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VW May Be Forced to Clean the Air Its Diesel Cars Polluted

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(Bloomberg) -- Volkswagen AG may have to do more than fix half-a-million cars implicated in an emissions-cheating scandal: It also could be forced to undo the environmental damage.

Environmental and consumer groups are pushing the federal government to consider a long list of possible reparations, from a VW-funded program to build the infrastructure to power electric cars to high fines to cleaning up five times the amount of pollution released by the dirty diesel engines.

“The clean-air reparations must be so large that Volkswagen or other companies will never again be tempted to cheat,” said Frank O’Donnell, president of Clean Air Watch, an environmental group based in Washington.

There’s precedent for a U.S. settlement with automakers going beyond repairing or replacing affected vehicles. In the 1990’s, the Environmental Protection Agency forced truck manufacturers that had cheated on emissions tests to invest \$1 billion on cleaner engines, among other things.

The EPA in March 2015 updated its policy of accepting company actions as part of a settlement if they support key government objectives, such as reducing the impact of climate change, promoting innovative technology or improving children’s health.

‘Quantifiable Benefits’

Driving the Volkswagen case is the purposeful cheating that permitted about 600,000 VW and Audi cars, including popular diesels like the Jetta, Golf and Beetle, to emit as much as 40 times the legal limit of smog-forming nitrogen oxide. VW acknowledged last year that it had been rigging diesel vehicles since 2009 with “defeat devices” to pass emissions tests in the lab while they exceeded limits on the road.

The EPA and the California Air Resources Board now must decide how VW not only can bring the cars into compliance and reimburse owners of models that can’t be retrofitted, but what other fines or penalties the German automaker should face.

The agencies are being pushed by environmental and consumer groups to require VW to take steps to remediate the pollution its cars released.

One criteria the EPA uses to evaluate offsetting projects is whether they provide “significant, quantifiable benefits to public health or the environment,” according to a memo from Cynthia Giles, the agency’s assistant administrator for enforcement and compliance assurance. The agency says it may reduce a company’s penalties if it agrees to such supplemental projects.

Volkswagen Cooperating

Volkswagen is continuing to cooperate with EPA and CARB, and trying to develop remedies acceptable to the agencies “as quickly as possible,” company spokeswoman Jeannine Ginivan said. She declined to comment on specific environmental projects that could become part of the settlement.

EPA spokeswoman Julia Valentine declined to comment on negotiations with VW.

Due to the scale of the cheating, the EPA may ask VW to eliminate more pollution than the raw amount of nitrogen oxides that the cars emitted, said Margo Oge, a former head of the agency’s Office of Transportation and Air Quality. Other options may include the funding of environmental projects like retrofitting older trucks or buses in cities with smog problems, or selling electric cars, she said.

Zero-Emission Vehicles

“I don’t think we’ve experienced anything similar to that in the past,” Oge said. “They’ll need to do more than make up for the environmental damage they have caused.”

The EPA is talking to Volkswagen about producing electric vehicles at its plant in Chattanooga, Tennessee as part of the diesel-emissions negotiations, the German weekly *Welt am Sonntag* reported Sunday. The agency and VW are also discussing getting the automaker to help build a nationwide network of charging stations, the newspaper reported. It didn’t cite its sources.

Excess pollution from the affected Volkswagens will cause 60 early deaths in the U.S., according an estimate in a study by researchers at the Massachusetts Institute of Technology and Harvard University. If the company recalls all affected cars by year-end, another 130 premature deaths may be avoided, the study projected.

The American Lung Association has asked the EPA to make Volkswagen promote zero-emissions vehicles like those powered by batteries or hydrogen, build infrastructure to charge electric cars or retrofit older diesel engines with better pollution controls.

Communities will be burdened by pollution from VW’s emissions cheating for another generation until the vehicles retire, the lung association said in a September letter to EPA, CARB and U.S. Attorney General Loretta Lynch.

“People can’t unbreath the air they’ve already breathed,” said Paul Billings, the lung association’s senior vice president for advocacy, in an interview. “But you can make the air cleaner than it would have been otherwise.”

Caterpillar, Cummins

Penalties on VW need to be enforced because past EPA settlements haven’t always panned out, Billings said. In 1998, heavy-duty truck manufacturers, including Caterpillar Inc., Cummins Inc. and Volvo AB, settled with EPA after discovery of defeat devices to cheat emissions tests. The truckmakers paid a \$83.4 million civil penalty and close to \$1 billion in remediation projects to producing cleaner engines and new emissions technologies.

They also were supposed to fix the trucks but many never were, Billings said.

Remediation projects can make up a large share of what a company will spend to settle this kind of case, said Richard Alonso, a former official with the EPA’s Office of Enforcement and Compliance Assurance. The upper limit of what EPA could demand is what the agency believes a federal judge will approve.

“If the judge feels the United States is overreaching, or somehow EPA demands something Volkswagen believes it would never be able to get in court, they could say no,” said Alonso, now a partner with Bracewell LLP in Washington.

VW Costs

Cleaning up five times the amount of pollution caused would probably been seen as excessive, Alonso said. Twice the amount or 1.5 times would be more typical. But he said the agency is more likely to use financial penalties than environmental projects to punish VW and deter future cheating.

The final cost to Volkswagen, including recall repairs, remedial actions, investor lawsuits and penalties, could exceed \$42.2 billion (38 billion euros) worldwide, according to Patrick Hummel, an analyst with UBS AG in Zurich.

Volkswagen also should make sure there are generous incentives so consumers who may be hesitant to bring in a recalled car for repair, said Dan Becker, director of the Safe Climate Campaign in Washington. Incentives are important because there is no recall in which everyone brings the car back, even when a matter of safety, he said.

“You can’t put the genie back in the bottle,” Becker said. “Until they’re fixed, they’re going to pollute much too much. Volkswagen, which created the problem, will need to incentivize consumers to bring them in.”

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