December 8, 2014

VIA USPS & ELECTRONIC MAIL

Sam Hirsch, Esq.
Acting Assistant Attorney General
U.S. Department of Justice
Environment and Natural Resources Division
P.O. Box 7611
Washington, DC 20044-7611
Email: pubcomment-ees.enrd@usdoj.gov

Re: Comments on the proposed consent decree in *United States et al. v. Hyundai Motor Company et al.* (Civil Action No. 1:14-cv-1837), D.J. Ref. No. 90-5-2-1-10753

Dear Mr. Hirsch:

As lead environmental agency officials in States that are working collectively to reduce carbon pollution from cars, we thank you for the opportunity to comment on the proposed consent decree in *United States et al. v. Hyundai Motor Company et al.* (Civil Action No. 1:14-cv-1837), which was lodged with the U.S. District Court for the District of Columbia on November 3, 2014.

In the complaint filed on the same day, the United States, on behalf of the U.S. Environmental Protection Agency (EPA), joined by the California Air Resources Board, seeks civil penalties and injunctive relief against Hyundai Motor Company, Hyundai Motor America, Kia Motors Corporation, Kia Motors America, and Hyundai America Technical Center, Inc. under the Clean Air Act for unlawful actions that led to understating greenhouse gas (GHG) emissions and overstating fuel efficiency for more than one million Hyundai and Kia automobiles. Under the proposed settlement, Defendants would pay a civil penalty of $100 million, with $93,656,600 paid to the United States, and $6,343,400 paid to the California Air Resources Board; take steps to prevent future violations; and forfeit 4.75 million GHG credits that were wrongfully claimed by Defendants. In addition, Defendants are providing customers with gasoline debit cards to reimburse the additional costs associated with underperforming fuel economy.

We applaud EPA for taking action to preserve the integrity of the program to reduce GHGs from light duty vehicles and to protect consumers from inaccurate information about fuel economy and GHG emissions. The proposed settlement ensures that Defendants will not benefit from their wrongdoing by requiring Defendants to forfeit emission reduction credits that are not tied to actual reductions. It also safeguards against future violations by requiring corrective actions. However, the proposed settlement misses a prime opportunity to achieve GHG reductions beyond those gained by compliance. Moreover, failing to include measures aimed at reducing GHG emissions from passenger vehicles – the very purpose of the program Defendants violated – sets a bad precedent for future settlements involving this federal program.

Our States have a vested interest in reducing GHG emissions from motor vehicles as demonstrated by exercising our option under Section 177 of the Clean Air Act to adopt the California GHG emission standards for light duty vehicles for model years 2009-2025, which paved the way for the federal standards in place today for model years 2012-2025. In addition, our states recently entered into a memorandum of understanding to work together to accelerate electrification of light duty vehicles to reduce transportation-related air pollution (including GHGs, smog-forming pollutants and mobile source air toxics), enhance energy diversity, save consumers money, and promote economic growth.[1]

At a time when our States are working vigorously to provide our citizens with clean transportation choices to reduce GHGs, Defendants engaged in practices that run counter to our efforts. According to EPA, Defendants understated GHG emissions from their vehicles by an amount equal to 1,000,000 passenger vehicles being driven for a year. Defendants should be required to undertake projects that, in effect, "reimburse" consumers for these misrepresentations and advance the objectives of the Clean Air Act and regulations that were violated.

Therefore, we urge the United States to revise the settlement to reduce the civil penalty by $25 million and to instead require Defendants to direct at least $25 million to emission-reducing supplemental environmental projects (SEPs) in the Section 177 States[2] with electric vehicle programs. The funding would support categories of projects to advance electric vehicles, including battery electric, fuel cell electric and plug-in hybrid electric vehicles. Eligible projects could be selected from the categories of potential projects described in the Attachment hereto through a collaborative process among EPA, the Section 177 States and Defendants. Even in the face of shrinking state budgets and declining federal funding for our regulatory programs, our States have taken a number of actions to expand the electric vehicle market and are well positioned to put this money to good use. Additional funding to bolster our efforts to increase electric vehicles on our roads will help to facilitate additional reductions in GHGs and other motor vehicle pollution in future years, while putting our states on a path toward energy independence, better health protections, and greater economic opportunities.

The use of SEPs is common practice in Clean Air Act settlements. By way of example, a 1998 settlement required the diesel engine industry to pay $83.4 million in civil penalties and to undertake a number of projects costing $109.5 million to reduce NOx emissions, and a 2003 settlement required Toyota to pay a $500,000 civil penalty and spend $20 million on projects to retrofit diesel buses to run cleaner. Moreover, EPA's SEP Policy encourages the use of SEPs that "improve, protect, or reduce risks to public health or the environment; [are] undertaken in settlement of an enforcement action; and [are] projects that the alleged violator is not otherwise legally required to perform." The SEPs proposed herein meet these criteria.

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[1] The governors of California, Connecticut, Maryland, Massachusetts, New York, Oregon, Rhode Island, and Vermont signed the memorandum of understanding on October 24, 2013. In May of this year, the signatory states released a Multi-State Zero Emission Vehicle (ZEV) Action Plan that lays out concrete steps to make it easier for our citizens to own and operate ZEVs and to ensure continued growth in ZEV sales. Additional information about this initiative is available at: http://www.nescaum.org/topics/zero-emission-vehicles

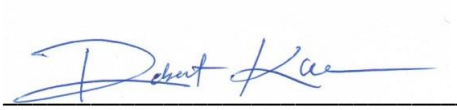
[2] Collectively the Section 177 States comprise roughly one quarter of the U.S. market for new automobiles.

We request that the United States exercise its right under the proposed consent decree "to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations indicating that the Consent Decree is inappropriate, improper, and inadequate." The Section 177 States have demonstrated a commitment to implementing vehicle emission control programs and these violations adversely impact the air pollution reduction efforts in the Section 177 States by misleading our consumers about the GHG emissions from Hyundai and Kia vehicles sold in our states. Under these circumstances, directing more than $25 million to mitigating the impact of the violations in the Section 177 States would be appropriate and reasonable, but $25 million should be the absolute minimum. We therefore request that the consent decree be revised, as described above, to require Defendants to fund at least $25 million worth of projects to advance electric vehicles in the Section 177 States with electric vehicle programs.

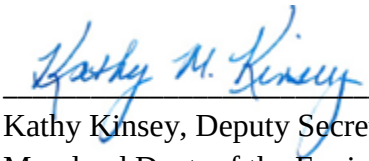
Additionally, we would like to note that EPA did not inform or involve the states that have adopted California's emission standards under Section 177 of the Clean Air Act in the settlement process for this case. Including the interests of the Section 177 States in this action could have strengthened the complaint and provided the opportunity for more efficient litigation for all parties. Revising the consent decree to require Defendants to fund SEPs in the Section 177 States would benefit those states that were not given an opportunity to participate in negotiations in this case. Finally, we encourage EPA to take advantage of future opportunities to work proactively and cooperatively with the Section 177 States where potential related claims exist.

Thank you again for the opportunity to comment on the proposed consent decree in *United States v. Hyundai Motor Company*.

Sincerely,



Robert Klee, Commissioner
Connecticut Dept. of Energy &
Environmental Protection



Kathy Kinsey, Deputy Secretary
Maryland Dept. of the Environment

David Cash, Commissioner
Massachusetts Department of Environmental Protection

Joseph Martens, Commissioner
New York Department of Environmental Conservation

Dick Pedersen, Director
Oregon Department of Environmental Quality

Janet Coit, Director
Rhode Island Department of Environmental Management

David Mears, Commissioner
Vermont Department of Environmental Conservation

Cc: Gina McCarthy, Administrator, U.S. Environmental Protection Agency
Mary Nichols, Chairman, California Air Resources Board

ATTACHMENT:
Proposed Supplemental Environmental Projects

Defendants shall fund the following categories of projects to advance zero emission vehicles (ZEVs), including battery electric, plug-in hybrid, and fuel cell electric vehicles. The funds for these projects shall be apportioned by and among the Section 177 States with electric vehicle programs, and Defendants shall not have approval rights for the projects or the apportionment. Such projects may include, but are not limited to, the following:

- Promoting the availability and effective marketing of ZEVs, including dealer incentives;
- Offering consumer incentives to enhance the ZEV ownership or lease experience;
- Increasing ZEV deployment in public and private fleets;
- Encouraging workplace charging;
- Planning and investing in public charging and fueling infrastructure;
- Promoting clear signage to ZEV charging and fueling stations;
- Establishing consistent policies, codes and standards to facilitate the deployment of charging stations;
- Other actions similarly intended to accelerate the ZEV market.