

It Took E.P.A. Pressure to Get VW to Admit Fault

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Volkswagen unveiled the 2016 Passat on Monday at the Duggal Greenhouse in New York.

[Volkswagen](#) executives told environmental regulators for more than a year that discrepancies between pollution tests on its diesel cars and the starkly higher levels out on the road were a technical error, not a deliberate attempt to deceive Washington officials.

But this month, the executives made a startling admission: The diesel vehicles it sold in the United States used software meant to cheat on the tests.

VW made the admission only when the [Environmental Protection Agency](#) took the extraordinary action of threatening to withhold approval for the company's 2016 Volkswagen and Audi diesel models, according to letters sent to company officials by the E.P.A. and California regulators.

Since that deception became public on Friday, [Volkswagen has scrambled to conduct damage control](#). The chief executive apologized and the company said it would stop selling diesel-powered cars from the 2015 and 2016 model years.

All this was possible because environmental regulators had tools and powers at their disposal that another area of enforcement — auto safety regulation — does not have, despite the efforts of lawmakers, consumer advocates and, more recently, auto safety regulators themselves. Often, the auto industry has beaten back more stringent laws.

The National Highway Traffic Safety Administration, for example, can impose a maximum penalty of \$35 million on an automaker that flouts safety regulations — a relatively low sum for a company like General Motors, which last year paid such a fine for a defect that has now been linked to at least 124 deaths.

By contrast, under the [Clean Air Act](#), Volkswagen, the world's largest automaker, could be fined as much as \$37,500 for each recalled vehicle, for a possible total penalty of as much as \$18 billion.

“The Clean Air Act statutory scheme gives E.P.A. more power and flexibility to move more quickly than N.H.T.S.A.,” said Carl Tobias, a law professor at the University of Richmond, who has studied the government's response to auto safety issues. “E.P.A. also seems more tough-minded and savvy about how to be effective in this arena.”

Still, the time it takes to investigate auto companies is often extensive, and getting the facts can be a challenge. “Even E.P.A. took a year to finally crack this case open,” he said.

Beyond the E.P.A., the government has other tools at its disposal when it comes to enforcing environmental regulation.

As G.M. did, Volkswagen now faces a criminal investigation by the Justice Department, according to a person briefed on the inquiry. It is being conducted, though, by the department's Environment and Natural Resources Division, which is devoted to violations of environmental law. “Nearly one-half of the division's lawyers bring cases against those who violate the nation's civil and criminal pollution-control laws,” the department's website says.

And on Monday, a subcommittee of the House Energy and Commerce Committee said it would hold a hearing on the issue.

It's only part of the pressure being applied to Volkswagen. An official with the Environmental Protection Agency said that discussions are continuing with Volkswagen, as the company grapples with how to handle a recall of the affected vehicles.

“We still have many questions for the company,” said Christopher Grundler, head of the agency's transportation office. “It's the responsibility of Volkswagen and Audi to prepare a remedy for these vehicles.”

There is no timetable for Volkswagen to submit a comprehensive plan to recall and fix the affected vehicles. But government officials are urging the company to take action quickly — both on developing a fix for the cars and starting a campaign to educate consumers on the problem.

“This does not happen immediately,” Mr. Grundler said. “And we’ve been trying to be clear with the consumers that their vehicles are safe and they don’t have to do anything right now.” The assessment of fines for the violations will also not happen immediately. “That is down the road,” he said.

“But we feel a sense of urgency to address the emissions of these vehicles that are already on the road.”

A Volkswagen spokesman, John Schilling, said the automaker was “committed to fixing this issue as soon as possible” and to developing “a remedy that meets emissions standards and satisfies our loyal and valued customers.”

Even with the looming punishment, the company almost got away with it. In fact, it most likely would have if not for a strange twist of fate and the curiosity of several auto researchers.

Two years ago, the International Council on Clean Transportation, a nonprofit environmental group staffed by a number of former E.P.A. officials, had been testing the real-world performance of so-called clean diesel cars in Europe, and were less than impressed with the emissions results.

The group decided it would test diesel-powered cars in the United States, where regulations were much more strict, as a way of almost shaming the European automakers to tighten their compliance. The group fully expected the American cars to do well, and run cleaner than their counterparts across the pond.

What they could not have foreseen was that they would stumble onto one of the biggest frauds in recent automotive history.

Further, on the campus of West Virginia University, a group of emissions researchers who mainly dealt with heavy trucks noticed an unusual posting by the transportation council, which was looking for a partner to test diesel-powered cars.

“No one had done that before in the U.S.,” said Arvind Thiruvengadam, a professor at the university. “It sounded very interesting, to test light-duty diesel vehicles in real-world conditions. We looked around at each other said, ‘Let’s do it.’ ”

The university’s team bid on the project and got the contract. Mr. Thiruvengadam and his colleagues never envisioned where it would lead. “We certainly didn’t have an aim of catching a manufacturer cheating,” he said. “It didn’t even cross our minds.”

The study also did not target Volkswagen specifically. It was something of a fluke, he said, that two out of three diesel vehicles bought for the testing were VWs.

It did not take long for suspicions to set in. The West Virginia researchers were well-versed in diesel performance on real roads, and had certain expectations for how the test cars should ebb and flow in their emissions. But the two Volkswagens behaved strangely.

“If you’re idling in traffic for three hours in L.A. traffic, we know a car is not in its sweet spot for good emissions results,” Mr. Thiruvengadam said. “But when you’re going at highway speed at 70 miles an hour, everything should really work properly. The emissions should come down. But the Volkswagens didn’t come down.”

Even then, however, it is difficult for most researchers to be sure exactly what is going on. There are so many factors involved in real-world driving — speed, temperature, topography, braking habits. It is not unheard-of for cars to perform much differently in on-the-road tests than one expected.

But this time there was a key difference: The California Air Resources Board heard about the groups’ tests and signed on to participate. The regulators tested the same vehicles in their specially equipped lab used to judge cars’ compliance with state emissions standards. That gave the project what most studies lacked: a baseline.

“That broke loose everything,” Mr. Thiruvengadam said.

In the lab, the two VWs performed flawlessly. But when they were taken out on the roads in California, they were belching out levels of nitrogen oxide that were 30 to 40 times higher than the regulatory standards. Even the heavy-duty trucks the researchers had tested had never performed that poorly by comparison.

“It just didn’t make sense,” said John German, one of the leaders on the project at the transportation council. “That was the real red flag for us.”