

**D-1GN-15-004513**

Cause No. \_\_\_\_\_

STATE OF TEXAS,	§	IN THE DISTRICT COURT OF
Plaintiff,	§	
v.	§	
	§	
VOLKSWAGEN GROUP OF	§	TRAVIS COUNTY, TEXAS
AMERICA, INC. and AUDI OF	§	
AMERICA, LLC,	§	
Defendants.	§	<b>200TH</b>
		_____ JUDICIAL DISTRICT

**STATE OF TEXAS’S ORIGINAL PETITION AND  
APPLICATION FOR INJUNCTIVE RELIEF**

The State of Texas, through Texas Attorney General Texas Ken Paxton, (“State”) and on behalf of the people of the State of Texas and the Texas Commission on Environmental Quality (“TCEQ”), files this Original Petition and Application for Injunctive Relief.

**1. Discovery and Relief Requested**

1.1 Pursuant to the Texas Rules of Civil Procedure, discovery will follow a level two discovery control plan. Tex. R. Civ. P. 190.3.

1.2 This case is not subject to the restrictions of expedited proceedings under Rule 169 because (1) the State seeks non-monetary injunctive relief and (2) the State’s claims for civil penalties are in excess of \$100,000, and the maximum potential civil penalty exceeds \$1,000,000.

## 2. Nature of the Suit

2.1 This case is a civil environmental enforcement case. The State seeks civil penalties and injunctive relief against Defendants for violations of the Texas Clean Air Act arising from their unlawful scheme to manipulate emission control equipment on certain diesel automobiles sold or leased, or offered for sale or lease, in the State of Texas.

## 3. Parties

3.1 Plaintiff, the State, brings suit pursuant to a referral for enforcement from the TCEQ. *See* Tex. Water Code § 7.105.

3.2 Defendant Volkswagen Group of America, Inc. (“VW”) is a foreign corporation created under the laws of New Jersey doing business in the State of Texas. VW may be served through its registered agent for process in Texas, Corporation Service Company, d/b/a CSC-Lawyers Incorporating Service Company, at 211 East 7<sup>th</sup> Street, Suite 620, Austin, Texas 78701-4234.

3.3 Defendant Audi of America, LLC (“Audi”), is a foreign corporation created under the laws of Delaware doing business in the State of Texas. Audi is not registered in Texas and/or has not designated an agent for service of process in Texas. Audi may be served through the Texas Secretary of State. Tex. Bus. Org.

Code § 5.251.

#### **4. Jurisdiction and Venue**

4.1 This is a suit for injunctive relief and civil penalties brought to enforce the Texas Water Code, Texas Clean Air Act (“TCAA”),<sup>1</sup> and TCEQ rules located in 30 Texas Administrative Code, Chapters 101 and 114. This Court has jurisdiction, and venue is proper in Travis County. Tex. Water Code § 7.105(c).

#### **5. Background**

5.1 On or about September 18, 2015, the public first learned that Defendants VW and Audi manipulated the emissions control systems software on certain diesel powered cars so that these models would purportedly pass federal emission tests. However, the software altered operation of the emissions control equipment, concealing the fact that in actual driving conditions the actual emission rates were far higher than revealed in emission testing. VW and Audi concealed this information from both governmental regulators and the public.

5.2 On its website, VW reports that “[o]n September 18, 2015, [it] received notice from the [United States] Environmental Protection Agency, [United States]

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<sup>1</sup> Tex. Health & Safety Code §§ 382.001, *et seq.*

Department of Justice and the California Air Resources Board informing VW that those agencies had determined that some of [its] 2.0L 4-cylinder TDI vehicles do not comply with applicable emissions regulations.”

5.3 VW further reported that the vehicles identified in the notifications include:

- VW Jetta TDI (Model Years 2009-2015)
- VW Jetta SportWagen TDI (Model Years 2009-2014)
- VW Golf TDI (Model Years 2010-2015)
- VW Golf SportWagen TDI (Model Year 2015)
- VW Beetle TDI and VW Beetle Convertible TDI (Model Years 2012-2015)
- VW Passat TDI (Model Years 2012-2015)

The United States Environmental Protection Agency reported that the Audi A3 (Model Years 2010-2015) also have the same emission control manipulation.

5.4 VW and Audi have acknowledged or admitted that they manipulated the emissions control software on these models and reported that they are working on repairs and recalls to resolve the problem. To date, Defendants have not identified any specific repairs or remedial actions, or specific time table for such actions, for affected cars sold in the United States.

5.5 On September 24, 2015, Attorney General Ken Paxton announced that “The State will investigate if Volkswagen violated Texas consumer laws by deceiving car buyers when selling ‘clean diesel’ cars, which were allegedly programmed to manipulate the data produced during emissions standards testing.” General Paxton also confirmed that the State would “investigate possible violations of consumer protection laws, while various state environmental regulatory agencies will investigate possible violations of environmental protection laws.”

5.6 Defendants’ unlawful scheme to manipulate emission controls on diesel vehicles are of national and state-wide importance, and are significant to the citizens of the State of Texas. According to Texas Department of Motor Vehicle records, approximately 32,000 of the VW and Audi diesel models at issue are registered in the State of Texas.

5.7 On September 29, 2015, Harris County, Texas filed suit in Harris County, Texas against VW and Audi seeking substantial civil penalties against Defendants for violations of the TCAA and the Texas Water Code. Harris County lacks authority to sue to address the violations affecting all citizens of the State of

Texas and has sued only to address Harris County violations. About 4,800 of the VW and Audi diesel models at issue are registered in Harris County.

5.8 Although the TCEQ is a necessary and indispensable party to the Harris County suit as provided for in Texas Water Code § 7.353, the State, acting on behalf of the citizens of Texas and at the request of the TCEQ, brings this suit to enforce the laws and seek a just remedy on an issue that affects all of Texas. Because the TCEQ is already a party to the suit for violations in Harris County, Texas, this suit is limited to the violations that occurred in each of the other 253 counties in the State of Texas affected by Defendants' deliberate violations of law.

## **6. Regulatory Authority and Applicable Law**

6.1 "A person may not cause, suffer, allow, or permit a violation of a statute within the [TCEQ's] jurisdiction or a rule adopted or an order or permit issued under such a statute." Tex. Water Code § 7.101.

6.2 "A person may not cause, suffer, allow, or permit the . . . performance of any activity in violation of this chapter or of any [TCEQ] rule or order." Tex. Health & Safety Code § 382.085(b).

6.3 "A person who causes, suffers, allows, or permits a violation of a statute, rule, order, or permit relating to any other matter within the [TCEQ's]

jurisdiction to enforce, other than violations of Chapter 11, 12, 13, 16, or 36 of this code, or Chapter 341, Health and Safety Code, shall be assessed for each violation a civil penalty not less than \$50 nor greater than \$25,000 for each day of each violation as the court or jury considers proper. Each day of a continuing violation is a separate violation.” Tex. Water Code § 7.102.

6.4 “No person shall use any plan, activity, device or contrivance which the executive director determines will, without resulting in an actual reduction of air contaminants, conceal or appear to minimize the effects of an emission which would otherwise constitute a violation of the Act or regulations.” 30 Tex. Admin. Code § 101.3.

6.5 “No person may remove or make inoperable any system or device used to control emissions from a motor vehicle or motor vehicle engine or any part thereof, except where the purpose of removal of the system or device, or part thereof, is to install another system or device, or part thereof, which is equally effective in reducing emissions from the vehicle.” 30 Tex. Admin. Code § 114.20(b).

6.6 “No person may sell, offer for sale, lease, or offer to lease in the State of Texas any motor vehicle unless all of the following conditions are met: (1) [t]he

motor vehicle shall be equipped with either the control systems or devices that were originally a part of the motor vehicle or motor vehicle engine or an alternate control system or device as designated in subsection (b) of this section [and] (2) [t]he control systems or devices required in paragraph (1) of this subsection shall be in good operable condition. . . .” 30 Tex. Admin. Code § 114.20(c).

6.7 “No person may sell, offer for sale, or use any system or device which circumvents or alters any system, device, engine, or any part thereof, installed by a vehicle manufacturer to comply with the Federal Motor Vehicle Control Program during actual in-use operation of a motor vehicle on Texas roadways.” 30 Tex. Admin. Code § 114.20(e).

## **7. Violations by VW**

7.1 Defendant VW violated Texas Water Code § 7.101, Texas Health and Safety Code § 382.085(b), and 30 Texas Administrative Code § 101.3 by engaging in a plan, activity, device or contrivance that concealed or appeared to minimize the effects of an emission which would otherwise constitute a violation of the TCAA or regulations, specifically by manipulating emission controls on diesel vehicles identified in Paragraph 5.3 above.

7.2 Defendant VW violated Texas Water Code § 7.101, Texas Health and

Safety Code § 382.085(b), and 30 Texas Administrative Code § 114.20 (1) by rendering inoperable emission control equipment on diesel vehicles identified in Paragraph 5.3 above; (2) by selling or leasing, or offering for sale or lease, the diesel vehicles identified in Paragraph 5.3 above that contained emission control equipment that did not operate as intended or did not operate in good working order in actual driving conditions; and/or (3) by selling, offering for sale, or using a system or device to circumvent the manufacturer installed emission control equipment during actual driving conditions.

7.3 VW is liable for civil penalties within the statutory range of \$50 to \$25,000 for each day of each violation of the above statutes and regulations. Tex. Water Code § 7.102.

## **8. Violations by Audi**

8.1 Defendant Audi violated Texas Water Code § 7.101, Texas Health and Safety Code § 382.085(b), and 30 Texas Administrative Code § 101.3 by engaging in a plan, activity, device or contrivance that concealed or appeared to minimize the effects of an emission which would otherwise constitute a violation of the TCAA or regulations, specifically by manipulating emission controls on diesel vehicles identified in Paragraph 5.3 above.

8.2 Defendant Audi violated Texas Water Code § 7.101, Texas Health and Safety Code § 382.085(b), and 30 Texas Administrative Code § 114.20 (1) by rendering inoperable emission control equipment on diesel vehicles identified in Paragraph 5.3 above; (2) by selling or leasing, or offering for sale or lease, the diesel vehicles identified in Paragraph 5.3 above that contained emission control equipment that did not operate as intended or did not operate in good working order in actual driving conditions; and/or (3) by selling, offering for sale, or using a system or device to circumvent the manufacturer installed emission control equipment during actual driving conditions.

8.3 Audi is liable for civil penalties within the statutory range of \$50 to \$25,000 for each day of each violation of the above statutes and regulations. Tex. Water Code § 7.102.

## **9. Injunctive Relief**

9.1 The Attorney General, at the request of the TCEQ, may bring an action for injunctive relief if it appears that a violation or threat of a violation of a rule issued under the TCEQ's statutory jurisdiction has occurred or is about to occur. Tex. Water Code § 7.032.

9.2 Defendants VW and Audi have violated, and are continuing to violate, the Texas Water Code, the TCAA, and regulations promulgated by the TCEQ as alleged in Paragraphs 7 and 8 above. Defendants are obligated, and may be enjoined by either a mandatory or prohibitory injunction, to comply with the law and to remedy the consequences of their violations.

### **10. Attorney's Fees and Costs**

10.1 Section 7.108 of the Texas Water Code authorizes the State to recover its reasonable attorney's fees, court costs, and reasonable investigative costs incurred in relation to this proceeding if the State ultimately prevails. Section 402.006 of the Tex. Government Code also authorizes the State to recover its reasonable attorney's fees and court costs in a suit in which the State is entitled to recover penalties. The State seeks a judgment against Defendants, jointly and severally, for its attorney's fees, court costs, and investigative costs pursuant to these statutory provisions.

### **Prayer**

WHEREFORE, the State respectfully requests:

1. That Defendants be cited to appear and answer herein;
2. That the Court grant a permanent injunction against Defendants as

requested above;

3. That the Court grant judgment for appropriate civil penalties within the range allowed by law against Defendants as requested above;
4. That the State be awarded its reasonable attorney's fees, investigative costs, and all costs of court;
5. That the State be awarded post-judgment interest; and
6. That the State be awarded all such other and further relief, at law and in equity, to which it may show itself justly entitled.

Respectfully submitted,

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Attorney General of Texas

CHARLES E. ROY  
First Assistant Attorney General

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PRISCILLA M. HUBENAK  
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ATTORNEYS FOR THE STATE OF TEXAS

# CIVIL CASE INFORMATION SHEET

CAUSE NUMBER (FOR CLERK USE ONLY): \_\_\_\_\_ COURT (FOR CLERK USE ONLY): \_\_\_\_\_

STYLED State of Texas v.

(e.g., John Smith v. All American Insurance Co; In re Mary Ann Jones; In the Matter of the Estate of George Jackson)

A civil case information sheet must be completed and submitted when an original petition or application is filed to initiate a new civil, family law, probate, or mental health case or when a post-judgment petition for modification or motion for enforcement is filed in a family law case. The information should be the best available at the time of filing.

<b>1. Contact information for person completing case information sheet:</b>		<b>Names of parties in case:</b>		<b>Person or entity completing sheet is:</b>	
Name: _____ Anthony.Benedict		Email: _____ AWB1@texasattorneygeneral.go		<input checked="" type="checkbox"/> Attorney for Plaintiff/Petitioner <input type="checkbox"/> Pro Se Plaintiff/Petitioner <input type="checkbox"/> Title IV-D Agency <input type="checkbox"/> Other: _____	
Address: _____ P.O. Box 12548 (MC-066)		Telephone: _____ (512) 475-4153		Additional Parties in Child Support Case:	
City/State/Zip: _____ Austin, Texas 78711		Fax: _____ (512) 320-0911		Custodial Parent: _____	
Signature: _____ 		State Bar No: _____ 02129100		Non-Custodial Parent: _____	
		Defendant(s)/Respondent(s): _____ Volkswagen Group of America, Inc Audi of America, LLC		Presumed Father: _____	
[Attach additional page as necessary to list all parties]					
<b>2. Indicate case type, or identify the most important issue in the case (select only 1):</b>					
<i>Civil</i>			<i>Family Law</i>		
<b>Contract</b>		<b>Injury or Damage</b>		<b>Real Property</b>	
<input type="checkbox"/> Debt/Contract <input type="checkbox"/> Consumer/DTPA <input type="checkbox"/> Debt/Contract <input type="checkbox"/> Fraud/Misrepresentation <input type="checkbox"/> Other Debt/Contract: _____  <input type="checkbox"/> Foreclosure <input type="checkbox"/> Home Equity—Expedited <input type="checkbox"/> Other Foreclosure <input type="checkbox"/> Franchise <input type="checkbox"/> Insurance <input type="checkbox"/> Landlord/Tenant <input type="checkbox"/> Non-Competition <input type="checkbox"/> Partnership <input type="checkbox"/> Other Contract: _____		<input type="checkbox"/> Assault/Battery <input type="checkbox"/> Construction <input type="checkbox"/> Defamation <i>Malpractice</i> <input type="checkbox"/> Accounting <input type="checkbox"/> Legal <input type="checkbox"/> Medical <input type="checkbox"/> Other Professional Liability: <input type="checkbox"/> Motor Vehicle Accident <input type="checkbox"/> Premises <i>Product Liability</i> <input type="checkbox"/> Asbestos/Silica <input type="checkbox"/> Other Product Liability List Product: _____ <input type="checkbox"/> Other Injury or Damage: _____		<input type="checkbox"/> Eminent Domain/Condemnation <input type="checkbox"/> Partition <input type="checkbox"/> Quiet Title <input type="checkbox"/> Trespass to Try Title <input type="checkbox"/> Other Property: _____  <b>Related to Criminal Matters</b> <input type="checkbox"/> Expunction <input type="checkbox"/> Judgment Nisi <input type="checkbox"/> Non-Disclosure <input type="checkbox"/> Seizure/Forfeiture <input type="checkbox"/> Writ of Habeas Corpus—Pre-indictment <input type="checkbox"/> Other: _____	
<b>Marriage Relationship</b>		<b>Other Family Law</b>		<b>Post-judgment Actions (non-Title IV-D)</b>	
<input type="checkbox"/> Annulment <input type="checkbox"/> Declare Marriage Void <i>Divorce</i> <input type="checkbox"/> With Children <input type="checkbox"/> No Children		<input type="checkbox"/> Enforce Foreign Judgment <input type="checkbox"/> Habeas Corpus <input type="checkbox"/> Name Change <input type="checkbox"/> Protective Order <input type="checkbox"/> Removal of Disabilities of Minority <input type="checkbox"/> Other: _____		<input type="checkbox"/> Enforcement <input type="checkbox"/> Modification—Custody <input type="checkbox"/> Modification—Other  <b>Title IV-D</b> <input type="checkbox"/> Enforcement/Modification <input type="checkbox"/> Paternity <input type="checkbox"/> Reciprocal (UIFSA) <input type="checkbox"/> Support Order	
<b>Employment</b>		<b>Other Civil</b>		<b>Parent-Child Relationship</b>	
<input type="checkbox"/> Discrimination <input type="checkbox"/> Retaliation <input type="checkbox"/> Termination <input type="checkbox"/> Workers' Compensation <input type="checkbox"/> Other Employment: _____		<input type="checkbox"/> Administrative Appeal <input type="checkbox"/> Antitrust/Unfair Competition <input checked="" type="checkbox"/> Code Violations <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Intellectual Property  <input type="checkbox"/> Lawyer Discipline <input type="checkbox"/> Perpetuate Testimony <input type="checkbox"/> Securities/Stock <input type="checkbox"/> Tortious Interference <input type="checkbox"/> Other: _____		<input type="checkbox"/> Adoption/Adoption with Termination <input type="checkbox"/> Child Protection <input type="checkbox"/> Child Support <input type="checkbox"/> Custody or Visitation <input type="checkbox"/> Gestational Parenting <input type="checkbox"/> Grandparent Access <input type="checkbox"/> Parentage/Paternity <input type="checkbox"/> Termination of Parental Rights <input type="checkbox"/> Other Parent-Child: _____	
<b>Tax</b>		<b>Probate &amp; Mental Health</b>			
<input type="checkbox"/> Tax Appraisal <input type="checkbox"/> Tax Delinquency <input type="checkbox"/> Other Tax		<i>Probate/Wills/Intestate Administration</i> <input type="checkbox"/> Dependent Administration <input type="checkbox"/> Independent Administration <input type="checkbox"/> Other Estate Proceedings  <input type="checkbox"/> Guardianship—Adult <input type="checkbox"/> Guardianship—Minor <input type="checkbox"/> Mental Health <input type="checkbox"/> Other: _____			
<b>3. Indicate procedure or remedy, if applicable (may select more than 1):</b>					
<input type="checkbox"/> Appeal from Municipal or Justice Court <input type="checkbox"/> Arbitration-related <input type="checkbox"/> Attachment <input type="checkbox"/> Bill of Review <input type="checkbox"/> Certiorari <input type="checkbox"/> Class Action		<input type="checkbox"/> Declaratory Judgment <input type="checkbox"/> Garnishment <input type="checkbox"/> Interpleader <input type="checkbox"/> License <input type="checkbox"/> Mandamus <input type="checkbox"/> Post-judgment		<input type="checkbox"/> Prejudgment Remedy <input type="checkbox"/> Protective Order <input type="checkbox"/> Receiver <input type="checkbox"/> Sequestration <input checked="" type="checkbox"/> Temporary Restraining Order/Injunction <input type="checkbox"/> Turnover	
<b>4. Indicate damages sought (do not select if it is a family law case):</b>					
<input type="checkbox"/> Less than \$100,000, including damages of any kind, penalties, costs, expenses, pre-judgment interest, and attorney fees <input type="checkbox"/> Less than \$100,000 and non-monetary relief <input type="checkbox"/> Over \$100,000 but not more than \$200,000 <input type="checkbox"/> Over \$200,000 but not more than \$1,000,000 <input checked="" type="checkbox"/> Over \$1,000,000					