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September 29, 2015

The Honorable Loretta Lynch
Attorney General of the United
States
Department of Justice
Robert F. Kennedy Building
950 Pennsylvania Avenue, NW
Room 5111
Washington, DC 20530

The Honorable Kamala Harris
Attorney General
State of California
P.O. Box 944255
Sacramento, CA 94244

The Honorable Gina McCarthy
Administrator,
U.S. Environmental Protection
Agency
William Jefferson Clinton Federal
Building
1200 Pennsylvania Avenue, NW
Room 3000
Washington, DC 20460

The Honorable Mary Nichols
Chair, Air Resources Board
P.O. Box 2815
Sacramento, CA 95812

Dear Attorney General Lynch, Administrator McCarthy, Attorney General
Harris and Chair Nichols:

We write to express our concern about the health impacts of the emissions released by the defeat devices installed on Volkswagen's diesel vehicles and to recommend steps to mitigate the harm caused by these deliberate violations of the Clean Air Act and other laws. We are concerned that past enforcement actions have not fully mitigated the pollution caused by those violations. The mission of the American Lung Association is to save lives by improving lung health and preventing lung disease. We advocate for cleaner, healthier air to protect all, but especially the most vulnerable – children, seniors, and those with chronic lung disease.

We were deeply dismayed to read the Notice of Violation that documented the installation of defeat devices designed to circumvent the certification

Advocacy Office:

1301 Pennsylvania Avenue NW, Suite 800
Washington, DC 20004
Ph: 202-785-3355 F: 202-452-1805

National Office:

55 W. Wacker Drive, Suite 1150 | Chicago, IL 60601
Ph: 312-801-7630 F: 202-452-1805 Info@Lung.org

test and dump excessive amounts of nitrogen oxides into the air.¹ Volkswagen's violations harm the public health and pollute the air. According to Bloomberg Business, the 482,000 noncompliant vehicles in the U.S. spewed almost 12,000 additional tons of nitrogen oxides into the air in one year, which, in total, "added the equivalent of as many as 19 million chemical-spewing cars to American roads."²

Since the 1960s, California has led the world to clean up motor vehicle pollution. The California Air Resources Board (ARB) and the U.S. Environmental Protection Agency (EPA) have collaborated to regularly update vehicle emissions standards to reduce air pollution and improve public health. The innovations to motor vehicle pollution control have changed the world and prevented millions of premature deaths. Key to this success are rigorous compliance and enforcement. Volkswagen's grave violation of the law has shaken the public confidence and increases the need for strong enforcement actions.

Through this enforcement action, we urge you to take all steps to mitigate the harm, punish those responsible, deter future violations of the law, increase the scientific understanding of near roadway air pollution and initiate steps to restore the public confidence in motor vehicle pollution control.

1. To mitigate the harm, every high emitting vehicle—all 482,000 cars—must be recalled and repaired to guarantee compliance with the emissions standards. Volkswagen must be obligated to create incentives to capture all of the vehicles including, if needed, a requirement to buy back those vehicles from their current owners and to retire those vehicles. If each vehicle is not repaired or retired, communities will be burdened by these excess emissions for another generation until the vehicles ultimately retire. EPA and ARB must develop a robust in-use testing protocol to ensure that if the vehicles are repaired, the vehicles remain in full compliance for the vehicles' full useful life, in real world driving conditions. The emissions control system must not be allowed to degrade over time to exceed the standards, and EPA and ARB must assure the public that there is no further cheating by Volkswagen.
2. Because of the magnitude of the excess emissions, reported to be as much as forty times the standard, the recall and repair must be promptly implemented with a short time limit for compliance. These vehicles pose a real and ongoing threat to public health. We recommend no more than 90 days for the recall and repair or scrappage of this fleet. These super-emitters cannot be allowed to continue to pollute the air.
3. EPA and ARB must determine the magnitude of the excess emissions caused by the vehicles from the date of the sale of the first vehicle through the effective repair or scrappage of the last vehicle. Volkswagen must be required to offset all the excess emissions through verified, enforceable pollution reductions. These offsets must be real,

¹ Brooks, P (2015, September 18) *Notice of Violation Letter to Volkswagen*
<http://www3.epa.gov/otaq/cert/documents/vw-nov-caa-09-18-15.pdf>

² Levin, A, and Plungis, J (2015, September 23) *VW Cheating Added Pollution of as Many as 19 Million U.S. Cars*, Bloomberg Business <http://www.bloomberg.com/news/articles/2015-09-23/vw-cheating-added-pollution-of-as-many-as-19-million-u-s-cars>

new emissions reductions, not, for example, purchasing shut down credits. Because much of the burden of the excess pollution falls on communities who live near roadways, the offsets must reduce emissions in those communities with the highest air pollution burden.

4. All of the correspondence, testing results and documents from Volkswagen, EPA and ARB must be released and made available to the public. This transparency will help to inform the public and policy makers as we work to strengthen enforcement and provide additional resources to support compliance with applicable laws. The public has a right to know why it took six years to identify these violations and what steps Volkswagen took to cover up the violation or delay the investigation.
5. To ensure that the full scope of the violations are known, to deter future violations of the law and to restore public trust, EPA and ARB should verify all Volkswagen vehicle certifications. EPA and ARB should audit the existing fleet of all Volkswagen vehicles (including all their other brands) for all Tier 2 model years 2004 through 2016, and prior to certification, all new models of all of the Volkswagen brands for the Tier 3 standards, model years 2017 through 2025, should be tested with a rigorous on-road testing protocol as well.
6. If there is a settlement, steps must be taken to mitigate the burden for the public and to further deter future conduct by Volkswagen or others. We urge that any resolution include Supplemental Environmental Projects that are consistent with the EPA guidance to “obtain environmental and public health protection and benefits that may not otherwise have occurred in the settlement of an enforcement action.”³ We recommend that substantial and significant additional pollution offsets be required in those communities with the highest air pollution burden. We believe that an additional five tons of nitrogen oxide should be cleaned up for each potential excess ton of nitrogen oxide these vehicles emitted. If the recall, repair or scrapping of the existing fleet does not achieve full compliance, any pollution attributed to non-participation of vehicles over their full lifetimes should be offset by ten tons of pollution cleaned up for every ton of pollution from the super-emitting vehicles. This will help to deter future cheating by Volkswagen and send a strong signal to other companies that the consequences of cheating are significant.

These reductions could take the form of incentives to promote zero emission vehicles and the infrastructure needed to support zero emission vehicle (ZEV) technology, the retrofitting with NOx controls or retirement of older diesel engines, other measures that reduce mobile source pollution in communities, or other real, enforceable and tangible pollution reductions.

7. A resolution to these violations should also support efforts to increase the understanding of the health impacts of motor vehicle pollution and enhance near roadway air pollution monitoring. In 2010, the Health Effects Institute published *Traffic-Related Air Pollution: A Critical Review of the Literature on Emissions, Exposure, and Health Effects* that concluded:

³ Giles, C (2015, March 10, *Issuance of the 2015 Update to the 1998 U.S. Environmental Protection Agency Supplemental Environmental Projects Policy* [Memorandum] Washington, DC: U.S. Environmental Protection Agency <http://www2.epa.gov/sites/production/files/2015-04/documents/sepupdatedpolicy15.pdf>

the evidence is sufficient to support a causal relationship between exposure to traffic-related air pollution and exacerbation of asthma. It also found suggestive evidence of a causal relationship with onset of childhood asthma, nonasthma respiratory symptoms, impaired lung function, total and cardiovascular mortality, and cardiovascular morbidity.⁴

Volkswagen should be required to fund, but not control in any way, an independent near roadway research program to improve the understanding of the impact of motor vehicle emissions on the public health. In addition, Volkswagen should fund state and local air pollution control agencies to expand their near road air pollution monitoring programs. Currently there are only 126 near road monitors including less than 20 in California. We recommend tripling this network and funding its operation for twenty years. This monitoring and research effort would further inform compliance, enforcement and policy to improve public health.

In conclusion, protecting public health demands cleaner air. California and federal law have significantly reduced air pollution from motor vehicles, yet millions of people still are exposed to unhealthy air pollution. Polluters who violate the public trust and the law must be held accountable. Any resolution to this case must mitigate all the harm and include significant measures to prevent and deter future misconduct.

The excessively polluting vehicles must not be permitted to continue to operate without being repaired to comply with their certification standards. Every gram of excess pollution created by these violations must be offset in the communities where the public bears the greatest air pollution burden. Additional significant pollution reductions must be made to help to compensate the public for the additional air pollution burden and to deter future misconduct. All Volkswagen vehicles from 2004 through 2025 should be subject to rigorous in-use compliance tests to ferret out any additional cheating and to deter future misconduct. In the interest of transparency, there must be full disclosure of all information related to these violations. And, Volkswagen should fund research and monitoring to improve the understanding of the health impacts of near roadway exposures.

Please contact Paul Billings, Senior Vice President, Advocacy and Education, at 202-785-3355 or Paul.Billings@Lung.org if you need any additional information.

Sincerely,



Harold Wimmer
National President and CEO



Olivia J. (Gertz) Diaz-Lapham
President and CEO
American Lung Association in California

⁴ Health Effects Institute (2010, January 13) HEI Panel on the Health Effects of Traffic-Related Air Pollution. 2010. Traffic-Related Air Pollution: A Critical Review of the Literature on Emissions, Exposure, and Health Effects. HEI Special Report 17. Health Effects Institute, Boston, MA. <http://pubs.healtheffects.org/view.php?id=334>



cc. John C. Cruden, Assistant Attorney General, Environment and Natural Resources Division
Cynthia Giles, Assistant Administrator, Enforcement and Compliance Assurance, U.S. EPA
Janet McCabe, Acting Assistant Administrator, Air and Radiation, U.S. EPA
Phillip A. Brooks, Director, Air Enforcement Division, U.S. EPA
Meetu Kaul, Air Enforcement Division, U.S. EPA

Richard Corey, Executive Officer, Air Resources Board
Ellen Peter, Chief Counsel, Air Resources Board
Todd Sax, Division Chief, Enforcement, Air Resources Board

Advocacy Office:

1301 Pennsylvania Avenue NW, Suite 800
Washington, DC 20004
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National Office:

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Ph: 312-801-7630 F: 202-452-1805 Info@Lung.org