

**Texas Commission on Environmental Quality
Volkswagen Environmental Mitigation Trust
Beneficiary Mitigation Plan for Texas
Frequently Asked Questions (FAQs)**

Updated August 8, 2018

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Volkswagen Environmental Mitigation Trust

Beneficiary Mitigation Plan for Texas

Frequently Asked Questions (FAQs)

Updated August 8, 2018

1. Overview

FAQ 1.1 What is the Volkswagen Environmental Mitigation Trust?

The Volkswagen State Environmental Trust (Trust) is part of a settlement agreement in the litigation between the United States Environmental Protection Agency (EPA), the State of California, and Volkswagen (VW) and its related entities. The EPA and the State of California filed suit in the U.S. District Court for the Northern District of California against VW alleging that VW violated provisions of the Federal Clean Air Act. The suit alleged that approximately 590,000 light-duty 2.0-liter and 3.0-liter diesel vehicles manufactured by VW and its subsidiaries contain emission defeat devices. These devices cause the emissions control system of those vehicles to perform differently during emissions testing compared to performance during normal vehicle operation and use. The subject vehicles emit nitrogen oxides (NO_x) at a level above required standards during normal vehicle operation and use.

The EPA, California, and VW have resolved this case through three partial settlements (Amended 2.0 Liter Partial Consent Decree, 3.0 Liter Second Partial Consent Decree, Third Partial Consent Decree). As part of the settlement agreements, VW must pay approximately \$2.9 billion into the Trust referenced above. The 50 states, the District of Columbia, and Puerto Rico may elect to become a beneficiary to receive an allocation from the Trust. An Indian Tribe Mitigation Trust has been established separate from the state mitigation trust.

On March 15, 2017, the Court appointed Wilmington Trust, N.A. to serve as the Trustee for the Trust. The final Trust Agreement was filed and became effective on October 2, 2017. The Trustee filed the designation of beneficiaries with the court on January 29, 2018. Texas is among the designated beneficiaries.

FAQ 1.2 Why is NO_x a problem?

The EPA has identified ozone as criteria pollutant under the National Ambient Air Quality Standards (NAAQS). The Texas Commission on Environmental Quality (TCEQ, agency, or commission) monitors areas of the state for compliance with the NAAQS. For areas not meeting those standards, the TCEQ is responsible for developing a state implementation plan (SIP) to outline strategies that will be implemented to bring those areas into attainment of the NAAQS.

In terms of compliance with the NAAQS, the pollutant that has been most challenging to show attainment in some areas of Texas is ground-level ozone.

Ozone is a gas formed in the atmosphere when three atoms of oxygen combine. Stratospheric ozone is found naturally in the Earth's upper atmosphere and forms a protective layer that shields us from the sun's ultraviolet rays. However, ground-level ozone is a respiratory toxic agent that can cause acute respiratory health effects when people breathe high concentrations of it over several hours. These effects include decreased lung function and pain with deep breaths, and aggravated asthma symptoms.

Ozone is not emitted directly into the air, but created by chemical reactions between NO_x and volatile organic compounds (VOCs) in the presence of sunlight. Ozone forms in the highest concentrations on warm, sunny days with light wind speeds, which allows more of the pollutant to form and accumulate. In Texas, much of the NO_x emissions are from motor vehicle and off-road equipment exhaust. Reducing those emissions by replacing or upgrading older vehicles and equipment to newer models with less emissions is an important tool in addressing the state's air quality goals related to ground-level ozone.

FAQ 1.3 What is the TCEQ's role?

Governor Greg Abbott selected the TCEQ as the lead agency responsible for the administration of funds received from the Trust. The governor submitted the necessary certification documents for Texas to be designated a beneficiary state under the Trust, and the Trustee filed the beneficiary notifications with the court on January 29, 2018. At that time, Texas became a designated beneficiary of the allocated funds.

FAQ 1.4 How much money is available to Texas?

The funds in the Trust are allocated based on the number of affected vehicles registered within the boundaries of each beneficiary. A minimum of \$209,319,163 is available to Texas for projects that reduce NO_x in the environment.

2. Beneficiary Mitigation Plan

FAQ 2.1 What is the Beneficiary Mitigation Plan?

At least 30 days before submitting the first request for funds, the TCEQ must submit a Beneficiary Mitigation Plan (Plan) to the Trustee that summarizes how the agency intends to use the funds allocated to Texas. The Plan must address the following four elements:

1. The state's overall goals for use of the funds.
2. The categories of eligible mitigation actions the state anticipates will be appropriate to achieve the goals and a preliminary assessment of the percentages of funds anticipated to be used for each type of action.
3. A description of how the state 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.
4. A general description of the expected ranges of emissions benefits the state anticipates will be realized by implementation of the eligible mitigation actions identified in the Plan.

The Plan must also explain the process by which the TCEQ has sought and considered public input on the Plan.

FAQ 2.2 What is the status of the Plan?

The *Draft Beneficiary Mitigation Plan for Texas* is available for public comment on the TCEQ's VW website at www.TexasVWFund.org. The TCEQ will accept public comments on the draft plan through October 8, 2018.

The TCEQ will consider comments received in preparing a final plan to submit to the trustee. The TCEQ anticipates the plan being finalized by early Fall 2018.

FAQ 2.3 How can I submit comments to the TCEQ?

The public may submit comments on the draft plan via email to VWSettle@tceq.texas.gov. Comments may also be sent by mail to the address listed on the TCEQ's VW website at www.TexasVWFund.org. You may also view comments received to date at this website.

Public meetings will also be scheduled in several areas of the state to allow the public to provide comments. Visit the TCEQ's VW website for information on scheduled public meetings.

FAQ 2.4 Will the comments on the draft plan be made available?

Yes, copies of the comments received on the draft plan will also be made available on the TCEQ's [VW website](#).

3. Plan Components

FAQ 3.1 What are the proposed goals for the draft plan?

The TCEQ proposed four primary goals for use of the mitigation funds to alleviate the air quality impacts from the affected vehicles.

1. Reduce NO_x Emissions

The primary goal for use of the funds will be to reduce NO_x emissions in those areas with the potential to be most impacted by NO_x emissions and, in particular, the 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. These “Priority Areas” are impacted by or are immediately adjacent to those areas that measure a disproportionate share of the air pollution burden within the regional and local jurisdictions. The Priority Areas are listed in Table A.1 and shown on Figure A.1 in Appendix A of the draft plan.

In addressing this goal, the TCEQ will place a high priority on program administration efficiency to maximize the amount of funding used for NO_x emissions reduction.

2. Reduce the Potential for Exposure of the Public to Pollutants

A second goal of the program will be to reduce the potential for exposure of the public to pollutants that are often emitted along with NO_x from older vehicles and equipment.

The program will address this goal through funding to replace or repower vehicles and equipment that operate within communities and at facilities where emission sources may be concentrated, including refuse vehicles, school buses, and cargo handling equipment.

3. Prepare for Increased and Sustained Use of Zero Emission Vehicles (ZEV)

The Trust Agreement allows for allocation of up to 15% of the funds for equipment to supply light-duty ZEV with electricity or hydrogen for hydrogen fuel cells. While the other mitigation actions will result in immediate reductions in NO_x emissions and other pollutants, funding ZEV infrastructure will help prepare the state for the increased use of ZEV in Texas and will help sustain the use of those vehicles.

4. Complement Other Incentive Funding Programs

The Texas Emissions Reduction Plan (TERP) provides grants to reduce NO_x emissions that would otherwise occur in the future if the grant-funded project were not implemented. Conversely, the VW funding is intended to help mitigate the impact of NO_x emissions that should not have previously occurred and were not considered in air quality inventories and planning to ensure compliance with the NAAQS. To use the funds as efficiently as possible, it is important that the VW funding be used to complement the efforts of the TERP program.

FAQ 3.2 How would the funds be allocated?

The draft plan includes a proposed allocation of funds for administration, one statewide program, and five priority areas.

Proposed Funding Allocation

| Priority Area | Counties | Maximum Funding Amount | Percentage of Total Funds |
|--|--|-------------------------------|----------------------------------|
| San Antonio Area | Bexar, Comal, Guadalupe, Wilson | \$73,554,754 | 35.14% |
| Dallas-Fort Worth Area | Collin, Dallas, Denton, Ellis, Hood, Johnson, Kaufman, Parker, Rockwall, Tarrant, Wise | \$29,116,296 | 13.91% |
| Houston-Galveston-Brazoria Area | Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, Waller | \$27,399,879 | 13.09% |
| El Paso County | El Paso | \$26,771,921 | 12.79% |
| Beaumont-Port Arthur Area | Hardin, Jefferson, Orange | \$12,705,673 | 6.07% |
| Subtotal | | \$169,548,523 | 81.00% |
| Light-Duty Zero Emission Vehicle (ZEV) Supply Equipment (Electricity or Hydrogen for Fuel Cells) | Statewide | \$31,397,875 | 15% |
| TCEQ Administration (TCEQ anticipates using less than this allocated amount) | TCEQ | \$8,372,767 | 4% |
| Total | | \$209,319,163.57 | 100% |

Estimated Administrative Funding (up to 4%)

The TCEQ's initial estimates are that it will need less than 4% of the allocated funds (approximately \$8 million) to administer the program. These estimates are still preliminary, and the final administrative needs will depend on the number of years the program is implemented and the final resource needs of the TCEQ to

administer the program. However, the TCEQ anticipates needing much less than the 15% of the funding authorized for administration.

Statewide Funding for Light-Duty ZEV Supply Equipment (up to 15%)

The TCEQ proposes to provide up to 15% of allocated funds (approximately \$31.4 million) statewide to increase available infrastructure for providing electricity to light-duty electric vehicles and, where warranted, hydrogen for hydrogen fuel cell vehicles. Providing statewide funding will help establish additional availability of charging or refueling infrastructure so that vehicles may travel longer distances and in a greater number of areas within the state.

The TCEQ will consider the efforts of Electrify America, LLC to implement the national ZEV Investment Plan when considering projects for funding under this category.

Priority Areas Allocation (up to 81%)

The TCEQ proposes to initially allocate 81% of the total funds (approximately \$170 million) among the five Priority Areas. The allocation is weighted toward three Priority Areas where air quality is closest to or above the 2015 ozone NAAQS, with two-thirds of the Priority Area funds allocated by population among the San Antonio, El Paso, and Beaumont-Port Arthur Areas. The remaining third is divided, based on population, between Houston-Galveston-Brazoria and Dallas-Fort Worth Areas.

FAQ 3.3 How were the Priority Areas Determined?

In Texas, there are two nonattainment areas that do not meet the NAAQS for ground-level ozone based on the EPA's currently implemented 2008 eight-hour ground-level ozone standard of 0.075 parts per million (ppm), Dallas-Fort Worth (DFW), Houston-Galveston-Brazoria (HGB), and Bexar County. On October 1, 2015, the EPA revised the primary NAAQS for ozone from the eight-hour standard of 0.075 ppm to an eight-hour standard of 0.070 ppm. As a result, Bexar County was also designated nonattainment, in addition to the other two nonattainment areas.

Additional counties are included in the San Antonio Area based on proximity to Bexar County. Hood County is included in the DFW Area for similar reasons.

The other areas of primary interest from an ozone NAAQS perspective are El Paso and Beaumont-Port Arthur (BPA). Preliminary data for 2018 indicate that El Paso has some monitored values near or above the 2015 NAAQS for ozone. The BPA area is considered a priority for mitigation for several reasons. First, the BPA area is under a federally enforceable ozone maintenance plan and was designated nonattainment for the revoked 1997 eight-hour ozone NAAQS. In addition, the BPA area has a history of elevated ozone, including the period when the subject vehicles

were being sold and driven. Specifically, the BPA area had ozone design values of 80 ppb as recently as 2012 and as high as 92 ppb in 2004.

FAQ 3.4 What is the proposed statewide program?

Light-Duty Zero Emission Vehicle (ZEV) Supply Equipment

The TCEQ proposes statewide funding for electric charging infrastructure for light-duty plug-in electric vehicles and hydrogen for fueling a vehicle powered by a hydrogen fuel cell. This funding category will help achieve the goal of preparing for increased and sustained use of ZEV.

FAQ 3.5 What Mitigation Actions are eligible in the Priority Areas?

Under the proposed plan, the following mitigation action categories would be eligible for funding in the Priority Areas.

- Class 4 - 7 Local Freight Trucks
- Class 8 Local Freight Trucks and Port Drayage Trucks
- Class 7 - 8 Refuse Vehicles
- School Buses
- Transit and Shuttle Buses
- Electric Forklifts and Port Cargo Handling Equipment
- Electric Airport Ground Support Equipment
- Ocean-Going Vessel Shore Power

FAQ 3.6 What limits would be placed on the funding?

The draft plan incorporates the limits on mitigation action funding established in the Trust Agreement, with some differences. Some of the key limits proposed in the plan that go beyond the criteria set out in the Trust Agreement are outlined below.

1. Under the proposed statewide light-duty ZEV supply equipment program, up to 50% of the costs of electric charging systems would be eligible for reimbursement. The Trust Agreement allows for higher percentages, based on location (e.g., public, workplace, multi-family).

Limits on the reimbursement for hydrogen fueling systems would be the same as allowed under the Trust Agreement. Up to 33% of eligible costs would be eligible for reimbursement for equipment capable of dispensing at least 250 kilograms (kg) per day, and up to 25% of eligible costs for equipment capable dispensing at least 100 kg per day.

2. Replacement and repower projects involving the purchase of all-electric vehicles, equipment, and engines would be eligible for up to 60% of the costs, including the cost for electric charging infrastructure. The Trust Agreement

allows reimbursement of up to 100% of the costs for publicly-owned vehicles and equipment.

3. Replacement and repower projects involving the purchase of diesel or alternative fuel vehicles and engines would be eligible for up to 60% of the costs for publicly-owned vehicles and privately-owned school buses operated under contract with a public school district. The Trust Agreement allows reimbursement of up to 100% of publicly-owned vehicles and equipment.

Replacement projects involving privately-owned vehicles would be eligible for the same percentages allowed in the Trust Agreement, up to 25% of the costs and repower projects would be eligible for up to 40% of the costs.

4. For government-owned shore power projects, up to 60% of eligible costs would be eligible for reimbursement. The Trust Agreement allows reimbursement of up to 100% of the costs for government shore power projects.

Privately-owned shore power projects would be eligible for up to 25% of the costs, the same as allowed under the Trust Agreement.

The lower percentage-of-cost limits are intended to ensure that applicants have a financial stake in the viability and sustainability of the grant-funded project, and to fund a greater number of projects with the available funds.

In addition these limits, the TCEQ may establish limits on the maximum grant amounts and may set limits on the cost per ton of NO_x reduced by a mitigation action.

FAQ 3.7 How would the funds be awarded and distributed?

The TCEQ proposes to award the funds as grants, which would be solicited through a Request for Grant Applications process. Different grant rounds may be used for the two different statewide programs and for the different priority areas.

The plan proposes to award funds under a first-come, first-served process, when that approach would be appropriate. Under this approach, the TCEQ might establish pre-determined maximum funding amounts or caps on funding.

However, in some cases, the TCEQ might use a competitive grant selection process for certain categories. Project selections would be made based on criteria established for that grant round, which might include the cost-effectiveness of the project in reducing NO_x.

Successful applicants would need to enter into a grant contract for the funds. However, the TCEQ would not be obligated to reimburse expenses until the TCEQ issues the grant recipient a Notice to Proceed (NTP).

The TCEQ would submit funding requests to the trustee for the contracted projects. The trustee will have 60 days after receipt of each funding request to

approve, deny, or request modification to the request, or request additional information. The trustee will then have 15 days after approval of a request to disburse the requested funds.

Subject to acceptance of the approach by the trustee, the TCEQ will request funding for the approved projects and the administrative costs of the agency. The funds will be held in an agency account for use in reimbursing the grant expenses and the agency's administrative costs. As the TCEQ receives funds for a project, the TCEQ will issue the grant recipient an NTP, after which a grant recipient may be reimbursed for eligible expenses in accordance with the grant contract.

For those projects requiring scrappage of the vehicle, equipment, and/or engine, the applicant will be required to complete the disposition process before requesting reimbursement from the TCEQ. If a grantee does not complete the scrappage and submit required documentation, reimbursement would not be authorized and the grant contract may be cancelled.

FAQ 3.8 How will emissions reductions be determined?

The TCEQ proposes to use the same methodology as used for the TERP program. The draft plan outlines the calculation methodology. The TCEQ will provide default usage figures for the calculations.

Except in cases where cost-effectiveness will be a competitive selection factor, applicants will not be asked to calculate the NO_x reductions and cost-effectiveness of their proposed project.

For reporting to the trustee, the TCEQ will calculate NO_x reductions and particulate matter (PM) reductions for the funded projects.

4. Timing and Availability of Funds

FAQ 4.1 When will the Beneficiary Mitigation Plan be finished?

It is anticipated that the final Plan will be completed and submitted to the Trustee by early Fall 2018. A copy of the final plan will be available on the TCEQ's [VW website](#).

FAQ 4.2 When will funds be available?

Based on the priorities established in the final Plan, the TCEQ may begin accepting applications for grants under some of the project categories outlined in the Plan by late Fall 2018.

No more than 1/3 of the total funds available to Texas may be requested from the Trustee the first year after the effective date of the Trust Agreement (October 2, 2017), or 2/3 the second year.

Applicants selected for funding will be sent a contract to sign and return to the TCEQ. The TCEQ will execute the contract and return a copy to the grantee. Executed contracts will then be contingent upon the TCEQ sending the grantee a Notice to Proceed (NTP). The TCEQ will submit a funding request to the Trustee for the selected projects and will issue the NTPs upon receipt of the funds. The grantee may then complete the eligible purchase and submit reimbursement requests to the TCEQ for payment.

Applicants selected for funding should expect the contracting process and the TCEQ obtaining the funds from the Trustee to take several months before the grantee would receive a NTP and be able to request reimbursement. For example, the Trustee has up to 75 days to review and approve a funding request.

FAQ 4.3 By when must the money be spent?

Beneficiaries have between three and 10 years to spend their allocated funds on specific types of projects as outlined in the Trust Agreement. After that, unused trust funds will be redistributed as supplemental funding among beneficiaries that have used at least 80% of their allocated trust funds. Those beneficiaries will be given five additional years to use the supplemental funds.

The TCEQ intends to award the funds allocated to Texas much sooner than the authorized 10-year period over which the funds are available.

5. Administrative Costs

FAQ 5.1 How much of the funds will be used for administration of the program?

Actual administrative costs may be reimbursed from the funds allocated to Texas, not to exceed 15% of the total cost of the Eligible Mitigation Actions funded under the program. The proposed funding allocation includes up to 4% (~\$8 million) of the allocated funds going to administrative costs. However, the TCEQ expects to need less than that amount, and any of those funds not used would be available for additional projects.