



August 5, 2016

Assistant Attorney General
U.S. DOJ--ENRD
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e-mail: pubcomment-ees.enrd@usdoj.gov

RE: In re: Volkswagen “Clean Diesel” Marketing, Sales Practices and Products Liability Litigation

Dear Sir/Madam:

The Western States Air Resources (WESTAR) Council, an association of 15 western state air quality managers, appreciates the opportunity to comment on the *Notice of Lodging of Proposed Partial Consent Decree Under the Clean Air Act*, which was published in the *Federal Register* on July 6, 2016 (81 Fed. Reg. 44,051). The notice pertains to the proposed partial Consent Decree (CD) with the United States District Court for the Northern District of California in the lawsuit entitled *In re: Volkswagen “Clean Diesel” Marketing, Sales Practices, and Product Liability Litigation*, Case No: MDL No. 2672 CRB (JSC). WESTAR submits suggestions and recommendations to the draft partial consent decree’s Appendix D that address unique western air quality concerns. The views expressed in this comment letter do not include the California Air Resources Board (CARB), given CARB’s role in the CD process.

Volkswagen allegedly equipped its model year 2009 through model year 2015 2.0 liter diesel vehicles with illegal software that detects when the car is being tested for compliance with EPA or California emissions standards and turns on full emissions controls only during that testing process. This software or “defeat device” resulted in the emissions of up to 40 times the EPA-compliant levels of nitrogen oxide emissions (NO_x) when these vehicles are on the road. It is estimated that approximately 500,000 vehicles with defeat devices are on the road nationally.

These excessive emissions of NO_x affect air quality nationally and are of concern to western states working to reduce ozone and particle pollution, regional haze, toxic air pollutants, acid deposition and greenhouse gases. NO_x is a precursor to the formation of ozone and particle pollution, which are criteria air pollutants with negative public health impacts. NO_x contributes to the formation of haze and nitrogen deposition in pristine lakes in the west. In fact, NO_x emissions affect many of the air pollutants of highest priority for western states. States have primary responsibility to ensure that federal and state air quality requirements are met through State Implementation Plans (SIPs). Excessive NO_x emissions hinder states' ability to meet air quality objectives for federal and state air programs.

WESTAR believes that Appendix D of the proposed partial CD with funding directed to states and tribes for NO_x emissions reductions establishes an appropriate framework to mitigate the harm caused by Volkswagen's excessive NO_x emissions nationally. The elements of Appendix D, however, could be reconsidered to provide more flexibility and achievement of greater air quality benefits to public health and the environment. With the implementation of the 2015 ozone National Ambient Air Quality Standard (NAAQS) on the horizon, several areas of the west that attained the previous ozone standard will potentially be designated as ozone nonattainment areas. In fact, some areas of the rural west may be designated nonattainment, and these rural western nonattainment areas have unique characteristics, such as high elevation, rugged terrain, and unique chemical interactions that will require extensive and complex photochemical modeling to determine the most effective air pollution controls to reduce ozone formation. States with these new potential nonattainment areas have not yet had the time or experience with the limited set of NO_x reduction strategies in the proposed partial CD to make informed choices from the list of options in the proposed partial CD. While the significant funding in the Environmental Mitigation Trust holds great promise for emissions reductions which could significantly reduce regional ozone concentrations, some states may not have conducted analyses to determine the most effective and cost-efficient NO_x reduction options. WESTAR recommends that the proposed partial CD provide more time, resources and flexibility to states in the form of extended deadlines, opportunities to use Trust funds for analysis and expanded options for NO_x strategies.

The Beneficiary Mitigation Plan (Appendix D, page 11) deadline of 30 days provides too little time to states to evaluate the choice of strategies, include the public and incorporate public input. The Trust provides such significant funding to states that it is important for states to have the time to evaluate what would be most beneficial in reducing air quality impacts. Thirty days is not long enough to even generally assess the goal for the use of the funds, the categories of mitigation actions that will be appropriate, environmental justice concerns and the range of emissions benefits. Beneficiaries should have sufficient time to seek public input prior to the submission of the mitigation plan if they choose to do so. The 30-day deadline would likely only lead to multiple modifications of the mitigation plan due to the short period of time allowed for initial analysis. A longer period of time, such as 120 days with option for extension in cases where more complex analysis is required, should be allocated for meaningful public input and technical analysis. WESTAR recommends that DOJ lengthen

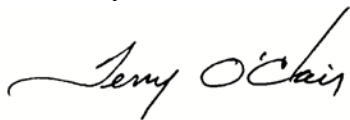
the time period for submission of mitigation plans to allow for a meaningful public process, incorporation of public input and state-specific or region-specific technical analyses.

The funds available to each state under the partial consent decree will enable states to make great strides toward reducing air quality impacts from NO_x emissions. States must be able to evaluate the best use of these funds through the use of air quality data and tools, such as emissions inventory and air modeling that will allow states to predict the air quality benefits of various mitigation measures. While these analyses have been conducted for nonattainment areas in metropolitan areas, few rural areas of the west have similar analyses that would provide the information required in the Beneficiary Mitigation Plan. In addition to the extension of the plan deadline to allow states more time for analysis, the partial consent decree should make clear that states can use a portion of the available funds for evaluation of air quality impacts, including monitoring trend analysis, emissions inventories and air modeling. Spending a small percentage of the available funds on analysis will enhance state decision making and result in maximum air quality benefit in using these funds. WESTAR recommends that Appendix D-2 clarify that analyses required for mitigation plan decisions are allowable expenses under the partial consent decree.

The list of mitigation options in Appendix D-2 certainly includes options for NO_x controls that will result in significant NO_x emissions reductions; however, the list is short and may not include NO_x mitigation measures that would be more beneficial to reducing air pollution in western states. States have a history of innovation and creativity in approaching air pollution issues. The use of a list is limiting and could constrain states to choosing mitigation measures that are less than optimal in reducing NO_x-related air pollution issues. Some mitigation options may have a high cost per ton of air pollution reduced. WESTAR recommends that DOJ modify the consent decree to allow states to make a demonstration for the use of funds for additional mitigation options not listed that may result in greater improvements to air quality, are more cost-effective and/or are more efficient to implement. Additionally, WESTAR recommends the lifting of the cap on light-duty ZEV equipment supply to allow states to determine the appropriate percentage of mitigation funds to apply to this measure.

Thank you for considering WESTAR's comments and recommendations. If you have any questions or need additional information, please contact Mary Uhl, Executive Director of WESTAR at 505-930-5197 or maryuhl@westar.org.

Sincerely,



Terry O'Clair, President
WESTAR Council