



April 10, 2017

Mr. Mark Williams, Mailstop 3E
Air Resources Board
P.O. Box 2815
Sacramento, CA 95812

RE: Comments on Volkswagen’s “California ZEV Investment Plan: Cycle 1”

I. Introduction

The Charge Ahead California campaign and the undersigned organizations greatly appreciate the opportunity to provide input on Volkswagen’s (“VW”) “California ZEV Investment Plan: Cycle 1” (“Investment Plan”) submitted to the California Air Resources Board (“CARB”) on March 14, 2017.

The Charge Ahead California campaign (“Charge Ahead”) is a coalition of environmental justice, equity, and environmental groups led by Coalition for Clean Air, Communities for a Better Environment, Environment California, The Greenlining Institute, and the Natural Resources Defense Council. Together, we sponsored Senate President pro Tem Kevin de León’s Charge Ahead California Initiative (“SB 1275”) in 2014 and we now work to implement it. The bill put in place the goal for California to place 1 million electric cars, trucks and buses on our roads by 2023 and to ensure that communities hardest hit by pollution – low-income communities of color – benefit from clean vehicles.

Volkswagen's 482,000 noncompliant diesel vehicles spewed almost 12,000 additional tons of nitrogen oxides (NOx) into our air in one year. That illegal pollution is equivalent to 19 million cars.¹ This pollution affects us all, and VW's dirty diesels poison the air even more in the neighborhoods already hit first and worst by pollution. In California, those who breathe the dirtiest air are disproportionately low-income communities of color. The only way to truly bring VW to justice is to help these communities first and most by increasing access to clean transportation, cleaner air, and economic opportunity.

As currently drafted, VW's Investment Plan contains serious deficiencies. For VW to expand economic opportunity, comply with the spirit of the Consent Decree to ensure that the investment plan "includ[e] measures to increase access [of ZEVs] to underserved areas"² and comply with California's equity values outlined in Senate Bill 1275, Senate Bill 350 (De León, 2015) ("SB 350"), and Assembly Bill 1550 (Gomez, 2016) ("AB 1550") highlighted in CARB's guidance document, the Investment Plan must:

- **Prioritize investment and minimum commitments.** Justice requires VW prioritize robust investments in the disadvantaged and low-income communities it hurt the most. VW must strive to exceed minimum investments as described in AB 1550, namely:³
 - A minimum of 25 percent of funds must go to projects "located within the boundaries of, and benefiting individuals living in," disadvantaged communities as described in Section 39711 of the Health and Safety Code;
 - An additional 10 percent of funds (at least) go to projects that benefit low-income households or projects located within low-income communities as described in Section 39713 of the Health and Safety Code.
- **Increase EV access for all.** Work to "increase access for disadvantaged, low-income, and moderate-income communities and consumers to zero-emission and near-zero-emission vehicles, and to increase the placement of those vehicles in those communities and with those consumers" as mandated in SB 1275 and SB 350.⁴
- **Maximize economic opportunity for those most in need.** Include targeted goals to recruit, train and hire diverse residents from disadvantaged and low-income communities to perform ZEV vehicle maintenance and infrastructure work that will create access to career paths and economic benefits for residents who need it most. At minimum, the Plan should have a targeted hiring goal of 35 percent of the overall workforce be diverse residents from within disadvantaged and low-income communities.

¹ See Bloomberg News at <https://www.bloomberg.com/news/articles/2015-09-23/vw-cheating-added-pollution-of-as-many-as-19-million-u-s-cars>.

² Consent Decree, Appendix C.

³ Assembly Bill 1550 (Gomez, 2016).

⁴ Senate Bill 1275 (De León, 2014).

II. Prioritize Investment and Minimum Commitments: VW's Plan Does Not Comply with Meaningful Investments in Disadvantaged and Low-Income Communities Who Were Hurt the Most by VW

We commend CARB for uplifting environmental justice communities and communities of color by including the following guiding principle in its guidance document to VW: “Prioritize Disadvantaged, Low-income, and Disproportionately Impacted Communities.”⁵ CARB urges VW to dedicate *at least 35 percent* of funds for investment directly in disadvantaged and low-income communities in alignment with key policies: SB 1275, SB 535, AB 1550, and SB 350. Together, these laws require that California increase access to clean transportation options in disadvantaged communities and for low- and moderate-income consumers, as defined by the California Environmental Protection Agency and the California Air Resources Board:

- SB 1275. Known as the Charge Ahead California Initiative, this bill states that California must “increase access for disadvantaged, low-income, and moderate-income communities and consumers to zero-emission and near-zero-emission vehicles, and to increase the placement of those vehicles in those communities and with those consumers to enhance the air quality, lower greenhouse gases, and promote overall benefits for those communities and consumers.”⁶
- SB 350. “Widespread transportation electrification requires increased access for disadvantaged communities, low- and moderate-income communities, and other consumers of zero-emission and near-zero-emission vehicles, and increased use of those vehicles in those communities and by other consumers to enhance air quality, lower greenhouse gases emissions, and promote overall benefits to those communities and other consumers.”⁷ The bill directs electrical utilities to make investments to “accelerate widespread transportation electrification to . . . achieve the goals set forth in the Charge Ahead California Initiative”
- SB 535. This bill requires that the California Environmental Protection Agency (Cal EPA) identify disadvantaged communities for the purposes of spending California Climate Investments. The bill states that: “communities shall be identified based on geographic, socioeconomic, public health, and environmental hazard criteria, and may include, but are not limited to, either of the following: (a) Areas disproportionately affected by environmental pollution and other hazards that can lead to negative public health effects, exposure, or environmental degradation. (b) Areas with concentrations of people that are of low income, high unemployment, low levels of homeownership, high

⁵ CARB Guidance Document. See, https://www.arb.ca.gov/msprog/vw_info/vsi/vw-zevinvest/documents/carb_guidance_021017.pdf.

⁶ Senate Bill 1275 (De León, 2014).

⁷ Senate Bill 350 (De León, 2015).

rent burden, sensitive populations, or low levels of educational attainment.”⁸ Cal EPA uses the CalEnviroScreen tool to identify disadvantaged communities.

- AB 1550. Requires that California Climate Investments be allocated as follows: A minimum of 25 percent of funds must go to projects “located within the boundaries of, and benefiting individuals living in,” disadvantaged communities as described in Section 39711 of the Health and Safety Code; An additional 10 percent of funds (at least) go to projects that benefit low-income households or projects located within low-income communities as described in Section 39713 of the Health and Safety Code.⁹

While VW’s Investment Plan does indicate that a portion of its proposed \$75M “high-speed highway network” will serve disadvantaged communities, this is the only mention of how its Plan would *technically* invest in disadvantaged communities and makes no mention how this investment or other measures will increase ZEV access to underserved areas as required in Appendix C.¹⁰

“In an analysis of the proposed highway network, roughly 25% of stations will fall in areas which score in the bottom quartile on the CalEnviroScreen, and over 50% of stations will fall in areas that scored in the bottom half on the CalEnviroScreen index.”¹¹

This means that VW’s Plan appears to *only invests 9.3 percent* of its funds in disadvantaged communities as defined by Cal EPA—the 25 percent highest scoring census tracts as designated by CalEnviroScreen. As characterized by Dean Florez, current CARB Board member, this Plan “falls far short of CARB’s guidelines, state law and a recent resolution” directing that at least 35 percent of funds go to disadvantaged and low-income communities.¹²

Low-income communities and communities of color were hit hardest by VW’s unlawful diesel exhausts and justice requires VW remedy its harm by prioritizing significant investments in communities hurt most.¹³

⁸ Senate Bill 535 (De León, 2012).

⁹ Assembly Bill 1550 (Gomez, 2016).

¹⁰ Consent Decree, Appendix C at 16. (VW’s draft Investment Plan must “include, at a minimum . . . : A description of all California ZEV Investments that the Settling Defendants will make . . . as well as including measures to increase access in underserved areas” (emphasis added).

¹¹ VW Investment Plan, at https://www.arb.ca.gov/msprog/vw_info/vsi/vw-zevinvest/documents/vwinvestplan1_031317.pdf.

¹² Dean Florez, VW’s Plan Drives Past Disadvantaged Communities, at <https://medium.com/@deanflorez/vws-plan-drives-past-disadvantaged-communities-d77cf0f3f138>.

¹³ CalCEF at <https://calcef.org/story/2015/11/new-interactive-mapping-tool-shows-effects-of-vw-diesel-scandal-and-suggests-how-vws-response-could-make-amends-to-those-hardest-hit>. (Kevala Analytics developed a mapping tool for the California Clean Energy Fund to identify exactly where non-compliant VW diesels have affected communities in California. They found low-income communities of color were hit first and worst by VW’s egregious act.)

VW must be accountable to industry standards and values in California related to equity in transportation electrification. That means complying with the equity portions of AB 1550, SB 1275, and SB 350.

Recommendation:

- In keeping with state law and CARB’s guidance, the various objectives, guiding principles, and investment methodologies of the Investment Plan should prioritize investments that will help VW/Electrify America to meet or exceed minimum investment of 25 percent within disadvantaged communities (as defined by Cal EPA and CARB) and at least an additional 10 percent benefitting low-income households (as defined by Cal EPA and CARB) for a minimum total of 35 percent in disadvantaged communities and low-income households. In fact, because of the harm VW caused, we recommend that VW should strive to *exceed* these minimums to recompense.

III. Increase EV Access for All: VW Does Not Comply with the Consent Decree, CARB Guidance, Nor State Values on Equity

As discussed above, SB 1275 and SB 350 require that California work to “increase access for disadvantaged, low-income, and moderate-income communities and consumers to zero-emission and near-zero-emission vehicles, and to increase the placement of those vehicles in those communities and with those consumers.” CARB’s guidance states that VW’s investments to increase ZEV access have “tremendous potential to bring the benefits of ZEVs to greater numbers of low-income Californians” and thus should “prioritize projects, especially those that serve disadvantaged, low-income, or disproportionately impacted communities”¹⁴

Further, CARB’s guidance requires VW to submit the following with its plan to increase ZEV access: “a description of how projects will benefit disadvantaged, low-income and disproportionately impacted communities”¹⁵

Appendix C of the Consent Decree requires that VW’s draft Investment Plan “include, at a minimum . . . : A description of all California ZEV Investments that the Settling Defendants will make . . . as well as including *measures to increase access in underserved areas*” (emphasis added).¹⁶

The following sections describe how VW fails to comply with the Consent Decree, CARB guidance, and California’s laws and values to address equity in transportation electrification.

¹⁴ CARB Guidance.

¹⁵ CARB Guidance.

¹⁶ Consent Decree, Appendix C, at 16.

A. Infrastructure (~ \$120M)

VW's Plan on infrastructure states that it will first focus on "the areas with the highest anticipated ZEV demand" and makes no mention on prioritization or meaningful investments to increase ZEV access in underserved areas—particularly disadvantaged and low-income communities—as required by the Consent Decree and CARB guidance.

In its \$45M "Community Charging" proposal, VW does not comply with the Consent Decree and CARB guidance because it neither describes how this project will benefit low-income and disadvantaged communities nor how it will increase ZEV access in these communities.

As discussed above, VW's \$75M High-Speed Highway Network proposal does mention disadvantaged communities but its description and targeting of the investment fails to comply with CARB guidance, the Consent Decree, and California's equity values.

B. Green City (~ \$44M)

VW's Plan on Green City Initiatives states that it has identified three potential initiatives currently anticipated to be in Sacramento. VW's Green City Plan must provide a description on how these initiatives will benefit low-income and disadvantaged communities and how it will increase ZEV access in these communities, to fully comply with CARB guidance and the Consent Decree.

Section 1.10.4 of Appendix C states that "selection of the city (*e.g.*, Los Angeles) will be made by the Settling Defendants in consultation with appropriate local authorities in California."¹⁷ Moving forward, VW should also actively collaborate with and seek input from environmental justice and equity groups to ensure its Investment Plans prioritize low-income communities of color most in need.

C. Public Education (~ \$20M)

VW's Public Education Plan does not comply with CARB guidance or the Consent Decree because it lacks a description on how these initiatives will benefit low-income and disadvantaged communities nor how it will increase ZEV access in these communities.

The greatest need for EV awareness is in low-income communities of color, especially given the multiple efforts across the state to target EV charging stations in disadvantaged communities and efforts to provide EV incentives to low- and moderate-income consumers.¹⁸

¹⁷ Consent Decree, Appendix C at 3.

¹⁸ See EV equity programs created pursuant to SB 1275 and investor-owned utility EV charging station pilots with commitments to disadvantaged communities.

D. Public Access Initiatives

VW's Public Access Initiatives Plan does not comply with CARB guidance or the Consent Decree because it lacks a description on how these initiatives will benefit low-income and disadvantaged communities nor how it will increase ZEV access in these communities.

Section 1.10.3 of Appendix C defines programs or actions to increase public exposure and/or access to ZEVs as those that do not require "the consumer to purchase or lease a ZEV at full market value, *e.g.*, the operation of ZEV car sharing services, or ZEV ride hailing services, including, but not limited to, ZEV autonomous vehicles, and, in California, scrap and replace with ZEV vehicles." Unfortunately, VW's plan does not propose any of the types of action listed here.

VW cannot be let off the hook and must comply with the legal requirements in Appendix C of the Consent Decree related to serving underserved areas and must align with California's interests and values related to equity in transportation electrification.

Recommendation:

- We recommend that the various objectives, guiding principles, and investment methodologies of the Investment Plan meaningfully address how it will introduce measures to increase EV access in underserved areas (as required in Appendix C and CARB guidance) that align with equity provisions in SB 1275, SB 350, and AB 1550.
- The Plan should encourage and prioritize funding EV charging infrastructure projects in and near apartment complexes, grocery stores, shopping centers, and community centers in disadvantaged communities, in addition to highway charging.
- The Plan must include a description on how each of its investment categories will benefit low-income and disadvantaged communities and how they will increase ZEV access in these communities.
- VW must align with equity values in California by meaningfully collaborating with environmental justice and equity groups representing the low-income communities hurt most by the unlawful emissions. The formalization of an advisory council for this purpose can help with ensuring VW's Investment Plans comply with equity provisions in the Consent Decree, CARB guidance, and state laws.
- CARB rightfully states that "[i]n order to reach all Californians, including those in disadvantaged, low-income, and disproportionately impacted communities, some marketing materials and products should be produced that are multi-lingual and culturally sensitive." We recommend VW fully comply with this guidance in its Public Awareness Plan and work with relevant community-based organizations to develop appropriate materials and to conduct outreach and education, where proposed. However, there must be a ceiling, or percentage limit, on education or public outreach efforts to ensure on-the-

ground investments are prioritized, such as those resulting in infrastructure or increased access to ZEVs for low-income and disadvantaged communities.

IV. Maximize Economic Opportunity for Those Most in Need: Workforce Development and Training; Targeted Hiring; and Diverse-Owned Business Contracting

VW's Plan fails to address how it will advance economic equity by buying goods and services from small diverse-owned businesses and by training and hiring individuals from low-income communities of color. There is no mention of how this \$800 million investment will create pathways out of poverty into skilled training and middle-class careers by leveraging the existing training programs, creating family-sustaining jobs with good wages and benefits and successfully recruiting, training and hiring from disadvantaged communities and low-income households.

VW caused great harm and must be held accountable, to the highest degree. VW can make amends by directing assured, and significant economic opportunities to communities most impacted by its unlawful emissions.

Establishing criteria for VW's Investment Plan to create good, accessible, middle-class jobs and training is consistent with existing state policy:

- SB 350 calls on “widespread transportation electrification to create high-quality jobs for Californians.”¹⁹
- The California Energy Commission directs funds for workforce development and training in transportation electrification and is increasingly committed to targeting these resources in low-income and disadvantaged communities.²⁰

Below, we re-submit the economic equity recommendations from the first set of comments the Charge Ahead California campaign submitted to CARB in December of 2016.

Recommendations:

- VW/Electrify America and its contractors should demonstrate how they will recruit, train, and hire at least 35 percent of the workforce from disadvantaged communities and low-income households. In fact, because of the harm VW caused, we recommend that VW should strive to *exceed* these minimums. Moreover, contractors and VW/Electrify America should pay prevailing wages; provide full family healthcare coverage; and provide retirement benefits.
- Support the development of and place a high priority on projects that have robust recruiting and hiring policies targeting underserved communities, provide high-quality jobs, have robust minority-owned business procurement goals (i.e., supplier diversity),

¹⁹ Senate Bill 350 (De León, 2015).

²⁰ California Energy Commission, at http://www.energy.ca.gov/drive/funding/workforce_training.html.

and partner with or provide support to workforce development programs aimed at underserved communities.

- Invest in skills-development programs aimed at training members of underserved communities (particularly those with barriers to employment) to fill emerging employment needs in the heavy-duty EV industry and related transportation-electrification fields.
- Increase access to skills development programs and initiatives (e.g. pre-apprenticeship programs, soft skills training, financial assistance)
- Incorporate wrap-around support services in skills development and employment programs (e.g. child care, transportation, housing, substance abuse counseling, physical health, financial stability, educational achievement, criminal record remediation, driver's license restoration)
- Track and report individual level data on the progress of efforts to train and employ members of underserved communities.
- Reference and use the US Employment Plan to evaluate and score proposals with the aim of encouraging commitments to creating good jobs and improving access for people historically excluded from high-quality jobs.²¹

We also recommend incorporating, more explicitly, “High Road” workforce development values in this investment that focuses on a commitment to quality, quantity, and access. We encourage using these questions in guiding this effort:

- How can you ensure clean transportation jobs in your area pay good wages, provide benefits, and provide well-articulated career ladders (quality)?
- Where are the opportunities that will go to a large enough scale to be meaningful (quantity)?
- And how can you ensure that those jobs are attainable for people with barriers to employment (access)?

To ensure equitable outcomes of VW’s Investment Plan, we recommend increasing transparency and workforce data collection, especially with respect to the hiring of low-income workers and other individuals with barriers to employment. Within the reporting process of the Investment Plan, there should be reporting on individual level data. Some possible jobs metrics:

- Job quantity: number of workers employed/trained; hours per week; employment status (part-time/full-time, or percentage of full-time equivalency)
- Job quality: hourly wages, employer-provided benefits for hires, partners and dependents (medical and dental coverage, paid vacation and sick leave, retirement savings, transportation reimbursement, childcare assistance, paid training opportunities)

²¹ The US Employment Plan was developed by a team of experts from LAANE, the Brookings Institution, the University of Southern California’s Program for Environmental and Regional Equity, and the University of Massachusetts at Amherst’s Political Economy Research Institute. More at <http://jobstomoveamerica.org/resources/u-s-employmentplan-resources-2>.

- Job access: worker demographics, including gender, race/ethnicity, workers with barriers to employment; geographic location (census tract of residency); project subject to project-labor agreement, targeted hiring policies, or community workforce agreement
- Job retention: length of time employed, retention rate
- Job classification: occupation, employee classification (employee, independent contractor, trainee, etc.), contractor classification (diverse-owned business, community based organization, etc.)
- Job trajectory: number and type of certifications or credentials awarded, number of job placements for trainees/interns, number of trainees enrolled in pre-apprenticeship or state-certified apprenticeship programs; existing workforce and training partnerships with training providers, workforce agencies or community-based organizations

We also recommend reporting on procurement of services and products from contractors and subcontractors certified as a diverse-owned business—i.e. minority-, women-, veteran-owned businesses.

In all Investment Plan spending, we encourage VW to prioritize projects that encourage broader economic and health benefits for low-income communities of color, particularly disadvantaged communities impacted most significantly by poor air quality and poverty.

V. VW is a Bad Actor: Ensure Strict Transparency, Oversight and Accountability of ZEV Investment Commitment

VW intentionally defrauded consumers and actively violated state and federal clean air laws and regulations knowing its actions would result in higher levels of nitrogen oxide (“NOx”) that would hurt everyone. VW does not deserve any benefit of the doubt.

Recommendation:

- We recommend that CARB use all legal and regulatory authority at its disposal, and any other relevant avenues, to forcefully oversee the ZEV Investment Plan to ensure funds are spent in the public interest, expand economic opportunity, and consistent with equity provisions in the Consent Decree, CARB guidance, and state laws (i.e. SB 1275, SB 350, and AB 1550).

VI. Conclusion

The Charge Ahead California campaign and the undersigned thanks CARB for the opportunity to provide comments. We look forward to continuing to work with CARB and VW/Electrify America to ensure this ZEV Investment Plan and future plans benefit the public interest, remedy harms, expand economic opportunity, and align with the equity goals codified in SB 1275, SB 350, and AB 1550.

Sincerely,

Bill Magavern,
Coalition for Clean Air

Bahram Fazeli,
Communities for a Better Environment

Michelle Kinman,
Environment California

Alvaro Sanchez,
The Greenlining Institute

Max Baumhefner,
Natural Resources Defense Council

Rey León,
Valley Latino Environmental Advancement
Project (LEAP)

Dolores Weller,
Central Valley Air Quality Coalition

John Shears,
The Center for Energy Efficiency and
Renewable Technologies

Kevin Hamilton,
Central California Asthma Collaborative &
Medical Advocates for Healthy Air