



Office of Chief Counsel

Multistate Litigation

Environmental Law Forum
April 4, 2019

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Disclaimer

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Case Topics

1. Volkswagen
2. Fiat Chrysler/Bosch
3. 2015 Ozone Standard Designations
4. Ozone Transport Region Expansion
5. Light-Duty Vehicle GHG Emission Standards

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Volkswagen Emission Scandal

U.S. EPA

California Air Resources
Board (CARB)



“Section 177”
States

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Volkswagen Emission Scandal

WVU's Center for
Alternative Fuels, Engines and Emissions
(CAFEE)



Discovered high VW emissions

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Volkswagen Emission Scandal

2.0 Liter Diesel Vehicles:

- Audi A3
- VW Beetle, VW Beetle Convertible
- VW Golf, VW Golf SportWagen
- VW Jetta, VW Jetta SportWagen
- VW Passat

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Volkswagen Emission Scandal

3.0 Liter Diesel Vehicles:

- Audi A6 Quattro, Audi A7 Quattro
- Audi A8L
- Audi Q5, Audi Q7
- Porsche Cayenne
- VW Touareg

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Volkswagen Emission Scandal

- Model years 2009-2016
- Emission controls would turn:
 - Off in real-life driving
 - On during testing

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Volkswagen Emission Scandal

VW sold unlawful vehicles

| Worldwide | U.S. | Penn |
|------------|---------|--------|
| 11,000,000 | 590,000 | 23,000 |

45,000 additional tons of NOx in U.S.

Volkswagen Emission Scandal

- Multistate investigation led to settlements for all 50 states
- AGs conducted pre-litigation discovery

Volkswagen Emission Scandal

U.S. v. Volkswagen AG et al., No. 16-cv-295 (N.D. Cal.) – January 4, 2016

California v. Volkswagen AG et al., No. 3:16-cv-03620 (N.D. Cal.) – June 27, 2016

Volkswagen Emission Scandal

In re: Volkswagen “Clean Diesel” Marketing, Sales Practices, and Products Liability Litigation, No. 3:15-md-02672-CRB (N.D. Cal.) (MDL 2672)

Volkswagen Emission Scandal



Judge Breyer



Justice Breyer



Settlement Master
Mueller

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Volkswagen Emission Scandal

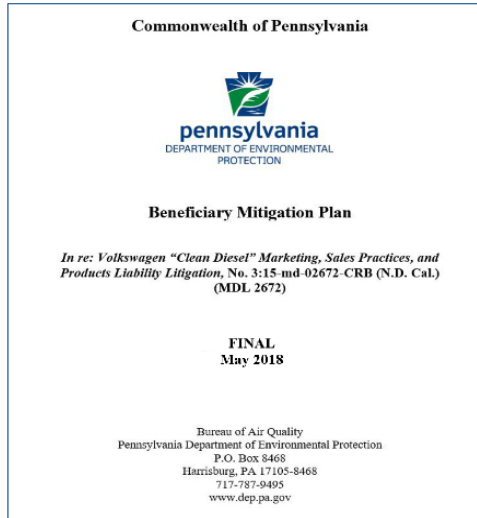
EPA and California's cases resulted in Partial Consent Decrees to address economic and environmental harms:

1. Recall and repair of vehicles
2. Environmental Mitigation Trust Fund - **\$2.925 B**
3. Zero Emission Vehicle (ZEV) Fund - **\$2.0 B**

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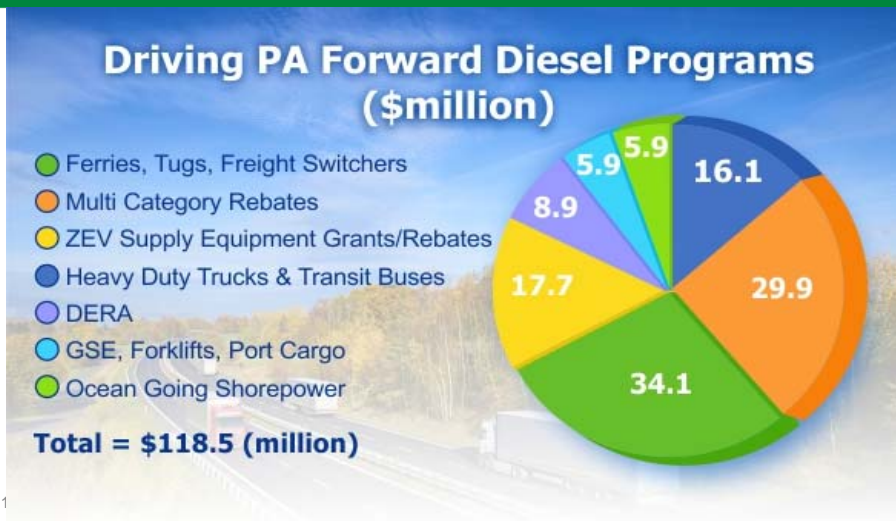
Volkswagen Emission Scandal



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Volkswagen Emission Scandal



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Volkswagen Emission Scandal



<http://www.depgis.state.pa.us/DrivingPAForward/>

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Volkswagen Emission Scandal

Pennsylvania lawsuit - \$30.4 million -

... shall be ... deposited into the General Fund to be expended in compliance with the Commonwealth's trustee duties under Section 27 of Article I of the Constitution of Pennsylvania.

72 P.S. § 1507.1(b.1)

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Fiat Chrysler/Bosch

*IN RE: CHRYSLER-DODGE-JEEP
ECODIESEL MARKETING, SALES
PRACTICES, AND PRODUCTS
LIABILITY LITIGATION,
17-MDL 2777 EMC
(N.D. Cal.)*

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Fiat Chrysler/Bosch

Fiat Chrysler – 100,000 3.0 V6 diesel engine vehicles (Model Years 2014-2016)

- Ram 1500 trucks
- Jeep Grand Cherokee SUVs

NOx emissions
3-20 times legal limit

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Fiat Chrysler/Bosch


Bosch – Supplied and helped program the illegal defeat device software in more than 600,000 Fiat-Chrysler and Volkswagen vehicles for over a decade

❖ More than 26,000 in Pennsylvania

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Fiat Chrysler/Bosch

- Multistate investigation led to settlements for all 50 states without first filing suit (except CA, which filed first)
- AGs conducted pre-litigation discovery
- Negotiated with companies
- Result 

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Fiat Chrysler/Bosch

Settled consumer and environmental claims.
\$171 million to the multistate coalition

- Bosch → \$98 million & injunctive provisions
- Fiat Chrysler → \$72.5 million & injunctive prov

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Designations for 2015 Ozone NAAQS

2015 Ozone National Ambient Air Quality Standard Area Designations

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Designations for 2015 Ozone NAAQS

AREA DESIGNATIONS:

Attainment

Nonattainment

Unclassifiable

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Designations for 2015 Ozone NAAQS

| | |
|--|----------------|
| 1. EPA revises NAAQS | 10-1-15 |
| 2. States propose designations | 10-1-16 |
| 3. EPA responds with "120-day letter" | 6-5-17 |
| 4. States may give EPA additional info | Interim |
| 5. EPA makes final designations | 10-1-17 |

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Designations for 2015 Ozone NAAQS

If EPA cannot meet the 2-year deadline to make final designations because EPA has insufficient information to make the final designations, EPA can claim a 1-year extension.

Section 107(d)(1)(B)(i) of the CAA

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Designations for 2015 Ozone NAAQS

New York, et al., v. EPA (D.C. Cir. 17-1185)

- August 1, 2017 Petition for Review – PA and 15 other states. Sought vacatur.
- CA, CT, DE, IL, IA, ME, MA, MN, NM, NY, OR, RI, PA, VT, WA, DC
- NGOs sued two weeks prior – same court

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Designations for 2015 Ozone NAAQS

- States also sued in N.D. Cal. for an order
- August 2, 2017 EPA signed notice to withdraw unlawful one-year extension
- EPA promised to designate by April 30, 2018
- Accomplished

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Expand the OTR

Petition to Expand the Ozone Transport Region (OTR)

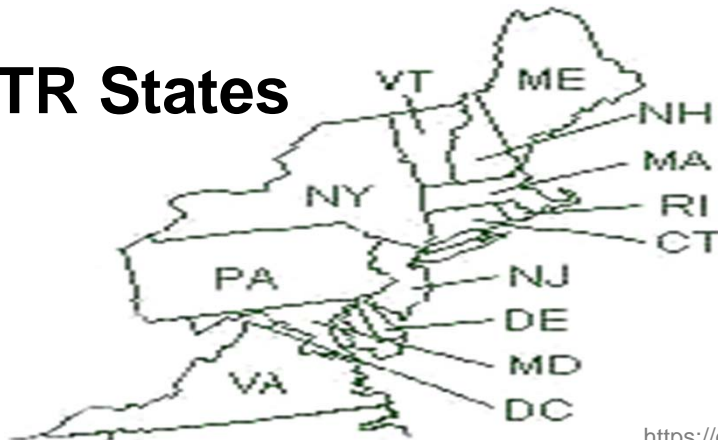
New York, et al. v. EPA, D.C. Cir. No. 17-1273

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Expand the OTR

OTR States



<https://otccair.org/about.as>

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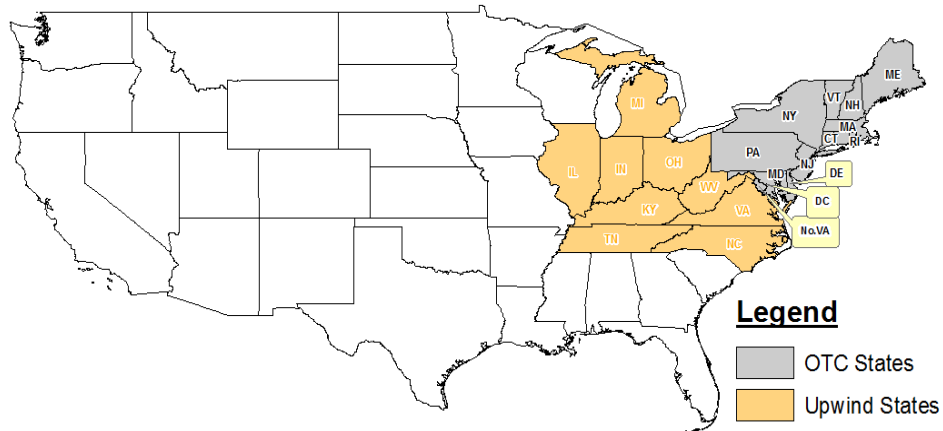
Expand the OTR

- Enhanced vehicle inspection & maintenance program requirements
- Statewide New Source Review controls
- Statewide Reasonably Available Control Technology (RACT) for stationary sources and for consumer products

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Expand the OTR



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Expand the OTR

...has reason to believe that the interstate transport of air pollutants from the additional states significantly contributes to a violation of the ozone standard in the OTR.

CAA 176A(a)(1), 42 U.S.C. § 7506a(a)(1)

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Expand the OTR

- EPA denied States' petition (Nov. 3, 2017)
- States challenged denial in D.C. Circuit Court of Appeals (Dec. 22, 2017)

Expand the OTR

1. CAA § 110(a)(2)(D)(i) – “Good Neighbor”
2. CAA § 126 – Petition to EPA about emissions from a source or group of sources

Expand the OTR

- Briefing is complete
- Oral argument (November 28, 2018)
- Waiting for Court decision

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Light-Duty Vehicle GHG Emissions

Light-Duty Vehicle Greenhouse Gas Emission Standards

California et al v. EPA, D.C. Cir. No. 18-1114

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Light-Duty Vehicle GHG Emissions

Massachusetts v. EPA, 549 U.S. 497 (2007)

CO₂, methane, N₂O, and hydrofluorocarbons are
“air pollutants” under CAA

- EPA Endangerment Finding (2009)
- EPA “Cause and Contribute” Finding re GHG emissions from new motor vehicles and engines

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Light-Duty Vehicle GHG Emissions

2012 rulemaking (EPA & NHTSA):

| | | |
|-------|--------------------|----------------------|
| EPA | Emission Standards | MY 2017-2015 |
| NHTSA | CAFE Standards | MY 2017-2021 |
| | | MY 2022-2025 augural |

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Light-Duty Vehicle GHG Emissions

2012 rulemaking (EPA & NHTSA) - *cont'd...*

- Mid-Term Evaluation – Do MY 2022-2025 GHG emission standards remain:
 1. Feasible,
 2. Practical, and
 3. Appropriate

Light-Duty Vehicle GHG Emissions

1. Draft Technical Assessment Report (TAR) - NHTSA and CARB - public comment
2. Propose determination for public comment
3. Publish final determination by EPA Administrator

Light-Duty Vehicle GHG Emissions

Mission accomplished:

EPA publishes Mid-Term Evaluation
Final Determination (January 12, 2017)

Light-Duty Vehicle GHG Emissions

January 2017 Final Determination:

The MY 2022-2025 GHG emission standards
remained:

1. Feasible,
2. Practical, and
3. Appropriate

Light-Duty Vehicle GHG Emissions

March 2017 announcement and notice:

- President Trump announces intention to reconsider MTE
- EPA Adm. Pruitt publishes Finding that MTE “flawed” – intends to reconsider MTE

Light-Duty Vehicle GHG Emissions

“Mid-Term Evaluation of Greenhouse Gas Emissions Standards for Model Year 2022–2025 Light-Duty Vehicles; Final Rule”

Released: April 2, 2018

Published: 83 Fed. Reg. 16,077 (Apr. 13, 2018)

Light-Duty Vehicle GHG Emissions

EPA publishes new MTE and Revised Determination (April 13, 2018):

1. GHG standards for MYs 2022-2025:
 - are based on outdated information
 - may be too stringent
 - should be revised

Light-Duty Vehicle GHG Emissions

2. Adm. Pruitt withdraws January 2017 Mid-Term Evaluation Final Determination
3. Adm. Pruitt promises to publish, with NHTSA, a proposed rulemaking to consider “appropriate standards”

Light-Duty Vehicle GHG Emissions

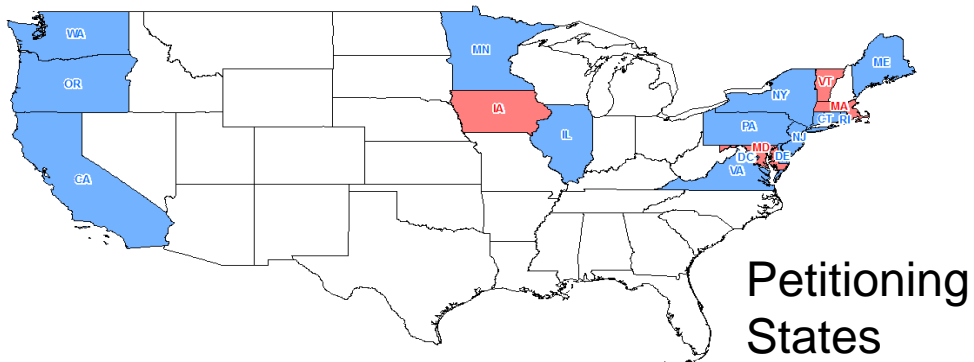
**** Petition for Review ****
Filed by 18 States

California v EPA, D.C. Cir. 18-1114 (May 1, 2018)

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Light-Duty Vehicle GHG Emissions



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Light-Duty Vehicle GHG Emissions

Amici:

1. Lyft
2. 16 Cities & Counties + Nat'l League of Cities & US Conference of Mayors
3. Consumer Federation of America
4. CA's South Coast Air Quality Mngt District
5. Colorado

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Light-Duty Vehicle GHG Emissions

Consolidated Cases:

1. National Coalition for Advanced Transportation
2. CBD, Conservation Law Foundation, EDF, NRDC, Public Citizen, Inc, Sierra Club, and Union of Concerned Scientists
3. Consolidate Edison of NY, Inc., National Grid USA, NY Power Authority, City of Seattle

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Light-Duty Vehicle GHG Emissions

Intervenors:

1. Alliance of Automobile Manufacturers
2. Association of Global Automakers, Inc.

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Light-Duty Vehicle GHG Emissions

- April 8 - EPA's brief due
- August – finalize MY 2022-2025 standards in the “SAFE” Vehicles rulemaking?
- September - oral argument?

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Summary

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Questions?

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