

January 12, 2016

VW 2-liter diesel car denial of recall, and Notice of Violation

Frequently Asked Questions:

What action is the California Air Resources Board (CARB) taking today?

CARB took two actions today:

- 1) It rejected VW's proposed recall plan for 2.0-liter diesel vehicles
- 2) It issued a notice of violation to VW of America related to 2.0-liter diesel vehicles

All publicly available materials are posted at:

http://www.arb.ca.gov/msprog/vw_info/vw_diesel_info.htm

Why is CARB taking these actions?

As a result of the ongoing investigation, we determined that VW violated several California air quality regulations. In addition, we determined that there was no easy and expeditious fix for the affected vehicles. As a result CARB is moving to the next phase: enforcement.

What are the next steps?

CARB, in conjunction with the U.S. EPA, will continue to evaluate VW's technical proposals to determine if and in what way the affected vehicles can be fixed. We will also address the issue of mitigating the past and future harm to the environment as a result of excess NOx emissions. And, we will determine the penalties for the violations of California air quality regulations.

Does an enforcement action preclude options such as a recall?

This action does not preclude a recall. It allows for a broader array of potential remedies that can be considered. CARB will continue its investigation and technical evaluations with EPA. We will continue discussions with VW to evaluate options with the objective of quickly identifying a solution that protects the environment, public health, and consumers.

What is a Notice of Violation (NOV)?

A Notice of Violation (NOV) is issued when CARB has conducted an investigation (which may continue) and has concluded that one or more violations occurred. We also cite the specific violations as well as the applicable sections of the California code that have been contravened. NOV's typically offer an opportunity for the recipient to

discuss their actions, including efforts to achieve compliance. CARB considers all appropriate information to determine any final resolution.

Why are you doing this now? U.S. EPA already issued a NOV.

CARB and U.S. EPA operate under different administrative processes and separate laws and regulations. On September 18, 2015, EPA issued a NOV while CARB issued an In-use Compliance Letter. CARB's letter formalized the investigative process, and provided VW an administrative path under California law to fix the vehicles. CARB's NOV of January 12, 2016, is the next step in CARB's investigation and details the range of actions or omissions by VW (for 2009-2015, 2.0-liter diesel engine cars) that violate specific California regulations. VW, among other violations:

- Failed to disclose all auxiliary emission control devices (AECD) in its applications for certification;
- Equipped its vehicles with defeat devices;
- Interfered with operation of vehicle on-board diagnostic (OBD) computers;
- Imported, delivered, purchased, acquired, or received and sold, or offered to sell, approximately 75,688 uncertified vehicles in California;
- Failed to comply with the emission standards or test procedures by failing to test the worst case vehicle configuration to evaluate durability, and emissions;
- Mislabeled vehicle emission control information labels and failed to comply with the smog label specifications;
- Sold, offered, and delivered vehicles that violate emission standards or test procedures and failed to correct these nonconformities under the 2014 recall; and
- Violated emission warranty requirements.

In earlier statements you said that VW “cheated.” What do you mean by that?

Before a new car can be sold in California it must meet rigorous standards for pollution control. Tests to make sure the car meets those standards are performed to the highest standards of scientific rigor in a special emissions testing laboratory on a device known as a dynamometer. Cars that meet these and other standards are then certified for sale in California.

VW programmed its diesel cars to sense when the car was being tested – and its software would turn on all the emission control technologies to ensure that the car met the testing standards – so the cars could be certified for sale. But when the car was not driven under laboratory conditions, the software sensed that it was being driven “in the real world”, and either turned off or changed emissions control equipment, generating

substantial excess, illegal, and ongoing emissions of nitrogen oxides (NOx) from these vehicles. As a result, these cars were not certified for sale pursuant to California law.

For eight years VW misled Californians and regulators about the amount of pollution the company's vehicles released into our air. That means VW profited by lying to California consumers who thought they were helping improve the environment by purchasing a vehicle which was marketed as "clean."

Why is NOx a problem?

NOx emissions in California are the most important contributor to ambient ozone and a key contributor to fine particulate matter pollution which is associated with premature death, increased hospitalizations, emergency room visits due to exacerbation of chronic heart and lung diseases, and other serious health impacts. Unfortunately, and in spite of significant progress to improve air quality, California is home to both the highest ozone levels (South Coast) and ambient particulate matter levels (San Joaquin Valley) in the United States. Twelve million Californians live in communities that exceed the federal ozone and particulate matter ambient air quality standards that were put in place to protect public health. VW must mitigate the harm that these vehicles have already caused and continue to cause.

Why did CARB require VW to submit a recall plan?

As noted above, California has some of the unhealthiest air in the nation. Because of that, we are permitted to write and enforce our own vehicle emissions regulations. Those regulations are generally more stringent than federal regulations.

After VW admitted it had a "defeat device" that cheated on the testing process, CARB issued an "In-Use Compliance Letter." This required VW to submit an approvable recall plan within 45 business days to expeditiously return the affected cars to the emission standards under which they were certified to operate. The recall plan must address multiple required elements. (See below for more on those requirements.)

Why did CARB reject VW's recall plan?

Volkswagen's proposals are deficient in several areas, including:

- The proposed plans contain gaps and lack sufficient detail.
- The descriptions of proposed repairs lack enough information for a technical evaluation; and
- The proposals do not adequately address overall impacts on vehicle performance, emissions and safety.

In addition, California regulation Title 13, Section 2113(c) requires that the plan notify vehicle owners and correct their vehicles “in an expeditious manner.” That has not happened nor does the proposed recall plan demonstrate how the repairs will be made expeditiously.

Is a recall still possible in the future? Yes. CARB, EPA and VW continue to evaluate potential recall plans to determine if any of the deficient vehicles can be repaired and reprogrammed to meet emissions standards while ensuring vehicle performance is not adversely impacted. A recall may still be part of a potential resolution of this case.

What makes a recall plan approvable?

Each recall plan must include all the required elements detailed in California Code of Regulations Title 13, Sections 2113-2121, and Code of Federal Regulations, Title 40 Section 85.1803. These elements include but are not limited to:

- a. The description of the vehicles and affected California and U.S. population
- b. Description of the nonconformity and the specific recalibration and hardware corrective actions to return the vehicles to the certified configuration (i.e., no defeat device and emission compliant)
- c. A description of the method by which the manufacturer will determine the names and addresses of vehicle owners and the method for notifying the service facilities and vehicle owners of the recall
- d. A description of the procedure to be followed by the vehicle owner to obtain correction. This shall include the date on or after which the owner can have the nonconformity remedied, the time reasonably necessary to perform the labor, and the designation of the facilities that can perform the work
- e. A copy of the owner’s notification letter
- f. A description of the system by which the manufacturer will assure adequate supply of parts
- g. A copy of all instructions that will be sent to those performing the repair
- h. A description of the impact of the proposed repairs or adjustments on fuel economy, drivability, performance and safety of each vehicle recalled and a brief summary of the data, technical studies, or engineering evaluations which support the data
- i. The estimate of the capture rate (percentage of cars successfully fixed) from the proposed recall
- j. A description of the impact of the proposed changes on the average emissions from the vehicle to be recalled. The description shall include:
 - i. Average noncompliance emission levels
 - ii. Average emission reduction per pollutant from the recall repair

- iii. An estimate of the average emission level per pollutant for the vehicle adjusted for the capture rate
- k. A repair label shall be affixed to each vehicle that is corrected per the approved recall plan
- l. A description of the impact of the proposed changes of the On-Board Diagnostics system performance on the vehicle to be recalled. The description shall include:
 - i. OBD demonstration testing for all major monitors
 - ii. Identification and disclosure of all OBD monitoring requirements that are not met in the recall calibration

What is an Auxiliary Emissions Control Device (AECD)?

An AECD is “any element of design that senses temperature, vehicle speed, engine RPM, transmission gear, or any other parameter for the purpose of activating, modulating, delaying, or deactivating the operation of any part of the emission control system.” (40 C.F.R. § 86.1803-01; Cal. Code Regs., tit. 13, § 1961(d).)

AECDs are not illegal if they are installed to protect the engine or other systems during very limited driving situations and are disclosed to CARB for review and approval *at the time the manufacturer applies for vehicle certification*.

What is a “Defeat Device”?

A defeat device is a prohibited type of AECD. A defeat device is an undisclosed AECD “that reduces the effectiveness of the emission control system under conditions which may reasonably be expected to be encountered in normal vehicle operation and use.” (*Id.*)

You state that VW’s illegal software also impacts the On-Board Diagnostics (OBD) system. What does that mean?

OBD systems are designed to monitor the performance of vehicle emission control systems for malfunctions that can develop with time and use. Their purpose is to reduce in-use emissions from vehicles by quickly alerting the vehicle owner when a malfunction occurs, and by providing information that helps technicians identify and fix the problem more efficiently.

The OBD system consists of software in the vehicle’s on-board computer, and it uses sensors that in most cases are already on the vehicle to measure engine parameters such as temperature, pressure, and airflow. The sensor data are used to directly or indirectly evaluate the performance of emission control systems and other emission-related parts.

The VW software prevented the OBD system from detecting the fact that the emission control system was not operating as originally certified.

I own one of these 2.0-liter VW diesel cars. What do I need to do now?

Nothing. You will be notified as to the details of a corrective action, buyback or any other remedy.

Can I re-register my car in California?

Vehicle registration will not be affected by this situation until a resolution is announced. If this eventually involves a corrective action, it is likely that the repair must be made prior to the next registration date.

Does this mean VW will now have to buy back my car?

No. ARB's actions do not require VW to do a buyback. A buyback may be part of the ongoing discussions.

Does this affect my 3.0-liter vehicle?

No. There are issues with several 3.0-liter diesel vehicles made by VW, Audi and Porsche, but those are being handled through a separate action.

Which vehicles are affected?

Affected diesel models are **only 2.0-liter cars**, and include:
(Note: MY means 'Model Year')

- VW Jetta SportWagen (MY 2009 - 2014)
- Audi A3 (MY 2010 - 2013, 2015)
- VW Beetle (MY 2013 - 2015)
- VW Beetle Convertible (MY 2013 – 2015)
- VW Golf (MY 2010 - 2015)
- VW Jetta (MY 2009 - 2015)
- VW Passat (MY 2012 - 2015)
- VW Golf SportWagen (MY 2015)