Stunning. But not shocking. That was my reaction to the massive fraud admitted by Volkswagen recently. Stunning in its sheer size and reach; half a million cars in the United States and another ten and a half million globally. Yet not very surprising given the fact that use of mechanical and digital cheat devices has been something of a proud tradition in the automotive industry since the advent of emissions controls. But 11 million cars? And in the context of a marketing strategy that boasted about the environmental virtues of clean diesel? That is the stunner.

What are we to make of this, coming just on the heels of the Justice Department's reaffirmation of its intent to get tough on corporate crime? With all the necessary caveats about waiting for all the facts, a few things seem unlikely to change. Volkswagen has admitted to a willful, sophisticated and until now successful campaign to subvert environmental law in multiple countries. This isn't negligence or even reckless behavior; some coder or group of coders in the bowels of the company or one its suppliers sat at a computer somewhere and wrote the nefarious code. As EPA described it in the Notice of Violation, the software included in the cars' engine control modules purposefully switched to "dyno calibration" during emissions testing. Chances are someone tested it to make sure it would work, perhaps Volkswagen engineers even compared the performance and emissions of test cars on a track and on a dynamometer. And it is doubtful that the software engineers and design engineers came up with this on a lark. As the recent New York Times article detailed, Volkswagen took a chance on clean diesel over hybrid technologies and advanced emissions controls and lost. As the demands of increasingly stringent regulations and need for progressively better performance closed in on it, managers at the company made a choice to cheat.

So what happens to cheaters? Commentators like to say that *Citizens United* stands for the proposition that corporations are people, entitled to the same rights and privileges as natural persons. That probably stretches the actual holding too far, but it gets the general idea right. It follows that corporations ought to be subject to similar obligations and consequences for misconduct. But when push comes to shove, a corporation is not a natural person, and of course you cannot put a corporation in jail. But you can put its managers and employees in jail. Even though that rarely happens, this case may be the very one to turn that tide. Eleven million cars across the globe. Brazen, clear fraud for years followed by attempted deception when questioned by the California Air Resources Board and the EPA. The new Department of Justice's guidelines (just out this month) embrace the notion that "[o]ne of the most effective ways to combat corporate misconduct is by

seeking accountability from the individuals who perpetrated the wrongdoing.” The VW debacle sounds like an excellent test case for this principle.

And you can certainly impose penalties to dissuade this company and others from similar behavior in the future. Volkswagen faces federal penalties in the United States upwards of 18 billion dollars, although maximums are rarely if ever paid. Automakers have paid 300 million and 900 million in fines recently, the former for emissions violations in 1 million cars and the latter for ignition switch defects linked to more than 100 deaths. Of course no one died in a crash as a result of excess emissions of oxides of nitrogen (NO_x). But let’s not forget that, according to EPA, pollution resulting from NO_x emissions is associated with a range of serious health effects, including increased asthma attacks and other respiratory disease, and *premature death* due to respiratory-related or cardiovascular-related impacts. Children, the elderly, and people with pre-existing respiratory disease are most at risk. The point is that Volkswagen’s tons of intentional excess NO_x emissions clearly damaged public health.

Financially penalizing the corporation impacts many individuals. Volkswagen is an aggregation of people—including employees, managers, automobile dealerships and their employees, and shareholders—linked together by networks of contracts and other relationships. Certainly most of the people who are Volkswagen were not involved in this mess, and likely find it as repugnant as many outside the corporation. They are suffering now, and large penalties will exacerbate that pain. Thus setting the appropriate penalty is a difficult balancing act, which should take these consequential impacts into consideration. That said, a fair number of the affected individuals, particularly shareholders and upper level managers, most likely benefited from the bounty generated for Volkswagen by its fraudulent behavior and must be prepared to accept the costs as well.