

# House Bill Bans Future VW-Style Settlements

*Legislation Prohibits Settlements from Requiring Defendants to Fund Environmental Projects to Offset Harm from Violations*



## ACKNOWLEDGEMENTS

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## THE ENVIRONMENTAL INTEGRITY PROJECT

The Environmental Integrity Project (<http://www.environmentalintegrity.org>) is a nonpartisan, nonprofit organization established in March of 2002 by former EPA enforcement attorneys to advocate for effective enforcement of environmental laws. EIP has three goals: 1) to provide objective analyses of how the failure to enforce or implement environmental laws increases pollution and affects public health; 2) to hold federal and state agencies, as well as individual corporations, accountable for failing to enforce or comply with environmental laws; and 3) to help local communities obtain the protection of environmental laws.

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# House Bill Bans Future Volkswagen-Style Settlements

## *Legislation Allows Automakers and Other Companies to Avoid Paying for Clean Vehicle Programs and Other Environmental Projects Supported by States*

On May 23, the U.S. Department of Justice filed a federal lawsuit against Fiat Chrysler Automobiles, alleging that pollution controls on more than 104,000 diesel-powered vehicles were designed to work during emission tests but to shut off under normal driving conditions.<sup>1</sup> The lawsuit claims that the “defeat devices” installed on Jeep Grand Cherokees and Ram pickup trucks resulted in far more nitrogen oxide air pollution being released than allowed by the Environmental Protection Agency, contributing to the formation of smog and deadly soot-like particles. Other major automakers are reportedly also under investigation, with a Seattle-based law firm filing a class action lawsuit against GM on May 25, claiming that the company installed software to cheat on emissions tests for about 705,000 of its diesel trucks from 2011 to 2016.<sup>2</sup>

The Justice Department settled a similar case against Volkswagen last year after the company agreed to pay \$4.7 billion for state projects designed to increase the use of electric cars and to reduce emissions from a wide variety of other vehicles.<sup>3</sup> On February 7, 2017, the U.S. House Judiciary Committee voted in favor of a bill to prohibit any future settlement from requiring violators to fund any project to improve air or water quality, including the kind of clean vehicle improvements approved in the Volkswagen case.<sup>4</sup> The full House of Representatives approved a substantially similar bill in a [241-174](#) vote on September 7 of last year.<sup>5</sup> If this legislation becomes law, it means states and the public could lose hundreds of millions of dollars in funding for environmental projects that Fiat-Chrysler and other companies might otherwise be willing to pay to settle enforcement actions.

### *The Action Against Volkswagen*

On June 28, 2016, the Department of Justice and California Air Resources Board announced a consent decree with Volkswagen to settle charges that its managers had violated the federal Clean Air Act by installing defeat devices on nearly 600,000 diesel-powered automobiles.<sup>6</sup> These devices were programmed to ensure that emission controls worked well enough to pass inspection, but were turned off under typical driving conditions. To help offset the illegal pollution from the dirty engines sold to unsuspecting customers, the consent decree requires Volkswagen to provide \$800 million to California and \$1.2 billion to other states to expand the use of electric cars and other “zero emission vehicles.”<sup>7</sup> The agreement also sets up a \$2.7 billion “Environmental Mitigation Trust Fund” for state initiatives to reduce air pollution from other cars,



*State governments could be deprived of hundreds of millions of dollars in environmental project funds from polluters if Congress approves HR 732.*

trucks, and off-road sources like locomotive engines or bulldozers.<sup>8</sup> (See Appendix 1 for each state's allocation of Environmental Mitigation funds in the VW settlement.<sup>9</sup>) The settlements also require the company to buy back cars with dirty engines and shell out \$4.3 billion in civil and criminal fines, and include jail sentences for managers responsible for cheating on emission controls.

### [HR 732: Proposed Legislation Would Bar Environmental Projects Funded Through Enforcement Settlements](#)

On February 7, the U.S. House Judiciary Committee voted 17-8 along party lines to approve [HR 732](#), the so-called “Stop Settlement Slush Fund Act of 2017.”<sup>10</sup> (For a listing of how committee members voted, see Appendix 2). The full House approved similar legislation in September. The “slush fund” bill, introduced by Representative Goodlatte (R-VA), has a deliberately misleading name because there is no evidence that these settlement agreements have been abused, lined anyone's pockets, or funded projects not designed to reduce pollution, protect the environment, or improve public health. Federal prosecutors working for both Republican and Democratic Presidents have negotiated such agreements for decades.

Regardless, HR 732 would prohibit funding environmental projects like those being paid for by VW in any future settlements. Beyond just Fiat Chrysler and GM, other auto manufacturers are also being investigated for potential Clean Air Act violations like those committed by Volkswagen.<sup>11</sup> If this bill becomes law, any settlement of those pending cases could not include funding for clean vehicle projects like the ones approved in the Volkswagen consent decree. Nor could it include funding for the many other environmental improvements that defendants have agreed to support in prior settlements of Clean Air or Clean Water Act violations.

### [What the House Bill Says](#)

The bill provides that:

“An official or agent of the Government may not enter into or enforce any settlement agreement on behalf of the United States, directing or providing for a payment or loan to any person or entity other than the United States, other than a payment or loan that provides restitution for or otherwise directly remedies actual harm (including to the environment) directly and proximately caused by the party making the payment or loan...”<sup>12</sup>

These limitations apply to any settlement agreement covering civil or criminal violations of any federal statutes. The [House Committee's report](#)<sup>13</sup> on the legislation specifies that the kind of projects approved in the Volkswagen settlement would not be allowed in future settlements if the bill became law:

The Department of Justice's “2016 settlement with Volkswagen required the company to spend \$2 billion on an Administration electrical vehicle initiative after Congress twice refused to pay for it. *It is critical that Congress act to prevent these activities in the future.*”<sup>14</sup> [emphasis added]

The committee rejected an amendment offered by Congressman Hank Johnson (D-GA) that would have allowed settlements to continue to include funds for state clean air projects. The bill's

restrictions are not limited to the Clean Air Act and could also impact areas including drinking water and oil spills. The committee also voted against an amendment from Congressman John Conyers (D-MI) that, in cases involving violations of drinking water standards for lead, would have allowed settlements to fund third-party projects to reduce the risk of future contamination.

### *Examples of Environmental Projects*

HR 732 would prohibit virtually all of the other environmental improvements, large and small, that polluters have paid for in past settlements, including projects to restore watersheds, protect habitat, convert diesel-burning school buses to natural gas, install solar panels, and weatherize low income homes (See Table A, below).

For example, BP agreed in 2012 to provide nearly \$350 million in funds for work along the Gulf Coast to help minimize the impact of future oil spills. Louisiana Generating LLC in 2012 settled Clean Air Act violations by its coal-fired power plants in part by installing \$5 million in solar panels on local schools and government buildings. The Northern Indiana Public Service Company in 2011 settled an air pollution violation case involving its coal-fired power plants in part by agreeing to spend at least \$3.5 million reducing local air pollution by adding emission control equipment to the diesel engines of buses. In 2014, Southern California Edison settled an air pollution violation case in part by agreeing to spend \$3.2 million replacing old, high-pollution furnaces in the homes of the people of the Navajo Nation. (See Appendix 3 for a more detailed breakdown of projects in states across the U.S.).

Federal agents, attorneys, or other employees who, in the future, approve settlements that require violators to pay for environmental projects could be removed from office or be ruined by financial penalties. Those sanctions presumably apply to federal judges, who thus far have been trusted to determine whether civil consent decrees and criminal plea agreements are fair, in the public interest, and consistent with federal law.

### *Why Settlement Agreements Include Funding for Environmental Projects*

Prosecutors usually bring environmental enforcement actions on behalf of the public at large, and can only rarely monetize the harm to specific individuals in such cases. Why? Because pollution risks are spread across large populations or geographic areas, making it impossible to identify specific victims and assign a dollar value to the “actual harms” that are the “direct and proximate” result of the violator’s conduct. Instead, environmental attorneys often seek projects to make the environment a little cleaner for everyone who has been exposed to illegal pollution. Companies that violate emission standards contribute to higher levels of ozone or fine particle air pollution, leading to more frequent asthma attacks and higher rates of lung and heart disease. The idea is that these companies should pay to help reduce the kind of health impacts that they create.

The proposed bill, HR 732, would allow payments to states or other parties for cleanup of the actual damage caused by a polluter. That would include, presumably, funding states or nonprofit organizations to remove oil from a contaminated beach after a spill. But because payments could only be used to clean up the violator’s own mess, the bill would not allow settlements to fund sensible longer-term solutions, such as restoring and rebuilding wetlands to protect the coastline or tidal habitat from future spills.

David Uhlmann, Professor at the University of Michigan Law School and former Chief of the Justice Department's Environment Crimes Section, testified that HR 732 would have prohibited many of the environmental restoration projects in the Gulf of Mexico that BP agreed to finance to resolve its criminal and civil liability for the Deepwater Horizon disaster in 2010.<sup>15</sup>

The proposed legislation would almost certainly have prohibited the \$350 million that BP agreed to pay to help states prevent or minimize the damage from future spills, since prosecutors could only ask a defendant to cover the actual cost of cleaning up its own spill rather than helping to avoid the next one.



*HR732 could prohibit polluter funding for future wetlands restoration projects as part of consent agreements.*

**Table A. Some Examples of Supplemental Environmental Projects from EPA Enforcement Cases, 2000-2017**

| Project Type                              | Benefits  | Funding       | Location  | Cases  | Statutes                       |
|---|---|---------------|---|--|--------------------------------|
| Oil Spill Prevention                      | Funding for research, development, education, and training can be used to improve oil spill prevention and response efforts for future spills.  | \$350,000,000 | Gulf of Mexico states   | BP Exploration and Production, Inc.  | Clean Water Act                |
| Stream and Ecosystem Restoration Projects | Ecosystem restoration projects include revegetation of streams, bank and bed revitalization, the removal of invasive species, etc. They improve the natural habitat, improve water quality, prevent erosion, and improve storm water retention. | \$29,243,400  | North Carolina, Virginia; Grand Calumet River; Ottawa River; Michigan; Ouachita River; Lake Michigan Watershed; Nashua River Watershed                  | Duke Energy subsidiaries; Gary Sanitary District & City of Gary, IN; City of Lima, OH; Consumers Energy; El Dorado Chemical; Dominion Energy, Inc.; City of Fitchburg, MA  | Clean Water Act, Clean Air Act |
| Solar Projects                            | Solar projects provide local communities and schools with clean, renewable energy.  | \$12,212,750  | Fond du Lac Tribal Lands, MN; Alma and Genoa, WI; Brown and Marathon Counties, WI; Louisiana; Havasupai Reservation, AZ                                 | Dairyland Power Cooperative; Minnesota Power; Wisconsin Public Service Corp.; Louisiana Generating; Department of the Interior, Indian Affairs                             | RCRA, CAA, CWA, EPCRA, SDWA    |
| Replacement of old wood-burning stoves    | Wood-burning appliances are sometimes used in homes to produce heat. These projects offer incentives for residents to replace these appliances with cleaner or energy-efficient appliances to reduce indoor/outdoor air pollution.              | \$8,550,000   | Navajo Nation Territory; San Joaquin Valley; various counties in North Carolina; Denver, CO; Fond du Lac Tribal Lands in Minnesota                      | Four Corners Power Plant; Harley Davidson; J.R. Simplot; Guardian Industries; Duke Energy Co.; Noble Energy, Inc.; Minnesota Power   | Clean Air Act                  |
| School Bus Retrofitting and Replacement   | Retrofitting school buses with emission control equipment, converting to compressed natural gas, or replacing old school buses cuts down on diesel emissions, which negatively impacts human health, particularly children.                     | \$7,410,000   | Port Arthur and Deer Park, TX; Chicago, IL; Mount Vernon, Gary, Hammond, Michigan City, South Bend, Elkart, and Fort Wayne, IN; Communities in Missouri | Dominion Energy, Inc.; Flint Hills Resources; Shell Oil; H. Kramer Co.; Countrymark Refining & Logistics, LLC; Doe Run Resources Corp; Northern Indiana Public Service Co. | Clean Air Act                  |
| Vehicle Charging Stations                 | Electric vehicle charging stations allow for increased use of electric vehicles, decreasing air pollution.  | \$4,000,000   | Southern Louisiana  | Louisiana Generating   | Clean Air Act                  |
| Energy Efficiency Projects                | Energy efficiency projects help reduce/avoid pollution emissions, reduce energy consumption, & save low-income communities money.   | \$3,800,000   | Michigan, Missouri, Illinois  | Consumers Energy; Dominion Energy, Inc.; Doe Run Resources Corp  | Clean Air Act                  |
| Weatherization                            | Weatherization projects include installing insulation, sealing windows/doors, and testing appliances to reduce the use of fossil fuels. Poor weatherization in a home requires additional heating and can increase indoor air pollution.        | \$3,700,000   | Navajo Nation Territory; various communities in Illinois  | Four Corners Power Plant; Dominion Energy, Inc.  | Clean Air Act                  |
| Health Care Trust                         | Trusts help pay for medical exams, treatment, medication, transportation, and other health care needs to address health problems.   | \$2,000,000   | Navajo Nation Territory near Farmington, New Mexico   | Four Corners Power Plant   | Clean Air Act                  |
| Emergency Response Equipment and Training | These projects provide funding for HAZMAT safety trainings or emergency equipment for local fire departments, police departments, and other emergency responders.   | \$1,008,370   | Kansas, Missouri, Iowa, Nebraska; Various fire departments in affected counties; St. Charles Parish Emergency Operations Center, LA                     | Tyson Foods, Inc; AT&T Wireless; Shell Chemical  | Clean Air Act                  |

As noted, in addition to \$2 billion for zero emission vehicles, the bill provides another \$2.7 billion to help states reduce on-road and off-road vehicle emissions in other states.<sup>16</sup> Wilmington Trust has been selected to distribute those funds to eligible projects, based on an allocation formula that reflects the estimated number of Volkswagen vehicles in each state with defective emission controls. The initial allocation reserves at least \$7.5 million for each state,<sup>17</sup> while the ten largest recipients are scheduled to receive \$1.4 billion for eligible projects (Table B).<sup>18</sup>

**Table B. Largest Beneficiaries of \$2.7 Billion Environmental Mitigation Trust Fund**

| Subaccounts                                  | Allocations (\$)     | Allocations (%) |
|--|----------------------|-----------------|
| California                                   | 381,280,175          | 14.12%          |
| Texas  | 191,941,816          | 7.11%           |
| Florida                                      | 152,379,151          | 5.64%           |
| New York                                     | 117,402,745          | 4.35%           |
| Pennsylvania                                 | 110,740,311          | 4.10%           |
| Washington                                   | 103,957,041          | 3.85%           |
| Illinois                                     | 97,701,054           | 3.62%           |
| Virginia                                     | 87,589,313           | 3.24%           |
| North Carolina                               | 87,177,374           | 3.23%           |
| Ohio   | 71,419,317           | 2.65%           |
| <i>Other States and Administrative Costs</i> | <i>1,298,411,704</i> | <i>50.73%</i>   |
| <b>Total</b>                                 | <b>2,700,000,000</b> | <b>100.00%</b>  |

*Note: These are initial allocations of funds from the VW settlement and could change in the future.*

The proposed legislation, HR 732, would prohibit future settlements that require violators to fund similar clean vehicle programs in California or anywhere else. HR 732 is not retroactive, so would not apply to clean vehicle projects funded through the Volkswagen settlement. But Members of Congress who supported this legislation voted to keep federal prosecutors from ever again being able to secure these environmental benefits for their states. The issue is not an academic one. The Justice Department is currently investigating other automakers, including Fiat Chrysler, for violating tailpipe emission standards. If enacted, HR 732 would ensure that any settlements that result from these ongoing investigations do not include funding for environmental projects like those funded by the VW settlement.

### *HR 732 is a Solution in Search of a Problem*

What is so wrong about requiring defendants, as a condition of a settlement, to fund environmental projects to help offset the harm caused by their violations of environmental law?

The House committee report suggests that settlement funding of state and other third party environmental projects illegally diverts funds owed to the U.S. Treasury, or spends federal money for projects not authorized through Congressional appropriations.<sup>19</sup> But federal courts charged with interpreting our laws have not found that to be so, at least where those agreements are reached (as they were in the Volkswagen case) before liability or the appropriate penalties have been determined.

These environmental projects are funded by violators, not taxpayers, through settlements that defendants have voluntarily accepted to avoid civil or criminal prosecution. They are managed by



state or local agencies in most cases, and occasionally by other third parties, but not by the federal government. These commitments are above and beyond any monetary penalties imposed by courts or required under consent decrees or plea agreements, which are deposited with the U.S. Treasury as law requires.

The committee report states that if consent decrees can no longer include funding for environmental projects, "...the violator is not let off the hook. The full penalty is paid, but into the Treasury."<sup>20</sup> But a defendant willing to help fund an environmental restoration project is often not as ready to pay the same amount in penalties. Supporting a state or local environmental initiative can help a defendant repair its reputation and earn good will, while paying higher penalties can reinforce impressions of guilt.

The committee cites the Crime Victims Act to argue that current federal law restricts any funding of third parties in settlements to payments to victims that are "directly and proximately harmed by a defendant's acts."<sup>21</sup> But while that law *entitles* crime victims the right to a minimal level of restitution, it does not limit a prosecutor's *discretion* to negotiate and obtain funding for environmental projects in either criminal or civil cases.

The committee reassures us that Congress can best decide whether or how to allocate funds to help offset the general harm to specific communities or watersheds that have been hit the hardest by illegal pollution. But that seems a false promise. When would legislators even have time to consider those issues, given how much effort is spent year after year just keeping the government open from one month to the next?

### *Who Supports This Bill?*

Not surprisingly, the bill is supported by Tea Party enthusiasts like Grover Norquist's "Americans for Tax Reform," "Freedom Works," and the "Heritage Foundation." These are not organizations that share any enthusiasm for federal enforcement of environmental laws, to put it mildly. And they have no interest in seeing polluters pay the "full penalty" that the House Judiciary Committee mistakenly thinks defendants will gladly pay instead of funding the environmental improvements banned by this legislation.

HR 732 is one of a package of bills pending in Congress that are designed to hollow out laws that protect public health and the environment by, for example, giving corporations more influence over scientific decision-making, requiring regulatory agencies to pay more attention to costs than benefits, and making rules harder to enforce.<sup>22</sup>

## Conclusion

While House leadership usually worships at the altar of “states’ rights,” HR 732 would strip state and local governments of funding for environmental projects that polluters have repeatedly shown they are willing to pay for in settlement agreements. That seems unfair, given that we rely so heavily on state and local agencies to help implement our environmental laws.

The projects that defendants have agreed to fund in settlements also help to make the air and water cleaner for people who suffer the most when our environmental laws are violated. These include the residents of low income and minority neighborhoods clustered next to some the biggest sources of pollution in the country. Congress should let prosecutors do their jobs and stop trying to shut down enforcement settlements that help pay for environmental improvements that enhance the public’s health and quality of life.

## Appendix I. Initial Allocations of Environmental Mitigation Trust from VW 2.0L Engine Settlement\*

| Subaccounts    | Allocations (\$) | Allocations (%) |
|----------------|------------------|-----------------|
| California     | 381,280,175      | 14.12%          |
| Texas          | 191,941,816      | 7.11%           |
| Florida        | 152,379,151      | 5.64%           |
| New York       | 117,402,745      | 4.35%           |
| Pennsylvania   | 110,740,311      | 4.10%           |
| Washington     | 103,957,041      | 3.85%           |
| Illinois       | 97,701,054       | 3.62%           |
| Virginia       | 87,589,313       | 3.24%           |
| North Carolina | 87,177,374       | 3.23%           |
| Ohio           | 71,419,317       | 2.65%           |
| Maryland       | 71,045,825       | 2.63%           |
| Massachusetts  | 69,074,008       | 2.56%           |
| Oregon         | 68,239,144       | 2.53%           |
| New Jersey     | 65,328,105       | 2.42%           |
| Wisconsin      | 63,554,019       | 2.35%           |
| Colorado       | 61,307,576       | 2.27%           |
| Michigan       | 60,329,906       | 2.23%           |
| Georgia        | 58,105,433       | 2.15%           |
| Arizona        | 53,013,862       | 1.96%           |
| Connecticut    | 51,635,238       | 1.91%           |
| Minnesota      | 43,638,120       | 1.62%           |
| Tennessee      | 42,407,794       | 1.57%           |
| Missouri       | 39,084,816       | 1.45%           |
| Indiana        | 38,920,040       | 1.44%           |
| Utah           | 32,356,471       | 1.20%           |
| South Carolina | 31,636,950       | 1.17%           |
| New Hampshire  | 29,544,298       | 1.09%           |
| Alabama        | 24,084,727       | 0.89%           |
| Nevada         | 22,255,716       | 0.82%           |
| Maine          | 20,256,436       | 0.75%           |
| Iowa           | 20,179,541       | 0.75%           |
| Oklahoma       | 19,086,528       | 0.71%           |
| Kentucky       | 19,048,080       | 0.71%           |
| Louisiana      | 18,009,993       | 0.67%           |

\* Initial allocations from the consent decree, filed Oct. 25, 2016, include all prospective beneficiaries of the environmental mitigation trust. If beneficiaries do not apply to receive funds, their allocation will be redistributed among the remaining beneficiaries.

Appendix I continues on next page.

## Appendix I, continued

| <b>Subaccounts</b>                    | <b>Allocations (\$)</b> | <b>Allocations (%)</b> |
|---------------------------------------|-------------------------|------------------------|
| Vermont                               | 17,801,277              | 0.66%                  |
| New Mexico                            | 16,900,503              | 0.63%                  |
| Idaho                                 | 16,246,892              | 0.60%                  |
| Kansas                                | 14,791,373              | 0.55%                  |
| Arkansas                              | 13,951,016              | 0.52%                  |
| Rhode Island                          | 13,495,137              | 0.50%                  |
| Montana                               | 11,600,215              | 0.43%                  |
| Nebraska                              | 11,528,812              | 0.43%                  |
| West Virginia                         | 11,506,842              | 0.43%                  |
| Mississippi                           | 9,249,414               | 0.34%                  |
| Delaware                              | 9,051,683               | 0.34%                  |
| Puerto Rico                           | 7,500,000               | 0.28%                  |
| North Dakota                          | 7,500,000               | 0.28%                  |
| Hawaii                                | 7,500,000               | 0.28%                  |
| South Dakota                          | 7,500,000               | 0.28%                  |
| Alaska                                | 7,500,000               | 0.28%                  |
| Wyoming                               | 7,500,000               | 0.28%                  |
| District of Columbia                  | 7,500,000               | 0.28%                  |
| Tribal Allocation Subaccount          | 49,652,858              | 1.84%                  |
| Trust Administration Cost Subaccount  | 27,000,000              | 1.00%                  |
| Tribal Administration Cost Subaccount | 993,057                 | 0.04%                  |
|                                       | <b>2,700,000,000</b>    | <b>100.00%</b>         |

Appendix 2. Breakdown of the 17-8 Committee on the Judiciary Vote in Favor of HR 732 on March 20, 2017

| Representative    | Party | State | In Favor | Against |
|-------------------|-------|-------|----------|---------|
| Robert Goodlatte  | R     | VA    | X        |         |
| Darrell Issa      | R     | CA    | X        |         |
| Trent Franks      | R     | AZ    | X        |         |
| Louie Gohmert     | R     | TX    | X        |         |
| Jim Jordan        | R     | OH    | X        |         |
| Jason Chaffetz    | R     | UT    | X        |         |
| Tom Marino        | R     | PA    | X        |         |
| Trey Gowdy        | R     | SC    | X        |         |
| Blake Farenthold  | R     | TX    | X        |         |
| Chris Collins     | R     | GA    | X        |         |
| Ron DeSantis      | R     | FL    | X        |         |
| Ken Buck          | R     | CO    | X        |         |
| Mike Bishop       | R     | MI    | X        |         |
| Martha Roby       | R     | AL    | X        |         |
| Matt Gaetz        | R     | FL    | X        |         |
| Mike Johnson      | R     | LA    | X        |         |
| Andy Biggs        | R     | AZ    | X        |         |
| John Conyers, Jr. | D     | MI    |          | X       |
| Jerrold Nadler    | D     | NY    |          | X       |
| Steve Cohen       | D     | TN    |          | X       |
| Hank Johnson      | D     | GA    |          | X       |
| Karen Bass        | D     | CA    |          | X       |
| David Cicilline   | D     | RI    |          | X       |
| Eric Swalwell     | D     | CA    |          | X       |
| Pramila Jayapal   | D     | WA    |          | X       |

## Appendix 3. Examples of Supplemental Environmental Projects from EPA Enforcement Cases, 2000-2017

| Project Type                              | Purpose  | Funding       | Location  | Cases   | Year |
|---|--|---------------|---|---|------|
| Oil Spill Prevention                      | Funding for research, development, education, and training can be used to improve oil spill prevention and response efforts for future spills.   | \$350,000,000 | Gulf of Mexico states                           | BP Exploration and Production, Inc.   | 2012 |
| Stream and Ecosystem Restoration Projects | Ecosystem restoration projects include revegetation of streams, bank and bed revitalization, the removal of invasive species, etc. They improve the natural habitat, improve water quality, prevent erosion, and improve stormwater retention. | \$175,000     | Northwest Indiana, Grand Calumet River          | Gary Sanitary District; City of Gary, IN  | 2016 |
|   |  | \$24,000,000  | North Carolina, Virginia                        | Duke Energy Business Services LLC, Duke Energy Carolinas LLC, Duke Energy Progress Inc. | 2015 |
|   |  | \$218,400     | Ottawa River, Ohio                              | City of Lima, OH  | 2014 |
|   |  | \$2,000,000   | Michigan  | Consumers Energy  | 2014 |
|   |  | \$150,000     | Union County, AR near Ouachita River            | El Dorado Chemical  | 2014 |
|   |  | \$2,500,000   | Lake Michigan Watershed                         | Dominion Energy, Inc.   | 2013 |
|   |  | \$200,000     | Fitchburg, MA; Nashua River watershed           | City of Fitchburg, MA   | 2012 |
| Solar Projects                            | Solar projects provide local communities and schools with clean, renewable energy.   | \$2,000,000   | Fond du Lac Tribal Lands in Minnesota           | Minnesota Power   | 2014 |
|   |  | \$2,000,000   | Brown, Marathon, and adjacent counties in Wisc. | Wisconsin Public Service Corporation  | 2013 |
|   |  | \$5,000,000   | Louisiana                                       | Louisiana Generating  | 2012 |
|   |  | \$2,000,000   | Alma and Genoa, WI                              | Dairyland Power Cooperative   | 2012 |
|   |  | \$1,212,750   | Havasupai Reservation, AZ                       | Dept. of the Interior, Indian Affairs   | 2011 |
| Replacement of old wood-burning stoves    | Wood-burning appliances are sometimes used in homes to produce heat. These projects offer incentives for residents to replace these appliances with cleaner or energy-efficient appliances to reduce indoor/outdoor air pollution.             | \$3,000,000   | Communities with extensive woodstove use        | Harley Davidson   | 2016 |
|   |  | \$200,000     | San Joaquin Valley                              | J.R. Simplot  | 2015 |
|   |  | \$150,000     | San Joaquin Valley                              | Guardian Industries   | 2015 |
|   |  | \$500,000     | North Carolina                                  | Duke Energy Co.   | 2015 |
|   |  | \$3,200,000   | Navajo Nation Territory near Farmington, NM     | Four Corners Power Plant  | 2015 |
|   |  | \$1,000,000   | Denver area                                     | Noble Energy, Inc.  | 2015 |
|   |  | \$500,000     | Fond du Lac Tribal Lands in Minnesota           | Minnesota Power   | 2014 |
| School Bus Retrofitting                   | Retrofitting school buses with emission control equipment, converting to compressed natural gas, or replacing old school buses cuts down on diesel emissions, which negatively impacts human health, particularly children.                    | \$2,000,000   | Port Arthur, TX                                 | Flint Hills Resources   | 2014 |
|   |  | \$200,000     | Deer Park, TX                                   | Shell Oil   | 2013 |
|   |  | \$500,000     | Indiana   | Dominion Energy, Inc.   | 2013 |
|   |  | \$3,500,000   | Northwest, IN                                   | Northern Indiana Public Service Co.   | 2011 |
|   |  | \$1,100,000   | Bee Fork Creek Communities, Missouri            | Doe Run Resources Corp.   | 2010 |

Appendix 3 continues on next page.

## Appendix 3, continued

| Project Type                              | Purpose   | Funding     | Location  | Cases  | Year |
|---|---|-------------|---|--|------|
| Vehicle Charging Stations                 | Electric vehicle charging stations allow for increased use of electric vehicles, decreasing air pollution   | \$4,000,000 | Southern Louisiana  | Louisiana Generating                                   | 2012 |
| Energy Efficiency Projects                | Energy efficiency projects help reduce/avoid pollution emissions, reduce energy consumption, & save low-income communities money.   | \$500,000   | Michigan  | Consumers Energy                                       | 2014 |
|   |   | \$2,200,000 | Schools and food banks in Illinois, Somerset and Fall River in Massachusetts  | Dominion Energy, Inc.                                  | 2013 |
|   |   | \$1,100,000 | Bee Fork Creek communities, Missouri  | Doe Run Resources Corp.                                | 2010 |
| Weatherization                            | Weatherization projects include installing insulation, sealing windows/doors, and testing combustion appliances to reduce the use of fossil fuels. Poor weatherization in a home requires additional heating and can increase indoor air pollution. | \$1,500,000 | Navajo Nation Territory near Farmington, NM   | Four Corners Power Plant                               | 2015 |
|   |   | \$2,200,000 | South Fork School District in Kincaid, IL; Central Illinois Foodbank; Somerset and Fall River, MA   | Dominion Energy, Inc.                                  | 2013 |
| Health Care Trust                         | Trusts help pay for medical exams, treatment, medication, transportation, and other health care needs to address health problems.   | \$2,000,000 | Navajo Nation Territory near Farmington, New Mexico   | Four Corners Power Plant                               | 2015 |
| Emergency Response Equipment and Training | Several cases have required defendants to provide funding for HAZMAT safety trainings, emergency equipment for local fire departments, police departments, and/or other emergency responders  | \$300,000   | Kansas, Missouri, Iowa, Nebraska  | Tyson Foods, Inc.                                      | 2013 |
|   |   | \$625,000   | Fire departments in Palm Beach & Putnam County, FL; NYC Fire Department; Yancey, TX Volunteer Fire Department; San Diego, County California Office of Emergency Services; Bodega Bay, California Fire Protection District; LAPD | AT&T Wireless  | 2013 |
|   |   | \$83,370    | St. Charles Parish Emergency Ops Center, Louisiana  | Shell Chemical   | 2010 |
| Green Lighting Project                    | Reduces carbon dioxide, sulfur dioxide, and nitrogen oxide emissions by converting to more energy efficient lighting fixtures   | \$350,000   | Lemont-Bromberek Consolidated School District, Illinois   | Citgo Petroleum Corporation, PDV Midwest Refining, LLC | 2016 |
| Truck Stop Electrification Project        | These projects install electrification equipment so truck drivers can turn their engines off to reduce fuel usage, noise, and pollution when making stops.  | -           | North Carolina  | Duke Energy Co.  | 2015 |

## NOTES

<sup>1</sup> U.S. Department of Justice. *United States Files Complaint Against Fiat Chrysler Automobiles for Alleged Clean Air Act Violations*. 2017. Available at:

<https://www.justice.gov/opa/pr/united-states-files-complaint-against-fiat-chrysler-automobiles-alleged-clean-air-act>

<sup>2</sup> Jim Lynch, “Lawsuit Claims GM Used VW-like Defeat Devices,” *The Detroit News*, May 25, 2017. Link: <http://www.detroitnews.com/story/business/autos/general-motors/2017/05/25/gm-diesel-lawsuit/102144038/>

<sup>3</sup> United States District Court. Northern District of California. In re: Volkswagen “Clean Diesel” MDL. Executive Summary of Final Class Settlement Program (2.0 Liter Engine Vehicles). Available at: <http://www.cand.uscourts.gov/crb/vwmdl/final-settlement-2-Liter>

<sup>4</sup> HR Report No. 115-72 (2017). Available at: <https://www.congress.gov/115/crpt/hrpt72/CRPT-115hrpt72.pdf>

<sup>5</sup> HR 5063, Stop Settlement Slush Funds Act of 2016, 115<sup>th</sup> Cong. Available at: <https://www.congress.gov/bill/114th-congress/house-bill/5063>

<sup>6</sup> U.S. Department of Justice. *United States Files Complaint Against Volkswagen, Audi and Porsche for Alleged Clean Air Act Violation*. 2016. Available at: <https://www.justice.gov/opa/pr/united-states-files-complaint-against-volkswagen-audi-and-porsche-alleged-clean-air-act>

<sup>7</sup> U.S. District Court, Volkswagen Summary.

<sup>8</sup> Those environmental commitments are in addition to the \$10 billion that it will cost Volkswagen to repurchase cars with dirty engines, another \$4.3 billion in civil and criminal fines the company later agreed to pay, and jail sentences for corporate managers responsible for installing defeat devices to shut off emission controls.

<sup>9</sup> Partial Consent Decree (2016). *United States of America v. Volkswagen AG et al.*, Case No. MDL No. 2672 CRB (JSC). Appendix D-1, available at: <https://www.vwcourtsettlement.com/en/docs/DOJ/Approved%20Appendix%20D-1.pdf>

<sup>10</sup> HR 732, Stop Settlement Slush Funds Act of 2017, 115<sup>th</sup> Cong. Available at: <https://www.congress.gov/115/bills/hr732/BILLS-115hr732rh.pdf>

<sup>11</sup> Peter Campbell, “Car industry left reeling by multiple investigations,” *Financial Times*, April 27, 2016. Available at: <https://www.ft.com/content/fc3786fe-0c7f-11e6-b0f1-61f222853ff3>

<sup>12</sup> HR 732.

<sup>13</sup> HR Report No. 115-72.

<sup>14</sup> *Id.* at 3.

<sup>15</sup> *Id.* at 41.

<sup>16</sup> Partial Consent Decree, Appendix D-1.



<sup>17</sup> U.S. Environmental Protection Agency. Frequently Asked Questions (FAQ) for Beneficiaries to the Volkswagen Mitigation Trust Agreement (2016). Available at: <https://www.epa.gov/sites/production/files/2016-11/documents/fagsecondedition.pdf>

<sup>18</sup> Partial Consent Decree, Appendix D-1.

<sup>19</sup> HR Report No. 115-72, at 3.

<sup>20</sup> *Id.* at 3.

<sup>21</sup> *Id.* at 3.

<sup>22</sup> The House has passed several bills in 2017 that would harm public health. H.R. 1430 (“HONEST Act”) prohibits EPA from using data that is not publicly available and would cripple the Agency’s ability to use scientific evidence to craft rules. Much of the data used to develop protections like the Clean Air Act and water quality standards include health studies with confidential data, which would be restricted by this bill or require significant resources to redact data. See H.R. 1430, 115<sup>th</sup> Cong. Available at: <https://www.congress.gov/bill/115th-congress/house-bill/1430>; H.R. 1431 (the “EPA Science Advisory Board Reform Act of 2017”) establishes new rules on selecting members of EPA’s Science Advisory Board and makes it easier for industry representatives to join the board. Restrictions placed on research grants for members on the board further discourage scientists from serving on the panel and threatens EPA’s access to the best available science. See H.R. 1431, 115<sup>th</sup> Cong. Available at: <https://www.congress.gov/bill/115th-congress/house-bill/1431>; H.R. 1009 (“OIRA Insight, Reform, and Accountability Act”) requires agencies provide information such as costs and benefits of proposed rules to OIRA, similar to Executive Order 12866, but would require a cost-benefit analysis for public health standards formerly exempted from these rules, such as the National Ambient Air Quality Standards. Adding these hurdles would make it more challenging to establish regulations designed to protect public health. See H.R. 1009, 115<sup>th</sup> Cong. Available at: <https://www.congress.gov/bill/115th-congress/house-bill/1009>.