

**Initial Proposal Regarding Use of Potential
Funding from the Volkswagen 2.0 Liter Partial
Consent Decree – Request for Public Comment**



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Volkswagen 2.0 Liter Partial Consent Decree –
Request for Public Comment**

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Introduction

The New Hampshire Department of Environmental Services (NHDES), in preparation for the use of funds that may be received as the result of a consent decree as described below, is seeking input from sectors of the population that may be impacted.

Background

On January 4, 2016, the United States filed a complaint against several Volkswagen companiesⁱ, referred to herein as Volkswagen, alleging violations of the Clean Air Act with regard to approximately 580,000 model year 2009 to 2015 2.0 and 3.0 liter diesel engines. The complaint alleged that the vehicles contained “defeat devices” in the form of computer software, designed to cheat on federal emissions tests, enabling the vehicles to emit levels of oxides of nitrogen (NOx) as high as 40 times the federal standard without detection by the vehicle’s On Board Diagnostic system, a system that numerous states rely upon to detect and require repairs on vehicles exceeding federal emission standards.

Nitrogen oxides come from an array of sources, including emissions from cars, trucks and buses, power plants, off-road equipment and agricultural sources. In the air, NOx can damage the leaves of plants, decrease their ability to produce food – photosynthesis – and decrease their growth. In addition to directly affecting plants, when deposited on land and in estuaries, lakes and streams, NOx can acidify and over fertilize sensitive ecosystems resulting in a range of harmful deposition-related effects on plants, soils, water quality, and fish and wildlife (e.g., changes in biodiversity and loss of habitat, reduced tree growth, loss of fish species and harmful algal blooms). In addition to their ecological effects, NOx contributes to the formation of ground-level ozone and fine particle pollution that are linked to a number of adverse effects on human cardiovascular and respiratory systems.

Provisions of the VW Consent Decree

On October 25, 2016, a Partial Consent Decree was entered by the Court that resolves issues related to Volkswagen’s 2.0 liter diesel vehicles only. The 3.0 liter vehicle litigation is, as yet, unsettled. The Partial 2.0 Liter Consent Decree (referred to hereafter as the Agreement) provides for the following:

- Volkswagen is required to remove from commerce in the United States or perform an emissions modification on at least 85 percent of the affected 2.0 liter vehicles by June 30, 2019. To achieve this, Volkswagen must offer owners and lessees of affected vehicles the option of a buyback or lease termination or, if an emissions modification solution is approved by the U.S.

Environmental Protection Agency (U.S. EPA) and the California Air Resources Board (CARB), the option of an emissions modification.

- Volkswagen must pay \$2.7 billion into an environmental mitigation trust designed to fully mitigate the excess NOx emissions from the subject 2.0 liter vehicles. Funds from the trust will be allocated to state, tribal and territorial governments to be used for specific NOx reducing actions.
- And finally, Volkswagen must invest \$2 billion to promote the use of Zero Emission Vehicles (ZEVs) and ZEV technology in the United States.

To view the agreement in its entirety, please see the following webpage: <https://www.epa.gov/vw>

New Hampshire's initial trust allocation is identified in Appendix D-1 of the Partial Consent Decree as \$29,544,297.76. If the Governor decides that New Hampshire should become a beneficiary under the Environmental Mitigation Trust, the State will be entitled to request one third of this figure or approximately \$9.8 million during the first year of the program or two thirds or approximately \$19.8 million during the first two years of the program.

Requirements for Mitigation Plans

The Agreement allocates \$29,544,297.76 of the Environmental Mitigation Trust to the State of New Hampshire. A designated state agency will have primary responsibility for drafting and implementing a "Beneficiary Mitigation Plan" for use of the funds. Pursuant to the requirements of the trust " . . . each Beneficiary 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: (i) the Beneficiary's overall goal for the use of the funds; (ii) 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; (iii) 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 (iv) 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 purpose of this document is to outline a draft plan for use of the funds and elicit comments on the proposed plan from interested stakeholders. The Partial Consent Decree stipulates that the Beneficiary

Mitigation Plan shall explain the process by which the Beneficiary shall seek and consider public input on the Beneficiary Mitigation Plan.

Overview of Eligible Mitigation Actions Allowed by the Consent Decree

Appendix D-2 of the Partial Consent Decree outlines eligible mitigation actions and expenditures of the Environmental Trust Agreement Mitigation Program as summarized below.

Class 8 Local Freight Trucks and Port Drayage Trucks

- engine model year 1992 to 2009
- may be repowered with a new diesel or alternate fueled (e.g. CNG, propane, Hybrid) engine or all-electric engine
- may be replaced with any new diesel or alternate fueled or all-electric vehicle, with the engine model year in which the mitigation action occurs or one engine model year prior
- reimbursable at a percentage between 25 and 100 percent, depending on whether the vehicle is owned by a non-government or government entity

School, Shuttle and Transit Buses

- engine model year 2009 or older class 4-8 buses
- may be repowered with any new diesel or alternate fueled or all-electric engine
- may be replaced with any new diesel or alternate fueled or all-electric vehicle, with the model engine year in which the eligible bus mitigation action occurs or one engine model year prior
- reimbursable at a percentage between 40 and 100 percent, depending on whether the vehicle is owned by a non-government or government entity

Freight Switchers

- pre-Tier 4 switcher locomotives operating 1,000 or more hours per year
- may be repowered with any new diesel or alternate fueled or all-electric engine (including generator sets)
- may be replaced with any new diesel or alternate fueled or all-electric (including generator sets) freight switcher certified to meet the applicable U.S. EPA emissions standards (or more stringent equivalent State standard) as published in the CFR for the model year in the mitigation action occurs
- reimbursable at a percentage between 25 and 100 percent depending on whether the freight switcher is owned by a non-government or government entity

Ferries and Tugs

- modifications to ferries and tugs with unregulated, Tier 1 and Tier 2 marine engines
- may be repowered with any new Tier 3 or Tier 4 diesel or alternate fueled engine, or with an all-electric engine
- may be upgraded with a U.S. EPA certified remanufacture system or a U.S. EPA-verified engine upgrade
- reimbursable at a percentage between 75 to 100 percent depending on whether the ferry or tug is owned by a non-government or government entity

Ocean Going Vessels Shorepower Systems

- systems that enable a compatible vessel's main and auxiliary engines to remain off while the vessel is at berth
- reimbursable at a percentage between 25 to 100 percent for the costs associated with the shore-side system depending on whether the system is owned by a non-government or government entity

Class 4-7 Local Freight Trucks

- engine model year 1992 - 2009 vehicles (for Beneficiaries with state regulations already requiring upgrades to these vehicles, eligible vehicles will also include 2010 - 2012 engine model year vehicles)
- may be repowered with any new diesel or alternate fueled or all-electric engine
- may be replaced with any new diesel or alternate fueled or all-electric vehicle, with the engine model year in which the mitigation action occurs or one engine model year prior
- reimbursable at a percentage of between 25 and 100 percent depending on whether the eligible vehicle is owned by a non-government or government entity.

Airport Ground Support Equipment

- Tier 0, Tier 1, or Tier 2 diesel powered airport ground support equipment and spark-ignition engine powered airport ground support equipment uncertified or certified to 3 g/bhp-hr or higher emissions
- may be repowered with an all- electric engine
- may be replaced with the same Airport Ground Support Equipment in an all-electric form
- reimbursable at a percentage of between 75 and 100 percent depending on whether the eligible vehicle is owned by a non-government or government entity

Forklifts and Port Cargo Handling Equipment

- forklifts with a lift capacity greater than 8,000 pounds and port cargo handling equipment
- may be repowered with an all-electric engine
- may be replaced with the same equipment in an all-electric form
- reimbursable at a percentage of between 75 and 100 percent of the cost of a repower with a new all-Electric engine, including costs of installation of such engine, and charging infrastructure associated with such new all-electric engine depending on whether they are owned by a non-government or government entity.

Diesel Emission Reduction Act

Beneficiaries may also use funding for the non-federal match for projects included in the U.S. EPA's Clean Diesel Program, funded through the Diesel Emission Reduction Act (DERA). Match of the U.S. EPA DERA funds triggers bonus funding from U.S. EPA. The DERA state Clean Diesel Programs administered by eligible states are designed to achieve significant reductions in diesel emissions. Use of DERA funding is pursuant to all U.S. EPA DERA guidelines. A final approved DERA workplan may be used as the Beneficiary Mitigation Plan for use of the DERA funds.

Light Duty Zero Emission Vehicle Supply Equipment

Up to 15% of the funding from the Environmental Mitigation Trust program may be used for necessary costs and other costs directly connected to, the acquisition, installation, operation and maintenance of new light duty zero emission vehicle supply equipment for projects.

- purchase, installation and maintenance of Level 1, Level 2 or fast charging equipment (or analogous successor technologies) that is located in a public place, workplace, or multi-unit dwelling is reimbursable at a percentage of between 80 and 100 percent depending on whether it is located on non-government or government property.
- purchase, installation and maintenance of Level 1, Level 2 or fast charging equipment (or analogous successor technologies) that is located at a multi-unit dwelling, but not to the general public is eligible for a 60% reimbursement.
- purchase, installation and maintenance of public light duty hydrogen fuel cell vehicle supply equipment capable of dispensing at least 100 kg/day is reimbursable at a percentage of between 25 and 33 percent depending on the output capacity.

Administration

States may use up to 15% of the total cost of the project for eligible administrative costs, including:

- Employee salaries, wages, benefits.
- Travel costs.
- Equipment and supplies.
- Contracted services and goods.
- Construction costs.
- Other costs including insurance, professional services, occupancy and equipment leases, printing and publication, training and accounting.

Request for Public Input

Availability of funds from the Volkswagen Consent Decree is not guaranteed and depends on acceptance by and approval of the use of the funds by the Governor. However, in order to be prepared should such funds be forthcoming, NHDES is seeking public input on how to best utilize the funds to meet the purpose of the funds. As stated in the Consent Decree, Appendix D, Section 2.0.3:

“It shall be the purpose of the Mitigation Trust to fund Eligible Mitigation Actions to be proposed and administered by the Beneficiaries subject to the requirements of the Consent Decree and this Trust Agreement. The goal of each Eligible Mitigation Action shall be to achieve reductions of NOx emissions in the United States.”

NHDES seeks comments on the design of a New Hampshire program in three areas that must be part of a proposed program plan. In the sections below, NHDES proposes some criteria for use of the funds and seeks comments on those proposals, and we seek responses to questions posed within each programmatic area. Comments may be provided in person at the November 29, 2016, public input session or in writing as specified at the end of this report.

Eligible Mitigation Actions

1. NHDES proposes that all actions that are eligible under the Partial Consent Decree, as outlined above, be eligible under New Hampshire’s Environmental Mitigation Trust program.
2. NHDES proposes that the State utilize the allowable maximum of 15 percent for acquisition, installation, operation and maintenance of new light duty electric vehicle charging infrastructure.
3. NHDES also seeks responses to the following questions:

- a. To ensure significant potential for substantial emissions benefits and additional benefits to taxpayers through reduced operating and fuel costs, should the initial stages of New Hampshire's Environmental Mitigation Trust program focus on replacement of publically owned state and municipal vehicle fleets?
- b. In order to maximize benefits under projects included in New Hampshire's Environmental Mitigation Trust program, should state agencies and municipalities be required to provide matching funds and if so, how much?
- c. To ensure efficient use of funding and effective administration of projects, should New Hampshire's Environmental Mitigation Trust program establish a minimum project size of \$500,000 and encourage grouping of smaller projects under a single entity acting as a lead agent?
- d. To ensure efficient use of funding and effective administration of projects, should New Hampshire utilize the services of a third party to manage projects?
- e. Should New Hampshire collaborate with private companies on environmental mitigation projects?
- f. Should New Hampshire collaborate with other New England states to develop funding strategies for equipment such as locomotives, freight switchers and ferries operating in multiple states?

Impact on Areas That Share a Disproportionate Burden of Air Pollution

1. NHDES seeks responses to the following questions:
 - a. How should NHDES design a program to ensure benefits occur in areas sharing a disproportionate share of NOx emissions?
 - b. What data should NHDES utilize to determine which areas have a disproportionate share of emissions?
 - c. Should NHDES design a program that specifically seeks to benefit low income areas as well?
 - d. What data should NHDES utilize to determine where low income areas are located in the state?

Expected Ranges of Emissions Benefits From Selected Eligible Mitigation Actions

1. NHDES seeks responses to the following questions:
 - a. Should the expected ranges of emissions benefits from projects under New Hampshire's Environmental Mitigation Trust program be determined by NHDES based on the use of U.S. EPA's MOtor Vehicle Emission Simulator (MOVES) model, U.S. EPA's Diesel Emissions Quantifier, or other means?

Submittal of Comments

Written comments may be submitted to NHDES no later than January 15, 2017, either electronically or in writing, as follows:

timothy.white@des.nh.gov

NH Department of Environmental Services

Attn: Timothy White

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ⁱ Volkswagen AG, Audi AG, Volkswagen Group of America, Inc., and Volkswagen Group of America Chattanooga Operations, LLC