



August 5, 2016

John C. Cruden, Esq.  
Assistant Attorney General  
Environment and Natural Resources Division  
950 Pennsylvania Avenue, N.W.  
Washington, DC 20530-0001

Re: *In re: Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation*, Case No: MDL No. 2672 CRB (JSC), and D.J. Ref. No. 90-5-2-1-11386

Dear Mr. Cruden:

The Automotive Recyclers Association (ARA) appreciates the opportunity to comment on the Partial Consent Decree regarding Volkswagen diesel vehicles. ARA is an international trade association representing over 4,500 professional automotive recycling facilities through direct or affiliated memberships in the United States and 14 other countries around the world. Since 1943, ARA has represented an industry dedicated to the efficient removal and reuse of original equipment manufactured (OEM) automotive parts, and the safe disposal of inoperable motor vehicles.

ARA's comments focus on a single concern: the definition of "Operable" vehicle. Section 2.10 of Appendix A of the Partial Consent Decree defines an "Operable" vehicle as one that "can be driven under its own 2.0-liter TDI engine power. A vehicle is not Operable if it had a branded title of "Assembled," "Dismantled," "Flood," "Junk," "Rebuilt," "Reconstructed," or "Salvaged" as of September 18, 2015, and was acquired by any person or entity from a junkyard or salvaged after September 18, 2015."

This definition is important because of its relationship to the definitions of "Eligible Owner" and "Eligible Vehicle" which specify those entitled to remedy under the agreement. Regrettably, the Partial Consent Decree does not mirror the eligibility requirements for correction of a nonconformity that are required under the recall regulations of the Clean Air Act.<sup>1</sup>

Federal regulation<sup>2</sup> specifically requires manufacturers to identify procedures for "vehicle owners" and "engine owners" to obtain remedy when a recall is issued. Specifically, Section 1803(a)(5) states that a remedial plan must contain:

(5) A description of the procedure to be followed by vehicle or engine owners to obtain correction of the nonconformity. This shall include designation of the date on or after which the owner can have the nonconformity remedied, the time reasonably necessary to perform the labor required to correct the nonconformity, and the designation of facilities at which the nonconformity can be remedied: *Provided*, That repair shall be completed within a reasonable time designated by the Administrator from the date the owner first tenders his vehicle or engine

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<sup>1</sup> 40 C.F.R. § 85.1803 (2016).

<sup>2</sup> 40 C.F.R. § 85.1803(a)(5)

after the date designated by the manufacturer as the date on or after which the owner can have the nonconformity remedied.

ARA encourages the adoption of language allowing owners of engines, not just of vehicles, to be “Eligible Owners” eligible for remedy under the Recall Program. Each day over 500,000 recycled OEM parts that were designed and built to meet the automakers’ original requirements for fit, finish, durability and safety are sold by professional automotive recyclers to consumers, repair facilities, and automobile dealers. ARA believes that the Partial Consent Decree is significantly deficient in providing equitable remedy for “engine owners” such as the professional automotive recyclers throughout the United States that have thousands of these engines in their inventories.

The value of these recycled OEM components was recognized in June when a settlement was reached between the United States Government, the State of California, and Volkswagen AG, that stated all eligible vehicles “may be, to the extent possible, recycled to the extent permitted by law.” In a July 1, 2016 National Public Radio segment on the Consent Decree, Cynthia Giles, Assistant Administrator for the Officer of Enforcement and Compliance Assistance, stated, “We encourage the maximum amount of recycling for those vehicles that repurchase for those that are not fixed. And explicitly say that the resale of parts from those vehicles is okay, except, of course for the parts that were involved in the emissions problem.”

It is important to be aware that the utilization of recycled engine and transmission parts provides a huge benefit to the environment. A single recycled engine versus a new engine saves 261 kg of carbon dioxide (CO<sup>2</sup>) production while a recycled automatic transmission averts 179 kg of CO<sup>2</sup>.

These OEM Volkswagen engines are valuable inventory and automotive recyclers must be treated in a manner consistent with other vehicle owners. On behalf of its members, ARA thanks the Department of Justice for the opportunity to comment on this important matter.

Sincerely,

A handwritten signature in black ink that reads "Michael E. Wilson". The signature is written in a cursive, flowing style.

Michael E. Wilson, CEO