

We have assembled the following informational document to help explain our understanding of the VW Settlement.

At this time, we are not soliciting public input.

Informational Document VW Settlement Funds



To: RI ZEV Working Group

Prepared by: RIDEM – Office of Air Resources

November 30, 2016

Background

On January 4, 2016, the United States filed a complaint against several Volkswagen companies, referred to herein as Volkswagen, alleging violations of the Clean Air Act with regard to approximately 580,000 model year 2009 to 2015 2.0 and 3.0 liter diesel engines. The complaint alleged that the vehicles contained “defeat devices” in the form of computer software, designed to cheat on federal emissions tests, enabling the vehicles to emit levels of oxides of nitrogen (NOx) as high as 40 times the federal standard without detection by the vehicle’s On Board Diagnostic system, a system that numerous states rely upon to detect and require repairs on vehicles exceeding federal emission standards.

Nitrogen oxides come from an array of sources, including emissions from cars, trucks and buses, power plants, off-road equipment and agricultural sources. In the air, NOx can damage the leaves of plants, decrease their ability to produce food – photosynthesis – and decrease their growth. In addition to directly affecting plants, when deposited on land and in estuaries, lakes and streams, NOx can acidify and over fertilize sensitive ecosystems resulting in a range of harmful deposition-related effects on plants, soils, water quality, and fish and wildlife (e.g., changes in biodiversity and loss of habitat, reduced tree growth, loss of fish species and harmful algal blooms). In addition to their ecological effects, NOx contributes to the formation of ground-level ozone and fine particle pollution that are linked to a number of adverse effects on human cardiovascular and respiratory systems.

Provisions of the VW Consent Decree

On October 25, 2016, a Partial Consent Decree was entered by the Court that resolves issues related to Volkswagen’s 2.0 liter diesel vehicles only. The 3.0 liter vehicle litigation is, as yet, unsettled. The Partial 2.0 Liter Consent Decree (referred to hereafter as the Agreement) provides for the following:

- Volkswagen is required to remove from commerce in the United States or perform an emissions modification on at least 85 percent of the affected 2.0 liter vehicles by June 30, 2019. To achieve this, Volkswagen must offer owners and lessees of affected vehicles the option of a buyback or lease termination or, if an emissions modification solution is approved by the U.S. Environmental Protection Agency (U.S. EPA) and the California Air Resources Board (CARB), the option of an emissions modification.
- Volkswagen must invest \$2 billion to promote the use of Zero Emission Vehicles (ZEVs) and ZEV technology in the United States.¹

¹ Appendix C

- o VW controls how it spends money to satisfy the investment requirement subject to the consent decree requirements and restrictions. VW must solicit input from the states. Investments could include:
 - ZEV Infrastructure
 - Level 2 charging at multi-unit dwellings, workplaces, and public sites
 - DC fast charging facilities accessible to all vehicles utilizing non-proprietary connectors
 - Later generations of charging infrastructure
 - Hydrogen and other ZEV fueling stations
 - ZEV Education
 - Brand-neutral education or public outreach
 - Goal to increase public awareness of ZEVs
 - ZEV Access
 - Programs to increase public exposure and/or access to ZEVs without requiring the consumer to purchase or lease a ZEV at full market value
 - Carshare and ride hailing services, ride and drives
- o There are no named Beneficiaries

➤ And finally, Volkswagen must pay \$2.7 billion into an environmental mitigation trust designed to fully mitigate the excess NOx emissions from the subject 2.0 liter vehicles. Funds from the trust will be allocated to state, tribal and territorial governments to be used for specific NOx reducing actions.²

To view the agreement in its entirety, please see the following webpage: <https://www.epa.gov/vw>

Rhode Island's initial trust allocation is identified in Appendix D-1 of the Partial Consent Decree as \$13,495,136.57. If the Governor decides that Rhode Island should become a beneficiary under the Environmental Mitigation Trust, the State will be entitled to request one third of this figure or approximately \$4.5 million during the first year of the program or two thirds or approximately \$8.9 million during the first two years of the program.

Requirements for Mitigation Plans

The Agreement allocates \$13,495,136.57 of the Environmental Mitigation Trust to the State of Rhode Island. A designated state agency will have primary responsibility for drafting and implementing a “Beneficiary Mitigation Plan” for use of the funds. Pursuant to the requirements of the trust “ . . . each Beneficiary shall submit and make publicly available a “Beneficiary Mitigation Plan” that summarizes how the Beneficiary plans to use the mitigation funds allocated to it under this Trust, addressing: (i) the Beneficiary’s overall goal for the use of the funds; (ii) the categories of Eligible Mitigation Actions the

² Appendix D

Beneficiary anticipates will be appropriate to achieve the stated goals and the preliminary assessment of the percentages of funds anticipated to be used for each type of Eligible Mitigation Action; (iii) a description of how the Beneficiary will consider the potential beneficial impact of the selected Eligible Mitigation Actions on air quality in areas that bear a disproportionate share of the air pollution burden within its jurisdiction; and (iv) a general description of the expected ranges of emission benefits the Beneficiary estimates would be realized by implementation of the Eligible Mitigation Actions identified in the Beneficiary Mitigation Plan.”

Overview of Eligible Mitigation Actions Allowed by the Consent Decree

Appendix D-2 of the Partial Consent Decree outlines eligible mitigation actions and expenditures of the Environmental Trust Agreement Mitigation Program as summarized below.

- Class 8 Local Freight Trucks and Port Drayage Trucks
- School, Shuttle and Transit Buses
- Freight Switchers
- Ferries and Tugs
- Ocean Going Vessels Shorepower Systems
- Class 4-7 Local Freight Trucks
- Airport Ground Support Equipment
- Forklifts and Port Cargo Handling Equipment
- Diesel Emission Reduction Act

Beneficiaries may also use funding for the non-federal match for projects included in the U.S. EPA’s Clean Diesel Program, funded through the Diesel Emission Reduction Act (DERA). Match of the U.S. EPA DERA funds triggers bonus funding from U.S. EPA. The DERA state Clean Diesel Programs administered by eligible states are designed to achieve significant reductions in diesel emissions. Use of DERA funding is pursuant to all U.S. EPA DERA guidelines. A final approved DERA workplan may be used as the Beneficiary Mitigation Plan for use of the DERA funds.

- Light Duty Zero Emission Vehicle Supply Equipment

Up to 15% of the funding from the Environmental Mitigation Trust program may be used for necessary costs and other costs directly connected to, the acquisition, installation, operation and maintenance of new light duty zero emission vehicle supply equipment for projects.

- purchase, installation and maintenance of Level 1, Level 2 or fast charging equipment (or analogous successor technologies) that is located in a public place, workplace, or multi-unit dwelling is reimbursable at a percentage of between 80 and 100 % depending on whether it is located on non-government or government property.
 - purchase, installation and maintenance of Level 1, Level 2 or fast charging equipment (or analogous successor technologies) that is located at a multi-unit dwelling, but not to the general public is eligible for a 60% reimbursement.
 - purchase, installation and maintenance of public light duty hydrogen fuel cell vehicle supply equipment capable of dispensing at least 100 kg/day is reimbursable at a percentage of between 25 and 33% depending on the output capacity.
- Administration
States may use up to 15% of the total cost of the project for eligible administrative costs.

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