

Harris County seeks millions from Volkswagen for unlawful fumes

By Gabrielle Banks

September 29, 2015 Updated: September 29, 2015 9:46pm

Harris County seized on the outrage of the Volkswagen emissions scandal, saying in a multimillion dollar lawsuit filed Tuesday that the German automaker contributed to the region's poor air quality.

In what is likely the first government lawsuit over Volkswagen's deception, Harris County officials claim that 6,000 diesel cars circulating on local roadways produced harmful emissions. These vehicles came off the line between 2009 and 2015, installed with software that could circumvent emissions monitoring.

"We have to use the maximum power of the law to penalize them. It is a grave act, what they've done," said Terence O'Rourke, the special assistant county attorney. "When you cheat like this, with the biggest car company in the world, and you lie in such a sinister way, you jeopardize the entire system of environmental regulations."

Harris County Commissioners Court approved the lawsuit Tuesday morning and hired three law firms to handle the matter on a contingency basis. Within a few hours, the county and its lawyers had filed the suit based on "deceptive acts" that "have undermined Harris County's efforts to improve air quality ... and protect our citizens."

O'Rourke said the county is particularly at risk because it is home to the largest petrochemical complex in the U.S., it experiences major vehicular traffic, and it already fails to meet basic standards set by the Clean Air Act and the Texas Commission on Environmental Quality.

Volkswagen officials declined to comment on the lawsuit or any pending litigation, said Jeanine Ginivan, senior manager of corporate communications at Volkswagen Group of America, Inc. in Herndon, Va.

'We totally screwed up'

Last week, Volkswagen of America's CEO Michael Horn told an audience at a launch for the 2016 Passat, "Our company was dishonest with the EPA" and "we totally screwed up."

Software in the Volkswagen vehicles registered significantly cleaner readings during emissions tests than the air they emitted while operating on the road. The software impacted 11 million diesel vehicles worldwide.

Some harmful vehicle emissions, nitrous oxides and volatile organic compounds create ozone when they get hit with sunlight. Harris County has dangerous ozone levels to begin with, which can create or exacerbate chest pain,



Photo: DAVID MCNEW, STR

A state technician on Friday prepares to test the diesel emissions of a 2013 Volkswagen Passat in El Monte, Calif. The emission tests cheating scandal has shaken not just Volkswagen, but the worldwide auto industry.

coughing, throat irritation and congestion. The lawsuit alleges that Volkswagen emissions further imperiled the public by brazenly violating emissions requirements.

The county does not have any Volkswagens in its fleet, said Dre Dupont, the county fleet manager. Instead, the focus of this suit is the extent to which Volkswagen, Audi and their affiliates violated Texas emissions standards, creating a public health hazard for anyone in Harris County who came into contact with the cars' fumes.

Volkswagen said about 500,000 vehicles in the U.S. made since 2009 had the fraudulent emissions software.

Lawyers here, estimating those faulty vehicles were spread evenly across the country, say there were 6,000 affected cars in Harris County. Texas code stipulates a rate of \$50 to \$25,000 in penalties per violation for each day that a car is in use.

Andrew Adams, an advocate for tort reform and a former board member of Citizens Against Lawsuit Abuse, said the lawsuit does not appear frivolous. "Based on what I've seen, you've got a bad actor here," Adams said. "Someone needs to hold them accountable."

Volkswagen executives announced last week the corporation had set aside \$=7.3 billion to address the cost of recalls and damages.

Harris County gets in line

County Judge Ed Emmett said unabashedly

that the county's impetus was to get in line, since Volkswagen officials have publicly stated they are liable. "Volkswagen and everybody's already said this is going to be a big settlement," Emmett said.

"We do know that we have thousands of those vehicles here. Everybody knows there's going to be a whole lot of people - every county, every state, everybody's going to get involved. This just puts us in the line."

The firms retained for the case are Mithoff Law, whose chief counsel Richard Mithoff represented the county in tobacco litigation to recover health care costs, Baker-Wotring LLP, and Abraham, Watkins, Nichols, Sorrels, Agosto & Friend.

In 1998, Mithoff's firm settled with the tobacco companies for \$2.2 billion on behalf of all Texas counties, including several million for Harris County.

Mithoff said the attorneys could be needed because this could be a complex undertaking. The investigation of Volkswagen could include questioning executives, software engineers and designers and those involved in the decision to rig the equipment.

"This was not an overnight slip-up somewhere," he said. "It appears to be a very complex deception involving a number of people at a number of entities, but these are things we will have to explore."