companies. The provisions of the Decree that are summarized above are intended to ensure an accountable process for Volkswagen's investment decisions and implementation.