



Maryland

Department of the Environment

Larry Hogan, Governor
Boyd K. Rutherford, Lt. Governor
Ben Grumbles, Secretary
Horacio Tablada, Deputy Secretary

July 7, 2020

Ford Motor Company
One American Road
Dearborn, MI 48126-2798
Attention: Robert T. Holycross,
Vice President, Sustainability, Environment and Safety Engineering

RE: Low Emission Vehicle Program Enforcement Discretion Directive for Motor Vehicle
Manufacturers subject to the Code of Maryland Regulations (“COMAR”) 26.11.34.02

Dear Mr. Holycross:

This is to advise you that in consideration of the Settlement Agreement Regarding Light-Duty Vehicle GHG Emissions between the California Air Resources Board (“CARB”) and Ford Motor Company (“OEM”) (“Settlement Agreement”), the Maryland Department of the Environment (“MDE”) is exercising its enforcement discretion to allow OEM to comply with the Settlement Agreement commitments. As of the date the Settlement Agreement is effective, MDE will exercise its discretion through Model Year 2026 not to enforce against OEM the fleet-wide, light-duty motor vehicle greenhouse gas (“GHG”) emissions standards (“Vehicular GHG Emission Standards”) that Maryland has adopted in COMAR 26.11.34.02 (“Enforcement Discretion”), provided that OEM meets the condition set forth in this Enforcement Discretion Directive. MDE undertakes this Enforcement Discretion Directive in reliance on OEM’s commitments in the Settlement Agreement.

Background

CARB and OEM voluntarily entered into the Settlement Agreement based on a mutual interest in mitigating their respective risks and resolving potential legal disputes concerning the enforcement of certain motor vehicle standards. Specifically, recently adopted SAFE Rule Part One and Part Two calls into question CARB’s authority, and the authority of those states that have adopted California’s motor vehicle emissions standards pursuant to Section 177 of the Clean Air Act, 42 U.S.C. § 7507 (“Section 177 States”), to adopt and enforce Vehicular GHG Emissions Standards for vehicles manufactured by OEM for Model Years 2021-2026. Ongoing and potentially lengthy litigation over the SAFE Rule Part One and Part Two, to which Maryland is a party, leads to regulatory uncertainty and subjects OEM to considerable enforcement risk. OEM entered into the Settlement Agreement, recognizing that it offers OEM compliance flexibility and greater certainty to plan for its nationwide fleet.

The SAFE Rule Part One and Part Two, and the related litigation, also entail risks that CARB and the Section 177 States may not be able to enforce the Vehicular GHG Emissions Standards

and thereby achieve their GHG reduction goals. The Settlement Agreement provides CARB and the Section 177 States, including Maryland, among other things, greater certainty regarding continuing automotive GHG emission reductions during Model Years 2021-2026.

CARB and the Section 177 States, including Maryland, have taken the position that they are able to enforce the Vehicular GHG Emissions Standards, including that period of time for which EPA purports to have revoked CARB's Clean Air Act waiver of federal preemption for the Vehicular GHG Emissions Standards (and with them, Maryland's standards), if the revoked portions of the waiver are reinstated or if the actions in the SAFE Rule Part One are vacated. MDE may exercise its enforcement discretion with respect to such authority. Md. Code Ann., Envir. §§ 2-101 - 1211 (2013 Repl. Vol.). *See also Neutron v. Dept. of Environment*, 166 Md. App. 549 (2006); *Massachusetts v. Environmental Protection Agency*, 549 U.S. 497, 527 (2007).

MDE has determined that the GHG emissions reductions that will result from OEM's Settlement Agreement commitments are consistent with Maryland's GHG goals and will deliver environmental benefits commensurate with those goals that may not be realized in the absence of the Settlement Agreement.

Condition of Enforcement Discretion

The condition of this Enforcement Discretion Directive is that OEM remains subject to all terms and conditions of the Settlement Agreement, including any modifications made in accordance with paragraph 35 of the Settlement Agreement.

Acknowledgements

In exercising its Enforcement Discretion, MDE acknowledges that OEM's compliance with the Settlement Agreement will be enforced exclusively in accordance with the terms of the Settlement Agreement. As such, MDE will abide by the enforcement, mitigation, dispute resolution, and Force Majeure mechanisms as implemented in accordance with the Settlement Agreement.

MDE further acknowledges that it will abide by the modification and termination terms as implemented in accordance with the Settlement Agreement.

MDE acknowledges that OEM is relying on the MDE's exercise of its enforcement discretion, as described herein, as an important and material basis for the OEM's decision to enter into the Settlement Agreement.

Reservation of Rights

Nothing in this Enforcement Discretion Directive affects OEM's obligation to comply with all relevant portions of Title 2 of the Environmental Article, Annotated Code of Maryland and Title 26, Subtitle 11 of COMAR other than the Vehicular GHG Emission Standards, including its Low Emission Vehicle Program requirements not addressed specifically by the Settlement Agreement.

This document is not a regulation and does not constitute final agency action.

With the exception of OEM and CARB, no Party may rely on this Enforcement Discretion Directive to create rights, duties, obligations or defenses, implied or otherwise, enforceable in any judicial or administrative proceeding with MDE. In addition, this directive does not exempt any person from complying with the other requirements in COMAR 26.11.34.02 or any other applicable local, state or federal law not related to Vehicular GHG Emissions Standards.

If you have any questions concerning the conditions of this directive, please contact Marcia Ways at (410) 537-3286 or marcia.ways@maryland.gov.

Sincerely,

Ben Grumbles
Secretary

cc: Bradley M. Gayton, General Counsel
Ford Motor Company
One American Road
Dearborn, MI 48126-2798