The Volkswagen Air Emissions Testing Scandal and Related Crimes

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Abstract

Volkswagen AG (VW) and its subsidiaries created a global environmental business scandal when it deliberately engineered some 11 million diesel vehicles sold worldwide during the period 2009-15, including some 600,000 in the United States. The vehicles had “defeat devices” designed to avoid air pollution testing standards. The devices worked only when the vehicles were undergoing government mandated emission testing, and not when the vehicles were otherwise being driven. When a “defeat device” stopped working in a vehicle, VW provided car dealers and mechanics with new cheating software “fixes.” As a result, VW “clean diesel” vehicles spewed out 35-40 times more nitrogen oxide, which is a potent greenhouse gas linked to climate change.

In 2017, VW pled guilty to three criminal felony counts (conspiracy to defraud, wire fraud, and criminal violation of the Clean Air Act) in the United States for using these defeat devices. The company paid the largest criminal fine ($2.8 billion) ever levied by the federal government against a car manufacturer. Several executives also have been criminally charged, while others have been forced to resign. VW has also been sued civilly for breach of contract, breach of warranty, and violation of consumer protection laws. The company has paid $30-40 billion in fines and compensation.

As part of its criminal plea agreement requiring significant business investment, VW was placed under an independent compliance monitor. Monitoring reports were forwarded to the Department of Justice (DOJ). But important parts of the reports remain largely secret, which is troubling because VW has struggled with transparency in implementing internal controls. Both the federal government and VW maintain that confidentiality is a necessary component to the monitoring, which is debatable given the nature of the criminal charges against VW, such as providing “false” and “incomplete” information.
The Freedom of Information Act (FOIA), 5 U.S.C. § 552(a)(3) and (b)(1), generally requires government records, such as the VW monitoring reports, to be disclosed to the public unless a statutory or other exemption applies. The proposed research will principally focus on the 2020 FOIA litigation to gain access to the monitoring and compliance information being withheld by the Department of Justice and VW. It will require examining the factual background to the emissions scandal, the criminal charges, and the specific details of the VW plea agreement with the DOJ. The topic is both timely and important.

**Keywords:**