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Subject: Volkswagen Comments in Response to Amendments to California's Emission Warranty Information Reporting and Recall Regulations and Emission Test Procedures

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Volkswagen of America, Inc. (Volkswagen) welcomes the opportunity to submit comments on behalf of Volkswagen AG, AUDI AG, Bentley Motor Cars, Ltd., Automobili Lamborghini, SpA, and Bugatti Automobiles S.A.S., in response to the following California Air Resources Board (ARB) notice:

Notice of Public Hearing to Consider Amendments to California's Emission Warranty Information Reporting and Recall Regulations and Emission Test Procedures (Released October 6, 2006)

As a member of the Alliance of Automobile Manufacturers (Alliance), Volkswagen concurs with comments filed by the Alliance on behalf of its members.

In addition, Volkswagen strongly objects to the proposed revisions to the requirements which, in its opinion, would; 1) deprive the manufacturer of the opportunity to demonstrate that vehicles do not exceed prescribed emission standards, 2) potentially impose emission warranty requirements beyond the useful life of the vehicles, 3) deprive the manufacturer of due process, and 4) impose an unreasonable (and undefined) emission certification burden.

Volkswagen specifically wishes to emphasize its concern regarding the fourth item identified above. Appendix B to the Staff Report: Initial Statement of Reasons for Proposed Rulemaking provides proposed changes to the emission standards and test procedures. The procedures incorporate, by reference, applicable portions of the regulations used by the U.S. Environmental Protection Agency to implement the emission certification program. In some instances, ARB amends these regulations to address their specific needs.

In this case, the exhaust, refueling and evaporative emission durability demonstration procedures are proposed to be amended to require the following:

Beginning with 2010 model-year vehicles or engines, at the time of certification manufacturers shall demonstrate that the emission control devices on their vehicles or engines will not exceed a valid failure rate of 4% or 50 vehicles, whichever is greater, in an engine family, test group or subgroup over the useful life of the vehicles or engines they are installed in. If any emission control device fails at this rate, that constitutes a violation of these test procedures and it entitles the Executive Officer of the Air Resources Board to require that the vehicles or engines they are installed in be recalled or subjected to corrective action as set forth in title 13 CCR, Division 3, Chapter 2, Article 5, sections 2166 through 2174.

The inclusion of this provision, without further explanation or guidance, essentially requires the manufacturer to predict the future.

As ARB is well aware, the emission certification program must begin more than one year in advance of the start of production for any given test group. As such, the durability program, which is the only aspect of the pre-production emission certification process that evaluates the emission characteristics of the vehicle over its full useful life, must use prototype vehicles and/or components. The methodology employed by manufacturers to complete the durability requirement varies, as permitted by the regulations. That is, manufacturers may perform mileage accumulation and testing on entire vehicles or may perform bench tests on key emission-related components. Because of the time-sensitive nature of the emission certification program, these tests are accomplished under an accelerated time schedule. Also, as prescribed by the regulations, the durability programs are conducted under specified operating conditions.

ARB's Staff Report cites the requirement of the California Health and Safety Code Section 43106 which provides, in part,

"Each new motor vehicle or engine required pursuant to this part to meet the emission standards established pursuant to Section 43101 shall be, in all material respects, substantially the same in construction as the test motor vehicle or engine, as the case may be, which has been certified by the state board in accordance with this article."

The Staff report also acknowledges the fact that, "At the time of certification, manufacturers test *prototype* [emphasis added] vehicles to demonstrate that their emission control components will be durable and last for the useful life of the vehicle."¹ Through the durability procedure described above, the manufacturer's own component durability testing, and reliance on suppliers' durability and batch sampling procedures, manufacturers have, to the extent feasible, established

¹ Staff Report: Initial Statement of Reasons for Proposed Rulemaking, Public Hearing to Consider Amendments to California's Emission Warranty Information Reporting and Recall Regulations and Emission Test Procedures, Date of Release: October 20, 2006, pg. 12.

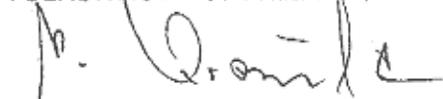
procedures under the current emission certification requirements, to ensure emission compliance and emission control system durability for the full useful life of the vehicle.

To go beyond current practice, as suggested by the amendments to the emission test procedures, would impose an unreasonable burden on the manufacturer, assuming that some type of testing or evaluation could be devised. The certification program, as described above, precludes the implementation of long term test projects that would adequately represent all forms of vehicle use and operation. As such, Volkswagen is at a loss as to how it can demonstrate, at the time of certification, that any given emission control device on our vehicles will not exceed a valid failure rate of four percent or 50 claims, in a test group.

ARB provides no insight in the Staff Report, into what might be an acceptable demonstration of compliance with this proposal. Rather, the Staff Report simply states; "Staff believes adding this requirement in the test procedures will ensure the manufacturer understands its obligation during the certification process to accurately represent the durability of emission control components."² Volkswagen can assure ARB that it already fully understands its obligations, and has taken steps under the current emission certification program to ensure vehicle and component durability. Volkswagen does this not only to satisfy its regulatory obligations, but to enhance quality, ensure customer satisfaction, and reduce costs associated with warranty claims, service actions and recalls.

In conclusion, Volkswagen concurs with the Alliance in requesting that the Board reject the proposed rulemaking and direct Staff to work with interested parties in developing more appropriate requirements. Further, Volkswagen requests the Board direct ARB Staff to retain the existing regulatory language with respect to durability demonstration in the emission test procedures. The proposed amendments are undefined and without precedent in the realm of motor vehicle regulation (Not even the Federal Motor Vehicle Safety Standards (FMVSS) administered by NHTSA impose such a burdensome requirement). If adopted these amendments would impose an unmanageable and unnecessary burden. In addition, the intended "legal link" between the certification process and in-use compliance is already described in the California Health and Safety Code Section 43106, which has long been in place, and serves its intended purpose.

Sincerely,
VOLKSWAGEN OF AMERICA, INC.



Norbert Krause, Director
Engineering and Environmental Office

² Staff Report: Initial Statement of Reasons for Proposed Rulemaking, Public Hearing to Consider Amendments to California's Emission Warranty Information Reporting and Recall Regulations and Emission Test Procedures, Date of Release: October 20, 2006, pg. 21.