



RODNEY ELLIS
Commissioner

October 8, 2018

Texas Commission on Environmental Quality
Air Quality Division
Implementation Grants Section, MC-204
P.O. Box 13087
Austin, Texas 78711-3087

ATTN: VW Settlement

RE: Comments Pertaining to the Use of Volkswagen Mitigation Trust Funds in Texas and the Development of a State Beneficiary Mitigation Plan; Distribution of Litigation Trust Funds

Dear Commissioner Niermann:

Thank you for the opportunity to comment on the proposed Texas Commission on Environmental Quality's Draft Beneficiary Mitigation Plan (Texas Plan) for the allocation of the funds to be awarded to Texas as a beneficiary of a \$2.9 billion settlement (Federal Settlement) between the United States Environmental Protection Agency (EPA), Volkswagen (VW) and others arising from a suit filed by the EPA, California and Attorneys General across the nation alleging that VW violated the federal Clean Air Act by installing software on certain diesel cars and trucks to ensure favorable emission readings during testing. The use of the software allowed the subject vehicles to be permitted for on-road use when they actually emitted nitrogen oxides (NO_x) at levels that far exceeded federal standards.

The goal of the Federal Settlement is to "fully mitigate the total, lifetime excess NO_x emission from the vehicles at issue in the lawsuit."¹ The primary goal of the Texas Plan, in keeping with the Federal Settlement, is "to reduce NO_x emissions in those areas with the potential to be most impacted by NO_x emissions and in particular areas of the state designated nonattainment for National Ambient Air Quality Standards (NAAQS)."² As the Texas Plan goes on to explain, "These projects are

¹ United States Environmental Protection Agency, "Volkswagen Clean Air Act Civil Settlement," <https://www.epa.gov/enforcement/volkswagen-clean-air-act-civil-settlement>

² Texas Commission on Environmental Quality, "Volkswagen Environmental Mitigation Trust, Draft Beneficiary Mitigation Plan for Texas,"

intended to mitigate the excess NO_x emissions from the affected vehicles.”³ Furthermore, the Texas Plan intends “to reduce the potential for exposure of the public to pollutants that are often emitted along with NO_x from older vehicles and equipment...within communities and at facilities where emission sources may be concentrated.”⁴

Summary and Recommendation

The draft Texas Plan so underfunds the Houston-Galveston-Brazoria region that it makes it unlikely that the Federal Settlement and Texas Plan goals to improve air quality can be met. While the Texas Plan is intended to enable a reduction in our State’s NO_x levels, the proposed funding allocation would make it impossible to achieve that reduction in the regions most affected by VW’s deceptive actions. For the reasons outlined below, I recommend that the TCEQ base funding on the number of affected vehicles or the severity of ozone in the State’s declared Priority Areas. Furthermore, I recommend that the Texas Plan’s administrating agency, the TCEQ, issue all funds from the Federal Settlement on a competitive basis, to help ensure the greatest public benefit can be derived from the dollars spent, rather than the proposed “first-come, first-served” plan.

Discussion

The Texas Plan proposes allocating 81 percent of the State’s total VW mitigation funds (approximately \$170 million) to five identified Priority Areas across the State: Beaumont-Port Arthur, Dallas-Fort Worth, El Paso, Houston-Galveston-Brazoria, and San Antonio. The plan would disproportionately distribute two-thirds of the funds among the three Priority Areas—San Antonio, El Paso, and Beaumont-Port Arthur—with the fewest diesel vehicles with the VW defeat device and where air quality is closest to the 2015 ozone U.S. National Ambient Air Quality Standards (NAAQS). The remaining one-third of the Texas Plan funds would be divided between Houston-Galveston-Brazoria and Dallas-Fort Worth, which would make it virtually impossible to meet the Texas Plan’s purpose and the Federal Settlement’s goal.

Under the proposed Texas Plan, the Houston-Galveston-Brazoria Priority Area would receive only 13 percent of the funds, despite having the highest number of registered affected vehicles among the five identified Priority Areas. Nearly a quarter (24 percent) of diesel vehicles with the illegal defeat device in Texas were registered in the Houston-Galveston-Brazoria region. The presumed harm to our

<https://www.tceq.texas.gov/assets/public/implementation/air/terp/VW/RG-537-Draft-for-Public-Review-180801.pdf>

³ *Id.*

⁴ *Id.*

region's air quality from VW's deception was much greater than in regions with fewer registered affected vehicles (such as San Antonio, which would receive 35 percent of the funds despite having only 11 percent of the affected VW vehicles). The proposed funding allocation to Houston-Galveston-Brazoria falls far short of acknowledging the harm that VW inflicted on regional air quality and conflicts with the Federal Settlement's goal of "fully mitigat[ing] the total, lifetime excess NO_x emission from the vehicles at issue in the lawsuit."

The proposed allocation also would seriously undercut the State's goal of focusing mitigation on facilities with concentrated emission sources. Our region includes five of Texas' 10 largest school districts—Houston Independent School District alone commands 1,100 school buses in its fleet—the second busiest seaport in the United States, and over 30 airports, including the country's fifteenth busiest airport. More than half of the proposed mitigation actions in the Texas Plan are specific to these facilities. But Texas will not derive anything near the maximum benefit of the proposed mitigation actions specific to these facilities by allocating only 13 percent of the funds to our region. Underfunding Houston-Galveston-Brazoria Priority Area in this manner directly conflicts with a second goal of the Texas Plan: "to reduce the potential for exposure of the public to pollutants that are often emitted along with NO_x from older vehicles and equipment...within communities and at facilities where emission sources may be concentrated."

For the past 14 years, the Houston-Galveston-Brazoria region has been designated a "non-attainment area," as measured by the National Ambient Air Quality Standards, underscoring the region's need for increased Texas Plan funds. In 2017 alone, the EPA found that Harris County had only 207 good air quality days, 55 fewer days than Bexar County, which had 262 good air quality days. On this basis alone, the Houston-Galveston-Brazoria region is entitled to a greater share of the settlement funds than Bexar County.

High NO_x emission levels also have imposed greater economic and health costs on the Houston-Galveston-Brazoria region. An improvement in NO_x emissions levels would boost the regional and statewide economies by attracting and keeping major employers and growing, emerging industries.

Improved regional air quality would result in fewer missed workdays due to related illnesses, including asthma. As Loren Raun, Ph.D. and Chief Environmental Science Officer for the City of Houston, testified on September 10, 2018, at the TCEQ public meeting on the Texas Plan that NO_x is linked directly to increased risk of an asthma attack requiring ambulance treatment. Since 2004, our region has seen about 1,500 ambulance-treated asthma attacks annually.

The economic harm to our region from increased ozone levels is not limited to asthma attacks and cannot be understated. According to Dr. Raun, "the costs

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associated with adverse health effects in Houston are estimated to be four times higher than the region allocated the most funds.” Yet, the recognition of these economic and health effects is not reflected in the Texas Plan, which would underfund efforts to improve local air quality and, in so doing, regional health. This directly conflicts with the first purported goal of the Texas Plan, which aims to “reduce NO_x emissions in those areas with the potential to be most impacted by NO_x emissions and in particular areas of the state designated nonattainment for National Ambient Air Quality Standards (NAAQS) for ground level ozone and in other areas monitoring ground level ozone levels near the NAAQS for ozone.”

Conclusion

TCEQ states that, in carrying out its mission, it will strive to “base decisions on the law, common sense, sound science, and fiscal responsibility.”⁵ As discussed above, the Texas Plan and its proposal to allocate a bare 13 percent of the funds from the Federal Settlement to the Galveston-Houston-Brazoria region does not appear to be based on common sense, sound science, or fiscal responsibility, nor will this allocation allow Texas to meet the goals of the Federal Settlement or the Plan. Thus, I urge the TCEQ to allocate settlement funds according to the number of affected vehicles or the severity of ozone in Priority Areas. Further, granting all funds on a competitive basis, and not on a “first-come, first-served” basis, would allow TCEQ to evaluate the proposed efficacy of projects to ensure that funded projects will produce the greatest benefit for Texas and the greatest reduction in NO_x emissions levels.

Thank you, again, for the opportunity to comment on this initiative.



Rodney Ellis
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cc: Chairman Jon Niermann, MC-100
Mr. Toby Baker, Executive Director, MC 109
Ms. Stephanie Bergeron Perdue, Deputy Executive Director, MC 109
Mr. Brian Christian, Director Environmental Assistance Division, MC 108
Mr. David Brymer, Air Quality Division Director, MC 206
Implementation Grants Section via email to VWsettle@tceq.texas.gov

⁵ Texas Commission on Environmental Quality, “Mission Statement and Agency Philosophy,” <https://www.tceq.texas.gov/agency/mission.html>