

Volkswagen and Audi Settlement - Environmental Mitigation Trust Fund

Colorado Department of Public Health and Environment

Summary of Public Comments for Revised Beneficiary Mitigation Plan

September 18, 2019

Public Comments on Colorado's revised Beneficiary Mitigation Plan (BMP) for implementation of the Volkswagen Settlement Environmental Mitigation Trust Fund received during the public comment period are summarized in this document. This summary represents the public comments submitted to the Air Pollution Control Division as of July 14, 2019 and how the comments were addressed in the revised BMP.

Introduction and Background

Volkswagen has agreed to settle some of the allegations that it violated the federal Clean Air Act by selling vehicles that emit more air pollution than the Clean Air Act allows, and by cheating on federal emission tests to hide the excess pollution. The affected vehicles exceed emission limits for nitrogen oxides (NOx), a pollutant that harms public health and forms ozone or smog. The settlement was approved by a federal court in California on October 25, 2016. On December 14, 2017 Colorado was made an official beneficiary of these funds. Colorado expects to receive at least \$68.7 million from the trust between 2017 and 2027. The trust fund will be used to offset the excess air pollution emitted by some of the Volkswagen vehicles that violated the Clean Air Act. The \$68.7 million allocated to Colorado will fund certain eligible projects to reduce NOx emissions from the transportation sector. The Colorado Department of Public Health and Environment (CDPHE) is the state's lead agency to oversee how this money is distributed and spent. CDPHE partnered with the Colorado Department of Transportation (CDOT), Colorado Energy Office (CEO), and the Regional Air Quality Council (RAQCC) to develop an initial plan to disperse the funds, which was finalized and submitted to the Trust on March 21, 2018.

On January 17, 2019 Governor Jared Polis signed an executive order (order B 2019 002), Supporting a Transition to Zero Emission Vehicles, which directed CDPHE to, "focus all remaining eligible investments on supporting electrification of transportation, including transit buses, school buses, and trucks." Due to this executive order CDPHE and its partners revised the BMP to address the requests of the executive order. Additional changes to the BMP are based on lessons learned during the first year of implementing the trust. This includes relative funding demands amongst programs, streamlining administrative processes, and updated information on currently available and anticipated technology.

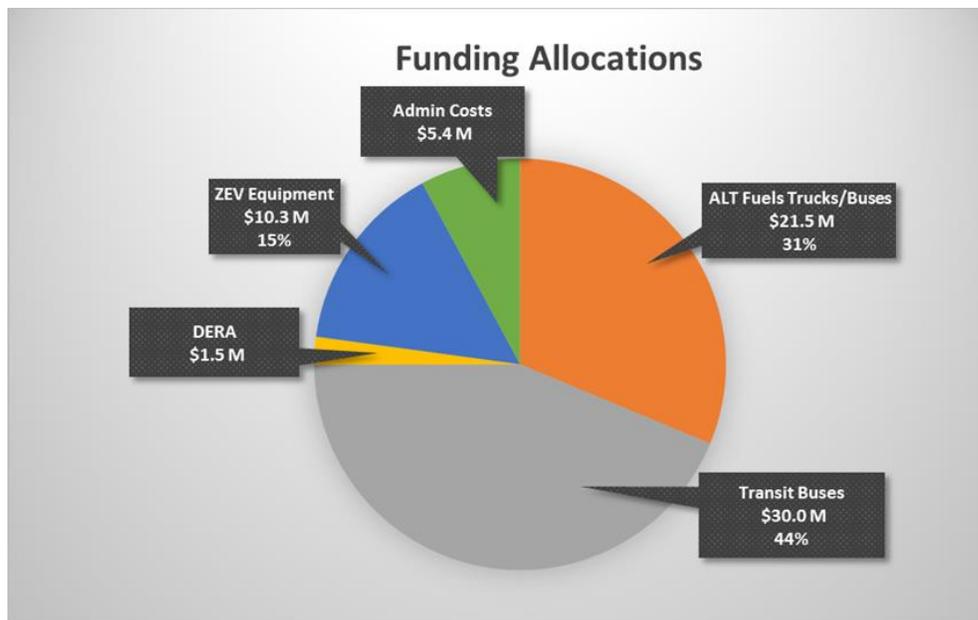
Under the Trust requirements states are allowed to update their BMP at any time without having to receive approval from the Trust, States self-certify with the BMP. The revised Beneficiary Mitigation Plan (BMP) was published for public comment on June 14, 2019 and the deadline for comments was July 14, 2019.

Significant updates to the BMP:

1. Funds are to be directed to only zero emission vehicles. CNG, Diesel and hybrid are no longer funded. The following are eligible mitigations actions as aligned with the Trust:

- Model year 1992-2009 Class 8 Diesel Local Freight Trucks (Heavy-Duty) as defined by Appendix D-2 of the October 2, 2017 final State Trust Agreement, may be replaced with new zero emission vehicles.
- Model year 1992-2009 Class 4-7 Diesel Local Freight Trucks (Medium-Duty), as defined by Appendix D-2 of the October 2, 2017 final State Trust Agreement, may be replaced with new zero emission vehicles.
- Model year 2009 and older Diesel Class 4-8 School Buses and intra-facility Shuttle Buses, as defined by Appendix D-2 of the October 2, 2017 final State Trust Agreement, may be replaced with zero emission vehicles.
- Airport Ground Support Equipment (Tier 0, Tier 1, or Tier 2 diesel powered airport ground support equipment; and Uncertified, or certified to 3 g/bhp-hr or higher emissions, spark ignition engine powered airport ground support equipment), as defined by Appendix D-2 of the October 2, 2017 Trust Agreement, may be replaced with all-Electric Airport Ground Support Equipment.
- Railroad Freight Switchers (pre-Tier 4 switcher locomotives that operate 1000 or more hours per year) as defined by Appendix D-1 of the October 2, 2017 Trust Agreement, may be replaced with any All-Electric (including Generator Sets) Railroad Freight Switcher, that is certified to meet the applicable EPA emissions standards (or other more stringent equivalent State standard) as published in the CFR for the engine model year in which the Eligible Railroad Freight Switcher Mitigation Action occurs.

2. Flex funds were reallocated to Transit Buses, Alt Fuels Program and DERA. The following chart shows the revised funding allocations to each program:



3. RNG vehicles are called out as being eligible for funding. Applicants will be required to provide proof of RNG procurement, such as a verification of an RNG purchasing agreement, to ensure that the vehicles are using natural gas produced from a verified renewable source. Details of the requirements will be listed in the request for applications.

Solicitation of Public Comment

The revised BMP was published for public comment on June 14, 2019 on CDPHE's website. Notification of the public comment opportunity was sent via the Volkswagen listserv set up by CDPHE. Deadline for comments were due by July 14, 2019. CDPHE received 9 comments on the revised BMP. Of the 9 comments received two comments were in support of diesel being included, three were in favor of CNG, two in favor of RNG and two were in support of all electric. Comments provided covered a variety of topics, for example eligibility issues of different types of fuels and costs of replacing vehicles with all electric. Public comments on revised BMP can be found on CDPHE's VW website at:

<https://www.colorado.gov/pacific/cdphe/vw-settlement-public-involvement-and-timeline>

CDPHE and its partner agencies analyzed these issues, updated the BMP, and have provided clarification below to address some of the issues raised.

1. RNG vehicles should be included as eligible projects within the program. The BMP address the eligibility of RNG vehicle replacement.

Per the requirements of the trust, if the RAQC were to fund vehicles operating on RNG, funding levels for public fleets are not to exceed 100% of the cost of a new, OEM vehicle and funding levels for private fleets are not to exceed 25% of the cost of a new, OEM vehicle. Per the requirements of the trust, public funding will not exceed 100% of the cost of a new, OEM All-Electric and incentives for private fleets will not exceed 75% of the cost of a new, OEM All-Electric vehicle

CDPHE, CDOT, CEO and RAQC will monitor the market for zero emission technology that is both innovative and viable. This program may consider funding vehicles that use hydrogen fuel cells, innovative hybrid technology, and Renewable Natural Gas (RNG). In spring 2019, the Colorado Energy Office requested a study of the RNG market in Colorado, especially its use as a transportation fuel. The results of this study will guide the decision to fund CNG vehicles operating on RNG. If the program funds CNG vehicles operating on RNG, applicants will be required to provide proof of RNG procurement, such as a verification of an RNG purchasing agreement, to ensure that the vehicles are using natural gas produced from a verified renewable source.

2. Zero emissions options are expensive and may not be applicable for all users.

Incentive levels have been increased to encourage fleets to adopt fully electric or RNG powered vehicles and equipment. The proposed incentive levels will allow fleets to purchase a new electric or RNG vehicle for less than a new conventionally fueled

vehicle. For example, the RAQC under the Alt Fuels Colorado program and CDOT under the Transit funding program will now fund 110% of the incremental cost between a new diesel and electric or RNG powered vehicle.

3. DERA eligibility was clarified in the finalized BMP. The draft version stated that projects that qualify for incentives under both DERA and one of the other trust's eligible mitigation actions would not be funded under DERA. The language was revised to clarify that certain projects would be considered under DERA for projects that do not exactly fit the required criteria for the other eligible mitigation actions.