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VOLKSWAGEN'S EMISSIONS CHEATING SETTLEMENT:

QUESTIONS CONCERNING ZEV PROGRAM IMPLEMENTATION

TUESDAY, DECEMBER 6, 2016

House of Representatives,

Subcommittee on Oversight

and Investigations,

Committee on Energy and Commerce,

Washington, D.C.

The subcommittee met, pursuant to call, at 11:03 a.m., in Room 2322, Rayburn House Office Building, Hon. Tim Murphy [chairman of the subcommittee] presiding.

Present: Representatives Murphy, Burgess, Blackburn, Griffith, Bucshon, Flores, Mullin, Hudson, Collins, DeGette, Tonko, and Kennedy.

Staff Present: Grace Appelbe, Staff Assistant; Jennifer

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Barblan, Counsel, Oversight and Investigations; Elena Brennan, Staff Assistant; Blair Ellis, Digital Coordinator Press Secretary; Charles Ingebretson, Chief Counsel, Oversight and Investigations; A.T. Johnston, Senior Policy Advisor; Dan Schneider, Press Secretary; Peter Spencer, Professional Staff Member, Oversight and Investigations; Rick Kessler, minority Senior Advisor and Staff Director, Energy and Environment; Chris Knauer, Minority Oversight Staff Director; Elizabeth Letter, Minority Professional Staff Member; Miles Lichtman, Minority Staff Assistant; Dan Miller, Minority Staff Assistant; Matt Schumacher, Minority Press Assistant; and Andrew Souvall, Minority Director of Communications, Outreach and Member Services.

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Mr. Murphy. Good morning. This is the Oversight and Investigation hearing on Volkswagen's Emissions Cheating Settlement Concerning the ZEV Program Implementation. Here we will hear testimony to address the significant questions the Oversight Committee has about a \$2 billion investment program embedded in a recently approved partial consent decree to settle numerous claims against Volkswagen.

Just over a year ago, VW admitted to Federal authorities as well as this subcommittee, that it been thwarting Federal emissions tests for year. VW willfully and knowingly cheated, having installed engine software in 480,000 diesel vehicles to defeat emissions tests. This is a clear violation of Federal law. The reasons for VW's nefarious actions are now quite clear. Despite having committed to producing, quote, "clean diesel," unquote cars, it couldn't meet the Clean Air Act standards without installing the software to cheat testing machines, and ultimately hundreds of thousands of consumers.

It is also clear that VW deserved to be held to account for their illegal actions, for the harm to consumers, and the environment, and this violation of the public trust. In January, the United States sued VW for violations under the Clean Air Act. Hundreds of other parties brought actions. The cases were consolidated, and settlement talks commenced and eventually reached an agreement. In late October, a U.S. District Court approved a \$15 billion partial consent decree resolving

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many claims concerning the 2.0 liter engines, and including buyback and modification provisions to address the economic harm to VW customers.

Yet, a piece of this settlement raises the potential that VW's penalty for bad behavior may not be entirely without benefit for VW's own future operations. The settlement requires VW to invest a substantial amount of money in infrastructure and education to expand the market for zero emission vehicles, such as plug-in electric cars, coincidentally just as VW was launching a new strategy to enter and grow its share in the electric vehicle market. Under this so-called ZEV investment commitment to the partial consent decree, VW must spend \$800 million over the next 10 years into infrastructure and market development in California to be overseen by the State of California, and \$1.2 billion over the same period in the rest of the Nation to be overseen by the EPA.

This works out to VW having to invest nearly \$500 million every 30 months. To put this in perspective, the total market for U.S. electric charging infrastructure, including installation, has been estimated by industry to be up to \$800 million over the next 30 months. So VW has agreed to spend at a rate that would nearly double the size of this market. Think about the regulatory and oversight considerations if this massive influx of infrastructure investment was government spending, like a stimulus package. The pace and scale of

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such investment would be of great interest to preexisting market players who would stand either to benefit from an enlarged market, or to suffer from public money that would crowd out competition.

In many respects, VW's mandated investment threatens a similar situation, but the ZEV investment oversight provisions appear pretty thin, especially at the Federal level. Most notably, VW will apparently have the sole discretion for how it will invest these sums in \$1 billion dollar national program overseen by the EPA, creating opportunity for VW to gain an enormous competitive advantage.

Now, we are not here today to ask EPA to renegotiate the agreement. But now that it is final, we need to understand how it will work, how it will affect businesses already in the zero emission vehicle marketplace, and what EPA's role is in administering this huge financial commitment. We wish there were more time, but EPA must make some decisions, even as we speak. And the big decision on VW's plan for spending the first \$300 million will come early next year. It is against this backdrop that we wrote EPA in early November, and we asked EPA here today to help us build a record on the issues surrounding the ZEV program implementation, and the measures necessary to protect market competition as investment plan's developed. I'm expecting to hear what EPA's oversight role will be, and given the enormous amount of money to be invested, how it will impact the policymaking landscape.

I also want to hear what actions EPA will make to ensure programs

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like this do not encroach on congressional interests.

VW betrayed the public trust with this cheating scandal, and we are here this morning to ensure the agencies responsible for developing and agreeing to this deal will ensure the public interest is protected.

Now, we are waiting for the Democrats to come onboard. So is there another member this side that would like to make an opening statement?

I recognize the vice chair of the committee, Mrs. Blackburn, for 5 minutes.

Mrs. Blackburn. I want to thank you all for being here. And as the chairman said, we have some questions about EPA and their role and their ability to oversee this. And also VW's participation in this. I think one of the things that I want to hear from EPA is how active, how passive is this role in monitoring going to be? What are your expectations? And then, do you have the necessary skill sets in order to do this?

The second thing I'm going to want to know is about the data that is going to be collected when the cars are in these stations. Who owns that data? Is it VW? Is it going to be the EPA? Who's going to own this data? And then what are they going to do with that data? What are the restrictions on it? Who owns the transfer rights? Who is going to hold those transfer rights on this information? So as we get to questions, I will want to discuss that with you, because I think

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that as we look at this expansion and VW rolling out this, I think we need to have a discussion about that component of the data also.

And, Mr. Chairman, I yield back.

Mr. Murphy. Is there anyone on our side that has any other opening statements to begin with?

Seeing none, we will move forward. Let me just mention a couple things:

First of all, I ask unanimous consent that the members' written opening statements be introduced into the record. And without objection, the documents will be entered into the record.

I also want to explain the minority is delayed by a caucus meeting. They will be here as soon as they can be. And at that time, they will be able to make opening statement. But in the meantime, we will move forward with our panel.

So let me introduce our two witnesses for today's hearing, both from the U.S. Environmental Protection Agency. First, we have Cynthia Giles, Assistant Administrator in the Office of Enforcement and Compliance Assurance at the EPA; and Janet McCabe, Acting Assistant Administrator in the EPA's Office of Air and Radiation. Both our witnesses come to us today with extensive experience in environmental service in the public, private, and nonprofit sectors. Thank you, Ms. Giles and Ms. McCabe, for being here today. And we look forward to hearing from you in this very important matter.

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You're aware the committee is holding an investigative hearing, and when doing so, has the practice of taking testimony under oath. And do you have any objections to taking -- giving testimony under oath?

Seeing no objections, the chair would advise you that under the rules of the House and rules of the committee, you're entitled to be advised by counsel. Do you desire to be advised by counsel during your testimony today?

And seeing none, then in that case, would you please rise and raise your right hand, and I'll swear you in.

[Witnesses sworn.]

Mr. Murphy. Thank you. You are now under oath and subject to the penalties set forth in title 18, section 1001 of the United States Code. We'll have you each give a 5-minute summary of your written statement -- we're just doing one statement? All right. Ms. Giles, you're recognized for 5 minutes.

TESTIMONIES OF CYNTHIA GILES, ASSISTANT ADMINISTRATOR, OFFICE OF ENFORCEMENT AND COMPLIANCE ASSURANCE, U.S. ENVIRONMENTAL PROTECTION AGENCY; AND JANET MCCABE, ACTING ASSISTANT ADMINISTRATOR, OFFICE OF AIR AND RADIATION, U.S. ENVIRONMENTAL PROTECTION AGENCY

Ms. Giles. Thank you, Mr. Chairman and distinguished members of the subcommittee. I am Cynthia Giles. I'm the Assistant

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Administrator of the Environmental Protection Agency's Office of Enforcement and Compliance Assurance. And I'm joined today by Janet McCabe, the Acting Assistant Administrator in the Office of Air and Radiation. Thank you for the opportunity to testify about the Volkswagen settlement achieved by EPA, the Department of Justice, and the California Air Resources Board.

In close coordination with our partners, EPA achieved a groundbreaking settlement using the authority provided to EPA by Congress under the Clean Air Act. Our priority from the start was to remedy the damage VW caused when it sent half a million cars onto our roads emitting harmful pollution far in excess of reasonably achievable, cost-effective Federal standards. These standards are in place to protect the air we breathe. And through this settlement, we are upholding these standards and delivering on our obligation under the Clean Air Act to protect public health for all Americans.

In October, the court formally approved the settlement agreement, partially resolving allegations that Volkswagen violated the Clean Air Act by the sale of approximately 500,000 vehicles containing 2-liter diesel engines equipped with defeat devices. Through three key provisions, the settlement holds Volkswagen accountable and puts in place remedies for the violations. VW must offer to buy back or fix the violating cars; VW is required to pay \$2.7 billion into a trust account to fund mitigation projects selected by the States; and VW will

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invest an additional \$2 billion to promote the development and use of clean vehicle technologies.

The subcommittee today has asked us to focus on the third element, investment in clean vehicle technology, which is just one part of this comprehensive partial settlement. Over the course of several years, Volkswagen sold vehicles in the United States that it claimed were green, lower-emitting, and clean diesel vehicles. Consumers looking to reduce air pollution purchased these vehicles on the premise that they were clean. But we now know that, in fact, they emit up to 40 times the allowable level of NOx pollution.

VW's violations of the Clean Air Act undercut the market for truly green vehicles, resulting in illegal pollution and not the cleaner air that was promised. The zero emissions vehicle, or ZEV, investment requirement is a court-ordered remedy intended to address the harm that VW caused by requiring investments to accelerate the growth of clean transportation, and to advance cleaner air in America.

The settlement requires Volkswagen to develop investment plans over a 10-year period, totaling \$2 billion nationwide that will increase the necessary ZEV infrastructure, improve access to ZEVs, and promote education about ZEVs in the United States. "ZEV" means any zero emitting vehicle, including battery electric vehicles, fuel cell vehicles, and certain on-road plug-in hybrid electric vehicles. The settlement means more people have opportunities to use ZEVs without

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having to purchase or lease one, for example, through car sharing programs. More drivers of electric cars will find a charge when they need one. And there will be more brand-neutral public outreach efforts across the country about the benefits of ZEVs.

The agreement also includes strong transparency and accountability measures. VW is explicitly required to solicit and consider input from States, municipalities, tribes and other Federal agencies, before it makes ZEV investment decisions. And it must make its investment plans available online.

VW ZEV infrastructure investments and its public outreach efforts must be brand neutral, meaning ZEV infrastructure must be accessible to all ZEV vehicles utilizing nonproprietary charging equipment, and not just the ones VW makes.

The ZEV investment plan will be updated every 30 months, ensuring that the investments account for changes in ZEV technology and the market. And all Federal, State, and local laws will apply to Volkswagen as they do to any other company.

EPA, working with DOJ, will ensure that VW follows the rules, that it satisfies the requirements for stakeholder engagement, that the investments are truly brand neutral, and that VW complies with all the terms of the settlement.

This settlement ensures that Volkswagen finally delivers on the promise it made for cleaner air and a cleaner transportation future.

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Thank you for the opportunity to testify. And we would be happy to answer any questions.

[The prepared joint statement of Ms. Giles and Ms. McCabe follows:]

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Mr. Murphy. Thank you. I now recognize myself for 5 minutes.

Ms. Giles, and I apologize for mispronouncing your name, in a few words, can you tell me the purpose of the ZEV investment commitment and the NOx mitigation trust in the Volkswagen matter?

Ms. Giles. Both of those provisions are part of the three-part structure to remedy the harm caused by VW's violations to get the pollutant cars off the road, to mitigate the NOx pollution that they caused, and to invest in a clean transportation future.

Mr. Murphy. Thank you. Now, part of the settlement requires Volkswagen to pay \$2.7 billion into a NOx mitigation trust. The partial consent decree states, and I quote, "The funding for the eligible mitigation actions provided for herein is intended to fully mitigate for total lifetime excess NOx emissions from the 2.0 liter subject vehicles where" -- "or will be operated." Now, that sounds like to me, when you say fully mitigate total lifetime, that sounds like 100 percent. Am I correct on that?

Ms. Giles. The mitigation trust is part, as I said, of a three-part remedy that is designed to address the different types of violations that VW had.

Mr. Murphy. I understand that. Okay. But tell us today the amount of the total lifetime excess NOx emissions from these vehicles?

Ms. Giles. The mitigation trust, as you mentioned, is part of the three parts designed to remedy NOx emissions. And it sets up a

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trust that is run by a trustee to approve and oversee the expenditures by States of the funds that are allocated to them.

Mr. Murphy. Well, let me come back to that in a second there.

In your written statement, you talk a lot about how transparent the settlement agreement is. But I have a hard time seeing that transparency, if we can't see the basis on which you claim the total NOx emissions will be mitigated. Can you give us that?

Ms. Giles. The only calculations we have done with respect to the NOx emissions were done in support of the enforcement case. And that enforcement case is not over. We still have the 3-liter vehicles, we have civil penalties, and the ongoing criminal investigation. So your specific question is relevant to those ongoing portions of the case and not something we can talk about here.

Mr. Murphy. But I'm still having a little trouble. I'm just trying to clarify this, that if we take your word that the total environment harm is mitigated by the NOx mitigation agreement, what's the purpose of the ZEV investment commitment?

Ms. Giles. Those two components are designed to address separate harms. So the mitigation portion is to make up for the pollution caused, and the ZEV portion is to address the fact that they sold dirty vehicles claiming they were clean.

Mr. Murphy. Is that a penalty? Is that a penalty then?

Ms. Giles. No, it is not a penalty. These are all part of the

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injunctive relief in the case.

Mr. Murphy. So I've accepted there's a legitimate purpose, then, for the ZEV investment commitment. I'm still trying to find how I determine what that is. There are conflicting statements coming out of EPA and what the role of the ZEV investment commitment is, and what authority EPA has to ensure that it meets those goals. What does it mean to fully mitigate the total lifetime excess NOx emissions? Can you please define that for me?

Ms. Giles. The NOx reduction provisions of mitigation are one part, as I've said, of a three-part strategy to address the violations. So we're addressing the cars on the road as one part, the NOx emissions from the vehicles as the second part, and the third part is to remedy the damage caused to the marketplace.

Mr. Murphy. Yeah, I hear that part. And those are noble causes. I just wonder if there's some double jeopardy here. So it -- in your November 18 letter to the committee, you wrote, quote, "The partial consent decree does not allow the EPA to substitute its preferences for choices made by Volkswagen." So that makes it sound like VW can pretty much invest in whatever it wants, which is concerning, given that VW has announced that it's going to have this brand-new business plant for electric vehicles. And a few months ago the head of the EPA's Office of Transportation Air Quality, Chris Grundler, was quoted as saying that EPA would have a much larger say in how VW spent the \$1.2

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billion for ZEV infrastructure. Mr. Grundler went on to state, "We have work to do with the new team and with our colleagues at the Transportation and Energy Departments to come up with a collective vision for what infrastructure would look like nationally, so we can make an informed decision when Volkswagen comes in with their plan that is consistent with ours, so that the \$2 billion is not wasted." Mr. Grundler also stated that he didn't want all the money to go to fast charging stations, and that there should be an emphasis on providing the charging station at multi-family dwellings. So which is it? Does the EPA have a limited but essential role where you will not substituting your own preferences for Volkswagen, or is the EPA actually going to make VW's plan fit within EPA's vision of ZEV infrastructure?

Ms. Giles. Consent decree clearly provides that the decisions are made by VW. They are in charge of the investment decisions. EPA has a limited but important role to make sure that VW complies with the consent decree.

Mr. Murphy. So VW can make their own decisions on how this is going to go. I see. Well, we'll come back to that.

I now will -- my time is up. I now recognize Mrs. Blackburn for 5 minutes.

Mrs. Blackburn. Thank you. Your answer to the chairman's question makes it sound like VW's going to have a lot of autonomy over

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this situation. So let's go to the issue of data, and the data that is coming in off of the charging stations. And let's talk specifically for a minute about who is going to collect it? Who's going to hold it? How they're going to be able to use it? Would VW be able to take that data and use it as a marketing plan for their cars? Would they be able to take that information and use it to incent sales? So talk to me about that data, and then, also, the transfer rights that should be accompanying or overriding that data.

Ms. Giles. Well, there are a couple provisions that are relevant to your specific question. One is, as I mentioned briefly before, that VW has to comply with all of the laws that any other company in this marketplace would comply with. The specific --

Mrs. Blackburn. Well, let me interject right there. We have no laws on the book that apply to transfer rights on data. And we do not have a data security law on the book. So go ahead.

Ms. Giles. As to your specific question about the data, one of the essential parts of the transparency that is required by this consent decree is that VW is required to collect information about the charging stations that it installs, and to make that data available to the public as part of the robust transparency that we are building into this consent decree. So that information will be available to the public, to competitors, who will have, you know, quite a big window into VW's operations.

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Mrs. Blackburn. So then what we may want to do is look at something regarding timing on collection, and when that data is made public, so that they don't capture and hold that and then release it a year later or 2 years later, that everyone has access at the same time.

Ms. Giles. So the consent decree specifically provides that VW has to file annual reports, which are public and posted on the Web, that will include the data from the charging stations that they have installed.

Mrs. Blackburn. So then, in essence, what you're telling me is for a 365-day period, they will -- and they and they alone, will have access to that data to manipulate it, to work with it, to advertise or to market. But it will be theirs. And then after that period of time, it will be made public. So would that be your understanding?

Ms. Giles. Well, the consent decree provides that they have to make that data available to everyone annually. So --

Mrs. Blackburn. Do you not see a little bit of a concern with this if there is no restriction that -- see, one of the things that we've discussed in our communications and technology subcommittee and others here is looking at the data security issues and looking at who owns the virtual "you." It's a part of our privacy debate. It is something that encompasses much of what is transpiring in the Internet of things.

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And from what I'm hearing from you, it sounds as if you all do not have a clear understanding as to who is going to have first the right of refusal over that data. Is it the person that owns the vehicle? Is it the -- is it Volkswagen, because they're the ones that are manning the stations? Within that 365-day period of time, what are the restrictions on them? And what is their ability to use that prior to anyone else having access to that? You know, it's one thing to say -- and we see this all the time when you look at patents and copyrights, you know. And if someone says, Well, you know, it's out there in the public domain. But, yeah, then what did that person do with it before it went to the public domain? So this is Volkswagen taking this data, and then they're going to have use of it for a year, and then at the end of the year, they're going to make a report as to what that data is. But in the meantime, it is theirs. So you could look at it and say, Wow, \$2 billion. That was quite a settlement. But look what they bought.

Ms. Giles. Well, the -- every company in this market operates with a less degree of transparency than VW will do. VW has to solicit input on what this plan contains. Their investments specifically have to be brand neutral, and they have to update their plan every 30 months to account for changes in the marketplace, and they have to be very transparent. So they are going to be substantially more transparent than other companies in the --

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Mrs. Blackburn. After 365 days.

I yield back.

Mr. Murphy. Thank you. The gentlelady yields back.

I now recognize Dr. Burgess for 5 minutes.

Mr. Burgess. Thank you, Mr. Chairman. And I -- this settlement that has been crafted and created is -- I mean, it's the first time I've ever seen anything like this. I mean, the language. The language that's written in the court settlement is some of the most detailed and densely technical language that I have ever -- that I've ever read.

Just to carry on with Vice Chairwoman Blackburn's concerns, if I'm reading correctly in appendix C in the settlement that deals with the issue of data -- yeah, I think what the chairwoman is suggesting is very possible, that there would be almost a year's benefit to the company that has been monitoring the activity at their charging stations. I don't even know, does Volkswagen have an electric vehicle on the market?

Ms. Giles. I believe they do. Yes.

Mr. Burgess. So they will have almost a year's advantage on anyone else in that market space with their ability to monitor consumer behavior and consumer use of their charging stations. I don't begrudge them that, but that is a fact. And I don't think, again, as I read appendix C of the agreement, I don't see there's anything to prevent that. And if I were clever, and I have to believe the people at

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Volkswagen are, because they wouldn't be in this position if they hadn't been somewhat clever, that they'll be able to use and manipulate that data and use to it to their advantage. I would be surprised if they didn't, in fact. I don't know if there's any way that that can be dealt with differently, but just as I read appendix C, that's my takeaway.

Who advised -- this is written -- this document is produced by the Federal district court. Is that correct?

Ms. Giles. The settlement agreement was written by EPA and the California Resources Board with VW.

Mr. Burgess. So it was your assets that then went into drafting this settlement?

Ms. Giles. That's correct.

Mr. Burgess. So it was people of the United States, essentially, who paid for the production of this very detailed document that we have in front of us. Is that correct?

Ms. Giles. As with all EPA enforcement actions, yes.

Mr. Burgess. I will confess to being a little bit concerned about the characteristics of the directors of that board, although they are spelled out of the -- I don't know what you call them, the reviewers or the monitors, although it is spelled out in the agreement, and that they're not supposed to have any conflicts, and they're not supposed to go to work for the company within 2 years' time of having -- what enforcement do you have over that? How do you prevent someone who says,

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you know, Volkswagen just cut me a real good deal. So I'm leaving the board and I know what it says in print, but what -- how do you prevent that? What mechanism is at your disposal?

Ms. Giles. Well, we certainly appreciate your careful reading of appendix C. That's great to hear. The independent financial auditor for the -- in the appendix C agreement that you've mentioned does have very clearly spelled out independence obligations. And their job as accountants is to look at the information that VW gives them, and to attest whether it meets the requirements that are very detailed for what counts as credible costs under the agreement. EPA retains, as we do in all our enforcement cases, retains the ability to make the decision of where -- if the company has complied with the consent decree or not.

Mr. Burgess. Is this settlement -- I mean, it seems unique to me. But maybe I'm just naive. Is this a standard type of EPA settlement? I mean, do these things happen frequently?

Ms. Giles. It is very typical for us to have enforcement cases where we require the company to fix the pollution problem and to redress the harms caused, and that's what we've done in this case.

Mr. Burgess. But this creation of \$2 billion of electric substation charging infrastructure, that seems a little unusual to me. But, again, I'll defer to the EPA on this. It's not something that I am familiar with encountering with 14 years on this subcommittee.

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Ms. Giles. Well, every enforcement remedy is tailored to the facts of a particular case. And in this case, as you know, we had very egregious violations of the laws that protect clean air in this country. This remedy --

Mr. Burgess. Where did this idea originate -- from where did it originate? Can you tell me that?

Ms. Giles. That was part of our settlement discussions.

Mr. Burgess. But who advised you on that?

Ms. Giles. Well, I'm not in a position to talk about our settlement discussions, in part, because we have a court order prohibiting me from doing that.

Mr. Burgess. At some point will those documents become public?

Ms. Giles. I don't know the answer to that question. I can just tell you that right now where the case is ongoing, and we're not a position to discuss the settlement negotiations.

Mr. Burgess. So much for transparency. Mr. Chairman, I'll yield back.

Mr. Murphy. The gentleman yields back.

Dr. Bucshon, you're recognized for 5 minutes.

Mr. Bucshon. Mr. Chairman, I don't have any specific questions. Can I yield my time to someone else?

Mr. Murphy. Well, next would be Mr. Flores for 5 minutes.

Mr. Flores. Mr. Chairman, I'll pass at this point, and maybe in

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the second round.

Mr. Murphy. Thank you.

Mr. Griffith.

Mr. Griffith. Okay. How many cars -- do you know how many cars has VW purchased back?

Ms. Giles. I don't know the answer to that question.

Mr. Griffith. Do you know if they've purchased any back?

Ms. Giles. I don't know.

Mr. Griffith. Are you all doing anything to see if they're in compliance with that?

Ms. Giles. We will be closely monitoring what they are required to do. There is no current obligation that cars already have been purchased back.

Mr. Griffith. When -- and I was just looking through the court order to see if I could find it, when do we expect that process to start? And let me say so that I'm not misleading anybody, I'm one of the people who gets compensated under this. I'm an owner of a Volkswagen diesel, and we filed our work, and I've got a constituent who is keeping me advised on their process. They filed all of their paperwork. She's already got her new car picked out and just waiting. And so I'm just curious. It's been closing in on 40 days since the court approved the agreement. You all reached an agreement, I think, in August. Court had to approve it. I get that. I'm just wondering if anybody's

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following up with Volkswagen to see that the consumers are, in fact, protected.

Ms. Giles. Absolutely. So there is a very extensive process set up which you probably have been exposed to that was set up by the plaintiff steering committee and the FTC and others to figure out exactly what the schedule should be for implementing the consumer's choice of whether they prefer buyback or fix if one is approved. So there is an established process that is being followed.

Mr. Griffith. All right. If you all would just follow up on that, I would greatly appreciate it.

And then, I have some of the concerns that other folks have raised in regard to, you know, how active you all are going to be, and is this actually going to end up benefiting Volkswagen. Because while I've driven a lot of Volkswagens over the years, certainly don't condone their bad behavior in this circumstance. And -- and so just want to make sure that this is all working out the way that it was intended to, and whether it's the data that we've heard about or whether it's making sure that they don't come up with a crafty plan that actually rewards them for that bad behavior, it's very important to us.

Ms. Giles. So the consent decree specifically provides, as you probably are aware, that VW's investments and their outreach must be brand neutral. So they have to make that accessible to any car with a standard plug, even if it's not the one that VW cars use.

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And as to your second point, EPA is going to be very active in making sure that VW follows the requirements of the consent decree.

Mr. Griffith. All right. With that, Mr. Chairman, I have no additional questions at this time, and would yield back.

Mr. Murphy. Would the gentleman hold for a moment?

All right. I'll recognize myself for another 5 minutes, just follow up while the other members are preparing their comments here.

For Ms. Giles, it remains unclear how VW's going to fulfill the ZEV investment commitment under the terms of partial consent decree. And nothing prevents VW from obtaining revenue from these investments. That's one of our bottom-line concerns. Can you point to some other examples in EPA settlements where -- or enforcement actions that permit the party responsible for a violation to establish a new business or generate revenue as part of the settlement? Is there other models for this that you have?

Ms. Giles. Every case has remedies that are uniquely tailored to the facts of that particular case. In this case, this is a part of the injunctive relief, it is not a penalty, it's part of the injunctive relief, it's an investment that VW is making in ZEV infrastructure. And there is no prohibition on them earning revenues from that investment.

Mr. Murphy. Well, do you know if VW does, in fact, intend to pursue any revenue regeneration from these investments? Has that been

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part of your discussion?

Ms. Giles. I don't know the answer to that question. It will be a decision that the company makes. I would say that some of the comments that we have heard from other companies in this business seem to be encouraging that VW should be making revenues from these investments.

Mr. Murphy. So it would seem to me that would be part of the discussion, that if someone is being penalized but that penalty is going to allow them to actually make money, that would seem to be a bit of a contradiction and part of a discussion you might want to have with them.

Ms. Giles. We would certainly agree if this were a penalty. This is not a penalty. This is part of the injunctive relief. The penalty portion of the case is still underway.

Mr. Murphy. So -- and I understand you can't discuss all those things, but just clarify for me. If there is a penalty, will that -- is one of the options a fine?

Ms. Giles. Yes. That -- yes. It is.

Mr. Murphy. And where will that money go if there's a fine?

Ms. Giles. It goes to the Treasury.

Mr. Murphy. Does it go to the EPA?

Ms. Giles. No, it does not.

Mr. Murphy. So you have no say-so at all on how that money is

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spent?

Ms. Giles. The money goes to the Treasury.

Mr. Murphy. Okay. And now some have suggested this could also have a negative or anticompetitive effect on the existing ZEV infrastructure. Do you agree?

Ms. Giles. We've heard a variety of opinions. Some of the people who are active in ZEV infrastructure think this is going to be a boon for this industry. Some are concerned about what the impacts could be. We have worked hard at trying to put sidebars on VW's investments here so that we will do as best we can to help preserve a fair and neutral market. So input from other people into what VW's plan should be, their requirement to be brand neutral, the requirement that it be updated, and the many provisions for public transparency and accountability that the agreement contains.

Mr. Murphy. And I myself have seen some things from one company called EVgo that thinks it might be beneficial. Another one called ChargePoint thinks that it could be an antitrust issue. And so we will have to continue and follow up with those.

Ms. McCabe, by most assessments, the ZEV infrastructure investments under the terms of the partial consent decree will most likely be into electric vehicle infrastructure such as charging stations. Do you agree that's the most likely thing, the charging stations?

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Ms. McCabe. We expect that to be significant.

Mr. Murphy. Is the Office of Transportation and Air Quality aware of the size of the electric vehicle charging market? Can you tell us what that is?

Ms. McCabe. I don't have a specific number for you, Congressman. But we -- there's clearly a lot of interested inquiry in this from Members of Congress themselves about it. And it's -- we've got a big country here with a lot of people to serve.

Mr. Murphy. Right. If you could get us that information, because I'm sure that would be of interest to this committee, to you as well, as understanding what that market is and the development of that and how this infrastructure investment might actually directly influence that.

Ms. McCabe, according to an industry filing with the court in the partial consent decree, the market over the next 90 months for installation, operation is approximately \$800 million. You heard us say that. Do you think this is in the ballpark of the market size, \$800 million?

Ms. McCabe. I really wouldn't want to opine on that, Congressman. But we'll provide you answers in follow-up.

Mr. Murphy. Okay. Thank you.

And to both of you, last week the California Air Resources Board called CARE held a public input workshop regarding implementation of

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California's allocation of the ZEV investment commitment. Does the EPA continue -- intend to conduct a similar public outreach?

Ms. Giles. The VW is required to solicit public outreach. And you may have seen that VW put out a notice, I think earlier this week, saying that it intends to update the public on what the opportunities for public input are going to be.

Mr. Murphy. I understand. But will EPA conduct this outreach as well?

Ms. Giles. The consent decree puts that obligation on VW.

Mr. Murphy. Will you have any kind of a role in that as well in how that data's collected, collated, responded to? Will you be there at the table in any way, or that you'll wait for their report?

Ms. Giles. VW's obligations under the consent decree are to conduct that outreach in accordance with a public outreach obligation. And we're going to make sure, through our oversight of the consent decree implementation, that they do comply with those obligations to conduct public outreach and to consider that in the development of their plan.

Mr. Murphy. Thank you. Thank you. I'm out of time.

Mr. Kennedy, are you ready for questions?

Mr. Kennedy. Yes.

Mr. Murphy. I'll recognize you for 5 minutes.

Mr. Kennedy. I appreciate that, Dr. Murphy. Thank you.

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Ms. Giles, I understand that the zero emission vehicles provisions of this settlement were designed to remedy some of the adverse environmental effects of VW vehicles emitting excess pollutants into the atmosphere. Is that correct?

Ms. Giles. Yes.

Mr. Kennedy. So the ZEV provision mitigates these harmful environmental effects by encouraging the development of clean technology. Is that right?

Ms. Giles. That's correct.

Mr. Kennedy. And a district court approved the settlement and said that it was substantively fair and would, quote, "further the purpose of the Clean Air Act." Is that right?

Ms. Giles. That's right.

Mr. Kennedy. Okay. So, Ms. Giles, EPA responded to Chairman Upton's request for more information on the settlement agreement on a -- in a November 18 letter. EPA's response explains, quote, "The zero emission vehicle investment requirement is not a government program and does not" -- "and is not an argument for any government program. It is a remedy obtained from a Federal judge by DOJ on behalf of the EPA that partially resolves an enforcement of the case," end quote. So can you explain why this is not a government program, or what it means that it does not, quote, "augment any government program"?

Ms. Giles. So under the consent decree, it is VW's decision where

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and how to implement the investment for ZEV infrastructure. But they must do so within boundaries laid out by the consent decree. So EPA has a very limited role. We are not the deciders on the investment infrastructure. But we are going to oversee VW's conduct here to make sure that they fully and completely comply with the consent decree.

Mr. Kennedy. And my understanding, Ms. Giles, is that those in the zero emission vehicle industry are divided on this aspect of the settlement. Some feel like additional investment in the ZEV industry is welcome, and others fear that VW will be able to unfairly influence the market. Has EPA heard some of those reactions? And what's your response to those questions?

Ms. Giles. We have heard from a wide variety of people with opinions about this aspect of the consent decree. I would say one thing that all of the commenters have agreed on is that investment in ZEV infrastructure is important and needed. They -- I would say the other thing that is common to all the people we have heard from is that they each believe they have the best answer as to what VW should do for the ZEV investments. And we certainly encourage them to take advantage of the opportunity that they will have to provide those points of view to VW through the outreach effort.

And I would say lastly, some of the folks we had heard from about these investments have taken the view that these additional investments will help everyone. As one commenter put it, a rising tide floats all

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boats.

Mr. Kennedy. Right. Thank you for that.

You note that in your November 18 letter to Chairman Upton that VW remains subject to all Federal and State laws regarding competitive behavior. I believe you say in your letter, quote "If, in the course of making ZEV investments, Volkswagen unlawfully undermines competition in the market, it will be subject to enforcement under antitrust or other competition laws by appropriate State and Federal authorities responsible for overseeing such laws." So do I understand this to mean, Ms. Giles, that there are existing constraints outside the settlement agreement that prevent VW from engaging in an anticompetitive process?

Ms. Giles. So the consent decree does provide that VW has to comply with all laws, Federal, State, and local, including laws about anticompetitive behavior. So if they engage in any such unlawful behavior, they would be subject to, held to account, in the same way any other company can.

Mr. Kennedy. And what tools or mechanisms are in place to keep VW from pursuing unfair competitive practices when it comes to meeting those zero emission vehicle obligations?

Ms. Giles. Well, among other things, we have put a number of requirements in the consent decree for -- that their investments need to be brand neutral, and that their outreach must also be, and that

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they consider input. And they have an unprecedented level, really, of transparency of information that they are going to be required to provide to the public.

Mr. Kennedy. Great. Thank you very much.

And I yield back.

Mr. Murphy. Thank you.

I recognize Dr. Burgess for a second round, 5 minutes.

Mr. Burgess. Thank you, Mr. Chairman. I just have a brief follow-up.

I was able not to find in the settlement agreement, perhaps you can help me. Is there any stipulation or specificity as to where the power is purchased from that runs the charging station?

Ms. Giles. No, there is not. That is part of VW's investment decision.

Mr. Burgess. So different parts of country, there will be different availability of nuclear power, wind power, solar power. But the vast majority of it is going to be coal power. Is that correct?

Ms. Giles. Whatever the power source is in the areas that they're installing the infrastructure.

Mr. Burgess. Does the EPA have a general sense as to -- assuming that the bulk of this power is generated from a coal -- is purchased from a coal generation plant, what is the impact of that coal that is burned to produce the power to charge the vehicles? I mean, is there

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some correlation with -- I don't even know how much it takes to charge a vehicle. So have you all done any study on this? Do you have a sense of what are the power requirements to charge one of these?

Ms. Giles. Well, VW's going to be looking into that as part of their business investment, just like every other participant in the vehicle infrastructure market. So they will take advantage of the power that's available, and they'll make decisions about where those infrastructure investments best belong.

Mr. Burgess. Well, but I assume that the EPA has had some experience with this. I mean, you guys have worked on this for a long time. Is there -- is there a sense -- I mean, we talk about an electric vehicle as being a zero emission vehicle. Some emissions are encountered in the generation of the power, again, unless it's nuclear or solar or wind. But some emissions are encountered with the generation of the power. Do we have an idea of what the tradeoff is?

Ms. Giles. Well, this enforcement settlement is about motor vehicles. The whole question of power generation is a different topic not covered under this consent decree.

Mr. Burgess. Okay. I can see I'm not going to get an answer. And, of course, this will probably come -- this would be part of the -- whatever the penalty phase is. But what is the cost per microliter of NOx that you would appropriately put into the environment? Does the EPA have a sense of that as what is the

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appropriate return for the penalty that's encountered, or the infraction that's encountered?

Ms. Giles. There's a variety of factors laid out in the statute about what goes into determining what's an appropriate penalty. And that includes the seriousness of the violation, the egregiousness of the behavior, and many other factors as laid out in the -- in the law.

Mr. Burgess. Are there many metrics that you can share with us as far as estimates? I don't know even know what the unit is for nitrous oxide released into the environment. Is it microliters per day? Or is it micrograms or nanograms? I don't even know what it is. Can you share that with us?

Ms. Giles. The amount of pollution is one factor, but it's only one factor that goes into the calculation of a penalty.

Mr. Burgess. But do you know that information, I guess, is what I'm asking you?

Ms. Giles. The only calculations that I mentioned before are the only calculations we've done with respect to the amount of NOx has been as part of our enforcement action, which is still ongoing, and which is relevant, as we just were discussing, to the calculation of penalty, and that matter is still ongoing.

Mr. Burgess. But antecedent to this event, had EPA done -- I mean, presumably you have done work -- I mean, we've been concerned about NOx for a long time. So presumably you've done work on how much

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is generated, how much was generated from cars 15 years ago, what are the improvements that have been made. Can you share any of that data with the committee -- subcommittee?

Ms. McCabe. I'll take that one, Congressman. Certainly over the years, and in doing our clean air work and working with the States, we do lots of estimations and modeling to assess impacts and emissions from motor vehicles and from other sources of pollution, and we develop inventories over time that show improvements from various sectors of the economy --

Mr. Burgess. I don't disagree with the improvement. That is -- I would stipulate that is a fact. But do we -- again, do we -- have we drilled down on the metrics on just what are the -- and, again, I don't even know the units that you all talk about. Is it microliters or is it nanoliters? What is -- what is the metric that was used?

Ms. McCabe. Generally, parts per billion or micrograms per cubic meter when we're talking about air pollution. NOx is an important pollutant because it's a precursor to ozone, which is measured in parts per billion, or to PM2.5 fine particles as measured in micrograms per cubic meter. And so we do have lots of information about those trends over time and would be happy to answer specific questions about that.

Mr. Burgess. All right. Thank you, Mr. Chairman. I'll yield back.

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Mr. Murphy. Yeah, I appreciate your line of questioning because we're just scratching our heads. So if someone has a violation of their individual car, and they're caught by the local law enforcement or the State, and says, Well, we know you violated the law. We're going to let you choose your penalty, and let us know when it's done. And by the way, you can supervise yourself. And it's okay if you open up a store and make money on the whole thing. It just doesn't make sense to us.

Dr. Bucshon, you're recognized for 5 minutes.

Mr. Bucshon. Thank you. Dr. Burgess, in the State of Indiana, 80 to 85 percent of electrical power is generated from coal, so when you plug in your electric car in Indiana, you have to take that into consideration.

Ms. McCabe, Ms. Giles' response to the committee's November 1 letter on the ZEV investment, she highlighted the stakeholder outreach VW's required to conduct under the terms of the partial consent decree has a means for ensuring transparency and accountability in VW's investment decisions. The response stated, and I quote, "EPA intends to ensure Volkswagen conduct a robust process for public input and accept comment from relevant stakeholders before 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

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obligation to act upon the suggestions it receives in the course of this outreach." So the question is: Are States, municipal governments, Indian tribes, and Federal agencies the only stakeholders relevant to EV infrastructure investments?

Ms. McCabe. No. And VW, I believe, is conducting very broad outreach. They're making it broadly available so that any and all parties have the opportunity to weigh in.

Mr. Bucshon. Okay. Does the EPA expect VW to conduct outreach or accept input from, as you just said, other interested parties, even if they're not specifically required to under the terms of the partial consent decree? I guess you just answered that question. If so, how does the EPA intend to enforce this if your role is limited to determining whether the company satisfied the requirements of the partial consent decree?

Ms. Giles. So I believe VW has recently announced their plan to make the input available to all who are interested to comment. So we are expecting that is what VW will do.

Mr. Bucshon. Okay. And if VW is not required to act on the comments received from the stakeholders, how does this stakeholder outreach provide any accountability? I mean, if people can comment but there's -- it doesn't make any difference, I mean, it's fluffiness, right, that they took comments but they really don't have to -- don't have to act on them or consider them, really.

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Ms. Giles. Well, the consent decree actually does say that not only do they have to solicit comment, but they have to consider it, and they have to describe in their plan how they considered the input.

Mr. Bucshon. Okay. Thank you.

I yield back.

Mr. Murphy. The gentleman yields back.

I now recognize the ranking member of the committee, Ms. DeGette.

Ms. DeGette. Thank you, Mr. Chairman. And thank you very much for your comity. The Democrats were all in a meeting with Vice President Biden this morning. And as often happens with the Vice President, he was extremely late. His excuse was that he was in a meeting with the President. So --

Mr. Murphy. If I had a dime for every time I heard that.

Ms. DeGette. I know. We were forced to accept it. So thank you very much, and thanks to our witnesses.

I'll ask unanimous consent to put my opening statement into the record.

Mr. Murphy. Without objection.

[The prepared statement of Ms. DeGette follows:]

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Ms. DeGette. And I also do have a few questions. I think we need to really put today's hearing into context. Let's remind ourselves that what VW did that necessitated legal action, and what the overall settlement was intended to accomplish.

Ms. Giles, last year, it was discovered that VW installed defeat devices in various models that were emitting up to 40 times the NOx levels allowed by law. Is that correct?

Ms. Giles. That's correct.

Ms. DeGette. And also, there were about half a million of these vehicles that were outfitted with these defeat devices, many of which are still on the road today. Is that correct?

Ms. Giles. That's right.

Ms. DeGette. Now NOx, one of the reasons why we regulated it is, it's a harmful pollutant to human health. Is that correct?

Ms. Giles. Yes.

Ms. DeGette. And, Ms. McCabe, you're nodding also.

Ms. McCabe. Yes.

Ms. DeGette. So here's my understanding of the partial settlement with VW. After discovering this massive cheating scheme, the Obama administration brought multiple parties to the table, including VW, the State of California, and the Federal Government, and they reached a partial settlement. This was approved by the Federal judge in October, and it will result in VW spending nearly \$15 billion

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over the next decade. So I want to go through some of the key components of this agreement.

Ms. Giles, the settlement requires that VW remove from commerce or modify at least 85 percent of the 2.0-liter vehicles that are still polluting the air. Is that correct?

Ms. Giles. That's right. VW is required to offer all the consumers buyback or a fix, if one is approved, and damages for consumer harm.

Ms. DeGette. And that part of the settlement which is designed to get the cars off the road and also to make consumers whole, that's the bulk of the deal. But that's going to cost about \$10 billion to VW to accomplish that, correct?

Ms. Giles. That's the estimated amount, yes.

Ms. DeGette. And the other provisions of the settlement are intended to try to reverse the damage these vehicles caused to the environment. One provision mandates that VW spend nearly \$2.7 billion to fund a mitigation trust fund to mitigate the excess air pollution from the 2-liter vehicles. And the other remaining part of the settlement requires that VW invest \$2 billion into zero emission vehicles. Is that correct, Ms. Giles?

Ms. Giles. That's right.

Ms. DeGette. So the bulk of the settlement is either dedicated to fixing or replacing the cars, to stop the ongoing harm, and then

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about a third of the settlement is designed to mitigate or reverse the damage that these vehicles have already caused, or will continue to cause. That's the crux of the agreement. Is that right?

Ms. Giles. Yes. It is.

Ms. DeGette. That seems pretty reasonable to me.

And, Mr. Chairman, I'm really happy that you're having this hearing, because I think we should have meaningful oversight to ensure that VW adheres to the terms of the settlement. I've got to say, you know this, Mr. Chairman, but I -- when this first broke, I went out to one of my local dealerships in Denver. And I looked at these cars and I saw the -- I mean, I'm no mechanic, but I saw what the situation looked like, and I was dubious at that time about what, if anything, could be done both to mitigate the harm to the consumers, and also to mitigate the damage to the environment.

So I think this is a pretty good compromise. And we should -- we should continue to oversee this to make sure that both that the consumers are made whole and that the environment is protected.

I think this is probably our last hearing in this Congress, Mr. Chairman. And I just want to say we've had a lot of productive conversations, particularly among our mental health hearings that we had earlier in this Congress. And I know we worked together, sometimes in a little more contentious way than others. But in the end, we were able to work on that mental health bill that became part of 21st Century

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Cures. And I just want to thank you for your chairmanship. I don't know what you're going to be doing in the next Congress. But I've enjoyed, and I've also -- I know my members aren't here, but we have the A team over here on this side of the aisle, and we've had a good session. So thank you, Mr. Chairman. I yield back.

Mr. Murphy. Thank you for your comments. I also want to say that the work you and Chairman Upton did on the 21st Century Cures is remarkable but predictable in terms of dedication that took place and the bipartisan work in this full committee that both the mental health bill and that bill came through this committee unanimous. And we're going to see the Senate vote on it tonight. And I think we'll see a strong vote there and on to the President's desk. It's going to make a big difference. And a lot of that stemmed out of the work of this subcommittee. So I thank you for your great work.

Mr. Flores, you're recognized for 5 minutes.

Mr. Flores. Thank you, Mr. Chairman.

Ms. Giles, Ms. McCabe, you've talked anecdotally about the comments of the other parts of the ZEV industry with respect to the ZEV investment by VW. What detailed analysis did the EPA do to take a market that's just starting, and then to jam \$2.7 billion into it. What detailed analysis did the EPA do to see what impact that would have on the market?

Ms. Giles. So you're referring to the ZEV investment?

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Mr. Flores. Correct.

Ms. Giles. So the \$2 billion ZEV investment, what we have heard from other people that are in this market --

Mr. Flores. What detailed analysis did you do?

Ms. Giles. We did not do a detailed --

Mr. Flores. Okay. That's fine. You didn't do a detailed analysis.

Ms. Giles. Our purpose --

Mr. Flores. So does -- so my question is this: Does it make sense to rigorously study this important question before requiring a defendant accused of cheating customers and the U.S. Government to flood a growing market with \$2 billion of capital?

Ms. Giles. So we -- as you are aware, we put a number of provisions in this consent decree that are designed to put sidebars on VW's behavior --

Mr. Flores. No, that's not the question. The question is: Doesn't it make sense to do some sort of detailed analysis on the market that you're getting ready to impact? Does it or does it not?

Ms. Giles. We think that it makes sense to have VW, who is a player in this market, to make investment decisions consistent --

Mr. Flores. So the cheating company gets to make all the investment decisions, and the EPA says, Oh, well, we got some anecdotal evidence. We didn't do any detailed study. We're going to just impose

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this on the market and just hope it turns out okay. Hope that VW does it a good way.

Ms. Giles. That is not how we perceived it.

Mr. Flores. Well, that's the way the American people are going to perceive it.

All right. Moving on, EPA is currently conducting midterm evaluation on the fuel economy and emission standards for light duty vehicles. These so-called CAFE and GHG standards require annual increases in fuel efficiency reaching 54.5 miles per gallon by 2025. A nearly doubling over current fuel efficiency. At a September hearing before this committee, you informed us that these standards could be met without a substantial increase in the electrification of the Nation's vehicle fleet. Is that correct?

Ms. McCabe. Yes. I did.

Mr. Flores. Okay. Just last week your agency issued its proposed conclusions to its midterm evaluation of these standards. And in it, your agency essentially says that automakers are on track to meet the greenhouse gas standards, and that no relaxation of targets in the outyears is necessary. Is that also correct?

Ms. McCabe. That's correct.

Mr. Flores. Okay. So if the EPA believes that greenhouse gas standards for vehicles can be met without more electric vehicles, then what is the purpose of the electric vehicle provisions in the VW

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settlement?

Ms. McCabe. Well, the greenhouse gas standards and the fuel economy standards set in 2012 projected out until 2025, reasonable, reasonably affordable and --

Mr. Flores. Yeah. We all got that.

Ms. McCabe. Okay. That doesn't mean that that's all and everything that the transportation sector or that the automotive industry intends to do. And there's a great desire, both in the automotive industry, and in places like California and other places around the country, for increasing technology innovations in the electric vehicle space and other zero emitting vehicles. And so it's entirely appropriate for those activities and those technologies to continue to develop, even if they may well go beyond --

Mr. Flores. Okay. All right.

Ms. McCabe. -- the reductions achieved by the 2012 rule.

Mr. Flores. And so EPA stated in that same September hearing that automakers are meeting all standards -- meeting standards and will continue to meet them thanks to efficiency improvements and conventional internal combustion engines vehicles. And they expect these improvements to continue. Yet the VW settlement clearly forces VW in the direction of investments in electrification. So is there a risk that the agency is simultaneously pushing automakers in two directions at once, and that splitting company resources between the

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internal combustion engine efficiency improvements and electrification investments may not be the best long-term strategy?

Ms. McCabe. I don't see that this puts the automakers in a difficult position at all. They're moving forward with advanced gasoline engines. They're moving forward with investments in electric vehicles. And the market wants both of those.

Mr. Flores. Okay. Thank you, Mr. Chairman. I yield back.

Mr. Murphy. The gentlemen yields back. I now recognize Mr. Tonko for 5 minutes.

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RPTR BRYANT

EDTR ROSEN

[12:05 p.m.]

Mr. Tonko. Thank you, Mr. Chair.

And welcome to our guests and thank you for your good work.

As you know, VW was accused of installing cheating software on more than half a million of its vehicles. This has resulted in harms to both the environment and consumers in upstate New York and, indeed, across the country. Owners of VW's noncompliant vehicles are now stuck with cars they believed to be clean diesel, or lower-emitting vehicles. Now these consumers' vehicles have to be modified or taken off the road altogether. The rest of the public has also been harmed by the excessive pollutants these vehicles put into the air.

Ms. Giles, Appendix D of the partial settlement requires VW to establish a \$2.7 billion environmental mitigation trust fund, which will be administered by an independent trustee. Is that correct?

Ms. Giles. That is correct.

Mr. Tonko. Ms. Giles, the EPA has stated that the purpose of this fund is to support actions that will replace certain diesel emission sources with cleaner technology. This will reduce excess NOx emissions by the violating 2.0-liter cars.

So, Ms. Giles, can you give us more information on the reasoning

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behind this mitigation trust fund?

Ms. Giles. Yes. The mitigation trust fund was set up, as you mentioned, for the purpose of reducing NOx emissions in the future, and it will -- it sets up a fund that is administered by a trustee, and allocates funds to individual States for them to make decisions about what types of pollution reductions make sense for their State.

So they will apply to the trustee for funding on a public process with a lot of transparency, and the trustee will make the decision.

Mr. Tonko. So, in your opinion, is there a greater value that these environmental mitigation projects have than simply having VW write a large check to the U.S. Treasury?

Ms. Giles. Absolutely. So the purpose of mitigation is to make up for the pollution that they caused by their violations. And we think the mitigation trust, combined with the provisions for ZEV and the provisions for remediating the cars and getting the polluting cars off the road, will achieve that objective.

Mr. Tonko. I understand that all 50 States, the District of Columbia, Puerto Rico, and federally recognized tribes, can potentially qualify for mitigation projects. Is that correct?

Ms. Giles. That is correct. They have the election, whether they wish to participate or not.

Mr. Tonko. Okay. Thank you. And, Ms. Giles, each participating beneficiary will receive an allocation of funds from that

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total, \$2.7 billion, based on the number of registered illegal VW vehicles within the boundaries of the beneficiary. Is that correct?

Ms. Giles. That is correct. And so in the case of New York, that's about \$117 million.

Mr. Tonko. So a State like New York then would be -- which is likely more impacted by noncompliant vehicles than a small State, would receive more money. Is that correct?

Ms. Giles. The money is, as you said, roughly allocated based on where the unlawful vehicles are registered.

Mr. Tonko. And, Ms. McCabe, I understand that possible mitigation projects could include, for example, efforts to reduce heavy-duty diesel sources near population centers, or even heavy-polluting school and transit buses. Is that correct?

Ms. McCabe. That is correct.

Mr. Tonko. Okay. And what other projects might we expect to see qualify for some of these moneys?

Ms. McCabe. Well, the document lays it out very specifically, so that this will be straightforward for the States to implement and for the trustee to oversee. So projects such as school buses, heavy-duty vehicles, equipment in ports that emit large amounts of NOx, these are very common sorts of equipment that can take a lot of resources to replace or retrofit. So these will have tremendous benefits in terms of reducing NOx.

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Mr. Tonko. And to either of you, when can States begin applying for this money and what is that process going to look like?

Ms. Giles. As soon as the trustee is selected and the trust documents are finalized, the beneficiaries can register. And then there's a process laid out in the consent decree to begin applying for funding.

Ms. McCabe. And, Congressman, if I might add --

Mr. Tonko. Sure.

Ms. McCabe. -- we've been doing a fair amount of outreach to our State partners, so that they understand and can ask all the questions that they might have about the process, so they don't miss any opportunities and they're ready.

Mr. Tonko. Have you had any interaction, any feedback from the States, or any of the beneficiaries in terms of the process you're doing, you're incorporating?

Ms. Giles. Yes. States have been very supportive of the amount of information we're providing and the ability to ask questions and to fully understand what their opportunities are.

Mr. Tonko. And, Ms. Giles, earlier you were asked about conducting analyses as a prerequisite to dealing with this issue, and I got the sense you had more to share with us.

Ms. Giles. I did. So our intention on this was to put boundaries around what the behavior is that VW can engage in as part of the ZEV

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investment, so that we do protect the market. So the requirement to solicit input, the requirement to be very transparent, to collect and make data available, to be brand-neutral, to update the plan, all of these requirements are going to be constraints on VW; and EPA is going to be watching very closely to make sure that VW does comply with all of those requirements.

Mr. Tonko. Well, let me conclude by thanking EPA and this administration for its outstanding work to bring this matter to a conclusion, and make both the public and the environment whole.

And with that, Mr. Chair, I yield back.

Mr. Murphy. Thank you. The gentleman yields back.

I recognize the gentleman from Oklahoma, Mr. Mullin, for 5 minutes.

Mr. Mullin. Thank you, Mr. Chairman.

And thank you both for being here. Obviously, we wish neither one of you guys had to be here with Volkswagen, and we understand the circumstances we're in. But, obviously, we're here to discuss, you know, about the penalties that are being assessed, and how they're being assessed. And I don't know which one wants to take the answer, so I'll just kind of ask it.

The authority to assess the ZEV, I guess -- is that how we're pronouncing it? -- penalty was based, according to you-all's testimony about the Clean Air Act, that you guys had the authority to assess it

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through the Clean Air Act. Is that correct?

Ms. Giles. That's correct. But let me just clarify. It's not a penalty. What we have done under this partial consent decree is to fashion a remedy for the harms caused by VW's violations of the Clean Air Act.

Mr. Mullin. So that would be considered a fine?

Ms. Giles. No. The penalty portion of the case is not yet completed. All that has been done so far is what we call the injunctive relief. So what does the company have to do to address the cars on the road and to compensate for the harms and pollution it caused through its violations.

Mr. Mullin. So I guess the question that I have then is, where does that authority come from through the Clean Air Act? I mean, that's kind of a broad explanation that you get the authority through the Clean Air Act. I guess, I'm kind of curious of how Congress has delegated you to do that through the Clean Air Act?

Ms. Giles. So the Clean Air Act lays out specific requirements, and EPA is tasked with enforcing.

Mr. Mullin. What are those specific requirements?

Ms. Giles. Requirements to meet the standards that are set forth for cleaner cars in this particular instance.

Mr. Mullin. But I mean where -- I get that, but where does it give you authority to have such a massive penalty or fine, or whatever

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you want to call it, to VW? I'm not saying they're in the right or the wrong. I'm not defending VW's actions. I'm just concerned here that the EPA is maybe reaching a little far underneath the powers that were delegated to you by Congress, and I just -- I don't want to use a broad sweep here, and I'm really trying to understand where you're coming from.

And, by no means, think that I'm trying to ask you a got-you question or anything. I really am -- under what I've read, the letter that you responded back to this committee, it was very vague, and I'm not understanding exactly still yet where you come up with the authority to be able to assess whatever you want to call this. But either way, it's a fine or it's a penalty, because it's to remedy their emissions that they lied about, and it's somehow supposed to offset that, according to your letter.

Ms. Giles. Well, the DOJ filed a complaint on our behalf, which lays out the violations of the Clean Air Act that VW committed by its conduct in this matter. And the Clean Air Act also gives EPA the authority to take enforcement actions to remedy violations of the Clean Air Act, and that's what we've done here.

Mr. Mullin. But through the ZEV Act, to say that you have a \$2 billion deal where they're supposed to invest in infrastructure, and then a \$2 billion fine that was supposed to equally offset -- according to the provisions of the settlement, that's intended to address the

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adverse effects of VW's violation on the quality by supporting the technologies that are actually clean. The first \$2 billion was supposed to fully offset those emissions.

The second \$2 billion for the infrastructure investment, what is that offsetting?

Ms. Giles. So the settlement contains three elements to remedy the violations of VW here: First is getting illegal cars off the road; the second is making up for the pollution they caused; and the third is to invest in clean vehicle technology to address the harms from selling dirty vehicles, claiming they were clean.

Mr. Mullin. That third one is the one that I'm having a problem understanding. Where did we delegate you the authority to say that they have to invest in that technology?

Ms. Giles. The authority is to enforce the terms of the Clean Air Act and to fashion remedies that address violations.

Mr. Mullin. That is without question. But to say that the \$2 billion is supposed to invest in technology is specifically what you said. The third was to invest in technologies. Where does the Clean Air Act give you authority to force a company to invest in clean technology? I don't think you find that in the Clean Air Act.

Ms. Giles. What the Clean Air Act does is gives us authority to fashion remedies to fit the circumstances of each individual case.

Mr. Mullin. Remedies. But investing in an infrastructure is

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totally different, and I think that's where we are outside the scope. And I appreciate what you guys are trying to do here, but I really feel like that this is outside the EPA's authority to be able to force a company to invest in clean technology. That's over and beyond what the Clean Air Act authority gave you.

I yield back, Mr. Chairman.

I'm sorry, I'm out of time.

Mr. Murphy. The gentleman is out of time, yes.

Ms. DeGette, you had a quick comment?

Ms. DeGette. I just want to say a couple quick comments in closing. Number one, this was not the EPA forcing VW to do this. It was part of a settlement that both parties agreed on.

Correct, Ms. Giles?

Ms. Giles. That is correct.

Ms. DeGette. So VW agreed this would be something they could do proactively to begin to mitigate this.

Ms. Giles. That's right.

Ms. DeGette. Mr. Chairman, I just want to -- now that we do have these two witnesses today, I already told you about how I enjoyed working with you and the committee this year.

I also want to tell these two EPA witnesses that I think we've made extreme advances with the EPA the last few years. And Congress hasn't always been a willing partner, but I think that creative thinking

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and cooperation is really what we need, moving forward, in making sure that we enforce our environmental regulations.

When I talk to my constituents, what they want is they want clean air, they want clean water, they want safe drinking water. And your agency always gets vilified, but, actually, you're trying to achieve those goals for the American people. I just want to say thank you.

And I yield back. Thank you.

Ms. Giles. Thank you.

Mr. Murphy. The gentlelady yields back.

And we all share those concerns too.

Let me just say this is our last hearing of this session for this Subcommittee on Oversight and Investigations. I want to thank all the members of this committee on both sides of the aisle for their dedication. We have had some remarkable hearings, provided some tremendous oversight, and shined a bright light on many Federal agencies and companies out there, and I think that's been to the great benefit of the American people. It's been an honor to serve as your chairman.

In conclusion, I ask unanimous consent that the contents of the document binder be introduced into the record and authorize staff to make any appropriate redactions. Without objection, the documents will be entered into the record with any redactions the staff determines are appropriate.

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And I want to thank the witnesses today and the members that are here that have been part of today's hearing. And I remind members they have 10 business days to submit questions for the record. We'll have some other questions for the record we'll submit to you, and I ask the witnesses all agree to respond promptly to those questions.

And, with that, this committee is now adjourned.

[Whereupon, at 12:17 p.m., the subcommittee was adjourned.]