

August 5, 2016

John C. Cruden  
Assistant Attorney General  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Washington, D.C. 20044-7611

*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 Assistant Attorney General Cruden:

The Northeast States for Coordinated Air Use Management (NESCAUM) thanks the Department of Justice (DOJ) for the opportunity to comment on the proposed Partial Consent Decree filed with the US District Court for the Northern District of California regarding the above-referenced lawsuit. NESCAUM is the regional association of air pollution control agencies representing Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, and Vermont.

In particular, we applaud the Department for emphasizing transportation electrification as a key strategy to ensure continued and lasting NO<sub>x</sub> reductions from the light-duty vehicle fleet. NESCAUM is a strong supporter of zero-emission vehicles (ZEVs), and has been working with our member states for many years to promote ZEV market growth. These efforts have included actions to improve access to electric vehicle charging infrastructure, provide incentives to both consumers and dealerships, and encourage automakers to make ZEVs available for sale in our region.

Seven of our eight member states are implementing the California Advanced Clean Cars rules, including the ZEV rule, as authorized under section 177 of the Clean Air Act. These states have had the ZEV rule in place for many years (in some cases since the 1990s), but because of various complexities of that rule, there has not yet been a binding ZEV sales requirement in the northeast states. This, combined with a lack of marketing effort by the automakers, has meant that despite the substantial investments the states have made in ZEV readiness, despite clear demand from consumers, and despite the impressive capabilities of the vehicles themselves, our member states still await a meaningful effort by the automakers to promote ZEV sales in the Northeast.

NESCAUM also facilitates the multi-state ZEV Task Force in which five of our eight member states participate along with California, Maryland, and Oregon. Through this effort, these states

have developed a Multi-State ZEV Action Plan,<sup>1</sup> and are working aggressively to implement the many actions identified to support a growing ZEV market, individually and through coordinated efforts. Implementation steps to date include allocation of funds for infrastructure expansion and purchase incentive programs in all five northeast Task Force states. To date, our states have invested millions of dollars in ZEV deployment and planning. The ZEV investments required by Appendix C of the proposed consent decree will enhance the ongoing efforts in the Northeast and elsewhere to build robust markets for ZEVs.

With respect to the establishment of the Environmental Mitigation Trust, we applaud DOJ for its focus on mitigating the environmental harm caused in this case. Our states have a long history of working successfully to reduce NOx and other pollutants from diesel engines in highway, nonroad, and marine applications. For example, NESCAUM and our states piloted some of the first nonroad diesel retrofit projects and implement a wide range of diesel engine retrofits and repowers under the ongoing DERA program. While our states remain committed to reducing emissions, we observe that the opportunities for NOx reductions from diesel engines can vary widely; for example, states without large ports may have fewer opportunities to reduce emissions from cargo-handling equipment. We appreciate that the proposed settlement allows for a small percentage of the Mitigation Trust Fund to be allocated toward ZEV projects; and we note that to the degree states are allowed flexibility in identifying the optimal use of mitigation funds, they are able to achieve the desired emission reductions that much more effectively.

The potential ZEV investment level contained in the Proposed Consent Decree could represent a significant contribution to ZEV market growth. Having worked with our member states for many years to prepare for and support the transition of our region's light-duty vehicle fleet to zero-emission technologies, we commend DOJ for its diligence and its commitment to preserving the integrity of the Clean Air Act, mitigating environmental harm, and providing long-lasting public health protection to citizens in the Northeast and across the nation.

Thank you again for this opportunity to comment.

Sincerely,

A handwritten signature in black ink, appearing to read "Arthur N. Marin". The signature is fluid and cursive, with the first name "Arthur" being the most prominent.

Arthur N. Marin  
Executive Director

---

<sup>1</sup> ZEV Program Implementation Task Force, *Multi-State ZEV Action Plan* (May 2014), available at <http://www.nescaum.org/topics/zero-emission-vehicles/multi-state-zev-action-plan>.