

Volkswagen May Face Civil and Criminal Charges

By Thao Thai, J.D. Candidate 2018 | October 08, 2015

According to the Environmental Protection Agency ([EPA](#)), Volkswagen installed “defeat devices,” designed to cheat emissions tests, in 11 million diesel cars worldwide. VW’s “diesel dupe” has already caused the company considerable financial damage, as it has set aside [\\$7.39 billion](#) to cover recall costs in the U.S. alone. In addition, VW may now face civil and criminal charges for violations of the Clean Air Act (CAA) as well as class action lawsuits from private individuals.

Under the [CAA](#), an automaker can be fined up to \$37,500 for every noncompliant vehicle. The EPA could impose a total civil fine of more than \$18 billion on Volkswagen for its approximately 500,000 noncompliant cars in the U.S, though allegations of violated environmental rules are often [settled](#) for much less than the maximum fine.

The CAA’s [criminal provision](#) imposes criminal penalties on persons who knowingly make false statements in CAA documents and who knowingly tamper with monitor devices or required methods. Recently, [General Motors](#) was also criminally investigated for making false statements to the government (regarding defective ignition switches) and reached a settlement by means of a deferred-prosecution agreement. VW’s conduct may make it difficult for the company to reach the same type of settlement.

Unlike in G.M.’s case where the company’s misconduct resulted from multiple failures to act, VW’s misconduct appeared intentional. It is likely that the defeat device, a sophisticated computer program designed specifically to evade emission requirements, was a conscious decision by individuals in the command chain.

This month, the [Department of Justice](#) revealed a “new” policy in which civil and criminal investigations are to “focus on individuals from the inception.” This new policy suggests that the DOJ may be turning away from its past refusal to prosecute individuals for corporate wrongdoings. If the DOJ does pursue criminal liability, it would be the first-ever against an automobile manufacturer for evading emission standards.

Even if the government does not take any further action against VW, private individuals may bring civil actions against it. Customers could sue the corporation for fraud and breach of contract for misrepresenting the emission levels of the vehicles. At least one class action [lawsuit](#) has already been filed against VW.