



Central Texas Clean Air Coalition of CAPCOG

6800 Bureson Road, Building 310, Suite 165, Austin, Texas 78744

(p) 512-916-6000 (f) 512-916-6001

www.capcog.org

October 3, 2018

Chair

Judge Sarah Eckhardt
Travis County

Vice Chair

Commissioner Ray Whisenant
Hays County

Council Member Ann Kitchen
City of Austin

Council Member Lyle Nelson
City of Bastrop

Commissioner Mel Hamner
Bastrop County

Mayor Monty Parker
City of Bee Cave

Council Member Evan Ture
City of Bee Cave

Commissioner Terry Wright
Caldwell County

Council Member Heather Jeffs
City of Cedar Park

Mayor Pro Tem Jessica Bega
City of Elgin

Council Member Anna Eby
City of Georgetown

Mayor Doug Gaul
City of Hutto

Mayor Pro Tem Ron Massa
City of Lakeway

Council Member Andrea Navarrette
City of Leander

Mayor Lew White
City of Lockhart

Mayor Mike Hendricks
City of Luling

Council Member Mike Heath
City of Pflugerville

Council Member Tammy Young
City of Round Rock

Council Member Jane Hughson
City of San Marcos

Commissioner Terry Cook
Williamson County

Mr. Joseph Walton, Implementation Grants Section Manager
Texas Commission on Environmental Quality
Implementation Grants Section, MC-204
P.O. Box 13087
Austin, TX 78711-3087
ATTN: VW Settlement

Dear Mr. Walton,

The Central Texas Clean Air Coalition (CAC) appreciates this opportunity to comment on TCEQ's draft VW beneficiary mitigation plan for Texas. We also appreciate the difficult task TCEQ has of developing and carrying out a mitigation plan that best advances the purpose of the mitigation trust to, "mitigate the total, lifetime excess NO_x emissions" from the affected VW vehicles where they, "were, are or will be operated." While we appreciate the TCEQ's proposal makes \$31.4 million available statewide for light-duty electric vehicle charging equipment, we believe that the state cannot meet the goals of the mitigation trust without some portion of the \$170 million proposed for vehicle replacement grants being available to the five counties in the Austin-Round Rock Metropolitan Statistical Area (MSA).

In the draft mitigation plan, TCEQ states, "those communities most impacted are those that likely had additional emissions from vehicles under the consent decree that are measuring levels at or above the National Ambient Air Quality Standard for ozone." The affected vehicles included model years 2009 – 2016, which means that the excess NO_x emissions from these vehicles dates back to fall of 2008. From 2009 through today, the Austin-Round Rock MSA has experienced 90 days with O₃ levels above the level of the 2015 O₃ NAAQS (70 ppb), including four days when O₃ were high enough to be considered "unhealthy" for everyone. The region's O₃ design value was above 70 ppb up through 2013, and although the 2018 O₃ season is not yet finished, the fourth-highest daily maximum 8-hour O₃ average at the region's controlling regulatory monitor is so far 72 ppb, putting the region at significant risk for having a 2017-2019 O₃ design value that violates the NAAQS.

With a 2015-2017 design value of 69 ppb, no metro area in the state has a design value closer to the 2015 O₃ NAAQS. A statement released by TCEQ to the press on August 9, 2018, suggests that this would tend to mean that the region would benefit at least as much, if not more, than other areas of state that TCEQ had identified as "priority" areas: "in deciding to allocate funds, those areas measuring ozone levels closest to the National Ambient Air Quality Standards are most likely to see the greatest benefit by an initial and significant effort to either attain the NAAQS or remain in attainment of the NAAQS."

We also note that beyond the general purpose of the plan describing the need to account for where these vehicles were actually located, the settlement also requires this mitigation plan to include “a description of how the Beneficiary will consider the 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.” As TCEQ acknowledged at its hearing on the VW settlement in Austin last week, the state’s own allocation of the mitigation funding is based on its share of violating vehicles, but this plan doesn’t include any analysis at all of where the violating vehicles “were, are or will be operated.” Any such analysis would show that Central Texas has suffered and is suffering a disproportionate air pollution burden from these violating vehicles. Of the 40,444 affected vehicles in Texas, 5,052 (12.49%) were located within the Austin-Round Rock MSA.

The Austin-Round Rock MSA has the highest number of affected vehicles per capita (2.39 vehicles per 1,000 residents) of any metro area in the state. This ratio is substantially higher than the total for the 28 counties that TCEQ has proposed as priority areas for this funding (1.38 vehicles per 1,000 residents), and every county in the Austin-Round Rock MSA has a ratio that exceeds the total for those 28 counties. This disproportionate impact of the affected vehicles on ambient air pollution levels within the region dating back to 2009 has not been accounted for in the proposed allocation of funding, and we strongly encourage TCEQ to do so. We believe that it is important for the sake of transparency for the plan to acknowledge the geographic distribution of vehicles within the state and how that compares with the amount of mitigation funding that TCEQ decides to make available for each area.

In considering how to proceed with this mitigation plan, we urge the TCEQ to keep in mind that the purpose of this mitigation funding is to mitigate harm to public health that has already been done as a result of VW’s actions, not simply to “address air quality issues in the state.” We note that there are other sources of funding available to TCEQ to do that, including the \$1.7 billion fund balance in the Texas Emission Reduction Plan (TERP) account and the \$200 million fund balance in the Clean Air Account. We still believe that allocating the funding based on where the vehicles were located represents the best way to uphold the purpose of this settlement, but we also believe that if TCEQ is going to have “priority” areas for the vehicle mitigation funding, that the TCEQ would consider the Austin-Round Rock MSA a priority area as well. The TCEQ is in a unique position to mitigate the harm that VW has inflicted on our region as a result of their actions, and we are counting on TCEQ to ensure that sufficient resources from this settlement are directed towards the areas where these vehicles caused the most harm.

Thank you for your consideration.

Sincerely,



Sarah Eckhardt
Travis County Judge, CAC Chair



Ray Whisenant
Hays County Commissioner, CAC Vice-Chair