

EXHIBIT 4F

Comments Received by Department of Justice

(VW-2LCMT0000727-VW-2LCMT0000829)

From: jkim@shorepower.com
To: jkim@shorepower.com; ENRD, PUBCOMMENT-EES (ENRD)
Sent: 8/5/2016 12:57:13 PM
Subject: In re: Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation, Case No: MDL No. 2672 CRB (JSC), and D.J. Ref. No. 90-5-2-1-11386.

John C. Cruden Esq.
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice
In re: Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation, Case No: MDL No. 2672 CRB (JSC), and D.J. Ref. No. 90-5-2-1-11386.

Dear Mr. Cruden:

Our organization writes to request that the final settlement between the U.S. government and Volkswagen provide maximum flexibility for States and Native American tribes to consider allocating some of their funds to electrified parking spaces (EPS) and truck stop electrification (TSE). Specifically, we ask that the settlement expressly list truck stop electrification as an eligible mitigation activity within Appendix D-2, along with the nine other activities that already include various forms of diesel retrofits and the marine equivalent of truck stop electrification. While TSE is eligible for funding under the DERA program option, we are concerned that some States and Tribes will decline or minimize use of the DERA option. Moreover, should Congress decide not to provide funding for the DERA program, there would be limited opportunity to invest in TSE. We know TSE is a cost-effective strategy to reduce NOx emissions and value this mitigation option.

Too often, drivers idle their engines during overnight stays in order to maintain a safe and comfortable cab interior environment. The practice takes place on a large scale and has a disproportionate impact on disadvantaged communities where truck stops and fleet terminals are often located. DERA's own guidelines flag the communities surrounding truck stops for programmatic priority. The Argonne National Laboratory (http://www.afdc.energy.gov/uploads/publication/hdv_idling_2015.pdf) estimates that rest-period idling wastes about 1 billion gallons of diesel and results in the emission of about 55,000 tons of nitrogen oxides released annually in the US. The EPA rates Truck Stop Electrification as the single most cost effective activity to mitigate mobile sources of NOx emissions (less than one third of the cost per ton achieved through diesel retrofits). See page 13 (<https://www3.epa.gov/otaq/stateresources/policy/general/420b07006.pdf>). Truck Stop Electrification, an EPA SmartWay verified technology, provides long-haul truck drivers an alternative to idling their diesel engines during their overnight stays. Significant NOx mitigation can be achieved through 1) installation of new TSE locations; and 2) TSE vouchers for truck drivers to encourage more truckers to use existing TSE facilities.

Again, we urge you to specifically list EPS/TSE infrastructure and TSE vouchers as eligible mitigation activities under Appendix D-2 of the settlement. This would afford beneficiaries maximum flexibility to achieve the settlement's goal of improving air quality in disadvantaged communities by reducing harmful diesel emissions.

Thank you for your consideration!

Sincerely,

Jean Starke
Shurepower LLC dba Shorepower Technologies
Hillsboro, Oregon
jstarke@shorepower.com

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From: [REDACTED]
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Sent: 8/5/2016 1:01:54 AM
Subject: In re: Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation, Case No: MDL No. 2672 CRB (JSC), and D.J. Ref. No. 90-5-2-1-11386.

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Thank you for your consideration!

Sincerely,

Joseph Licari
Shorepower Technologies
Frankfort, NY
[REDACTED]

I also ask that you consider many inter-related issues involved with Idle-reduction and truck stop electrification.

Beyond the obvious of wasted fuel and carbon emissions, there is also toxic air contaminants, the health of the drivers who congregate in in truck stops and service centers for their mandated rest periods, providing a healthier, more restful sleep environment by shutting the truck down, initiatives to make freight movement in this country more sustainable, interstate corridor approaches for providing alternative fuel (including electricity), and, looking to the not too distant future, the electrification of the transportation industry that includes heavy-duty trucks with the efforts of DOE's Supertruck program, the Aireflow truck (now the Star truck since it picked up a corporate sponsor, Wal-Mart's WAVE truck, the recently announced Nicola 1 truck, and last but not least, Elon Musk's announcement of his intention to produce an electric truck next year. Idling of heavy duty trucks needs to be a practice of the past for the county's benefit, for the climates benefit, and for the driver's benefit. Truck stop electrification, along with being one of the most cost-effective methods to reduce idling and diesel emissions, will be a needed infrastructure to support electrification of the heavy-duty truck market in the future, just as a charging network is needed to support electric vehicles.

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August 5, 2016

Assistant Attorney General
Environment & Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611

Submitted via email to: pubcomment-ees.enrd@usdoj.gov

Re: Proposed Partial Consent Decree Under the Clean Air Act in *In re Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation, Case No: MDL No. 2672 CRB (JSC), and D.J. Ref. No. 90-5-2-1-11386*

Dear Assistant Attorney General:

We commend your office for taking swift and aggressive action to hold Volkswagen accountable for its deceptive marketing and its emissions cheating that has led to damaging climate and health impacts.

We are pleased to see that the Proposed Partial Consent Decree includes dedicated funds to improve and—most critically—to electrify our nation's vehicle fleets. Transportation electrification is vital to reduce oil dependence, improve public health, and achieve federal air quality and carbon emissions reductions goals. Our overarching purpose in submitting these recommendations is to ensure that investments made with settlement funds are forward thinking, equitable, and will result in meaningful emissions reductions from the transportation sector.

Sierra Club is the nation's oldest and largest grassroots environmental organization with more than 2.4 million members and supporters. Sierra Club works to move America beyond the use of fossil fuels and toward renewable energy and clean transportation solutions. Sierra Club has been a leading voice on policies and programs for clean vehicles, from defending vehicle efficiency standards to promoting vehicle electrification through public and policy engagement on the benefits of electric cars, trucks, and buses.

We respectfully submit the following recommendations on the Proposed Partial Consent Decree:

1. **Investments should result in benefits for communities disproportionately impacted by air pollution.** Low-income residents and people of color in the U.S. are disproportionately exposed to air pollution, including emissions from diesel-powered freight vehicles and buses as well as heavy traffic corridors. For the \$2 billion allotment of funds assigned to electric vehicle (EV)

infrastructure programs, we believe there should be a designation for installation in low-income areas. We should also ensure that EV infrastructure funds are spent, in part, on improving access to charging at multi-unit dwellings and workplaces as well as to establish direct current fast charging stations—charging locations and applications that are critical for improving adoption and which often face unique market barriers. For the \$2.7 billion allotment, we believe that benefits from funds spent on electrification or efficiency improvements to heavy-duty equipment and transit buses should be inclusive of and directed toward low-income areas most impacted by this pollution.

2. **Investments should support zero emission transit buses and not natural gas or diesel buses.** We are pleased to see that one of the possible areas for spending of the settlement funds includes transit buses. However, we are concerned that, as proposed, the funds can be spent on a switch to compressed natural gas (CNG) and so-called “clean diesel” buses. To effectively reduce emissions, we hope this part of the program will instead be restricted to zero emission buses that include battery electric and solar-derived hydrogen fuel cell buses. A recent demonstration project conducted by the National Renewable Energy Laboratory found that battery electric buses have an average fuel economy four times higher than that of CNG buses.¹ Moreover, diesel exhaust contains more than forty toxic air contaminants that can cause or contribute to cancer, asthma and other respiratory illness, heart disease, and developmental and reproductive impacts. The following table lists average greenhouse gas emissions factors for different bus fuel types², and illustrates that only full battery electric and hydrogen fuel cell buses present us with truly cleaner transit bus choices for our communities.³

Bus Fuel type	GHG Emissions factor (grams per mile)
Diesel standard	~3,000
CNG standard	~2,800
Diesel-hybrid standard	~2,300
Fuel cell	~1,550
Full electric	~650

3. **Education and outreach should be conducted in partnership with dedicated organizations.**

We are pleased to see that settlement funds will be spent in part on public education. Indeed, most

¹ The NREL report found that the battery-electric buses had an overall average efficiency of 2.15 kWh per mile, which equates to a 17.48 miles per diesel gallon equivalent. The baseline CNG buses had an average fuel economy of 4.04 miles per gasoline gallon equivalent, which equates to 4.51 miles per diesel gallon equivalent. See Eudy, Prohaska, Kelly & Post, *Foothill Transit Battery Electric Bus Demonstration Results*, National Renewable Energy Laboratory (2016), available at <http://www.nrel.gov/docs/fy16osti/65274.pdf>.

² California Air Resources Board, *Advanced Clean Transit Presentation* (May 2015), Slide 34, available at <http://www.arb.ca.gov/msprog/bus/workshoppresentation.pdf>

³ For more information on vehicle GHG emissions factors, see the following data sheet: Environmental Protection Agency, *Average Annual Emissions and Fuel Consumption for Gasoline-Fueled Passenger Cars and Light Trucks*, available at <http://www3.epa.gov/otaq/consumer/420f08024.pdf>

Americans are still unaware of the many benefits of switching to an EV. To ensure that education and outreach are successful, these efforts should be conducted by and in partnership with organizations that are experienced in community education and electric vehicle promotion. For example, National Drive Electric Week, a nationwide initiative organized by Sierra Club, Electric Auto Association, and Plug In America, partners with government leaders and local organizations—such as the Department of Energy’s Clean Cities Coalitions—in hundreds of cities to improve education and awareness of electric vehicles. Events like these have been successful because they leverage the strength of the existing, on-the-ground network of organizations committed to advancing clean transportation. Any education and outreach efforts conducted under the settlement should likewise partner with experienced organizations, which can ensure that funds used to educate consumers will be spent strategically, including at workplaces and community events as well as on high-traffic traditional and social media.

4. **Settlement funds should add to, and not replace, existing clean transportation initiatives.** To make an impact, the settlement funds for infrastructure and incentives must be considered additive to, and not as a replacement for, current infrastructure or incentive funding and programming. To truly offset the emissions cheating, the settlement should result in widespread gains in clean transportation, which requires new or expanded initiatives in numerous states. For states on the forefront of clean transportation planning, such as California, the settlement funds should not replace existing funding allotments already planned to be dedicated to zero-emission vehicle (ZEV) infrastructure and incentive programs.
5. **The administration of the ZEV Investment Commitment lacks transparency and process for meaningful stakeholder engagement.** It is not clear from the Proposed Partial Consent Decree how stakeholders may track or influence the various developmental stages of administration of the ZEV Investment Commitment funds. To ensure that these funds result in strategic investment that lowers barriers to ZEV adoption, the settlement should provide for greater formal input from stakeholders experienced in the planning and deployment of ZEV infrastructure at both the development and implementation stages.
6. **Resale of partially fixed vehicles should be prohibited.** As we understand from the settlement documents, the repaired Volkswagen vehicles will still exceed their original emissions certification levels. According to health experts, these excess emissions, including nitrogen oxides, pose serious risks to human health. We urge you to not allow Volkswagen or other parties to buy back and resell vehicles that exceed the original emissions certification levels.

Thank you for your attention to these important matters.

Sincerely,

Gina Coplon-Newfield
Director, Electric Vehicles Initiative



August 5, 2016

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In Re: *Volkswagen “Clean Diesel” Marketing, Sales Practices, and Products Liability Litigation*, Case No: MDL No. 2672 CRB (JSC), and D.J. Ref. No. 90-5-2-1-11386

Dear Sir:

Thank you for the opportunity to provide comments on the notice entitled *Notice of Lodging of Proposed Partial Consent Decree Under the Clean Air Act*, which was published in the *Federal Register* on July 6, 2016 (81 Fed. Reg. 44,051). The notice seeks comments pertaining to the proposed partial Consent Decree (CD) with the United States District Court for the Northern District of California in the lawsuit entitled *In re: Volkswagen “Clean Diesel” Marketing, Sales Practices, and Product Liability Litigation*, Case No: MDL No. 2672 CRB (JSC).

The South Carolina Department of Health and Environmental Control (SCDHEC) is the South Carolina State Agency charged with protecting our state's public health and environment. The Bureau of Air Quality (BAQ) is the program area within SCDHEC dedicated to ensuring our state's compliance with National Ambient Air Quality Standards (NAAQS) and protecting the public's health from exposure to air emissions.

SCDHEC supports the core elements of the proposed partial CD, including the establishment of a program that requires VW to remove or repair the affected vehicles, commit to enhance access to Zero Emission Vehicles (ZEV), and fund a Mitigation Trust to mitigate the environmental harm VW's actions have caused.

Although our State works with the U.S. Environmental Protection Agency (EPA) to implement the Clean Air Act and ensure compliance with the NAAQS, individual

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states will need to play a primary role in determining how best to mitigate the negative impact of the excess emissions. SCDHEC appreciates that the proposed partial CD will entrust the mitigation of the excess emissions to the state programs. However, SCDHEC would prefer to see states given more flexibility in implementing projects to mitigate these excessive emissions, and all states should be given the same level of consideration. For example, the ZEV Investment Commitment portion of the CD commits significant resources to projects and investments in California, but provides no assurance as to the level of ZEV spending by VW in other states, or that spending levels for each state will be reasonably and equitably determined. In addition, there are limitations to the types of DERA-like projects that could prohibit meaningful and effective projects from being implemented. This concern is addressed further, below.

Our comments on the CD are as thorough as possible given the timeframe to participate. However, SCDHEC believes that several areas of the CD lack detail and are left for interpretation and potential improvement and requests that an interactive dialog with the potential Beneficiaries be scheduled prior to finalizing the document to address these areas. Our comments for specific sections of the CD are expressed in the balance of this letter.

General Support for Partial Consent Decree

SCDHEC applauds the DOJ, CARB, and EPA for preparing the proposed partial CD and supports the ZEV Investment Commitment and the Environmental Mitigation Trust Fund.

Appendix C - The ZEV Investment Commitment

SCDHEC is very pleased to see the inclusion of funding for Zero Emission Vehicles. Mobile source emissions are a significant contributor to pollution of the ambient air we breathe. The opportunity to influence our dependence on internal combustion engines is well timed for the introduction of new vehicle technologies. While we do support ZEVs, this category of the CD needs to be more refined and detailed.

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The long-term application of the proposed ZEV Investment Commitment funding could allow for many partnerships to be developed if more details were known. The proposal should have included, and the final CD must include, how the \$2 billion will be fairly and equitably distributed for investments throughout the affected states. SCDHEC believes that the final CD should indicate to each Beneficiary the portion of the ZEV Investment Commitment that would inure to its benefit, just as the proposed CD indicates each state's allotment under the Mitigation Trust Fund. In the proposed partial CD, only California has been afforded this opportunity. Other states should be given the same consideration.

SCDHEC would also propose some expansion of the types of investments that may qualify as ZEV Investments. The use of ZEVs may shift emissions from the exhaust pipe to power plants, which also emit criteria pollutants, and toxic air pollution. Therefore, some portion of the ZEV funding should be dedicated to enhance the use of renewable energy sources like solar, wind, and hydro-electric to ensure the emissions are eliminated and not just absorbed into or transferred to another sector. Other opportunities also exist for switching the use of internal combustion engines to electric power, such as through the use of truck stop electrification.

The exclusion of electric off-road equipment in a long term program for ZEV investment should be reevaluated. (See Appendix C, Section 1.9). Battery technology advances are creating new applications in the off-road sector that could be widely available within the life of this agreement. The inclusion of electric off-road equipment may even allow for greater emissions reductions in areas where this type of equipment is a major source of air pollution.

Appendix C offers opportunities for ZEV investment (and corresponding emission reduction) in California that are not made available in other states (see Appendix C, Sections 1.10.1 and 2.1). Heavy-Duty ZEV charging infrastructure may be a future need of all states, and a vehicle scrap and replace program to allow more electric vehicles to be introduced nationally would also be beneficial.

Appendix C, Section 1.10.3 indicates that VW in California alone can implement a "scrap and replace with ZEV vehicles" initiative. This option should be available to all states. Providing the options to invest both in ZEV infrastructure and a "scrap and replace" program will help to ensure that ZEVs are available to utilize the infrastructure that is constructed.

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Again, the same consideration and flexibility provided for determining the most effective or appropriate ZEV investments for California should be afforded with respect to ZEV investments nationwide.

Appendix D - Form of Environmental Mitigation Trust Agreement

Mitigation Trust Beneficiaries (Appendix D, Section IV)

The "IV. Mitigation Trust Beneficiaries," section of the proposed CD sets forth the process for governmental entities identified in Appendix D-1 to become Beneficiaries of the Trust. SCDHEC supports this framework of responsible parties to implement the mitigation measures, but we also would like to specifically see states given the opportunity to partner with local governments and nongovernmental organizations to enhance protection of environmental justice communities where a disproportional impact of excess emissions may occur. Our experience has shown us that flexibility is important, as each area can have unique air quality issues that require specific air quality solutions. While SCDHEC is the sole air quality agency in South Carolina, we have developed successful partnerships with local governments throughout the State. These Air Quality Coalitions (<http://www.scdhec.gov/advance/>) voluntarily initiate programs to reduce emissions in their areas. A mechanism for utilizing Mitigation Trust funds through these partnerships should be included in the final CD.

Beneficiary Mitigation Plan (Appendix D, Section 4.1)

The Beneficiary Mitigation Plan, to be submitted 30 days after becoming a Beneficiary, describes how that Beneficiary intends to use the mitigation funds allotted to it. These plans are to be detailed and specific as to how the funds are to be spent and the benefits achieved. These plans should also provide the public with information about the Beneficiary's intended use of the funds.

Considering the work involved in creating and submitting a detailed, specific and meaningful Beneficiary Mitigation Plan, SCDHEC is concerned that 30 days is insufficient. We intend to engage local and underserved communities, along with other stakeholders, such as our Air Quality Coalitions, when developing action

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plans. As this scenario is new to us, unforeseen delays may be encountered. We recommend a timeframe of at least 60 days, with an option for an extension if necessary.

Accountability Provisions (Appendix D, Sections 5.2 and 5.3)

The Funding Requests (Section 5.2) and Beneficiary Reporting Obligations (Section 5.3) provisions of the proposed CD are intended to ensure accountability of the Beneficiaries. SCDHEC supports such accountability provisions and expects the Beneficiaries of the Mitigation Trust resources to ensure that the funds are used appropriately.

However, like other commenters, SCDHEC believes that the Beneficiary Reporting Obligations language, as written, lacks structure and fails to provide Beneficiaries sufficient notice of their obligations. A more detailed explanation of the recording and reporting obligations on Beneficiaries with respect to the mitigation actions and funding expenditures is needed. The EPA, in its administration of the DERA State Program, provides a template for reporting details of projects funded by the state DERA allocations. SCDHEC suggests that the Trustee develop a similar mechanism that is available to Beneficiaries via its website. The template (EPA uses a MS Excel spreadsheet) should include what is expected to be reported, and to what detail.

Appendix D-2 - Eligible Mitigation Actions and Mitigation Action Expenditures

Appendix D-2 lists the Eligible Mitigation Actions that can be implemented. Many, if not all, of the listed options mimic the DERA Program and can result in significant NOx emissions reductions. While many projects will most likely fall into these categories, SCDHEC is concerned that there will be other projects that will yield just as much, if not more, emissions reductions that would be excluded if Appendix D-2 is finalized as proposed.

As mentioned previously, Beneficiaries should be given the flexibility to implement the projects listed in Appendix D-2 *and* implement any other project that can be shown to be similarly effective. The actions listed in Appendix D-2 are limiting and based heavily on reductions from diesel engines, but other actions can be just as

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beneficial in reducing NO_x emissions. States should be able to direct their allocation toward the NO_x reduction programs best suited to their circumstances. The program should also allow Beneficiaries to propose unlisted actions that would be cost-effective in their particular jurisdictions. Many of the eligible actions, while suitable for some areas, may not effectively address NO_x emissions in socio-economically challenged or other areas. As stated in the August 2, 2016, comments on the proposed partial CD submitted by the National Association of Clean Air Agencies (NACAA), Eligible Mitigation Actions should also include off-road equipment and vehicles for "construction, agriculture, mining and other heavy industrial applications—which can remain in service for many years and produce far more NO_x than on-road trucks per hour of operation—as well as truck stop electrification, cargo-handling equipment and yard trucks."

SCDHEC is also concerned that the proposed mitigation actions are so "DERA-like" that it may compete with the DERA Program and may even result in reduced funding for that program. Additional flexibility in acceptable actions would lessen this competitive perception.

The final CD should also include a mechanism for keeping mitigation options current, taking into account emerging technologies and alternative fuels, as the Mitigation Trust Funds could be available for 10 or more years. Technological advances in drive train, fuels, engines, etc. will undoubtedly be made, and it would be unfortunate if they could not be utilized because of a static CD.

Appendix D-2 of the Eligible Mitigation Actions includes the "Diesel Emission Reduction Act (DERA) Option," (Paragraph 10) by which Beneficiaries may utilize Mitigation Trust Funds as their State DERA match, for DERA-eligible projects not specifically listed as Eligible Mitigation Actions under Appendix D-2. SCDHEC supports this option. However, because DERA is subject to periodic Congressional authorization and annual appropriation, no one can be sure of the availability or level of funding for this program on a year-to-year basis. To be clear and to add certainty to the DERA Option, projects eligible under DERA must also be specifically listed in the CD as Eligible Mitigation Actions. Since the DERA Program is dynamic, a mechanism must be in place which accounts for changes in the DERA Program over time.

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For each Eligible Mitigation Action other than the DERA Option, the proposed CD identifies the percentage of costs allowed to be funded through the Mitigation Trust, depending on whether the relevant vehicles or equipment are government-owned or non-government-owned. These proposed levels of funding are very similar to the levels used in DERA for non-government entities. It has become increasingly difficult to solicit non-government partners to participate in projects under the DERA program in part because of these limits. Thus, SCDHEC recommends allowing a higher percentage of the costs for projects involving non-government-owned eligible equipment to be funded by the Mitigation Trust.

Moreover, the return on investment for non-government partners makes it difficult to recruit partners when a vehicle with continuing useful life must be scrapped. A higher percentage from Mitigation Trust funding and a more realistic evaluation of useful life than is currently used by DERA would result in greater participation. For example, our State's school bus fleet has buses that remain in operation for a long period of time, and the "useful life" specifications may not be applicable to our situation. A situation could exist whereby buses that have several years of useful life in our State are considered too old to be replaced. At a minimum, we recommend that a mechanism for requesting and receiving variances from the allowable model-year requirements for on-road and off-road vehicles be included to assure that the benefits of the funding are maximized. We also recommend that the definition for "All-Electric" be revised to include advanced hybrid systems and other emerging technologies.

SCDHEC is aware of many commenters with concerns similar to those of SCDHEC. In its August 2, 2016, comments, NACAA recommends, and we agree, that several of the Eligible Mitigation Actions included in the proposed CD should be revised or expanded as follows:

- 1) Expand the definition of "Class 8 Local Freight Trucks" (Appendix D-2, p. 11) to include not only tractor trucks, as stated, but also straight trucks. Given the examples provided in the definition of this term (waste haulers, concrete trucks, dump trucks) it appears the intention is to include both. The following definition would accomplish this: "Class 8 Local Freight, and Port Drayage Trucks (Eligible Large Trucks)" shall mean trucks with a Gross Vehicle Weight Rating (GVWR) greater than 33,000 lbs used for port

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- drayage and/or freight/cargo delivery (including waste haulers, dump trucks, concrete mixers).
- 2) Expand the model year (MY) ranges for all eligible truck categories. In 10 years, when Beneficiaries will be required to show they have spent 80 percent of their respective allocation, MY 2006 trucks will be more than 20 years old and likely already replaced. A regular evaluation and updating of the ranges should be included in the Mitigation Actions.
 - 3) Under the School and Transit Bus project category (Appendix D-2, pp. 2-3, Paragraph 2), school bus companies that contract with a government entity are considered government entities for the purpose of taking advantage of the 100-percent government cost sharing. We recommend that this provision be extended to the Class 4-7 and Class 8 local freight truck categories, which, for example, would allow replacement or repowering of waste haulers that belong to a company that contracts with a municipality to be funded by the Mitigation Trust at 100 percent.
 - 4) Define Tugs/Ferries such that the term includes river barge towboats or tugs and large diesel-powered river cruise boats.
 - 5) Expand the definition of "Zero Emission Vehicle" (Appendix D-2, p. 12) by adding at the end of the current definition "or other vehicles that demonstrate comparable emissions benefits."

We are also very pleased that the proposed CD allows Beneficiaries to use a portion of their allotted Trust Funds for actual administrative expenditures. As also noted by NACAA, there remains some ambiguity as to whether indirect costs are eligible expenditures, and if the indirect costs are part of the actual administrative expenditures. SCDHEC supports including indirect costs as eligible expenditures, either as a stand-alone expense or as part of the administrative expenditures. SCDHEC also echoes NACAA's support for allowing administrative costs at a rate higher than 10 percent. The DERA Program allows for a 15 percent administrative rate, and the indirect costs are not included in this. Since much of the proposed Eligible Mitigation Actions are based on the DERA Program, it would be appropriate to also allow the same administrative rate in the Mitigation Trust context.

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Conclusion

SCDHEC appreciates DOJ's efforts in response to the alleged violations committed by VW, as well as the opportunity to comment on the proposed partial CD. We strongly urge the DOJ to fully consider SCDHEC's recommendations. We look forward to any opportunity to discuss the details of the program with you further as you develop the final CD.

If you have any questions or require additional information, please do not hesitate to contact Nelson Roberts or Brian Barnes of SCDHEC at robertln@dhec.sc.gov or barnesbk@dhec.sc.gov, respectively, or (803)898-4123.

Sincerely,



Rhonda Banks Thompson, P.E.
Chief, Bureau of Air Quality
S.C. Department of Health and Environmental Control



South Coast Air Quality Management District

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August 4, 2016

via email

Ms. Karen S. Dworkin, Esq.
Assistant Section Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Email: pubcomment-ees.enrd@usdoj.gov

Re: South Coast Air Quality Management District Comments on
Proposed Volkswagen Consent Decree (81 Fed. Reg. 44051; July 6, 2016)
*In re: Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability
Litigation*, Case No: MDL No. 2672 CRB (JSC), and D.J. Ref. No. 90-5-2-1-11386

Dear Ms. Dworkin:

The South Coast Air Quality Management District ("SCAQMD" or "District") staff hereby offers its comments on the proposed Partial Consent Decree with Volkswagen. As background, the SCAQMD is the California regional agency charged with air pollution control in the South Coast Air Basin, which consists of all of Orange County and the non-desert portions of Los Angeles, Riverside and San Bernardino Counties. In addition, the District includes the Riverside County portion of the Salton Sea Air Basin, which includes Palm Springs and surrounding areas to the Salton Sea. In general, the SCAQMD primarily regulates non-vehicular sources, while the California Air Resources Board is primarily responsible for control of emissions from motor vehicles, as well as off-road engines.

The South Coast Air Basin has the worst ozone problem in the nation, being one of only two "extreme" ozone areas in the nation, and has the second-worst PM_{2.5} problem. (The Basin has just been found to have attained the 1997 PM_{2.5} standards, but still must attain the more recent PM_{2.5} standards.) Of course, NO_x is a precursor to both of these pollutants. Despite the SCAQMD and the California Air Resources Board having implemented the most stringent pollution control measures in the nation, the Basin must still reduce NO_x by 43% beyond already-adopted measures to attain the 80 ppb ozone standard in 2023, and by 55% to attain the 75 ppb standard in 2031. (Draft 2016 Air Quality Management Plan [AQMP] for the South Coast Air Basin, p. ES-3.) Therefore, the Basin needs every feasible NO_x reduction to attain the standards. Importantly, the Draft 2016 AQMP concludes that the region must rely on accelerated

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fleet turnover and zero or near-zero emissions technologies, especially for mobile sources, which can only feasibly be implemented through a combination of regulatory and incentive measures, p. ES-8. Therefore, the incentive funding offered through the Partial Consent Decree will be crucial to attaining these ozone standards in the South Coast Air Basin.

General Comments Regarding Mitigation Structure

1. Beneficiary Mitigation Plan.

Under Appendix D, p. 11, within 30 days of becoming a Beneficiary, each state (only states and Puerto Rico may become beneficiaries) must submit and make publicly available a Beneficiary Mitigation Plan, which sets forth the Beneficiary's program for expenditure of funds awarded, consistent with the Eligible Mitigation Actions set forth in Appendix D-2. However, the Beneficiary Mitigation Plan is not intended to bind the Beneficiary, or create any rights to claim an entitlement for funding, and may be adjusted at the Beneficiary's discretion. Moreover, it does not appear that the Trustee is charged with ensuring that expenditures comply with the Beneficiary Mitigation Plan, but only that they are made for approved Eligible Mitigation Actions as set forth in Appendix D-2. (Appendix D, Section 3.1.2.7, p. 6; Section 5.1, p. 16, Section 5.2.15, p. 18.) We recommend that the funding allocations in the plan be enforceable to the extent described in Comment 3 below.

2. Expenditure Limitations

The Trust Agreement provides that a Beneficiary may not request payout of more than one third of its allocation during the first year after the initial deposit by the Settling Defendants, nor more than two-thirds in the first two years. (Section 5.0.2, p. 15.) We recommend that these limits be removed, at least for extreme ozone areas. From our perspective, the earlier expenditures are potentially more important since the gap between adopted rules and attainment is likely more difficult to fill for the 2023 deadline than for the 2031 deadline.

3. Mitigation Plan Considerations

The Beneficiary Mitigation Plan is required to set forth how the Beneficiary will consider the potential beneficial impact on areas that bear a disproportionate share of the air pollution burden within its jurisdiction. (Section 4.1, p. 11.) While the Beneficiary Mitigation Plan is in general not enforceable, we request that the Partial Consent Decree provide that for states with extreme ozone areas, that the funds be prioritized and distributed in a manner which reflects the severity of air pollution and number of persons exposed, and that this requirement be made enforceable.

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General Comments Regarding Eligible Mitigation Actions and Mitigation Action Expenditures (Appendix D-2)

1. Definition of “Government” Excludes Many Eligible Agencies

In general, each category of Eligible Mitigation Actions provides that up to 100% of the costs may be reimbursed for “government-owned” eligible equipment, and smaller percentages for non-government-owned equipment. However, the definition of “government” is improperly narrow. Appendix D-2, p. 11, defines “Government” as “a State agency, school district, municipality, city, county, tribal government or native village, or port authority that has jurisdiction over transportation and air quality. The term ‘State’ means the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the United States Virgin Islands, American Samoa, and the Commonwealth of the Northern Mariana Islands.”

This definition is improperly narrow, since it excludes many kinds of public entities found in California and other states. For example, it excludes local and regional air pollution control agencies, which are found not only in California but in other states including Arizona, Colorado, Florida, etc. (See EPA website, “RBLC Links for State and Local Air Pollution Control Agencies.”) These agencies are able to set an example for the public and should be eligible for full funding. While it is likely that air agencies would not operate many of the eligible types of equipment, such as locomotives, they are likely to own light duty vehicles, and should be eligible for reimbursement as a “government.”

Secondly, the definition excludes a wide variety of public agencies in California, such as transit districts, sanitation districts, water districts, airports, and municipal utility districts. It is particularly important that transportation agencies be made eligible for “government” based reimbursement, since these agencies operate large numbers of heavy duty vehicles, and often operate directly in residential neighborhoods. We recommend the definition of “government” include “any political subdivision of a state.” If the state believes that a particular subdivision is not suited for 100% reimbursement, perhaps if it is a profit making entity, then the state will not include it in its Beneficiary Mitigation Plan, but that decision should be left up to the state, not artificially excluded by the definition in the Trust Agreement.

Finally, the definition improperly limits port eligibility for treatment as a “government.” The definition allows treatment as a “government” only for “a port authority that has jurisdiction over transportation and air quality.” Certainly in California, there is no such port authority. We do not understand why all public port authorities would not be eligible for treatment as a “government.” We also find it odd that a port that has authority over transportation and air quality would be eligible, but other agencies with jurisdiction over transportation and air quality, such as transit districts and air quality management districts, are not eligible, as discussed above.

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2. List of Eligible Mitigation Actions Improperly Narrow

There are several areas in which the list of Eligible Mitigation Actions is improperly narrow. Most notably, the list only allows funding of freight switcher locomotives, not any other type of locomotives. This excludes funding freight line haul replacements or conversions, public transit locomotive replacement or conversions, and replacement or electrification of light rail. SCAQMD staff believes all of these areas are important for the zero-emission future. For example, staff believes it is technically feasible for line-haul freight locomotives to be modified to connect to a battery-electric tender, which would allow the train to operate in zero-emission mode in heavily populated areas, while converting back to diesel in other areas. Such a development could hugely impact freight rail emissions including in railyards in all urban areas, thus reducing pollution including carcinogenic diesel PM emissions. This technology and others for non-switcher locomotives should be eligible. Similarly, the Southern California Regional Rail Authority, the region's commuter rail service is in the process of converting its entire fleet of transit locomotives to Tier 4, with large grants from SCAQMD to assist. Other regional passenger rail agencies may wish to do so but are financially constrained. These projects should be supported, as should projects for rail electrification.

Other potential eligible projects could include hybridization of commercial harbor craft, Class 4 through 7 hybridized heavy-duty vehicles (i.e., non-Class 8 on-road heavy-duty vehicles), cargo handling equipment (either zero emission or alternative fuels). In addition, cleaner on-road heavy-duty vehicles that have engines meeting one of California's Optional NO_x exhaust emissions standard. There is a natural gas powered engine commercially available today that meets California's cleanest optional NO_x emissions standard at 0.02 g/bhp-hr. Additional engines meeting this standard are expected to be commercially available in the next few years.

Secondly, the list of Eligible Mitigation Actions should include replacement or repowering of stationary sources. The Draft 2016 AQMP notes that although much incentive funding will likely be targeted toward mobile sources, there are also stationary sources of NO_x that may be economically difficult to electrify or repower without incentive funding, yet may be more cost-effective than mobile source conversions. (2016 AQMP p. 4-14 to 4-15.) Indeed, the list of Eligible Mitigation Actions should be expanded to allow reimbursement for the commercialization and deployment of any zero emission or near-zero emission technology, including equipment types that are not on the existing list, subject to approval by EPA to ensure that the technology is viable and emission reductions are real.

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Specific Comments Regarding Eligible Mitigation Actions

1. Scrapping Requirement

The requirements for equipment participating in replacement programs include that the eligible equipment being replaced must be scrapped. (See e.g., Section 1.b regarding Class 8 Local Freight Trucks.) This requirement means that the eligible equipment owner takes a near-total loss on the investment in the truck being replaced, and makes incentivizing replacements more difficult. SCAQMD staff suggests adding that the equipment can either be scrapped or “covered by an EPA-approved enforceable mechanism that will ensure that the equipment is only operated in an attainment area that wishes to allow operation of such equipment.” It may be that such a mechanism will take time to develop but SCAQMD staff believes it is worth doing so because it means the equipment owner will take a much smaller loss on getting rid of the old equipment and will thus be more likely to agree to a replacement.

2. Differential Payment for Hydrogen Vehicles

Under the light-duty vehicle classification, the Eligible Mitigation Actions allow a greater percent incentive funding for electric vehicle “supply equipment” including infrastructure than for hydrogen fueling supply equipment. SCAQMD staff questions the reasoning behind this percentage differential. While it is true that hydrogen fueling infrastructure may be more expensive, light-duty hydrogen vehicles have potential advantages over traditional battery-electric vehicles in terms of greater range and quicker fueling times, and thus are worth developing, as they may be more likely to be adopted by the driving public once generally available. Thus, we suggest equal funding percentages be allowed for hydrogen infrastructure. Also, SCAQMD staff suggests allowing some percentage of the costs of actually acquiring hydrogen vehicles.

3. Payment Percentages Should Reward Ultra-Low Emissions Vehicles

Currently, the Eligible Actions allows payment of a percent of cost for Non-Government-Owned Eligible trucks and buses based on the technology used, rather than the emissions reductions achieved, with the maximum percentage being 50%, or 75% for electric vehicles. This approach provides incentives for vehicles that meet only EPA’s 2010 standards (.2 g/bhp-hr) at the same rate as trucks meeting CARB’s optional low-NO_x standard, which is ten times lower (.02 g/bhp-hr). We urge that the structure to be modified to reward development and use of vehicles meeting the CARB optional standard, regardless of technology, by providing them with the same percent recovery as electric vehicles (75%) or at least a much higher percentage than the 50% allowed for alternative fuel vehicles that merely meet the 2010 standard. We along with a collaborative of other state and local air agencies have petitioned EPA to adopt a nationwide standard of .02 g/bhp-hr for all new heavy duty trucks as early as 2022.

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Thank you for the opportunity to provide comment on the proposed Partial Consent Decree. If you have any questions or would like to discuss our comments, please contact Ms. Barbara Baird, Chief Deputy Counsel at (909) 396-2302 (email: bbaird@aqmd.gov) or Mr. Henry Hogo, Assistant Deputy Executive Officer - Mobile Source Division, Science and Technology Advancement at 909-396-3184 (hhogo@aqmd.gov).

Sincerely,



Wayne Natri
Acting Executive Officer

WN:BB:pa

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cc: Barbara Baird, SCAQMD
Henry Hogo, SCAQMD

Assistant Attorney General
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Re: Proposed Partial Consent Decree Under the Clean Air Act
RE: Volkswagen “Clean Diesel” Marketing, Sales Practices, and
Products Liability Litigation, Case No: MDL No. 2672 CRB (JSC)

Dear Assistant Attorney General:

We are submitting the following comments on behalf of the Southwest Energy Efficiency Project and Utah Clean Energy, SWEEP is a public interest advocacy organization that works in 6 states across the southwest to support increased energy efficiency in the electricity, building, industrial and transportation sectors. Utah Clean Energy is a non-profit, non-partisan public organization partnering to build the new clean energy economy in Utah and the West.

Overall, we are very supportive of the proposed settlement.

We support the proposed ZEV investment plan. We are at a crucial juncture for zero emissions vehicles, as affordable long-range electric vehicles poised to enter into the market, and a nationwide investment of \$2 billion could play an important role in accelerating adoption.

We also support the environmental mitigation trust. It is an appropriate requirement that funds be used to reduce NOx emissions, in order to mitigate the additional NOx emissions due to VW's cheating. However, we have a number of suggested modifications.

First, we would urge that the 15% cap on the use of the funds for fueling and charging infrastructure for light duty vehicles be dropped. There may be states where an investment of greater than 15% of the funds would allow the state to provide widespread enough charging infrastructure to spur significantly greater adoption of electric vehicles, which would have significant benefits in reducing NOx emissions, as well as VOCs, particulates and GHG emissions.

Second, we would like to propose a modification to the allowed uses of the funds for electrification of buses. The current settlement language restricts this to replacing or repowering model year 2006 and earlier diesel buses. While this makes sense for replacing older diesel buses with new diesel or CNG buses, since the emissions benefit from replacing a post 2006 diesel with a newer diesel or CNG bus is very small, electrification is quite different. Electrification of buses is a transformative technology that will lead towards true zero emissions transit as the electric grid gets cleaner and cleaner over time.

After 2006, the NOx rate for new transit buses is approximately 1.336 grams/mile¹, while the emissions rate for an electric bus on the national average grid (33% coal, 33% NG, 20% nuclear and 14% renewables) would be 0.9 grams/mile; if we restrict this to emissions that take place from power plants within urban areas, where NOx emissions are most problematic, the emissions rate is much lower, 0.27 g/mile.

In addition, there is a practical problem associated with the restriction to model year 2006 and older vehicles for transit buses. Public transit fleets are typically on a 12 year replacement cycle, so many fleets have only a few pre 2004, 2005 and 2006 buses in their fleets; and by June 2017 when these funds are available, most of the 2004 buses will be cycled out, leaving some 2005 and 2006 buses. States that chooses to apply these funds over a time period longer than three years may not be able to use these funds for transit bus replacement past the first few years.

Thus, we would propose that the restriction to model year 2006 and older buses be dropped if the replacement in a zero emissions bus. Alternatively, this restriction could be phased out, applied for expenditures in 2017 and 2018, but removed in years 2019 and later.

We also support Proterra's comments that a higher level of funding should be available for conversion to zero emissions bus technologies than for replacements with newer diesel vehicles: "That being said, we respectfully request prioritizing Trust expenditures for zero-emission heavy-duty vehicle technology that eliminate toxic NOx emissions and provide much greater GHG reductions than near-zero, petroleum-based heavy-duty technologies. Specifically, Beneficiaries should be able to draw funds from the Trust in the amount of 100% of the cost of a new All-Electric bus, including the associated charging infrastructure, regardless of whether these buses are Government-owned. Further, Beneficiaries should not be able to draw funds greater than 25% of the cost of a new or repowered diesel or Alternate Fueled bus. We therefore respectfully request that Appendix D-2, §§ 2(d)(4) (increase funding from 75% to 100%), 2(e)(1) (decrease funding from 100% to 25%) and 2(e)(2) (decrease funding from 100% to 25%) be amended accordingly. "

Thank you for the opportunity to comment. We appreciate the visionary nature of this settlement, and look forward to working with the beneficiaries to advance zero emissions vehicles.

Sincerely Yours

Will Toor
Transportation Program Director

¹ Argonne National lab, 2015, The Greet model Expansion for Well-to-Wheels Analysis of Heavy Duty Vehicles

Southwest Energy Efficiency Project

and

Sara Wright
Executive Director
Utah Clean Energy

Please direct any questions or correspondence to Will Toor, wtoor@swenergy.org



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John C. Cruden

Assistant Attorney General

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RE: State of Vermont Comments concerning the proposed Partial Consent Decree, *In re: Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation*, Case No: MDL No. 2672 CRB (JSC), and D.J. Ref. No. 90-5-2-1-11386

Dear Assistant Attorney General Cruden,

The Vermont Agency of Natural Resources (ANR), along with the Vermont Agency of Transportation and the Vermont Agency of Commerce and Community Development respectfully submit for your consideration the following comments and recommendations on the proposed Partial Consent Decree recently lodged in the case of *In re: Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation*. ANR and its partner agencies recognize that the Department of Justice and the Environmental Protection Agency are taking Volkswagen's violations of federal and state environmental and consumer laws very seriously, and applaud the efforts that have resulted in a significant agreement to remove non-compliant 2.0 liter vehicles from service and mitigate the environmental injury that has resulted from their excess emissions.

Vermont has long been a leader in adopting and implementing aggressive air quality programs and policies, as evidenced by our stringent approach to regulating emissions from stationary sources and our status as a "Section 177" State that has adopted California's Motor Vehicle Emission Standards under the Clean Air Act. Vermont has unique air quality issues because we have a rural landscape with many working farms and forests and few urban areas. This results in a higher than average vehicle miles travelled (VMT) by on-road motor vehicles, and non-road equipment. In Vermont, on-road and non-road mobile sources are responsible for more than 75% of NOx emissions within the state as a result of the predominance of higher emitting vehicles and the longer distances travelled.

 VERMONT

Many Vermonters place a high value on natural resources and practice environmental stewardship, so it is not surprising that Vermont has the second highest per capita ownership of affected Volkswagen diesel passenger cars in the United States – vehicles that were marketed as clean and having a lower impact on the climate and air quality. Although Vermont is a small state, its proposed allocation under the Mitigation Trust is substantially higher than other “small states”, and it is crucial that Vermont be able to spend its allocation on the types of projects that are actually applicable to more prevalent types of diesel emission sources in the state.

Accordingly, the Mitigation Trust Agreement should more broadly reflect the Clean Air Act’s cooperative federalism framework, which places primary responsibility for selecting sources from which emission reductions will be obtained on the states and local governments. The States have extensive experience in working with private and government entities to achieve emissions reductions based on unique air quality concerns. Given that the success of the Mitigation Trust relies heavily on the participation of all states, the Agreement should allow for sufficient state flexibility in keeping with the intent and functionality of the Clean Air Act.

Therefore, ANR and its partner agencies respectfully request that the Department of Justice consider making the following amendments to Appendix D before moving for entry of the Consent Decree. These proposed amendments would facilitate Vermont’s ability to use its allocation of the Mitigation Trust to achieve the greatest amount of NOx reductions possible.

1. Amend the Definition of Class 8 Local Freight Trucks

The definition of “Class 8 Local Freight, and Port Drayage Trucks (Eligible Large Trucks)” as currently drafted in Appendix D-2 of the Consent Decree, is contradictory. The definition states that such trucks shall mean “truck tractors” that meet the Class 8 weight rating, and then gives examples of the types of trucks inclusive of this category as “including waste haulers, dump trucks, concrete mixers.” Not all Class 8 Local Freight Trucks, however, meet the definition of “truck tractors”. In fact, the majority of Class 8 waste haulers, dump trucks, and concrete mixers are “straight trucks” which mean that they carry cargo on the same chassis as the power unit and cab, unlike truck tractors which are a non-cargo-carrying power unit used in combination with a semitrailer. Therefore, the majority of the types of local freight trucks provided in the definition’s example would not be eligible under Eligible Mitigation Action (1).

If this definition is not amended to correct this contradiction, Vermont, and states similarly situated, would not be able to use their allocation to fund repowers or replacements of Class 8 trucks that would ultimately represent a significant step towards maximizing NOx emission reduction within the scope of the Eligible Mitigation Actions. For example, limiting the Eligible Large Trucks to include only truck tractors reduces the Eligible Large Trucks in Vermont’s government-owned fleet to approximately 6% of the total fleet of Large Trucks that would have been eligible if the definition were to include both straight trucks and truck tractors. ANR and its partner agencies therefore recommend the following amendment to the definition of “Class 8 Local Freight, and Port Drayage Trucks (Eligible Large Trucks)”:

“Class 8 Local Freight, and Port Drayage Trucks (Eligible Large Trucks)’ shall mean straight trucks and truck tractors with a Gross Vehicle Weight Rating (GVWR) greater than 33,000 lbs used for port drayage and/or freight cargo delivery (including waste haulers, dump trucks, concrete mixers).”

2. Include an Eligible Mitigation Action for non-road equipment

As noted above, Vermont is a small state that relies upon the agriculture and forestry industries. These industries in turn rely heavily on non-road diesel powered equipment in their every-day operations.

Vermont is also a rural state where municipalities must maintain thousands of miles of gravel roads with non-road highway maintenance equipment. The list of Eligible Mitigation Actions includes very limited opportunities for reduction of NOx emissions through the replacement or repowering of non-road equipment. As proposed, freight switchers, ferries and tugs, shore power for ocean going vessels, airport ground support equipment and forklifts are the only non-road equipment eligible, while non-road engines, equipment or vehicles used in construction and agriculture, including stationary generators and pumps, are completely excluded.

Eligible Mitigation Action (10), the Diesel Emission Reduction Act (DERA) Option, allows Beneficiaries to use their allocation for actions otherwise not enumerated in Appendix D-2, but eligible under the DERA program. Vermont has implemented a state DERA program for 8 years and is familiar with the types of projects eligible under DERA, as well as the parameters and limitations of the program. While certain non-road equipment is eligible for replacement or repower under the DERA program, it has been challenging for Vermont to fund projects under DERA because of strict eligibility criteria. For non-road equipment, these criteria include the early replacement requirement and the “seven-year useful life remaining” requirement, while restrictive model year (MY) ranges (in some cases only up to 2003 MY vehicles are eligible for replacement), the early replacement requirement, and non-applicability for the replacement or repowering of Class 4 vehicles are some of the DERA restrictions that apply for highway vehicles. The list of Eligible Mitigation Actions, while still very narrow in scope, is structured in such a way that allows better cost sharing and MY opportunities, and removes many of the other burdensome restrictions of the DERA program. For example, it is not uncommon for the engine of an agricultural tractor to be rebuilt in lieu of replacement, which can greatly extend the life of a tractor at a lower cost. However, this practice often results in older, higher-emitting non-road equipment that are not eligible under the DERA program due to the restrictive “seven-year useful life remaining” requirement. Instead, older, higher-emitting non-road equipment remain in Vermont’s fleet, continuing to operate at higher emission rates well past what is deemed to be their remaining useful life under the DERA program.

ANR and its partner agencies recommend that non-road equipment be specifically added as an Eligible Mitigation Action. This category could be defined as “non-road vehicles or equipment used in construction, handling of cargo (including at a port or airport), or agriculture and include stationary generators and pumps.” The addition of this category would allow rural states, both large and small, that have a significant population of these types of diesel emission sources to prioritize them for replacement or repower under a structure that is much more likely to attract both government and non-government entities to partner with a Beneficiary to reduce NOx emissions.

3. Expand the eligible Model Year ranges so that project categories remain relevant throughout the life of the Trust

Several Eligible Mitigation Action categories are drafted as limiting eligibility to a narrow window of vehicle model years. In all cases where this restriction applies, the newest MY eligible under the list is 2006. While the signatory agencies recognize that the application of this restriction prioritizes projects that will achieve the replacement of older, higher emitting vehicles, it does not align with the timing of the implementation of the Trust. For example, in 2027, which will likely be the ten-year anniversary of the Trust and when Beneficiaries are required to demonstrate that 80% of their allocation has been spent, eligible 2006 MY Trucks and Buses will be over 20 years old, and likely already replaced. At that point in the implementation of the Trust, and potentially sooner, it may be practical to consider allowing Trucks and Buses newer than MY 2006 to become eligible for replacement or repower to allow Beneficiaries to continue spending their allocation in accordance with their Mitigation Plan and achieve further NOx emission reductions.

The most recent NOx standards for heavy-duty trucks were fully phased-in 2010, therefore replacement or repower of any truck newer than MY 2009 would result in no net emissions reduction. ANR and its partner agencies therefore recommend that the list of applicable Eligible Mitigation Actions that are restricted by MY allow for vehicles MY 2009 or older to be replaced or repowered by all Beneficiaries. In addition, eligible MY ranges should be adjusted periodically so that all vehicles not meeting the then-current emission requirements would be eligible.

4. Allow non-Government entities that contract with Government entities to replace or repower their eligible vehicles at 100% cost

Eligible Mitigation Action (2) allows for replacement or repower projects for Privately Owned School Buses Under Contract with a Public School District to draw funds from the Trust in the amount of 100% of the project cost. This deviation from the normal cost-sharing structure for non-government entities in the Eligible Mitigation Action list makes sense, as the majority of Public School Districts contract with non-government entities to provide school bus transportation services. Municipalities also tend to contract with non-government entities to provide other services to residents. For example, it is common for private waste haulers to be under contract to provide garbage and recycling services within a municipality. Also, private transit bus companies often contract with the state to provide transit services in their service area. Therefore, it makes sense that for projects involving Transit Buses and Large and Medium Trucks owned by entities which operate exclusively under contract with a government entity, and otherwise eligible for replacement or repower under Eligible Mitigation Actions (1), (2), and (6), Beneficiaries should be able to draw funds from the Trust in the amount of 100% of the project cost. ANR and its partner agencies therefore recommend that following amendments to Eligible Mitigation Actions (1), (4), and (6):

(1)(f): “For Government Owned Eligible Class 8 Large Trucks, and Eligible Class 8 Large Trucks which operate exclusively under contract with a Government Entity, Beneficiaries may draw funds from the Trust in the amount of...”

(2)(e): “For Government Owned Eligible Buses, ~~and~~ Privately Owned School Buses under Contract with a Public School District, and Privately Owned Transit Buses which operate exclusively under contract with a State or Government Entity, Beneficiaries may draw funds from the Trust in the amount of...”

(6)(e): “For Government Owned Eligible Medium Trucks, and Eligible Medium Trucks which operate exclusively under contract with a Government Entity, Beneficiaries may draw funds from the Trust in the amount of...”

5. Allow states to spend more of their allocation on EVSE

Eligible Mitigation Action (9) allows states to spend 15% of their allocation on the installation of Electric Vehicle Supply Equipment (EVSE) for light-duty vehicles. This percentage, however, is too restrictive. For example, Section 177 states that have adopted California’s Zero Emission Vehicle (ZEV) regulations are currently working to ensure that electric vehicle (EV) charging infrastructure in their states will accommodate the increased supply of electric vehicles required by the enhanced ZEV mandate that will come into effect with 2018 MY passenger cars. States that have adopted California’s ZEV regulations have taken advantage of the flexibility afforded to them under the Clean Air Act to adopt these rules in response to their identification of motor vehicle emissions, including NOx, as a

significant contributor to air pollution in these states. The states should be able to prioritize the use of their allocation under the Mitigation Trust to implement the technologies that they have identified as being most effective in reducing motor vehicle emissions. Increasing the percentage allowed to be allocated to EVSE under the Mitigation Trust in Appendix D-2 will allow states the flexibility to prioritize spending funds on these types of projects and be prepared to accommodate an increase in EV drivers in these states.

ANR and its partner agencies, as well as other states, have extensive experience in conducting outreach about and implementing grants to fund EVSE projects, and would be able to capitalize on this expertise in prioritizing the use of funds dedicated to EVSE infrastructure in the Mitigation Fund. Therefore, we recommend that the percentage allowed for expenditures under Eligible Mitigation Action (9) be increased to 25% of a states total allocation under the Mitigation Fund.

6. Refine Appendix C: The ZEV Investment Commitment

ANR and its partner agencies have a deep interest in the development of the National Investment Fund and the criteria and process that will govern its allocation.

First, on-road and non-road mobile sources are responsible for more than 75% of the NOx emissions in Vermont. Vermont has a longstanding commitment to supporting the expansion of our state's market for EVs as an essential strategy for reducing these pollutants. In 2013, Vermont joined a Multistate Memorandum of Understanding (<http://www.nescaum.org/documents/zev-mou-8-governors-signed-20131024.pdf>) and ZEV Task Force (<http://www.zevstates.us/>) to support EV market expansion across the northeast, California, and Oregon. In 2014, Vermont developed and began implementing its own ZEV Action Plan.

Second, Vermont has the second highest per capita ownership of Volkswagen and Audi two-liter diesel vehicles in the United States. A high portion of Vermonters are aware of and seek ways to reduce their environmental impact. Choosing Volkswagen and Audi vehicles marketed as low emissions vehicles is one way they have exercised that preference. Many of the affected vehicle owners might have made a different choice had they been informed about the actual emissions of the vehicles. In fact, it is likely that the presence of the affected vehicles in the state's vehicle market, given their high sales rates, has dampened growth in EV sales necessary to meet the state's climate and energy goals, especially in recent years.

For these reasons, ANR and its partner agencies applaud and fully support the development of a National Investment Fund to expand the market for electric vehicles. Appendix C includes provisions that are highly complementary actions to the Consent Decree's provisions for restitution for affected vehicle owners and provisions in Appendix D for mitigating the historic and future increased NOx emissions from the affected vehicles. We offer the following comments on specific provisions of Appendix C.

a. Focus Expenditures of the National Investment Fund in Section 177 States

Section 177 states all administer rules governing the delivery of EVs to market, a regulatory approach that creates a foundation for success in ensuring an adequate supply of EVs to support market transformation. In addition, most are working together collaboratively and with significant resources to create the conditions necessary for growth in demand for EVs. On October 24, 2013, the governors of California, Connecticut, Maryland, Massachusetts, New York, Oregon, Rhode Island, and Vermont signed a memorandum of understanding (MOU) committing to take joint cooperative actions designed to put 3.3 million ZEVs on their collective roadways by 2025. The states formed a multi-state ZEV Task

Force to facilitate this collaboration and worked with the region's air agencies to begin implementing supportive policies and investments summarized in a "Multi-State ZEV Action Plan".

Investments by the Settling Parties' National Investment Fund to accelerate market growth in the Section 177 states can leverage and amplify the impact of the supportive policy frameworks, infrastructure development and incentives established in recent years to drive expansion in EV sales. This targeted approach would ensure the cost effective use of Fund resources.

b. Maintain the Three Categories of Action and Consider Adding Point of Sale Incentives

ANR and its partner agencies support the proposed eligible categories for actions and investments developed by the Settling Defendants. In particular, we support the inclusion of a category for electric charging infrastructure, including infrastructure at workplaces. Numerous studies have shown the importance of workplace charging in maximizing electric miles driven and in expanding the number of employees interested in learning more about EVs. Investments in greater availability of workplace charging will be critical for market expansion, and these funds could provide a meaningful incentive to businesses.

ANR and its partner agencies also strongly support the inclusion of an investment category for a brand-neutral education or outreach that builds or increases public awareness of ZEVs. Increasing consumer education and outreach about EVs is a top priority in both Vermont's ZEV Action Plan and in the Multi-state ZEV Action Plan; research has repeatedly shown that a generally low level of consumer awareness about this technology and its benefits continues to be a major barrier to increasing ZEV sales. The Multi-State Task Force is developing a collaborative, public/private partnership with automakers to launch a brand-neutral consumer education and outreach campaign, a cost effective, regional approach to addressing this challenge. The National Investment Fund could support implementation of this effort.

Finally, ANR and its partner agencies recommend the inclusion of an investment category for brand-neutral EV incentives, since arguably the most significant barrier to their purchase is cost, at least for the next several years while EV technology continues to become more affordable. Brand-neutral EV incentives would be an appropriate category of investment established as part of Appendix C, or alternatively as part of Appendix D's list of Eligible Mitigation Actions, and in cases where other eligible investments have been exhausted.

c. National ZEV Outreach Plan

ANR and its partner agencies support the requirement in Appendix C for Settling Defendants to develop and invite comment on a National ZEV Outreach Plan detailing how they will solicit input from various parties during the creation of the National Investment Plan.

We urge the inclusion of requirement in Section 2.3 of Appendix C that the draft Outreach Plan describe specific processes or steps the Settling Defendants will take to solicit early input from the Section 177 states. This will ensure that the Settling Defendants take advantage of the considerable expertise and experience in these states resulting from decades of Low and Zero Emission Vehicle rule implementation and implementation of non-regulatory actions aimed at creating the conditions for ZEV market expansion.

ANR and its partner agencies appreciate the opportunity to comment and make recommendations related to the Partial Proposed Consent Decree. We look forward to continuing work with the Department of Justice, the Environmental Protection Agency, and the Settling Defendants to implement the provisions

in Appendices C and D of the Consent Decree in ways that consider the unique role that state agencies play in improving air quality and public health.

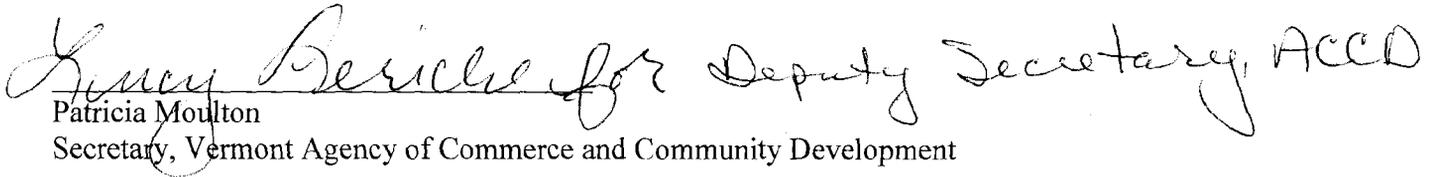
Sincerely,



Deborah Markowitz
Secretary, Vermont Agency of Natural Resources



Chris Cole
Secretary, Vermont Agency of Transportation



Patricia Moulton
Secretary, Vermont Agency of Commerce and Community Development



STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION
NASHVILLE, TENNESSEE 37243-0435

ROBERT J. MARTINEAU, JR.
COMMISSIONER

BILL HASLAM
GOVERNOR

August 5, 2016

Via Email and First Class Mail

John C. Cruden, *Assistant Attorney General*
U.S. Department of Justice
Environment and Natural Resources Division
ATTN: Partial Consent Decree In re: Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products
Liability Litigation, Case No: MDL No. 2672 CRB (JSC), D.J. Ref. No. 90-5-2-1-11386
P.O. Box 7611
Washington, DC 20044-7611
pubcomment-ees.enrd@usdoj.gov

**RE: Partial Consent Decree In re: Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products
Liability Litigation, Case No: MDL No. 2672 CRB (JSC), D.J. Ref. No. 90-5-2-1-11386.**

Dear Assistant Attorney General Cruden:

The Tennessee Department of Environment and Conservation (TDEC) appreciates the opportunity to provide comments on the U.S. Department of Justice's (DOJ) proposed Partial Consent Decree *In re: Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation* (hereinafter referred to as the proposed VW consent decree).¹ TDEC is the environmental agency in Tennessee with responsibility for implementing regulatory programs under the Clean Air Act (CAA) and for developing and overseeing programs and initiatives to reduce environmental impacts and promote and support economic development through clean energy technology. TDEC strives to improve and maintain the quality of its air resources such that they are protective of human health and the welfare of Tennesseans while maximizing employment and enhancing economic development within the State. Balancing these factors is critical to the State's continued prosperity.

In June 2016, DOJ (on behalf of EPA) entered into settlements with Volkswagen (VW)² which partially resolve allegations that VW violated the CAA by selling 500,000 model year 2009 to 2015 motor vehicles containing 2.0 liter diesel engines and 80,000 model year 2009 – 2016 motor vehicles containing 3.0 liter diesel engines equipped with defeat devices.³ These devices have resulted in the release of excess nitrogen oxides (NO_x), which

¹ Partial Consent Decree *In re: Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation*, 81 Fed. Reg. 44,051 (July 6, 2016), <https://www.gpo.gov/fdsys/pkg/FR-2016-07-06/pdf/2016-15858.pdf>. Full text of Partial Consent Decree available at https://www.justice.gov/sites/default/files/enrd/pages/attachments/2016/06/28/vw_partial_21_ed_and_appendices_docketed.pdf (hereinafter referred to as the Proposed VW Consent Decree).

² Settling defendants include Volkswagen AG, Audi AG, Volkswagen Group of America, Inc., and Volkswagen Group of America Chattanooga Operations, LLC.

³ Volkswagen Clean Air Act Partial Settlement, (June 28, 2016). U.S. EPA. <https://www.epa.gov/enforcement/volkswagen-clean-air-act-partial-settlement>. The settlement only addresses allegations regarding the 2.0 liter vehicles.

play a role in the formation of smog and soot. Smog and soot have been associated with detrimental health impacts, such as respiratory and cardiovascular conditions and premature death.

As proposed, the VW consent decree is comprised of three main components, summarized as follows:

- Vehicle Recall: VW is required to remove from commerce or perform an approved emissions modification on at least 85 percent of the affected 2.0 liter vehicles by June 2019.
- Zero Emission Vehicle (ZEV) Investment: VW is required to invest \$2 billion in ZEV charging infrastructure and the promotion of ZEVs.⁴
- Mitigation Trust Fund: VW is required to fund a \$2.7 billion mitigation trust fund for eligible projects undertaken by beneficiaries⁵ that reduce NO_x.

TDEC offers the following comments on components of the VW consent decree.

Mitigation Trust Fund

As proposed, each participating beneficiary has the option to receive an allocation of funds from the total \$2.7 billion that can be used for eligible mitigation actions. Each beneficiary's potential allocation is based on the number of registered illegal VW vehicles within the boundaries of the beneficiary.⁶ TDEC is supportive of this proposed allocation methodology.

Clearly Define Mitigation Trust Fund Terminology

Once an entity has been designated as a beneficiary, it must submit and make publicly available a Beneficiary Mitigation Plan that describes plans for use of the mitigation funds.⁷ Appendix D to the proposed VW consent decree states that "the Beneficiary Mitigation Plan need only provide the level of detail reasonably ascertainable at the time of submission."⁸ TDEC does not object to any required elements of the Beneficiary Mitigation Plan, but requests that DOJ and EPA clarify what is meant by "reasonably ascertainable."

Similarly, item 5.2.7.1 of Appendix D indicates that the Beneficiary Mitigation Plan must identify the specific governmental entity responsible for reviewing and auditing expenditures of eligible mitigation action funds to ensure compliance with state law.⁹ TDEC requests that DOJ and EPA clarify any minimum requirements associated with performance of these reviewing and auditing roles such that beneficiaries know how best to determine an appropriate entity for this responsibility.

The proposed VW consent decree also uses the terms "vendors,"¹⁰ "recipients,"¹¹ and "sub-recipients"¹² however these terms are never clearly defined within the document. TDEC recommends that DOJ and EPA provide explicit definitions for these terms.

⁴ \$800 million is to be invested in California and \$1.2 billion is to be invested throughout the rest of the U.S.

⁵ All 50 states, Puerto Rico, the District of Columbia, and Indian tribes may elect to become beneficiaries.

⁶ Proposed VW consent decree, Appendix D, page 196.

⁷ Proposed VW consent decree, Appendix D, page 193. Required elements include: (i) the Beneficiary's overall goal for the use of the funds; (ii) the categories of Eligible Mitigation Actions the 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.

⁸ *Id.*

⁹ *Id.* at 199.

¹⁰ *Id.* at 199 and 200.

¹¹ *Id.* at 190

¹² Proposed VW consent decree, Appendix D-2, page 210.

Clarify Eligibility of Administrative Expenditures for Use of Mitigation Trust Funds

Appendix D-2 of the proposed VW consent decree indicates that “beneficiaries may use trust funds for administrative expenditures associated with implementing eligible mitigation actions, but not to exceed 10% of the total cost of the eligible mitigation action.”¹³ TDEC recommends that DOJ and EPA clarify whether use of mitigation trust funds for administrative expenditures only applies to those of the beneficiary, or whether use of mitigation trust funds for administrative expenditures may also apply to those of the recipient performing mitigation actions. If the latter, TDEC also recommends that DOJ and EPA clarify whether the 10% threshold applies to the total of both beneficiary and recipient administrative expenditures or each set of administrative expenditures independently. This clarification is extremely important, as it will impact how a state opts to distribute its funds to eligible mitigation actions.

Appendix D-2 of the proposed VW consent decree indicates that administrative expenditures may encompass other costs, such as “insurance, professional services, occupancy and equipment leases, printing and publication, training, and accounting.”¹⁴ TDEC recommends that DOJ and EPA clarify if “professional services” and “accounting” may include any costs associated with review and auditing functions noted in section 5.2.7.1 of Appendix 2.

TDEC also recommends that DOJ and EPA consider increasing the threshold of allowable administrative expenses to 15% for beneficiaries. Under the DERA program states are permitted to draw up to 15% of project costs to cover administrative costs. The current 10% threshold is unlikely to provide sufficient funds (particularly if the 10% threshold applies to the total of both beneficiary and recipient administrative expenditures) for adequate administration of the program and related monitoring, reporting, and compliance oversight functions. If improperly funded, the likelihood of noncompliance with Mitigation Trust Fund requirements and associated audit findings could increase.

Streamline Funding Requests for DERA and Non-DERA Options

The proposed VW consent decree also states that beneficiaries may submit requests for eligible mitigation action funding at any time, but that each request for funding for an eligible mitigation action must be submitted to the Trustee with identification of necessary elements pertaining to: how the funding request aligns with the Beneficiary Mitigation Plan; a description of proposed action and its benefits; the estimated NO_x reductions resulting from the action; a project management plan including detailed budget and implementation and expenditure timeline; certification that vendors will be selected in accordance with applicable state contracting laws; detailed cost estimates from vendors for expenditures exceeding \$25,000; a description of how the beneficiary will oversee the action; a description of any cost share requirement; a description of how the proposed action mitigates impacts of NO_x emissions on communities that have historically borne a disproportionate share of adverse impacts of such emissions; and a plan for reporting on action implementation.¹⁵ Alternatively, if the beneficiary opts to employ the Diesel Emissions Reduction Act (DERA Option), the settlement notes that the beneficiary may use its DERA proposal as its funding request for those Eligible Mitigation Actions funded through the DERA Option.¹⁶ Comparatively, and based on TDEC’s experience, as proposed in the consent decree, the outlined requirements for funding requests under the non-DERA option are considerably more time-consuming and detail-oriented than what is currently required within a DERA proposal (please reference attached FY 2016 DERA project narrative submitted to EPA by TDEC). TDEC recommends that DOJ and EPA consider the discrepancy between the levels of effort associated with the non-DERA and DERA options and opportunities for better aligning beneficiary resources and analysis which would be required under each approach. If these requirements are not better aligned, the consequence may be that more beneficiaries opt to use the DERA option

¹³ *Id.* at 218.

¹⁴ *Id.*

¹⁵ Proposed VW consent decree, Appendix D, pages 199-200.

¹⁶ *Id.*

due to its less onerous funding request requirements, which could result in a less comprehensive and creative approach to reducing NO_x emissions within states given the more restricted types of activities that are eligible to receive funding through the DERA program. TDEC recommends that DOJ and EPA make the funding request requirement for the non-DEIRA and DEIRA options equivalent, or provide an explanation as to why states need to present more information under the non-DEIRA option.

Expand List of Eligible Mitigation Actions

As proposed, the Mitigation Trust Fund outlines eligible mitigation actions that include a variety of projects designed to reduce NO_x emissions within a number of vehicle categories,¹⁷ such as replacing or repowering older diesel engines with new diesel or alternate fueled engines; replacing older diesel vehicles with new diesel, alternate fueled, or all-electric vehicles; and implementation of charging infrastructure associated with all-electric vehicles. TDEC recommends that DOJ and EPA consider expansion of this list of eligible mitigation actions such that it becomes more reflective of the broad array of potential projects and activities that accomplish the trust's purpose: "to achieve reductions of NO_x emissions in the United States."¹⁸

Specifically, TDEC recommends that DOJ and EPA consider including investment in and implementation of compressed natural gas (CNG) and propane infrastructure as eligible mitigation actions. Replacing and repowering older diesel engines with alternate fueled engines, including those powered by CNG and propane (as well as those that are all-electric or hybrid electric), are already considered eligible mitigation actions in many vehicle and equipment categories.¹⁹ While DOJ and EPA include investment in all-electric vehicle charging infrastructure as eligible mitigation actions,²⁰ the same benefit is not afforded to investment in CNG or propane infrastructure. If DOJ and EPA truly intend to incentivize investment in CNG and propane technologies, investment in the very infrastructure necessary to support these technologies should also qualify as eligible expenses, as is provided for all-electric vehicle infrastructure.²¹ TDEC has engaged in recent conversations with representatives of the natural gas industry,²² which indicate that lack of available infrastructure to support use of CNG and propane is one barrier to wider adoption of CNG and propane vehicles and equipment in Tennessee, particularly within rural areas of the state. Increasing access to CNG and propane infrastructure across the state, specifically within rural communities and along major transit corridors throughout the southeastern region,²³ is an area of opportunity untapped by the proposed Mitigation Trust Fund.

Similarly, TDEC recommends that DOJ and EPA consider including investment in and implementation of CNG and propane vehicle and related maintenance needs, both in terms of specific maintenance facility needs (e.g., ceiling height, roof design, gas detection equipment, etc.),²⁴ as well as technician job training associated with the

¹⁷ Eligible categories include: class 8 local freight trucks and port drayage trucks; freight switchers; class 4-8 school bus, shuttle bus, or transit bus; ferries/tugs; ocean going vessels shorepower; class 4-7 local freight trucks; airport ground support equipment; forklifts; and light duty ZEV supply equipment.

¹⁸ Proposed VW consent decree, Appendix D, page 184.

¹⁹ Proposed VW consent decree, Appendix D-2, pages 209-220.

²⁰ Proposed VW consent decree, Appendix D-2, page 216. Item 9, "Light Duty Zero Emission Vehicle Supply Equipment," includes costs necessary for, and directly connected to, the acquisition, installation, operation and maintenance of new light duty zero emission vehicle supply equipment for projects.

²¹ In addition to being an Eligible Mitigation Expenditure, a \$2 billion investment in all-electric vehicle infrastructure will also occur within the ZEV Investment component of the settlement.

²² Conversations with Jonathan Overly of East Tennessee Clean Fuels Coalition on July 15, 2016 and Eddie Davidson of Piedmont Natural Gas on July 18, 2016.

²³ Representatives of the natural gas industry also indicated that there is a need for funding that considers opportunities for multi-state and regional collaboration to address CNG and propane infrastructure.

²⁴ See generally "Upgrading a Maintenance Facility for CNG." (November 2014). *Government Fleet*.

<http://www.government-fleet.com/article/story/2014/11/upgrading-a-maintenance-facility-for-cng.aspx> and Leo Thomason, "Vehicle Maintenance Facilities Requirements for CNG and LNG Vehicles." (June 11, 2014). Natural Gas Vehicle Institute. <http://www.nfpa.org/~media/2389E01D3FD74S33B2EA684CAE84F9F2.pdf>.

operation and maintenance of CNG and propane vehicles and fueling infrastructure, as eligible mitigation actions. Discussions with relevant industry representatives indicate that CNG and propane vehicle maintenance and job training are needed to contribute to greater adoption of CNG and propane technologies.

TDEC recommends that DOJ and EPA consider including idle reduction technologies as eligible mitigation actions. Idle reduction technology is increasingly being used in fleets to minimize idling and decrease emissions. For example, electrified parking spaces, also known as truck stop electrification, provide truck drivers necessary services (such as heating or air conditioning) without requiring them to idle their engine. Onboard idle reduction equipment, such as automatic engine stop-start controls, can also save fuel and decrease emissions when paired with driver modifying behavior training. These technologies are relatively low-cost and can lead to significant energy savings and air quality improvement.

TDEC also recommends that DOJ and EPA consider including research and analysis of alternative designs to traditional Inspection and Maintenance (I/M) programs as eligible mitigation actions. For example, an alternative design to I/M programs might include a combination of two or more of the following approaches: remote sensing, portable emissions measurement systems (PEMS), and traditional stationary I/M testing. While EPA has historically acknowledged traditional and non-traditional vehicle emission testing approaches within state implementation plans (SIPs) through the provision of credits, non-traditional emissions testing approaches are not generally provided credits on an equivalent basis when compared to those provided for traditional emissions testing approaches.²⁵ Non-traditional emissions testing approaches offer the opportunity for in use testing of vehicles and their emissions systems and should continue to be studied, designed and implemented as both a compliment to and, potentially, in substitution of traditional stationary I/M tests. Allowing use of Mitigation Trust Fund dollars for investigating alternative designs to I/M programs would further EPA's and states' knowledge of non-traditional testing approaches as these technologies continue to evolve and mature. This could result in the future design of I/M programs with increased accuracy, efficiency and efficacy with regard to reducing NO_x emissions. Increasing acceptance and adoption of these technologies could also prevent and/or lead to earlier diagnosis of similar CAA violations in the future.

Finally, TDEC recommends that DOJ and EPA consider including replacing or repowering older diesel non-road vehicles and equipment as eligible mitigation actions. States across the country, particularly those with significant rural areas, have a considerable amount of diesel-powered non-road vehicles and equipment used in sectors such as agriculture and construction that serve as a source of NO_x emissions. Including non-road vehicles and equipment as eligible mitigation actions would not only provide states with greater flexibility to allocate their mitigation trust fund dollars, but would also provide another avenue for landlocked states, which are unlikely to be able to take advantage of eligible mitigation actions for ferries and tugs, ocean going vessels, and marine shorepower equipment, to target NO_x emissions reductions based on activities within their state.

ZEV Investment

As part of the ZEV investment component, VW is required to submit ZEV investment plans to EPA for approval, and provide government agencies and the public notice of opportunities to provide input on these plans. TDEC is supportive of the concept of requiring VW to invest in ZEV infrastructure and promotion as well as offering a venue for the general public and state and local government agencies to provide input on VW's ZEV investment

²⁵ RSDs have already been utilized for vehicle emissions testing as part of state-administered programs and pilot studies in several U.S. states for a number of years. Examples of states with programs include Colorado, Texas, Indiana, Ohio, and Massachusetts. Examples of states which have conducted studies include California, Nevada, Arizona, Illinois, Georgia, Pennsylvania, New York, Rhode Island, Connecticut, Delaware, Maryland, and the District of Columbia. See "Remote Sensing Programs." Opus Inspection. <http://opusinspection.com/remote-sensing-device-technology/remote-sensing-programs/>.

plan. However, given that certain ZEV infrastructure expenditures are also considered eligible projects under the Mitigation Trust Fund, TDEC recommends that DOJ and EPA recognize that there may be overlap in activities between what is financed through the ZEV investment and the Mitigation Trust Fund, and consider clarifying any distinctions between which types of projects are eligible in one program as opposed to another, or explicitly stating any restrictions, as applicable. Moreover, due to the potential for duplication of efforts as well as the potential for collaboration and leveraging of funds derived from these separate settlement resources, TDEC recommends that DOJ and EPA consider incorporating mechanisms which ensure effective utilization and coordination of ZEV infrastructure resources in the final consent decree.

In closing, TDEC appreciates the opportunity to comment on the proposed VW consent decree and hopes that this input is of value to DOJ and EPA. Please contact me should you have any questions regarding these comments.

Sincerely,



Robert J. Martineau, Jr.
Commissioner

cc: Cynthia Giles, *Assistant Administrator of the Office of Enforcement and Compliance Assurance*, EPA
Janet McCabe, *Acting Assistant Administrator of the Office of Air and Radiation*, EPA
Kendra Abkowitz, PhD, *Director of Office of Policy and Planning*, TDEC
Molly Cripps, *Director of Office of Energy Programs*, TDEC
Jenny Howard, *General Counsel*, TDEC
Shari Meghreblian, PhD, *Deputy Commissioner of Bureau of Environment*, TDEC
Michelle Walker Owenby, *Director of Division of Air Pollution Control*, TDEC
Lauran Sturm, *Assistant General Counsel*, TDEC

U.S. EPA, Office of Transportation and Air Quality, Transportation and Climate Division

FISCAL YEAR 2016

STATE CLEAN DIESEL GRANT PROGRAM

WORK PLAN AND BUDGET NARRATIVE TEMPLATE

SUMMARY PAGE

Project Title: Reducing Diesel Emissions for a Healthier Tennessee

Project Manager and Contact Information

Organization Name: Tennessee Department of Environment and Conservation

Project Manager: Greg Riggs

Mailing Address: William R. Snodgrass TN Tower

312 Rosa Parks Ave., 15th Floor

Nashville, TN 37243

Phone: 615-532-0567

Fax: 615-532-6817

Email: greg.riggs@tn.gov

Project Budget Overview:

	FY 2014	FY 2015	FY 2016
EPA Base Allocation	\$ 90,357	\$ 139,561	\$ 216,857
State or Territory Matching Funds (if applicable)	\$	\$	\$
EPA Match Incentive (if applicable)	\$	\$	\$
Mandatory Cost-Share	\$	\$	\$
TOTAL Project	\$ 90,357	\$ 139,561	\$ 216,857
Additional Leveraged Resources	\$	\$	\$

Project Period

October 1, 2016 – September 30, 2017

Summary Statement

TDEC is partnering and contracting with East Tennessee Clean Fuels Coalition (ETCleanFuels) and Director Jonathan Overly to place the 2014, 2015 and 2016 funding into a Tennessee diesel vehicle replacement program called **“Reducing Diesel Emissions for a Healthier Tennessee”** which will fund a portion of new, cleaner, alternatively fueled, medium- and heavy-duty vehicles to replace older diesel trucks or other vehicles. Options for the applicants will include newer, diesel-replacement vehicles that run on these fuels – propane, natural gas (as CNG, compressed natural gas) or electricity – and vehicles that put hybrid technology in use. Any older diesel vehicles that can be replaced by new, alternatively fueled vehicles will be able to apply, including but not limited to (as examples) school buses, refuse trucks, dump trucks, cement mixers, delivery vans/trucks, tour or transit buses, minibuses, shuttles, class-8 trucks, tow trucks, bucket trucks and other work trucks.

SCOPE OF WORK

Project Description

The Tennessee “Reducing Diesel Emissions for a Healthier Tennessee” rebate program is making grant funding available to entities in Tennessee to replace older, diesel vehicles with new dedicated, alternative-fuel vehicles that can run on propane, compressed natural gas (CNG), or electricity, or that are hybrids or that can be converted into a hybrid. This funding is EPA Clean Diesel funding that has been previously apportioned to other purposes in Tennessee that the Tennessee Department of Environment and Conservation (TDEC) has been managing, but that is now being directed into an effort to put cleaner, alternatively fueled vehicles on Tennessee roads. ETCleanFuels is working with TDEC in managing this project and dispersing this funding. This program will provide estimated emissions reductions of .24 tons of PM2.5/yr, .32 tons of HC/yr. and 1.21 tons of CO/yr.

Anticipated timeline for DERA grant activities:

<u>Activity</u>	<u>Date</u>
1. Release RFP	May 1, 2016
2. All applications due	June 20, 2016
3. Selecting and notifying rebate recipients	June 30, 2016
4. Complete agreements with recipients	July 30, 2016
5. Vehicles to be purchased	September 30, 2016- June 30, 2017
6. All rebates to recipients	September 30, 2017
7. Submit Final Report	November 30, 2017

Program Priorities

TDEC—in partnership with ETCleanFuels—will utilize the FY 14 - FY16 grant funding to maximize public health benefits by utilizing federal grants. By replacing older, diesel trucks or vehicles with new dedicated, alternative-fuel trucks or vehicles (or hybridizing diesels with proven hybrid technology), air quality and human-health benefits will realized across Tennessee. The larger an area that can be covered will benefit all Tennesseans and help reduce the health impacts associated with harmful diesel emissions.

Older, more polluting vehicles can lead to significant health risks for not only the drivers of the vehicles but the community in which those vehicles operate.

Per 2010 CDC asthma data¹, 9.3% of adults in Tennessee have asthma while 10.5% of children do. That equates to over 600,000 Tennesseans having asthma, with diesel pollution in Tennessee exacerbating their illness. Additionally, per this HealthGrove article from December 2105², the CDC ranks Tennessee as the 4th most polluted state for fine particulate matter—or PM-2.5—with an overall number of 14.02 micrograms/cubic meter of PM air pollution. The article notes, “PM-2.5 particles, classified as a fine air pollutant with an aerodynamic diameter less than 2.5 micrometers, have the ability to penetrate deep into the lungs and bloodstream. A study published in The Lancet found that for every 10 ug/m3 increase of PM2.5 particles, lung cancer incidences increased by 36 percent. Potential sources of PM2.5 include motor vehicles, power plants, wood burning and other industrial processes.” Also, fine PM damages hearts and lungs, and other diesel emissions contribute to ozone formation, global climate change and acid rain. This funding will place a priority on removing older, more polluting diesel vehicles from Tennessee’s roads and replacing those vehicles with newer, cleaner vehicles.

EPA’s Strategic Plan Linkage and Anticipated Outcomes/Outputs

The “Reducing Diesel Emissions for a Healthier Tennessee” Program will decrease harmful emissions from older vehicles that have a negative impact on its whole community.

¹ <http://www.cdc.gov/asthma/brfss/2010/brfsschilddata.htm>

² <http://conditions.healthgrove.com/stories/9642/polluted-states-america#Intro>

OUTPUTS

The following information will be gathered and will help the state track and measure progress toward the environmental goal throughout the grant period.

1. Total number of applications received
2. Number of contracts generated for vehicle replacement
3. Number of vehicles replaced, and where applicable, the number of additional vehicles that might be switched to alternative fuels due to the fleet receiving this funding
4. Amounts awarded and any additional cost share paid for by winning applicants
5. Annual and lifetime gallons of petroleum reductions
6. Annual and lifetime emissions reductions
7. Total number of community citizens impacted

The state of Tennessee will expend all FY 14 – FY16 funding by the end of the grant period. The funding will be in the form of a rebate of up to a maximum of \$16,700 per vehicle.

OUTCOMES

Diesel exhaust contains toxic compounds and EPA classifies diesel exhaust as a probable human carcinogen. Reducing diesel emissions from older, more polluting diesel vehicles in Tennessee communities is an important step towards protect public health and can provide a range of benefits, including reducing health care costs and continuing Tennessee’s overall air quality improvements.

Project Partners

East Tennessee Clean Fuels Coalition (ETCleanFuels) will be partnering with TDEC in the “Reducing Diesel Emissions for a Healthier Tennessee” rebate program. ETCleanFuels will write the RFP, solicit applicants, review the proposals, assist TDEC in ranking the proposals and ensure the guidelines of the program are being followed.

Sustainability of State Program

We believe there will be wide interest in this funding. There are many older diesel engines on the road in Tennessee and by utilizing the FY14 –FY16 funding these engines will be replaced. This program will also help propel the use of alternative fuels in communities as winning applicant fleets will discuss their new vehicles in their communities alongside the work that ETCleanFuels will do to promote it both in those communities and throughout the state and southeastern U.S.

ETCleanFuels plan to utilize their communications networks to promote the winning applicants, their vehicles, and the rebate program. This includes via the

- a) *Tennessee Clean Fuels Advisor*, a six-page, printed, statewide alternative fuels newsletter that is distributed to over 3,000 recipients in 18 states (and published two times per year);
- b) the *Fuels Fix* national ezine that is published quarterly and distributed online and by many of the other 87 Clean Cities coalitions across the U.S. to their members and stakeholders; and
- c) their email system with stakeholders and members across all of Tennessee.
- d) Last but not least, they also plan to utilize partners like TDEC and the Office of Energy Programs (who are a coalition partner) and their email systems to help distribute information on the winners and the program and its benefits.

BUDGET NARRATIVE**Itemized Project Budget**

FY 2014 - FY 2016			
Budget Category	EPA Allocation	Voluntary Match (if applicable)	Mandatory Cost-Share (if applicable)
1. Personnel			
2. Fringe Benefits			
3. Travel			
4. Supplies			
5. Equipment			
6. Contractual	\$446,775		
7. Program Income			
8. Other			
9. Total Direct Charges	\$446,775		
10. Indirect Charges			
Grand Total	\$446,775		

Explanation of Budget FrameworkPersonnel – N/AFringe Benefits – N/ATravel – N/ASupplies – N/AEquipment – N/A

Contractual

Budget Category	FY 2014 - FY 2015		FY 2016	
	EPA	State or Territory Match (if applicable)	EPA	State or Territory Match (if applicable)
Contractor assistance: write RFP, solicit applicants, review proposals, assist in ranking proposals, reimburse school districts, provide information to TDEC for reporting	\$219,918	0	\$216,857	0

Program Income _ N/A

Other – N/A

Direct Charges - \$446,775

Indirect Charges – N/A

Matching Funds and Cost-Share Funds

Although there will be no match requirement, ETCleanFuels will track the additional funding (cost share) spent over and above the incremental purchasing amount of the equivalent new diesel vehicles. Thus, we will have a total match value once the project ends and will include that as part of the reporting.

Bryan W. Shaw, Ph.D., P.E., *Chairman*
Toby Baker, *Commissioner*
Jon Niermann, *Commissioner*
Richard A. Hyde, P.E., *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

August 5, 2016

Mr. John C. Cruden
Assistant Attorney General
U.S. DOJ—ENRD
P.O. Box 7611
Washington, D.C. 20044-7611

Re: Volkswagen "Clean Diesel" Marketing, Sales Practices, and Product Liability Litigation
Case No: MDL No. 2672 CRB
D.J. Ref. No. 90-5-2-1-11386

Dear Mr. Cruden:

The Texas Commission on Environmental Quality (TCEQ) submits the enclosed comments on the Proposed Partial Consent Decree associated with the above-referenced lawsuit. The TCEQ is the primary Texas State administrative agency that develops, implements, and enforces Texas environmental law, including the Texas Clean Air Act.

The comments provided with this letter pertain to the provisions for establishing and using the Mitigation Trust Fund under Appendix D of the proposed decree.

In making the attached comments, the TCEQ has drawn on its experience with the Texas Emission Reduction Plan or TERP, which was established by the Texas Legislature in 2001. The TERP is administered by the TCEQ and, like the Mitigation Trust Fund, is directed to reducing ground level ozone in Texas, including projects to reduce nitrogen oxides (NO_x) from mobile sources. Information about the TERP program is available at <www.terpgrants.org>.

The comments reflect the TCEQ's desire that TERP and the Mitigation Trust Fund complement each other and develop synergies to enhance ozone reduction efforts, rather than simply establishing two separate programs that in some instances may be in competition or conflict with each other.

The TCEQ appreciates the opportunity to comment on the proposed decree. If you have any questions, please contact Mr. Steve Dayton with the TCEQ's Air Quality Division at (512) 239-6824.

Sincerely,

A handwritten signature in black ink that reads "Richard A. Hyde".

Richard A. Hyde, P.E.
Executive Director

RAH/sd

Enclosure

P.O. Box 13087 • Austin, Texas 78711-3087 • 512-239-1000 • tceq.texas.gov

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Volkswagen “Clean Diesel” Marketing, Sales Practices, and Product Liability Litigation
Case No: MDL No. 2672 CRB
D.J. Ref. No. 90-5-2-1-11386

Comments on
Proposed Partial Consent Decree – Mitigation Trust Fund

Submitted by the Texas Commission on Environmental Quality (TCEQ)
August 5, 2016

1. It is unclear from the terms of the Environmental Mitigation Trust whether administrative funds would be available during the project development and solicitation phases of implementing an overall program. The TCEQ interprets the administrative funds to be accessible for use during the planning and project development phase, as opposed to solely accessible in conjunction with each funding request. This is critical to the success of the overall program given the amount of funds disbursed. It will be very difficult to administer the program if administrative funding is only provided prospectively with each individual funding request listing the specific projects (mitigation actions) to be funded under that request. It is recommended that more information be provided on the specifics regarding a lead agency’s receipt of administrative funding for program development, project solicitation, review, and implementation.

Additionally, if there are any other limitations that will be placed on the use of administrative funding, it is very important for possible beneficiaries to be aware of such requirements now so that a full evaluation may be made as to the costs and benefits of successfully implementing such a program.

2. The TCEQ recommends two changes in regard to Appendix D-2 of the proposed consent decree. The first is that the beneficiaries have the flexibility to propose modifications to the project criteria outlined in the decree to best meet the needs of a particular state. The limits of such modifications could be outlined in the proposed consent decree or subject to trustee approval. The TCEQ has administered the very successful Texas Emissions Reduction Plan (TERP) grant program for over fifteen years. The TERP awards grants for projects similar to the mitigation actions under the proposed consent decree. That program has been accepted by the U.S. Environmental Protection Agency (EPA) as meeting criteria for inclusion in the state implementation plan. Although the TERP and the Mitigation Trust would fund projects for different purposes and potentially at different times, having programs with drastically differing funding percentages could create issues with applicants having to evaluate both programs, deciding which best met their needs, and then result in impacting demand on one or both programs through direct competition. For instance, the TERP program may fund repower and replacement projects for both government and non-government projects up to 80% of the costs, while the consent decree limits non-government projects to a range of percentages between 25% and 75% of the costs. Allowing some flexibility in establishing the project criteria would help the TCEQ ensure that the programs are not in competition with each other.

Similarly, the TCEQ recommends that the proposed consent decree allow beneficiaries to outline a broader set of mitigation actions than currently provided in Appendix D-2. Allowing a broader range of project options would provide more flexibility for states to design and target a program that would best address the needs of that state for mitigation of nitrogen oxides (NO_x) emissions. For example, two types of projects that might be added include funding for replacement or repower of additional types of non-road vehicles and equipment and funding for congestion mitigation actions, consistent with guidelines established by the EPA for considering emissions reductions for those types of projects. Non-road emissions make up a significant portion of the NO_x emissions in the state’s

nonattainment areas. In addition, continued growth in Texas' urban areas and accompanying traffic congestion also contributes to additional NO_x emissions in those areas.

3. In order to make the program as efficient as possible, the TCEQ recommends that there be an option for the lead agency, particularly for an agency that already has a well-established grant program like TERP, to outline a grant program and receive funding to implement the program, and then report on the selected projects as part of the semi-annual reports. A program implementation plan could be provided for a particular funding period, including details on how projects will be selected and expenditures tracked, in lieu of having to list the details of vendors and expenditures prospectively for each project in each funding request.

If the intention of the Mitigation Trust is that each individual mitigation action be submitted and approved before a project receives funding, the end result may be substantial delays in project implementation. This would further result in states having to fund program administration for an extended time and then receive reimbursement. It is unreasonable and very difficult within a state's funding scheme for the beneficiaries to fund implementation of an approved Mitigation Plan and then receive what would be a reimbursement of funds already expended. In addition, for those beneficiaries with a large amount of allocated funding, several hundred or more projects might be submitted for the Trustee's approval at any one time. It could be anticipated that the Trustee would have difficulty reviewing such a large number of projects in the allotted time period. In addition, the TCEQ suggests that this level of review for an agency, such as the TCEQ with an already established grant program for similar types of projects, would not be necessary to ensure appropriate use of the funds.

4. The TCEQ recommends that the consent decree explain any limitations regarding one or more governmental entities, in addition to the lead agency, participating in implementation of the mitigation plan as well as on the funding passing through to those entities, including funding for administration of those separate programs to solicit and fund mitigation projects.
5. The consent decree does not provide details on the extent to which beneficiaries must monitor use of grant-funded vehicles and equipment once purchases are made and funding provided. The TCEQ recommends that the consent decree clarify the expectations regarding responsibilities of the beneficiaries and the funds recipients once purchases are made and any scrappage requirements are met.
6. Because the eligible mitigation actions deal with vehicles and vehicle infrastructure, rather than projects that will impact land or land use, or may somehow be used on land (per se), it is not clear why the federal agencies controlling land within the boundaries of the Certifying Entity must be notified pursuant to paragraph 4.2.8 of the proposed consent decree. The TCEQ recommends that this provision be removed or further explanation be provided regarding the requirement.



August 5, 2016

CERTIFIED MAIL NO. 7003 3110 0004 0492 5278

VIA EMAIL: Pubcomment-ees.enrd@usdoj.gov

Assistant Attorney General
U.S. DOJ-ENRD
P.O. Box 7611
Washington, D.C. 20044-7611

Re: In re: Volkswagen "Clean Diesel" Marketing, Sales, Practices and Products Liability
Litigation, Case No: MDL No. 2672 CRB (JSC), and D.J. Ref. No. 90-5-2-1-11386

To Whom It May Concern:

The Pennsylvania Department of Environmental Protection (DEP) thanks the United States Department of Justice (DOJ) for the opportunity to comment on the proposed Partial Consent Decree filed with the United States District Court for the Northern District of California in the lawsuit entitled, *In re: Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation*, Case No: MDL No. 2672 CRB (JSC), partially resolving Clean Air Act and various California claims (including under the California Health and Safety Code) against Volkswagen Group of America, Inc., and others, concerning certain noncompliant 2.0-liter diesel vehicles (Partial Consent Decree). DEP is commenting on the Partial Consent Decree, specifically the ZEV Investment Commitment, Appendix C, and the Form of Environmental Mitigation Trust Agreement, Appendix D.

Although the environmental harm done by the actions of Volkswagen can never be undone, this settlement amount offers the opportunity to improve the air our citizens breathe and make our living and working spaces within the United States healthier. DEP thanks the DOJ for its careful consideration of DEP's comments on the proposed Partial Consent Decree. DEP believes that if DOJ makes changes based on these comments, the positive environmental effects that will be achieved from this Partial Consent Decree will be enhanced. Comments and recommendations on the proposed Partial Consent Decree are provided below.

Appendix D-2, "Eligible Mitigation Actions and Mitigation Action Expenditures"

The Environmental Mitigation Trust Agreement funding should provide at least 50 percent of the funding for the eligible cost share of projects that repower diesel equipment with newer, cleaner diesel engines. The cost-share amount of 40 percent provided throughout Appendix D-2 will not attract private business interest.

DEP has experience with repowering older diesel-powered equipment not subject to emissions standards with newer, cleaner diesel engines through DEP grants using funds from both the Diesel Emissions Reduction Act (DERA) and the American Recovery and Reinvestment Act. DEP is aware that, in most cases, businesses—specifically, railroads and tugboat operators—are looking for at least a 1-for-1 match of their funding to participate in diesel-to-diesel repower grant programs. These businesses have told DEP that a 50 percent cost share is the minimum level of funding to gain their interest. The 40 percent cost-share amount throughout the Environmental Mitigation Trust Agreement will not incentivize businesses that operate the most polluting equipment. Elevating the project match to at least 50 percent for diesel repower projects is necessary for the funding opportunity to be effective.

The Environmental Mitigation Trust Agreement should treat all fuels equally. Offering a higher level of funding for one fuel over another will lead to reduced competition among valid projects and reduce the cost effectiveness of all projects.

The Environmental Mitigation Trust Agreement offers up to 75 percent of the project cost to repower a non-government owned diesel engine with an all-electric engine, including charging infrastructure. While the pursuit of creating a market of all-electric equipment over diesel-powered equipment may be an admirable endeavor, it overlooks some essential factors about diesel engines. The diesel engine is and will be, for years to come, the workhorse of large freight movement in this country. Engines powered by other types of fuels simply do not have the horsepower, performance characteristics, or durability to equal diesel-powered engines and move freight from coast to coast. Diesel engines are powerful, operate for long hours, and can remain in service for decades. The need to rebuild long-lasting diesel engines can be infrequent, which results in excessive emissions of both oxides of nitrogen (NO_x) and fine particulate matter (PM_{2.5}) by these older, in-use engines. Excessive emissions of NO_x and PM_{2.5} can elevate concentrations of ambient pollutants to unhealthy levels in our most populated areas and in downwind locations. Therefore, the largest emission reductions and some of the greatest health effects can be achieved by repowering non-government owned diesel-powered equipment with the best and most efficient engine choice for the application rather than expending more funds for a lesser number of electric engines simply because the incentive is greater. For this reason, the Environmental Mitigation Trust Agreement should adopt a more fuel-neutral approach and value the NO_x and PM_{2.5} emission reductions achievable by treating electric repower projects equally to diesel repower projects. Providing the same percentage of project costs for diesel replacement and repower projects, as well as for alternative fueled (e.g., CNG, Propane, Hybrid) replacement projects would increase the ability for a wider range of projects and attract the most cost-effective projects based on emissions reductions. If the Environmental Mitigation Trust Agreement's intent is to provide additional funding for electric repowers and new electric vehicles due to the additional costs for charging infrastructure, it is DEP's suggestion that the costs for new electric infrastructure, where needed, be provided a 75 percent grant as a separate incentive for the infrastructure-only portion.

The Environmental Mitigation Trust Agreement should expand the eligibility of funding locomotives from just switcher engines to all locomotives, including line-haul locomotives.

Line-haul locomotives operate at high speeds and typically have greater horsepower engines than switcher engines. Engines that have high horsepower and operate at higher speeds produce greater emissions, most notably NO_x emissions. NO_x is the pollutant that Volkswagen's defeat

device produced in much greater amounts than allowed by state and federal vehicle emission standards. In Pennsylvania, line-haul locomotives produce NOx emissions just upwind of urban centers and in urban centers as these locomotives pass through Pennsylvania cities. Line-haul locomotives are responsible for emissions that lead to elevated ambient concentrations of both ozone and PM_{2.5}. By not including line-haul locomotives in the list of eligible projects, the Environmental Mitigation Trust Agreement closes the door on a source of emission reductions that offers the most cost-effective projects for lowering the very emissions that the Environmental Mitigation Trust Agreement is trying to offset. Line-haul locomotives should be included in the list of eligible emission reduction projects.

The Environmental Mitigation Trust Agreement list of eligible mitigation actions states a specific percentage cost share available to government and non-government entities. Before every percentage of cost share listed, the words “up to” should be included.

The DEP will likely distribute funds for projects by using an existing grant program. DEP's grant programs are competitive. If DOJ were to state “up to 75 percent” instead of just “75 percent” on the eligible mitigation list in Appendix D-2, applicants would be afforded the flexibility to fund their share of the project at a percentage rate selected by them and not prescribed by the Environmental Mitigation Trust Agreement. The variability of the percentage could encourage competition through the grant application process. Grant applicants would then have the option to vary the amount of their funding contribution to the project and increase their chances for grant funding by providing a greater amount of funding than rival applicants. This provides a greater potential to leverage the amount of available mitigation funding into additional projects to reduce NOx emissions. If a specific type of project is guaranteed a specific percentage of cost share from the mitigation fund, the grant applicant will not be able to offer a higher percentage of funding for the project costs, effectively eliminating an element of competition between applicants.

Provide a greater percentage of cost share from the Environmental Mitigation Trust Agreement to Class II and Class III railroad companies and owners of smaller tugboat fleets.

Pennsylvania is home to dozens of Class II and Class III railroads and smaller tugboat fleets. In the past, Pennsylvania diesel emission reduction grants have not attracted many applicants from these smaller fleets, although the need to upgrade emission controls on their diesel equipment is most likely great and the most cost effective because these companies typically have older equipment. The Environmental Mitigation Trust Agreement should provide at least an additional 10 percent premium to all cost-share percentages for Class II and Class III railroad companies and owners of tugboat fleets that have fewer than six tugboats. This additional cost-share funding provided by the Environmental Mitigation Trust Agreement would attract worthy applicants that may have difficulty raising funds for their company's portion of the project's costs.

The Environmental Mitigation Trust Agreement should include a wider array of nonroad equipment on its eligible mitigation action list. At a bare minimum, the additional types of nonroad vehicles and equipment should include nonroad diesel equipment that operates at high load factors, has high activity levels, and uses larger horsepower engines. DEP advocates for an even broader spectrum, however.

The current terms of the Environmental Mitigation Trust Agreement exclude many types of nonroad equipment from the list of projects eligible for funding. There are other such examples of unnecessary limitation in this category. Additional emission reductions could be available from the excluded types of nonroad equipment. As stated previously, diesel engines have the durability, high horsepower, and performance characteristics that lead to high levels of emissions. Because the Environmental Mitigation Trust Agreement excludes various types of high-emitting nonroad equipment, DEP would not be able to consider these types of equipment for upgrade; consequently, cost-effective and helpful emission reductions would needlessly not be realized.

The Environmental Mitigation Trust Agreement should include truck stop electrification projects or other low emission idling reduction technologies in the list of eligible projects.

Idle reduction technology is one of the most cost-effective ways of reducing sources of mobile source diesel air pollution. Diesel truck idling is an unnecessary practice, but truck drivers need alternatives to main engine idling to bring this practice to an end. Truck stop electrification and other electric-based idle reduction technologies are solutions to reducing emissions from diesel vehicles. This type of project should be included in the Environmental Mitigation Trust Agreement. Because truck stop electrification is an electric replacement to operating a diesel engine, truck stop electrification should be funded similarly to other zero emission infrastructure technology, such as ship-based shore power technology, which is funded in the Environmental Mitigation Trust Agreement.

The Environmental Mitigation Trust Agreement should better explain how available funds can be used as part of a state grant program that follows DERA guidelines. [Appendix D-2, p. 217 of 225]

It is unclear how the Environmental Mitigation Trust Agreement will fund Pennsylvania's State Clean Diesel Program, which is normally funded by DERA funds. The Environmental Mitigation Trust Agreement should better explain how the Environmental Mitigation Trust Agreement and state DERA programs can interact.

The Environmental Mitigation Trust Agreement should fund all Class 8 trucks that operate in a freight or drayage capacity. If the Environmental Mitigation Trust Agreement will only fund "local" Class 8 trucks, as is suggested in the first item of Appendix D-2 ("Eligible Large Trucks include 1992-2006 model year Class 8 Local Freight or Drayage"), then "local" should be better defined. [Appendix D-2, p. 209 of 225]

DEP supports funding repower or replacement projects that extend the eligibility to all Class 8 trucks that operate in a freight or drayage capacity. If all Class 8 trucks cannot be made eligible, then the term "local" needs to be defined so that the operating area of the trucks is not overly limited. DEP believes that the term "local" should mean "a truck that operates predominately within the state where it is based." In addition, care should be taken in using portions of defined terms, such as using "Class 8 Local Freight or Drayage" when there is a defined term "Class 8 Local Freight, and Port Drayage Trucks (Eligible Large Trucks)."

The Environmental Mitigation Trust Agreement should fund all Class 4-7 trucks that operate in a freight or drayage capacity, or the Mitigation Trust Agreement needs to better

define what is meant by the term “local,” which is contained in the sentence, “Eligible Large Trucks include 1992-2006 model year Class 4-7 Local Freight or Drayage.” [Appendix D-2, p. 213 of 225]

DEP supports funding repower or replacement projects that extend the eligibility to all Class 4-7 trucks that operate in a freight or drayage capacity. If all Class 4-7 trucks cannot be made eligible, then the term “local” needs to be defined so that the operating area of the trucks is not overly limited. DEP believes that the term “local” should mean “a truck that operates predominately within the state where it is based.”

The term “Trust Funds” should be defined.

The capitalized term “Trust Funds” is used in multiple places in the Environmental Mitigation Trust Agreement but is not included in the “Definitions” section. Please define the term to prevent confusion.

Up to 10 percent of the beneficiaries’ administrative costs should be reimbursable expenditures under the terms of the Environmental Mitigation Trust Agreement. [Appendix D-2, p. 218 of 225]

DOJ should clarify whether the list of actions under the heading “Eligible Mitigation Action Measures” for which the beneficiary may use the Trust Fund applies to the expenditures by the beneficiary itself, the final recipient of the funding, or both the beneficiary and final recipient. DEP believes that up to 10 percent of the beneficiaries’ administrative costs should be reimbursable by the Trust Fund.

Appendix C, “The ZEV Investment Commitment”

The ZEV Investment Commitment should further clarify the role of and manner in which a State may participate in the review of projects being considered by the ZEV Fund.

While the Consent Decree identifies the roles of EPA and Settling Defendants under the ZEV Fund, the State’s role is less specific and therefore less clear. Clearer guidance is needed in the Partial Consent Decree regarding the State’s role in acting as an intermediary, administering and/or participating in the ZEV Fund with regards to both public and private sector project proposal submissions. DEP believes that for projects which are considered by the ZEV Fund as a part of the National ZEV Investment Plan that are to be located in Pennsylvania, DEP should be able to provide a recommendation or a preference/ranking of those projects. Often, other in-state opportunities or financial assistance may already be leveraged for projects which may be under consideration by the ZEV Fund. An open line of communication regarding opportunities under consideration could help identify those opportunities and also ameliorate projects which may have other challenges to overcome, whether it be permitting, local approvals, or additional project financing. For instance, Pennsylvania has existing programs such as the Small Diverse Business Program for Procurement for all verified Minority-, Woman-, Veteran-, and Disabled Veteran-owned businesses and could play a helpful role as an intermediary to connect these Pennsylvania businesses with the Settling Defendants for service-level contracting opportunities, including construction, accounting, human resources, legal, procurement, etc. Opportunities may also exist for multi-state projects, and information sharing between states could be a vital

component to the successful deployment of projects whereby shared resources and coordination is required among state agency approval processes.

The ZEV Investment Commitment should clarify how the role of other entities, i.e., municipal government, non-profit, for-profit and colleges and universities, etc., may interact with the ZEV Fund.

With respect to the National ZEV Outreach Plan and National ZEV Investment Plan, DEP seeks clarification as to whether a municipal government, non-profit, for-profit and colleges and universities, for example, can submit ZEV Investment recommendations to the Settling Defendants without going through the agency that the State has identified as the designee to attend to matters under this Partial Consent Decree. DEP recommends that projects should be submitted to the Settling Defendants through the selected designated State agency for this Partial Consent Decree. In Pennsylvania's case, this will be the Pennsylvania Department of Environmental Protection, an agency that already has a strong working relationship with both municipal governments and the private sector on a variety of energy/environmental-related projects. Such an approach will result in more organized and complete project submissions to the Settling Defendants and will also help Settling Defendants to more effectively allocate ZEV investments as opposed to letting a disorganized process occur by having various entities not communicate with the State agency in charge. This approach would also be beneficial for the applicant because the State agency, as an intermediary, could assist in identifying potential flaws in a project submittal, which could be remedied by the municipal and/or private sector applicant.

The ZEV Investment Commitment should further clarify how a State may benefit from the information generated from ZEV Investment projects.

DEP recommends that, in addition to anticipated or projected costs, the Settling Defendants should be required to submit post-completion costs as well as the results of any third-party audits on the ZEV website for public review. Such sharing and access to information and costs would help to determine the ability to reproduce projects in each state based on the true costs for innovation and deployment. The ZEV Investment Fund should be revised to more clearly identify the State's participation role during the completion and analysis of service-level contracts.

The ZEV Investment Commitment is not clear on the potential funding of projects which might be currently planned or have received funding from other sources.

Pennsylvania recommends that the ZEV Investment Fund provide guidance on the ability to allow for the financing of preapproved state ZEV projects for which state funds have already been allocated or committed. Pennsylvania has multiple ZEV projects totaling nearly \$1.5 million in various stages of completion. It is unclear whether a project of this type with existing funding could be funded and/or if the state funding could be replaced with ZEV funding such that the project is shovel-ready for the first 30-month investment period.

The ZEV Investment Commitment should define underserved areas and include a social media campaign that targets those areas to ensure equal opportunities and access for the vulnerable populations.

The National ZEV Investment Plan should include an environmental justice component. Specifically, the National ZEV Investment Plan should take into account the EPA definition that environmental justice is the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. In order to accomplish this, the National ZEV Investment Plan's brand-neutral media activities should include a robust community engagement plan to ensure that all communities have an equal voice and equal access to the resources provided by the National ZEV Investment Plan. This engagement should include direct outreach to community organizations that serve environmental justice communities. The DEP recommends that the National ZEV Investment Plan utilize the newly created EPA C-FERST tool, EJ Screen, NEJAC, the ECOS environmental justice community, and the EPA all-states environmental justice community to develop a broad engagement process with underserved communities. This should include traditional outreach (community meetings, schools, and places of worship) and also a social media campaign that targets those areas to ensure equal opportunities and access for the vulnerable populations. Economically and environmentally disadvantaged populations are often in non-attainment areas, and education and awareness requirements should include targeted messages to them. A single marketing firm that would receive input from all the states will ensure consistent messaging and leveraging of activities as well as achieving economies of scale. Programs such as car share and "ride and drive" and any other programs should be included in an outreach plan. The plan should also require input from the states. This will not only save costs for research and targeted messaging, but it will also give in-depth guidance on the locations of the vulnerable populations as well as any special needs such as bilingual messaging.

The ZEV Investment Commitment should clarify which types of funding mechanisms can be used to support ZEV Investments, including the design/planning, construction/installation, operation, and maintenance of ZEV infrastructure.

There are many types of funding mechanisms that have been used to successfully support clean transportation programs and projects. These mechanisms include not only direct grant and rebate programs, which have the benefit of simplicity, but also financing programs, such as state revolving loan funds, which are advantageous because they provide the opportunity to sustainably support projects and programs for a longer time period. Pennsylvania manages several clean energy and/or transportation programs, such as the Green Energy Loan Fund, Pennsylvania Energy Development Authority, Alternative Fuels Incentive Grant Program, Alternative and Clean Energy Fund, and the Pennsylvania Sustainable Energy Finance Program, which use various mechanisms to support energy projects that provide air quality benefits. DEP recommends the use of existing financing program mechanisms to achieve the ZEV Investment Plan goals. A mechanism to achieve cost-effective program development is to use already existing programs. Provision of a portion of the funding to be transferred to states for use in existing programs will allow a determination of the most appropriate funding mechanism to use and lessen program development costs for the ZEV Fund.

The ZEV Investment Commitment should clarify whether there will be standard operating procedures for EPA and the Settling Defendants associated with the ZEV Fund and, if so, whether states will be provided with them.

In order to determine what projects and programs can be selected, it is important to understand the limitations there are on the funding sources and the reporting requirements the projects and programs will be subject to if they receive funding. For example, if federal requirements such as those related to prevailing wage, disadvantaged business enterprises, historic preservation, and the National Environmental Policy Act apply to the funding, certain projects may not be able to be completed due to the additional costs associated with tracking and reporting activities associated with these requirements. The Plan should clarify the conditions under which these requirements may apply.

The ZEV Investment Commitment should allow for an extended cycle of time to expend any funds left over at the end of the 10-year time frame.

It is our interpretation that funding may be left unspent in the ZEV Fund at the end of the final 30-month ZEV Investment Plan. This leftover money could include any penalties incurred during the Investment Plan period as well as the penalties incurred for not expending the entire \$1.2 billion of the National ZEV Investment Fund within the 120-month timeframe. Those funds, plus any unexpended funds from projects committed but uncompleted within the final 30-month timeframe, should be allowed to be re-deployed by the states through a formula basis as was used for the Environmental Mitigation Trust Agreement. DEP suggests a timeframe of an additional 30 months. This would be the same incremental time period the Settling Defendants would have had to make their ZEV investments under this Partial Consent Decree for the final performance period. In any event, any leftover money as well as penalties or income to the fund should be invested in the states for ZEV and related infrastructure projects.

Conclusion

DEP recommends that the Environmental Mitigation Trust Agreement be structured so that more vehicles, equipment, and project types are eligible for funding. In addition, expanding the universe of eligible projects will increase the number of applicants, promote competition among applicants, and lead to projects that have higher emission reduction potential and increased cost-effectiveness. Projects funded by the Environmental Mitigation Trust Agreement should achieve the greatest emission reductions possible for the citizens of Pennsylvania.

Further guidance for the ZEV Investment Commitment is suggested relative to the role States will have in the implementation process as well as the manner of participation allowed by all entities in the project selection, deployment, reporting and analysis phases during the entire 10-year ZEV Investment Plan period. DEP believes that the expertise of the Commonwealth of Pennsylvania should help direct and support activities. The information which could be gleaned from the successful implementation of projects is an invaluable resource to all states and state programs that cannot be overlooked. Our comments regarding clarity of process and evaluation of opportunities and results, if implemented, will benefit Pennsylvania as well as surrounding states.

Assistant Attorney General

- 9 -

August 5, 2016

Should you have any questions or need additional information, please contact Krishnan Ramamurthy, Acting Director, Bureau of Air Quality, by e-mail at ramamurth@pa.gov or by telephone at 717.787.9702.

Sincerely,

A handwritten signature in black ink, appearing to read "Patrick McDonnell", written in a cursive style.

Patrick McDonnell
Acting Secretary

From: [REDACTED]
To: [REDACTED]; ENRD, PUBCOMMENT-EES (ENRD)
Sent: 8/5/2016 2:59:51 AM
Subject: In re: Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation, Case No: MDL No. 2672 CRB (JSC), and D.J. Ref. No. 90-5-2-1-11386.

John C. Cruden Esq.
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice
In re: Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation, Case No: MDL No. 2672 CRB (JSC), and D.J. Ref. No. 90-5-2-1-11386.

Dear Mr. Cruden:

Our organization writes to request that the final settlement between the U.S. government and Volkswagen provide maximum flexibility for States and Native American tribes to consider allocating some of their funds to electrified parking spaces (EPS) and truck stop electrification (TSE). Specifically, we ask that the settlement expressly list truck stop electrification as an eligible mitigation activity within Appendix D-2, along with the nine other activities that already include various forms of diesel retrofits and the marine equivalent of truck stop electrification. While TSE is eligible for funding under the DERA program option, we are concerned that some States and Tribes will decline or minimize use of the DERA option. Moreover, should Congress decide not to provide funding for the DERA program, there would be limited opportunity to invest in TSE. We know TSE is a cost-effective strategy to reduce NOx emissions and value this mitigation option.

Too often, drivers idle their engines during overnight stays in order to maintain a safe and comfortable cab interior environment. The practice takes place on a large scale and has a disproportionate impact on disadvantaged communities where truck stops and fleet terminals are often located. DERA's own guidelines flag the communities surrounding truck stops for programmatic priority. The Argonne National Laboratory (http://www.afdc.energy.gov/uploads/publication/hdv_idling_2015.pdf) estimates that rest-period idling wastes about 1 billion gallons of diesel and results in the emission of about 55,000 tons of nitrogen oxides released annually in the US. The EPA rates Truck Stop Electrification as the single most cost effective activity to mitigate mobile sources of NOx emissions (less than one third of the cost per ton achieved through diesel retrofits). See page 13 (<https://www3.epa.gov/otaq/stateresources/policy/general/420b07006.pdf>). Truck Stop Electrification, an EPA SmartWay verified technology, provides long-haul truck drivers an alternative to idling their diesel engines during their overnight stays. Significant NOX mitigation can be achieved through 1) installation of new TSE locations; and 2) TSE vouchers for truck drivers to encourage more truckers to use existing TSE facilities.

Again, we urge you to specifically list EPS/TSE infrastructure and TSE vouchers as eligible mitigation activities under Appendix D-2 of the settlement. This would afford beneficiaries maximum flexibility to achieve the settlement's goal of improving air quality in disadvantaged communities by reducing harmful diesel emissions.

Thank you for your consideration!

Sincerely,

Debora Kimball
Time Mark Enterprises
Casa Grande, AZ
[REDACTED]

Build your Google Contacts with Address Extractor for Gmail.

This email was sent via the Google Forms Add-on.



August 5, 2016

John C. Cruden Esq.
Assistant Attorney General,
U.S. Department of Justice--ENRD, P.O. Box 7611,
Washington, D.C. 20044-7611

**In Re: Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation,
Case No: MDL No. 2672 CRB (JSC), and D.J. Ref. No. 90-5-2- 1-11386**

Dear Assistant Attorney General Cruden:

Transportation Energy Partners (TEP) appreciates the opportunity to provide public comments on the draft partial settlement between the U.S. government and Volkswagen (VW) published on July 6, 2016. TEP is a national non-profit organization, which conducts outreach and education to promote clean transportation fuels and vehicles that provide greater energy security for the United States. We work closely with the 87 grassroots Clean Cities coalitions and the 15,000 stakeholders that participate in the U.S. Department of Energy's (DOE) Clean Cities program, focused on deployment of cleaner transportation technologies.

Overall, TEP agrees with the framework and focus of the proposed settlement which requires VW to: (1) make whole VW customers that have been harmed by the company's actions; (2) invest in mitigation actions that will reduce diesel emissions, especially in disadvantaged communities; and (3) invest in strategies that will advance markets for Zero Emission Vehicles (ZEV).

We write to urge the government, the court and the other parties to modify the Consent Decree to enable the use of the Environmental Mitigation Trust and the National and California ZEV Investment Plan funds in ways that will provide faster and greater reductions of nitrogen oxides ("NOx") emissions at lower cost. We believe strongly that TEP's requested changes outlined below will result in directing more of these emission reductions to the communities and regions where they are most needed.

General Recommendations

Recommendation #1: The final settlement should formally encourage the states and VW to consult and work with Clean Cities coalitions as local partners to help identify, select and administer projects under both the Environmental Mitigation Trust and the ZEV Investment Strategy.

There are currently 87 local, state, and regional Clean Cities coalitions across the country that are part of the U.S. Department of Energy's Clean Cities program. The Clean Cities program was created in 1993, pursuant to the Energy Policy Act of 1992, to promote alternative fuels and advanced technology vehicles as a key strategy to reduce America's dependence on petroleum as a transportation fuel and to decrease harmful air emissions from mobile sources. The Clean Cities coalitions are active in 45 states and work with more than 15,000 public and private sector stakeholders to promote cleaner transportation solutions.

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The Clean Cities coalitions have helped hundreds of public and private sector fleets convert to cleaner vehicles and fuels. They have worked in partnership with numerous public and private entities to install alternative fuel infrastructure, including natural gas, propane, advanced ethanol, biodiesel fueling, and electric charging stations. Additionally, they have conducted successful education and outreach programs informing transportation stakeholders and the general public about the many benefits of cleaner fuels and vehicles. According to the Department of Energy, Clean Cities coalition activities are now saving well over 1 billion gallons of petroleum a year and the program is on track to save 2.5 billion gallons a year by 2025. By implementing a multitude of clean transportation projects, the coalitions are also helping to eliminate tens of millions of tons of harmful air emissions from transportation sources each year.

The Clean Cities coalitions have a proven track record of working with public and private sector partners to develop and manage a wide range of successful clean transportation projects with verifiable benefits to communities across the U.S. Over the past decade, Clean Cities coalitions have directly managed hundreds of million dollars in federal and state grant funding. They have led successful projects funded by the American Reinvestment and Recovery Act (ARRA), the Department of Transportation's Congestion Mitigation and Air Quality (CMAQ) program, the Department of Energy's Vehicle Technologies Program, and the EPA's Diesel Emissions Reduction Act (DERA) program. In addition, coalitions have partnered with numerous state funding programs to implement successful petroleum saving, emission reduction projects. In carrying out these projects, the coalitions have consistently leveraged more than ten dollars for every grant dollar invested.

In playing their role as local implementers, Clean Cities coalitions can help ensure that funds are targeted and spent well, with accountability to leverage maximum impact for air quality benefits and market acceleration of ZEVs. Through their twenty plus years of working in the alternative fuels arena, Clean Cities coalitions have gained extensive knowledge about which vehicle technologies can achieve projected mobile source emission reductions and those that cannot. Moreover, Clean Cities coalition project results can be verified at minimal cost by the Department of Energy labs that track and monitor various alternative fuel technologies.

Given their substantial expertise in alternative fuels and advanced technology vehicles, their large and growing network of transportation energy stakeholders, their vast reservoir of experience, their access to the DOE national labs, and their proven track record of implementing successful, community-based clean transportation projects, the Clean Cities coalitions are uniquely qualified, and suited to play a major role in managing and leading projects funded by the settlement. Therefore, the final settlement should formally recognize the Coalitions as key partners in implementing the Mitigation Trust and the ZEV Investment Plan.

Recommendation #2: The final consent decree should provide the public an opportunity to provide formal input on the National and California ZEV Investment Plans and Beneficiary Mitigation Plans before they are approved.

TEP greatly appreciates the opportunity to comment on the Consent Decree. We also appreciate the provisions within the Consent Decree that make the documents, plans, and reports created in connection with the ZEV investment plans and the Environmental Mitigation Trust expenditures publicly available. In the spirit of promoting additional public engagement, we request that the public be provided a meaningful opportunity to comment on the proposed ZEV investment plans and the

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Beneficiary Mitigation Plans before they are approved. This will help to ensure appropriate engagement among the public, States, EPA and VW so that specific investments and mitigation projects are intelligently developed and accountable to the taxpayers.

Recommendations for the \$2.7 Billion Environmental Mitigation Trust Fund for NOx Remediation

Recommendation #3: The final settlement should give equal treatment to all alternative fuels and all purchasers of cleaner vehicles in order to maximize emissions reductions.

The proposed settlement calls for different levels of reimbursement from the Mitigation Trust for different fuels and different purchasers. Specifically, it offers greater reimbursements for electric vehicles and for all vehicles purchased by governments.

Based on the experience of many Clean Cities coalitions administering clean vehicle conversion projects, the proposed reimbursement rates will be inadequate to incentivize the participation of many private sector fleets. This is especially the case for small and independent truckers who typically do not have the capital to invest in new vehicles. While we understand its purpose, the proposed settlement's requirement for "Scrappage" of old vehicles adds to the disincentives to convert to cleaner technologies. It makes it even more difficult for small and independent truckers to purchase new vehicles when they can only recover minimal value from their initial investment.

These same small fleets and independent truckers tend to drive older, dirtier trucks, which should be the primary focus of the investment of the settlement funds. The private sector long haul trucks also generally drive significantly more miles than government-owned heavy duty trucks, thereby producing much greater emissions. Because the draft settlement provides greater incentives for government purchasers, it could result in disproportionate investments in government vehicles, thereby leading to less emission reductions.

Therefore, we recommend that the final settlement allow the Mitigation Trust to contribute "**up to 80 percent**" of the cost of all low and no NOx replacement engines and vehicles regardless of the purchaser or fuel. This is the same cost share formula used by the Department of Transportation's CMAQ program, which is widely viewed as the most effective federal investment program in terms of reducing air emissions through promoting cleaner transportation fuels and vehicles. Permitting a contribution of up to 80 percent from the settlement funds will also help to overcome the serious barrier that the scrappage requirement imposes to the purchase of cleaner vehicles.

Recommendation #4: The final settlement should ensure fair and equal assessments of alternative fuel projects: The current version of the settlement may penalize alternative fuel vehicle replacements, such as compressed natural gas (CNG), liquefied natural gas (LNG), and liquid petroleum gas (LPG) compared with diesel-to-diesel replacements. This is because the U.S. Environmental Protection Agency's (EPA) primary assessment tool, the Diesel Emission Quantifier (DEQ), uses default values that under represent the emissions reductions from CNG, LNG and propane compared to diesel replacements. As the attached exhibit prepared by Clean Fuels Ohio shows, the effect of this bias could be to discourage alternative fuel projects that actually achieve greater reductions in NOx and other emissions based on currently available engines. The unintended consequence would be less NOx and other emissions reductions resulting from the Mitigation Trust investments. Therefore, TEP endorses the Clean Fuels Ohio recommendation for the U.S. EPA to either work to correct and update these data

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gaps, or provide a recommended manual emission reduction calculation process based on the existing engine certification data available for diesel and alternative fuel engines.

Recommendation #5: The final settlement should provide greater flexibility for the States and Tribes to develop their mitigation plans.

We believe that the proposed settlement does not provide sufficient flexibility for the States and Tribes to develop mitigation plans that maximize emissions reductions. Several states have many years of experience running their own programs to promote cleaner transportation solutions. These include competitive grant programs, green banks, and rebate programs, to name a few. Based on their experience, they know what incentives are necessary to induce conversions to cleaner technologies. They also know how to structure programs that will achieve the greatest leverage of other funding sources and the greatest emission reductions. Therefore, we recommend that the final settlement provide greater flexibility for the states and tribes to develop mitigation plans that leverage the effectiveness of their existing alternative fuel and vehicle programs.

Recommendation #6: The final settlement should specifically list Truck Stop Electrification (TSE) as one of the enumerated eligible mitigation actions in Appendix D-2.

TEP recommends that the final settlement provide maximum flexibility for States and Native American tribes to allocate funds to truck stop electrification (TSE). Specifically, we request that the settlement expressly list truck stop electrification as an eligible mitigation activity within Appendix D-2, along with the nine other activities that already include various forms of diesel retrofits and the marine equivalent of TSE.

Most truck drivers idle their engines during overnight stays in order to maintain a safe and comfortable interior environment. According to estimates by the Argonne National Laboratory, rest-period idling wastes about 1 billion gallons of diesel fuel and results in about 55,000 tons of NOx emissions annually in the U.S. The practice takes place on a large scale and has a disproportionate impact on disadvantaged communities where truck stops and fleet terminals tend to be located. In fact, the EPA DERA program guidelines flag the communities surrounding truck stops for programmatic priority.

TSE is an EPA SmartWay verified technology, which provides long-haul truck drivers with an alternative to overnight idling. Studies conducted by the EPA and Federal Highway Administration rate TSE as the single most cost effective activity to mitigate mobile sources of NOx emissions (less than one third of the cost per ton achieved through diesel retrofits). Significant NOx mitigation can be achieved through: (1) installation of new TSE locations; and (2) TSE vouchers for truck drivers to encourage more truckers to use existing TSE facilities. These TSE activities should be explicitly listed in Appendix D-2 as "Eligible Mitigation Actions."

Although TSE is technically eligible under the draft settlement's so-called DERA Option, the DERA program does not provide adequate incentives to advance the use of TSE. TSE is still a start-up industry. Moreover, with diesel prices so low, the DERA cost share of 25 percent for new TSE infrastructure is insufficient for the development of new facilities. In fact, several DERA grants for TSE projects were recently returned to EPA because the economics did not work for the developers. In contrast, industry leaders have developed several new TSE facilities in recent years using DOT CMAQ funds, which provide a federal cost share of up to 80 percent. In addition, the DERA program does not provide TSE vouchers

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for truck drivers. This would be an extremely efficient mechanism to dramatically increase use of existing TSE facilities.

Consequently, we recommend that TSE be listed explicitly in Appendix D-2 as an eligible mitigation action and that the States and Tribes be allowed to provide up to 80 percent of the cost of new TSE infrastructure. In addition, the final settlement should allow the States and Tribes to allocate funds for TSE vouchers for truck drivers.

Recommendations for the \$2.0 Billion Zero-Emission Vehicle Investment Commitment

Recommendation #7: The final settlement should ensure transparency and accountability in Volkswagen's ZEV Investment Plan: The zero-emission vehicle (ZEV) markets are at a critical stage of development. Broad, market-oriented investments, especially charging infrastructure but also consumer education and outreach, are critical. As currently drafted, the ZEV Investment Plan in the proposed settlement agreement lacks transparency and contains minimal mechanisms to establish accountability to ensure investments that are effective in achieving the stated objectives. TEP recommends that the settlement provide more detailed guidance and accountability mechanisms for the ZEV program and create a program structure that ensures transparency. Specifically, as mentioned above, the public should have the opportunity to comment on the draft ZEV plan before it receives final approval. There should also be an opportunity for the public to review and comment on updates to the ZEV plan as it is modified from year to year.

Recommendation #8: The final settlement should include balanced investments in PEV infrastructure and other strategies to accelerate ZEV markets: Some have called for most of the \$2.0 billion ZEV fund to be used for development of a nationwide DC fast charging network. While public DC fast charging is important, this one-size-fits-all approach would ignore market conditions and ongoing investments unique to different state and local areas across the country. TEP recommends that the ZEV program be designed to direct funds to local projects that overcome specific market barriers that are unique to specific locations. These include investments in workplace, multi-unit residential and public charging, as well as consumer and dealer education and dealer incentives.

In conclusion, TEP urges the Justice Department to work with the other parties to integrate our recommendations into the final Consent Decree. This will maximize NOx emission reductions to the greatest extent possible and do the most to advance markets for clean transportation solutions.

Thank you again for the opportunity to provide these comments. If you have any questions or would like additional information on any of the points discussed in this letter, please do not hesitate to contact TEP's Ken Brown at 202-674-7777 or ken@akbstrategies.com.

Sincerely,



Sam Spofforth, TEP President
Clean Fuels Ohio

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On Behalf of the Transportation Energy Partners Board of Directors:

Phillip Wiedmeyer, TEP Vice-President
Alabama Clean Fuels Coalition

Lee Grannis, TEP Treasurer
Greater New Haven Clean Cities Coalition

Robin Erickson
Utah Clean Cities

Richard Battersby
East Bay Clean Cities Coalition

Alleyn Harned
Virginia Clean Cities

Carl Lisek
South Shore Clean Cities (IN)

Tony Bandiero
Eastern Pennsylvania Alliance for Clean
Transportation

Colleen Crowninshield
Tucson Clean Cities

Ruth Horton, Technical Advisor
National Association of State Energy Officials

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Exhibit 1 – Diesel Emission Quantifier, Regarding Alternative Fuels Prepared by Clean Fuels Ohio

The Diesel Emission Quantifier (DEQ) has shown itself to be a valuable tool for providing estimated emission reduction for clean diesel and alternative fuel technologies. There remain, however, some calculative mismatches that create discrepancies for how alternative fuels are calculated within the DEQ. The DEQ tool has limitations and data gaps when calculating multiple types of projects and is particularly problematic when calculating gaseous fuel (CNG and Propane) vehicle replacement projects. Specifically, the DEQ tool has data gaps related to the following:

- **Emission Reduction Factors** – While DEQ aims to provide simple, generalized factors for emission reduction, these factors can often be incorrect for specific alternative fuels, such as CNG and Propane. These errors are evident when comparing the proportional emissions outputs from existing diesel engines vs. propane or CNG engines using US EPA (and/or CARB) certification data on these engine platforms (more specific details below).
- **Missing Technology Options** – The DEQ technology options do not currently reflect the full spectrum of commercially available, US EPA approved, conversion options for alternative fuels. One specific example is dual-fuel natural gas and propane engine systems.

For CNG vehicle replacements, the DEQ offers an option for such technology under the emissions reduction technology scenarios; however, the DEQ indiscriminately applies a 50% NO_x Reduction and a 95% reduction of PM_{2.5}. These figures do not reflect the proportional reductions demonstrated by a direct comparison between the emissions certification data of existing diesel engines versus new CNG units, examples of which are provided below:

Existing Diesel Engines ¹	Diesel Engine Model Year	New CNG Engine ²	New CNG Model Year	% NO _x Reduction from CNG System ³	% PM Reduction from CNG System
MACK MR690s	2000	Cummins ISL G	2015-2016	96.75%	98.00%
MACK LE613	2000	Cummins ISL G	2015-2016	96.75%	98.00%
Volvo VNL42T300	2003	Cummins ISX 12 G	2015-2016	96.25%	97.00%
International 7400	2003	Cummins ISL G	2015-2016	96.8%	99.00%
Volvo VNL42T300	2005	Cummins ISX 12 G	2015-2016	96.25%	97.00%
Freightliner CL120	2006	Cummins ISX 12 G	2015-2016	96.25%	97.00%
Freightliner CL112	2006	Cummins ISX 12 G	2015-2016	96.25%	97.00%

¹ For each existing fleet vehicle, model year specific NO_x and PM emissions standard data (in grams/bhp-hr) were assembled using the US EPA's database of Exhaust Emission Standards for Heavy-Duty Highway Compression-Ignition Engines And Urban Buses (view online at: <http://www.epa.gov/otaq/standards/heavy-duty/hdci-exhaust.htm>).

² For each new engine, NO_x and PM emissions standard data (in grams/bhp-hr) were assembled using US EPA and CARB certified emissions data for each system and vehicle proposed.

³ Percent reductions were created by comparing the existing diesel engine certification standards to the specific CNG or propane engine certification standards. The methodology used was as follows: (existing diesel engine certification level – CNG or Propane engine certification level) / existing diesel certification level = % reduced.

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Similarly, for propane vehicle replacements, the DEQ offers an option for such technology under the emissions reduction technology scenarios, however, the DEQ under represents the actual emissions reductions and does not reflect the proportional reductions demonstrated by a direct comparison between the emissions certification data of existing diesel engines versus new propane units, examples of which are provided below:

Existing Diesel Engines	Diesel Engine Model Year	New Propane Engine	Propane Model Year	% NOx Reduction from Propane System	% PM Reduction from Propane System
CAT	1998	Roush Propane	2016	98.0%	100.0%
Cummins	2000	Roush Propane	2016	98.0%	100.0%
International 3800	2003	Roush Propane	2016	98.0%	100.0%
Blue Bird TCF	2003	Thomas 311TS	2016	95.0%	90.0%

Due to the DEQ's data gaps and inability to correctly account for emission reductions when using alternative fuels other than diesel, such as compressed natural gas (CNG) or propane, Clean Fuels Ohio recommends the US EPA either work to correct and update these data gaps, or provide a recommended manual emission reduction calculation process based on the existing engine certification data available for diesel and alternative fuel engines. An example of a manual calculation method is detailed below.

Manual Emission Reduction Calculation Process (example):

As described above, there are other avenues for calculating emissions such as those detailed in the California Air Resources Board (CARB) Carl Moyer Program. The Carl Moyer program guidelines provide an example of manual emission reduction calculation methodology, namely the *Estimated Annual Emissions based on hours of Operation* (Formula C-4) formula.⁴ Instead of converting hour of operation to miles (using outdated data and diesel specific assumptions), the Carl Moyers Formula C-4 allows for a simpler output by focusing on engine load factor:

$$\text{Emission Factor} \left(\frac{g}{bhp-hr} \right) \times \text{Horsepower} \times \text{Load Factor} \times \text{Annual Hours of Operation} \left(\frac{\text{hours}}{\text{year}} \right) \times \frac{1 \text{ ton}}{907,200 \text{ grams}}$$

For this equation, all factors are known, including Load Factor (LF), detailed in Table B-11 of Moyer's Guidelines.⁵ While On-Highway Tractors/Trucks are not included, load factor of similar engines are detailed, such as Off-Highway Tractors (LF = 0.65), Off-Highway Trucks (LF = 0.57), or an "Other" catch-all category (LF = 0.43).

Conclusion:

Due to the DEQ's data gaps and inability to correctly account for emission reductions when using alternative fuels other than diesel, such as compressed natural gas (CNG) or propane, Clean Fuels Ohio recommends the US EPA either work to correct and update these data gaps, or provide a recommended

⁴ The Carl Moyer Program Guidelines, Page C-3 (Page 37)

⁵ The Carl Moyer Program Guidelines, Table B-11, Page B-6 (Page 18)

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manual emission reduction calculation process based on the existing engine certification data available for diesel and alternative fuel engines.

For more information on this exhibit, please contact: Sam Spofforth, Executive Director of Clean Fuels Ohio at (614) 884-7336 or Sam@CleanFuelsOhio.org.

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From: IdleAir TSE Partners
To: ENRD, PUBCOMMENT-EES (ENRD); info@idleair.com
Sent: 7/28/2016 12:10:00 PM
Subject: Re: Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation, Case No: MDL No. 2672 CRB (JSC), and D.J. Ref. No. 90-5-2-1-11386

John C. Cruden Esq.
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice

In re: Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation, Case No: MDL No. 2672 CRB (JSC), and D.J. Ref. No. 90-5-2-1-11386.

Dear Mr. Cruden:

Our organization writes to request that the final settlement between the U.S. government and Volkswagen provide maximum flexibility for States and Native American tribes to consider allocating some of their funds to truck stop electrification (TSE). Specifically, we ask that the settlement expressly list truck stop electrification as an eligible mitigation activity within Appendix D2, along with the nine other activities that already include various forms of diesel retrofits and the marine equivalent of truck stop electrification. While TSE is eligible for funding under the DERA program option, we are concerned that some States and Tribes will decline or minimize use of the DERA option. Moreover, should Congress decide not to provide funding for the DERA program, there would be limited opportunity to invest in TSE.

Too often, drivers idle their engines during overnight stays in order to maintain a safe and comfortable interior environment. The practice takes place on a large scale and has a disproportionate impact on disadvantaged communities (see <https://www.idleair.com/tse-environmental-justice/>) where truck stops and fleet terminals tend to be located. DERA's own guidelines flag the communities surrounding truck stops for programmatic priority. The Argonne National Laboratory estimates that rest-period idling wastes about 1B gallons of diesel and results in the emission of about 55,000 tons of nitrogen oxides released annually in the US (see http://www.afdc.energy.gov/uploads/publication/hdv_idling_2015.pdf). The EPA rates Truck Stop Electrification as the single most cost effective activity to mitigate mobile sources of NOX emissions (less than one third of the cost per ton achieved through diesel retrofits). See page 13 (<https://www3.epa.gov/otaq/stateresources/policy/general/420b07006.pdf>). Truck Stop Electrification, an EPA SmartWay verified technology, provides long-haul truck drivers an alternative to idling their diesel engines during their overnight stays. Significant NOX mitigation can be achieved through 1) installation of new TSE locations; and 2) TSE vouchers for truck drivers to encourage more truckers to use existing TSE facilities.

Again, we urge you to specifically list TSE infrastructure and TSE vouchers as eligible mitigation activities under Appendix D2 of the settlement. This would afford beneficiaries maximum flexibility to achieve the settlement's goal of improving air quality in disadvantaged communities by reducing harmful diesel emissions.

Thank you for your consideration.

Sincerely,

Adriane Jaynes
Title: Energy Programs and Clean Cities Coordinator
Organization: Tulsa Area Clean Cities
Email: ajaynes@incog.org

Additional Comments: Please include TSE in this program. It is a tremendously effective means of reducing diesel emissions.



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John C. Cruden
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U.S. DOJ--ENRD
P.O. Box 7611
Washington, D.C. 20044-7611

August 5, 2016

**In re: Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability
Litigation, Case No: MDL No. 2672 CRB (JSC), and D.J. Ref. No. 90-5-2- 1-11386**

Dear Assistant Attorney General Cruden,

I am writing to you in support of the comments on **Appendix C "The ZEV Investment Commitment"** to the Partial Consent Decree, Case No: MDL No. 2672 CRB (JSC) contained in a letter to you by Dr. Randell L. Mills, Chairman and CEO of Brilliant Light Power Inc., dated July 26, 2016.

I am one of the five independent scientists who have recently validated Brilliant Light Power SunCell[®] technology. The independent validations, utilizing a variety of methods, have demonstrated million watt plus [1 MW+] power levels in a volume of less than a coffee cup from highly compact laboratory systems. The technology validation demonstrates the SunCell[®] has achieved its power targets in the laboratory and is ready for commercial system development and testing. This validation effort helps Brilliant Light Power now focus development activities to meet customer expectations for cost, reliability, and durability. Four validation methods were employed to substantiate the SunCell[®] reaction power levels. These test results all demonstrate substantial net power when compared to reference. The validations were carried out with four different techniques:

- absolute total optical power of ignited hydrated silver shots recorded over the spectral range from extreme ultraviolet to infrared wavelength;
- absolute ultraviolet power spectroscopy of ignited hydrated oxide-doped silver shots;
- calorimetry of solid fuel;
- thermal burst power measurement in continuous generator.

The testing provides insight into the breakthrough hydride reaction power levels in the 1 MW range. Brilliant Light Power has developed simple, reliable, proprietary, and cost effective solutions for the SunCell[®] power conversion to electricity. The SunCell[®] operates like an incandescent light bulb. The optical plasma is contained in a tungsten sphere which then radiates power in the visible light range. This visible light is at intensities of thousands of times that of

the Sun and is converted to electricity by photovoltaic cells. The SunCell® commercial design harnesses the power of thousands of Suns, providing clean, safe, and cost-effective energy. I concur with the assessment by Dr. Mills that the proposed ZEV charging infrastructure could become obsolete by the early 2020s, and propose to amend Appendix C of the Partial Consent Decree as follows: replace paragraph 1.10.1 with:

“Brand-neutral research and development of ZEV technology within the United States. The results of such research and development efforts or activities will be made available to all automobile manufacturers in the United States on a non-discriminatory basis. Such efforts or activities may contain a statement that they are “sponsored by Volkswagen,” but that statement shall not be prominently displayed, and the efforts, materials or activities shall not feature, favor, or advertise Settling Defendants’ services or vehicles.”

Alternatively, the proposed new paragraph 1.10.1 could be inserted as paragraph 1.10.2 with appropriate changes in the order of the following paragraphs, or added as new paragraph 1.10.5. A recent, peer-reviewed study of “Life cycle air quality impacts of conventional and alternative light-duty transportation in the United States” (Tessum, 2014, <http://www.pnas.org/content/111/52/18490.full.pdf>) shows that electric vehicles charged by next-decade grid-average electric power have higher health costs than conventional vehicles—with a mortality rate about twice that of modern internal combustion engines, and twice the health costs per gallon gasoline equivalent (\$1 vs. \$0.5 for gasoline, diesel, CNG or hybrids, see Tessum, Figure 2). The combined climate and health externality costs of grid-average electric vehicles are also higher than for gasoline, diesel, CNG and hybrids (Tessum, Figure 3). Electric vehicles will have a climate and health cost advantage over conventional vehicles only once coal-fired power generation has been phased-out completely. Only with **clean electric power generation** technologies (solar, wind, water, SunCell®) would a battery-charging infrastructure provide **positive** climate and health benefits. With SunCells soon available as a cost-effective automotive technology, a ZEV battery-charging infrastructure would become obsolete by the early 2020s.

Sincerely yours,



Randy A. Booker, Ph.D.
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From: Mike Litt
To: ENRD, PUBCOMMENT-EES (ENRD)
Sent: 8/5/2016 4:21:10 PM
Subject: In re: Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation, Case No: MDL No. 2672 CRB (JSC), and D.J. Ref. No. 90-5-2-1-11386

August 5, 2016

John C. Cruden
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044

Submitted by email at pubcomment-ees.enrd@usdoj.gov.

In re: Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation, Case No: MDL No. 2672 CRB (JSC), and D.J. Ref. No. 90-5-2-1-11386.

Dear Mr. Cruden,

Thank you for the opportunity to comment on the Partial Consent Decree lodged by the Department of Justice for the lawsuit entitled, *In re: Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation*. As a leading consumer and good government advocacy organization that has engaged tens of thousands of people across the country to hold Volkswagen accountable for its emission scandal, U.S. PIRG Education Fund is pleased to see a Partial Consent Decree on behalf of the EPA and CARB for 2.0 Liter Subject Vehicles that would compensate customers, clean up the environment, and deter future wrongdoing. However, we would like to see a Decree that requires buybacks that are at least equal to the higher amounts required by the related but separate Class Action Settlement.

When news of the scandal broke last September, U.S. PIRG Education Fund launched a "Make VW Pay" campaign to hold the company accountable for polluting our air and ripping off hundreds of thousands of consumers who thought they were buying clean diesel cars. Over 20,000 people signed petitions calling for accountability of the company. We also wrote a letter with leading environmental, public health, and consumer groups outlining criteria we wanted to see in a settlement.

Buybacks

Although we called for buybacks at full purchase price of the affected cars, the inclusion of buybacks at Retail Replacement Value in the Partial Consent Decree is a win for consumers. However, as is acknowledged in Paragraph 4.1 under Section IV of Appendix A, the payments required by the related but separate FTC Order and the Class Action Settlement are equal to or in excess of the Retail Replacement Value. The Buyback to owners under the separate Class Action Settlement is made up of the September 2015 National Automobile Dealers Association ("NADA") Clean Trade-In value of the car before the scandal became public, plus an additional cash payment. While we are not aware of estimated payments to owners under the Partial Consent Decree, an examination of estimates under the FTC Order and the Class Action Settlement show a higher range of potential compensation of up to an average of about \$1700 more per car under the Class Action Settlement.ⁱⁱ We understand that VW's compliance with the FTC Order and the Class Action Settlement would satisfy the Buyback requirement under the EPA/CARB Consent Decree. However, Paragraph 4.1 explains that should Volkswagen not fulfill its buyback requirement under the FTC Order and Class Action Settlement, or if the Court does not enter into those agreements, Volkswagen must still provide the Buyback as required by the Consent Decree. Because of such a possible scenario, we would like to see a Buyback amount in the Consent Decree that is at least equal to the higher amounts required under the Class Action

Lease Termination and Vehicle Modification

In addition to the Buyback, we are pleased to see a Lease Termination and Vehicle Modification Recall Program, as called for in Paragraph 9 under Section IV of the Decree. We understand that while the Decree does not require lessee restitution in addition to offering lease cancellation at no cost or restitution to customers opting for an approved modification, the FTC order and Class Action Settlement do. We recommend clarification in Paragraph 4.2 under Section IV of Appendix A that lessee restitution is required to eligible lessees as defined in the FTC Order and/or Class Action Settlement. We also recommend clarification in Paragraph 5.1 under Section V of Appendix A that restitution is required to eligible owners and lessees who choose an approved modification, as defined in the FTC Order and/or Class Action Settlement.

Eligible owners and lessees who chose an approved modification should be offered the opportunity to return their modified vehicle within 30 days for a buyback or lease termination.

Recall Rate

We are pleased to see a target for an at least 85% Recall Rate by June 30, 2019, backed by a requirement that Volkswagen contribute \$85,000,000 for each 1% that the National Recall Rate falls short of the target.

Mitigation and ZEV

The inclusion of \$2.7 million for Eligible Mitigation Actions and \$2 million for investments in increased use of Zero Emission Vehicles (ZEV) are important steps in reducing pollution caused by the scandal and deterring future criminal acts.

Stipulated Penalties

We are also pleased to see Stipulated Penalties in Paragraph 8.2 under Section VIII of Appendix A, including but not limited to penalties for failure to make required Buyback payments, failure to initiate the recall program within 15 days of criteria outlined in Paragraph 8.2.1, and failure to make any Mitigation Trust Payments. Such penalties are necessary to help ensure compliance with the decree. We will also follow Volkswagen's compliance with the Decree and engage the public around the status of Volkswagen's follow-through with the requirements of the Decree.

Conclusion

The Decree is an important step towards compensating consumers, cleaning up the environment, and deterring future wrongdoing. The final Decree should not fall short of what has been proposed in the proposed Partial Consent Decree, FTC order, or Class Action Settlement.

Sincerely,

Mike Litt
Consumer Advocate
U.S. PIRG Education Fund
mlitt@pirg.org; 202-461-3830

[i] We calculated the difference between the lowest amount listed for each car on Attachment 1A of the FTC's Proposed Partial Stipulated Order for Permanent Injunction and Monetary Judgement and the highest amount listed for each car under Exhibit 6 (Estimated Settlement Payments to Owners and Lessees) of the Class Action Settlement. We then calculated the average for the differences of 45 VW models and came up with \$1,733. See FTC, *FTC's Proposed Partial Stipulated Order for Permanent Injunction and Monetary Judgment (Attachment 1A)*, 28 June 2016 and Class Action Settlement, *Estimated Settlement Payments to Owners and Lessees (Exhibit 6)*, 28 June 2016.



Utah Clean Cities Coalition

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August 5, 2016
John C. Cruden Esq.
Assistant Attorney General,
U.S. Department of Justice – ENRD, P.O. Box 7611
Washington, D.C. 20044-7511

RE: Volkswagen “Clean Diesel” Marketing, Sales Practices, and Products Liability Litigation, Case No: 2672 CRB (JSC), and D.J. Ref. No. 90-5-2-1-11386

Dear Assistant Attorney General Cruden:

Utah Clean Cities Coalition (UCCC) has been reviewing this case with Transportation Energy Partners, NGV America and Clean Cities Coalitions across the United States. UCCC agrees with Recommendations presented by Transportation Energy Partners whereas Clean Cities Coalitions are very knowledgeable, experienced and best suited to implement transportation solutions to reduce nitrogen oxides (“NOx”) emissions in their local and state regions.

UCCC Recommendations

Utah currently has one of the best “Public CNG Access Infrastructures in the United States. EV infrastructure and Truck Stop Electrification are specifically mentioned.

- We believe that CNG and LPG infrastructure should be specifically mentioned for funding in both the Public and Private sector.

UCCC has a very high success rate with implementation of programs when utilizing Grant Money or other means of funds available. We have been successful with reducing more emissions per dollar than other agencies. The most recent DOE Grant Program (AARA) was a success for UCCC and its stakeholders with a \$14.9M program, UCCC accomplished the following.

	Planned	Final
AFV Deployed	678	558
Fueling Infrastructure	46	53
CNG - new	16	19
CNG - upgrade	24	18
LNG	3	4
Biodiesel	3	1
EVSE	0	11
Fuel Displacement	11.5 Million GGE/Yr.	9.7 Million GGE/Yr.*

Total DOE ARRA Award:

	Original	Final
Federal	\$14,908,648.00	\$14,908,648.00
Match	\$37,458,715.00	* \$42,458,715.00
Total	\$52,367,363.00	\$69,927,753.04

*UCCC's 24 partner match was approximately 12% (\$5M) higher than the original project estimate.

UCCC knows from experience if the program is administered opening and fairly with all alternative fuels available to the consumer, businesses and government huge emission reductions are possible. With over 86 Clean Cities Coalitions across the nation having huge successes like UCCC in a short period of time the results would be a tremendous benefit our air quality. The Clean Cities Coalitions are very knowledgeable in their region and have a sense for what fuels will provide the largest emission reductions within a short period of time.

The incentives provided in the settlement are not equal. Each alternative fuel has unique advantages when compared to other alternatives within their geographical area.

1. If incentives are on an "even playing field" implementation will be quicker and less costly.
2. Scrapping an older diesel engine for a newer engine will provide fewer emissions; however an alternative fueled vehicle will provide a greater reduction in emissions immediately.

In order to maximize the NOx reduction at best, we urge the Justice Department to consider all recommendations and integrate these into the final Consent Decree.

Sincerely,



Robin Erickson, Executive Director
Utah Clean Cities Coalition



David A Duey, Operating Committee, Chair
Utah Clean Cities Coalition



State of Utah

GARY R. HERBERT
Governor

SPENCER J. COX
Lieutenant Governor

Department of
Environmental Quality

Alan Matheson
Executive Director

Brad T Johnson
Deputy Director

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August 3, 2016

John C. Cruden
Assistant Attorney General
U.S. DOJ-ENRD
P.O. Box 7611
Washington, D.C. 20044-7611

Re: Public Comment on proposed Partial Consent Decree, *In re: Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation*, Case No: MDL No. 2672 CRB (JSC)

Dear Mr. Cruden,

I. Introduction

The Utah Department of Environmental Quality (The Department) submits the following comments on the above-referenced Partial Consent Decree (Consent Decree). These comments concern Appendix D-2 of the Consent Decree entitled Eligible Mitigation Actions and Mitigation Action Expenditures.

The Consent Decree requires Volkswagen to pay \$2.7 billion into a trust for the purpose of mitigating the NOx emissions from 2.0 liter Volkswagen diesel engine vehicles. This money may only be spent by the beneficiaries listed in the Consent Decree for eligible mitigation actions. The Department agrees with the decision to limit the trust funds to eligible mitigation actions that are enumerated in Appendix D-2 of the Consent Decree. However, the Department believes that the section enumerating eligible mitigation actions should be modified.

For the reasons explained below, the Department respectfully requests that the Consent Decree be modified to expand Appendix D-2 in two ways. The first

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modification would be to classify the replacement or repower of diesel commuter rail locomotives operated principally or entirely within a current nonattainment area for a pollutant impacted by diesel emissions as an approved mitigation activity. The second modification would be to remove the 15% spending cap for electric vehicle (EV) charging stations.

II. Request for changes to the Eligible Mitigation Action List

A. Request for the Addition of Diesel Commuter Rail Locomotives to the Eligible Mitigation Action List

The consent decree should be modified to allow beneficiaries to spend their portion of the trust funds to repower or replace commuter diesel locomotives operated principally or entirely within a current nonattainment area for a pollutant impacted by diesel emissions. A commuter diesel locomotive known as the FrontRunner runs up and down the Wasatch Front and travels through two adjacent PM_{2.5} nonattainment areas. The FrontRunner consists of Tier 0 and Tier 1 diesel locomotives that emit over six times more NO_x and over eight times more direct PM than Tier 4 locomotives. Repowering or replacing FrontRunner engines would help remediate the environmental harms caused by Volkswagen.

Although the FrontRunner could be repowered or replaced through the Diesel Emission Reduction Act (DERA) program under the consent decree, Utah would like the flexibility to be able to also use its allocation of the money outside of the DERA program. Allowing both DERA and non-DERA funding for repowering or replacing the FrontRunner diesel engines would give the State the same flexibility that is given to freight switchers. Under the consent decree, freight switchers can be replaced either as an approved mitigation activity enumerated in the consent decree or through the DERA program. Government owned freight switchers can be funded at 100%. Under the DERA program funding is more limited. The consent decree should be amended to allow 100% funding for repowering or replacing commuter diesel locomotives either owned by the government or by a quasi-governmental organization like the Utah Transit Authority.

The reason that commuter rail should be included as an approved mitigation activity is because it directly addresses remediating the increased air pollution caused by the Volkswagen defeat device. The Volkswagen defeat device allowed light-duty diesel vehicles (LDDVs) to emit pollutants well beyond the applicable emission standards. Replacing or repowering the FrontRunner diesel engines would reduce the same type of diesel emissions that were illegally being emitted into the airshed by Volkswagen's LDDVs.

B. Request for the Removal of the 15% Cap for Electric Vehicle (EV) Charging Stations

Page 3

The 15% cap on the total amount of the allocation of money that may be used for EV charging stations should be removed or raised. This will provide more flexibility for states that wish to improve their infrastructure for EVs. The 15% cap appears to be an arbitrary limit on a mitigation activity that directly relates to remediating the air pollution caused by Volkswagen.

For years Volkswagen pushed diesel-powered cars as a clean alternative to gasoline-powered cars that could reduce CO₂ emissions and provide better fuel efficiency. Volkswagen's push for diesel-powered vehicles slowed its entry into the EV market. Removing the 15% spending cap will enable states to remediate the damage caused by Volkswagen's diesel vehicles. Building up the EV charging infrastructure will encourage the use of EVs, and it will help reverse the environmental harm caused by the fact that Volkswagen's entry into the EV market was slowed by its production of diesel-powered vehicles.

III. Conclusion

The Department appreciates the time spent by the DOJ and the EPA on negotiating a Consent Decree that will address the environmental harms caused by Volkswagen's 2.0 liter diesel vehicles. The Department respectfully requests that the above changes are made to the list of approved mitigation actions. Adding diesel commuter locomotives to the list and removing the 15% cap on EV charging stations will further enhance the purposes of the Consent Decree and will provide individual states more latitude in setting environmental policy that will remediate NOx emissions caused by Volkswagen's diesel vehicles.

Sincerely,



Alan A. Matheson
Executive Director



128 Lakeside Avenue, Suite 401
Burlington, VT 05401 USA

Tel: (802) 658-6060
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veic.org

Via e-mail to: pubcomment-ees.enrd@usdoj.gov

August 5, 2016

John C. Cruden, Esq.
Assistant Attorney General
Environment and Natural Resources Division
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Re: Volkswagen "Clean Diesel" Marketing,
Sales Practices, and Products Liability
Litigation
Case No: MDL No. 2672 CRB (JSC), and
D.J. Ref. No. 90-5-2- 1-11386

Dear Mr. Cruden:

The Vermont Energy Investment Corporation (VEIC), a nonprofit organization dedicated to reducing the economic and environmental costs of energy use, appreciates the opportunity to offer comments on the referenced litigation documents. Six other organizations—the Conservation Law Foundation, Green Mountain Power, the Vermont Chapter of the Sierra Club, Vermont Conservation Voters, the Vermont Clean Cities Coalition and the Vermont Natural Resources Council—have joined with VEIC in supporting these comments.

Our comments relate only to **Appendix C** (The ZEV Commitment) and **Appendix D-2** (Eligible Mitigation Actions and Mitigation Action Expenditures).

VEIC has a strong transportation efficiency practice, and is particularly concerned in this proceeding about ensuring that fund distribution from the Settlement is appropriately strategic and inclusive to be consistent with the spirit of the environmental benefits sought in the Partial Consent Decree.

We therefore offer the following comments, citing the sections to which they relate and their corresponding page numbers, for ease of reference. Where applicable, we provide a rationale for our comments, and a suggestion for a change in the language:

I. "National" distribution of funds outside California

Applicable to Appendix C:

- **Section II.** National ZEV Investment Plan, **Item 2.1**, National ZEV Investment; Appendix C p. 4; Partial Consent Decree p. 151.

The provisions do not appear to involve vehicles in states complying with the Clean Air Act requirements for Section 177 states. Such states should receive a targeted portion of Settlement funds.

- **Rationale:** Section 177 states should benefit from their ongoing investment in zero-energy vehicles (ZEVs), and from their ability to leverage their policy and regulatory frameworks to achieve the goals of the Settlement to increase ZEV deployment. If the non-California funds are to be distributed nationwide, the proposed national distribution will not result in the kind of environmental benefits envisioned in the Partial Consent Decree nearly as much as would a targeted, strategic effort that encourages more, rather than less, ZEV adoption. We also believe that the states receiving a targeted portion will be in an excellent position to advance the directions of the ZEV industry toward greater nationwide acceptance of ZEVs.
- **Suggestion:** We recommend that at least 25 percent of the non-California funds be assigned for ZEV Investment Fund activities in Section 177 states. Further, we recommend that these funds be concentrated in the seven non-California states that are signatories to the Memorandum of Understanding on State Zero-Emission Vehicle Programs (Connecticut, Maryland, Massachusetts, New York, Oregon, Rhode Island, and Vermont).

II. Model years covered

Applicable to Appendix D-2:

- **Item 1.a.** Category 1 Class 8 Local Freight Trucks and Port Drayage Trucks (Eligible Large Trucks), Appendix D-2 p. 1; Partial Consent Decree p. 209.
- **Item 2.a.** Category 2 Class 4-8 School Bus, Shuttle Bus, or Transit Bus (Eligible Buses), Appendix D-2 p. 2; Partial Consent Decree p. 210.
- **Item 6.a.** Category 6 Class 4-7 Local Freight Trucks (Medium Trucks), Appendix D-2 p. 5; Partial Consent Decree p. 213.

This proposal specifies replacement assistance on vehicles from model years 1992 to 2006. It is our position that the newest model year should be 2010, extended and annually adjusted in such a way as to ensure the funds can be spent. Federal regulations and the Diesel Emissions Reduction Act (DERA) frequently use Model Year 2010 as a demarcation point. Federal emissions regulations increased significantly in 2010. The proposed Consent Decree will limit the ability of states to replace vehicles. If the model years cannot be adjusted across the ten years of the spend-down requirement, there will be nearly zero probability that any vehicle will be eligible.



Conservation
Law Foundation



SIERRA CLUB
VERMONT CHAPTER



VNRC
Vermont
Natural
Resource
Council



- Rationale.** Vehicle fleets operating in the many states that use salt on roadways in winter to reduce ice and snow hazards are at risk of rapid rust and corrosion to their bodies and engines. It is standard and best practice for fleet managers to replace vehicles in these regions every eight years. Thus, vehicles built in the most recent covered model year, 2006, began to come to the ends of their useful lives in 2014 and thereafter, and thus do not qualify for replacement assistance under the proposed settlement. Further, if the model years covered are static across the lifetime of the settlement (80 percent of the funds must be spent within 10 years), very few to no eligible vehicles will likely be covered. In part because of the best-practice vehicle fleet replacement schedules, there are very few vehicles in model year 2006 or older. By 2026, it is doubtful that there will be any such vehicles on U.S. roadways.
- Suggestion.** The goal should be to spend down the fund in three years, and to specify model years covered to optimize their replacement, while respecting real-world planning and practices for vehicle replacement. For example, if the settlement takes effect in 2017, the range of model years should be 1992 – 2010; in 2018, the model year should rise to 2011; and in 2019, the model year should rise to 2012.

III. Vehicle replacement with plug-in hybrids

Applicable to Appendix D-2:

- Item 6.c.** Category 6 Class 4-7 Local Freight Trucks (Medium Trucks), Appendix D-2 p. 6; Partial Consent Decree p. 214.

The proposal specifies replacement with any new diesel, alternative-fueled, or all-electric vehicles, but it does not specify another engine model that should be encouraged: plug-in hybrid electric vehicles.

- Rationale.** Some larger utility trucks are plug-in hybrid electric models, often a better environmental choice for replacement than new diesel and alternate-fueled vehicles.
- Suggestion.** Expand the list of replacement vehicle types to include plug-in electric hybrid models.

IV. Repowering

Applicable to Appendix D-2:

- Item 4.d.** Non-Government Owned Eligible Ferries and / or Tugs, Appendix D-2 pp. 4-5; Partial Consent Decree p. 212-213.
- Item 4.e.** Government Owned Eligible Ferries and / or Tugs, Appendix D-2 p. 5; Partial Consent Decree p. 213.

This category should include replacements of existing ferries with new, all-electric ferry and / or tugs.



Conservation
Law Foundation



- **Rationale.** The Settlement clearly recognizes the value of alternate-fuel and all-electric engines, and has specified the coverages for each kind of solution. However, the Repower option covers three types of engine replacement: rebuilding, replacement with remanufactured engines, and full replacement. It does not, however, cover new, all-electric ferries. All-electric ferries are in use in Norway and are likely to be available in the U.S. market within the timeframe of the Consent Decree.
- **Suggestion.** The Partial Consent Decree language should be changed to offer compensation for switching to new all-electric motors, whether in existing ferries and tugs or as vehicle replacements.

V. The term *truck tractor*

Applicable to Appendix D-2:

- **Definitions / Glossary of Terms,** "Class 8 Local Freight, and Port Drayage Trucks (Eligible Large Trucks)," Appendix D-2 p. 11; Partial Consent Decree p. 219.

Class 8 Local Freight, and Port Drayage Trucks (Eligible Large Trucks) shall mean truck tractors with a Gross Vehicle Weight Rating (GVWR) greater than 33,000 lbs ...

We believe the use of the term *truck tractor* is in error here.

- **Rationale.** There are very few truck tractors with a GVWR greater than 33,000 lbs. Further, the term is imprecise.
- **Suggestion.** Remove the word *tractors* from the description. *Truck tractor* refers only to the truck engine cab, and not the entire truck. GVWR is commonly applied to the entire truck, and not just to the engine cab.

VI. The term *new diesel*

Applicable to Appendix D-2:

- **Definitions / Glossary of Terms.** Appendix D-2, p. 12; Partial Consent Decree, p. 220.

The term *new diesel* should be clearly understood to be only ultra-low sulfur diesel fuel, and to require exhaust controls.

- **Rationale.** It is the combination of the low sulfur and exhaust controls that make the "new diesel" fuel so clean. *New* refers only to recency, but does not imply an acceptable level of intended environmental quality.
- **Suggestion.** Add the term *New Diesel* to the Definitions / Glossary of Terms, and define it as: "...shall mean an engine or vehicle that operates only on ultra-low sulfur diesel fuel and contains exhaust controls." Further, remove all 28 instances of *any new diesel* and *new diesel*, and replace them with *New Diesel*.



Conservation
Law Foundation



Thank you again for the opportunity to respond. We at VEIC, Green Mountain Power, the Vermont Chapter of the Sierra Club, Vermont Conservation Voters, and the Vermont Natural Resources Council wish you well in your completion of the Final Settlement.

Sincerely yours,



Karen Glitman
Director, Policy & Public Affairs
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Sandra Levine, Esq.
Senior Attorney
Conservation Law Foundation

Lauren Hierl
Political Director
Vermont Conservation Voters

Josh Castonguay
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Green Mountain Power

Johanna Miller
Energy Program Director
Vermont Natural Resources Council

Karl Kemnitzer
Vermont Chapter, Sierra Club

Abby Bleything
Coordinator
Vermont Clean Cities Coalition



From: IdleAir TSE Partners
To: ENRD, PUBCOMMENT-EES (ENRD); info@idleair.com
Sent: 8/2/2016 2:43:29 PM
Subject: Re: Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation, Case No: MDL No. 2672 CRB (JSC), and D.J. Ref. No. 90-5-2-1-11386

John C. Cruden Esq.
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice

In re: Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation, Case No: MDL No. 2672 CRB (JSC), and D.J. Ref. No. 90-5-2-1-11386.

Dear Mr. Cruden:

Our organization writes to request that the final settlement between the U.S. government and Volkswagen provide maximum flexibility for States and Native American tribes to consider allocating some of their funds to truck stop electrification (TSE). Specifically, we ask that the settlement expressly list truck stop electrification as an eligible mitigation activity within Appendix D2, along with the nine other activities that already include various forms of diesel retrofits and the marine equivalent of truck stop electrification. While TSE is eligible for funding under the DERA program option, we are concerned that some States and Tribes will decline or minimize use of the DERA option. Moreover, should Congress decide not to provide funding for the DERA program, there would be limited opportunity to invest in TSE.

Too often, drivers idle their engines during overnight stays in order to maintain a safe and comfortable interior environment. The practice takes place on a large scale and has a disproportionate impact on disadvantaged communities (see <https://www.idleair.com/tse-environmental-justice/>) where truck stops and fleet terminals tend to be located. DERA's own guidelines flag the communities surrounding truck stops for programmatic priority. The Argonne National Laboratory estimates that rest-period idling wastes about 1B gallons of diesel and results in the emission of about 55,000 tons of nitrogen oxides released annually in the US (see http://www.afdc.energy.gov/uploads/publication/hdv_idling_2015.pdf). The EPA rates Truck Stop Electrification as the single most cost effective activity to mitigate mobile sources of NOX emissions (less than one third of the cost per ton achieved through diesel retrofits). See page 13 (<https://www3.epa.gov/otaq/stateresources/policy/general/420b07006.pdf>). Truck Stop Electrification, an EPA SmartWay verified technology, provides long-haul truck drivers an alternative to idling their diesel engines during their overnight stays. Significant NOX mitigation can be achieved through 1) installation of new TSE locations; and 2) TSE vouchers for truck drivers to encourage more truckers to use existing TSE facilities.

Again, we urge you to specifically list TSE infrastructure and TSE vouchers as eligible mitigation activities under Appendix D2 of the settlement. This would afford beneficiaries maximum flexibility to achieve the settlement's goal of improving air quality in disadvantaged communities by reducing harmful diesel emissions.

Thank you for your consideration.

Sincerely,

Alleyn Harned
Title: Executive Director
Organization: Virginia Clean Cities
Email: aharned@vacleancities.org
Additional Comments:



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

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Molly Joseph Ward
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August 5, 2016

By electronic and first-class mail

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Assistant Attorney General
Environment and Natural Resources Division
United States Department of Justice
U.S. DOJ – ENRD
P.O. Box 7611
Washington, DC 20044-7611

Comments on proposed Appendix D of the Partial Consent Decree, *In re: Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation*, Case No: MDL No. 2672 CRB (JSC), and D.J. Ref. No. 90-5-2-1-11386

Dear Mr. Cruden:

The Virginia Department of Environmental Quality (VDEQ) submits the following comments on the above referenced proposed Partial Consent Decree, which the United States lodged on June 28, 2016. These comments concern Appendix D, "Form of Environmental Mitigation Trust Agreement," and Appendix D-2, "Eligible Mitigation Actions and Mitigation Action Expenditures" of the proposed Partial Consent Decree.

I. Introduction

VDEQ commends the Department of Justice, the U.S. Environmental Protection Agency (EPA), and the State of California for obtaining Volkswagen's commitment to get its noncompliant 2.0 liter vehicles off the road and to pay for the environmental injury resulting from their excess emissions. VDEQ appreciates this opportunity to comment on the proposed Partial Consent Decree, and we respectfully request that the final Partial Consent Decree be revised to incorporate the suggestions below.

II. Requests for Changes to Eligible Mitigation Actions and Mitigation Action Expenditures Under Appendix D-2

A. Provide Flexibility to Beneficiaries to Expand List of Eligible Mitigation Actions and Mitigation Action Expenditures.

States have first-hand knowledge regarding the mobile and nonroad sources of NO_x within their borders and the best mitigation actions and funding necessary to achieve the NO_x emission reduction intended by the partial Consent Decree. Therefore, flexibility should be given to states to use funding for equipment, engines, and other NO_x mitigation actions not listed in Appendix D-2. For example, Beneficiaries should be provided with the option of including railroad line haul engines (which were excluded from the list) in addition to railroad freight switchers.

Flexibility should be afforded to Beneficiaries to fund up to 100% of the cost for any Eligible Mitigation Actions (e.g., 100% of the infrastructure needs for alternative fuels and other necessities for these projects), as well as any NO_x mitigation action deemed appropriate by the states/lead agency with no limitations by owner classification to ensure the greatest emission reductions possible are achieved from this settlement. Privately owned equipment may be more fully utilized than governmental equipment and may also be older. Providing fully funded opportunities for new equipment or repowers, including the use of alternative fuels, to private owners may result in the greatest emission reductions. Allowing such flexibility may also allow Beneficiaries to target more small businesses or other efforts associated with upgrades in environmental justice areas.

With respect to supply equipment for light duty zero emission vehicle supply equipment (Appendix D-2; 9), we recommend that flexibility be afforded to states to determine the total percentage of trust funds allowed for project use, which is currently limited to 15% of the trust fund allocation. Additionally, the proposed partial Consent Decree limits reimbursement percentages based on the type of fuel (electricity or hydrogen fuel cell) and the location where the supply equipment is installed (government or non-government owned land); see paragraphs c(2), c(5), and c(6). Flexibility should also be afforded to states to determine the percentage of vehicle supply equipment costs eligible for reimbursement when the equipment is made available for use by the public. Furthermore, flexibility should also be afforded to Beneficiaries to use funds to purchase real estate and for other capital costs associated with the installation of the vehicle charging equipment. Funding the equipment purchase without funding the installation of the equipment may unnecessarily hinder project adoption.

B. Specific Requested Changes to Broaden the List of Eligible Projects and Allowable Mitigation Action Expenditures

In addition to affording states overall flexibility to best determine mitigation actions that would result in the greatest NO_x emission reductions to fund 100% of these

actions regardless of ownership type, VDEQ request the following specific changes for the purpose of broadening the list of Eligible Mitigation Actions and allowable Eligible Mitigation Action Expenditures.

1. Appendix D-2, 1. Class 8 Local Freight Trucks.

VDEQ recommends changing any reference of “model year” to “engine model year” for Class 8 local freight trucks, as these may not be the same year. This is particularly important for heavy-duty trucks where newer chassis may have older engines.

2. Appendix D-2, 1. Class 8 Local Freight Trucks, 2. Class 4-8 Buses, and 6. Class 4-7 Local Freight Trucks: Reference of Model Year.

The partial Consent Decree limits eligible trucks and buses to those in the 1992 to 2006 model year range. The model year range is too restrictive and should be expanded. VDEQ recommends that the model year range for the three categories of eligible trucks and buses under Appendix D-2 (i.e., 1, 2, and 6) be expanded to include engine model years 2010 and older that do not meet the current NOx heavy-duty vehicle emission standard.

3. Appendix D-2, Eligible Mitigation Action Expenditures for All Categories of Eligible Mitigation Actions.

The U.S. Department of Energy, Department of Transportation, and Environmental Protection Agency and state equivalents have identified that there are wider opportunities for emission reduction program success with some form of specific outreach, education, and technical assistance expenditures to support these new or expanding programs. In the case of many new technologies there is a known knowledge and familiarity gap with the vehicle owner operators in government and private sectors that can be mitigated with educational materials, workshops, and supportive and available administrative/technical experts. VDEQ requests that these necessary costs be enumerated as allowable and considered as a programmatic or project expense within each Eligible Mitigation Action category.

III. Requests for Clarification of Provisions Under Appendix D and Appendix D-2

A. State Applicable Public Contracting Laws

Section 5.2.1 of the proposed Mitigation Trust Agreement reads that Beneficiaries must “certify that all vendors were or will be selected in accordance with state applicable public contracting laws”, which implies that recipients (i.e., third parties chosen by Beneficiaries to administer and implement selected Eligible Mitigation

Actions/projects) are required to follow state public contracting laws. VDEQ requests clarification on the application of this section.

B. Administrative Costs for Eligible Mitigation Action Expenditures

VDEQ requests clarification on whether the 10% cap on administrative expenses set forth on page 10 of Appendix D-2 under "Eligible Mitigation Action Expenditures" applies only to a Beneficiary's administrative expenses, or applies to the administrative expenses of the recipient performing the Eligible Mitigation Actions under the Trust as well. VDEQ strongly advocates adoption of the former interpretation: If the 10% cap applies to administrative expenses for both Beneficiaries and recipients, the Trust could fail because it may not provide sufficient administrative resources to adequately implement and administer Eligible Mitigation Actions funded by the Trust.

IV. Conclusion

VDEQ appreciates this opportunity to provide comments on the proposed Volkswagen Partial Consent Decree, and respectfully requests that Appendix D and Appendix D-2 of the proposed Partial Consent Decree be modified and clarified as suggested above.

Sincerely,



Michael G. Dowd
Director
Air Division



John C. Cruden
Assistant Attorney General
Environment & Natural Resources Division
United States Department of Justice
P.O. Box 7611, Washington, D.C. 20044-7611.

Re: *In re: Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation*, Case No: MDL No. 2672 CRB (JSC), and D.J. Ref. No. 90-5-2-1-1, 1986

Dear Mr. Cruden:

I would like to comment on the Partial Consent Decree (PCD) the Department of Justice (DOJ) has submitted in the lawsuit entitled *In re: Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation*, Case No: MDL No. 2672 CRB (JSC). Specifically, I have concerns about the PCD's provisions requiring VW to make \$2 billion in investments "to support increased use of technology for Zero Emission Vehicles," known as ZEVs.

I am the owner of Vollan Oil in South Dakota. Vollan Oil is a small, independent gasoline and ethanol retailer that also operates a full service automobile repair center that does not service electric vehicles. I am also the owner of a 2.0 liter vehicle that is the subject of DOJ's lawsuit. As such an owner, I believe I may be a potential member of the class whose claims are subject to the proposed settlement in the class action litigation that has been consolidated with DOJ's case. I am submitting these comments on behalf of both Vollan Oil and myself.

The PCD's ZEV-related investment provisions will harm Vollan Oil and myself, and I believe them to be unlawful. The promotion and advancement of ZEVs required by the PCD will very likely deprive Vollan Oil of gasoline sales and repair service contracts, with consequences that could be devastating. Further, as a probable member of the class, I am concerned that the PCD deprives

VW of substantial funds that should go toward further compensating class members for the harm VW has caused them.

I have had the opportunity to review those submitted by the Competitive Enterprise Institute and Boyden Gray & Associates. Those comments capture my policy and legal concerns about the PCD's ZEV-related investment provisions. I would like to fully adopt them as my comments, in addition to what I have written here.

Thank you for the opportunity to comment on this important matter.

Sincerely,

A handwritten signature in cursive script that reads "Bruce Vollan". The signature is written in black ink and is positioned below the word "Sincerely,".

Bruce Vollan
Owner, Vollan Oil

W A S A T C H



Clean Air Coalition

August 4, 2016

US Department of Justice
Assistant Attorney General,
Environment and Natural Resources Division

Re:

Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation,
Case No: MDL No. 2672 CRB (JSC),
D.J. Ref. No. 90-5-2-1-11386.

Thank you for the opportunity to comment on this matter. This proposed settlement displays a great deal of attention & creativity in identifying relevant mobile source emission mitigations. We are glad to see the variety of eligible projects. Good work.

Here in Utah, many advocates would like to see our old dirty locomotives replaced on our commuter rail, Front Runner. So far, for various reasons, the funding has been elusive. We hope the language in this consent decree explicitly allows such in-state RR locomotive replacement, as the mechanisms of DERA funding can be difficult to navigate in a timely fashion. Possibly such replacement would not be selected when all the possibilities are considered when the settlement is finalized, but it might receive more serious consideration if was not under the final general DERA program.

Thank you for your attention to these comments.

Peace,
Kathy Van Dame, Policy Coordinator
1148 East 6600 South
Salt Lake City, Utah 84121
(801)261-5989 dvd.kvd@juno.com

WESTERN STATES AIR RESOURCES COUNCIL



August 5, 2016

Assistant Attorney General
U.S. DOJ--ENRD
P.O. Box 7611
Washington, D.C. 20044-7611

e-mail: pubcomment-ees.enrd@usdoj.gov

RE: In re: Volkswagen "Clean Diesel" Marketing, Sales Practices and Products Liability Litigation

Dear Sir/Madam:

The Western States Air Resources (WESTAR) Council, an association of 15 western state air quality managers, appreciates the opportunity to comment on the *Notice of Lodging of Proposed Partial Consent Decree Under the Clean Air Act*, which was published in the *Federal Register* on July 6, 2016 (81 Fed. Reg. 44,051). The notice pertains to the proposed partial Consent Decree (CD) with the United States District Court for the Northern District of California in the lawsuit entitled *In re: Volkswagen "Clean Diesel" Marketing, Sales Practices, and Product Liability Litigation*, Case No: MDL No. 2672 CRB (JSC). WESTAR submits suggestions and recommendations to the draft partial consent decree's Appendix D that address unique western air quality concerns. The views expressed in this comment letter do not include the California Air Resources Board (CARB), given CARB's role in the CD process.

Volkswagen allegedly equipped its model year 2009 through model year 2015 2.0 liter diesel vehicles with illegal software that detects when the car is being tested for compliance with EPA or California emissions standards and turns on full emissions controls only during that testing process. This software or "defeat device" resulted in the emissions of up to 40 times the EPA-compliant levels of nitrogen oxide emissions (NO_x) when these vehicles are on the road. It is estimated that approximately 500,000 vehicles with defeat devices are on the road nationally.

These excessive emissions of NO_x affect air quality nationally and are of concern to western states working to reduce ozone and particle pollution, regional haze, toxic air pollutants, acid deposition and greenhouse gases. NO_x is a precursor to the formation of ozone and particle pollution, which are criteria air pollutants with negative public health impacts. NO_x contributes to the formation of haze and nitrogen deposition in pristine lakes in the west. In fact, NO_x emissions affect many of the air pollutants of highest priority for western states. States have primary responsibility to ensure that federal and state air quality requirements are met through State Implementation Plans (SIPs). Excessive NO_x emissions hinder states' ability to meet air quality objectives for federal and state air programs.

WESTAR believes that Appendix D of the proposed partial CD with funding directed to states and tribes for NO_x emissions reductions establishes an appropriate framework to mitigate the harm caused by Volkswagen's excessive NO_x emissions nationally. The elements of Appendix D, however, could be reconsidered to provide more flexibility and achievement of greater air quality benefits to public health and the environment. With the implementation of the 2015 ozone National Ambient Air Quality Standard (NAAQS) on the horizon, several areas of the west that attained the previous ozone standard will potentially be designated as ozone nonattainment areas. In fact, some areas of the rural west may be designated nonattainment, and these rural western nonattainment areas have unique characteristics, such as high elevation, rugged terrain, and unique chemical interactions that will require extensive and complex photochemical modeling to determine the most effective air pollution controls to reduce ozone formation. States with these new potential nonattainment areas have not yet had the time or experience with the limited set of NO_x reduction strategies in the proposed partial CD to make informed choices from the list of options in the proposed partial CD. While the significant funding in the Environmental Mitigation Trust holds great promise for emissions reductions which could significantly reduce regional ozone concentrations, some states may not have conducted analyses to determine the most effective and cost-efficient NO_x reduction options. WESTAR recommends that the proposed partial CD provide more time, resources and flexibility to states in the form of extended deadlines, opportunities to use Trust funds for analysis and expanded options for NO_x strategies.

The Beneficiary Mitigation Plan (Appendix D, page 11) deadline of 30 days provides too little time to states to evaluate the choice of strategies, include the public and incorporate public input. The Trust provides such significant funding to states that it is important for states to have the time to evaluate what would be most beneficial in reducing air quality impacts. Thirty days is not long enough to even generally assess the goal for the use of the funds, the categories of mitigation actions that will be appropriate, environmental justice concerns and the range of emissions benefits. Beneficiaries should have sufficient time to seek public input prior to the submission of the mitigation plan if they choose to do so. The 30-day deadline would likely only lead to multiple modifications of the mitigation plan due to the short period of time allowed for initial analysis. A longer period of time, such as 120 days with option for extension in cases where more complex analysis is required, should be allocated for meaningful public input and technical analysis. WESTAR recommends that DOJ lengthen

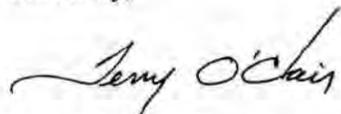
the time period for submission of mitigation plans to allow for a meaningful public process, incorporation of public input and state-specific or region-specific technical analyses.

The funds available to each state under the partial consent decree will enable states to make great strides toward reducing air quality impacts from NO_x emissions. States must be able to evaluate the best use of these funds through the use of air quality data and tools, such as emissions inventory and air modeling that will allow states to predict the air quality benefits of various mitigation measures. While these analyses have been conducted for nonattainment areas in metropolitan areas, few rural areas of the west have similar analyses that would provide the information required in the Beneficiary Mitigation Plan. In addition to the extension of the plan deadline to allow states more time for analysis, the partial consent decree should make clear that states can use a portion of the available funds for evaluation of air quality impacts, including monitoring trend analysis, emissions inventories and air modeling. Spending a small percentage of the available funds on analysis will enhance state decision making and result in maximum air quality benefit in using these funds. WESTAR recommends that Appendix D-2 clarify that analyses required for mitigation plan decisions are allowable expenses under the partial consent decree.

The list of mitigation options in Appendix D-2 certainly includes options for NO_x controls that will result in significant NO_x emissions reductions; however, the list is short and may not include NO_x mitigation measures that would be more beneficial to reducing air pollution in western states. States have a history of innovation and creativity in approaching air pollution issues. The use of a list is limiting and could constrain states to choosing mitigation measures that are less than optimal in reducing NO_x-related air pollution issues. Some mitigation options may have a high cost per ton of air pollution reduced. WESTAR recommends that DOJ modify the consent decree to allow states to make a demonstration for the use of funds for additional mitigation options not listed that may result in greater improvements to air quality, are more cost-effective and/or are more efficient to implement. Additionally, WESTAR recommends the lifting of the cap on light-duty ZEV equipment supply to allow states to determine the appropriate percentage of mitigation funds to apply to this measure.

Thank you for considering WESTAR's comments and recommendations. If you have any questions or need additional information, please contact Mary Uhl, Executive Director of WESTAR at 505-930-5197 or maryuhl@westar.org.

Sincerely,



Terry O'Clair, President
WESTAR Council



Matthew H. Mead, Governor

Department of Environmental Quality

To protect, conserve and enhance the quality of Wyoming's environment for the benefit of current and future generations.



Todd Parfitt, Director

August 1, 2016

John C. Cruden
Assistant Attorney General
United States Department of Justice
Environment and Natural Resources Division
P.O. Box 7611
Washington, D.C. 20044-7611

Submitted via electronic mail to pubcomment-ees.enrd@usdoj.gov

RE: *In re: Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation, Case No: MDL No. 2672 CRB (JSC), and D.J. Ref. No. 90-5-2-1-11386*

Dear Mr. Cruden:

The United States Environmental Protection Agency (EPA), through the United States Department of Justice (DOJ), has lodged a proposed consent decree to settle some of the claims EPA has against Volkswagen. Notice of Lodging of Proposed Partial Consent Decree Under the Clean Air Act. 81 Fed. Reg. 44051 (Jul. 6, 2016). One component of this consent decree is a \$2 billion fund to support the increased use of zero emission vehicle (ZEV) technology in the United States. *Id.* at 44052. Under the proposed consent decree, \$800 million of that fund will go to the State of California and EPA retains discretion to utilize the remaining \$1.2 billion for ZEV infrastructure projects in other states. Unlike the mitigation fund also established through this proposed consent decree, there is no state-specific allocation of ZEV investment, but instead a national allocation from which certain funds are set aside for use in California.

The Wyoming Department of Environmental Quality (Department) appreciates the opportunity to provide comment on the proposed consent decree, specifically the ZEV Investment component. The Department supports this component of the proposed consent decree and asks that EPA distribute the fund in a fair and equitable manner, paying particular attention to portions of our country underserved by free market investment in ZEV infrastructure. The Department encourages EPA to abide by its commitment to environmental justice when making decisions about where to allocate these investment funds.

Wyomingites refer to our state as "one small town with very long streets." We are one of the largest states, land-wise, yet have the smallest population. We have only 10 communities with more than 10,000 people. The majority of our population lives near the interstate system, but we are still separated from each other by many hundreds of miles of long streets. Due to the low population, it is unlikely that private investments will be seen in Wyoming ZEV infrastructure. The State of Wyoming will be unlikely to invest in this infrastructure, as well, due to recent economic downturn associated with declining revenues from coal, oil, and natural gas. This settlement will provide the opportunity to expand the ZEV infrastructure that would otherwise not be considered by private or public investments within the foreseeable future. Thus, Wyoming has only 25 electric charging stations statewide, with 4 in the capitol city of Cheyenne and 9 near Yellowstone National Park. This Settlement will provide further assistance to achieve the goals set forth by local groups such as the Greater Yellowstone Electric Vehicle Workgroup that has worked diligently to expand ZEV infrastructure, however these goals are unlikely to be met without the assistance of the settlement agreement. This proposed agreement would allow for further collaboration between the State of Wyoming and local groups to expand ZEV infrastructure.

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ADMIN/OUTREACH (307) 777-7937	ABANDONED MINES (307) 777-6145	AIR QUALITY (307) 777-7391	INDUSTRIAL SITING (307) 777-7369	LAND QUALITY (307) 777-7756	SOLID & HAZ. WASTE (307) 777-7752	WATER QUALITY (307) 777-7781
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Additionally, Wyoming's traffic patterns are non-commuter based and do not serve large populations other than the metropolitan areas of Casper and Cheyenne, the two largest communities in Wyoming. A significant statewide investment in ZEV infrastructure could create and maintain a sustainable population of zero emissions vehicles. Wyoming currently has 1 electric car per 18,788 citizens. Developing ZEV infrastructure within the major corridors throughout Wyoming will provide residents a greater incentive to consider electric cars as their next form of transportation.

Every year, Wyoming welcomes millions of tourists and visitors from across the world to famous destinations such as the Old Faithful geyser at Yellowstone National Park and Frontier Days, the largest outdoor rodeo and Western celebration in the country. Tourism is the second largest industry in Wyoming. Electrifying main thoroughfares to popular tourist destinations will provide additional tourism opportunities throughout the State of Wyoming that are currently inaccessible to electric vehicles.

Wyoming believes there is a great opportunity to welcome a new technology and tourists into our state, however we believe that the restriction outlined in Appendix C restricts the capability of states to utilize the funding for ZEV infrastructure associated with Level 1, Level 2, or fast charging equipment. Wyoming respectfully requests a change in language to allow a "minimum of 25%" be utilized for these projects and costs associated within. This change in language will allow a much more diverse population to be served and larger populations to be capable of receiving the benefits associated within this settlement.

The ZEV component of this proposed Consent Decree presents a unique opportunity for EPA to ensure that the development of ZEV infrastructure does not "fly over" Wyoming and other similarly situated rural states. This is a unique opportunity to invest in and electrify rural America. The Department asks EPA to commit to spending at least \$3.33 million on ZEV infrastructure in Wyoming, equivalent with the state-specific breakdown of the mitigation fund through this proposed Consent Decree. My agency is happy to discuss these comments in further detail. Feel free to contact Nancy Vehr, Air Quality Administrator, at 307-777-7391, or Landon Brown, Diesel Emissions Reduction Act Program Coordinator, at 307-777-7347.

Sincerely,



Todd Parfitt
Director

cc: Nancy Vehr
Landon Brown
Elizabeth Lyon
Shaun McGrath

PO BOX 11756
JACKSON WY
83002
810.955.5811



To Whom It May Concern:

As the sole regional designee of the Department of Energy's (DOE) Clean Cities program, Yellowstone-Teton Clean Cities (YTCC) functions as an on-the-ground advocate for petroleum displacement activities and technologies in transportation in the Greater Yellowstone Region. This affiliation with the Clean Cities program provides YTCC with access to regional and national support networks and resources, bringing a much broader perspective to local sustainable transportation projects.

In 2013, Wyoming and the Greater Yellowstone Region were significantly behind in the national EVSE installation trend with zero stations. Then in the 2014 grant cycle, YTCC managed a National Park Clean Cities Assistance Program Grant with a total budget of \$500,000, and won the grant again in 2015 with a total budget of \$200,000. These two grants helped purchase hybrid and plug-in hybrid vehicles, as well as electric vehicle (EV) charging infrastructure, for Yellowstone and Grand Teton National Parks. Additionally, YTCC has won three large EPA grants in the last three years, all with the purpose of furthering alternative fuel infrastructure in the region.

Through this work by YTCC and its partners, Wyoming now has 27 stations with 48 charging plugs, but those still only cover a fraction of the state. To date, there has not been any electrification of our rural highways, mostly due to the high up-front costs, leaving a large gap in the middle of the western United States. Electrifying highways in Wyoming, Idaho, and Montana would connect EV markets in the rest of the country to several of our biggest national treasures: Yellowstone, Grand Teton, and Glacier National Parks, as well as Devil's Tower National Monument and many others.

Currently, only 15% of the emissions mitigation funds can be allotted to DC fast charging projects, severely limiting the ability to develop coherent, uninterrupted corridors between existing EV markets in Denver, Salt Lake City, and Jackson. Completing these corridors will be a giant leap forward in bringing EVs and their respective demand for charging to Wyoming, Idaho, and Montana. Doing so will be a much bigger challenge and significantly more expensive, than other states might face due to the lack of existing infrastructure. As such, YTCC strongly recommends allowing more flexibility in the use of the settlement funds in order to fit the region's unique development needs.

Sincerely,

Christy Lewis, Project Manager

A handwritten signature in black ink, appearing to read "Christy Lewis". The signature is fluid and cursive, with a large initial "C" and "L".

John Cruden
Assistant Attorney General
United States Department of Justice
Environment and Natural Resources Division
P.O. Box 7611
Washington, D.C. 20044-7611

Re: Comments on Proposed Partial Consent Decree Under the Clean Air Act;
In Re: Volkswagen “Clean Diesel” Marketing, Sales Practices, and Products
Liability Litigation, Case No: MDL No. 2672 CRB (JSC)

Dear Mr. Cruden:

We, the undersigned, write to provide our comments and recommendations regarding Appendix C of the proposed Partial Consent Decree in the Volkswagen “Clean Diesel” Marketing, Sales Practices, and Products Litigation. Appendix C outlines a zero emissions vehicle (ZEV) investment program to be implemented nationwide, separately from the funding allocated to vehicle buy-back and state-level NOx remediation.

As part of the Partial Consent Decree, Volkswagen has agreed to “invest \$2.0 billion over 10 years in zero emissions vehicle (ZEV) infrastructure, access and awareness initiatives,” including \$1.2 billion nationally and \$800 million in California. This is a welcome investment that is a potential game changer and could help accelerate the adoption of electric vehicles (EVs), EV charging networks, and other alternative fuel technologies in California and across the country. We offer these comments in a constructive way to help the Environmental Protection Agency (EPA) and the California Air Resources Board (CARB) structure the program in an effective, workable manner.

This agreement is of particular importance since it comes on the heels of a landmark White House announcement that will also boost electric vehicles and EV charging stations across the country. Electric vehicles and EV charging are at a tipping point, and it’s important that new investments in this area complement all other existing commitments and programs.

We believe that it is critical that the settlement funds be administered independently and transparently, distributed in a way that encourages the continued development of a robust and competitive charging and other alternative fuel marketplace, allows drivers significant choice, and provides for meaningful administrative oversight.

As currently drafted, Appendix C leaves open serious questions about how the \$2 billion will be administered and what its impact will be on innovation and the continued operation of a competitive marketplace for EV charging equipment and other alternative fuel technologies and services.

Therefore, we wanted to take this opportunity to share our thoughts on this matter and urge the EPA and CARB to ensure that this Partial Consent Decree does not have harmful unintended consequences for the marketplace.

Specifically, we believe that the ZEV investment program should:

Support a Competitive Marketplace – The agreement shouldn't pick winners and losers, especially given that this emerging market transition will in no small part define 21st century transportation. The agreement should ensure that these funds are administered by regulators or an independent, third party organization to support the development of a robust, competitive electric vehicle charging marketplace. An independent administrator is key to ensuring that the program treats all industry participants, regardless of business model and technology, fairly. The fund shouldn't benefit one particular company or market sector, but should support competition within the entire industry. It's important to get this right, since the decisions we make today will define the marketplace for many years to come.

One way to accomplish this is to earmark some portion of the funds for a rebate program to support employers, apartment owners, workplaces, and other facility managers who want to install EV charging and other alternative fuel technologies at their place of business or multi-unit dwelling. This approach has been proven successful in enabling customer choice, and has the added benefit of being simple in design, consumer-friendly and administratively cost effective.

Extend the Benefits to all Communities – The fund should have significant provisions to ensure that the benefits of electric vehicles, electric vehicle charging, and other alternative fuel technologies extend to low-income and underserved areas.

Protect Driver Choice – Drivers should have the right to select service providers of their choice based on a range of options including price, location, technology, and networked capabilities.

Preserve Customer Choice – Site hosts should continue to have the ability to make technology choices and to determine the price for services at their facilities. This is an important feature of a well-functioning program, which ensures that site hosts have a stake in maximizing EV charging and alternative fuel station use and enables them to tailor the installation to the needs of the site.

Encourage Innovation – The ZEV industry is still at an early stage in its development. New companies are emerging with new technology offerings and innovative consumer demand-driven services, and different approaches to communications protocols. Different business models, technologies, and services should be allowed to compete. Both new companies and existing market players should be able to participate in the program and bring a range of products and services to consumers.

Plans should also emphasize infrastructure projects that support the EVs of the future. As more models come to market with bigger batteries, consumers will need the longer range enablement that fast charging corridors bring to ZEV adoption. The fund should enable infrastructure solutions that offer future-proof technologies and range in an ever changing market.

Promote EV Awareness & Outreach – With more than four Americans out of five still very unaware about the availability of ZEVs and PEVs, the attractiveness of the technology in terms of impact on air quality and climate change, drivability, and lower costs of operations, an effective program with respect to accelerating ZEV adoption must ensure wide promotion and outreach across all parts of the population.

Benefit all Drivers Around the Country – The program should be structured to benefit drivers in California and across the nation, not enable the settling defendants to enter or influence the markets for ZEV charging and fueling equipment and services.

Provide for Process Transparency – All major stakeholders should understand the process, have visibility into it, and have the ability to provide timely comments on program administration.

If structured appropriately, the ZEV investment program can accelerate adoption of zero emission vehicles and the deployment of EV charging and alternative fuel stations across the nation. But without appropriate safeguards, the program could undermine the competitive marketplace that exists today and conflict with existing state and national initiatives and programs.

We hope that you will embrace these principles as you move to final review and approval of the Partial Consent Decree.

Sincerely,

Acadia Center
Apollo Sunguard Systems
Ben Kortlang, Senior Partner, Green Growth Fund at KPCB
CALinnovates
ChargePoint
Clean Fuel Connection
Clean Fuels Ohio
Clinton Electric Co.
Consolidated Electrical Distributors
Electric Transportation Partners
Electric Vehicle Charging Association
Envision Solar

EV Connect
Hannah Solar
Michigan Energy Innovation Business Council
My Fleet Dept EV Charge Solutions
National Asian American Coalition
National Car Charging
National Energy Technologies LLC
NEMA
New York League of Conservation Voters
North Carolina Sustainable Energy Association
Ohio EV Solutions
Pace Energy and Climate Center
REJ Electric Inc.
SeaWave Batteries
Southern Alliance for Clean Energy
Volta