



October 6, 2018  
Texas Commission on Environmental Quality  
Air Quality Division  
Implementation Grants Section, MC-204  
P.O. Box 13087  
Austin, TX 78711-3087  
ATTN: VW Settlement

Re: Comments on TCEQ Draft VW Mitigation Plan

The Lone Star Chapter of the Sierra Club is pleased to offer these brief comments on the TCEQ's VW Mitigation Plan. The Lone Star Chapter appreciates the opportunity to comment and to have had many of our members participate in the public meetings held by TCEQ in various cities. While we believe there is much good in the proposed draft plan, certain improvements are needed and a more careful consideration and transparent explanation of the geographic distribution of the funds should be offered.

#### **TCEQ's Proposed Mitigation Actions**

In general, the Sierra Club is supportive of the three main buckets that TCEQ proposed to create for allocation of the more than \$209 million that Texas is expected to receive from the VW Environmental Mitigation Fund.

**Administrative.** First we appreciate that TCEQ is proposing to only set aside up to 4 percent for administrative costs. Given that the Legislature recently increased funding to TCEQ for administrative of the TERP funds to \$8 million per year, we believe that TCEQ may require very limited funding to administer the funds. We are supportive of the administrative funding staying at the state level and not being used to hire third-parties or pay for regional administrators.

Ultimately, the money is coming to the state and the state should be responsible for making sure the funds are spent wisely.

**Electric Vehicle Infrastructure.** Second, we are in full support of setting aside the full 15% of the funds for electric (and hydrogen cell-fueled) vehicle charging infrastructure, and making those grants available statewide. We do urge TCEQ to assure that they coordinate closely with existing infrastructure already being deployed through local actions, and through Electrify America and DOT efforts so that money is spent wisely. In addition, we support spending at least 25% of the funds in this bucket for infrastructure that would be installed in areas that benefit Texans most vulnerable populations. Specifically, assuring that some stations are made available in urban areas that may lack such infrastructure such as at multi-family complexes, or part of public areas would help assure that communities that bear the burden of pollution have access to new technology. In other words, such communities and locations should be prioritized as part of this bucket of funding.

**Other Mitigation Actions Available for Funding.** The Sierra Club supports the eight categories of funding identified in the draft plan. We believe that all of the proposed categories -- Class 4-7 Local Freight Trucks, Class 8 Local Freight and Drayage Trucks, Class 7 & 8 Refuse Trucks, School Buses, Transit and Shuttle Buses, Electric Forklifts and Port Cargo-Handling Equipment, Electric Airport Ground Support Equipment, and Ocean-Going Vessel Shorepower --can lead to significant emission reductions. We are particularly supportive of efforts to reduce pollution from school buses, transit and shuttle buses, in part because there are co-benefits in reducing other pollutants impacting vulnerable populations and children, and efforts to electrify our railyards, ports and airports, since high-polluting older diesel equipment is often used in these areas. In all of these categories, TCEQ should prioritize funding replacement of equipment that is the oldest and dirtiest and is used heavily so that the maximum emissions reduction is achieved. We would recommend prioritizing electrification and electric vehicles where readily available. As an example, replacing local freight, refuse and drayage trucks with diesel equipment is not a good use of VW funds, since cleaner, longer-lasting electric versions are now available.

**What's Missing.** We would support adding two other categories of eligible mitigation activities: **Tugs/Ferries & Switcher Locomotives.** We believe TCEQ should consider adding these categories to the list of eligible activities. Older tugs, ferries and switcher stations for locomotives are significant pollution sources, and new electric and hybrid electric versions are now readily available. While there are other funding sources for these categories (ie TERP) we believe it would be an improvement in the plan to include them as eligible actions for funding.

## **Where we disagree: First come/first serve, emissions reduction methodology and geographic distribution**

The Sierra Club believes there are three areas where the proposed plan could be substantially improved.

**Competitive Grants by Category, not a Free-for-All.** First, we favor **competitive grants** over first-come, first-serve grants. The problem with simply creating a first-come first-serve process is TCEQ might receive proposals from a few private or even public projects that are already in the planning stage, but do not necessarily represent the greatest emission reduction, or the cleanest available technologies. In addition, the VW Settlement clearly stated that areas that are unduly burdened by pollution should be prioritized, and a first-come, first-serve distribution of funds would most likely not prioritize such areas.

In addition, while TCEQ has proposed categories for funding which we are in general support of, a first-come, first-serve mechanism might lead to some categories receiving no grants. As an example, planning for new purchases for electric school buses or transit buses might take time for public entities to work with their local officials for identifying a local funding match, while a private freight operator might be able to turn in an application as soon as grants become available.

We would propose that TCEQ begin with an expectation of including a minimum amount of funding for each of the major mitigation action categories, with a timeline for competitive applications in those categories. If after that timeline has been reached, and few applications are received then some of the funding could be switched over to other categories with more demand. In this way, TCEQ would be at least provide the opportunity for applications in that category, be it school buses or drayage trucks.

As an example, because there is approximately \$170 million for the mitigation actions (not including administration or zero emissions vehicle charging infrastructure), TCEQ could set aside at least \$10 million in each of the major categories and invite applications in those categories. Depending on interest, TCEQ could then determine where best to prioritize funding for a second round of competitive grants. We believe that because of their beneficial impacts on communities impacted most by air pollution, at the very least TCEQ should set aside approximately 20% of the funds for electric school buses, and electric transit and shuttle buses.

**NOx Emission Estimate Methodology.** TCEQ is also proposing to use a NOx emission estimate methodology equivalent to what has been used for the Texas Emissions Reduction

Plan (TERP). However, we believe that TCEQ should use a more updated and comprehensive methodology. Thus, we are in agreement with many others who have commented that other tools that are more reflective of real-world conditions and that can also quantify other emission reductions, like fine particulates (PM2.5), carbon monoxide, and hydrocarbons. Specifically, we would suggest that AFLEET be utilized for on-road vehicles, and the EPA's Diesel Emission Quantifier [DEQ] for non-road and marine equipment and vehicles.

**Geographic Distribution.** We are confused by the methodology used by TCEQ to arrive at the proposed distribution of funds geographically. While we do not disagree that the five areas selected - the San Antonio area, the Houston area, the Dallas-Fort Worth area, the Beaumont-Port Arthur area, and El Paso -- are good candidates for NOx reduction efforts and VW mitigation funds, we do not understand how TCEQ arrived at the proposed percentages of the funds, and we believe there are at least four other areas --Waco, Austin, Corpus and Tyler-Longview-Marshall -- in the state that should also be eligible for funding.

Some have suggested that because the VW settlement is due to harm caused by VWs, TCEQ should simply assign money based on the number of registered VW vehicles. We do not necessarily believe this is the only approach to be used and we would suggest that the level of current pollution could be an alternative approach that would lead to a fairer distribution of resources. Thus, as an example, TCEQ could prioritize areas with the highest levels of ozone, and the areas that had the most individual days with ozone readings above the health based standard. The table below shows some data between 2015 and 2018.

**High Ozone Levels and Days Above Standard, 2014-2018**

Area	Number of Days Above Standard, 2018	4 <sup>th</sup> -Highest Day, 2016	4 <sup>th</sup> -Highest Day, 2017	4 <sup>th</sup> -Highest Day, 2018
Houston-Galveston	17	79	88	88
Dallas-Fort Worth	26	76	77	82
San Antonio area	8	71	73	73
Austin Area	10	64	70	74

Waco Area	1	66	72	72
Corpus Christi Area	2	69	63	66
Beaumont-Port Arthur	7	69	67	73
El Paso	9	71	75	78
Tyler-Longview	1	65	63	69

Based upon the numbers above, we would suggest that the geographic priorities and amounts be shifted, with larger amounts available for Houston and Dallas-Fort Worth, medium amounts available for San Antonio, Austin, Beaumont-Port Arthur and El Paso, and lower amounts available for Corpus, Waco and Tyler-Longview-Marshall. Another way to divide the money would be make a larger pot of money available to any areas considered non-attainment under the new standard - Houston, Dallas and San Antonio -- and then a lesser amount to any areas considered under Texas statute to be an "affected" area.

### Other Issues

In addition to these major comments, the Lone Star Chapter of the Sierra Club would suggest that TCEQ utilize the same requirements for **TERP Scrappage**, which requires grantees to scrap their old vehicles and equipment within 90 days of receiving their reimbursement, rather than before they receive their reimbursement. We agree that old vehicles must be scrapped but it may cause issues for some local fleet operators to have to destroy vehicles before they have their new vehicles up, running and reimbursed.

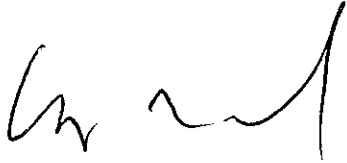
Moreover, while we agree that public agencies should put some "skin-in-the game" to gain access to VW funds, we believe the 60% limit might be too low for some types of public projects. Thus, we would support increasing the 60% limit to an 80% limit for **public fleets for electric vehicles such as electric school buses, shuttle and transit vehicles.**

Finally, we would request that TCEQ work with and consider input from local regional planning organizations in the selection of projects. While we believe that TCEQ and the state should be the final arbiter of which projects are selected, working with these organizations makes sense

since they already have other funding mechanisms that can help provide a match to VW projects. The state is well served when our state and local governments work together.

The Sierra Club appreciates the opportunity to offer these brief comments to the TCEQ on its VW Mitigation Plan.

Sincerely,

A handwritten signature in black ink, appearing to read 'Cyrus Reed', written in a cursive style.

Cyrus Reed, Conservation Director  
Lone Star Chapter, Sierra Club