



**Proposed Beneficiary  
Mitigation Plan  
Volkswagen, Audi,  
and Porsche  
Clean Air Act  
Settlements**

**April 2018**

# Table of Contents

I.	Introduction.....	1
II.	Louisiana Timeline .....	2
III.	Mitigation Plan.....	2
IV.	Preferred Mitigation Projects .....	5

## **I. Introduction**

On January 4, 2016, and as amended on October 7, 2016, the United States (U.S.) filed a complaint against the Volkswagen AG (VW) and certain subsidiaries alleging violations of the Clean Air Act (CAA) with regard to approximately 590,000 model year 2009 to 2016 diesel motor vehicles sold in the U.S. Specifically, the complaint alleges that each of these vehicles contains, as part of the engine control module, certain computer algorithms and calibrations that cause the emissions control system of those vehicles to perform differently during normal vehicle operation and use than during federal emissions tests. The complaint further alleges that these computer algorithms and calibrations are prohibited defeat devices under the CAA, and that during normal vehicle operation and use, the cars emit levels of NO<sub>x</sub> significantly in excess of the Environmental Protection Agency (EPA) compliant levels. NO<sub>x</sub> emissions contribute to the formation of ground level ozone and are a significant health concern.

On October 25, 2016, VW and the U.S. finalized a Partial Consent Decree which called for the establishment of an Environmental Mitigation Trust (Mitigation Trust). VW will provide funds to the Mitigation Trust, which will then provide funds to recognized Beneficiaries in order to implement projects to offset or mitigate excess emissions as a result of VW's actions.

The Mitigation Trust will be administered by Wilmington Trust, N.A., a trustee appointed by the court on March 15, 2017. The "Trust Effective Date" is the date when the U.S. files fully executed trust documents with the court. The Mitigation Trust provides a structure to allocate funds to Beneficiaries primarily based on the number of registered, non-compliant Volkswagen vehicles within the boundaries of the Beneficiary. Therefore, those Beneficiaries with more non-compliant cars will receive a larger allocation of trust funds.

Louisiana's initial share is approximately \$18 million. The Mitigation Trust will pay for defined eligible projects, also known as Eligible Mitigation Actions. These include projects to reduce NO<sub>x</sub> emissions from heavy duty diesel sources near population centers, such as large trucks, school buses, and transit buses. The goal of each Eligible Mitigation Action is to fully mitigate the total lifetime excess NO<sub>x</sub> emissions from the vehicles.

Pursuant to the Partial Consent Decree and Final Trust Documents, the States, Puerto Rico, and the District of Columbia may elect to become a Beneficiary by timely filing with the court a Certification for Beneficiary Status. Unless the U.S. timely files an objection, the state shall become Beneficiary eligible for Mitigation Trust funds for eligible projects. Prior to submitting a funding request, each Beneficiary must submit and make available a "Beneficiary Mitigation Plan" that summarizes how the Beneficiary plans to use the Mitigation Trust funds.

## **II. Louisiana Timeline**

The State of Louisiana has filed a Certification for Beneficiary Status under the Environmental Mitigation Trust Agreement (Appendix D-3), containing each of the certifications required by subparagraphs 4.2.1 through 4.2.9:

- A. The U.S. has not filed an Objection to the Certification by Louisiana.
- B. Louisiana is a “Beneficiary” pursuant to the agreement.

Louisiana has prepared this plan to provide notice of intended use of settlement funds, etc.:

- A. Louisiana will provide public notice & outreach on this plan.
- B. Louisiana will respond to any public comments received.

## **III. Mitigation Plan**

The Environmental Mitigation Trust Agreement for State Beneficiaries states: After being deemed a Beneficiary pursuant to subparagraph 4.0.2.1 hereof, each Beneficiary, not later than 30 Days prior to submitting its first funding request pursuant to Paragraph 5.2, shall submit and make publicly available a “Beneficiary Mitigation Plan” that summarizes how the Beneficiary plans to use the mitigation funds allocated to it under this Trust, addressing:

- A. the Beneficiary’s overall goal for the use of the funds;
- B. the categories of Eligible Mitigation Actions the Beneficiary anticipates will be appropriate to achieve the stated goals and the preliminary assessment of the percentages of funds anticipated to be used for each type of Eligible Mitigation Action;
- C. a description of how the Beneficiary 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; and
- D. a general description of the expected ranges of emission benefits the Beneficiary estimates would be realized by implementation of the Eligible Mitigation Actions identified in the Beneficiary Mitigation Plan. The Beneficiary Mitigation Plan need only provide the level of detail reasonably ascertainable at the time of submission.

This Plan is intended to provide the public with insight into Louisiana’s s high-level vision for use of the Mitigation Trust funds and information about the specific uses for which funding is expected to be requested. Nothing in this provision is intended to make the Beneficiary Mitigation Plan

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 Beneficiary Mitigation Plan. The Trustee has no duty to monitor or supervise any Beneficiary's compliance with its Beneficiary Mitigation Plan. To the extent a Beneficiary intends to avail itself of the Diesel Emission Reduction Act (DERA) Option described in Appendix D-2, that Beneficiary may use its Final Approved DERA Workplan as its Beneficiary Mitigation Plan as to those Eligible Mitigation Actions funded through the DERA Option. The Beneficiary Mitigation Plan shall explain the process by which the Beneficiary shall seek and consider public input on its Beneficiary Mitigation Plan.

Louisiana has previously solicited proposed projects for consideration by the Department of Environmental Quality (DEQ), the Department of Natural Resources (DNR), and the Department of Transportation and Development (DOTD). Proposed projects will be reviewed to determine qualification pursuant to Appendix D-2 and consideration of appropriate goals, priorities, costs and impacts from the projects.

**A. Louisiana's overall goals for the use of the funds:**

1. have a significant and permanent reduction in the emission of air pollutants, principally Nitrogen Oxides (NO<sub>x</sub>) by replacing or repowering older, less efficient and higher-polluting diesel engines;
2. have a significant reduction in the exposure to pollutants by achieving significant and sustained cost effective reductions in air pollutants, primarily NO<sub>x</sub>;
3. maximize the improvement of overall air quality, taking into consideration existing air quality, population, and geographic area;
4. encourage and expedite deployment and widespread adoption of zero emission and lower-emission vehicles and engines;
5. spur projects that promote improvements and/or transformation of infrastructure and other areas that will provide environmental, economic, social, and/or energy benefits for the state; and
6. proposed projects with the Preferred Mitigation Projects.

**B. Categories of Eligible Mitigation Actions**

Louisiana may take advantage of all eligible projects identified in Appendix D-2. However, as discussed in the Preferred Mitigation Projects below, Louisiana has established a priority

for various projects. To the extent that funds are available, Louisiana will apportion funds for other projects within eligible categories.

**C. Description of how the Beneficiary 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**

The proposed projects anticipated by Louisiana will focus on NO<sub>x</sub> emission reductions. However, they will also achieve reductions in other emissions, including Sulfur Dioxide (SO<sub>2</sub>), Volatile Organic Compounds (VOCs), Particulate Matter (PM), and Hazardous Air Pollutants (HAPs). NO<sub>x</sub> is a criteria pollutant with a National Ambient Air Quality Standard (NAAQS). NO<sub>x</sub> is also a precursor for ozone and PM.

All areas of Louisiana are currently designated as in attainment with all NAAQS, except St. Bernard Parish which is designated as nonattainment for SO<sub>2</sub>. However, Louisiana has achieved significant reductions in SO<sub>2</sub> in St. Bernard Parish and monitors currently meet the SO<sub>2</sub> NAAQS standards.

The Louisiana DOTD owns and operates more than 5,500 pieces of equipment with an estimated replacement cost of more than \$200 million. Approximately 60% of the equipment is currently beyond its estimated ideal replacement cycle established by the DOTD. The DOTD's main goal is to reduce overall emissions by replacing some of its fleet with new diesel technology equipment with use of the available funds, resulting in improved operational efficiency of its fleet with increased reliability and reduced downtime of equipment.

By concentrating first on school buses, Louisiana will provide significant emission reduction both for NO<sub>x</sub> and Toxic Air Pollutants (TAPs). Since these emissions occur at or near ground level, there is relatively little dispersion with maximum impact on the passengers and school children. Addressing school buses first provides the greatest improvement in local air quality for one of the most sensitive populations.

**D. General description of the expected ranges of emission benefits the Beneficiary estimates would be realized by implementation of the Eligible Mitigation Actions identified in the Beneficiary Mitigation Plan**

Louisiana anticipates the replacement of approximately 300 buses, vehicles, or diesel powered equipment, which could result in emissions reductions of approximately 60 tons/year of NO<sub>x</sub> and a lifetime reduction of about 900 tons.

## IV. Preferred Mitigation Projects

At this time, Louisiana proposes to budget:

- A. Up to 15% of its allocation of Mitigation Trust funds for administrative expenses as provided by Appendix D-2. These funds will be used by the DEQ to administer, implement, and enforce the terms and conditions of the Environmental Mitigation Trust Fund Agreement and provide necessary and appropriate assistance to entities to whom funds are provided by the trustee, oversight of project implementation and the filing of any necessary forms, certification or other documents required by the Fund Agreement. These expenses include:
1. personnel costs, including costs of employee salaries and wages, but not consultants;
  2. fringe benefits costs, including costs of employee fringe benefits such as health insurance, FICA, retirement, life insurance, and payroll taxes;
  3. travel costs, including costs of Eligible Mitigation Action-related travel by program staff, but does not include consultant travel;
  4. supply costs, including tangible property purchased in support of the Eligible Mitigation Action that will be expensed on the Statement of Activities, such as educational publications, office supplies, etc. Identify general categories of supplies and their Eligible Mitigation Action costs;
  5. contractual costs, including all contracted services and goods, except for those charged under other categories such as supplies, construction, etc. Contracts for evaluation and consulting services and contracts with sub-recipient organizations are included;
  6. construction costs, including costs associated with ordinary or normal rearrangement and alteration of facilities; and
  7. other costs, including insurance, professional services, occupancy and equipment leases, printing and publication, training, indirect costs, and accounting.
- B. Up to 15% of its allocation of Mitigation Trust funds on the costs necessary for, and directly connected to, the acquisition, installation, operation and maintenance of new, light duty, zero emission vehicle supply equipment for projects as specified below. Provided, however, that Mitigation Trust funds shall not be made available or used to purchase or rent real estate, other capital costs (e.g., construction of buildings, parking facilities, etc.), or general maintenance (i.e., other than supply equipment maintenance).

- C. Between 23% and 33% of its allocation of Mitigation Trust funds to the replacement of DOTD equipment in the categories of “Class 8 Local Freight Trucks & Port Drayage Trucks (Eligible Large Trucks)” and “Class 4-7 Local Freight Trucks (Medium Trucks)”. More specifically, the preliminary plan is to replace equipment owned and operated by the DOTD in the truck categories below. These categories may include: CY Dump Trucks, Y Dump Trucks, Truck Tractors, Stake Body Trucks, Wrecker Trucks, Derrick Digger Trucks, Sign Service Trucks, and Bucket Trucks. No more than 1/3 of this amount may be applied to these projects during each of the first three years.
- D. The Remaining (~37 – 66 2/3%) of Louisiana’s allocation of Mitigation Trust funds on other projects submitted to the DEQ and DNR for consideration.
1. First consideration will be given to replacement or repowering of school buses owned or used by Louisiana school districts with newer, cleaner vehicles, and/or new cleaner burning engines.
    - a. 25% matching funds will be given for the replacement or repowering of eligible buses with newer cleaner burning diesel.
    - b. 50% matching funds will be given for the replacement of eligible buses with eligible alternate fuels powered buses, including Liquefied Natural Gas (LNG), propane, etc.
  2. Consideration will be given to projects already submitted by public entities that comply with terms and limitations provided in Appendix D-2.
  3. The State may consider, in the future, requesting additional proposals from the community and using any remaining funds on proposed projects in accordance with priorities and standards established by this plan. This consideration shall include:
    - a. the degree of reduction in NO<sub>x</sub> emissions;
    - b. the achievement of significant and sustained improvement in ambient air quality, including:
      - i. consideration of the pollutants of concern; while NO<sub>x</sub> is itself a criteria pollutant, it is also a precursor for both ozone and particulate matter;
      - ii. consideration of areas where ambient air quality will improve; this will include possible:



- a) nonattainment areas, maintenance areas, “near” nonattainment areas, areas with higher ambient concentrations, the geographic size of the area;
  - b) areas with “high” existing emissions (over areas with low existing emissions);
- c. consideration of the entity proposing the project:
- i. government and government associated entities (publicly owned sources) will be given priority over private sector;
  - ii. government and non-government entities with demonstrated experience and existing administrative and programmatic structure in place for implementing diesel reduction or offset projects will be given priority;
  - iii. collaboration with other states or regional impact may also be given priority;
- d. consideration of the nature of the project:
- i. higher NO<sub>x</sub> emission reductions for the dollar expended (tons of NO<sub>x</sub> reduction per dollar expended) will be given priority;
  - ii. “leveraged” projects (i.e., cost-sharing);
  - iii. EPA exhaust emission standards for NO<sub>x</sub> (<https://www.epa.gov/emission-standards-reference-guide>):
    - a) Heavy duty highway vehicles may provide up to a 96% reduction in NO<sub>x</sub> emissions per vehicle, based on replacing a model year 1992 engine with a model year 2007 engine.
    - b) Non-road equipment replacements, depending on the type of equipment and engine power rating, may provide between a 20% and 95% reduction in NO<sub>x</sub> emissions for each engine.
    - c) Locomotives, replacing the oldest (Tier 0) engine with the newest (Tier 4) engine may provide up to an 89% NO<sub>x</sub> reduction per engine.

- d) Commercial marine vessels, an upgrade or repower of a ferry or tug engine may provide up to an 80% NOx reduction for each vessel.
- iv. projects with verified funding (i.e., for projects that require a cost-share) or leveraged funding;
- v. schedule of implementation (which may result in earlier emission reductions);
- vi. oversight costs;
- vii. “transformative projects” that can act as “seed” projects to promote further development of beneficial projects, policies or considerations;
- e. “Other” Considerations:
  - i. energy considerations;
  - ii. other environmental impacts (water, waste disposal, etc.);
  - iii. economics [i.e., areas with limited financial resources], environmental justices, toxic air pollution concerns, etc.