

EDWARD J. MARKEY
MASSACHUSETTS

COMMITTEES:

ENVIRONMENT AND PUBLIC WORKS

RANKING MEMBER:

SUPERFUND, WASTE MANAGEMENT, AND
REGULATORY OVERSIGHT

FOREIGN RELATIONS

RANKING MEMBER:

SUBCOMMITTEE ON AFRICA
AND GLOBAL HEALTH POLICY

COMMERCE, SCIENCE, AND TRANSPORTATION

SMALL BUSINESS AND ENTREPRENEURSHIP

CHAIRMAN:

U.S. SENATE CLIMATE CHANGE CLEARINGHOUSE

United States Senate

October 29, 2015

SUITE SD-255
DIRKSEN BUILDING
WASHINGTON, DC 20510-2107
202-224-2742

975 JFK FEDERAL BUILDING
15 NEW SUDBURY STREET
BOSTON, MA 02203
617-565-8519

222 MILLIKEN BOULEVARD, SUITE 312
FALL RIVER, MA 02721
508-677-0523

1550 MAIN STREET, 4TH FLOOR
SPRINGFIELD, MA 01101
413-785-4610

The Honorable Dr. Mark Rosekind
Administrator
National Highway Traffic Safety Administration (NHTSA)
1200 New Jersey Avenue, SE, West Building
Washington, D.C. 20590

Dear Administrator Rosekind:

I write to request information about Volkswagen Group's (VW's) compliance with Corporate Average Fuel Economy (CAFE) standards in light of VW's use of defeat devices to circumvent NOX emissions controls requirements. I also ask that NHTSA re-evaluate any CAFE compliance ratings or credits received by VW and act to ensure that VW cannot profit in any way from its illegal activity.

In May 2009, President Obama announced the National Fuel Economy Policy, which combined the increase in CAFE standards mandated by the enactment of provisions I co-authored in 2007 with EPA's authority to reduce greenhouse gas emissions under the Clean Air Act. This announcement, which called for NHTSA to promulgate standards that resulted in a projected average fuel economy standard of 35.5 mpg by 2016, was supported by a wide range of environmental organizations, labor and automobile manufacturers.

Ironically, when President Obama announced the next phase of CAFE standards for model years 2017-2025, VW was one of the only automobile manufacturers that opposed them, in part because it felt that the new plan was "unfair" to makers of clean diesel engines¹. We've since learned that the term 'clean diesel engine' appears to have been an oxymoron when used to describe VW's fleet. Some analyses have even concluded that the deaths of dozens of people may have been caused by the illegal air pollutant emissions VW's defeat devices enabled².

The technologies that are typically used to reduce NOX emissions tend to reduce the fuel economy performance of the vehicle, often because more fuel is needed to enable the technology to operate properly³. The defeat device technology VW used on its vehicles thus also allowed these vehicles to operate more fuel efficiently, and for VW to meet its CAFE standards without

¹ <http://www.inautonews.com/vw-attacks-proposed-CAFE-standards-goes-to-white-house#.ULQP8aO1wII>

² <http://www.nytimes.com/2015/09/29/upshot/how-many-deaths-did-volkswagens-deception-cause-in-us.html>,
<http://bigstory.ap.org/article/a6925f0af82e44aaa1a1ed4b55d030f6/ap-analysis-dozens-deaths-likely-vw-pollution-dodge>

³ <http://www.rsc.org/chemistryworld/2015/09/vw-volkswagen-emission-cheating>

making the same vehicle design changes that other automakers had to make to meet their regulatory requirements. Moreover, to the extent VW exceeded its CAFE standards, it also would have been entitled to claim CAFE credits, which could have been used for both regulatory and monetary benefit.

In fact, an examination of NHTSA's CAFE compliance records⁴ shows that VW has consistently exceeded its CAFE standards for the model years subsequently recalled because some models included defeat devices⁵:

- In MY 2014, VW's domestic passenger car fleet exceeded its CAFE standard by 4.1 mpg, its light truck fleet exceeded its CAFE standard by 0.7 mpg while its imported passenger car fleet missed its CAFE standard by 0.8 mpg.
- In MY 2013, VW's domestic passenger car fleet exceeded its CAFE standard by 2.2 mpg, its light truck fleet exceeded its CAFE standard by 0.9 mpg while its imported passenger car fleet missed its CAFE standard by 0.4 mpg.
- In MY 2012, VW's domestic passenger car fleet exceeded its CAFE standard by 1.6 mpg, its light truck fleet exceeded its CAFE standard by 0.1 mpg while its imported passenger car fleet missed its CAFE standard by 0.7 mpg.
- In MY 2011, VW's light truck fleet exceeded its CAFE standard by 1.1 mpg while its imported passenger car fleet exceeded its CAFE standard by 3.2 mpg.
- In MY 2010, VW's light truck fleet exceeded its CAFE standard by 1.7 mpg while its imported passenger car fleet exceeded its CAFE standard by 5.8 mpg.
- In MY 2009, VW's light truck fleet exceeded its CAFE standard by 1.4 mpg while its imported passenger car fleet exceeded its CAFE standard by 3.7 mpg.

CAFE credits are provided by NHTSA when automakers exceed their CAFE standards in a given year. These credits can be used to compensate for a future failure to meet a CAFE standard, or, for example, a credit earned for over-compliance with a manufacturer's passenger car CAFE standard can be used to compensate for under-compliance with the manufacturer's light truck CAFE standard in the same model year. Manufacturers can also 'sell' their credits to other under-compliant manufacturers. NHTSA converts CAFE credits into a fuel savings total, and for VW, has calculated that for MYs 2008-2011, VW's CAFE credits translate into a fuel savings of 848,479,404 gallons of gasoline saved, more than two days' worth of gasoline typically used in the U.S.⁶.

In light of VW's illegal use of defeat devices to circumvent emissions controls, it is my belief that NHTSA should immediately re-analyze and, as appropriate, reverse any CAFE benefits VW might have enjoyed as a result of its illegal behavior. I also ask that you provide me with responses to the following questions:

⁴ See <http://www.nhtsa.gov/fuel-economy> for all associated documents

⁵ This list of CAFE compliance information does not attempt to exclude CAFE credits obtained through the use of alternative fuels, since those credits would have been available to VW irrespective of its use of defeat devices on its diesel vehicles.

⁶ <http://www.eia.gov/tools/faqs/faq.cfm?id=23&t=10>

- 1) For each of model years 2009-15, please indicate what VW's CAFE average for each of its light truck, imported passenger car and (as applicable) domestic passenger car fleets would have been had its fleet utilized compliant NOX emissions systems.
- 2) For each of model years 2009-15, please indicate, as a result of your re-analysis of VW's CAFE compliance, the degree to which each of its light truck, imported passenger car and (as applicable) domestic passenger car fleets exceeded or missed meeting its CAFE standard.
- 3) For each of model years 2009-15, please indicate, as a result of your re-analysis of VW's CAFE compliance, the total CAFE credit that would have been obtained (or, in the case of non-compliance, required) by each of its light truck, imported passenger car and (as applicable) domestic passenger car fleets.
- 4) What actions has NHTSA taken or does NHTSA plan to take to either a) recoup any monetary benefit VW may have realized from over-compliance with CAFE standards that is attributable to its illegal use of defeat devices or b) penalize VW for any failures it would have had in meeting its CAFE standards had its automobiles not been equipped with defeat devices? If no such actions are planned, why not?

Thank you very much for your prompt attention to this matter. Please provide your response no later than close of business on Friday November 20, 2015. If you have any questions or concerns, please have your staff contact Michal Freedhoff of my staff at 224-2742.

Sincerely,



Edward J. Markey
United States Senator