

Ch. 10: Environmental Enforcement

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On May 3, 2018, the U.S. Department of Justice announced that Martin Winterkorn, the former CEO of Volkswagen AG (VW), had been indicted for conspiracy and wire fraud in connection with the company's long-running scheme to evade U.S. vehicle emissions requirements. The indictment charges that Winterkorn conspired with other senior VW executives and employees to defraud the United States, defraud VW's U.S. customers and violate the Clean Air Act by making false representations to regulators and the public about the ability of VW's supposedly "clean diesel" vehicles to comply with U.S. emissions requirements. The following paragraphs are from the Justice Department Press Release announcing the indictment:

"If you try to deceive the United States, then you will pay a heavy price," said Attorney General Sessions. "The indictment unsealed today alleges that Volkswagen's scheme to cheat its legal requirements went all the way to the top of the company. These are serious allegations, and we will prosecute this case to the fullest extent of the law. I want to thank the Criminal Division's Fraud Section, the Department's Environment and Natural Resources Division and the U.S. Attorney's Office for the Eastern District of Michigan as well as our partners at the EPA, FBI and in Germany for their hard work on this important case."

"Volkswagen deceived American regulators and defrauded American consumers for years," said U.S. Attorney Schneider. "The fact that this criminal conduct was allegedly blessed at Volkswagen's highest levels is appalling. The U.S. Attorney's Office is committed to pursuing accountability for corporate crimes, and the Winterkorn prosecution is a reflection of that commitment."

The indictment of Winterkorn represents the most recent charges in an ongoing investigation by U.S. criminal authorities into unprecedented emissions cheating by VW. In March 2017, VW pleaded guilty to criminal charges that it deceived U.S. regulatory agencies, including the Environmental Protection Agency (EPA) and the California Air Resources Board (CARB), by installing so-called defeat devices in diesel vehicles emissions control systems that were designed to cheat emissions tests. The defeat devices consisted of software designed to recognize whether a vehicle was undergoing standard U.S. emissions testing on a dynamometer or being driven on the road under normal driving conditions, in which case harmful nitrogen oxide (NOx) emissions increased significantly.

As part of its plea agreement with the Department, VW paid a [criminal penalty](#) of \$2.8 billion. VW also agreed to the imposition of an independent corporate compliance monitor for the duration of its probation, which is at least three years. Subsequently, Larry Thompson was appointed as VW's monitor.

Winterkorn, who served as VW's management board chairman and thus VW's highest ranking executive from January 2007 until September 2015, is the ninth individual against whom U.S. criminal authorities have announced charges in connection with this matter. Two former VW engineers, [Oliver Schmidt](#), 48, and [James Liang](#), 63, both German citizens, pleaded guilty to participating in the conspiracy alleged in the indictment and are currently serving sentences of 84 months and 40 months in prison, respectively, imposed by U.S. District Judge Sean F. Cox of the Eastern District of Michigan. Five additional defendants, including former VW executives and senior managers, were indicted in January 2017, but have not been apprehended. Similar to Winterkorn, each of them is believed to be a German citizen and to reside in Germany. Finally, one former manager of VW's subsidiary Audi AG, Giovanni Pamio, 61, an Italian citizen, has been charged by complaint and currently remains in Germany pending extradition.

The indictment of Winterkorn alleges that he was informed of VW's diesel emissions cheating in May 2014 and again in July 2015. The indictment further alleges that Winterkorn, after having been clearly informed of the emissions cheating, agreed with other senior VW executives to continue to perpetrate the fraud and deceive U.S. regulators.

As the indictment sets forth, in the spring of 2014 a study commissioned by the International Council on Clean Transportation (the ICCT study) tested road emissions of two VW diesel vehicles sold in the United States. The results of the study showed significantly elevated NOx levels of the two VW vehicles, with one emitting up to 35 times above the allowable legal limit. VW management quickly learned of the results of the study and discussed potential consequences flowing from the revelations. Specifically, the indictment alleges that Bernd Gottweis, a senior manager then responsible for product safety issues, met with employees of the engine development department to discuss the ICCT study. Upon learning of the facts revealed by the study and the risks facing the company, Gottweis remarked that he needed to speak with Winterkorn immediately. Shortly thereafter, on May 22, 2014, Gottweis wrote a one-page memorandum describing the results of the ICCT study and warning that VW could not give a well-grounded explanation for the dramatically increased NOx emissions and that it could be assumed that the authorities would investigate whether the vehicles contained test-recognition software. Gottweis's memorandum was then attached to a cover note authored by a then-senior VW executive, and addressed to Winterkorn.

As alleged in the indictment, following publication of the ICCT study in the spring of 2014 the company knowingly continued to deny the existence of emissions cheating in its vehicles until late summer 2015. Instead, VW sought to deceive U.S. regulators about the causes for the significant discrepancies between emissions tests and emissions values measured on the road.

By the summer of 2015, however, the indictment alleges that U.S. regulators threatened to withhold authorization for VW to sell Model Year 2016 diesel vehicles in the United States until VW answered their questions about the discrepancies uncovered by the ICCT study. The diesel situation in the United States became increasingly alarming to VW senior management, culminating in a meeting on July 27, 2015 at VW's headquarters in Wolfsburg, Germany, internally referred to as the "damage table meeting." During that meeting, which was chaired by Winterkorn and attended by several senior VW executives, engine development department employees, with the help of a PowerPoint presentation, described to the attendees, and Winterkorn specifically: (1) how VW was deceiving U.S. regulators, including precisely what information had been disclosed and what had not yet been disclosed; and (2) the potential consequences of VW being caught cheating.

The indictment alleges that upon being presented with those and other facts, Winterkorn did not order his subordinates to disclose the cheating but instead agreed to continue to deceive U.S. authorities. Part of that strategy, which Winterkorn allegedly approved at the July 27, 2015 meeting, and which informed VW's steps over the next several weeks, included sending Oliver Schmidt to meet with a senior CARB official on Aug. 5, 2015, in order to obtain the release of the Model Year 2016 vehicles without revealing the fundamental reason for the higher NOx measurements on the road: that software had been intentionally installed in VW vehicles so the vehicles could detect and evade emissions testing. Consistent with Winterkorn's alleged directive from the July 27 meeting, VW executives also approved a script for an Aug. 19, 2015 meeting with CARB that continued to conceal VW's cheating. At the meeting, however, in direct contravention of the instructions from his superiors, a VW employee, in answering a direct question from CARB, revealed that VW had been using software in its 2.0 liter diesel vehicles to cheat U.S. emissions tests. On Sept. 3, 2015, VW officially admitted that it had installed defeat devices in various 2.0 liter diesel vehicles sold in the United States.