



VIA CERTIFIED MAIL AND ELECTRONIC MAIL

NOV 09 2017

Volkswagen AG  
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Attention: Group General Counsel  
Attention: Company Secretary

Audi AG  
Auto-Union Straße 1  
85045 Ingolstadt, Germany  
Attention: Company Secretary

Volkswagen Group of America, Inc.  
2200 Ferdinand Porsche Dr.  
Herndon, VA 20171  
Attention: President  
Attention: U.S. General Counsel  
Attention: Company Secretary

Volkswagen Group of America  
Chattanooga Operations, LLC  
8001 Volkswagen Dr.  
Chattanooga, TN 37416  
Attention: Company Secretary

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**Re: Notice of Partial Disapproval of Proposed Emissions Modification: Certain Vehicles within Test Groups 9VWXV02.035N and 9VWXV02.0U5N of Model Year 2009 Generation 1 2.0 Liter Volkswagen Subject Vehicles**

To Whom It May Concern:

Appendix B of the 2.0 liter (2.0L) Partial Consent Decree<sup>1</sup> entered on October 25, 2016 establishes how Settling Defendants shall submit Proposed Emissions Modifications, and how the United States Environmental Protection Agency (EPA) and the California Air Resources Board (CARB) will approve or disapprove any such proposal that Settling Defendants choose to

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<sup>1</sup> In Re: Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation, MDL No. 2672 CRB (JSC), United States District Court, Northern District of California.

submit. The Partial Consent Decree specifies requirements under which the EPA and CARB must assess a proposed Emission Modification and the applicable regulatory calculation methods, test procedures, protocols, processes, or procedures that shall apply. On January 25, 2017, Volkswagen submitted *Proposed Emissions Modification: Part A-C: EA189 GEN1 MY 2009-2014 Automatic and Manual Transmission Test Groups 9VWXV02.035N, 9VWXV02.0U5N, AVWXV02.0U5N, BVWXV02.0U5N, CVWXV02.0U5N, DVWXV02.0U5N, EVWXV02.0U5N, Final submission for EA189 Generation 1*. On July 27, 2017, the EPA and CARB issued *Approved Emission Modification: Test Groups 9VWXV02.035N, EVWXV02.0U5N of the 2.0 Liter Subject Vehicles*. However, based on information subsequently disclosed by the Settling Defendants, the EPA and CARB have determined that for certain of the vehicles the Proposed Emissions Modification fails to satisfy the requirements of the Partial Consent Decree. Accordingly, the EPA and CARB hereby issue this Notice of Partial Disapproval applicable to approximately 2,800 EA189 Generation 1 Model Year 2009 vehicles with software versions 1402 and 1405 within Test Groups 9VWXV02.035N and 9VWXV02.0U5N that require a transmission mechatronic hardware change before the Approved Emissions Modification (“AEM”) can be installed, as described in Settling Defendants’ presentation *2.0 L Diesel AEM Flash Status*, dated September 17, 2017 (page 3) (the “Impacted Vehicles”).

#### Basis for Disapproval

Based on information recently disclosed by the Settling Defendants, the EPA and CARB have determined that certain information and materials required to be submitted with each Proposed Emissions Modification pursuant to Appendix B of the 2.0L Partial Consent Decree are incomplete and inaccurate. Specifically, Settling Defendants disclosed to EPA and CARB that the Transmission Control Unit (TCU) and associated software on the Impacted Vehicles must be replaced before the AEM may be installed. The replacement of the TCU and associated software was not included in Settling Defendants’ January 25, 2017 Emissions Modification Proposal, resulting in the following deficiencies:

- (1) The draft Emissions Modification Disclosure, which must include all hardware and software changes and the logistics involved in obtaining a Proposed Emissions Modification, pursuant to Subparagraph 4.3.8, is incomplete and inaccurate;
- (2) The draft Emissions Modification Warranty statement, pursuant to Subparagraph 4.3.9, is incomplete and inaccurate;
- (3) The list of parts, including part identification numbers, covered by the Extended Emissions Warranty, which must include “any parts or components which can reasonably be impacted by effects of the Approved Emissions Modification,” pursuant to Subparagraph 4.3.10, is incomplete and inaccurate;
- (4) The “complete software functional description document,... the complete memory map..., including all such data applicable to the vehicles eligible for modification...

before and after application of the Proposed Emissions Modification, as well as a description of any changes to the ECU code functionality...”, pursuant to Subparagraph 4.3.12; is incomplete and inaccurate; and

- (5) The repair instructions concerning the Emissions Modification for distribution to dealers, pursuant to Subparagraph 4.3.13, are incomplete and inaccurate.<sup>2</sup>

Thus, the EPA and CARB hereby disapprove Settling Defendants’ Proposed Emissions Modification for certain EA189 Generation 1 Model Year 2009 vehicles with software versions 1402 and 1405 within Test Groups 9VWXV02.035N and 9VWXV02.0U5N. No other vehicles are impacted by this Partial Disapproval.

### Correcting Violations and Deficiencies

Because the Proposed Emissions Modification fails to satisfy the requirements of Appendix B, within 30 days of the date of this letter, pursuant to Appendix B, Subparagraph 5.1.2, Settling Defendants may provide EPA and CARB with a proposed remedy to address the bases for the disapproval. Such proposed remedy must, at a minimum, correct the deficiencies and inaccuracies in the draft Emissions Modification Disclosure, the draft Extended Emissions Warranty statement, the list of parts covered by the extended warranty, the repair instructions, and the required software submissions, noted above. In the event Settling Defendants propose a remedy and EPA/CARB approve it, the Extended Emissions Warranty must cover any component which can reasonably be impacted by effects of the Approved Emissions Modification, including the TCU and the transmission, for any Impacted Vehicle that receives the Approved Emissions Modification, and the draft Emissions Modification Disclosure must notify owners and lessees that the transmission and the TCU are covered by the warranty. *See* Appendix B, ¶ 3.9.1.

### Duty to Correct Eligible Owner and Eligible Lessee Notices

In addition, this letter serves as EPA/CARB’s notice that, because the previously issued Approved Emissions Modification Disclosure and the Extended Emissions Warranty statement failed to accurately describe affected owners’ and lessees’ available remedies under the Recall Program, as required by Appendix A, Subparagraph 8.2.7, and did not contain all disclosures required by Section 4.3.8 of Appendix B, Settling Defendants issued to Eligible Owners and Eligible Lessees a materially misleading and inaccurate Emissions Modification Disclosure concerning the affected vehicles, in violation of Appendix A, Subparagraph 3.2.1. Pursuant to Appendix A, Subparagraphs 3.2.3 and 8.2.7, within 30 days from the date of this letter, Settling

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<sup>2</sup> To the extent the Emissions Modification Proposal included incomplete and inaccurate information in response to any other requirement of Appendix B, the proposal was also deficient in those respects. Defendants have an ongoing obligation to submit complete and accurate information and notify the agencies of any additional deficiencies in the proposal.

Defendants must either (1) notify affected Eligible Owners and Eligible Lessees of the non-availability of an Approved Emissions Modification for the affected vehicles, or, (2) if a remedy is proposed and such remedy is approved by EPA and CARB, Settling Defendants must issue an amended Approved Emissions Modification Disclosure and Extended Emissions Warranty statement to correct the previous materially misleading and inaccurate notice to Eligible Owners or Eligible Lessees. If Settling Defendants elect to propose a remedy, a corrected draft Emissions Modification Disclosure must be submitted to EPA/CARB within ten (10) days of the date of this letter for review and approval. The corrected draft Emissions Modification Disclosure must include a description of the logistics and duration of the TCU replacement, including the fact that such replacement requires disassembly and reassembly of the transmission, and any impacts on performance such repair might have on the vehicle.

### Preservation Obligations

The EPA and CARB understand that Volkswagen has ceased to implement the Approved Emissions Modification program for Impacted Vehicles. The United States and California are currently reviewing Settling Defendants' submissions (*Statement Regarding 2.0L and 3.0L Software Flash Process and Data Retention for VW, Audi, and Porsche*, dated October 19, 2017, and the *Additional Statement Regarding 2.0L and 3.0L Software Flash Process and Data Retention for VW*, dated October 26, 2017) that describe protocols designed to meet Settling Defendants' preservation obligations, including under orders issued in the Volkswagen MDL, *In re: Volkswagen "Clean Diesel" Marketing, Sales Practices and Products Liability Litigation*, MDL No. 2672. Until such review is complete and Settling Defendants receive further notice in writing from the United States and California, Settling Defendants must not modify, sell, or scrap any of the vehicles that require a replacement TCU and associated software.

The EPA and CARB reserve all rights relating to violations of the Consent Decree, as well as all rights with respect to the previously undisclosed software, including all rights to obtain information, injunctive relief, and penalties under the Consent Decree and civil and criminal statutes and regulations.

**Notice of Partial Disapproval of the Proposed Emissions Modification: Certain Vehicles within Test Groups 9VWXV02.035N and 9VWXV02.0U5N of Model Year 2009 Generation 1 2.0 Liter Volkswagen Subject Vehicles**

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY



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U.S. Environmental Protection Agency



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within Test Groups 9VWXV02.035N and 9VWXV02.0U5N of Model Year 2009 Generation  
1 2.0 Liter Volkswagen Subject Vehicles**

FOR THE CALIFORNIA AIR RESOURCES BOARD



Annette Hebert, Chief  
Emissions Compliance  
Automotive Regulations and Science Division  
California Air Resources Board



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