

(FIVE MEMBERS)

(ACES)

(ON-ARCHIVE)

(2009)

(2010)

(2011)

(2012)

(2013)

(2014)

(2015)

(2016)

(2017)

THE EPA, THE ECONOMY AND INNOVATION: CAN THEY COEXIST, OR ARE THEY MUTUALLY EXCLUSIVE?

EMISSIONS (SUBMISSIONS)

Impact! (/full-blog?category=Impact%21), Natural Resource (/full-blog?category=Natural+Resource)

By: Jessie Smith

In September 2015, the Environmental Protection Agency (hereinafter “EPA”), armed with data independently obtained by a group of researchers at West Virginia University,^[i] accused Volkswagen Corporation of “cheating” on emissions tests.^[ii] Specifically, the allegation charged that Volkswagen had equipped certain models of their diesel engine vehicles with “defeat devices” – software on the vehicles that could detect when the vehicle was undergoing emissions tests, and subsequently regulate the amount of emissions that would be produced during the testing phase.^[iii] Once defeat devices received data input indicating that the tests were over, however, the vehicle would resort to default performance and emissions settings.^[iv] These default settings produced a dramatically increased amount of emissions; estimates place the increased amount anywhere between ten to forty times the amount of emissions than those seen during testing.^[v]

The scandal revolving around Volkswagen raises an important question of public policy for Congress and the EPA: how can emissions standards be adequately enforced against corporate violators, without handicapping the economy and hindering innovation?

Where enforcement is concerned, the federal government, pursuant to Section 113 of the Clean Air Act (hereinafter “CCA”), is authorized to issue court and administrative orders forcing violators of the Act to bring their conduct into compliance with the CCA.^[vi] Additionally, Section 113 authorizes the imposition of “penalties” if compliance is not met.^[vii] Among these penalties, fines are arguably the most motivational vehicles of



(<http://dailysignal.com/2014/05/12/thunee-seeks-prevent-trillion-dollar-per-year-epa-regulation/>)

enforcement available to the federal government and EPA in relation to corporate compliance, as is clearly demonstrated in context of the recent Volkswagen scandal.

According to an EPA spokesperson, Volkswagen could face as much as \$37,500 in fines per vehicle affected by the emissions defeating technology.^[viii] When this figure is considered in light of the fact that over 482,000 cars in the United States have been affected, Volkswagen could have to pay over \$18 billion in fines due to EPA rules alone.^[ix] These penalties, however, have had their desired effect: Volkswagen has announced that it has set aside \$7 billion to fund repairs to the affected vehicles in order to bring them into compliance,^[x] made multiple public apologies,^[xi] promised extensive internal and external investigations into the matter,^[xii] and discontinued the sale of affected vehicles in the United States.^[xiii]

However, several questions and uncertainties arise in relation to these sanctions. These questions include, the cost of achieving compliance, effects on the economy, and the impacts on automotive innovation. The answer to these questions lie in the aftermath of the initial revelation of Volkswagen's misconduct.

Shortly after it was revealed that Volkswagen had been cheating emissions tests, the company revealed that it was contemplating a lay-off of some of its temporary workers in order to "offset costs of the emissions scandal and cover vehicles refits, regulatory fines and lawsuits."^[xiv] Given Volkswagen's global presence, such a decision stands to affect workers across the globe – including workers in the United States. The company's production facility in Chattanooga, Tennessee, for example, employs over 3,200 people, provides 9,500 people with indirect employment in the form of supply-driven jobs, and is expected to result in \$12 billion in income growth and \$1.4 billion in tax revenues in the state of Tennessee. The potential economic impact of the EPA's sanctions are far-reaching, real, and close to home.

The economic impact does not end there. In the wake of the scandal, and the subsequent penalties assessed against Volkswagen, the company's stock plummeted by almost 30% in the first week alone, and is now down 50% from the fifty-two week high recorded in March of this year.^[xv] Shareholders are suffering, and the future of the company is uncertain.

Asides from the economic woes that are created either directly or indirectly from the EPA's imposition of penalties, one must consider the obstruction of innovation that stems from the penalties as well. The emissions standards, standing alone, arguably create a barrier to the advancement of automotive tech and innovation. Selective catalytic reduction (hereinafter "SCR") technology, for example, if incorporated into the affected Volkswagens, would have brought the vehicles into CAA compliance. However, the result would have been a reduction in fuel economy and performance.^[xvi]

Ultimately, given the reduction in performance and fuel efficiency associated with the SCR technology, one is left to wonder how successful the EPA's sanctions will be in accomplishing their goal of bringing the affected Volkswagen vehicles into compliance. Customers that own the affected vehicles would presumably be unwilling to make the sacrifice in on-road performance in order to bring their vehicles into compliance.

In order to combat the unintended consequences of stiff financial penalties currently assessed against violators of the CAA, administrative and regulatory agencies, specifically the EPA, need to utilize a more balanced approach in forcing corporate actors into compliance. One solution can be found in Section 114 of the CAA, which encompasses other venues of enforcement that are at the federal government and EPA's disposal, including the authority to require companies to monitor emissions, to certify compliance with the CAA, and to prepare and submit reports on emissions.^[xvii] Additionally, Section 114 authorizes the EPA to conduct inspections to check for compliance.^[xviii] Further, the EPA is authorized to utilize civil action against violators, as well as judicial intervention and criminal sanctions. Each of these alternatives would have a less profound impact on the economy and on the evolution of innovation within the industry, while maintaining a high level of compliance and deterrence for future violations. By the same token, Congress needs to work toward creating and enacting alternative enforcement measures that can be incorporated into the CAA and similar legislation. Alternatives are needed that have the desired effect of deterring violations and encouraging compliance, while simultaneously curbing the harmful effects on the economy and innovation that result from the current methodologies employed to force compliance.

[i] *How Volkswagen Got Away With Diesel Deception*, NY Times, http://www.nytimes.com/interactive/2015/business/international/vw-diesel-emissions-scandal-explained.html?_r=0 (http://www.nytimes.com/interactive/2015/business/international/vw-diesel-emissions-scandal-explained.html?_r=0) (last updated Oct. 15, 2015).

[ii] Kalyeena Makortoff, *What You Need to Know About the Volkswagen Scandal*, CNBC (Sept. 22, 2015), <http://www.cnbc.com/2015/09/22/what-you-need-to-know-about-the-volkswagen-scandal.html> (<http://www.cnbc.com/2015/09/22/what-you-need-to-know-about-the-volkswagen-scandal.html>).

[iii] *Id.*

[iv] *Id.*

[v] *Id.*

[vi] See Cong. Research Serv., RL 30798, *Environmental Laws: Summaries of Major Statutes Administered by the Environmental Protection Agency 17* (2013); *see also* Clean Air Act, 42 U.S.C. § 7413 (2010).

[vii] See Cong. Research Serv., RL 30798, *Environmental Laws: Summaries of Major Statutes Administered by the Environmental Protection Agency 17* (2013); *see also* Clean Air Act, 42 U.S.C. § 7413 (2010).

[viii] Claudia Assis, *Volkswagen at Risk of \$18 Billion EPA Fine*, MarketWatch (Sept. 18, 2015, 4:06 PM), <http://www.marketwatch.com/story/volkswagen-at-risk-of-18-billion-epa-fine-2015-09-18>.

[ix] *Id.*

[x] Nathan Bomey, *Volkswagen to Propose Fix in October*, USA Today (Sept. 29, 2015, 3:34 PM), <http://www.usatoday.com/story/money/cars/2015/09/29/emissions-scandal-volkswagen-propose-diesel-cars-fix/73028188/> (<http://www.usatoday.com/story/money/cars/2015/09/29/emissions-scandal-volkswagen-propose-diesel-cars-fix/73028188/>).

[xi] See Bill Visnic, *As CEO Apologizes for Emissions Cheating, VW Halts Sales of Some Diesels in U.S.*, Forbes (Sept. 20, 2015, 3:11 PM), <http://www.forbes.com/sites/billvisnic/2015/09/20/volkswagen-ceo-apologizes-for-emissions-cheating-cars-promises-internal-investigation/> (<http://www.forbes.com/sites/billvisnic/2015/09/20/volkswagen-ceo-apologizes-for-emissions-cheating-cars-promises-internal-investigation/>); *see also* Joann Muller, *Volkswagen CEO Apologizes (Again): 'We Will Get to the Bottom of This'*, Forbes (Sept. 22, 2015, 5:54 PM), <http://www.forbes.com/sites/joannmuller/2015/09/22/volkswagen-ceo-apologizes-again-we-will-get-to-the-bottom-of-this/> (<http://www.forbes.com/sites/joannmuller/2015/09/22/volkswagen-ceo-apologizes-again-we-will-get-to-the-bottom-of-this/>).

[xii] Bill Visnic, *As CEO Apologizes for Emissions Cheating, VW Halts Sales of Some Diesels in U.S.*, Forbes (Sept. 20, 2015, 3:11 PM), <http://www.forbes.com/sites/billvisnic/2015/09/20/volkswagen-ceo-apologizes-for-emissions-cheating-cars-promises-internal-investigation/> (<http://www.forbes.com/sites/billvisnic/2015/09/20/volkswagen-ceo-apologizes-for-emissions-cheating-cars-promises-internal-investigation/>).

[xiii] *Id.*

[xiv] Kedar Grandhi, *Volkswagen May Lay-Off Temporary Workers Says Work Council*, *Int'l Bus. Times* (Oct. 18, 2015, 7:50 BST), <http://www.ibtimes.co.uk/volkswagen-may-lay-off-temporary-workers-says-works-council-1524522> (<http://www.ibtimes.co.uk/volkswagen-may-lay-off-temporary-workers-says-works-council-1524522>).

[xv] Paul R. La Monica, *Volkswagen has Plunged 50%. Will it Ever Recover?*, CNN Money, <http://money.cnn.com/2015/09/24/investing/volkswagen-vw-emissions-scandal-stock/> (last visited Oct. 21, 2015).

[xvi] John Voelcker, *Why Did Volkswagen Cheat on Diesel Emissions in its TDI Cars?*, Green Car Rep. (Sept. 26, 2015), http://www.greencarreports.com/news/1100225_why-did-volkswagen-cheat-on-diesel-emissions-in-its-tdi-cars/page-3 (http://www.greencarreports.com/news/1100225_why-did-volkswagen-cheat-on-diesel-emissions-in-its-tdi-cars/page-3).

[xvii] See Cong. Research Serv., RL 30798, *Environmental Laws: Summaries of Major Statutes Administered by the Environmental Protection Agency 17* (2013); *see also* Clean Air Act, 42 U.S.C. § 7414 (2010).

Source: <http://motrolix.com/2015/09/production-2016-volkswagen-tiguan...>

♥ 3 Likes ◀ Share

COMMENTS (0)

Newest First [Subscribe via e-mail](#)

[Preview](#) [POST COMMENT...](#)

[Newer Post](#)

[It's a Trap! Venus Flytrap Poaching Laws \(/full-blog/sloanblog\)](#)

[Older Post](#)

[Recent Ruling Gives Cleaner Fuel Standards More Momentum \(/full-blog/2015/10/25/zubblog\)](#)

[SEARCHABLE ARCHIVE \(/PUBLICATION-ARCHIVE-1\)](#)

631 SOUTH LIMESTONE, LEXINGTON, KY

40508 (859) 257-4747 BLOG.KJEANRL@GMAIL.COM ([MAILTO:BLOG.KJEANRL@GMAIL.COM](mailto:BLOG.KJEANRL@GMAIL.COM))