

Products Liability Law Daily Wrap Up, TOP STORY—MOTOR VEHICLES—EPA issues second NOV to Volkswagen over ‘defeat devices’, (Nov. 2, 2015)

By John Dumoulin

A second notice of violation (NOV) of the Clean Air Act has been issued by the Environmental Protection Agency to Volkswagen AG, Audi AG, and Volkswagen Group of America, Inc., following an earlier NOV that was issued on September 18, 2015 [see *Products Liability Law Daily's* September 18, 2015 [analysis](#)], and to Porsche AG and Porsche Cars North America (these five companies are being collectively referred to as “Volkswagen (VW)”). The NOV alleges that VW developed and installed a defeat device in certain VW, Audi, and Porsche light duty diesel vehicles equipped with 3.0 liter engines for model years 2014 through 2016. This defeat device allegedly allows the vehicles to meet emissions standards when being tested but under normal conditions increases emissions of nitrogen oxide (NOx) to as much as nine times the allowable EPA standard ([EPA News Release](#), November 2, 2015).

Defeat devices. According to the EPA, the Clean Air Act prohibits manufacturers from making and selling vehicles equipped with defeat devices, which reduce the effectiveness of the emission control system during normal driving conditions. The EPA issued the original NOV for an alleged defeat device on certain 2.0 liter engines for model year 2009-2015 vehicles. The vehicles affected by the current NOV are the diesel models of the 2014 VW Touareg, the 2015 Porsche Cayenne, and the 2016 Audi A6 Quattro, A7 Quattro, A8, A8L, and Q5. The EPA said that it is Volkswagen’s responsibility to fix these vehicles’ emissions systems, that the emissions system violations do not present a safety hazard, and that it is legal to drive and resell the vehicles.

Testing and investigations. On September 25, 2015, the EPA initiated testing on all 2015 and 2016 light duty diesel models available in the United States to uncover potential defeat devices. The California Air Resources Board (CARB) and Environment Canada also conducted tests. Those tests led to the allegations in the current NOV. The EPA and CARB have initiated additional investigations based on the most recent allegations.

Current NOV. According to the EPA, VW allegedly manufactured and installed software in the electronic control module of the vehicles that senses when they are being tested for compliance with EPA emissions standards. When this occurs, the vehicles operate in a mode that allows them to meet emission standards, but after the initial phases of the standard test procedure, the vehicles return to their normal mode, under which NOx emissions increase to as much as nine times the EPA standard. Under normal driving conditions, the NOx emissions are higher from the beginning.

Violations. The NOV alleges that VW’s software on the affected vehicles includes one or more Auxiliary Emission Control Devices (AECD) that VW failed to disclose, describe, and justify in its applications for certificates of conformity that are required to be approved by the EPA each year for each model. According to the EPA, VW allegedly violated two important provisions of the Clean Air Act by selling vehicles with defeat devices and by selling vehicles with higher levels of air emissions than were certified to the agency. The EPA release said VW may be liable for civil penalties and injunctive relief for the violations alleged in the NOV.

Companies: Volkswagen AG; Audi AG; Volkswagen Group of America, Inc.; Porsche AG; Porsche Cars North America

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