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Even After Recall, VW's Dirty Diesels Won't Meet Air Standards

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Volkswagen AG's \$15.3 billion settlement for cheating on emissions tests fell short in one key respect: even after the cars are recalled and repaired they won't be fully compliant with clean-air laws.

VW's oldest 2-liter diesels covered by the case -- including Jetta, Golf and Beetle models dating back to 2009 -- will emit more pollution than allowed under the emissions standards the company evaded, the settlement released on June 28 shows. To compensate, VW will contribute billions of dollars to environmental programs.

The failure of government negotiators to require repaired vehicles comply with current standards raised complaints from some clean-air advocates.

“For reasons they didn't state, they're allowing fixed vehicles to not be fixed, but to allow vehicles to emit twice as much pollution as they otherwise would allow,” said Daniel Becker, director of the Safe Climate Campaign.

The fact that [the fix](#), which has been widely anticipated since the scandal broke in September, still hasn't arrived is an indication of how complicated it is to re-engineer cars after the fact.

Environmental Claims

The German carmaker agreed to devote as much as \$10 billion to buy back affected models and compensate drivers. It will also pay \$2.7 billion to federal and California regulators to fund pollution-reduction projects, and give \$2 billion to be invested in clean technology. Volkswagen also announced a \$603 million settlement to resolve consumer and environmental claims with 44 U.S. states.

The California Air Resources Board estimates, when fixed, the VW diesels will have their emissions cut by 80 percent to 90 percent over current levels. But regulators also estimated the cars could emit as much as 40 times the permitted amounts of NOx, so even a 90 percent reduction would be more emissions than cars that fully comply with clean-air laws.

“Volkswagen knowingly broke the law and lied about it, not the vehicle owners,” said David Clegern, a spokesman for the Air Resources Board. “Therefore, owners are being given as much flexibility as possible in how they choose to handle their individual vehicles.”

The legal agreement with VW will fully mitigate the environmental harm from any past and future emissions from the affected vehicles, Clegern said.

No Fix

Regulators must approve the repair before a recall is issued and, despite months of research and back and forth with the automaker, no agreement has been reached.

Adding a urea-tank system -- which most diesel cars use -- was deemed to have been prohibitively expensive, said Roland Hwang, director of energy and transportation at the Natural Resources Defense Council. Instead, regulators and VW came to agreement on alternative ways to clean up air pollution.

“They told us they’re doing a cost calculation,” Hwang said. “With the mitigation strategy and the buy-back strategy, the regulators felt very comfortable that the future and past emissions is going to be fully compensated for, and then some.”

While the deals require the company to pay drivers for their troubles, they also require it to spend billions to make up for the environmental damage caused by its diesel engines, partly in the form of advancing clean-engine technologies. A major beneficiary is California, which called out VW for its emissions cheating and will receive \$800 million for clean-energy development.

Expediency Favored

For the Environmental Protection Agency, the priority was reducing excess pollution “as much and as quickly as possible, in a way that also protects vehicle owners,” said agency spokesman Nick Conger.

“The settlement protects both consumers and the public,” Conger said. “It offers owners the flexibility to choose what’s right for them, and requires VW to fully offset the excess NOx pollution it is responsible for.”

Conger declined to answer specific questions about how the VW cars would be fixed.

Volkswagen spokeswoman Jeannine Ginivan also declined to answer questions about the ways the cars will be fixed.

Mitigation Fund

The settlement with the U.S. government requires VW to get 85 percent of the cars recalled by June 30, 2019. If it fails to do that, it will have to pay \$85 million more into the environmental mitigation trust for each percentage point of the shortfall. It will also have to pay an additional

\$13.5 million into the trust for each percentage point it falls below the 85 percent target in California.

Mary Nichols, the California Air Resources Board chairwoman who helped negotiate the deal, said last month VW was still trying to convince regulators its proposed repairs would work, but the process shouldn't "drag on for a whole lot longer." Durability is a big issue, she said. The older cars, when fixed, have to have their emissions systems certified to hold up for 120,000 miles -- well past the anticipated life span of most of them. The newer cars will be certified for 150,000 miles.

State Tests

VW owners can continue to drive their vehicles for now, even if they wouldn't pass state emissions testing. Individual states may require approved emissions fixes on these vehicles in the future. Owners who choose the buyback option will receive their cars' trade-in value as of last September, just before VW's admission, plus the compensation payments.

"More pollution means more illness, more premature death," said Becker of the Clean Climate Campaign. "It's a bad thing. I presume the government tried to weigh various alternatives, and this was the least worst they could come up with."

Volkswagen's agreements with car owners and the U.S. must be approved by U.S. District Judge Charles Breyer, who is overseeing more than 800 lawsuits over the rigged vehicles that were consolidated in San Francisco. Breyer is scheduled on July 26 to consider approving the agreements.

California Rejection

VW suffered a setback on July 14 when California regulators rejected a proposed fix for 85,000 diesel vehicles with 3-liter engines, increasing the likelihood that the German automaker may have to buy back some expensive luxury vehicles. The California Air Resources Board listed 10 specific failures of VW's proposal, including a less than complete description of the so-called defeat devices, the impact of any repair on performance and enough detail about fixes to allow regulators to evaluate their effectiveness.

For the 2-liter cars, the first fix for so-called third-generation vehicles will come first, to be proposed by VW as soon as July 29 and approved by October 14. For second generation vehicles, VW's deadline for a proposal is December 16, with a target date for approval of March 3. For the hardest-to-fix first generation vehicles, VW's proposal is due Nov. 11, with the final approval expected by Jan. 27.

Meanwhile, New York and Maryland are among [several states](#) planning to sue Volkswagen AG over the environmental damage already done. Maryland Attorney General Brian Frosh said Monday in a statement that he's acting in coordination with the attorneys general of New York and Massachusetts, among others.

VW's June settlement didn't bar states from suing individually over environmental damage from the added pollution.

The federal case is In Re: Volkswagen "Clean Diesel" Marketing, Sales Practices and Products Liability Litigation, MDL 2672, U.S. District Court, Northern District of California (San Francisco).

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