
FCA US LLC

RESPONSE TO COMMENTS DOCUMENT

March 12, 2024

Consent Order No. 2024-02



Gretchen Whitmer, Governor

Air Quality Division
Michigan Department of Environment, Great Lakes, and Energy

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PUBLIC PARTICIPATION PROCESS

Consent order No. 2024-02 (Consent Order) requires FCA US LLC (FCA), to pay a fine and follow a compliance plan. The Consent Order resolves violations alleged by the Michigan Department of Environment, Great Lakes, and Energy (EGLE), Air Quality Division (AQD) at FCA's Jefferson North Assembly Plant (JNAP), located at 2101 Conner Avenue, Detroit, Michigan. The public participation process involved providing information for public viewing, including a Proposed Enforcement Summary (PES), Enforcement Summary Report (ESR), and a proposed Administrative Consent Order. An extended 45-day public comment period was held, during which members of the public provided verbal and written comments on the proposed Consent Order.

Note: During the public notice and comment period, the AQD used "Stellantis" when describing the Company. The proper name is FCA US LLC, which we have abbreviated to FCA. All instances of where "Stellantis" was or could have been used in this document have been changed to "FCA".

Public Comment Period and Opportunities to Participate

On December 7, 2023, a public comment period was opened. The public participation process involved providing information for public review including:

- The PES, ESR, and proposed Consent Order were placed on the AQD Public Notice webpage for [Proposed Consent Orders Open for Comment](#).
- The [Facility Specific Information page on FCA](#) provided an update on the public comment period.
- A notification was sent via email to persons who had previously expressed interest in FCA and had provided a valid email address.
- A notification of the comment period was also sent out through EGLE's subscription platform to the FCA and the Environmental Justice lists.
- Posted information on the enforcement action was on EGLE's FCA webpage at [Michigan.gov/EGLEStellantis](https://www.michigan.gov/EGLEStellantis).
- Posted a notice of the start of the comment period, the date of the informational session and public hearing, and the end of the comment period on the EGLE Outreach Calendar at <https://www.michigan.gov/egle/outreach/calendar>.

An online information session and public hearing was held on January 9, 2024. A [recording](#) of the informational session and public hearing was posted on YouTube.

The virtual information session and public hearing were held on January 9, 2024. Approximately 91 people attended the virtual information session. Representatives from the AQD were available to answer questions about the proposed Consent Order during the information session. Annette Switzer, AQD Division Director, was the decision maker for the action and Jenifer Dixon served as the hearing officer. The information session began at 6:00 p.m. and the

public hearing followed afterward, ending at approximately 7:30 p.m. During the public hearing, verbal comments were provided for the record.

Summary of Changes

No changes were made to the Consent Order as a result of comments received.

Public Comments

Comments were received from a total of 11 parties during the public comment period.

Summary of Significant Comments

1. Comment

FCA should be required to immediately comply with the VOC emissions limit that was violated.

AQD Response

FCA is currently in compliance with the 12-month rolling 4.8 lbs. volatile organic compound (VOC)/job emission limit and has been since September 2023. When drafting the Consent Order, the AQD took into account the length of time of the public notice and comment period which ended on January 23, 2024, the time to draft this response to comments document, and the time to finalize the Consent Order itself. This Response to Comments document is being published after March 1, 2024, and therefore FCA is expected to be continually in compliance with the 4.8 lbs. VOC/job at JNAP.

2. Comment

FCA should include in the final Consent Order an immediate emissions mitigation plan. Rather than waiting for FCA to have another VOC exceedance in a calendar quarter, EGLE should require FCA to have a more proactive plan to prevent emission exceedances from occurring and/or a plan for how they will adjust their operations, optimize, and properly calibrate its spray system during vehicle transition, etc. if they observe problems that would lead to an exceedance. This plan should be available to the public.

AQD Response

FCA's Renewable Operating Permit (ROP) No. [MI-ROP-N2155-2017](#), requires certain records and calculations that track their emissions be kept, including VOC emissions from the paint lines. They are required to compile these records and calculations and submit them to the AQD within 30 days of the last day of each month. Since these records and calculations require data from the entire month, it can take some time to gather and analyze this data and then complete the calculations to determine the level of VOCs emitted from the paint lines for the prior month.

Instead of looking at an entire 12-month period, the compliance plan requires FCA to look at a shorter 3-month period (calendar quarter) and take action if they exceed the 4.8 lbs. VOC/job emission limit in any calendar quarter. This means that, if necessary, FCA will have to take action and develop an Emissions Mitigation Plan depending on emission levels over a three-month period, versus over a 12-month period as required by their ROP. An average emission

limit exceeding 4.8 lbs. VOC/job over a 3-month period does not necessarily mean that FCA is exceeding the permitted emission limit of 4.8 lbs. VOC/job over a 12-month period, but it indicates that VOC emissions are trending upwards and there is a possibility that if FCA does not take action, they may exceed their permitted emission limit. This method will work as a trigger point for FCA to come up with a plan to avoid violating the 12-month VOC limit.

From September 2022 to September 2023, FCA made changes to their paint assembly line process which brought them back into compliance with the lbs. VOC/job emission limit. Due to these changes, the AQD does not expect FCA to exceed this emission limit in the near future. If for any reason this does happen, the AQD will issue a Violation Notice and consider issuing stipulated fines to FCA.

In the case that FCA is required to develop an Emissions Mitigation Plan, the AQD will post the document at Michigan.gov/EGLEStellantis.

3. Comment

The AQD received comments that \$84,420 fine is not large enough. Specifically, commentors stated:

- The fine should be 10 to 100 times this amount, and
- The fine is a minimal consequence given FCA's resources and disturbing compliance history.

AQD Response

The AQD consistently follows the United States Environmental Protection Agency's Clean Air Act Stationary Source Civil Penalty Policy ([USEPA Penalty Policy](#)) to calculate monetary fines. The USEPA Penalty Policy sets out violation categories and corresponding fines based on:

- The gravity of the alleged violations,
- The actual and possible harm to the environmental and public health,
- The importance of achieving the goals of the Clean Air Act and Michigan's Air Pollution Control Rules, and
- The length of time the violations occurred, the size of violator, aggravating and mitigating factors such as cooperation, history of noncompliance, and degree of negligence, and inflation.

Using the USEPA Penalty Policy, the calculated monetary fine in this case included each of the following categories:

- The amount of pollutant emitted over the permitted limit of 4.8 lbs. VOC per job,
- Where the violations happened or sensitivity of the environment. At the time of the violations, JNAP was located in a marginal nonattainment area for ozone,
- Length of time FCA was out of compliance with its' permit requirement,
- The size of the company, and
- How cooperative the company was in correcting the violations.

The AQD believes the \$84,420 for the monetary fine was properly calculated. In addition, if there are future violations of the Consent Order, FCA may be required to pay stipulated fines.

4. Comment

The AQD received comments requesting that FCA complete a Supplemental Environmental Project (SEP) as part of the Consent Order. Commentors suggested different SEP ideas, including:

- A SEP to address air quality issues in the neighborhoods surrounding JNAP,
- Providing air filters or air purification systems for homes,
- Fortifying homes of those in the impact areas, and
- Assessing the potential health risks caused by illegal emissions.

AQD Response

A SEP is a voluntary project that a company can choose to do or not do as part of an enforcement action. The AQD cannot require a company in escalated enforcement to do a SEP and cannot require FCA to conduct a specific project as part of this enforcement action. In this enforcement action, FCA chose not to do a SEP.

Outside of this enforcement action, EGLE, the City of Detroit, and the USEPA are looking for ideas from the community for Environmentally Beneficial Projects in Detroit. For more information, please visit the City of Detroit's webpage at <https://detroitmi.gov/departments/buildings-safety-engineering-and-environmental-department/bseed-divisions/environmental-affairs/environmentally-beneficial-projects>.

5. Comment

FCA has violated its reporting requirements described in its permit by not timely reporting the pounds per job emissions exceedance deviation as required.

AQD Response

Based on this comment, the AQD did an additional assessment of FCA's reporting of the lbs. VOC/job emission exceedance, and determined they met the requirements of Mich Admin Code, R 336.1912 (Rule 912). Rule 912 requires a Company to notify the AQD as soon as possible when it knows a permit deviation has occurred, but not later than two business days after the discovery of an abnormal condition. This notification must be followed by a written report submitted to the AQD within 30 days of discovery of the abnormal condition.

The earliest FCA would have been able to begin assessing the September 2022 data was October 1, 2022, because the limit that was violated is based on a 12-month rolling time period. The September 2022 data was due to be submitted to the AQD by October 30, 2022. FCA verbally notified the AQD they exceeded the VOC emission limit for September 2022 on October 28, 2022. This verbal notification was followed up with a written report submitted to the AQD on November 7, 2022, which was ten days after the discovery of the abnormal condition and within the allowed time frame of 30 days.

6. Comment

The AQD received the following comments regarding stopping or shutting down FCA operations:

- Why doesn't EGLE have the ability to shut down corporations? If they violate a permit, shouldn't they have to stop operations?
- FCA operations should be ordered to stop if any corrective action does not resolve the environmental issues within a 30-day period and should be prevented from restarting until they complete any necessary corrective action.
- I have noticed the negative health effects from the pollution from the plant, including early deaths for residents of Detroit. The plant should close so it's neighbors can have a healthier and happier life.

AQD Response

Under Part 5510 of the National Resources and Environmental Protection Act (NREPA), EGLE has the statutory authority to revoke a permit in different situations. For example, if a company's operation of its facility will violate the air quality rules and regulations, EGLE has the authority to invoke a permit revocation unless the company agrees to come into compliance with a legally enforceable schedule of compliance in a permit or Consent Order. Also, EGLE has the authority under Part 5510 to revoke a company's permit if its operations present or may present an imminent and substantial endangerment to public health. The process of revoking a permit can take many years.

First, FCA has agreed to enter into a Consent Order to legally resolve the violation, which includes a legally enforceable compliance plan. Second, EGLE does not have any health data or other information to establish that the violation presented an imminent and substantial endangerment to public health.

By agreeing to this settlement, FCA is in compliance with a legally enforceable schedule of compliance in this Consent Order. Although FCA was not in compliance with its permit at the time the violation happened, in order to revoke a permit, a company must still be in noncompliance when the permit is revoked. Since FCA returned to and is currently operating in compliance with the air quality rules and regulations, at this time EGLE does not have the authority to revoke their permit.

What the AQD can do is to hold FCA accountable to comply with their permit and the state and federal rules and regulations. The AQD will continue to monitor and evaluate emissions from FCA and can take additional enforcement actions if future violations are found at the facility. The function of this Consent Order is to make sure FCA remains in compliance with the emission limit that was violated. The AQD believes the requirements of the compliance plan adequately address the violation that was alleged, including continual compliance with the 4.8 lbs. VOC/job emission limit and the requirement to submit an Emission Mitigation Plan for the AQD to review and approve in case of upward trending emissions.

7. Comment

The AQD received comments expressing that FCA should be required to fulfill certain demands:

- FCA should be required to pay for and perform multiple daily air quality tests at the source and in the surrounding community to prove consistent compliance,
- FCA should compensate the surrounding community by offering a direct cash payment to residents to help offset the loss in real estate value due to reduced desire to reside next to a facility that has a reputation for negatively impacting the environment,

- FCA should set aside funds in a trust to study community health impacts as well as provide funding for future medical claims resulting from their operations, and
- FCA should buy out homes on Beniteau Street and turn the street into a green space.

AQD Response

These comments are outside the scope of this enforcement action.

When the AQD takes an enforcement action against a company, the resulting Consent Order addresses the violations that were cited in the Violation Notice(s) issued by the district inspector. In this case, the Violation Notice was for exceeding a permitted VOC emission limit. A Consent Order is a mechanism for the AQD to bring a company into compliance with state and federal air quality rules and regulations. The AQD believes the requirements of the compliance plan for FCA adequately address the violations that were alleged.

The AQD is prohibited from directing funding to projects outside the scope of the settlement. Per MCL18.1443 of the Michigan Management and Budget Act, monetary fines paid under a Consent Order must go to the State of Michigan General Fund unless a portion of the fines are going to a SEP as part of a settlement. A SEP was not proposed by FCA as part of this Consent Order. A SEP is a voluntary project that a company can choose to do as part of a settlement, and the AQD cannot require any certain SEP or direct the funds in any way. As part of this Consent Order, the AQD does not have the authority to require FCA to compensate the community, set aside funds for studies, conduct home buy outs, or perform additional testing that is unrelated to the alleged violations in the Consent Order.

8. Comment

The State of Michigan should do clawbacks on FCA over the tax abatements, incentives, and public funds they have received because they continue to violate air quality and threaten public health.

AQD Response

This comment is outside the scope of this enforcement action.

9. Comment

The East Side Community Network and East Side Climate Action Coalition is available to collect data and work with EGLE to find solutions.

AQD Response

The AQD appreciates this offer and will keep this in mind for any future data collection and community outreach efforts.

10. Comment

The AQD received comments expressing that EGLE should take certain actions:

- We would like to see more enforcement and reparations for the harm being done to the community, and
- EGLE needs to do more to do more to address FCA's disregard for the health and safety of the surrounding community and to restore some confidence that it can properly and promptly safeguard the health of the community.

AQD Response

We are empathetic to the concerns of local residents and understand how frustrating the limitations of the Department can be. The laws that give us the authority to make decisions specify what the basis of those decisions must be. The decisions must be based upon the current federal and state rules and regulations in place to protect public health. Each decision we make must be supported by these laws for the decision to be legally upheld.

The AQD staff regularly inspect industrial facilities and respond to citizen complaints in this community to check that these facilities are operating in compliance with state and federal air quality rules and regulations. We follow procedures to escalate significant violations when an enforceable plan is needed to bring a facility back into compliance. If there are future violations at the facilities in this community, the AQD may take enforcement action against these facilities when necessary. However, it is important to note that Consent Orders are administrative settlement agreements and do not provide reparations for harm.

In this case, the AQD took an enforcement action against FCA, required them to pay a fine, and to commit to a compliance plan to ensure compliance with the 4.8 lbs. VOC/job emission limit at JNAP. By signing this Consent Order, FCA is legally required to follow the compliance plan in the Consent Order, and the AQD can assess stipulated fines if violations of the Consent Order are found in the future.