

LDEQ Volkswagen Mitigation Plan Response to Comments  
August 2018

This document provides responses to public comments on Louisiana's Volkswagen Beneficiary Mitigation Plan (BMP). The BMP is required as a provision to receive Environmental Mitigation Trust (EMT) funds in Volkswagen's (VW's) proposed partial Consent Decree 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). Appendix D-2 of the Consent Decree specifies eligible mitigation actions and expenditures for the EMT funds.

The Louisiana Department of Environmental Quality (LDEQ), being the named Beneficiary<sup>1</sup>, sought public input on Louisiana's BMP via the agency's public notice process on April 27, 2018. The public notice period was extended beyond the usual 30 days due to consideration of IT issues that potentially interfered with the public's ability to participate effectively in the public comment process. Copies of all comment letters submitted are available electronically through LDEQ's Electronic Data Management System (EDMS) by searching under Agency Interest Number (AI #): 204948.

The LDEQ, the Louisiana Department of Natural Resources and the Louisiana Department of Transportation and Development, have reviewed the comments. While the decision-making process has benefitted from the public comments and additional information submitted, the concerns and information presented did not raise any substantial new issues regarding preferred eligible mitigation actions and expenditures. The Beneficiary will, however, incorporate minor administrative changes in an update to the BMP for better clarity and understanding. The BMP is a living document to the extent that it is not intended to be binding on any Beneficiary, nor does it create any rights in any person to claim an entitlement of any kind. Beneficiaries may adjust their goals and specific spending plans at their discretion and, if they do so shall provide the Trustee with updates to their BMP, per the consent decree.

Comments received in writing were organized into three major categories, Eligible Mitigation Actions, Eligible Mitigation Expenditures, and Beneficiary Mitigation Plan, for the purpose of grouping similar comments received. The comments have been paraphrased for length or clarity and are listed from highest to lowest concerns expressed by commenters.

The comments, response to comments, and the most up-to-date BMP will be available to the public on LDEQ's Volkswagen webpage or you may search EDMS under AI # 204948.

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<sup>1</sup> "Beneficiary" shall mean each governmental entity among the 50 States, Puerto Rico, and District of Columbia that is determined to be a Beneficiary pursuant to Section IV (State Mitigation Trust Beneficiaries). (Case 3:16-cv-00295-CRB Document 51-1; Attachment A Environmental Mitigation Trust Agreement for Beneficiaries, Definitions)

### ***Eligible Mitigation Expenditure***

<i>Comment 1:</i>	Commenter asks that LDEQ prioritize using the maximum funds allocated for implementing an electric vehicle equipment infrastructure for the Louisiana interstates.
<i>Response 1:</i>	Under section IV. Preferred Mitigation Projects, B., of the BMP, the plan provides for up to 15% of its allocation of Mitigation Trust funds to go to costs necessary for, and directly connected to, the acquisition, installation, operation and maintenance of new, light duty, zero emission vehicle supply equipment; which is consistent with the Partial Consent Decree, Appendix D-2, Eligible Mitigation Actions and Mitigation Action Expenditures, #9 Light Duty Zero Emission Vehicle Supply Equipment.

### ***Eligible Mitigation Action***

<i>Comment 2:</i>	Commenter believes that the funding should be set aside for clean, alternative fuel vehicle projects that focus on maximizing NOx reduction for the funds spent.
<i>Response 2:</i>	The Beneficiary must follow all requirements set forth in the Mitigation Trust Agreement. As such, eligible mitigation actions, under section IV. Preferred Mitigation Projects D.3.e, are selected with great consideration of environmental pollutant impact, which includes NOx. The BMP is not binding and beneficiaries may adjust their goals and specific spending plans. Thus, the State may consider, in the future, requesting additional proposals from the community and utilizing any remaining funds on proposed projects in accordance with the overall priorities and standards established by the BMP.
<i>Comment 3:</i>	Commenter opposes use of funds for “clean diesel” buses; offers match percentages for alternatively fueled and electric buses instead.
<i>Response 3:</i>	The Beneficiary must follow the guidelines of the trust and therefore may not eliminate use of funds for clean diesel buses. LDEQ will take the match percentage changes under consideration, as the BMP is not binding and beneficiaries may adjust their goals and specific spending plans.
<i>Comment 4:</i>	Commenter believes that it is more cost-effective to spend funds on diesel retrofits than on subsidizing a percentage of vehicles in the state and suggests that the DERA option is the most cost effective and beneficial action for the administration of all settlement funds.
<i>Response 4:</i>	While retrofits are cost effective, the NOx reductions realized are greater with either alternatively fueled vehicles, clean diesel vehicles, or electric vehicles.
<i>Comment 5:</i>	Commenter requested that specific terms and conditions be placed upon proposed recipients in qualifying for and accepting funds. This includes and is not limited to the awardee providing proof that a working vehicle is being taken out of service and that it was not out of service, having reached its end of useful life prior to VW replacement; provide VIN #s to the Beneficiary; revoke registration for replacement vehicles; show proof that a vehicle was scrapped; and provide proof of availability of vehicles for a timely purchase.
<i>Response 5:</i>	The Beneficiary believes that "the plan provides the public with insight into the Beneficiary's high-level vision for use of the mitigation funds and information about the specific uses for which funding is expected to be requested." While the BMP “provides a level of detail reasonably ascertainable,” the awardee must adhere to the Trust requirements and any specific terms and conditions established by the Beneficiary.
<i>Comment 6:</i>	Commenter asks that LDEQ set aside a portion of the funds for Capital Area Transit System to replace diesel buses with electric buses.
<i>Response 6:</i>	Under section IV. Preferred Mitigation Projects, D (3), the plan outlines consideration of future projects for the use of remaining funds based upon degree of NOx reductions,

significant and sustained improvement of ambient air quality and consideration of the entity proposing the project. The BMP states that publicly owned entities will be given priority. The BMP states Louisiana's overall goal for use of the funds - it is not binding and beneficiaries may adjust their goals and specific spending plans.

***Beneficiary Mitigation Plan***

<i>Comment 7:</i>	Commenter believes that funding for government entities should be addressed the same as for non-government entities.
<i>Response 7:</i>	To the extent that funds are available, Louisiana may apportion funds for other projects within eligible categories; however, Louisiana has established a priority for various projects.
<i>Comment 8:</i>	Commenter requests a contingency measure for school districts that are not able to abide by commitments to purchase school buses.
<i>Response 8:</i>	Disqualified or changed application dollars will be added back into the fund for future disbursement. To the extent that funds are available, Louisiana may apportion funds for other projects within eligible categories; however, Louisiana has established a priority for various projects.
<i>Comment 9:</i>	Commenter seeks clarity in the title of the document listed as "final"; requests date of mitigation plan final release date; requests date of disbursement date; and requests publication of approved school districts each year.
<i>Response 9:</i>	LDEQ regrets the misleading word, "final" in the document title. As "final" indicated its readiness for public notice. The mitigation plan is deemed "proposed" until such time as all comments are received, reviewed and the plan has been adequately amended to reflect changes deemed necessary. The final plan will be published on the LDEQ website; funds will be disbursed following the requirements of the settlement document; a list of all funded projects will be published on the LDEQ website. If the Beneficiary adjusts their goals or specific spending plans, the Trustee will be provided with updates to their BMP and subject to public notice.