



August 5, 2016

The Honorable John C. Cruden  
Assistant Attorney General  
**United States Department of Justice,**  
**Environment and Natural Resources Division**  
U.S. DOJ--ENRD  
P.O. Box 7611  
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[pubcomment-ees.enrd@usdoj.gov](mailto:pubcomment-ees.enrd@usdoj.gov)

**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 American Bus Association (ABA) appreciates the opportunity to file comments in response to the Department of Justice's (DOJ) notice opening a period for public comment on the proposed Partial Consent Decree with the United States District Court for the Northern District of California in the lawsuit entitled In re: Volkswagen ``Clean Diesel'' Marketing, Sales Practices, and Products Liability Litigation, Case No: MDL No. 2672 CRB (JSC) (Decree). The Decree is intended to partially resolve Clean Air Act and various California claims (including under the California Health and Safety Code) against Volkswagen Group of America, Inc., and others, concerning certain noncompliant 2.0 liter diesel vehicles.

The ABA is the leading trade association representing private and over-the-road passenger motor carrier operators who transport the public and serve the motorcoach industry. ABA has been in operation for 90 years and has over 800 bus operating company members, including both large and small; rural and urban; and intercity, charter and tour operators. Our members provide all manner of passenger transportation services, including intercity scheduled service, charter and tour operations, airport and employee shuttle services, and commuter operations (including subcontracted public transit operations). In addition, ABA membership includes hotels, convention and visitors' bureaus, attractions, restaurants, motorcoach manufacturers and companies providing services to the motorcoach industry.

Motorcoach companies move more than 605 million passengers a total of 65 billion miles annually. These efforts and efficiencies are undertaken as a commercial venture, but also with the goal of improving our environment through reduced pollution and the congestion mitigation benefits that the over-the-road bus industry provides to its passengers and our society as a whole. Based on a 2014

report from MJ Bradley<sup>1</sup> and Associates, motorcoaches are the most environmentally friendly form of surface transportation. It is in this context ABA offers the following comments to Appendix D of the Decree, relating to the Environmental Mitigation Trust. Our comments are offered in the interest of ensuring consistent use of terminology, and to achieve optimum environmental mitigation benefits from projects to be funded from trust payments. Specifically, ABA requests DOJ to consider making the following modifications to Appendix D of the Decree, 1) the applied definitions of Eligible Buses; 2) provide parity between government and non-government buses and diesel engine repowers, with other eligible mitigation activities; and 3) adding outreach and education activities, as an additional mitigation action.

## **1. Definitions of Eligible Buses**

In terms of facilitating execution of Appendix D to the Decree, ABA believes the document would benefit from incorporation of an existing federal term and definition within Eligible Buses, specific to motorcoaches. Although motorcoaches currently fall within the definition of class 4-8 buses, and as such are recognized under DERA, inclusion of the term over-the-road bus or OTRB, as defined in section 301 of the Americans with Disabilities Act of 1990 (42 USC 12181), would provide more specificity. Based on the broad use and acceptance of the term OTRB such as in the Federal Transit Administration's Circular 9040.1E for its rural bus transportation grant programs, the Department of Homeland Security's grant guidance for the intercity bus security grant program and throughout Federal Motor Carrier Safety Administration's policies and procedures, we believe that OTRB is an appropriate term to be added to the Decree. For the purposes of consistency and ease in execution of Appendix D, ABA recommends modifying the description of Eligible Buses under category 2 of Appendix D-2 to explicitly include the term over-the-road bus, as defined in federal law.

## **2. Parity for Diesel Engine Repowers**

The ABA also requests DOJ reconsider distinguishing between government and non-government owned vehicles in terms of buses under category 2 of Appendix D-2, and specifically requests this section be modified to increase the amount available for a diesel engine repower from 40% to 75% or higher. Initially, there is no basis to distinguish between the environmental benefits derived from governmental versus non-governmental vehicles. As previously noted, motorcoaches provide the most environmental friendly mode of surface transportation. There is no basis to discriminate against the private sector in this case, considering motorcoaches fulfill the *same* federal goal of reducing congestion and pollution as public providers, and do so at a lower cost to the Federal Government.

Further, we see no reason for there to be a bias under this program towards electric engines. This is particularly true considering that under the current CMAQ program guidelines, which the Decree adopts in part, the eligible cost share is typically 80% or higher. As well, under the DERA program, all-electric engine repowers are capped at a 60% subsidy level. As the fundamental basis for establishing the Environmental Mitigation Trust is to fund projects to fully mitigate the total lifetime excess emissions from tainted diesel engines, ABA would like to see diesel engines supported at an equal to or higher level as other available engine technologies.

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<sup>1</sup> "Updated Comparison of Energy Use & CO<sub>2</sub> Emissions From Different Transportation Modes

### 3. Support Outreach and Education Activities

Finally, ABA requests DOJ consider adding another mitigation action to the existing list of actions described in Appendix D-2. Based on the success of existing programs and in the interest of being comprehensive, ABA believes an appropriate mitigation action for inclusion in Appendix D-2 would be outreach and education activities. These activities are a large part of the success for both the DERA and CMAQ programs, and have a lasting effect beyond a simple vehicle life. We urge you to consider adding explicitly outreach and education activities to Appendix D-2. We note that “educational publications” are mentioned under Eligible Mitigation Action Expenditures within Appendix D-2, but in the interest of clarity and consistency with existing federal definitions, ABA suggests incorporating language from 23 USC 149.

The ABA appreciates the opportunity to comment on the Decree. We support DOJ’s efforts to address violations of the Clean Air Act, as part of our longstanding commitment to improving air quality and the environment, and look forward to continuing to be part of that solution. We hope you will consider our suggestions and requests related to defining Eligible Buses, funding parity for vehicles and mitigation actions, and supporting educational outreach activities. We are happy to answer any questions you may have regarding the motorcoach industry. We can be reached at 800-283-2877, direct dial (202) 218-7227 or via email at [bbuchanan@buses.org](mailto:bbuchanan@buses.org).

Sincerely,

A handwritten signature in black ink, appearing to read "Brandon Buchanan". The signature is fluid and cursive, with a long horizontal stroke at the end.

Brandon Buchanan  
Director of Regulatory Affairs