



April 19, 2017

Administrator Scott Pruitt
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington D.C. 20460

Re: In re Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation

Dear Administrator Pruitt,

We write to express our concern regarding Appendix C of the Partial Consent Decree in *In re Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation*, Case No. MDL No. 2672 CRB (JSC).

As you are aware, Appendix C is a component of the settlement of federal claims relating to Volkswagen's well-publicized diesel engine fraud. Appendix C requires Volkswagen and its affiliates, the settling defendants, to propose and implement a zero emission vehicle (ZEV) investment plan that includes spending \$2 billion on ZEV technology in the United States over a period of up to 10 years. The ZEV investments contemplated by Appendix C are intended to support increased use of ZEV technology and as such the monies set aside for satisfying Appendix C can be funneled to objectives that include the "development, construction, and maintenance" of ZEV-related infrastructure. Volkswagen has submitted a draft of its ZEV Investment Plan, which the EPA must approve before it can be implemented.

Others have objected to Appendix C *in toto* because of its possibly fatal jurisdictional and constitutional problems, including concerns surrounding its alignment with bedrock separation-of-powers principles. And these concerns may well have substantial merit. However, we write you now with concerns that instead go to the actual implementation of Appendix C through the ZEV Investment Plan. It appears that Volkswagen and its affiliates are using this plan as an opportunity to capitalize on the required distributions, thus benefiting from what was intended as punishment for the company's substantial wrongdoing.

The EPA must be vigilant in ensuring that implementation of the Volkswagen ZEV Investment Plan puts the interests of consumers and a competitive market ahead of Volkswagen's interests. At this time it remains unclear whether EPA has approved the Plan, either provisionally or finally; and whether approval, if any, was validly executed and/or is subject to revocation. In any ongoing review, we urge the EPA to carefully consider two things when evaluating Volkswagen's proposed ZEV Investment Plan. First, the plan should ensure that consumers benefit substantially from the plan. Second, the plan should ensure that Volkswagen is not able to distort the competitive market for ZEV vehicles and infrastructure by cornering any ZEV submarket or undermining existing market participants.

Consumers from our states and others across the United States were manipulated and defrauded for almost a decade by Volkswagen's diesel scheme. The company has admitted to wrongdoing, including pleading guilty to federal criminal charges. Attorneys General from across the country, including some of our offices, are in the process of holding Volkswagen and its affiliates accountable for violation of state laws. But Appendix C paves the way for Volkswagen to benefit from its deception by gaining a major foothold in the nascent ZEV industry. We ask your agency to carefully consider this possibility when determining whether to approve Volkswagen's plan. Wrongdoers like Volkswagen should not be allowed to profit at the expense of consumers and the free market, especially with the blessing of government agencies.

Respectfully,



Mark Brnovich
Attorney General of Arizona



Peter Kilmartin
Attorney General of Rhode Island



George Jepsen
Attorney General of Connecticut



Tom Miller
Attorney General of Iowa



Adam Laxalt
Attorney General of Nevada



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