

Volkswagen case shows DOJ pursuit of corporate executives

Volkswagen engineer James Liang was recently sentenced to 40 months in prison for his role in what was, according to US authorities, a scheme spanning nearly 10 years to mislead US regulators and customers. According to his plea agreement, Liang and his co-conspirators designed software to cheat standard US emissions tests. Liang is the first Volkswagen executive to be sentenced in connection with this case, to which Volkswagen pleaded guilty in January 2017. The FBI stated “Today’s sentencing is significant as it demonstrates there is and will be personal culpability for corporate executives who knowingly cheat American consumers, violate federal laws, and purposely utilize technologies that further endanger our environment.” This case – and the sentence handed down – demonstrates the DOJ’s intent to fulfil its promises to pursue corporate executives for their wrongdoing, as laid down in the well-known Yates memo.

Volkswagen settled with US authorities in criminal and civil penalties for USD 4.3 billion in January 2017. The company pleaded guilty to participating in a conspiracy to defraud the US, and Volkswagen’s US customers, and to violate the US Clean Air Act. According to the [DOJ](#), Volkswagen repeatedly lied about whether certain diesel vehicles complied with US emissions standards, using software designed to cheat standard US emissions tests (the “defeat device”) to do so. Volkswagen engineers allegedly designed a new diesel engine for Volkswagen’s 2007 models to meet stricter US emissions standards, but later decided they could not obtain this compliance while also satisfying customer demand. Instead, according to the DOJ, they chose to use a software function to cheat standard US emissions tests.

The settlement helped Volkswagen avoid further prosecution. Volkswagen agreed to fully cooperate with the ongoing investigation and with the prosecution of the individuals responsible for these crimes. According to the DOJ, Volkswagen will be under probation and monitored for three years. However, the DOJ’s leniency did not extend to individual executives of the company; in the same press release, the DOJ announced the indictment of six Volkswagen executives and employees for their roles in the matter.

On 25 August 2017, the first employee was sentenced. James Liang, a former engineer who worked in the US, pleaded guilty and was [sentenced](#) to 40 months in prison. Oliver Schmidt, the second Volkswagen employee to be prosecuted in the US, was arrested at Miami airport on 7 January 2017. Schmidt was the General Manager in charge of the Environment and Engineering Office. After pleading guilty in August 2017, he may now face up to seven years in prison and a fine of between USD 40,000 and USD 400,000 after admitting to conspiring to mislead US regulators and violate environmental laws. Schmidt is scheduled to be sentenced on 6 December 2017.

The Volkswagen case marks one of the first major sanctions for corporate wrongdoing since former US Attorney General Sally Yates issued her [memo](#) in September 2015. Yates outlined new standards that companies must follow before reaching a settlement with the DOJ. One of the key requirements is that if companies want to receive credit for cooperating with the authorities, they need to hand over all relevant facts on individuals involved in the misconduct, regardless of their position at the company. This information should be provided before a settlement is reached. In addition, corporate settlements may no longer include protection for individuals; only the company can receive credit for cooperation, unless extraordinary circumstances justify it; see also [In context October 2015](#).

It now appears that the DOJ is fulfilling the promises expressed in the memo to pursue all executives, even foreign executives. In a statement Yates emphasised this by saying “a corporation should get no special treatment as co-operator simply because the crimes took place behind a desk”. The investigation into Volkswagen and its individuals continues. We will continue to monitor the investigation and keep you informed on any further developments.