



Largest Penalty in U.S. *Clean Air Act* History for Underreporting Emissions and Fuel Economy

By [John Georgakopoulos](#), Partner, with the assistance of Mark Youden, student-at-law. © Willms & Shier Environmental Lawyers LLP.



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On November 3, 2014, the U.S. Environmental Protection Agency (U.S. EPA) announced a proposed settlement between Kia, Hyundai, U.S. Government and California Clean Air Resources Board which marks the largest civil penalty in Clean Air Act history. The settlement will resolve the automakers' alleged Clean Air Act violations. As part of the proposed settlement, the automakers will pay a \$100 million civil penalty (Hyundai to pay \$56.8 million and Kia to pay the balance) to resolve alleged violations of emissions testing and certification of vehicles sold in the U.S. The consent decree allocates the proceeds of the penalties as follows: \$93,656,600 to the U.S. Government and \$6,343,400 to the California Air Resources Board.

The Complaint

The complaint filed by the California Clean Air Resources Board and the U.S. Government alleged that the automakers would collectively emit approximately 4.75 million metric tons more greenhouse gases (GHGs) than the automakers' certified to the U.S. EPA. The alleged violations arose from the automakers' introduction into the U.S. market of over 1 million vehicles (model years 2012 and 2013) that were not covered by Certificates of Conformity as required by the *Clean Air Act*. These vehicles did not conform to the specifications included in the automakers' applications for Certificates of Conformity.

A Certificate of Conformity covers only those vehicles that conform to the design specifications stated in an automakers' application. The issue here was the vehicles' road load force. A vehicle's road load force is a critical design specification that determines laboratory settings for testing fuel economy rates and GHG emissions. If the accurate road load force is used, the vehicle's emissions during laboratory testing are determinative of real-world driving conditions. The automakers' vehicles subject to the complaint allegedly had higher road load forces than described in the automakers' application for Certificate of Conformity. Due to inaccurate road load forces used during testing, these vehicles actually had lower fuel economy and increased GHG emissions than reported.

Corrective Measures and Audit Testing Under the Consent Decree

In addition to the settlement's civil penalty, the consent decree also requires the automakers to take the following action, which is estimated to cost the automakers approximately \$50 million: (1) the automakers must take certain measures to prevent future violations; (2) those measures must be completed before the automakers perform vehicle emission testing to certify their 2017 model year vehicles; and (3) until the corrective measures are in place, the automakers must audit their fleets to ensure that the vehicles sold conform to certification.

Kia and Hyundai must also forfeit 4.75 million GHG emission credits that they previously claimed. These credits were estimated to be worth over \$200 million. The forfeiture of the automakers' GHG emission credits are to ensure that the automakers cannot take advantage of improperly earned emission credits.

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