EXHIBIT 4D

Comments Received by Department of Justice

(VW-2LCMT0000449-VW-2LCMT0000573)

Manufacturers of Emission Controls Association
2200 Wilson Blvd., Suite 310
Arlington, VA 22201
(202) 296-4797

August 5, 2016

John Cruden, Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, DC 20044

Dear Assistant Attorney General Cruden:

The Manufacturers of Emission Controls Association (MECA) is pleased to respond to the US Department of Justice's (DOJ) request for public comments on its Notice of Lodging of Proposed Partial Consent Decree Under the Clean Air Act regarding the case U.S. v. Volkswagen Group of America, et al. We support the provisions of this consent decree, to mitigate the excess oxides of nitrogen (NOx) emissions released due to Volkswagen's use of defeat devices and the broad objectives to ensure that all automobiles are complying with their designated EPA emissions standards. We thank staff from DOJ, the Environmental Protection Agency (EPA) and the California Air Resources Board (ARB) for dedicating significant resources to address this issue. We offer these recommendations for consideration when implementing this order so that environmental benefits can be maximized with the funds allocated by the consent decree.

The Manufacturers of Emission Control Association (MECA) is a non-profit association of the world's leading manufacturers of emission control and engine efficiency technology for mobile sources. Our members have over 40 years of experience and a proven track record in developing and manufacturing technology for a wide variety of on-road and off-road vehicles and equipment, including extensive experience in developing emission controls and combustion efficiency technology for gasoline and diesel engines and vehicles in all world markets. Our industry has played an important role in the emissions success story associated with mobile sources around the globe and has continually supported efforts to develop innovative, technology-forcing emissions programs to deal with air quality problems.

MECA applauds DOJ for working with EPA and ARB to develop a list of feasible options to be considered for funding by the trustee. It is important that the states have a list of NOx mitigation choices from which to choose in order to best fit their needs. MECA

provides these comments from the perspective of technology and fuel neutrality with the overarching goal of maximizing NOx mitigation via the most cost effective means. Despite the specific issue that led to this consent decree, lean-NOx traps (LNT) and selective catalytic reduction (SCR) technology are proven NOx control strategies. SCR has been used to control NOx emissions from mobile and stationary sources for decades, and SCR is the technology of choice for reducing NOx emissions from today's U.S. 2010-compliant diesel engines. In current applications these SCR systems are delivering in excess of 90% reduction of NOx from diesel engines. SCR technology provides one of the most cost effective options to reduce NOx emissions from mobile sources (http://www.fhwa.dot.gov/environment/air_quality/cmaq/reference/cost_effectiveness_tables/).

The inclusion of a ZEV mitigation option in the environmental mitigation trust agreement at a higher funding allocation percentage relative to other mitigation technology options prioritizes ZEVs for funding under the consent decree. ZEVs also benefit from the funding allocated to the ZEV investment commitment. Moreover, certification documents show that many heavy-duty diesel-fueled truck engines are emitting near-zero levels of NOx in the 0.06 to 0.10 g/bhp-hr range. Engines meeting ultra-low NOx levels are supported by a test program ARB and MECA have been conducting to demonstrate the feasibility of certifying heavy-duty diesel and CNG fueled engines to ultra-low NOx standards as low as 0.02 g/bhp-hr. As shown in Table 1 in the Appendix, replacing 2009 and older trucks with new model year trucks will offer greater NOx benefit at lower cost than replacing the original older truck with a battery-electric vehicle, even if the battery is charged with electricity generated by power plants that emit zero NOx pollution. The EPA transportation office's regulatory-based emissions standards and voluntary programs have always been both fuel- and technology-neutral since the first standards were set in the 1970s. The work accomplished through this settlement should follow this practice of maintaining a level playing field and avoid picking winners and losers. **MECA encourages stronger consideration for a technology neutral approach that applies the same percentage subsidy across all technologies and will award project funds to those projects that result in the largest NOx emission reduction for the least money spent.**

Many existing mitigation programs, such as California's Carl Moyer program or the federal DERA program have been established around some type of effectiveness criteria to ensure that public funds are used in the most cost effective manner. Cost effectiveness can be easily calculated on a project by project basis by dividing the amount of funding requested by the amount of NOx emissions predicted to be reduced. Thus, the units of a cost effectiveness metric relevant to mitigation projects to be funded by this order are dollars per ton of NOx reduced. The Carl Moyer Program sets a threshold cost effectiveness level that cannot be exceeded and allows applicants to contribute matching funds or leverage other funding sources to make projects more cost effective

(http://www.arb.ca.gov/msprog/moyer/guidelines/current.htm). A cost effectiveness calculation will also allow beneficiaries, the trustee, and the public to determine which projects are providing the most benefits for the least money spent. (Please refer to Table 1 in the Appendix for an example of cost effectiveness calculations.) **Therefore, MECA proposes that a cost effectiveness threshold be strongly considered when deciding which projects should be funded. Moreover, MECA suggests that applications and project grants be segmented into annual or semi-annual application time periods to allow decision makers the option of prioritizing projects based on cost effectiveness prior to making funding decisions.**

MECA's understanding is that the purpose of the $2.7 billion in mitigation expenditures agreed to in this consent decree and described in Appendix D is to reduce NOx emissions in order to offset the increase in NOx emissions from the non-compliant vehicles. Thus, any projects included on the list of eligible mitigation actions and expenditures in Appendix D-2 should effectively reduce total NOx emissions. We believe that real-world NOx reduction benefits should represent both NOx from the tailpipe as well as upstream NOx emitted through the generation of energy that is used to power the vehicle. In the case of battery-electric vehicles, NOx emissions from power generation used to charge a battery should be counted against any tailpipe benefits (See Table 1 in Appendix). Most power plants in the U.S., including some in California, emit NOx on a per horsepower basis that exceeds that of currently available clean diesel trucks. Thus, in many cases a ZEV project may have a net zero or net positive change in NOx emissions by moving the emissions from the tailpipe to an electric generating unit (https://greet.es.anl.gov/publication-updated-elec-emissions). **Each state should consider the NOx emissions from their respective electricity mix when deciding on the best strategy for their citizens.**

In conclusion, MECA would like to extend our appreciation to DOJ, EPA, and ARB staff for their diligent work and dedication throughout this ongoing litigation. We would welcome the opportunity to review any of the information presented here, including data and calculations, with DOJ, EPA or ARB if there are any questions as to how we reached these conclusions. MECA member companies are committed to deliver the emission controls that are durable, reliable and cost effective towards achieving the goals of this consent decree. MECA strongly believes that the greatest societal benefits can be gained by taking a technology neutral approach based on cost effectiveness at reducing NOx emissions.

Sincerely,

Dr. Rasto Brezny
Executive Director
Manufacturers of Emission Controls Association
rbrezny@meca.org

MECA

Appendix

Table 1: Sample Cost Effectiveness Calculations for Bus Replacement Projects

Project Type	Diesel Bus Replacement	Battery Electric Replacement (No Power Plant Emissions)	Battery Electric Replacement (California)	Battery Electric Replacement (New York)
Cost[a]	$485,000	$800,000	$800,000	$800,000
Engine Size (hp)	250	250	250	250
Useful Life (hours)	22,000	22,000	22,000	22,000
Engine NOx before replacement[b] (g/bhp-hr)	2.0	2.0	2.0	2.0
Engine NOx after replacement (g/bhp-hr)	0.2	0	0	0
Power plant NOx[c] (g/hp-hr)	0	0	0.22	0.90
Emissions Reduced (tons NOx)	10.9	12.1	10.8	6.7
Cost Effectiveness[d] - 100% funding for all[e] ($/ton NOx)	**$44,434**	**$65,964**	**$74,278**	**$119,448**
Cost Effectiveness[d] - 25% funding for all[f] ($/ton NOx)	**$11,108**	**$16,491**	**$18,570**	**$29,862**
Cost Effectiveness[d] - Based on consent decree[g] ($/ton NOx)	**$11,108**	**$49,473**	**$55,709**	**$89,586**

[a] Costs come from California Air Resources Board 2015 Workshop presentation on Advanced Clean Transit (slide 38) - http://www.arb.ca.gov/msprog/bus/workshoppresentation.pdf.

[b] For all cases, original engine assumed to emit at pre-2010 NOx levels (2.0 g/bhp-hr).

[c] Power plant emission factors are calculated by weighted average of emission factors from all power plants within state. Transmission and other losses are not considered. Data source: CEC North American Power Plant Emissions Report - http://www3.cec.org/islandora/en/item/2165-north-american-power-plant-air-emissions-en.pdf.

[d] Cost effectiveness is based on the funds allocated by this consent decree. Leveraged monies or co-funding is not included.

[e] This row assumes each project, regardless of technology type, is fully funded by consent decree funds.

[f] This row assumes each project, regardless of technology type, is funded at the 25% level by consent decree funds.

[g] This row assumes each project is funded at the levels indicated (for non-public entities) in the consent decree (25% for replacements with new diesel engines and 75% for replacements with battery electric technology).

Maryland
Department of
the Environment

Larry Hogan
Governor

Boyd Rutherford
Lieutenant Governor

Ben Grumbles
Secretary

August 5, 2016

BY ELECTRONIC MAIL

John C. Cruden
Assistant Attorney General
US Department of Justice
Environment and Natural Resource Division
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Re: Public Comment on proposed Partial Consent Decree, *In re: Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation*, Case No: MDL No. 2672 CRB (JSC)

Dear ~~Assistant Attorney~~ John General Cruden:

The Maryland Department of the Environment appreciates this opportunity to comment on the above-referenced proposed Partial Consent Decree ("Consent Decree"), which the United States lodged on June 28, 2016. These comments supplement those submitted by the Attorneys General of several states and concern Appendix D-2 of the Consent Decree entitled Eligible Mitigation Actions and Mitigation Action Expenditures.

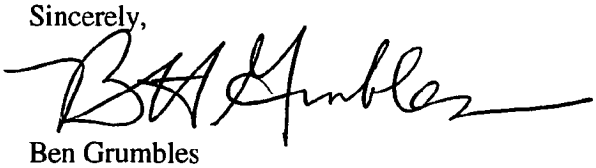
As you know, context matters. During the time period of 2009 thru 2015 nearly 13,000 Volkswagen vehicles subject to this settlement action were sold in Maryland. These vehicles illegally emitted at least 800 tons of NO_x into Maryland, adversely affecting those with asthma and other respiratory diseases. During that same time period, Maryland was developing, implementing and maintaining numerous pollution reduction programs to combat a longstanding and pervasive ozone air pollution problem that affected a high percentage of Maryland's population. For example, Maryland has adopted California's strict emission control standards for vehicle NO_x emissions as part of our effort to address pervasive ground-level ozone (smog) pollution, particularly in the Baltimore City metropolitan area and along the I-95 corridor. Emissions of NO_x also impact the Chesapeake Bay, causing eutrophication of, and excess nutrient loading in, the Chesapeake Bay and other waters, thus reducing the diversity of fish and other life in these waters.

Although we made significant progress in reducing air pollution, Maryland remains in nonattainment for ozone. The overall mobile source sector is a significant source of the pollutants that create ozone. Maryland firmly believes that the illegal emissions from those nearly 13,000 Volkswagens hindered our progress in cleaning the air and continues to do so today and for years to come. It is important, then, to broaden the list of eligible mitigation actions to make up for lost time and to right the course moving forward in a manner that best serves the states whose air quality has been harmed by Volkswagen's actions.

The Maryland Department of the Environment agrees with the nine categories listed in Appendix D-2 and supports the expansion of the list of Eligible Mitigation Projects submitted by the Attorneys General on behalf of the States. The Department, however, believes that further expansion is needed. Maryland recommends the inclusion of a broader category that would provide more flexibility and creativity to fund additional mitigation actions. This would give each affected state the ability to submit for approval currently unlisted mitigation actions that are uniquely relevant to that state. An example of this would be enhancing light-duty Inspection and Maintenance (I/M) programs in a manner that meets Maryland's needs while securing the necessary NOx pollution reduction benefits.

The Maryland Department of the Environment would like to again acknowledge our appreciation for the efforts of DOJ and EPA on this matter, and we respectfully request that DOJ consider the change requested above. Thank you for this opportunity to comment.

Sincerely,



Ben Grumbles
Secretary

cc: Angelo Bianca, Deputy Director, Air and Radiation Management Administration

Charles D. Baker, Governor
Karyn E. Polito, Lieutenant Governor
Stephanie Pollack, MassDOT Secretary & CEO
Brian Shortsleeve, Chief Administrator and Acting General Manager

massDOT
Massachusetts Department of Transportation

August 3, 2016

Assistant Attorney General
U.S. DOJ – ENRD
P.O. Box 7611
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pubcomment-ees.enrd@usdoj.gov

RE: Volkswagen Partial Consent Decree – "In re: Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation, Case No: MDL No. 2672 CRB (JSC)

To Whom It May Concern:

The Massachusetts Bay Transportation Authority (MBTA) is dedicated to providing safe, reliable, world class public transportation in an environmentally sound and responsible manner. One of the MBTA's core policies is to adhere to practices that not only protect the environment, but are cost effective and efficient, and therefore sustainable.

The MBTA is encouraged by the scope and breadth of mitigation projects that are eligible for funding as outlined in the partial consent decree between DOJ, EPA and Volkswagen. We provide a valuable community service offering transit bus, ferry, subway and commuter rail options and are well-positioned to utilize the mitigation funding. However, after reviewing the partial consent decree, the MBTA would like to offer the following comments:

1. The eligible mitigation actions with respect to locomotives are limited only to freight switch locomotives and eligibility should be modified to include commuter locomotives. Commuter rail service operates within a clearly defined boundary and as such any diesel emission mitigation benefits can be guaranteed to remain within the localized airshed. For the MBTA, our operating area includes Eastern and Central Massachusetts with one line providing service to Providence, RI.

   Commuter rail services provide significant benefits to the urban and suburban areas within which they operate, including, but not limited to reducing congestion and providing access to jobs.

   We respectfully request that the list of eligible mitigation actions be modified to include commuter locomotives. The MBTA suggests the following changes to include a new category of eligible mitigation action:

   Commuter Locomotives

   a. Eligible Commuter Locomotives include pre-Tier 4 locomotives that operate 1000 or more hours per year.
   b. Eligible Commuter Locomotives must be Scrapped.

Massachusetts Bay Transportation Authority
Ten Park Plaza, Suite 3910, Boston, MA 02116
www.mbta.com

c. An eligible Commuter Locomotive may be Repowered with any new diesel or Alternate Fueled or All-Electric engine(s) (including Generator Sets), or may be replaced with any new diesel or Alternate Fueled or All-Electric (including Generator Sets) Commuter Locomotive, that is certified to meet the applicable EPA emissions standards (or other more stringent equivalent State standard) as published in the CFR for the model year in which the Eligible Commuter Locomotive's Mitigation Action occurs.
d. For Non-Government Owned Commuter Locomotives, Beneficiaries may draw funds from the Trust in the amount of:
    1. 40% of the cost of a Repower with a new diesel or Alternate Fueled (e.g. CNG, propane, Hybrid) engine(s) or Generator Sets, including the costs of installation of such engine(s).
    2. 25% of the cost of a new diesel or Alternate Fueled (e.g. CNG, propane, Hybrid) Commuter Locomotive.
    3. 75% of the cost of a Repower with a new All-Electric engine(s), including the costs of installation of such engine(s), and charging infrastructure associated with the new All-Electric engine(s).
    4. 75% of the cost of a new All-Electric Commuter Locomotive, including charging infrastructure associated with the new All-Electric locomotive.
e. For Government Owned Eligible Commuter Locomotives, Beneficiaries may draw funds from the Trust in the amount of:
    1. 100% of the cost of a Repower with a new diesel or Alternate Fueled (e.g. CNG, propane, Hybrid) engine(s) or Generator Sets, including the costs of installation of such engine(s).
    2. 100% of the cost of a new diesel or Alternate Fueled (e.g. CNG, propane, Hybrid) Commuter Locomotive.
    3. 100% of the cost of a Repower with a new All-Electric engine(s), including the costs of installation of such engine(s), and charging infrastructure associated with the new All-Electric engine(s).
    4. 100% of the cost of a new All-Electric Commuter Locomotive, including charging infrastructure associated with the new All-Electric locomotive.

2. The mitigation portion of the partial consent decree (i.e., Appendix D) currently appears to exclude certain non-road equipment and trucks from the list of eligible mitigation actions.

   The MBTA operates a significant number of non-road support pieces of equipment that are used mostly to maintain our subway, rail and transit operations. Examples of these include portable diesel generators that allow our workers to accomplish critical maintenance tasks during periods when the system is not running (e.g., between approximately 2 AM and 5 AM) and rail track maintenance vehicles. Our rail track maintenance vehicles are a key element to our operations and are overlooked by the partial consent decree diesel mitigation strategies. Track maintenance vehicles may be rubber-tired non-road equipment that are also equipped with a high-rail system that also lets them operate on the rail tracks or they may be dedicated to operate solely on the rails. In either case, these critical pieces of equipment are

powered by non-road engines and are not governed by EPA locomotive rules. Because the partial consent decree mitigation actions do not include nonroad equipment, there is an opportunity for diesel emission mitigation that is lost.

We respectfully request that a new category of eligible mitigation actions be added to the partial consent decree as outlined below:

Non-Road Vehicle or Equipment

a. Eligible Non-Road Vehicles or Equipment include pre-Tier 4 Non-Road Vehicles or Equipment that operate 1000 or more hours per year.
b. Eligible Non-Road Vehicles or Equipment must be Scrapped.
c. An eligible Non-Road Vehicle or Piece of Equipment may be Repowered with any new diesel or Alternate Fueled or All-Electric engine(s) (including Generator Sets), or may be replaced with any new diesel or Alternate Fueled or All-Electric (including Generator Sets) Non-Road Vehicle or Equipment, that is certified to meet the applicable EPA emissions standards (or other more stringent equivalent State standard) as published in the CFR for the model year in which the Eligible Non-Road Vehicle or Piece of Equipment's Mitigation Action occurs.
d. For Non-Government Owned Non-Road Vehicles or Equipment. Beneficiaries may draw funds from the Trust in the amount of:
    1. 40% of the cost of a Repower with a new diesel or Alternate Fueled (e.g. CNG, propane, Hybrid) engine(s) or Generator Sets, including the costs of installation of such engine(s).
    2. 25% of the cost of a new diesel or Alternate Fueled (e.g. CNG, propane, Hybrid) Non-Road Vehicle or Piece of Equipment.
    3. 75% of the cost of a Repower with a new All-Electric engine(s), including the costs of installation of such engine(s), and charging infrastructure associated with the new All-Electric engine(s).
    4. 75% of the cost of a new All-Electric Non-Road Vehicle or Piece of Equipment, including charging infrastructure associated with the new All-Electric Non-Road Equipment.
e. For Government Owned Eligible Non-Road Vehicles or Equipment. Beneficiaries may draw funds from the Trust in the amount of:
    1. 100% of the cost of a Repower with a new diesel or Alternate Fueled (e.g. CNG, propane, Hybrid) engine(s) or Generator Sets, including the costs of installation of such engine(s).
    2. 100% of the cost of a new diesel or Alternate Fueled (e.g. CNG, propane, Hybrid) Non-Road Vehicle or Piece of Equipment.
    3. 100% of the cost of a Repower with a new All-Electric engine(s), including the costs of installation of such engine(s), and charging infrastructure associated with the new All-Electric engine(s).

4. 100% of the cost of a new All-Electric Non-Road Vehicle or Piece of Equipment, including charging infrastructure associated with the new All-Electric Non-Road Equipment.

The MBTA continuously strives to provide our riders with safe and sustainable transit options. We are pleased that DOJ, EPA, and Volkswagen have agreed to make significant resources available that will result in substantial diesel emission reductions. The MBTA requests that the above changes be considered to allow greater opportunity for diesel fleets to reduce NOx emissions and maximize participation in the program.

Sincerely,

Janis O. Kearney
Director of Environmental Compliance/
Assistant General Counsel I

O:\Legal Memos\Comment letter for VW CD.docx

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Executive Office of Energy & Environmental Affairs

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August 5, 2016

John C. Cruden
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611

Re: Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation, Case No: MDL No. 2672 CRB (JSC), and D.J. Ref. No. 90-5-2-1-11386

Dear Assistant Attorney General Cruden:

The Massachusetts Department of Environmental Protection (MassDEP) is pleased to submit comments on the Department of Justice (DOJ) proposed Partial Consent Decree with the US District Court for the Northern District of California on *Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation, Case No: MDL No. 2672 CRB (JSC), and D.J. Ref. No. 90-5-2-1-11386.* We appreciate the work done by DOJ to ensure proceeds are directed to addressing air quality issues. MassDEP's comments are focused on Appendix D-2 of the Partial Consent Decree, Eligible Mitigation Actions and Mitigation Action Expenditures.

Appendix D-2 contains a list of eligible mitigation actions in two main categories. First, various diesel engines are listed as eligible for repowering and/or replacement including: Class 8 Freight Trucks and Port Drayage Trucks, Class 4-8 School Buses, Shuttle Buses or Transit Buses, Freight Switchers, Ferries/Tugs, Ocean Going Vessels Shorepower, Class 4-7 Local Freight Trucks, Airport Ground Service Equipment, and Forklifts. Second, up to 15% of the beneficiary's Trust Allocation may be used to fund Light Duty Zero Emission Vehicle Supply Equipment and other projects to promote the purchase of Zero Emission Vehicles. It is our understanding that the purpose of these two types of mitigation projects is to reduce emissions of nitrous oxides (NO_x), the primary pollutant that was increased as a result of the alleged actions by the VW companies that are parties to the proposed Partial Consent Decree.

We note two important Massachusetts efforts that have bearing on our views of the consent decree. First, since 2008, to reduce harmful emissions from diesel vehicles and engines, including NO_x emissions, Massachusetts has implemented a robust diesel vehicle/engine retrofit, repower, and replacement program under the federal Diesel Emission Reduction Act (DERA). In addition, Massachusetts has supplemented and matched the federal DERA funds to increase our diesel reduction efforts by covering more vehicles and engines. To date, the Massachusetts diesel efforts have significantly reduced emissions from school buses, waste collection and recycling vehicles, fishing boats (through shorepower projects), locomotive engines (through repowering projects), municipal construction equipment, electrification of refrigeration units, and on-road state owned vehicles.

Second, under section 177 of the federal Clean Air Act, Massachusetts has adopted California vehicle emission standards including the requirements for zero emission vehicles (ZEV) (e.g., battery electric and plug-in hybrid vehicles). The California standards and the ZEV mandate are a key part of the Massachusetts State Implementation Plan for ozone, for which NO_x is a precursor, and our plan to meet the requirements of the Massachusetts Global Warming Solutions Act. Under the ZEV mandate and an 8-state Zero Emission Vehicle Memorandum of Understanding, the Massachusetts goal for ZEVs in the state is 300,000 vehicles by 2025, with this number significantly increasing to meet our long-term greenhouse gas reduction goals by 2050. Increasing the percentage of ZEVs in the Massachusetts vehicle fleet also reduces all vehicle pollutants, including NO_x. In response, Massachusetts is implementing numerous programs to grow the ZEV market including a consumer purchase rebate, funding and incentives to increase charging infrastructure, and numerous education and outreach efforts. As of the end of June 2016, the number of ZEVs currently registered in Massachusetts was approximately 7,000 and significantly more effort and funding will be necessary to continue to grow the market to meet our 2025 and long-term goals.

Massachusetts offers three specific comments on Appendix D-2:

1) The percentage of funds that can be allocated to electric vehicle charging infrastructure by states should be increased beyond 15%, to 30% or more. As noted above, Massachusetts and other states are relying on increasing ZEVs in our fleets to meet our clean air and greenhouse reduction goals. We note that shifting the light-duty fleet to ZEVs will meet the goal of Appendix D-2 to mitigate NOx emissions from the light-duty vehicle fleet.

2) The project investments in Section 1.10 should not be limited to be solely "in California." For example, other states may have transportation electrification goals that would include investing in new heavy-duty ZEV fueling infrastructure. EPA should allow all participating states to consider all types of projects.

3) The categories of diesel engines and vehicles eligible for funding should be more inclusive and states should have more flexibility in deciding what engines and vehicles to target for repowering or replacement. Reflecting variation among state fleets and environmental goals, states have taken various approaches and have implemented a wide array of diesel reduction projects in their states to reduce harmful diesel emissions, all of which also have the desired result of reducing NO_x emissions. As an example, Massachusetts has targeted our diesel projects in environmental justice areas to address areas that are overburdened with uncontrolled diesel engines. We are implementing a "Clean Markets Program" that provides funding to replace diesel engines in truck refrigeration units with electric power.

Thank you for considering our comments.

Sincerely,

Martin Suuberg
Commissioner

Congress of the United States
Washington, DC 20515

August 3, 2016

Mr. John C. Cruden
Assistant Attorney General
Environment & Natural Resources Division
U.S. Department of Justice
Post Office Box 7611
Washington, DC 20044-7611

RE: Case #: MDL, 2672 CRB (JSC) and D.J. Ref. #90-5-2-1-11386 – Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation

Dear Assistant Attorney General Cruden:

We are writing to you concerning the notice published in the Federal Register on July 6th, 2016 regarding the proposed settlement between Volkswagen and certain governmental agencies concerning the diesel emissions violation matter. The settlement covers various areas including the establishment of a $2.7 billion Environmental Mitigation Trust that would fund a variety of transportation projects to put newer, cleaner heavy-duty vehicles on the road.
We respectfully urge the parties to amend the Consent Decree and include an explicit incentive for "Near-Zero" heavy-duty natural gas engine technologies as a part of any settlement to this matter. In terms of reducing harmful nitrogen oxide (NOx) emissions, these engines are 90 percent cleaner than what is required by current federal standards. Compared to a new diesel truck, each new truck that operates with a "Near-Zero" engine will displace or offset almost one ton of NOx over its lifetime.

As presently structured, the Consent Decree provides no specific incentive for heavy-duty engines that meet this cleaner standard. Given that the goal of the Trust is to reduce harmful NOx emissions, an explicit incentive for this technology will improve opportunities for states to use settlement monies toward the most significant and cost-effective air quality improvement projects in local communities.

Specifically, we encourage the government and the parties to amend the list of Eligible Mitigation Actions contained in Appendix D-2 of the Decree to provide a 75 percent funding incentive for non-governmental purchases of new trucks or Repowers that are equipped with "Near-Zero" engines that meet the California Optional Low NOx Standard of 0.02 g/bhp-hr. Specific support from the Trust for these cleaner engines would provide a critical opportunity to lower harmful NOx emissions and significantly improve air quality in a cost-effective manner.

Thank you for your consideration and the opportunity to provide these comments.

Congress of the United States
Washington, DC 20515

Sincerely,

James M. Inhofe
United States Senator

Bill Cassidy, M.D.
Bill Cassidy
United States Senator

Joe Donnelly
United States Senator

Markwayne Mullin
Member of Congress

Tim Ryan
Member of Congress

STATE OF MICHIGAN
DEPARTMENT OF ENVIRONMENTAL QUALITY
LANSING

RICK SNYDER
GOVERNOR

C. HEIDI GRETHER
DIRECTOR

August 5, 2016

VIA E-MAIL

Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, DC 20044-7611

Dear Sir/Madam:

SUBJECT: *In Re: Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation*, Case No: MDL No. 2672 CRB (JSC), and D.J. Ref. No. 90-5-2-1-11386

The Michigan Department of Environmental Quality, the Michigan Agency for Energy, the Michigan Economic Development Corporation, and the Michigan Department of Transportation (collectively, Michigan) appreciate this opportunity to comment on the *Notice of Lodging of Proposed Partial Consent Decree Under the Clean Air Act*, that was published in the *Federal Register* on July 6, 2016 (81 Fed. Reg. 44051). The notice pertains to the proposed partial Consent Decree (CD) 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).

Volkswagen allegedly violated federal and state laws and regulations by purposely using prohibited defeat devices in motor vehicles for model years 2009 through 2015 that resulted in excess emissions of nitrogen oxide (NO_x). These excess NO_x emissions contributed to ozone, particle and toxic air pollution, haze, and acid rain, which can have serious adverse health and environmental impacts.

This proposed CD establishing the Mitigation Trust Fund program will be a very important tool to remedy the substantial environmental harm caused by Volkswagen's alleged deception. Michigan looks forward to a quick implementation of the mitigation program to ensure expeditious improvement in air quality, especially in areas that have been disproportionately impacted by vehicular emissions and in nonattainment areas. The Great Lakes region will benefit from the reduction in ozone transported to western Michigan, the Upper Peninsula, and eastern Wisconsin that will result from NO_x mitigation projects in the Chicago region with its dense rail and trucking operations.

The Diesel Emission Reduction Act (DERA) program has a long history of measureable success in air quality improvement and incentivizes small businesses to improve their

environmental performance. Michigan agrees that a substantial portion of the mitigation trust fund should be directed to DERA-type projects that have a direct nexus to the damage that was caused by the alleged emissions violations. Michigan also agrees that states should have the leeway to use mitigation funds for state matching contribution for DERA projects.

This said, the proposed project definition is so narrow that opportunities to provide maximal environmental benefits are artificially limited, and we encourage a change in the consent decree language to permit the use of funds in alternative projects if the environmental benefits are greater than the types of projects described. We believe that expanding the list of acceptable projects, or providing simple language to say "or other projects expected to produce environmental benefits in excess of these example projects," should be added.

Michigan believes that the list of Eligible Mitigation Actions in Appendix D-2 could be expanded. The acceptable uses of the dispersed settlement funds should also include the following:

- Projects like those suggested by local partners in the enclosed letter of July 31, 2016;
- Great Lakes vessels shorepower projects in addition to projects for ocean-going vessels;
- Emission reduction projects at international crossings;
- Construction projects and equipment;
- Truck stop or rest area alternative fueling infrastructure;
- Auxiliary power units for long haul trucks; and
- Zero emission or alternative vehicle equipment for research and testing facilities.

Michigan recommends the inclusion of a mechanism for flexibility for states to use innovative measures to achieve the desired outcome of air quality improvement. We believe there are excellent opportunities to partner with local entities and reduce those pollutants in some of our communities most impacted by air quality and where reductions can, therefore, have the largest impact. Michigan, therefore, recommends that a portion of the funds be allocated to a more open-ended category, giving states more discretion in the selection of activities that may align with states' priorities beyond the very limited eligible mitigation actions, provided they can show an air quality benefit exceeding that of listed projects. Michigan would also potentially like to support infrastructure that can have a larger impact on investment in fleet conversion when compared to a straight incentive (e.g., fueling stations, etc.). Similarly, Michigan would like to ensure that key sites for research and product development are designed for zero emission and alternative fuel vehicles to make sure technology innovations get speedy take up.

Ozone nonattainment areas may be either NO_x limited or volatile organic compound (VOC) limited. The ratio of VOC to NO_x is an indicator of which pollutant should be targeted for reduction to effectively lower ozone concentrations in a given airshed.

Michigan recommends the inclusion of flexibility to substitute VOC for NO_x reduction measures in VOC limited ozone nonattainment areas.

Michigan also recommends that the terms of the settlement provide clarity as to the states' use of the NO_x emission reduction credits for attainment in State Implementation Plans (SIP) planning for fine particle and ozone National Ambient Air Quality Standards.

The on-road mobile source emissions inventories used by the U.S. Environmental Protection Agency (EPA) for model years 2009-2015 were inaccurate due to the alleged Volkswagen violations. As such, the inputs to the photochemical models were inaccurate. As a result, states will question the modeling used in EPA's determination of significant contribution to another region's nonattainment or interference with maintenance in the interstate transport rules. Additionally, the Motor Vehicle Emission Budgets in the states' SIPs used to determine transportation conformity may also require adjustment. Michigan encourages the EPA to assess the impact of the erroneous inventories on modeling products and regulatory mandates. Funds should also be allocated to the necessary re-modeling efforts in order to restore integrity to SIP planning processes.

If you have any questions regarding these comments, please contact Mr. Jack Schinderle, Chief, Office of Environmental Assistance, at 517-284-6852; schinderlej@michigan.gov; or Michigan Department of Environmental Quality, P.O. Box 30457, Lansing, Michigan 48909-7957.

Sincerely,

C. Heidi Grether

C. Heidi Grether, Director
Michigan Department of Environmental Quality

Valerie Brader

Valerie Brader, Executive Director
Michigan Agency for Energy

Steve Arwood

Steve Arwood, CEO
Michigan Economic Development Corporation

Kirk Steudle

Kirk Steudle, Director
Michigan Department of Transportation

Enclosure

July 31, 2016

Ms. Valerie J. M. Brader
Executive Director
Michigan Agency for Energy
P.O. Box 30221
Lansing, MI 48909

Dear Ms. Brader:

We appreciate the opportunity to give voice on behalf of our brothers and sisters in S.E. Michigan and to raise arguments for major allocations of the proceeds from the Volkswagen (VW) Settlement. We want to make clear from the outset that we believe our area is exemplary in terms of the types of damage being felt on a daily basis from an overburden of diesel emissions. We live in a region whose negative health impacts serve as the inspiration and foundation for the emission rules VW violated in the first place. Our preference is the majority of dollars allocated to our area be spent on reducing diesel emissions. However, it is clear that there is also great need for the application of mitigation strategies and we will share some well researched and prioritized ideas for them as well.

There are several reasons we believe our area deserves a major portion of the investment for addressing diesel pollution. Here are a few to consider:

Detroit is a growing transportation hub. It is the #1 U.S. border crossing with Canada, and Canada is the U.S.'s #1 trading partner with $40 billion in trade crossing annually. There are multiple and growing transportation and industrial developments on top of an existing high concentration of heavy industry that contribute to ongoing cumulative air impacts and violations of the Clean Air Act. Diesel truck and rail traffic will continue to increase with various transportation developments associated with our border and other heavy industries.
A 2005 Federal Highway Administration (FHWA) freight traffic and emissions study concluded that Detroit had the highest percentage of heavy-duty trucks as a percentage of total vehicle miles traveled of six major freight regions studied in the U.S. It states: "The contribution of freight trucks to total on-road NOx emissions ranges from a high of 63% (Detroit) to a low of 49% (Los Angeles)."

Southwest Detroit has the highest density of occupied residential homes, the highest number of children under age 5 in the city (11.5% children under 5, compared to 7% citywide), **and the lowest per capita income of any other city council district** ($16,753 per capita income, and 37% of households are living in poverty). The area is 47%–72% Latino in different areas and 80% African American and Latino overall. The area hosts multiple heavy industries, including: steel, coal-fired energy, sewage incineration, among others, and is the U.S.'s busiest border crossing.

Trucking-related developments are located amid residential neighborhoods in Southwest Detroit where they have daily impacts to quality of life. Trucking- related activities are not centrally located so have direct public health impacts on residential streets. One recent siting example: An auto-related logistics subsidiary with 200 truck bays located between two streets that also have three major schools (elementary, intermediate, and high school) and the area's primary park. The benefits of reducing diesel emissions for over-the-road trucks will extend to the entire city of Detroit, for all communities on the major highways—especially I-94 (another trade corridor)—and these benefits will extend across S.E. Michigan and beyond.

In the city of Detroit an estimated 69,000 (about 10%) **residents live within 150 meters** (about 500 feet) **of a major freeway.** Roughly 70,000 – 90,000 trucks travel on major corridors (I-75, I-94, I-96, M10, and M39) in Detroit daily, and 7,000 trucks a day (2.5 million annually) pass through the Delray neighborhood. There are approximately 75 public schools within 200 meters of large highways, where trucks emit high proportions of heavy diesel vehicles. In 2014–2015, 58 of those public schools were in operation with an estimated 24,490 students in attendance.

We have capacity to build an effective program here. S.E. Michigan has been a non-attainment area over the years for a variety of air pollutants. It's an area where the prevalence of environmental health disparities is well documented. Fortunately, it is also an area where for the past seven years one organization, Southwest Detroit Environmental Vision (SDEV) has been spearheading the roll-out of several tactics for reducing the level of pollution from diesel sources in the region.

SDEV's work has resulted in 2:1 private dollars matched to the public dollars (more than $13 million to date) contributed for retrofitting, upgrading, and replacing diesel equipment. We would continue the successful model of the Environmental Protection Agency (EPA) DERA matching-grant programs and leverage any monies invested with additional private matching dollars. We would structure new funding to apply the best of lessons learned over the past several years that have led to this success. This program design has been successfully implemented, including: outreach to equipment owners; education on the technology benefits and funding options available; verification of emissions on existing equipment using EPA's emissions calculator; an independent RFP process for selecting recipients; and gathering resulting data.

Source reduction is the best use of resources and remains atop most hierarchies of prioritized recommendations for dealing with pollution. We have had success in S.E. Michigan, and we look to the proven successes of the nationally-recognized Port of Los Angeles work.

- In 2008, the Port of Los Angeles provided $44 million in payments to licensed motor carriers in order to incentivize their purchase of 2,200 Clean Trucks. Another $12.5 million was approved in May 2008 for incentive payouts on the purchase of 500 natural gas-fueled trucks. These incentives, coupled with [other programs] led to over $1 billion in private investment toward the purchase or lease of approximately 7,000

more Clean Trucks, making a total of more than 9,800 Clean Trucks currently operating at the Port of Los Angeles and Long Beach.

- As of January 2012, 9,800 Clean Trucks use the ports, including more than 880 natural gas vehicles. Operation of 9,800 Clean Trucks will reduce more than 40 tons of diesel particulate matter emitted by trucks per year at the Port, and equates to removing the particulate matter emissions of nearly 300,000 automobiles from Southern California highways over the course of one year.

In summary, nearly 10,000 trucks were improved in Los Angeles, delivering an overall reduction of 40 tons of diesel particulate (alone) per year. SDEV data by comparison shows total diesel toxic reductions (particulate as well as other emissions components) = 5,500 tons/year—which shows that the potential of overall reductions from the air in Detroit is HUGE.

Our recommended actions can be cast in three broad categories: **Source Reduction**, **Mitigation**, and **Education/Research**. Our aim would be for approximately 75% investment in source reduction programs, and 25% in mitigation/education to further improve public health for children and families. Examples of each are as follows.

SOURCE REDUCTION

We would expand the successful Clean Diesel Program in place since 2009. SDEV has retrofitted, upgraded, or replaced more than 250 pieces of diesel equipment based in, or primarily operating within, the target impact area of our region—including trucks, port cranes, service boats, and construction equipment.

Participating companies have provided a 2:1 private dollar match for the public funding they were granted, and total diesel emissions are being reduced by 5,500 tons of particulate per year. With thousands more diesel vehicles and other diesel-powered equipment operating in the area, there is significant opportunity to further reduce diesel emissions at their sources.

Larger economic benefits for Michigan

There are potentially larger economic benefits to the S.E. Michigan region: Detroit Diesel and Cummins Engine, both local companies, have participated in the diesel retrofit projects, and manufacture new truck engines and diesel reduction filters locally, providing the opportunity for other local economic gains. These companies would stand to benefit from investment of the settlement dollars locally, supporting Michigan companies and Michigan jobs.

Retrofitting and Emissions Reduction Technologies

Retrofitting diesel engines involves installing more modern and effective emission controls on older diesel engines (especially those built before 2007) to reduce the amount of pollutants emitted. Diesel retrofits can be done on trucks, school buses, off-road construction vehicles (e.g., dump trucks and cranes), diesel-powered equipment (e.g., generators and pumps), ships, and trains. Overall emissions-reduction technologies and opportunities include: installing filters,

modifying or replacing engines, replacing equipment, installing idle-reduction auxiliary power units, and shifting fleets to alternative fuel-systems.

Diesel engines have long lives, and thousands of older vehicles and engines remain in use today. These old engines have few if any emissions controls, and they emit considerable amounts of pollutants like particulate matter (PM2.5), nitrogen dioxide (NOx), and other pollutants. Diesel exhaust accounts for 20% of PM2.5 concentrations at Detroit monitoring sites, and a larger amount at "hot spots" where there are large numbers of vehicles. Both on- and off-road vehicles are very important in Detroit. About 68% of diesel emissions in Wayne County come from highway (on-road) traffic, and about 22% from non-road vehicles (like construction equipment). Roughly 70,000–90,000 trucks travel on major corridors (I-75, I-94, I-96, M10, and M39) in Detroit daily, and 7000-plus trucks per day are involved in international trade crossing our border (2.5 million annually).

Retrofitting old vehicles and engines with filters and other modifications can significantly reduce the emissions, and can be more cost-effective than vehicle replacement.[1] Reduced emissions of diesel exhaust would lead to improvements in respiratory diseases such as asthma; reduced lung diseases such as chronic obstructive pulmonary disease (COPD), bronchitis, emphysema, and lung cancer; fewer heart attacks and cases of hypertension; and reduced irritation of the nose, throat, and lungs.(1)

Specific recommendation:

- Expand Existing Successful Clean Diesel Program. A collaboration will work with SDEV to build upon and expand the existing program to identify fleets and equipment in a target geographic area in S.E. Michigan where air standards are out of compliance with the Federal Clean Air Act. The focus would be on Wayne County and specifically the transportation-industrial corridor of Southwest Detroit and the adjacent Downriver communities. We would work with private sector companies and municipal departments to apply for opportunities for fleets and construction equipment through a bidding and funding match process. Like the current program successes, the focus would include all diesel equipment operating in the target area, not only trucks, and would include school buses in Wayne County.

Anti-Idling

Idling controls also reduce the pollutant emissions from cars, trucks, buses, and construction equipment when engines are running but vehicles are not in motion. Idling controls restrict the amount of time that vehicles can idle, by using anti-idling technology, laws, or regulations. These restrictions often target commercial trucks and buses, but emissions can also be reduced when anti-idling controls are used on other sources, like construction equipment. Some anti-idling technology opportunities would be included in the retrofit program described above. Other, cost-effective programs to reduce idling and therefore reduce emissions would include creating an Anti-Idling Engagement Program for Detroit /Wayne County, including:

- Anti-idling hotline and a web-based tool (1) similar to the IdleFreePhilly. Philadelphia, Pennsylvania, implemented anti-idling laws in 2008. Detroit created a similar anti-idling ordinance in 2010. Philadelphia's air pollution control agency, Air Management Services, is responsible for monitoring air pollutants and enforcing air quality standards. Residents can report idling violations in their neighborhood using a telephone hotline or a web-based mapping tool called IdleFreePhilly.org and clicking on the map where the idling issue is occurring. (2) This information is reported to Air Management Services, and the city's Clean Air Agency can issue a ticket if enough information is provided. In addition, the collected data allows the city to identify and address idling hot spots. (3)

- Anti-idling outreach campaign to enforce existing protections. Detroit currently has anti-idling regulations, but they are not always enforced as rigorously as they might be. Dallas, Texas, created an anti-idling campaign as part of its *Green Dallas* program. This included a sign program (requesting companies and organizations to post anti-idling signs), an educational component (featuring a website where people could learn more about the ordinance), and outreach to trucking companies, including distributing brochures at truck stops and trucking businesses. (4)

MITIGATION

Filters in Homes and Schools

Indoor air filters are devices that remove certain air pollutants from air that is passed through them. Most air filters remove particles, including dust, small particles (including much $PM_{2.5}$), pollen, allergens, animal dander, and fibers. Some filters can remove gases, such as sulfur dioxide (SO_2), odors, and volatile organic compounds. When designed and used appropriately, air filters can reduce indoor exposure to harmful air pollutants, like $PM_{2.5}$.

At homes – The average person spends over 90% of their time indoors. (5) Air pollution found indoors arises from indoor sources, such as cooking, smoking and vacuuming, as well as outdoor sources, such as traffic and power plants. Outdoor *pollutants* enter building via the ventilation system, windows, doors, and other openings in the building. Indoor air filters can significantly reduce the amount of both indoor and outdoor PM pollution you breathe. As a result, using filters to improve or maintain air quality can reduce your exposure from both outdoor and indoor sources of particulate matter. Among the mitigation strategies considered, filters are beneficial in this regard.

At schools – Indoor air quality is important in schools, where children spend much of their day during the school week. Many of Detroit's schools are old buildings that suffer from mold, ventilation problems, and heating and cooling issues. (6) Detroit children also suffer from high rates of asthma, which can be exacerbated by some school's conditions. Estimates suggest that if indoor air filters were installed in all Detroit schools, approximately 12,500 asthma exacerbations (cough, among children aged 6–14) could be avoided each year. Installing indoor

air filters only in schools within 150 meters of a major freeway could reduce asthma exacerbations among Detroit children aged 6–14 by 2,094, and installing indoor filters in all Detroit homes is estimated to reduce asthma exacerbations in this same age group by 33,400 cases per year. (1)

Recommendations include:

- Improve school filtration preventive maintenance. The East Hartford (Connecticut) school system has effectively incorporated a preventive maintenance program, which includes quarterly cleaning and filter change-out, repairing roof leaks, a comprehensive "Green Clean" janitorial cleaning program with environmentally-friendly material, and established guidelines for renovation projects (e.g., controlling emissions during construction and using low emitting materials). (7)
- Fund the use of freestanding filters. These filters can significantly reduce $PM_{2.5}$ concentrations in portions of homes such as bedrooms and living areas. These filters can be used in homes with or without a forced air system.

Buffers

Buffers can be strips of land, vegetation, or physical barriers located between sources of pollution (e.g., roadways) and homes, schools, or other places where people spend time and may be exposed to those pollutants. Creating distance buffers between people and diesel pollution sources is the most effective type of buffer to reduce exposure. Vegetative buffers can reduce people's exposure to harmful air pollutants by absorbing and trapping some of the pollutant. While buffers don't decrease air pollution emissions, they can reduce human exposures by lowering air pollution concentrations, if the right trees and enough growth is achieved over time.

It is most important to create such buffers within 500 feet of roadways that have heavy traffic. At 500 feet people are at risk of increased breathing and heart complications as well as cancers, according to national public health studies; and even at 1,500 feet from a freeway children are eight-times as likely to have leukemia (blood cancer). [See attached article from May 2015.] Placing geographic, vegetative, and sound wall buffers between major freeways or other pollution sources (e.g., industries emitting air pollutants) and sensitive populations, including residential areas, schools, retirement centers, and hospitals, would reduce asthma hospitalizations, missed school and work days due to asthma exacerbations, and deaths due to cardiovascular and pulmonary causes. These effects would be particularly beneficial to those who live within 150 meters (about 500 feet) of roadways and other pollution sources. (1)

Recommendations include:

- Implement vegetative buffers along major roadways. Increasing the distance, tree canopy, or other vegetation along freeways would reduce exposure to near-roadway pollutants, particularly for residents who live, work, or go to school near high traffic roadways. EPA suggests that a well-designed sound wall can reduce pollutant concentrations from vehicle sources on the order of 15%–50%, and that the combined use of trees and sound walls may reduce downwind vehicle pollution by up to 60%.

- Implement buffers around neighborhoods and sensitive receptors like schools, in particular those vulnerable to adverse health effects due to lower income, lower educational attainment, larger proportions of young children, and high proportions of rental properties or older homes. In Buffalo, New York, the Clean Air Coalition of Western New York hosted a local organization that designs and implements green buffers to protect vulnerable neighborhoods. They held a community workshop and facilitated meetings with stakeholders. The members also met with nine Common Council members. As a result, the Peace Bridge Authority (i.e., an international compact entity between the State of New York and Canada) announced that it will spend $3 million on green infrastructure to improve air quality and buffer vulnerable neighborhoods from diesel exhaust. (8)

EDUCATION/RESEARCH

Monitors/Extending Systems

Air-quality monitoring (or surveillance) is one of the tools used to enforce ambient air quality and emission standards. Air-quality monitoring is conducted by U.S. EPA, MDEQ, and sometimes county and local governments, tribes, industry, community organizations, researchers, and individuals.

Ambient monitoring uses instruments that measure specific pollutants or parameters in outdoor air, most commonly the NAAQS pollutants (SO2, NO2, O3, CO, lead, and PM2.5). This type of monitoring is used to measure the concentration of pollutants in the atmosphere which you may breathe.

Monitoring ambient air quality is the best way to tell if the air is getting cleaner, because monitors accurately report how much of a pollutant is in the air. In Michigan, the state's ambient air quality monitoring network and the collected data are described by the MDEQ each year in its annual Air Monitoring Network Review, and its annual Air Quality Monitoring Reports. U.S. EPA also makes the same data available. There are limitations to the current network of monitors, both in terms of where they are located and which pollutants they monitor.

While air-quality monitoring in and of itself does not improve air quality, it provides important information that allows residents as well as regulatory agencies and decision makers to monitor the air quality over time. Strengthening the monitoring network in Detroit and Michigan more broadly would provide better and more consistent data with which to measure air pollution, and to assess changes over time. (1)

Vehicle emissions are described to be released "at the human level," which is why they contribute so negatively to many health conditions, and diesel emissions in particular. In our area of non-attainment in S.E. Michigan and Southwest Detroit and adjacent transportation-industrial communities, the ***cumulative impact*** of air toxins is also a leading factor in overall negative health. The impact from transportation/diesel emissions is made worse by the existing

cumulative air quality. **Therefore, we recommend the expansion of the air-monitoring network**:

- Increase SO_2 monitoring. Current SO_2 analyses in Detroit rely heavily on modeling. Placement of additional monitors in modeled "hotspot" areas is necessary to track SO2 emissions and their dispersion.
- Deploy semi-permanent mobile monitors to understand impacts from particular sources—including monitoring carbon as a specific marker for diesel emissions, particularly heavy industry in southwest Detroit, with sufficient data to develop annual average concentrations of toxics.
- Provide resources for low-cost community air-monitoring activities to supplement existing monitoring networks to identify pollution hotspots. Collaboration with MDEQ and other actions can assure quality data collection and interpretation.

In conclusion, our priorities for targeted program investments would:

- Reduce diesel emissions at the sources
- Provide critical in-home and in-school filters to reduce the incidence of asthma, and
- Provide necessary monitoring of diesel emissions and public education to residents to reduce profound health impacts of asthma—the primary cause of lost work and school time, as well as lead to improved overall health of vulnerable populations.

Our collaboration will continue effective partnerships with the community, government, and the private sector, and will continue to deliver health and economic benefits to Southeast Michigan and our highly impacted industrial area for generations to come.

Detroit Health Department
Detroiters Working for Environmental Justice
Southwest Detroit Community Benefits Coalition
Southwest Detroit Environmental Vision
University of Michigan School of Public Health (CAPHE Program)

CC:
Jack Schinderle, Chief, Office of Environmental Assistance, MDEQ
Honorable Debbie Stabenow, U.S. Senate
Honorable Gary Peters, U.S. Senate
Honorable Brenda Lawrence, U.S. House of Representatives
Honorable Stephanie Chang, Michigan House of Representatives

REFERENCES:

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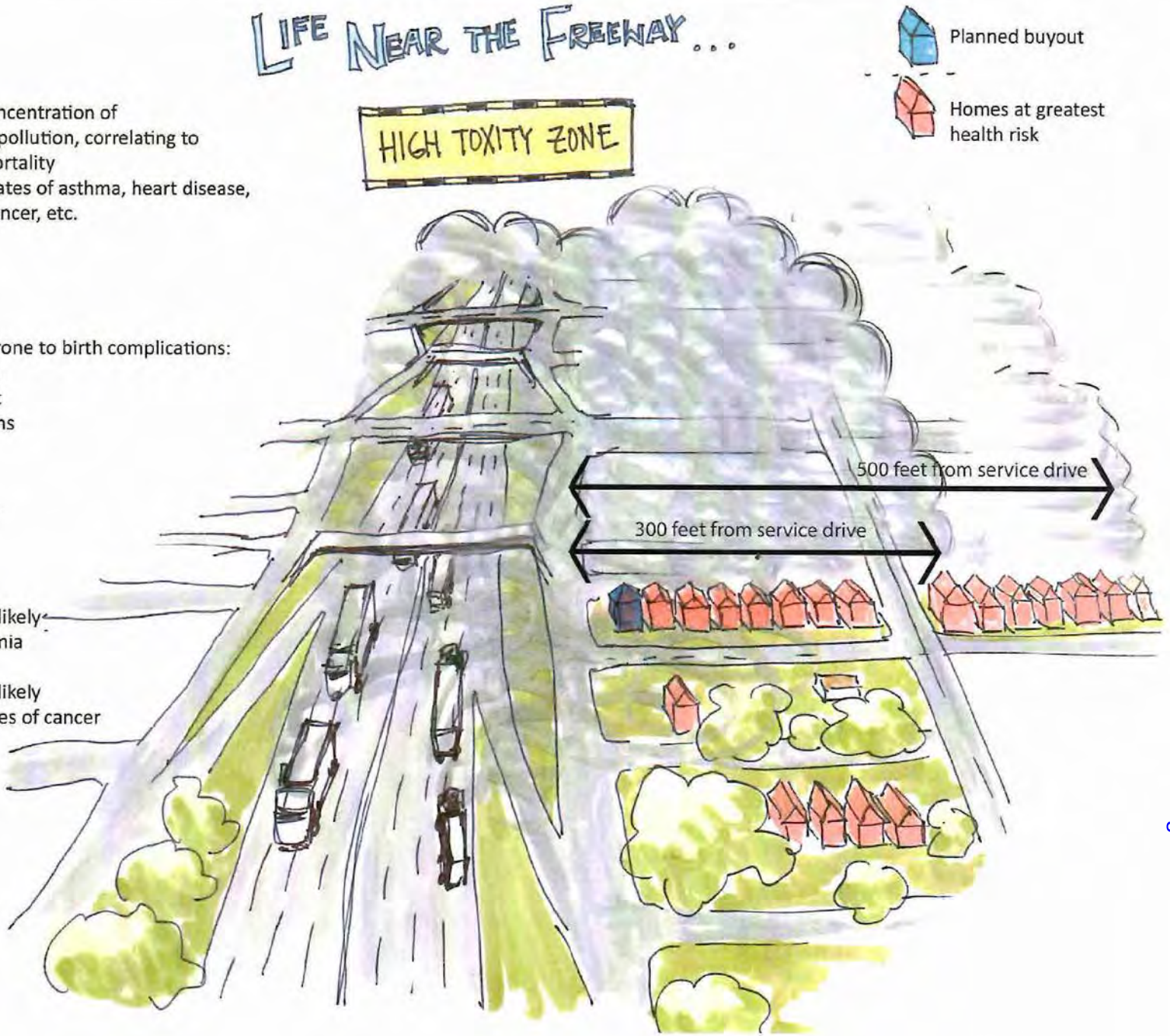
(8) Clean Air Organizing for Health and Justice. 2014. 2014 Annual Report. Buffalo, NY: The Clean Air Coalition of W.N.Y. http://www.cacwny.org/wp-content/uploads/2012/03/CA-Annual-Report-2014.pdf [accessed 3-3-16].

ATTACHMENTS:
Attachment #1: Life Near Freeway
Attachment #2: Buffer Safe Distance
Attachment #3: DREACT
Attachment #4: SDEV Clean Diesel Successes
Attachment #5: SDEV Clean Diesel Program

LIFE NEAR THE FREEWAY...



WITHIN 300 FEET:

- Exposure to highest concentration of most dangerous pollution, correlating to
  - early mortality
  - higher rates of asthma, heart disease, cancer, etc.

WITHIN 300-500 FEET:

- Pregnant women are prone to birth complications:
  - premature birth
  - low birth weight
  - medical problems

WITHIN 1000-1500 FEET:

- Children are 8 times as likely to develop leukemia
- Children are 6 times as likely to develop all types of cancer

http://sandiego.urbdezine.com/2015/05/28/what-is-a-safe-distance-to-live-or-work-near-high-auto-emission-roads/

What is a safe distance to live or work near high auto emission roads?

May 28, 2015 by Bill Adams

A nearby roadway may be putting your household's health at risk. The same is true of workplaces, schools, and other places where people spend significant time. This health risk is from the elevated auto emissions near high traffic roadways. It's a health risk separate and in addition to the regional air pollution from auto emissions.

We have come to draw a false sense of security from our collective sharing of regional air pollution and, perhaps, the belief that regulatory agencies protect us. However, research continues to show that air pollution, particularly from auto emissions, has profound effects on health. Moreover, such impacts are unequally distributed among local populations, largely based on nearness to major roadways.

Discussions about whether or not to build or expand roadways are dominated by the topics of traffic congestion relief, urban planning, and greenhouse gasses. The impact of roadways on Americans' health and morbidity is often lost in the discussions. 53,000 U.S. deaths annually are attributable to automobile emission air pollution. (Calazzo, et al., 2013) Many more are ill or incapacitated from auto emissions. Ninety percent of the cancer risk from air pollution in Southern California is attributable to auto emissions. (Hulsey, et al., 2004, par. 10) For comparison, there are 35,000 U.S. deaths a year from auto collisions (NHTSA, 2012), which is the top cause of death for U.S. males between the age of 15 and 24, and in the top ten causes of death of all Americans through the age of 54.

The impact on life and safety generally from road expansion receives little attention. However, auto emission pollution based on proximity to source, i.e. line-source pollution, is one of the most overlooked health threats in the U.S. Current U.S. policies and regulations do little to protect susceptible populations, including children, from the dangers of nearness to auto-emission sources. Undoubtedly, the disproportionate lack of urgency concerning the health impacts of air pollution is attributable to its hidden and delayed impact. Although the health impacts of air pollution on general populations are certain, individual diagnoses of disease rarely identify air pollution as the cause. As a result, the health threat fails to take on the personal dimension of other health threats. The same was true with smoking for many decades. Additionally, awareness of line-source pollution is further hindered by confusion with regional / ambient air pollution, which typically manifests in more noticeable high ozone levels, i.e., smog.

Air pollution monitored by various agencies includes particulate matter (PM), ozone, nitrogen dioxide, carbon monoxide, sulfur dioxide, and lead. However, two of these cause the most concern due to their prevalence and health significance: 1) Ozone, which causes the brown smog commonly seen over cities and 2) Particulate matter (PM), also referred to as ultra-fine particulates (UFP). Unlike ozone, PM exposure is directly related to proximity to source – primarily areas near to or downwind from high traffic areas. Moreover, for health impacts, PM pollution may be the worst of the lot. Heart

disease, lung function impairment, leukemia, asthma, and lung cancer, are some of the conditions that have been associated with PM exposure resulting from proximity to high traffic sources. (Hulsey, et al., 2004, par. 6; Fuller, et al., 2012, pp. 257 – 265) As stated in a 2002 study about exposure to highway PMs:

> Throughout the past decade, epidemiological studies have reported a consistent relationship between increases in particulate matter (PM) exposure and contemporary increases in mortality and morbidity. (Zhu, et al., 2002)

Figure 17. Hypothesized pathways via which inhalation of UFPs may lead to effects on cardiovascular and respiratory systems and on the brain. Reprinted with permission from the Health Effects Institute, Boston MA.

Children are especially vulnerable to auto-emission health impacts because, among other reasons, they breathe more air relative to their body weight than adults, are more physically active, and spend more times outdoors during times when pollutant levels are at their highest. (Hulsey, et al., 2004) Additionally, children have many more years ahead of them in which the cumulative damage caused by auto emissions can manifest itself in disease or disability. Women who live near areas of high automobile traffic during pregnancy have a 20 – 30% higher chance of having children with lung impairment. (Morales, et al., 2014) Auto emission PM exposure from nearness to high traffic during the the third trimester of pregnancy doubles the risk for autism. (Raz, et al., 2014).

11% of U.S. residents, over 30 million people, live within 100 meters of 4 lane or greater highways. (Brugge, et al., 2007; Howard, 2011) Adding in work places, schools, and commuting, it is reasonable to extrapolate that roughly 1/3 of people spend a substantial portion of their day exposed to unhealthy levels of auto emission PMs.

So how can you determine your own exposure level or that of your children? Below are some key distances and other factors:

Ground Zero:

Curbside and in-traffic air contains high levels of all pollutants associated with auto emissions – both PMs and gaseous substances like benzene and carbon monoxide. (Hulsey, et al., 2004, par. 7) PM exposure at intersections is as much as 29 times higher than other portions of the road. (Goel & Kumar, 2015) Cyclists, auto occupants with windows down or vents open, toll booth operators, and roadside residents and businesses receive up to 25 times the level of PM exposure. (Zhu, et al., 2002) Moreover, the air inside a car typically contains higher concentrations of these pollutants than the air outside of the car – as much as 4 times the benzene and 10 times the carbon monoxide. (ICTA, 2000) Keeping the windows closed and the ventilation set to recirculate can reduce in-car pollutants to 20% that of air outside the car. (L.A. Times, 2013)

High Toxicity Zone – 300 – 500 feet:

On average, PM concentration is significantly higher within 330 feet (100 meters) of major highways than it is further away. (Zhu, et al., 2002) The smallest PMs, with a peak concentration of 1.6 x 10(5)/cm3, are the most dangerous. Smaller PMs carry toxic substances deeper into the lungs and

body, and as a result, have more profound health effects. (Cal. EPA, Aug. 2014, p.29) They are concentrated in an area within 330 feet from highways. (Zhu, supra) Pregnant women who live within 500 feet of high traffic areas are prone to birth complications, including premature birth, low birth weight children, and children with medical problems. (Wilhelm & Ritz, 2003) A review of a broad range of studies has correlated early mortality — from a wide range of illnesses — with living within 330 feet of a high traffic roadway and related exposure to various auto emission substances. (Beelen, et al., 2008)

Figure 3.2.6-4: Sensitive Receptor Locations
(Springdale Street to Warner Avenue) May 2012, I-405 Improvement Project

Elevated Toxicity Zone – 1,000 – 1,500 feet:

PMs from auto emissions are elevated within 1,000 feet (300 meters) of a major highway. (Yifang, et al., 2002, pp. 1038-1039) A Denver study indicated that children living roughly within that distance were eight times as likely to develop leukemia and six times as vulnerable to all types of cancer. (Hulsey, et al., 2004,- par. 1) In another study, children under 5 years of age admitted to hospitals with asthma emergencies were significantly more likely to live within 500 meters (1,640 feet) of a major highway when traffic flow exceeded 24,000 vehicles per hour than those who lived further away or when traffic flow was less. (Edwards & Walters, 1994) Particle levels return to near normal beyond that distance.

Other Factors Influencing Air Pollution Levels Near Roadways:

Wind:

People living "downwind" of highways with 4 or more lanes (2 lanes in each direction) are exposed to higher levels of fine particulate matter. (Brugge, et al. 2007) However, this circumstance does not exempt one side of a highway from PM dangers. In many regions, wind direction changes not only depending on weather conditions, but also between day and night.

Sun, Rain & Humidity:

Areas receiving higher amounts of rain or humidity can experience reduced auto-emission pollution levels, especially ultra-fine particulate pollution. The clean air you sense after a rain storm really is cleaner. This fact is regularly demonstrated in high-pollution Bejing. (USA Today, Aug. 11, 2008)

Atmospheric conditions alter the size, distribution, and composition of freshly-emitted PM through condensation, evaporation, and dilution during transport to downwind locations. (Brugge, et al., 2007) Thus, higher humidity levels can tamp down the distribution of PMs. (HEI Review Panel, 2013, p.24) Conversely, sun, heat, and lack of humidity generally favor greater distribution of PM. Additionally, ground level ozone concentration is unhealthiest on sunny and warm days.

Topography:

A temperature inversion in a valley – clean air poster from a Teacher's Guide to Clean Air by BC Transit, Nov. 2005 – republished permission Ministry of Environment, British Columbia Canada

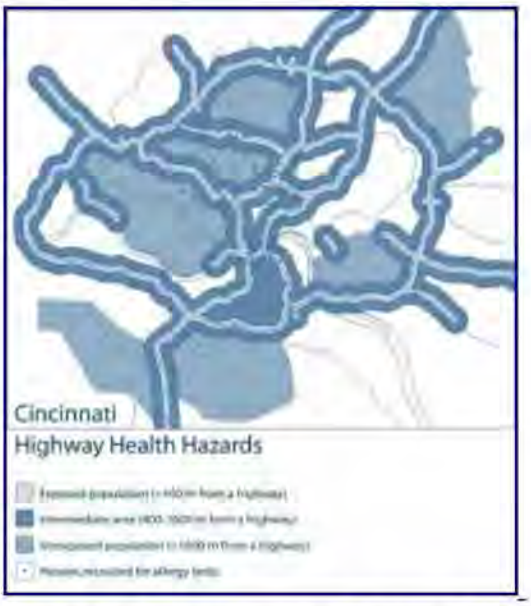
PM, as well as gaseous air pollutants, tend to concentrate in valleys due to containment by topographical features. (HEI Review, supra) Inversions, in which a layer of cold air is trapped underneath a layer of warm air, keep PM concentrated near ground level and aggravate the concentration of PM in valley and canyon floors. Ibid. Fog is often an indicator of an inversion.

Time:

The time of day can influence PM concentrations near highways – both in terms of traffic concentrations and in terms of weather. (HEI Review Panel, supra) Of course, highways experience much higher traffic concentrations at certain times of the day. However, such concentration has become less varied as employers stagger work shifts to alleviate commuting burdens and as continued highway expansion creates induced demand (tendency of freeway expansion to create more demand and congestion in the long run by facilitating sprawl). Additionally, the heating and cooling of day and night effect pollution concentrations at ground level.

Auto Emission Air Pollution as a Social Justice Issue:

The unavoidable conclusion from the research is that each time a major highway is built or expanded, some of the residents living nearby will pay with their health or lives. Nevertheless, compared to industrial uses that pose potential health risks, roadway construction projects remain relatively unregulated as a direct air pollution health risk. (Hulsey, et al., 2004) The same is true of the siting of residential, employment, senior, or educational uses near highways.



Cincinnati highway proximity health hazards. Republished permission LADCO

Low income and minority populations are disproportionately impacted by air pollution health risks. (Beleen, 2008) Suburban expansion creates a demand for road expansion through existing neighborhoods. Lower income neighborhoods and ethnic minority populations least often wield the political influence necessary to resist road expansion projects. Additionally, multifamily and affordable housing is more likely to be sited near high traffic areas than is more expensive detached housing. More recently, the construction of high density "transit oriented developments" (TODs), which are intended to reduce auto reliance and which often include affordable housing, are frequently sited near high traffic areas. There has been little acknowledgement in U.S. transportation policy of the social inequality and the ethical issues related to sacrificing the health of members of one community to facilitate the growth and commuting of another community.

Property condemned for a road expansion project results in monetary compensation to the owner based on fair market value. However, residents put at risk by the additional traffic emissions as a result of living adjacent to or near the road project cannot recover compensation or assistance to relocate.

Construction and expansion of roadways may involve some public disclosure of health impacts via environmental reporting documents but the reporting tends to assume that "no build" highway expansion options will simply result in ever increasing congestion. However, more than a half century of highway building has demonstrated that congestion relief from road expansion tends to be temporary, and that the long term impact is increased automobile use and traffic congestion. Such "induced demand" is increasingly recognized as the long term effect of expanding roadways to relieve current traffic congestion.

Increasingly, line-source proximity to auto emission pollution and the refinement and improved accuracy of roadway air pollution dispersion modeling is being used in legal and political challenges to highway expansion proposals. Given the stakes, its hard to justify the continued expansion of roadways in urban areas, the slowness of conversion to non-combustible fuel automobiles, or the proportionately small investment in public transit. If such decisions were based solely on health criteria proportionate to other identified public risks, highways might be quarantined as an acutely

elevated health hazard to those who live or work near them. Of course, such action is impractical as it would result in vast tracts of existing homes, schools, and places of employment being abandoned.

It is clear that the public is still not fully aware of the difference between ambient air pollution effecting the general populace of a city and line-source air pollution impacting health based on nearness to highways. Perhaps, if the public was more aware of the direct and unequal health impacts of high-traffic roadways, transitioning from roadway expansion to transportation alternatives would receive more urgency. One proposal for an air quality district plan in California required that builders of homes, schools, or day care centers provide notice to their customers of toxic emissions, including those emanating from busy roads, within 1,000 feet. (Hulsey, 2004, p.13)

Without a better understanding of line-source proximity exposure by the general public, its hard to foresee substantial changes. It may take activism and information campaigns, such as posting warning notices in neighborhoods within the 1,000 foot zone, to catch the public's attention and educate it on this health issue.

Notes:

While this article cites a number of scientific articles, some "rounding" is used for the purpose of readability. In other words, this article attempts to organize and summarize current available data into a general conceptual framework for general public understanding rather than to provide new data.

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About the Author Bill Adams

Bill Adams is the founder and chief editor of UrbDeZine. He is also a partner in the San Diego law firm of Norton, Moore, & Adams, LLP. He has been involved with land use and urban renewal for nearly 25 years, both as a professional and as a personal passion. He currently sits on the Boards of San Diego Historic Streetcars, The San Diego Architectural Foundation, The Food and Beverage Association of San Diego County, and The Gaslamp Quarter Association Land Use Planning Committee.

Norton, Moore, & Adams, LLP is a boutique land use firm which handles a wide range of land and building related matters, from permitting to litigation, including:

- Discretionary use applications and appeals, including alcoholic beverage sales, entertainment, industrial, social services, educational, hospitality, etc.
- Zoning variances
- Municipal code and regulatory amendments
- Litigation, including eminent domain, access and easements, CEQA, environmental, and preservation

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HEALTH DEPARTMENT

HEALTHIER PLACES

D-REACT: Detroit Responsive Environment for Asthma Care & Treatment

THE CHALLENGE

Detroit children are nearly 1.5 times as likely to have asthma, and are 3 times as likely to be hospitalized for asthma as their peers across Michigan. One of the causes of Detroit's asthma epidemic is poor air quality. Southwest, Detroit's asthma epicenter, sits within the airshed of several high-emitting industrial polluters. The 48217 zip code in Southwest continues to be in non-attainment status for sulfur dioxide.

While the Detroit Health Department has partnered with community organizations to reduce pollution in this airshed, the immediate challenge of protecting children from the asthma consequences of pollution remains. Industrial pollution data is readily available in Southwest, but health impact data is missing.

Asthma exacerbation is known to have significant effects on children's health. Children miss multiple days of school, are unable to be as engaged in the classroom, and additionally suffer from inactivity due to the poor air quality outside. Studies have linked asthma exacerbation to increases in respiratory viruses and decreases in overall health and well-being. Asthma exacerbations impact the full lifespan from immediate to long-term health effects as well as educational and social losses.

A key challenge facing children in Detroit is limited knowledge about ambient air quality and its implications for asthma care.

THE OPPORTUNITY

The Detroit Health Department proposes a pilot to generate real-time, highly local information on the health impact of air quality via a network of smart inhalers.

The tracking of medication use through smart inhalers has had a significant impact on both reducing asthma prevalence and allowing participants to understand geographic areas where they are more likely to be exposed to asthma triggers. For example, the Air Louisville program successfully improved the number of "asthma free days" eight-fold. In general, the technology deployed through this program – smart inhalers from Propeller Health – has helped reduce asthma attacks by 79% among users. Leveraging the information from such smart inhalers could allow parents, teachers, and clinicians to prevent asthma exacerbations by limiting exposure, adjusting medications, and remaining more vigilant.

For our pilot, the Detroit Health Department proposes to distribute Propeller Health smart inhalers to 200 families in Southwest suffering from asthma. Propeller Health would record the time and location of each use of its smart inhaler, aggregating the data anonymously to provide a real-time map of "hot spots" where poor air quality may be triggering asthma symptoms. Over time, the data collected through this network would directly benefit families using the smart inhalers, but also neighboring families affected by the same asthma triggers. Data from this pilot network would enhance the work of community organizations focusing on advocacy and education.

The project demonstrates a unique opportunity to leverage the power of the crowd, emerging technologies, and public-private partnership to improve the health and wellbeing of those living with asthma in Detroit.

Southwest Detroit Environmental Vision Clean Diesel Program – Success We Can Build On

SDEV has secured over $12-million in public and private investments to reduce diesel pollution in the Detroit area and throughout the State of Michigan. These investments have led to a reduction in **diesel emissions by over 5,500 TONS annually.**

Clean Diesel Program Background

Diesel emissions from mobile sources (such as on-highway trucks, off-road equipment and other transportation sources that run using diesel fuel) was determined to be the top issue of concern by the Southwest Detroit and South Dearborn communities through our CARE level I risk ranking process. To address the issue of diesel pollution, SDEV organized the Southwest Detroit Clean Diesel Collaborative. In less than five years, SDEV has formed partnerships with more than 30 local businesses, non-profit organizations, and local, state and federal government agencies.

SDEV received the ***2012 Midwest Clean Diesel Leadership Award*** from the U.S. EPA Region 5. The Michigan Department of Environmental Quality (MDEQ) and the Michigan Department of Transportation (MDOT) nominated SDEV for this award on behalf of the Michigan Clean Diesel Coalition. This award recognizes leaders across the Midwest whose actions have a real, lasting impact on air quality.

Below is a summary of the work that the SDEV Clean Diesel Program has accomplished since 2009.

Projects in Progress

- **MDEQ Diesel Emissions Reduction Act (DERA) Grant & Southeast Michigan Clean Diesel Collaborative, 2016**
- **EPA Diesel Emissions Reduction Act (DERA) Grant, 2014-2016**
- **EPA Diesel Emissions Reduction Act (DERA) Grant & Michigan Clean Diesel Collaborative, 2015-2017**

Completed Projects

State Clean Diesel Grant, 2015

Funded by: Michigan Department of Environmental Quality (MDEQ)

Partners: Causley Trucking, Inc., Foreman Brothers, Inc., Forgotten Harvest, and Gemini Transport, LLC

Projects: The Michigan Clean Diesel Collaborative (MCDC) project successfully completed the early replacement of five diesel trucks (two Class 8A short haul trucks, one Class 8A long haul truck and two Class 6 short haul refrigerated box trucks) operated by one non-profit and three private project partners. The MCDC project successfully reduced 105.7 tons of diesel emissions over the project lifetime (14-19 years), saving an estimated $260,000 annually based on avoidance of health effects associated with exposure to diesel emissions primarily in Wayne County, Michigan.

Southwest Detroit Environmental Vision Clean Diesel Program – Success We Can Build On

EPA Diesel Emissions Reduction (DERA) Grant, 2012-2014

In October 2012, SDEV was awarded a $1.2-million Diesel Emissions Reduction Act (DERA) grant from the U.S. EPA Region 5. This project, titled the *Michigan Clean Diesel Collaborative*, is a public/private/nonprofit partnership that continues to have a positive impact on air quality throughout the metro-Detroit, Lansing and Flint areas. SDEV and two other nonprofit agencies, *NextEnergy Center in Detroit* and *Greater Lansing Area Clean Cities*, worked with nine public and private fleets in Michigan to replace a total of 32 heavy-duty trucks and school buses with new, cleaner models. These new trucks and buses are 80-90% cleaner than the old vehicles. More information about the EPA DERA grant funding:
http://www.epa.gov/cleandiesel/prgnational.htm#awarded

Congestion Mitigation and Air Quality Improvement (CMAQ) Grant, 2013-2014

Funded by: Michigan Department of Transportation (MDOT)
Partner: Total Armored Car Service, Inc. in Detroit
Project: Replaced three old armored trucks with new, cleaner trucks

State Clean Diesel Grant, 2013-2014

Funded by: Michigan Department of Environmental Quality (MDEQ)
Partners: Foreman Bros, Inc. in Detroit and Red Cap Transport in Dearborn
Projects: Replaced four old Class 8b trucks with new, cleaner trucks

State Clean Diesel Grant, 2013

Funded by: Michigan Department of Environmental Quality (MDEQ)
Partners: Churchill Transportation, Ferrous Processing & Trading, and Total Armored Car Service, all located in Detroit
Projects: Replaced four old class 8 trucks and replaced two old armored trucks

CMAQ Grant, 2012

Funded by: Michigan Department of Transportation (MDOT)
Partner: Andrews Brothers, Inc. in Detroit
Project: Upgraded electrical infrastructure at the Detroit Fort Street Produce Terminal, and replaced seven old diesel refrigeration units with new plug-in electric units

State Clean Diesel Grant, 2012

Funded by: Michigan Department of Environmental Quality (MDEQ)
Partners: City of Melvindale, Churchill Transportation, Lakes Pilots Association, Marine One Towing, McCoig Materials, Norfolk Southern, Red Cap Transport, Superior Materials
Projects: Replaced six on-road trucks and one off-road lift machine, upgraded three marine engines, installed aerodynamic technology on 17 trucks, retrofitted 63 trucks with pollution controls, and installed idle reduction technology on six trucks

Southwest Detroit Environmental Vision Clean Diesel Program – Success We Can Build On

CMAQ Grant, 2011

Funded by: Michigan Department of Transportation

Partners: Churchill Transportation, DTE Energy, Ferrous Processing & Trading, and Red Cap Transport

Projects: Upgraded four truck engines, retrofitted nine trucks with pollution controls, and installed idle reduction technology on 16 trucks

Michigan Clean Diesel Recovery and Reinvestment Project, 2009-2011

Funded by: Michigan Department of Environmental Quality

Partners: Churchill Transportation, DTE Energy, Edward C. Levy, JW Westcott, Lakes Pilots Association, Marine One Towing, Red Cap Transport Superior Materials

Projects: Upgrade three marine engines, replaced three diesel forklifts with propane forklifts, replaced one off-road loader, retrofitted 56 trucks with pollution controls, and installed idle reduction technology on 11 trucks

Past and Present Clean Diesel Partners

Alco Transportation, Andrews Brothers, Churchill Transportation, City of Dearborn, City of Melvindale, City of Westland, Detroit Dept. of Water and Sewerage (DWSD), DTE Energy, Edward C. Levy, Ferrous Processing & Trading, Foreman Bros., H&P Transportation, JW Westcott, Lakes Pilots Association, Marine One Towing, McCoig Materials, National Industrial Maintenance, Norfolk Southern, Red Cap Transport, Superior Materials, Total Armored Car, UTSI, NextEnergy, and Greater Lansing Area Clean Cities.

Clean Diesel Program | Southwest Detroit Environmental Vision

$12M INVESTED

In just over five years, more than $12 million has been invested by public and private partners to reduce diesel pollution in Southwest Detroit, and the surrounding areas!

5 YEARS OF WORK

Below are some of the specific projects completed over the past five years.
- Replaced **47** old trucks and **8** old school buses with new, cleaner models
- Upgraded **5** old truck engines and **6** old marine engines with new, cleaner engines
- Replaced **7** diesel refrigeration units with electric plug-in units
- Installed pollution controls on **140** trucks and idle reduction technology on **40** trucks

45,000 TONS OF POLLUTION REDUCED

Improved air quality! Replacing old diesel engines with model year 2010 engines or newer reduces pollution by up to 98%! SDEV's clean diesel partnership has removed **more than 75** old, high-polluting diesel engines from operation and replaced them with new, cleaner engines.

SDEV's completed clean diesel projects have **reduced diesel pollution by 5,500 tons*** annually. And the impact is long term – in 10 years, we will have reduced diesel pollution by a total of **45,000 tons***!

**estimated pollution reduction of NOx, PM, HC, CO, CO2*

NUMEROUS PARTNERS

Alco Transportation, Andrews Brothers, Churchill Transportation, City of Dearborn, City of Melvindale, City of Westland, Detroit Dept. of Water and Sewerage (DWSD), DTE Energy, Edward C. Levy, Ferrous Processing & Trading, Foreman Bros., H&P Transportation, JW Westcott, Lakes Pilots Association, Marine One Towing, McCoig Materials, National Industrial Maintenance, Norfolk Southern, Red Cap Transport, Superior Materials, Total Armored Car, UTSI, NextEnergy, and Greater Lansing Area Clean Cities. **Funded by:** Michigan Department of Environmental Quality (MDEQ), Michigan Department of Transportation (MDOT), U.S. Environmental Protection Agency (EPA), and private investment by local business partners.

Learn more about SDEV's Clean Diesel Program

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August 5, 2016

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Submitted electronically to: pubcomment-ees.enrd@usdoj.gov

RE: Comments on proposed partial consent decree In RE: *Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation,* (Case No: MDL No. 2672 CRB (JSC), and D.J. Ref. No. 90–5–2–1–11386

Dear Assistant Attorney General Cruden:

The Minnesota Pollution Control Agency (MPCA) is pleased to submit the following comments on the U.S. Department of Justice's (DOJ) proposed partial consent decree in *Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation*, (Case No: MDL No. 2672 CRB (JSC), and D.J. Ref. No. 90–5–2–1–11386), published in the *Federal Register* on July 6, 2016.

The United States' complaint, filed on January 4, 2016, on behalf of the Environmental Protection Agency (EPA), against Volkswagen AG, Volkswagen Group of America Inc., Volkswagen Group of America Chattanooga Operations LLC, and Audi AG (collectively, VW) alleges that certain 2.0 liter and 3.0-liter diesel-engine vehicles contained illegal "defeat devices" that caused the vehicles to emit levels of nitrogen oxides (NO_X) during normal operation that are significantly in excess of national standards. The proposed partial consent decree (CD) published in the *Federal Register* on July 6, 2016, would partially resolve the government's claims against VW with respect to 2.0-liter vehicles. The MPCA applauds the seriousness with which the DOJ is taking VW's alleged actions and supports a final CD that ensures that VW provides resources to not simply offset the emissions that have occurred and will continue to occur, but to also go beyond and achieve a net emissions reduction.

NO_X is one of the primary pollutants that contribute to the formation of ozone and particulate matter (PM). All three of these pollutants contribute to serious adverse health impacts. Ozone and PM are two of the most important pollutants for Minnesota, and the MPCA and our partners are actively working to reduce the concentrations of these two harmful pollutants in our air. The MPCA is a participant in both the Ozone and PM Advance Programs to take pro-active action to cut emissions and continue to attain the National Ambient Air Quality Standards. The MPCA is also a member of Clean Air Minnesota, a public-private partnership that brings together members of the government, nonprofit, and private sectors to achieve voluntary, measureable emissions reductions and lower concentrations of ozone and PM in the state.

However, local voluntary actions can only go so far; the federal NO_x vehicle emissions standards are critical components of the national effort to reduce ozone and PM concentrations to protect human health. We are confident that the funding provided to Minnesota through the Trust Fund will result in significant reductions in air pollution, especially from mobile sources. Previously, the MPCA administered over $16 million in diesel grants to retrofit, repower, and replace old, dirty diesel engines around the state. We estimate our efforts reduced air pollution emissions equivalent to removing approximately 750,000 cars from our roads. Our significant experience in administering diesel engine programs informs the enclosed comments.

Additionally, the emissions from vehicles are of particular concern for Environmental Justice, as busy roadways often pass through low-income communities and communities of color. Our research shows higher concentrations of harmful air pollutants within 300 meters of busy roadways. This means that often our most vulnerable populations suffer the brunt of health impacts related to vehicle emissions and are also the populations most impacted by these alleged pollution control violations. We urge the DOJ to consider how the conditions of the CD can be used to advance the principles of Executive Order 12898 on Environmental Justice and assist EPA in implementing their Environmental Justice Action Agenda. Such considerations will greatly help the MPCA implement our own Environmental Justice Framework and meet our Strategic Plan Goal of reducing disparate exposures to air pollution.

The MPCA supports the efforts outlined in the CD and feels they will provide important means of reducing vehicle-related air pollution. The enclosed comments are intended to help strengthen the proposal and bring the benefits of the emissions reductions to more people. The alleged violations of the national vehicle emissions standards are serious and have put at risk the health of many Americans, especially vulnerable populations most at risk of the impacts of air pollution. It is imperative that the benefits of the Trust Funds go towards helping over-burdened communities and reducing their exposure to the harmful air pollutants associated with busy highways. It is critical that this CD and the resulting Trust Funds employ a wide range of cost-effective strategies to mitigate the past, present, and future damages allegedly caused by the excessive emissions from the VW vehicles.

The MPCA appreciates the opportunity to comment on the DOJ's proposed partial consent decree. If you have any questions regarding the enclosed comments, please contact Amanda Jarrett Smith of my staff at 651-757-2486 or amanda.smith@state.mn.us.

Sincerely,

John Linc Stine
Commissioner

JLS/AS:vs

Enclosure

Minnesota Pollution Control Agency comments on proposed partial consent decree *In Re: Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation,* Case No: MDL No. 2672 CRB (JSC), and D.J. Ref. No. 90–5–2–1–11386

The Minnesota Pollution Control Agency (MPCA) supports the efforts outlined in the proposed consent decree (CD) in *Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation*, (Case No: MDL No. 2672 CRB (JSC), and D.J. Ref. No. 90–5–2–1–11386), published in the *Federal Register* on July 6, 2016. The MPCA feels the efforts outlined in the CD will provide important means of reducing vehicle-related air pollution. The MPCA also supports the effort to incentivize VW to successfully implement its recall of the subject vehicles by requiring additional financial penalties if the recall does not meet its stated goals. These additional funds will both incentivize VW to act and also provide additional financial support for further mitigation if the goals are not achieved. The following comments are intended to help strengthen the proposal and bring the benefits of the emissions reductions to more people.

Environmental justice

The MPCA recommends that, for each of the eligible mitigation project categories, the CD allow the use of a higher percentage of Trust Funds for projects that target benefits to communities of environmental justice concern. Executive Order 12898 and the EPA's EJ 2020 Action Agenda both call for meaningful action to reduce disproportionate burdens currently placed on low-income communities and communities of color. The MPCA also has an Environmental Justice Framework that we are beginning to implement. Busy roadways and the elevated concentrations of harmful air pollutants that they carry with them often cut through communities of color and low income. These communities have been disproportionately impacted by the alleged violations of EPA's emission control requirements, so they should be targeted for the benefits of the CD's mitigation plans. Without additional financial support from the Trust Fund, it may be more difficult to find and fund projects in vulnerable communities because owners of vehicles in low-income areas may not be able to pay the required match. The CD should incentivize meaningful progress on addressing these inequities by allowing Trust Funds to be used for a higher percentage of the total project funding for projects located in communities of environmental justice concern.

Appendix D-2, Eligible mitigation

The CD offers many important methods for mitigating NO_X emissions related to the subject vehicles, but there are opportunities for improvements. The MPCA agrees with all of the listed mitigation strategies, but believes the categories outlined in the CD are too narrow and do not capture many opportunities for cost-effective NO_X emissions reductions. These comments are intended to offer suggestions on ways that the CD could better address the mitigation of NO_X emissions and allow for more creativity in the types of eligible mitigation projects.

<u>Diesel Emission Reduction Act (DERA) option</u>

The MPCA supports the DERA option outlined in the CD, but the CD should not rely on the DERA option to provide opportunities to fund mitigation projects beyond those listed explicitly in Appendix D-2. DERA is a program subject to Congressional authorization and appropriation and there is no guarantee that it will exist throughout the period of Trust Fund implementation. The MPCA strongly recommends that instead of relying on the DERA option, the CD allow Trust Funds to be used directly on a wider range of diesel vehicles and equipment. Allowing Trust Funds to be applied directly to a broader range of equipment, rather than being limited by DERA, would stretch the Funds further, fund more projects, and achieve greater emissions reductions.

<u>Diesel construction equipment</u>

The MPCA feels strongly that non--road, heavy-duty diesel construction equipment should be included as an eligible mitigation category. Older off-road diesel equipment typically produces far more NO_X per hour of operation than do on-road trucks. The MPCA suggests the CD adopt guidelines for repowering and retrofitting these engines that are similar to those outlined in DERA, but without the equipment-type lower limits on model year that restrict funding work on older equipment. In Minnesota, many construction companies continue to keep non-road construction equipment in active service for far longer than DERA guidelines allow for funding. Repowering these old and dirty pieces of equipment would have significant impacts to improve air quality.

Eligible heavy-duty trucks

The CD should allow funding for model years 2007-2009 of Class 4 through 8 vehicles and both long-haul and local trucks.

The most recent NO_X emissions control requirements for heavy-duty trucks came into effect in 2010, so model years prior to that should be eligible for funding. The MPCA, in implementing diesel engine retrofit and replacement programs in the past, has found that owners of older trucks typically want entirely new trucks, rather than a new or retrofitted engine because the rest of the truck is worn down, making it more difficult to find cost-effective partnerships for older vehicles. It is more cost-effective to retrofit 2007-2009 trucks than to replace very old models via the purchase of entirely new trucks, while still achieving significant emissions benefits. Additionally, due to many years of diesel emissions reduction efforts, there are fewer and fewer pre-2007 vehicles still on the road. For a program that is intended to last a decade or more, the pool of eligible trucks older than 2007 will just continue to shrink. Significant NO_X emissions reductions can be achieved by also including model year 2007-2009 trucks.

Long-haul trucks should also be eligible for funding, not just drayage and local freight trucks. Many large highways cut through vulnerable urban communities with high concentrations of poverty and people of color. Reducing emissions from all vehicles passing through these areas is critical, and allowing funding for retrofitting and repowering a wider range of trucks will provide more opportunities to help the communities most impacted by the alleged vehicle violations.

Ferries/tugs

The MPCA strongly recommends that the CD explicitly define the category of "ferries/tugs" to include river barge tow- and tug-boats, other port support equipment, and large passenger river cruise boats. In Minnesota, these boats operate in heavily-populated areas, such as St. Paul, and emit large amounts of NO_X and other harmful pollutants.

Ocean-going vessels (OGV) shorepower

The MPCA recommends that the CD make Trust Funds available for shorepower for vessels that operate on the Great Lakes, and not limit the Trust Funds only to ocean-going vessels. The vessels that operate on the Great Lakes include a mix of ocean-going vessels and vessels that operate only within the Great Lakes system. In Great Lakes ports such as Duluth, significant emissions reductions could be achieved in populated areas by improving shorepower systems. Data from the Lake Michigan Air Directors Consortium shows that freighters and other boats on the Great Lakes have significant air quality impacts. Allowing these vessels to power down and use a cleaner energy source while at berth could have significant air quality impacts in port cities.

Truck stop electrification and idle reduction

Trust Funds should be available for projects that reduce idling of vehicles, especially heavy-duty trucks and buses. Truck stop electrification can provide a way for trucks to avoid idling for long periods or "hoteling." Programs that require vehicles such as heavy-duty trucks and buses to turn off their engines while not moving for long periods can have a big impact on reducing exposure of employees, school children, and neighbors to harmful pollution. These programs are considered to be one of the most cost-effective means of reducing emissions.

Outreach and training

Trust Funds should be made available for projects that provide outreach and training related to diesel efforts, not just for zero emission vehicle (ZEV) work. For instance, outreach and education efforts designed to educate technical college students studying vehicle repair, mechanics, and fleet managers on the economic-, environmental-, and health-related costs of vehicle emissions tampering and how to detect such tampering in vehicles they work with. Vehicle tampering is a significant concern that can result in large, unaccounted-for emissions, especially in states without Clean Air Act-mandated vehicle inspection programs.

Open-ended category

The MPCA also recommends that the list of Eligible Mitigation Actions include an additional, more open-ended category that would provide flexibility and creativity to fund unlisted Mitigation Actions based on the Trustee's approval of a request by the Beneficiary that makes the case for an unlisted action. To receive funding, the Beneficiary should

demonstrate to the Trustee that the project would result in significant, cost-effective NO_x emissions reductions. For instance, some states might find that projects such as funding emissions-control repairs on old cars owned by low-income households or projects to address a wider variety of boats would have a significant impact on air quality in their particular context. Since the program established under the proposed CD could last for 15 years, such a category would ensure that there is a mechanism for keeping mitigation options current.

Appendix C, Zero emission vehicle (ZEV) commitment

ZEV use in place of gas-powered vehicles is important for reducing NO_x emissions. It is appropriate that the CD provides significant funding for ZEV education and infrastructure. The CD should provide additional direction on the National ZEV Investment Plan (Plan) to ensure that it truly directs funds in a way that will reduce emissions and provide a significant boost to the wide-spread use of ZEVs. The following comments are intended to strengthen the impact of the Plan.

Equitable investment

MPCA concurs with the CD requirement that states, municipal governments, and tribes must be given the opportunity to provide input on the development of the National ZEV Investment Plan. This outreach is critical, as state, local, and tribal governments are best positioned to understand the needs of their communities, while the national scope of the Plan will allow for a systematic approach to developing ZEV infrastructure. The broad outreach should be followed by an equitable opportunity for allowing all interested states, municipal governments, and tribes to obtain investment in ZEV infrastructure, brand-neutral education or public outreach, and ZEV car sharing services. Wide-spread investment will be critical in the effort to scale-up ZEV use across the country.

National perspective

The Plan should take a national perspective that considers building charging routes that allow for ZEV travel between states and throughout regions.

Current and future technology

The Plan development should specify use of the most recent technology for optimal charging speed and standards that allow all makes and models of ZEVs to utilize the charging services. It should also be flexible enough to incorporate future technologies, as ZEV technology is constantly changing and improving.

Renewable energy

The CD defines "zero emitting vehicles" as vehicles that have zero tailpipe emissions. To be truly "zero-emissions" a vehicle should be charged using renewable energy (e.g. wind, solar, and hydro). The CD should direct the Plan to prioritize the role-out of charging technology that relies on renewable energy to optimize the benefits of the electric vehicle technology. Additionally, related ancillary technology, such as charging stations that use battery storage to optimize renewable energy use, should be listed as considerations in selecting projects.

Program administration

Several areas of program administration should be further clarified in the final consent decree.

Appendix D, Section 4.1, Beneficiary Mitigation Plan

The CD requires that each beneficiary must submit a "Beneficiary Mitigation Plan" within 30 days of being deemed a beneficiary. This plan would require a detailed summary of what the beneficiary intends to do with the Trust Funds. The MPCA recommends that the 30 day period be extended to at least 60 days to provide sufficient time for developing the document and potential stakeholder engagement in its development.

Appendix D, Section 5.3, Beneficiary reporting obligations

The CD should provide greater detail on the record-keeping and reporting obligations of Beneficiaries so that states are aware of the data requirements prior to applying to become a Beneficiary.

Appendix D-2, Pages 10 and 19

The CD should define "sub-recipient" (D-2, page 10) and "sub-beneficiary" (D-2, page 19) and clarify its role. The CD should allow, when appropriate and cost-effective, for Beneficiaries to contract with third-party "sub-beneficiaries" to help distribute funding.

Timelines

A clear and concise timeline of all deadlines should be provided to clarify the dates for the various parts of the CD that are currently scattered throughout the proposal.

Reimbursement guidelines

For each of the nine categories of Eligible Mitigation Actions, the CD identifies a percentage of the cost of the project that may be used from Trust Funds, generally ranging from 25 percent to 75 percent of the total cost. The MPCA recommends that the final CD should clarify that Trust Funds may be used *up to* those percentages, so that states have the discretion to offer lower matches if partners are willing and able to pay a larger percentage of the cost of the project.

Typographical errors

The Trust Administration Costs listed in Appendix D, Parts 2.2.1 and 3.6 have been accidentally left blank and should be filled in appropriately.

Other considerations

As mentioned previously, high-traffic corridors often cut through communities of color and low income and MPCA research shows elevated concentrations of harmful pollutants in areas within 300 meters of busy highways. These communities are also often disproportionately burdened with multiple sources of air pollution and other social and environmental stressors. To address these disparities, states could be allowed the flexibility to use Trust Funds on targeted stationary source projects in overburdened communities surrounding high-traffic corridors. Such projects might include replacing or repowering backup generators at hospitals and other facilities in communities of environmental justice concern near highways. These projects would allow states to address NO_X emissions in specific communities of concern.

STATE OF MISSOURI
Jeremiah W. (Jay) Nixon, Governor • Sara Parker Pauley, Director
DEPARTMENT OF NATURAL RESOURCES
www.dnr.mo.gov

AUG 4 2016

Assistant Attorney General
U.S. DOJ—ENRD
P.O. Box 7611
Washington D.C. 20044–7611.

Re: Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation, Case No: MDL No. 2672 CRB (JSC), and D.J. Ref. No. 90–5–2–1–11386.

The purpose of this letter is to provide comments on the following Federal Register action:

Notice of Lodging of Proposed Partial Consent Decree Under the Clean Air Act (Federal Register, July 6, 2016, Notices, Volume 81, Pages 44051-44052)

The Missouri Department of Natural Resources (department) appreciates the opportunity to comment on the proposed Volkswagen partial consent decree and respectfully provides the following comments for consideration during the development of the final consent decree.

The department's comments are focused on Appendix D-2 of the proposed partial consent decree *Eligible Mitigation Actions and Mitigation Action Expenditures*. The department has a long history of implementing projects in Missouri using funds made available through the Diesel Emissions Reduction Act (DERA). In general, the department supports all of the eligible mitigation actions included in Appendix D-2 of the proposed partial consent decree. The department's comments on the eligible mitigation actions and expenditures are listed below.

Support for Allowing the Mitigation Trust Fund as State Match Under DERA

The department supports the proposed consent decree's specification that beneficiaries may use Trust Funds for their non-federal match or overmatch pursuant to Title VII, Subtitle G, Section 793 of the DERA Program in the Energy Policy Act of 2005 (codified at 42 U.S.C. 16133). In the past two years, the department was unable to commit to a non-federal match under the State DERA Program and thus unable to take advantage of the federal bonus funding available for states willing and able to provide the match. Therefore, the department supports the language in the proposed consent decree that will allow the use of the mitigation trust fund to provide this non-federal match, which will enable the state to increase the eligible amount of federal DERA funding available in the state.

Suggest Inclusion of Additional Eligible Projects (Idle Reduction Technology and Alternative Fuel Infrastructure)

Under DERA, on-road diesel vehicle idle reduction technology is not considered an eligible technology unless it is bundled on the same vehicle along with a tailpipe emission control technology. In addition, the proposed partial consent decree does not list stand-alone idle reduction technology for on-road diesel vehicles as an eligible mitigation project. However, reducing on-road diesel vehicle idling is both an attractive and cost effective way to reduce Nitrogen Oxide (NO_x) emissions from the transportation sector. The department supports inclusion of stand-alone idle reduction technology as an eligible project in the final consent decree. Potential funding levels for government and non-government owned vehicles are listed below.

- 25% - 40% funding for non-government owned on-road vehicle idle reduction technology without a requirement for bundling emission control technology,
- 50% - 100% funding for government owned on-road vehicle idle reduction technology without a requirement for bundling emission control technology

Another type of project that is not considered eligible under DERA or the proposed consent decree is refueling infrastructure for alternative fuels such as compressed natural gas (CNG), or propane. In Missouri, there are numerous fleets, both in the public and private sector, that have already switched, or are interested in switching, their diesel fleets to run on such alternative fuels. The department supports the inclusion of such refueling infrastructure projects as an eligible mitigation action in the final consent decree with appropriate funding levels for both government and non-government owned fleets.

Suggest Improvements and Clarification to the Scrappage Requirements

The proposed partial consent decree lists specific scrappage requirements in Appendix D-2, when referring to engine repower projects and early vehicle replacement projects. Specifically, the proposed consent decree requires that at a minimum a 3-inch hole must be cut in the engine block of a replaced engine and that if a vehicle is being replaced that the chassis must be cut in half. The department supports appropriate scrappage requirements that ensure true emission reductions are achieved through the mitigation actions pursued through the consent decree. For engine repowers (where an engine is uninstalled and replaced with a new engine meeting more stringent emission standards), a requirement for a 3-inch hole makes sense because the old engine will be uninstalled which makes cutting the hole a relatively simple task. However, specifically for on-road vehicle replacements (where the participating fleet may elect to retain possession of a disabled vehicle to salvage non-engine and non-chassis parts), a 1-inch hole is sufficient for engine scrappage. Requiring a 3-inch diameter hole could add labor costs to the

project as it may require first uninstalling the engine, where a 1-inch hole would not. The department also recommends listing an acceptable scrappage option to crush the engine and chassis in lieu of cutting a hole in the block and cutting the chassis in half (vehicle and engine crushing is often performed by numerous scrap yards through the use of large material handlers).

Suggested Clarification to Funding Level Percentages of Eligible Mitigation Actions

The proposed consent decree lists percentages of project costs that can be covered by the mitigation trust fund. The department suggests clarifying these are the maximum percentages that can be covered by the trust fund, and that states have the option of requiring fleets benefitting from the projects to cover higher matching percentages.

The Missouri Department of Natural Resources appreciates the opportunity to comment on the proposed Volkswagen partial consent decree. Should the attorney general require further information on this matter, please contact Mr. Richard Swartz, Compliance Enforcement Section Chief, richard.swartz@dnr.mo.gov, or Ms. Darcy Bybee, Air Quality Planning Section Chief, darcy.bybee@dnr.mo.gov, with the department's Air Pollution Control Program, P.O. Box 176, Jefferson City, MO 65102-0176, or by telephone at (573) 751-4817.

Sincerely,

AIR POLLUTION CONTROL PROGRAM

Kyra L Moore

Kyra L. Moore
Director

KLM:mlc

c: Leanne Tippett Mosby, Director, Division of Environmental Quality

DEQ
Montana Department
of Environmental Quality

August 5, 2016

U.S. Department of Justice

Assistant Attorney General, Environment and Natural Resources Division

Re: Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation

Case No: MDL No. 2672 CRB (JSC) and D.J. Ref. No. 90-5-2-1-11386

Via e-mail only at: pubcomment-ees.enrd@usdoj.gov

The Energy Bureau at the Montana Department of Environmental Quality appreciates the opportunity to comment on the Partial Consent Decree in the case of Volkswagen "Clean Diesel" Marketing, Sales Practices and Products Liability Litigation. Our comments focus on the "Eligible Mitigation Actions" under the Environmental Mitigation Trust Agreement that are listed in Appendix D of the Partial Consent Decree.

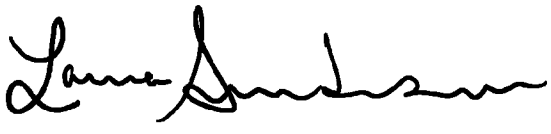
The Montana Department of Environmental Quality (MTDEQ) is requesting that Eligible Beneficiaries of the Environmental Mitigation Trust (States) be given maximum flexibility to spend their allocation funds on actions that reduce NO_X emissions. The current list of "Eligible Mitigation Actions" covers replacement and repowering of diesel vehicles with alternative fuels or electric–powered vehicles. MTDEQ plans to use most of Montana's $11.6 million initial allocation on actions that reduce NO_X emissions from diesel and gasoline engines.

Providing more flexibility may allow Montana and other states to maximize NO_X emission reductions from other sources, including stationary sources. For example, the MTDEQ has a well-established Alternative Energy Revolving Loan Program (AERLP) that has successfully funded residential, non-profit, local government and commercial energy efficiency and renewable energy projects across the state since 2001. The AERLP is funded by air quality penalty violations from stationary sources but can accept funds from other sources as well. Eligible renewable energy and energy efficiency projects funded by the AERLP help mitigate pollutants emitted in Montana from stationary sources, including NO_X. Providing for more flexibility by allowing any actions that reduce NO_X emissions would allow Montana to use a portion of the funding for a well-established and popular program that achieves the goal of reducing NO_X emissions. MTDEQ would ensure that only renewable energy and energy efficiency projects that reduce NO_X would qualify for funding from Montana's allocation of the Environmental Mitigation Trust. The MTDEQ would use a separate funding code to track projects under the AERLP that receive funding from Montana's allocation of the Environmental Mitigation Trust as part of this settlement. The separate funding code

would allow us to track NO_X emissions reductions attributable to funds from this settlement.

Additionally, MTDEQ recommends that there be more flexibility for use of allocated funds from this settlement towards state planning efforts related to electric vehicles and electric vehicle supply equipment (charging stations). Many rural states, including Montana, have very low market penetration of electric vehicles and therefore few installed charging stations. Allowing states to fund planning and marketing efforts for electric vehicle deployment will help ensure that distribution of these funds is coordinated and effective.

Thank you for the opportunity to provide comments on this important matter.



Laura Rennick Andersen
Chief, Energy Bureau (Montana Energy Office)
Montana Department of Environmental Quality

Moving Forward Network

John C. Cruden
Assistant Attorney General, Environment and Natural Resources Division
U.S. DOJ—ENRD
P.O. Box 7611
Washington, D.C. 20044-7611
In re: Volkswagen``Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation, Case No: MDL No. 2672 CRB (JSC), and D.J. Ref. No. 90-5-2-1-11386.

Via Email: pubcomment-ees.enrd@usdoj.gov

August 5, 2016

Dear Mr. Cruden,

Thank you for the opportunity to provide comments on the VW Consent Decree. These comments are submitted on behalf of the Moving Forward Network (the "Network"). The Network is a national coalition of over 44 member organizations including community-based groups, labor, national environmental organizations, and academic institutions, in over 20 major U.S. cities. The Network represents over 2 million members, and is committed to reducing the public health harms created by our country's freight transportation system. Network members live in and work directly with environmental justice communities, and advocate for the use of zero emissions technology to reduce emissions from the freight operations, including from ports, railyards, distribution centers, busy truck corridors.

Below, we provide recommendations to strengthen the ZEV Investment Plans described in Appendix C and the Environmental Mitigation Trust described in Appendix D.

1. **The National ZEV Investment Plan should be permitted to include zero emission freight transportation projects.**

The Network strongly supports investments in ZEV infrastructure, and especially with respect to investments that will support the use of ZE vehicles and equipment that operate in the freight transportation sector. Tens of millions of Americans live near our country's ports, railyards, distribution centers, and heavily-traveled truck corridors. These individuals—often low-income and persons of color—shoulder a disproportionate share of health harms from polluting trucks, ships, and trains, including increased risk of premature death, and aggravated respiratory diseases such as asthma. Investments in ZEV infrastructure throughout the nation will greatly benefit the health of these individuals. Accordingly, while we support the provision in Appendix C that enables investments in "zero emission freight transportation projects" in California, we strongly urge that such projects be deemed eligible for funding in other states as well through the National ZEV Investment Plan. Given the

geographic scope, nature, and impacts of our nation's freight transportation system, there is no reason to limit ZEV freight infrastructure investments to California.

2. **The cost of zero emissions technologies should be subsidized at 100% regardless of ownership.**

As noted, the Network strongly supports the use of zero emission technologies as a solution for eliminating toxic diesel exhaust from freight operations. Given the air quality, health, and climate benefits of all-electric vehicles and equipment, and the need to create a strong demand for such technologies, we support trust expenditures that will cover 100% of the cost of upgrading vehicles/equipment with all-electric engines regardless of whether the beneficiary is a government or non-government entity.

3. **The list of Eligible Mitigation Actions and Mitigation Expenditures in Appendix D should be broadened.**

While the list of actions eligible for funding in Appendix D-2 is a good start, it unnecessarily leaves out projects that could make a meaningful difference in communities impacted by NOx. Thus, while we support the actions in Appendix D-2 such as truck engine upgrades and shorepower, we recommend broadening the list of actions eligible for funding to include:

- Emissions capture technology for ships, which the California Air Resources Board recently approved as an alternative to shorepower;
- Control technologies for locomotives, including emissions capture systems; and
- Overhead catenary system for heavy duty trucks.

Broadening the list of eligible actions will provide flexibility as beneficiaries seek to match mitigation projects with a region's emissions reductions needs.

4. **A public process should be devised to allow for input on the ZEV Investment Plans, Beneficiary Mitigation Plans, and funding requests before they are approved.**

The public must have an opportunity to shape the specific content of the ZEV Investment Plans, Beneficiary Mitigation Plans, and funding requests. Indeed, the specific projects worthy of funding and at what amounts will vary by state by state. The consent decree should devise a fair, equitable, and transparent process that requires state and federal agencies to obtain input from the public before expenditures are approved. Public engagement on these critical investments should not be left to chance or result in disparate processes throughout the country. Robust public input will promote informed decision making, and ultimately, better investments.

5. **The environmental and health benefits of the expenditures made under Appendix C and D should be assessed and publicly reported.**

The Consent Decree does not appear to require any reporting of the environmental and health benefits achieved through the ZEV Investment Plans and Environmental Mitigation Trust. We request that an

assessment of such benefits be performed for each individual action funded under Appendix C and D, as well as an assessment of the cumulative benefit of these actions. This assessment should be available on a public-facing website. Such reporting will enhance transparency and accountability for the expenditures made under the consent decree, and increase public information about the value of different ZE investments.

Thank you for considering our comments. If you have any questions, feel free to contact Angelo Logan, at alogan@oxy.edu or (323) 259-2759.

Sincerely,

Angelo Logan
Campaign Director
Moving Forward Network

NAFA Fleet Management Association

Fleet Solutions for Fleet Professionals

August 5, 2016

John Cruden
Assistant Attorney General
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611

Re: Volkswagen ``Clean Diesel'' Marketing, Sales Practices, and Products Liability Litigation, Case No: MDL No. 2672 CRB (JSC), and D.J. Ref. No. 90-5-2- 1-11386.

Dear Assistant Attorney General Cruden:

I am writing on behalf of NAFA Fleet Management Association regarding the June 2016 partial Volkswagen Consent decree. This letter specifically addresses the requirement that Volkswagen establishes and funds a $2.7 billion environmental mitigation trust. The purpose of the mitigation trust fund (MTF) is to fund eligible mitigation actions that replace diesel emission sources with cleaner technology to reduce excess emissions of oxides of nitrogen (NOx) caused by the violating 2.0-liter cars.

NAFA is the association for the vehicle fleet management profession. NAFA's Full and Associate Members are responsible for the specification, acquisition, maintenance and repair, fueling, risk management, and remarketing of more than 3.7 million vehicles. NAFA's Members manage fleets for corporations covering a wide range of manufacturing and service organizations, governments (whether local, state and/or federal), and public service entities (public safety, law enforcement, educational institutions, utilities, etc.); still other Members serve financial institutions, insurance companies, non-profit organizations, and the like.

Comments

NAFA respectfully suggests the following changes in the administration of the MTF to make a more significant contribution toward achieving the principal goal of the Decree, additional NOx emissions reduction to mitigate the adverse effect on the environment associated with the VW's use of defeat technology.

Fleet Sustainability: NAFA feels strongly that the proposed settlement with Volkswagen offers the opportunity to do more than just promote the purchase of energy-saving, emissions-reducing vehicles and equipment. There are obvious and significant practical difficulties in ensuring that such a large sum of money is distributed not only equitably but in a manner that maximizes its *incremental* benefits to the environment – that is, avoids substituting settlement funds for money that organizations would have spent on fleet sustainability improvements anyway. Perhaps more importantly, spending more than $2 billion on vehicles whose life

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expectancy in most cases is no more than a decade and whose technology is rapidly evolving means that much of the benefit of such spending will dissipate relatively quickly.

NAFA urges the settlement negotiators to take a more expansive and holistic view of how best to reduce both the immediate and long-term impacts of motor vehicles on the environment and to broaden the allowable mitigation actions and uses of settlement funds accordingly. Replacing or repowering conventionally fueled vehicles with alternative fuel vehicles, including electric and natural gas, is but one of many strategies for which these funds should be made available. There are a host of other vehicle management activities which we believe collectively have a far greater impact on a vehicle fleet's environmental impacts, including NOx emissions. These include vehicle allocation, vehicle right typing (selecting the right vehicle for the job), vehicle utilization management (routing, scheduling, dispatching, ridesharing, etc.), vehicle operator management (e.g., driver training), vehicle maintenance and repair, vehicle fueling, and vehicle replacement. In all too many organizations, the allure of new automotive technology detracts attention from the profound environmental benefits of continually improving the performance of these core vehicle management activities.

We recognize that the eligible Mitigation Action Expenditures would permit the use of Mitigation Trust Fund monies for things like evaluation and consulting services, but the clear intent of the proposed settlement is to encourage the purchase of vehicles and related technology. NAFA believes that permitting beneficiaries to earmark 10 to 20 percent of the proposed settlement amount for grants for research, education, and other information dissemination and professional development activities could significantly advance the effectiveness with which organizations manage vehicle energy consumption and associated environmental impacts. Long-term improvements in core vehicle management practices could leverage just a small portion of the settlement funds to produce environmental benefits that will last well beyond one or two vehicle and technology purchasing cycles.

Cost Effectiveness: NOx cost effectiveness should be a primary factor used by beneficiaries when awarding funds among competitive bidders. The mitigation funding should be used to reduce NOx as cost-effectively as possible, without regard to the technology used, using a cost-effectiveness analysis to determine the amount of the subsidy. To maintain neutrality, a consistent subsidy as a percentage of total cost should be applied to all technology options. While we do not disagree with using funds to assist in commercializing new technologies, the lowest cost NOx mitigation will be diesel fleet modernization.

According to data provided by the Federal Highway Administration (FHWA), idle reduction curtails heavy-duty diesel engine idling, while heavy-duty vehicle diesel engine replacements address the inefficiencies of older diesel vehicles. According to FHWA, median costs of these practices are all under $20,000 per ton. By comparison, electric vehicle charging stations achieve a median cost effectiveness of $1.5 million per ton.[1]

[1] http://www.fhwa.dot.gov/environment/air_quality/cmaq/reference/cost_effectiveness_tables/

Funding should be Technology Neutral: To achieve a higher level of NOx emissions reduction, Appendix D should be modified so that the percentage subsidy levels are the same across all technologies. As presently drafted, the proposed Decree provides a different percentage subsidy for different types of technology. For example, the purchase of a replacement for a class 4-8 school bus model 2006 and older could include a new diesel that is eligible for a 25% subsidy or an all-electric vehicle is eligible 75% subsidy. Because all-electric vehicles are three to four times more expensive the diesel vehicles and the NOx emission reduction is approximately the same, the cost per ton of NOx reduction on an all-electric vehicle is far higher than it is for a clean diesel vehicle This means that for any given level of total funding available to fund vehicle replacement, far less NOx reduction will be achieved with investment in all-electric vehicles than would be achieved with investment in clean diesel vehicles.

Funding for Public and Private Fleets: We concur with providing a higher subsidy for acquisitions by government fleets, but recommend that the subsidy for private fleets be increased, as well. For many years, capital expenditure budgets of numerous fleets have been severely constrained, delaying vehicle and engine replacements. Many government fleets have extreme difficulties basing their purchase decisions on total cost of ownership life cycle cost and few are able to obtain the federal tax credits readily available to private fleets and/or finance a debt or lease obligation over multiple fiscal years to help absorb the higher up front equipment purchase costs of alternative fuel and advanced technology vehicles. Therefore, up front financial assistance helps government fleets provide justification to policy makers and elected officials to prioritize the increased public investment in lower emission vehicles and engines.

Some public institutions, school districts being one, have been chronically underfunded. This has been occurring at the same time that government fleets have been mandated to increase acquisitions of advanced technology vehicles. Since children, seniors and the infirm are the most susceptible to health issues related to exposure to diesel exhaust, institutions that provide transportation for those individuals should receive a higher level of funding. The mitigation fund will enable government fleets to replace older vehicles and engines on an expedited time schedule. We support the language in the Decree that would treat private school bus companies under contract with local school districts the same as government entities and suggest that other private companies under contract to governmental entities to be treated the same as well.

***

Thank you for your consideration of these comments.

Sincerely,

Phillip E. Russo

Phillip E. Russo, CAE
Chief Executive Officer

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NACAA
national association of clean air agencies

August 2, 2016

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In Re: Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation, Case No: MDL No. 2672 CRB (JSC), and D.J. Ref. No. 90-5-2-1-11386

Dear Sir/Madam:

The National Association of Clean Air Agencies (NACAA) appreciates this opportunity to comment on the *Notice of Lodging of Proposed Partial Consent Decree Under the Clean Air Act*, which was published in the *Federal Register* on July 6, 2016 (81 Fed. Reg. 44,051). The notice pertains to the proposed partial Consent Decree (CD) 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 Product Liability Litigation*, Case No: MDL No. 2672 CRB (JSC), and D.J. Ref. No. 90-5-2-1-11386. NACAA is a national, non-partisan, non-profit association of air pollution control agencies in 41 states, the District of Columbia, four territories and 116 metropolitan areas. The air quality professionals in our member agencies have vast experience dedicated to improving air quality in the United States. These comments are based upon that experience. The views expressed in these comments do not necessarily represent the positions of every state and local air pollution control agency in the country.

Volkswagen AG, Volkswagen Group of America, Inc., Volkswagen Group of America Chattanooga Operations, LLC, and Audi AG (collectively, VW) allegedly violated federal and state laws and regulations by purposely, and over a sustained period of time, employing prohibited defeat devices that resulted in excess emissions of nitrogen oxide (NO_x). It is estimated that, across the country, 500,000 model year 2009 to 2015 motor vehicles containing 2.0 liter diesel engines were affected by the scandal.

The excess NO_x emissions that have resulted from VW's alleged violations contribute to ozone (smog), particle pollution, haze, toxic air pollution, global warming, acid rain and the eutrophication of water bodies. NO_x emissions

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are linked with a large number of adverse impacts on the respiratory system, as well as with the many ill effects associated with all of the pollution problems to which they contribute, including premature death.

The members of NACAA are responsible under the Clean Air Act for preventing and controlling air pollution, including developing plans for meeting the National Ambient Air Quality Standards for NO_2 (the indicator for the larger group of NO_x), as well as for ozone and particulate matter, both of which can be created as a result of NO_x emissions. As such, we are very troubled by VW's alleged violations because they directly interfere with our agencies' efforts to protect the public's health and welfare.

Accordingly, we applaud the United States Department of Justice (DOJ) for taking these alleged violations very seriously, recognizing the associated environmental and public health damage and, through the proposed partial CD – particularly the Environmental Mitigation Trust Agreement – establishing a program that requires VW to, among other things, address and mitigate the environmental harm its alleged actions have caused. Additionally, we are pleased DOJ has incorporated into the proposed CD many of the elements that NACAA called for in its *Recommendations for the Distribution of Funds for Environmental Mitigation and Supplemental Environmental Projects Related to Alleged Volkswagen Violations*, which the members of NACAA adopted on May 17, 2016. (Available at http://www.4cleanair.org/sites/default/files/Documents/NACAA-VW-SEP-Recommendations-5-17-16.pdf).

Based on the fact that state and local air pollution control agencies will share in the responsibility of mitigating the environmental damage and public health harm caused by the violating VW vehicles and focusing on the extensive experience these agencies have in implementing a host of sophisticated and comprehensive air quality programs, the NACAA recommendations called for significant resources resulting from the legal settlement of the VW case to be provided to state and local air pollution control agencies. Funds directed in this way would support activities to ensure that past, present and future excess emissions from VW's alleged violations are mitigated. NACAA is gratified that DOJ has recognized the unique responsibilities and expertise of these agencies and included a significant role for them in the proposed CD, as NACAA recommended.

Given the great importance of this proposed CD and the potential it has for mitigating the substantial environmental harm caused by VW's alleged actions, we offer the following comments and recommendations to improve specific elements of the proposed program. These comments are intended to further refine and strengthen the CD to ensure that it fully meets its intended goals. In light of the many intricacies associated with implementing a program of this magnitude, and to ensure that there is a clear and workable process in place for doing so, we also strongly recommend that prior to entering a final CD, DOJ convene an open, interactive discussion with state and local air pollution control agencies concerning practical administrative and process issues related to the implementation of the Mitigation Trust Fund program. If undertaken immediately and expeditiously, such a discussion should not delay commencement of the program.

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Appendix D – Form of Environmental Mitigation Trust Agreement

Mitigation Trust Beneficiaries (page 10)

In the section entitled "IV. Mitigation Trust Beneficiaries," the proposed CD outlines a process for governmental entities identified in Appendix D-1 to elect to become Beneficiaries of the Trust. Those identified as eligible to become Beneficiaries include the 50 states, Puerto Rico, the District of Columbia and Tribes. NACAA is concerned that the proposed CD does not provide for local air pollution control agencies to receive funds under the Environmental Mitigation Trust Fund and recommends that such a mechanism be added.

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The Clean Air Act states that "air pollution prevention…and air pollution control at its source is the primary responsibility of States and *local* governments" (Section 101[a][3]) (emphasis added). Additionally, when discussing air pollution control agencies, the Act includes states as well as city, county or other local government authorities that are charged with the responsibility for enforcing ordinances or laws related to air pollution (Section 302). Finally, under Section 105 of the Clean Air Act, local air pollution control agencies are eligible to receive federal grants directly, along with the states. NACAA believes it is appropriate, therefore, for the Environmental Mitigation Trust Fund to recognize the important role of local air pollution control agencies and include provisions allowing qualified local agencies to become Beneficiaries and apply directly for a portion of the funds. In order to reduce the administrative

burden on the Trustee, NACAA recommends that a state and the local air agencies within that state work together to the greatest extent possible to collaborate on projects and seek funding.

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The proposed CD provides Beneficiaries with 30 days after being deemed a Beneficiary to submit a Beneficiary Mitigation Plan that summarizes how they plan to use the mitigation funds allotted to them. The plans are expected to include such things as the Beneficiaries' overall goals, the categories of actions that will be appropriate, the percentages of funds to be used for each action, how the benefits on certain overburdened areas will be considered and the expected ranges of emission benefits from the plans. The stated purpose of these plans is to provide the public with information about the Beneficiaries' visions for the use of the funds.

NACAA is concerned that 30 days is too short a time for many agencies to complete and submit such plans. Agencies could be required to follow state- or local-mandated processes for developing and seeking internal approval of their plans, which would necessitate additional time. We recommend additional time be provided.

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Sections (a) and (b) list specific conditions under which a Certifying Entity may not deny registration to any Subject Vehicle. However, Section (d) indicates that the Certifying Entity *may* deny registration under certain conditions. These sections are confusing and it is unclear if they conflict with one another. The CD would benefit from additional explanation and clarification with respect to the conditions under which registration may or may not be denied.

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With respect to the Beneficiary Reporting Obligations, however, we are concerned that the language in the proposal is rather vague. We recommend that a more detailed explanation be provided on what is envisioned with respect to recording and reporting mitigation actions. Among other things, it is important for Beneficiaries to understand in advance what is expected

and in what level of detail in order to accurately estimate future staffing needs and costs for these tasks.

Joint Application (page 18)

NACAA is pleased that the proposed CD includes an option for multiple Beneficiaries to submit a joint request for funds. Air pollution does not respect political boundaries and often multi-jurisdictional approaches are most effective and efficient in ameliorating local and regional air pollution problems. We applaud this provision, which allows for additional flexibility and creativity in designing mitigation efforts.

Appendix D-2 – Eligible Mitigation Actions and Mitigation Action Expenditures

NACAA appreciates the inclusion in Appendix D-2 of the proposed CD of a list of Eligible Mitigation Actions from which Beneficiaries may choose (pp. 1-9), all of which have the potential to yield significant NO_x emissions reductions and benefit public health and the environment in many areas of the country. We are also very pleased that the proposed CD recognizes the need to allow Beneficiaries to use a portion of their allotted Trust Funds for actual administrative expenditures associated with implementation of any Eligible Mitigation Actions. We believe, however, that both of these provisions would benefit from additional flexibility and/or clarification and offer the following comments in this regard.

With respect to Eligible Mitigation Actions, NACAA agrees with the inclusion of each of the nine distinct categories listed but believes this list is too narrow. Accordingly, we recommend that it be expanded to allow funds, with no cap, to be used for projects to address specific additional sources or projects to ensure that states are able to direct their allocation toward the NO_x reduction programs best suited to their circumstances. We urge that the enumerated Eligible Mitigation Actions also include nonroad equipment and vehicles, such as those used for construction, agriculture, mining and other heavy industrial applications—which can remain in service for many years and produce far more NO_x than onroad trucks per hour of operation—as well as truck-stop electrification, cargo-handling equipment and yard trucks. As with the already-listed actions, projects for these additional actions should continue to support as many alternative fuel options as possible. We further recommend that vehicle retrofits be included as Eligible Mitigation Actions, consistent with their inclusion under the Diesel Emission Reduction Act program.

NACAA also recommends that the list of Eligible Mitigation Actions be further augmented with an additional, more open-ended category that would provide flexibility and creativity to fund unlisted Mitigation Actions based on the Trustee's approval of a request by the Beneficiary that makes the case for an unlisted action that effectively reduces NO_x emissions. Since the program established under the proposed CD could extend for 15 years, such a category would ensure that there is a mechanism for keeping mitigation options current. It would also allow Beneficiaries to request approval for unlisted actions that would achieve significant NO_x reductions in a cost-effective way in their particular jurisdictions (with the understanding that cost effectiveness varies from area to area) and/or address the particular circumstances of an area.

The Eligible Mitigation Actions listed in the proposed CD also include the "Diesel Emission Reduction Act (DERA) Option," (p. 9) under which Beneficiaries may direct Trust Funds to their DERA non-federal match or overmatch, including for projects not specifically listed as Eligible Mitigation Actions but eligible under DERA. While NACAA appreciates the effort to make a connection to the highly successful DERA program, we have a concern with this option. Given that DERA is a program subject to Congressional authorization and appropriation, there is no guarantee it will endure throughout the lifetime of the CD program. Therefore, key DERA-eligible projects must also be specifically enumerated in the CD as Eligible Mitigation Actions (which we have recommended and elaborated on above).

For each of the nine distinct categories of Eligible Mitigation Actions, the proposed CD identifies, in terms of percent of cost, how much may be drawn from Trust Funds for projects involving non-government-owned vehicles or equipment, generally ranging from 25 percent to 75 percent of the cost (for government-owned vehicles and equipment, 100 percent of costs may be covered). We request clarification of how these proposed levels of cost coverage were determined and recommend that a mechanism be included for allowing a higher percentage to be covered. We also recommend that for Eligible Mitigation Actions 1 (large trucks), 2 (buses) and 6 (medium trucks) in particular, funding for repowering and replacing non-government-owned vehicles explicitly be allowed at a higher percentage if ultra-low-NO_x engines or vehicles are used. Specifically, we recommend that in each of these three categories, the term "All-Electric" be replaced with "Advanced Technology" and that the following definition of "Advanced Technology" be added: "Advanced Technology shall mean All-Electric vehicles and engines, vehicles and engines meeting a 0.02-grams-NO_x-per-brake-horsepower-hour standard or such other technology as determined by the Trustee."

NACAA commends the inclusion of Light Duty Zero Emission Vehicle Supply Equipment (p. 8) among the Eligible Mitigation Actions. However, we are concerned that capping at 15 percent the amount of Trust Funds that a Beneficiary can spend on this item is too restrictive and urge that this cap be lifted.

Understanding mobile source emissions and their impacts on air quality is critical to guiding effective NO_x emission mitigation actions. Accordingly, NACAA recommends that Beneficiaries be allowed to use a portion of their allotted Trust Funds to conduct air quality analyses that will inform their selection of mitigation actions. Such analyses should include, among others, emission inventories, air quality modeling (including improving the quality of input data) and monitoring trend analyses.

In addition, we recommend that the parameters of several of the Eligible Mitigation Actions included in the proposed CD be clarified or expanded:

1) Expand the definition of "Class 8 Local Freight Trucks" (p. 11) to include not only tractor trucks, as stated, but also straight trucks. Given the examples provided in the definition of this term (waste haulers, concrete trucks, dump trucks) it appears the intention is to include both, which NACAA supports. The following definition would accomplish this: "Class 8 Local Freight, and Port Drayage Trucks (Eligible Large

Trucks)' shall mean trucks with a Gross Vehicle Weight Rating (GVWR) greater than 33,000 lbs used for port drayage and/or freight cargo delivery (including waste haulers, dump trucks, concrete mixers)."

2) Make long-haul trucks, in addition to local trucks, eligible for funding for mitigation actions.
3) Expand the model year (MY) ranges for all eligible truck categories. In 10 years, when Beneficiaries will be required to show they have spent 80 percent of their respective allocation, MY 2006 trucks will be more than 20 years old and likely already replaced.
4) Identify vehicles by the MY of the engine rather than the MY of the vehicle, since the two do not necessarily correspond to one another. Identifying a replacement by the MY of the vehicle could allow for a newer vehicle equipped with an older, dirtier engine.
5) Extend provisions allowing companies that contract with a government entity to take advantage of the 100-percent government cost sharing. Under the School and Transit Bus project category (pp. 3-4), school bus companies that contract with a government entity are considered government entities for the purpose of taking advantage of the 100-percent government cost sharing. We recommend that this provision be extended to the Class 4-7 and Class 8 local freight truck categories, which would allow replacement or repowering of vehicles (e.g., waste haulers) that belong to a company that contracts with a municipality to be funded at 100 percent. Similarly, repowering or replacement of emergency vehicles (e.g., ambulances, fire trucks) for which a municipality contracts with a private company should also be eligible for funding at 100 percent.
6) Define Tugs/Ferries such that the term includes river barge towboats or tugs and large diesel-powered river cruise boats.
7) Expand eligibility under "Ocean Going Vessels (OGV) Shorepower" to also apply to vessels that operate within the Great Lakes system.
8) Expand the definition of "Zero Emission Vehicle" (p. 12) by adding at the end of the current definition "or other vehicles that demonstrate comparable emissions benefits."

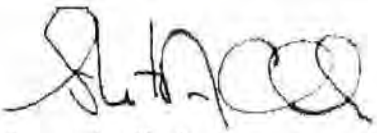
As stated above, NACAA strongly supports the inclusion of provisions to allow Beneficiaries to use up to 10 percent of their Trust Funds for actual administrative expenses related to the implementation of Eligible Mitigation Actions (p. 10). It is unclear whether indirect costs (based on a federally approved indirect rate) are eligible expenditures; if they currently are not, we recommend that they be made eligible in the final CD. In addition, we recommend that a mechanism be included to allow a higher overall administrative rate than 10 percent if the Beneficiary can demonstrate that a project has unusually high administrative needs. Finally, we believe additional guidance is necessary to explain and clarify eligible administrative expenses.

Conclusion

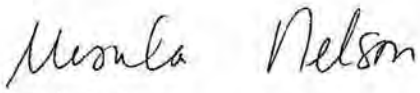
Once again, we commend DOJ for reaching this proposed settlement to address the environmental impacts of VW's egregious alleged violations. We thank you for this opportunity to comment on the *Notice of Lodging of Proposed Partial Consent Decree Under the Clean Air*

Act, related to *Volkswagen "Clean Diesel" Marketing, Sales Practices, and Product Liability Litigation*, Case No: MDL No. 2672 CRB (JSC), and D.J. Ref. No. 90-5-2-1-11386 and we strongly urge that DOJ provide full consideration to NACAA's recommendations. We look forward to discussing the details of the program with you further as you develop the final CD. If you have any questions or require additional information, please do not hesitate to contact Mary Sullivan Douglas or Nancy Kruger of NACAA at mdouglas@4cleanair.org or nkruger@4cleanair.org, respectively, or (202) 624-7864.

Sincerely,



Stuart A. Clark
Washington
Co-President of NACAA



Ursula Nelson
Tucson, Arizona
Co-President of NACAA

NACAA
national association of clean air agencies

August 2, 2016

Assistant Attorney General
Environment and Natural Resources Division
United States Department of Justice
U.S. DOJ – ENRD
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In Re: Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation, Case No: MDL No. 2672 CRB (JSC), and D.J. Ref. No. 90-5-2-1-11386

Dear Sir/Madam:

The National Association of Clean Air Agencies (NACAA) appreciates this opportunity to comment on the *Notice of Lodging of Proposed Partial Consent Decree Under the Clean Air Act*, which was published in the *Federal Register* on July 6, 2016 (81 Fed. Reg. 44,051). The notice pertains to the proposed partial Consent Decree (CD) 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 Product Liability Litigation*, Case No: MDL No. 2672 CRB (JSC), and D.J. Ref. No. 90-5-2-1-11386. NACAA is a national, non-partisan, non-profit association of air pollution control agencies in 41 states, the District of Columbia, four territories and 116 metropolitan areas. The air quality professionals in our member agencies have vast experience dedicated to improving air quality in the United States. These comments are based upon that experience. The views expressed in these comments do not necessarily represent the positions of every state and local air pollution control agency in the country.

Volkswagen AG, Volkswagen Group of America, Inc., Volkswagen Group of America Chattanooga Operations, LLC, and Audi AG (collectively, VW) allegedly violated federal and state laws and regulations by purposely, and over a sustained period of time, employing prohibited defeat devices that resulted in excess emissions of nitrogen oxide (NO_x). It is estimated that, across the country, 500,000 model year 2009 to 2015 motor vehicles containing 2.0 liter diesel engines were affected by the scandal.

The excess NO_x emissions that have resulted from VW's alleged violations contribute to ozone (smog), particle pollution, haze, toxic air pollution, global warming, acid rain and the eutrophication of water bodies. NO_x emissions

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are linked with a large number of adverse impacts on the respiratory system, as well as with the many ill effects associated with all of the pollution problems to which they contribute, including premature death.

The members of NACAA are responsible under the Clean Air Act for preventing and controlling air pollution, including developing plans for meeting the National Ambient Air Quality Standards for NO_2 (the indicator for the larger group of NO_x), as well as for ozone and particulate matter, both of which can be created as a result of NO_x emissions. As such, we are very troubled by VW's alleged violations because they directly interfere with our agencies' efforts to protect the public's health and welfare.

Accordingly, we applaud the United States Department of Justice (DOJ) for taking these alleged violations very seriously, recognizing the associated environmental and public health damage and, through the proposed partial CD – particularly the Environmental Mitigation Trust Agreement – establishing a program that requires VW to, among other things, address and mitigate the environmental harm its alleged actions have caused. Additionally, we are pleased DOJ has incorporated into the proposed CD many of the elements that NACAA called for in its *Recommendations for the Distribution of Funds for Environmental Mitigation and Supplemental Environmental Projects Related to Alleged Volkswagen Violations*, which the members of NACAA adopted on May 17, 2016. (Available at http://www.4cleanair.org/sites/default/files/Documents/NACAA-VW-SEP-Recommendations-5-17-16.pdf).

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3) Expand the model year (MY) ranges for all eligible truck categories. In 10 years, when Beneficiaries will be required to show they have spent 80 percent of their respective allocation, MY 2006 trucks will be more than 20 years old and likely already replaced.
4) Identify vehicles by the MY of the engine rather than the MY of the vehicle, since the two do not necessarily correspond to one another. Identifying a replacement by the MY of the vehicle could allow for a newer vehicle equipped with an older, dirtier engine.
5) Extend provisions allowing companies that contract with a government entity to take advantage of the 100-percent government cost sharing. Under the School and Transit Bus project category (pp. 3-4), school bus companies that contract with a government entity are considered government entities for the purpose of taking advantage of the 100-percent government cost sharing. We recommend that this provision be extended to the Class 4-7 and Class 8 local freight truck categories, which would allow replacement or repowering of vehicles (e.g., waste haulers) that belong to a company that contracts with a municipality to be funded at 100 percent. Similarly, repowering or replacement of emergency vehicles (e.g., ambulances, fire trucks) for which a municipality contracts with a private company should also be eligible for funding at 100 percent.
6) Define Tugs/Ferries such that the term includes river barge towboats or tugs and large diesel-powered river cruise boats.
7) Expand eligibility under "Ocean Going Vessels (OGV) Shorepower" to also apply to vessels that operate within the Great Lakes system.
8) Expand the definition of "Zero Emission Vehicle" (p. 12) by adding at the end of the current definition "or other vehicles that demonstrate comparable emissions benefits."

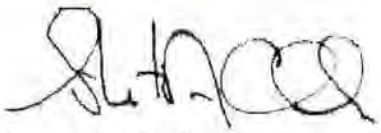
As stated above, NACAA strongly supports the inclusion of provisions to allow Beneficiaries to use up to 10 percent of their Trust Funds for actual administrative expenses related to the implementation of Eligible Mitigation Actions (p. 10). It is unclear whether indirect costs (based on a federally approved indirect rate) are eligible expenditures; if they currently are not, we recommend that they be made eligible in the final CD. In addition, we recommend that a mechanism be included to allow a higher overall administrative rate than 10 percent if the Beneficiary can demonstrate that a project has unusually high administrative needs. Finally, we believe additional guidance is necessary to explain and clarify eligible administrative expenses.

Conclusion

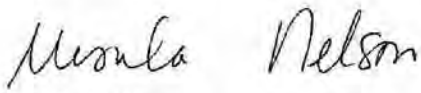
Once again, we commend DOJ for reaching this proposed settlement to address the environmental impacts of VW's egregious alleged violations. We thank you for this opportunity to comment on the *Notice of Lodging of Proposed Partial Consent Decree Under the Clean Air*

Act, related to *Volkswagen "Clean Diesel" Marketing, Sales Practices, and Product Liability Litigation*, Case No: MDL No. 2672 CRB (JSC), and D.J. Ref. No. 90-5-2-1-11386 and we strongly urge that DOJ provide full consideration to NACAA's recommendations. We look forward to discussing the details of the program with you further as you develop the final CD. If you have any questions or require additional information, please do not hesitate to contact Mary Sullivan Douglas or Nancy Kruger of NACAA at mdouglas@4cleanair.org or nkruger@4cleanair.org, respectively, or (202) 624-7864.

Sincerely,



Stuart A. Clark
Washington
Co-President of NACAA



Ursula Nelson
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NACAA
national association of clean air agencies

August 2, 2016

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In Re: Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation, Case No: MDL No. 2672 CRB (JSC), and D.J. Ref. No. 90-5-2-1-11386

Dear Sir/Madam:

The National Association of Clean Air Agencies (NACAA) appreciates this opportunity to comment on the *Notice of Lodging of Proposed Partial Consent Decree Under the Clean Air Act*, which was published in the *Federal Register* on July 6, 2016 (81 Fed. Reg. 44,051). The notice pertains to the proposed partial Consent Decree (CD) 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 Product Liability Litigation*, Case No: MDL No. 2672 CRB (JSC), and D.J. Ref. No. 90-5-2-1-11386. NACAA is a national, non-partisan, non-profit association of air pollution control agencies in 41 states, the District of Columbia, four territories and 116 metropolitan areas. The air quality professionals in our member agencies have vast experience dedicated to improving air quality in the United States. These comments are based upon that experience. The views expressed in these comments do not necessarily represent the positions of every state and local air pollution control agency in the country.

Volkswagen AG, Volkswagen Group of America, Inc., Volkswagen Group of America Chattanooga Operations, LLC, and Audi AG (collectively, VW) allegedly violated federal and state laws and regulations by purposely, and over a sustained period of time, employing prohibited defeat devices that resulted in excess emissions of nitrogen oxide (NO_x). It is estimated that, across the country, 500,000 model year 2009 to 2015 motor vehicles containing 2.0 liter diesel engines were affected by the scandal.

The excess NO_x emissions that have resulted from VW's alleged violations contribute to ozone (smog), particle pollution, haze, toxic air pollution, global warming, acid rain and the eutrophication of water bodies. NO_x emissions

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are linked with a large number of adverse impacts on the respiratory system, as well as with the many ill effects associated with all of the pollution problems to which they contribute, including premature death.

The members of NACAA are responsible under the Clean Air Act for preventing and controlling air pollution, including developing plans for meeting the National Ambient Air Quality Standards for NO_2 (the indicator for the larger group of NO_x), as well as for ozone and particulate matter, both of which can be created as a result of NO_x emissions. As such, we are very troubled by VW's alleged violations because they directly interfere with our agencies' efforts to protect the public's health and welfare.

Accordingly, we applaud the United States Department of Justice (DOJ) for taking these alleged violations very seriously, recognizing the associated environmental and public health damage and, through the proposed partial CD – particularly the Environmental Mitigation Trust Agreement – establishing a program that requires VW to, among other things, address and mitigate the environmental harm its alleged actions have caused. Additionally, we are pleased DOJ has incorporated into the proposed CD many of the elements that NACAA called for in its *Recommendations for the Distribution of Funds for Environmental Mitigation and Supplemental Environmental Projects Related to Alleged Volkswagen Violations*, which the members of NACAA adopted on May 17, 2016. (Available at http://www.4cleanair.org/sites/default/files/Documents/NACAA-VW-SEP-Recommendations-5-17-16.pdf).

Based on the fact that state and local air pollution control agencies will share in the responsibility of mitigating the environmental damage and public health harm caused by the violating VW vehicles and focusing on the extensive experience these agencies have in implementing a host of sophisticated and comprehensive air quality programs, the NACAA recommendations called for significant resources resulting from the legal settlement of the VW case to be provided to state and local air pollution control agencies. Funds directed in this way would support activities to ensure that past, present and future excess emissions from VW's alleged violations are mitigated. NACAA is gratified that DOJ has recognized the unique responsibilities and expertise of these agencies and included a significant role for them in the proposed CD, as NACAA recommended.

Given the great importance of this proposed CD and the potential it has for mitigating the substantial environmental harm caused by VW's alleged actions, we offer the following comments and recommendations to improve specific elements of the proposed program. These comments are intended to further refine and strengthen the CD to ensure that it fully meets its intended goals. In light of the many intricacies associated with implementing a program of this magnitude, and to ensure that there is a clear and workable process in place for doing so, we also strongly recommend that prior to entering a final CD, DOJ convene an open, interactive discussion with state and local air pollution control agencies concerning practical administrative and process issues related to the implementation of the Mitigation Trust Fund program. If undertaken immediately and expeditiously, such a discussion should not delay commencement of the program.

Partial Consent Decree

NACAA believes it is important for the CD to ensure that VW provides resources sufficient to not only offset, but also achieve reductions to surpass, all excess emissions that have already occurred and that will occur in the future as a result of the alleged violations. Accordingly, NACAA is very supportive of the intention of the Environmental Mitigation Trust fund "to fully mitigate the total, lifetime excess NO_x emissions from the 2.0 Liter Subject Vehicles" (page 5, #7). Additionally, we endorse the concept of requiring VW to place additional funds in the mitigation trust if VW does not meet its goal of recalling or removing from commerce a required percentage of affected vehicles (page 4-5, #3). This provision provides an incentive for VW to successfully implement the recall program and ensures that additional mitigation resources will be available if the recall provisions do not meet expectations.

Appendix D – Form of Environmental Mitigation Trust Agreement

Mitigation Trust Beneficiaries (page 10)

In the section entitled "IV. Mitigation Trust Beneficiaries," the proposed CD outlines a process for governmental entities identified in Appendix D-1 to elect to become Beneficiaries of the Trust. Those identified as eligible to become Beneficiaries include the 50 states, Puerto Rico, the District of Columbia and Tribes. NACAA is concerned that the proposed CD does not provide for local air pollution control agencies to receive funds under the Environmental Mitigation Trust Fund and recommends that such a mechanism be added.

Most local agencies are highly sophisticated and effective governmental entities with many years of experience (several, in fact, are larger than state agencies; they and others have been in existence as long as or longer than some state agencies). Some of these local air pollution control agencies would undoubtedly play a key role in planning NO_x-reduction strategies under the Mitigation Trust Program and would be best positioned within their jurisdictions to effectively execute them. Under the proposed CD, there are local agencies, including some in significant, highly populated areas, that may not have the ability to obtain Mitigation Trust Funds if their only option is to request funds from the state. There are a variety of reasons that this could be problematic, including, for example, if a state is not proactive in applying for funds or cannot undertake a mitigation action while the local agency is well situated to take on valuable NO_x-reduction programs.

The Clean Air Act states that "air pollution prevention…and air pollution control at its source is the primary responsibility of States and *local* governments" (Section 101[a][3]) (emphasis added). Additionally, when discussing air pollution control agencies, the Act includes states as well as city, county or other local government authorities that are charged with the responsibility for enforcing ordinances or laws related to air pollution (Section 302). Finally, under Section 105 of the Clean Air Act, local air pollution control agencies are eligible to receive federal grants directly, along with the states. NACAA believes it is appropriate, therefore, for the Environmental Mitigation Trust Fund to recognize the important role of local air pollution control agencies and include provisions allowing qualified local agencies to become Beneficiaries and apply directly for a portion of the funds. In order to reduce the administrative

burden on the Trustee, NACAA recommends that a state and the local air agencies within that state work together to the greatest extent possible to collaborate on projects and seek funding.

Beneficiary Mitigation Plan (page 11)

The proposed CD provides Beneficiaries with 30 days after being deemed a Beneficiary to submit a Beneficiary Mitigation Plan that summarizes how they plan to use the mitigation funds allotted to them. The plans are expected to include such things as the Beneficiaries' overall goals, the categories of actions that will be appropriate, the percentages of funds to be used for each action, how the benefits on certain overburdened areas will be considered and the expected ranges of emission benefits from the plans. The stated purpose of these plans is to provide the public with information about the Beneficiaries' visions for the use of the funds.

NACAA is concerned that 30 days is too short a time for many agencies to complete and submit such plans. Agencies could be required to follow state- or local-mandated processes for developing and seeking internal approval of their plans, which would necessitate additional time. We recommend additional time be provided.

Registration of 2.0 Liter Subject Vehicles (page 13-14)

Sections (a) and (b) list specific conditions under which a Certifying Entity may not deny registration to any Subject Vehicle. However, Section (d) indicates that the Certifying Entity *may* deny registration under certain conditions. These sections are confusing and it is unclear if they conflict with one another. The CD would benefit from additional explanation and clarification with respect to the conditions under which registration may or may not be denied.

Additionally, Section (c), as currently written, is subject to misinterpretation and should be clarified. Our reading is that the Settling Defendant will identify and provide information to the Certifying Entities about which vehicles have or have not received the Approved Emissions Modification. However, the current wording may leave the impression that the Certifying Entities are responsible for determining (i.e., identifying) and reporting which vehicles have undergone modification.

Accountability Provisions (pages 17-19)

In the sections on Funding Requests (page 17) and Beneficiary Reporting Obligations (page 18-19), the proposed CD calls for provisions that ensure accountability on the part of the Beneficiaries. NACAA believes it is appropriate for the recipients of the resources to be held accountable to ensure that the funds are used for their intended goals and to provide assurance to the public that the funds are achieving meaningful results.

With respect to the Beneficiary Reporting Obligations, however, we are concerned that the language in the proposal is rather vague. We recommend that a more detailed explanation be provided on what is envisioned with respect to recording and reporting mitigation actions. Among other things, it is important for Beneficiaries to understand in advance what is expected

and in what level of detail in order to accurately estimate future staffing needs and costs for these tasks.

Joint Application (page 18)

NACAA is pleased that the proposed CD includes an option for multiple Beneficiaries to submit a joint request for funds. Air pollution does not respect political boundaries and often multi-jurisdictional approaches are most effective and efficient in ameliorating local and regional air pollution problems. We applaud this provision, which allows for additional flexibility and creativity in designing mitigation efforts.

Appendix D-2 – Eligible Mitigation Actions and Mitigation Action Expenditures

NACAA appreciates the inclusion in Appendix D-2 of the proposed CD of a list of Eligible Mitigation Actions from which Beneficiaries may choose (pp. 1-9), all of which have the potential to yield significant NO_x emissions reductions and benefit public health and the environment in many areas of the country. We are also very pleased that the proposed CD recognizes the need to allow Beneficiaries to use a portion of their allotted Trust Funds for actual administrative expenditures associated with implementation of any Eligible Mitigation Actions. We believe, however, that both of these provisions would benefit from additional flexibility and/or clarification and offer the following comments in this regard.

With respect to Eligible Mitigation Actions, NACAA agrees with the inclusion of each of the nine distinct categories listed but believes this list is too narrow. Accordingly, we recommend that it be expanded to allow funds, with no cap, to be used for projects to address specific additional sources or projects to ensure that states are able to direct their allocation toward the NO_x reduction programs best suited to their circumstances. We urge that the enumerated Eligible Mitigation Actions also include nonroad equipment and vehicles, such as those used for construction, agriculture, mining and other heavy industrial applications—which can remain in service for many years and produce far more NO_x than onroad trucks per hour of operation—as well as truck-stop electrification, cargo-handling equipment and yard trucks. As with the already-listed actions, projects for these additional actions should continue to support as many alternative fuel options as possible. We further recommend that vehicle retrofits be included as Eligible Mitigation Actions, consistent with their inclusion under the Diesel Emission Reduction Act program.

NACAA also recommends that the list of Eligible Mitigation Actions be further augmented with an additional, more open-ended category that would provide flexibility and creativity to fund unlisted Mitigation Actions based on the Trustee's approval of a request by the Beneficiary that makes the case for an unlisted action that effectively reduces NO_x emissions. Since the program established under the proposed CD could extend for 15 years, such a category would ensure that there is a mechanism for keeping mitigation options current. It would also allow Beneficiaries to request approval for unlisted actions that would achieve significant NO_x reductions in a cost-effective way in their particular jurisdictions (with the understanding that cost effectiveness varies from area to area) and/or address the particular circumstances of an area.

The Eligible Mitigation Actions listed in the proposed CD also include the "Diesel Emission Reduction Act (DERA) Option," (p. 9) under which Beneficiaries may direct Trust Funds to their DERA non-federal match or overmatch, including for projects not specifically listed as Eligible Mitigation Actions but eligible under DERA. While NACAA appreciates the effort to make a connection to the highly successful DERA program, we have a concern with this option. Given that DERA is a program subject to Congressional authorization and appropriation, there is no guarantee it will endure throughout the lifetime of the CD program. Therefore, key DERA-eligible projects must also be specifically enumerated in the CD as Eligible Mitigation Actions (which we have recommended and elaborated on above).

For each of the nine distinct categories of Eligible Mitigation Actions, the proposed CD identifies, in terms of percent of cost, how much may be drawn from Trust Funds for projects involving non-government-owned vehicles or equipment, generally ranging from 25 percent to 75 percent of the cost (for government-owned vehicles and equipment, 100 percent of costs may be covered). We request clarification of how these proposed levels of cost coverage were determined and recommend that a mechanism be included for allowing a higher percentage to be covered. We also recommend that for Eligible Mitigation Actions 1 (large trucks), 2 (buses) and 6 (medium trucks) in particular, funding for repowering and replacing non-government-owned vehicles explicitly be allowed at a higher percentage if ultra-low-NO_x engines or vehicles are used. Specifically, we recommend that in each of these three categories, the term "All-Electric" be replaced with "Advanced Technology" and that the following definition of "Advanced Technology" be added: "Advanced Technology shall mean All-Electric vehicles and engines, vehicles and engines meeting a 0.02-grams-NO_x-per-brake-horsepower-hour standard or such other technology as determined by the Trustee."

NACAA commends the inclusion of Light Duty Zero Emission Vehicle Supply Equipment (p. 8) among the Eligible Mitigation Actions. However, we are concerned that capping at 15 percent the amount of Trust Funds that a Beneficiary can spend on this item is too restrictive and urge that this cap be lifted.

Understanding mobile source emissions and their impacts on air quality is critical to guiding effective NO_x emission mitigation actions. Accordingly, NACAA recommends that Beneficiaries be allowed to use a portion of their allotted Trust Funds to conduct air quality analyses that will inform their selection of mitigation actions. Such analyses should include, among others, emission inventories, air quality modeling (including improving the quality of input data) and monitoring trend analyses.

In addition, we recommend that the parameters of several of the Eligible Mitigation Actions included in the proposed CD be clarified or expanded:

1) Expand the definition of "Class 8 Local Freight Trucks" (p. 11) to include not only tractor trucks, as stated, but also straight trucks. Given the examples provided in the definition of this term (waste haulers, concrete trucks, dump trucks) it appears the intention is to include both, which NACAA supports. The following definition would accomplish this: "Class 8 Local Freight, and Port Drayage Trucks (Eligible Large

Trucks)' shall mean trucks with a Gross Vehicle Weight Rating (GVWR) greater than 33,000 lbs used for port drayage and/or freight cargo delivery (including waste haulers, dump trucks, concrete mixers)."

2) Make long-haul trucks, in addition to local trucks, eligible for funding for mitigation actions.
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Act, related to *Volkswagen "Clean Diesel" Marketing, Sales Practices, and Product Liability Litigation*, Case No: MDL No. 2672 CRB (JSC), and D.J. Ref. No. 90-5-2-1-11386 and we strongly urge that DOJ provide full consideration to NACAA's recommendations. We look forward to discussing the details of the program with you further as you develop the final CD. If you have any questions or require additional information, please do not hesitate to contact Mary Sullivan Douglas or Nancy Kruger of NACAA at mdouglas@4cleanair.org or nkruger@4cleanair.org, respectively, or (202) 624-7864.

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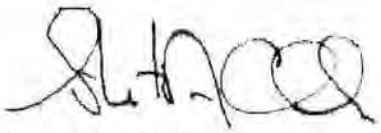

Stuart A. Clark
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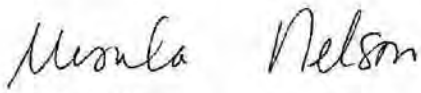

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August 5, 2016

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In Re: Volkswagen "Clean Diesel" Marketing , Sales Practices, and Products Liability Litigation
Case No: MDL No. 2672 CRB (JSC), and D.J. Ref. No. 90-5-2-1-11386

Dear Assistant Attorney General,

The United States Department of Justice has requested public comment on the Partial Consent Decree in the Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation (Case No: MDL No. 2672 CRB (JSC), and D.J. Ref. No. 90-5-2-1-11386). The following comments are submitted by the National Association of State Energy Officials (NASEO), the only national non-profit association representing the governor-designated energy officials from the 56 states and territories.

Questions on the attached comments should be directed to Jeff Genzer, NASEO General Counsel (jcg@dwgp.com) or David Terry, NASEO Executive Director (dterry@naseo.org).

Sincerely,

Jeff Genzer
General Counsel, NASEO

NASEO
National Association of State Energy Officials

Comments on the Partial Consent Decree in the

Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation

(Case No: MDL No. 2672 CRB (JSC), and D.J. Ref. No. 90-5-2-1-11386)

Submitted by the

National Association of State Energy Officials (NASEO)

August 5, 2016

NASEO
National Association of State Energy Officials

Background

The nation's 56 State and Territory Energy Offices have a multi-decade history of implementing programs that reduce emissions, promote alternative fuels, and improve energy efficiency within the transportation sector. Under the American Recovery and Reinvestment Act (ARRA), State Energy Offices, often in partnership with their Clean Cities Coalitions, administered alternative fuel vehicle infrastructure investment programs, and were responsible for building alternative fuel infrastructure networks within their states. For example, Rhode Island Office of Energy Resources used ARRA to invest in electric vehicle chargers along major roadways, at workplaces, and at other public spaces. Other federal resources, such as Congestion Mitigation and Air Quality (CMAQ) funds and State Energy Program funds have been leveraged by State Energy Offices for infrastructure investment and vehicle conversion programs. Using CMAQ funds, the New York State Energy Research and Development Authority (NYSERDA) administers the New York Truck-Voucher Incentive Program, which offers three types of vouchers for the purchase of alternative fuel vehicles and diesel emission control devices. Under Charge Ahead Colorado, the Colorado Energy Office uses SEP funds and other sources to support charging station installations. States have also used money from legal agreements and settlements to support alternative fuel programs. For instance, the Maryland Energy Administration used $1 million of the proceeds from a settlement with the American Electric Power Service Corporation for a public-private grant program to build a statewide network of DC fast charging stations for electric vehicles. The Massachusetts Department of Energy Resources also used $300,000 in AEP settlement proceeds to launch an EV infrastructure program. The Tennessee Department of Environment and Conservation's Office of Energy Programs used $2.5 million of proceeds from a separate settlement to fund an electric vehicle rebate program and will use another $2.5 million to launch a program that will assist Tennessee-based fleets invest in natural gas or propane powered commercial vehicles.

These experiences have given the State Energy Offices tremendous insight into what makes an alternative fuel program a success. In particular, these offices have led the way in taking early action – in partnership with local governments and the private sector – to establish many of the electric vehicle charging stations that are in place today. Building from this administrative and subject-matter expertise, NASEO, on behalf of the State Energy Offices, has compiled recommendations that aim to strengthen the Environmental Mitigation Trust Agreement (Appendix D of the Settlement) by allowing beneficiaries greater flexibility to implement mitigation actions that have a high likelihood of success.

Comments Related to Appendix D: Environmental Mitigation Trust Agreement

NASEO supports the objectives of the Environmental Mitigation Trust Agreement within the Settlement, and is eager to support actions that will decrease NOx emissions from the transportation sector. While the ten "Eligible Mitigation Actions" identified in Appendix D-2 will allow beneficiaries to take bold steps to reduce NOx emissions, NASEO urges the United

States to revise the Settlement to allow beneficiaries greater flexibility in the expenditure of Environmental Mitigation Trust funds. Specifically, NASEO recommends adding the following as allowable expenditures.

- *Allow Alternative Fuel Vehicle Infrastructure Investment*: Most Eligible Mitigation Actions outlined in Appendix D-2 specify that a portion of the settlement funds may be used to invest in electric vehicle charging infrastructure, if the infrastructure is associated with the repower or purchase of an all-electric vehicle or engine. Similarly, Light Duty Zero Emission Vehicle Supply Equipment is an allowed Eligible Mitigation Action under the Settlement. However, costs associated with the purchase and installation of infrastructure for alternative fuels (such as compressed natural gas or propane) is not an Eligible Mitigation Action Expenditure. One of the principle barriers to the adoption of alternative fuel vehicles is the availability of infrastructure, and fleets are unlikely to purchase or repower vehicles with alternative fuel engines if they do not have access to associated infrastructure. With that in mind, **NASEO requests that the Eligible Mitigation Action Expenditures outlined in Appendix D-2 be expanded to include the costs of alternative fueling infrastructure associated with new alternative fueled engines or vehicles.**

- *Allow Light Duty Zero Emission Vehicle Supply Equipment*: Under the settlement, beneficiaries may use up to 15 percent of their allocated Environmental Mitigation Trust funds to purchase and install Light Duty Zero Emission Vehicle Supply Equipment. In July, 2016 the Obama administration announced Federal and Private Sector actions to accelerate Electric Vehicle adoption in the United States, stating increasing access to charging infrastructure will help to promote electric vehicle adoption by making it easy for consumers to charge their vehicles. While the ZEV Investment Plan outlined in Appendix C of the Settlement will facilitate investment in electric vehicle infrastructure by Volkswagen, AG, states with strict air quality goals are motivated to make additional investments in infrastructure that support vehicles with zero tailpipe emissions. With that in mind, **NASEO requests that the Eligible Mitigation Action Expenditures outlined in Appendix D-2 be expanded to allow for up to twenty-five percent (25%) of its allocation of 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.**

- *Allow Loan Programs for Eligible Mitigation Actions*: Under the current settlement, beneficiaries may offer grants or directly invest in vehicles and infrastructure that fall into Eligible Mitigation Actions. **In addition to grants, NASEO requests that revolving loan programs be allowed to support the Eligible Mitigation Action Expenditures.** Loan programs offer many advantages, as they require applicants to

invest their own capital in and follow projects through to completion. Additionally, the option to structure the funds as loans (rather than as grants) creates a self-replenishing and larger-impact pool of funds because interest and principal repayments on old loans may be used to issue new loans to more applicants. Thirty-eight State Energy Offices, several of which have launched green banks and energy infrastructure partnerships (such as those in New York, Hawaii, Rhode Island, and Connecticut), have experience administering revolving loan funds and thus would be well-positioned to support this activity. The Nebraska Energy Office's *Dollar and Energy Savings Loan* (DESL) program has been particularly successful. Started in 1990 with an initial deposit of $10 million of Petroleum Violation Escrow (PVE) funds, the program has funded over 28,000 projects with a total investment over $330 million through low interest loans for energy efficiency, renewable energy, and waste minimization projects in all sectors. Nebraska's DESL program was initially a demonstration program under the PVE settlement, and after operating for several years with positive results, the program end date was eliminated. Since inception, the original $10 million of PVE funds have revolved ten times. By structuring eligible mitigation actions as loan programs with minimal administrative restrictions, the lead agencies would ensure significant participation from applicants and could increase the impact of Settlement funds.

- *Allow Purchase Incentives for Light-Duty Electric Vehicles as an Eligible Mitigation Action Expenditure:* The high incremental cost of electric vehicles is one of the leading barriers to alternative fuel vehicle adoption and transportation-sector emissions reduction in the United States. To address this barrier, states across the country are offering rebates, vouchers, tax credits, and other financial incentives to offset the high up-front cost of the vehicle, and these programs are leading to increased sales. Allowing Environmental Trust Mitigation Funds to be used to facilitate the purchase of light-duty vehicles that issue zero NOx emissions supports the spirit of the Settlement, and will also allow States to support a growing market and their own air quality and energy goals. **Given the success of these programs, NASEO requests that Appendix D-2 be amended to add Incentives, (e.g. rebates, revolving loans) for Light-Duty Electric Vehicles as an Eligible Mitigation Action Expenditure.**

- *Allow Idle Reduction Technology as an Eligible Mitigation Action Expenditure:* Idle reduction technology is increasingly being used in fleets to minimize idling and decrease emissions. For example, electrified parking spaces, also known as truck stop electrification, provide truck drivers necessary services (such as heating or air conditioning) without requiring them to idle their engine. Onboard idle reduction equipment, such as automatic engine stop-start controls, can also save fuel and decrease emissions when paired with driver modifying behavior training. These technologies are relatively low-cost and can lead to significant energy savings and air quality

improvement. **NASEO requests that idle reduction technology be added to Appendix D-2 as an Eligible Mitigation Action Expenditure.**

- *Allow Training, as well as Vehicle and Facility Maintenance as an Eligible Mitigation Action Expenditure:* One of the key barriers to alternative fuel vehicle adoption by public and private fleets is the maintenance "knowledge gap." Vehicles that run on alternative fuels typically have different engine configurations, and therefore different maintenance needs. Mechanics that have traditionally worked on gasoline and diesel vehicles require training to properly service alternative fuel vehicles. Similarly, maintenance facilities that have only serviced gasoline and diesel-powered vehicles may require upgrades to accommodate vehicles that run on alternative fuels (such as increased ceiling height, installation of gas detection equipment, etc.). For a fleet to adopt alternative fuels, their facilities must be able to accommodate the new vehicles, and the mechanics must be able to service them. **NASEO requests that mechanical training, as well as vehicle and facility maintenance be added to Appendix D-2 as an Eligible Mitigation Action Expenditure.**

- *Allow Replacing or Repowering Non-Road Vehicles and Equipment as an Eligible Mitigation Action Expenditure:* States across the country, particularly those with significant rural areas, have a considerable amount of diesel-powered non-road vehicles and equipment used in sectors such as agriculture and construction that serve as a source of NO_X emissions. Including non-road vehicles and equipment as eligible mitigation actions would not only provide states with greater flexibility to allocate their mitigation trust fund dollars, but would also provide another avenue for landlocked states, which are unlikely to be able to take advantage of eligible mitigation actions for ferries and tugs, ocean going vessels, and marine shorepower equipment, to target NO_X emissions reductions based on activities within their state. **NASEO requests that Replacing or Repowering Non-Road Vehicles and Equipment be added to Appendix D-2 as an Eligible Mitigation Action Expenditure.**

- *Expand the Definition of "Ocean Going Vessels Shorepower" to include Great Lakes Vessels and Shorepower Projects:* Appendix D-2 of the Settlement currently allows expenses associated with ocean going vessels as an Eligible Mitigation Action; however, Great Lakes vessels are not included, despite their significant contribution toward freight-based emissions. **NASEO requests that Appendix D-2's Eligible Mitigation Action 5 – Ocean Going Vessels Shorepower be amended to include Great Lakes Vessels and associated Shorepower projects as an eligible expense.**

- *Clarify and Expand Local Freight Definition:* Appendix D-2's Eligible Mitigation Actions 1 and 6 allow "Local Freight" trucks to be repowered or replaced. It is unclear

whether "Local Freight" refers only to vehicles that operate in metropolitan areas or within a state's boundaries, or if the definition allows investment in freight vehicles that with a broader range. **NASEO requests that the definition of "Local Freight" under Eligible Mitigation Actions 1 and 6 in Appendix D-2 be clarified and, if necessary, expanded to allow medium- and long-range vehicles.**

- *Change Mitigation Actions Expenditures Language to Include "Up To:"* Appendix D-2 stipulates that beneficiaries may draw funds from the Trust in the amount of "XX%" for Eligible Mitigation Actions. For example, for Non-Government Owned Eligible Class 8 Local Freight Trucks, beneficiaries may only draw funds from the Trust in the amount of 40% of the cost of a Repower with a new diesel or Alternative Fueled engine, including the costs of installation of such engine. However, not all projects under the Eligible Mitigation Actions will use the full amount of available funding. **To maximize the use of available funds and accommodate low-cost projects, NASEO requests that the language in Appendix D-2 pertaining to mitigation action expenditures be amended to include "up to" ahead of any percentage requirements.**

- *Increase the Threshold of Allowable Administrative Expenses to 15 percent for Beneficiaries*. Administration of a multi-million dollar program over a 10-15 year period will require significant administrative oversight from beneficiaries. The current 10 percent threshold is unlikely to provide sufficient funds for adequate administration of the program and related monitoring, reporting, and compliance oversight functions. If improperly funded, the likelihood of noncompliance with Mitigation Trust Fund requirements and associated audit findings could increase. To ensure adequate funding for essential administrative functions, **NASEO requests that the threshold of allowable administrative expensed be increased to 15 percent for beneficiaries under Appendix D.**

- *Allow Emerging Technologies with Proven Air Quality Benefits as an Eligible Mitigation Action Expenditure:* Beneficiaries have a minimum of ten years to use 80% of allocated funds. Over this ten-year period, it is likely that new fuels and technologies, such as high octane fuels or intelligent transportation communication systems, will come to market and offer significant energy and emission savings. **NASEO requests that the Settlement accommodate pending technological advancements by allowing beneficiaries to include yet-to-be-determined Eligible Mitigation Actions in future revisions of their Beneficiary Mitigation Plans.**

NASEO
National Association of State Energy Officials

Additional Comments

In addition to the above comments related to the Environmental Mitigation Trust, NASEO requests that funds from the Settlement should be allocated to support air quality remodeling efforts that were adversely effected by the Volkswagen vehicles. Information (on-road mobile source emissions inventories) used by EPA for modeling 2009-2015 data was inaccurate due to the alleged Volkswagen violation, which impacts states' confidence in modeling used to determine the significant contribution to a region's nonattainment. **With that in mind, NASEO requests that a portion of Settlement funds be allocated to remodeling efforts in order to restore integrity into the SIP planning process.**

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August 5, 2016

VIA ELECTRONIC MAIL

John C. Cruden
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RE: Comments on the Proposed Partial Consent Decree Under the Clean Air Act in *In re Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation*, Case No: MDL No. 2672 CRB (JSC)

D.J. Ref. No. 90-5-2-1-11386

Dear Assistant Attorney General Cruden:

The National Biodiesel Board (NBB) appreciates the opportunity to submit comments on the proposed partial consent decree that has been submitted to the district court for approval in the lawsuit entitled *In re Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation*, Case No: MDL No. 2672 CRB (JSC). NBB is the national trade association representing the biodiesel industry as the coordinating body for research and development in the United States. Founded in 1992, NBB is a comprehensive industry association that coordinates and interacts with a broad range of cooperators, including industry, government and academia. NBB's membership is comprised of state, national and international feedstock and feedstock processor organizations, biodiesel suppliers, fuel marketers and distributors and technology providers. Its members produce biomass-based diesel fuel, which provides the most efficient carbon reductions in the transportation sector, even over electric vehicles.

The consent decree purports to partially resolve allegations that Volkswagen AG, Audi AG, Volkswagen Group of America, Inc., and Volkswagen Group of America Chattanooga Operations, LLC (collectively referred to as "Volkswagen") violated the Clean Air Act by the sale of approximately 500,000 model year 2009 to 2015 motor vehicles containing 2.0 liter diesel engines equipped with "defeat devices." The partial consent decree would require Volkswagen to recall 85% of the affected 2.0 liter vehicles, to pay $2.7 billion into a mitigation trust, and to invest an additional $2 billion to promote the use of zero emission vehicles and ZEV technology. According to EPA, these actions purport to "remediate the excess NOx emissions from the

affected 2.0 liter vehicles." EPA, *Volkswagen Clean Air Act Partial Settlement*, https://www.epa.gov/enforcement/volkswagen-clean-air-act-partial-settlement (last updated July 25, 2016). NBB believes the proposed consent decree focuses too much on moving toward electric vehicles, which are among the most time-, cost- and carbon-intensive options for transportation fuels, and does not take advantage of proven and immediately available clean burning fuels that provide numerous environmental benefits, particularly with respect to air quality. NBB submits these comments to urge the United States to consider additional means of promoting use of biodiesel blends in new technology diesel vehicles as part of the mitigation efforts sought under the proposed consent decree.

About Biodiesel

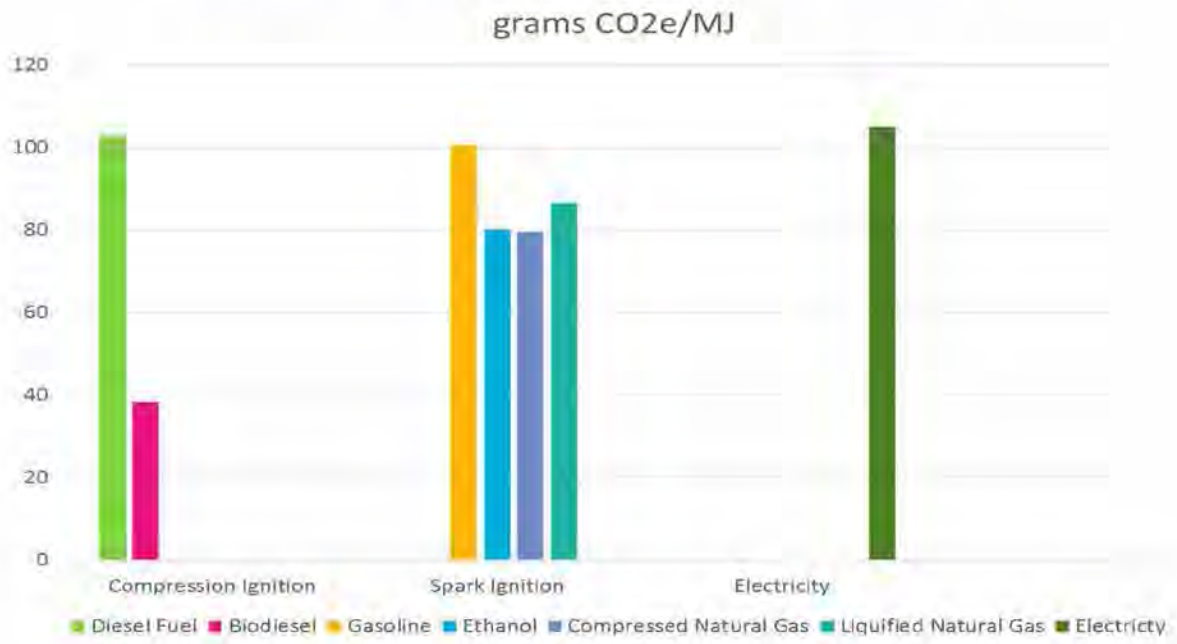
Biodiesel is a renewable, clean-burning petroleum diesel fuel replacement that is reducing U.S. dependence on fossil fuels, creating jobs and improving the environment. Biodiesel is the first and only EPA-designated Advanced Biofuel under the Renewable Fuel Standard program in commercial-scale production across the country. It is the most diverse fuel coming from various sources of wastes and byproducts, such as used cooking oil, soybean oil, and animal fats. The diversity of feedstocks used by the biodiesel industry has grown significantly in recent years, helping shape a nimble industry that is constantly searching for new technologies and feedstocks, which similarly have little to no land use impacts.

Biodiesel is produced at plants in nearly every state in the country. Biodiesel's growth has boosted the U.S. economy, not just by creating jobs but also by reducing our dependence on global oil markets and vulnerability to price spikes. The industry supports jobs in a variety of sectors, from manufacturing to transportation, agriculture and service. It has also led the way to increased renewable hydrocarbon diesel production in the United States, which also qualifies as an Advanced Biofuel under the Renewable Fuel Standard program.

Biodiesel is safe, biodegradable, and produces less air pollutants than petroleum-based diesel. Although we believe the greenhouse gas emission reductions are substantially greater given the unproven claims of land use impacts as a result of biodiesel production in the United States,[1] by EPA's own analysis, biodiesel reduces greenhouse gas emissions by at least 57% and

[1] Greenhouse gas emission reductions associated with soybean oil biodiesel are likely significantly greater than under EPA's analysis. Although NBB does not agree that biodiesel production has significant indirect emissions associated with land use changes and continues to believe modeling of such "indirect" emissions remains inadequate and uncertain, including because such changes have not been tied to biofuel production, a group of experts recently has recognized that advances in modeling have shown reduction in land use change impacts. *See* Argonne National Laboratory, Summary of CRC Workshop on Life Cycle Analysis of Transportation Fuels, at 2 (Oct. 26-28, 2015). According to the updated study by the University of Idaho, soybean oil-based biodiesel reduces greenhouse gas emissions by 76.4-81.2% relative to average 2005 petroleum, including indirect effects from international land use change. *See* A. Pradhan, et al., *Reassessment of Life Cycle Greenhouse Gas Emissions for Soybean Biodiesel*, American Society of Agricultural and Biological Engineers (2012). Argonne National Laboratory has quantified biodiesel's well to wheel greenhouse gas emission reduction benefit being as high as 122% compared to average petroleum diesel. *See* Jeongwoo Han and Michael Wang, Argonne National Laboratory, *Updated Greenhouse Gas Emission Results of Biodiesel with the GREET Model*, Presentation at the Biodiesel Technical Workshop, Nov. 2, 2010.

up to 86% when compared to petroleum diesel – making it one of the most practical and cost-effective ways to immediately address climate change. Data from the California Air Resources Board (CARB) on carbon intensity of transportation fuels show that biodiesel has the lowest carbon intensity of all fuels, while electricity has the highest carbon intensity. CARB has recently certified 43 new biodiesel pathways with an average carbon intensity of 31.58 g/MJ, which can be compared to petroleum diesel fuel at 102.76 g/MJ and electricity at 105.16 g/MJ (CA grid). CARB's carbon intensity determinations under its low carbon fuel standard are available at http://www.arb.ca.gov/fuels/lcfs/fuelpathways/pathwaytable.htm.



In addition to its lifecycle carbon reduction benefits, biodiesel markedly reduces major tailpipe pollutants from petroleum diesel, particularly from older diesel vehicles. This is important because the EPA has consistently cited diesel exhaust—primarily from older trucks, buses and other vehicles—as one of the nation's most dangerous pollutants. Biodiesel provides substantial reductions in particulate matter, polycyclic aromatic hydrocarbons and carbon monoxide. These benefits largely occur because the presence of oxygen allows the fuel to burn more completely, so fewer unburned fuel emissions result. Like NOx, several of these pollutants also contribute to ozone levels.[2]

Biodiesel has also been tested and proven to work exceedingly well in properly equipped New Technology Diesel Engines (2010 and newer) which offer substantial reductions in NOx

[2] Independent testing has shown that biodiesel is essentially a wash when it comes to NOx in older vehicles, with no net increase or decrease. Nonetheless, the proposed consent decree purports to address the environmental damage caused by Volkswagen's actions, as well as their false statements to the public about the emission benefits of their vehicles. Their reluctance to promote higher levels of biodiesel in their vehicles has resulted in substantially higher emissions that could have been avoided.

and other air pollutant emissions from petroleum diesel. This testing, which was done by the National Renewable Energy Laboratory—one of the leading independent emissions testing labs in the U.S.—provides confidence to users and fleets—as well as engine and vehicle makers—that the NOx technology incorporated into today's modern New Technology Diesel Engines works as well with B20 biodiesel blends as it does with petroleum ULSD no matter how the engine is running. According to the Diesel Technology Forum, new technology diesel engines deployed to achieve the near-zero NOx emissions standard established for commercial vehicles manufactured as of 2010, reduce emissions by 98% relative to a truck manufactured in 1988. Again, biodiesel works exceedingly well in these engines, and designing for B20 and higher blends of biodiesel, rather than petroleum diesel, would, in fact, produce even better results due to the substantial lifecycle carbon reduction benefits that biodiesel brings to the table.

Recognizing these numerous benefits, the Energy Policy Act of 2005 and the Energy Independence and Security Act of 2007 sought to promote the production of biodiesel, including incentives to push vehicle manufacturers to ensuring compatibility of their vehicles with biodiesel use. *See, e.g.*, Pub. Law No. 110-140, 121 Stat. 1492; *id.* §109(a), 121 Stat. 1506 (extending flexible fuel credit to B20); *id.* §202(a)(2), 121 Stat. 1523 (adding a biomass-based diesel requirement to Renewable Fuel Standard program); *id.* §247, 121 Stat. 1547-1548 (addressing fuel quality standards for B20 "so that vehicle manufacturers are able to design engines to use fuel meeting such standards"). EPA has also indicated its commitment "to developing, implementing, and revising both regulations and voluntary programs" to meet the goals of the Act. EPA, *Summary of the Energy Independence and Security Act, Public Law 110-140 (2007)*, https://www.epa.gov/laws-regulations/summary-energy-independence-and-security-act (last updated Aug. 2, 2016). EPA has failed to live up to its commitments with respect to biomass-based diesel. More important, Volkswagen has steadfastly refused to answer the call of Congress, choosing instead to install defeat devices to allow greater emissions versus working to ensure its so-called "clean diesel" vehicles are compatible with renewable fuels.

Growing biodiesel volumes will help achieve this Administration's goals for strengthening the economy, reducing carbon emissions and other costly pollution, and diversifying and strengthening fuel markets that are now dangerously dependent on petroleum. Incentivizing the adoption of properly equipped new technology diesel engines (MY 2010 and newer) also quickly and significantly reduces NOx and other air emissions. A growing majority of 2010 and newer vehicles are already approved for use of B20. Original equipment manufacturers (OEMs) have expressly approved biodiesel blends up to B20 for over 80% of the diesel vehicles coming off production lines today. Passenger cars substantially lag behind the almost 90% of medium- and heavy-duty truck OEMs that support B20 (and even higher volumes). Indeed, the Volkswagen companies are among the very few that have declined to officially state that B20 is compatible with their vehicles, currently limiting their recommended level to B5. Despite their unwillingness to publicly approve B20, Volkswagen has acknowledged to registered owners in Minnesota and Illinois (states where the majority of diesel fuel available is above B5) that the use of B20 is fine and does not void the owners' warranty. This is despite the fact that B20 provides substantial additional air quality benefits compared to petroleum diesel, and so we too question their ability to refer to their vehicles as "low-emission"

and "environmentally friendly" to constitute "clean diesel" vehicles. It makes little sense that the United States, particularly EPA, is considering letting Volkswagen off the hook by abandoning its diesel vehicle program in favor of a switch to electric vehicles, when in fact nearly every other major diesel vehicle manufacturer has successfully implemented new technology diesel engines that are approved for B20 biodiesel blends, and properly equipped their aftertreatment systems to meet EPA's aggressive emissions standards.

Where the Proposed Consent Decree misses the market.

As currently drafted, the proposed consent decree includes three main parts: (1) instituting a buy back, lease termination, and emissions modification compensation program for the affected Volkswagen vehicles; (2) requiring $2.7 billion to fund projects to mitigate the pollution from these vehicles; and (3) investing another $2 billion toward improving infrastructure, access and education to support and advance zero emission vehicles to address the adverse environmental impacts from these vehicles. However, there is a clear bias toward promotion of electric vehicles with no assessment as to how the electricity to run these vehicles is generated. Nitrogen oxides are a pollutant emitted from electric generating plants, and power plants that burn fossil fuels or materials made from fossil fuels are the source of about 40% of total U.S. carbon dioxide emissions. *See* U.S. Energy Information Administration, *Frequently Asked Questions: How much of U.S. carbon dioxide emissions are associated with electricity generation?*, http://www.eia.gov/tools/faqs/faq.cfm?id=77&t=11. There is also no discussion on how the electricity will get to the consumers, as electric power lines and other distribution infrastructure also have an environmental footprint. Biofuels, on the other hand, come from renewable resources, and biodiesel, in particular, uses by-products and wastes as their feedstock sources, providing even greater environmental benefits.[3]

NBB supports efforts to move toward electric vehicles and clean diesel engines, but also believes there should be provisions to promote biodiesel use. In particular, the Environmental Mitigation Trust Agreement should make clear that biodiesel compatibility (B20 or higher) is a

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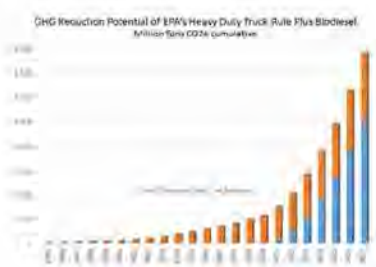
[3] Car companies already have additional incentives to move toward electric vehicles under the CAFE standards and EPA's greenhouse gas emissions reduction requirements. This money, then, will only be used to continue to help Volkswagen's future compliance requirements, rather than provide any mitigation for the environmental impacts its defeat devices have caused. EPA declined to provide incentives for increased biodiesel use in vehicles, despite the reductions in carbon emissions. We believe EPA's emissions reduction requirements and biodiesel use can work in tandem to provide even greater greenhouse gas reductions, as shown in the following table related to EPA's medium- and heavy-duty truck rule:



criterion for approval of any projects. This would be consistent with the Diesel Emission Reduction Act that seeks to prioritize projects that maximize public health benefits and that are the most cost-effective. Appendix D-2, however, makes no reference to biodiesel, which should be required to obtain increased monies. It makes no sense to provide benefits for vehicles from companies that continue to ignore the calls of Congress, and the American public, for moving toward renewable fuels. Given the increased benefits of biodiesel over electricity, it similarly makes no sense that electric vehicles obtain increased reimbursement. EPA also has raised purported concerns with constraints on getting biodiesel to consumers, yet there is nothing in the proposed consent decree to promote infrastructure for biofuels. This infrastructure can be put in place in already existing distribution facilities and retail stations, unlike the transmission and infrastructure that may be needed for increased use of electricity in the transportation sector. As noted above, Congress sought to promote biodiesel-fueled vehicles, not just electric vehicles. Requiring B20 or higher compatibility and infrastructure with a commitment to promote increased use of biodiesel are clearly better investments to provide greater benefits, faster.

Importantly, biodiesel blends can be used in all of the types of diesel engines that are referenced in Appendix D-2, from all classes of on- and off-road diesel vehicles to ferries/tugs and ocean-going vessels. Given the availability of biodiesel, it is unclear why the only benefits for some engines, such as airport ground support equipment and forklifts, would just be for electric vehicles. There is no analysis in the consent decree as to their availability. Nor is there any analysis of consumer acceptance, when we know of the strong support by B20 users of biodiesel and consumers that, through a voter survey, showed significant support for using higher blends of biodiesel.

The proposed consent decree, then, should be revised to ensure that vehicles that allow for biodiesel use are considered to receive these benefits. While biodiesel is a drop-in fuel to diesel fuel, it is a renewable alternative, yet it is not listed in the definition for alternate fueled vehicles. Indeed, the older vehicles that are already approved for B20 biodiesel blends do provide significant emissions reductions without even the need for new engines. Thus, the consent decree must consider and account for these additional benefits, either (a) requiring that any new diesel engines or replacements be compatible with at least B20 blends or (b) providing additional incentives for those vehicles that do approve B20, particularly when they are proposed together with added infrastructure and other provisions to ensure biodiesel use. For example, fleets that use biodiesel blends and have their own infrastructure to establish their use of higher blends should get added funds.

Research has shown that the new technology diesel engines, such as those promoted by the Diesel Technology Forum, do address NOx emissions, even when biodiesel blends are used. But they miss out on the numerous additional benefits that using a non-toxic, biodegradable and renewable low-carbon fuel brings when they fail to utilize biodiesel blends. Thus, we believe the proposed consent decree is deficient and continues to allow Volkswagen to avoid maximizing

the mitigation efforts that could be made to address their violations of the Clean Air Act, but also their gross misrepresentations to the American public about the benefits of their diesel vehicles.

Sincerely,

Anne Steckel
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cc: Assistant Attorney General
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August 5, 2016

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RE: Comments from the National Tribal Air Association and the Tribal Air Monitoring Support Center on the Partial Consent Decree as part of the Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation, Case No: MDL No. 2672 CRB (JSC), and D.J. Ref. No. 90-5-2-1-11386.

On behalf of the National Tribal Air Association ("NTAA") and the Tribal Air Monitoring Support (TAMS) Center, (the parties), we are pleased to submit these comments on the Partial Consent Decree as part of the *Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation, Case No: MDL No. 2672 CRB (JSC), and D.J. Ref. No. 90-5-2-1-11386.*

The NTAA is a member-based organization with 111 principal member Tribes. The organization's mission is to advance air quality management policy and programs, consistent with the needs, interests, and unique legal status of Indian Tribes. As such, the NTAA uses its resources to support the efforts of all federally recognized Tribes in protecting and improving the air quality within their respective jurisdictions. Although the organization always seeks to represent consensus perspectives on any given issue, it is important to note that the views expressed by NTAA may not be agreed upon by all Tribes. Further, it is also important that the DOJ and EPA understand interactions with the organization do not substitute for government to government consultation, which can only be achieved through direct communications between the federal government and Indian Tribes.

The Tribal Air Monitoring Support (TAMS) Center offers different training courses that focus on a variety of topics related to ambient and indoor air quality monitoring. To date, over 1,100 tribal professionals have been trained by the TAMS Center, representing more than 185 tribes. The TAMS Center courses have been designed to complement other American Indian Air Quality Training Program courses, and generally address more advanced air quality issues. Each course is designed with tribal audiences and issues in mind, integrating tribal case studies and tribal professionals as part of the instructional team in every course. Class size is kept to a minimum to

ensure a higher level of interaction and one-on-one training opportunities with the instructors. The Center also provides technical assistance on an individual basis for Tribal air programs to establish and setup monitoring programs. Assistance is available for quality control, data management/analysis and emissions inventories. The TAMS Center has many years of experience and expertise working with Tribes and understands their unique issues.

The Proposed Partial Consent Decree VW Settlement

The parties generally support the settlement allocation and provisions to reduce nitrogen oxide (NO_X) emissions outlined in the Partial Consent Decree. These comments are respectfully submitted to ensure Tribes are treated fairly and that the settlement details reflect that fairness with respect to Tribal sovereignty. The parties' comments address the proposed design details for five specific areas that are most relevant for the Tribes in Indian Country:

1. Trustee Selection and Trustee Criteria
2. Ensuring equitable access for Tribes to the Tribal Allocation Subaccount
3. Expanding the Range of Eligible Mitigation Actions ("EMA's")
4. Technical Assistance to Tribes
5. Zero Emission Vehicle ("ZEV") Infrastructure

Diesel Emissions and Human Health

The parties acknowledge that diesel emissions are a serious concern on Tribal lands. Many Tribes rely on outdated/legacy trucks, busses, agricultural/heavy equipment, or diesel generators, all of which produce large amounts of nitrogen oxides (NO_X) and particulate matter (PM) pollution. Many of these vehicles come from GSA stock. NO_X emissions are linked both directly and indirectly to numerous human health concerns. Direct exposure, even short-term, can cause airway inflammation and increased asthma symptoms. NO_X reacts with other common compounds to form small particles that can penetrate the lungs and cause or exacerbate respiratory and heart diseases. NO_X also reacts with volatile organic compounds to form ground level ozone, which can cause reduced lung function and worsen respiratory symptoms. Further, the U.S. Environmental Protection Agency has classified diesel exhaust as a potential human carcinogen. These health impacts are of particular concern for children, the elderly, and people with preexisting respiratory diseases.[1] Therefore the parties acknowledge that the Tribal Allocation Subaccount of the Environmental Mitigation Trust will allow Tribes to help mitigate excess NO_X emissions on and near Tribal lands.

Trustee Selection

Under the Partial Consent Decree, the parties understand the Settling Parties propose that one Trustee will oversee the entirety of the Mitigation Trust and Agreement (Appendix D). The parties propose that a separate Trustee be selected to oversee the Tribal Allocation Subaccount. In our view a separate Tribal Allocation Subaccount Trustee is necessary because:

1. Tribes have a unique legal status, diverse cultures and want to ensure Tribal sovereignty is respected;

[1] U.S. Environmental Protection Agency. (2016). Office of Air and Radiation. Retrieved from https://www3.epa.gov/airquality/nitrogenoxides/health.html

2. It is important that the Tribal Trustee be able to demonstrate a successful history of working with Tribes on technical projects;
3. Tribes typically (and unfortunately) have less capacity/technical expertise and resources than states due to limited staffing and thus will require a robust technical assistance and outreach plan to ensure a fair, effective and successful distribution of the Tribal Allocation Subaccount;
4. Unlike states that have already been provided with a specific allocation of the Environmental Mitigation Trust, a separate trustee would provide additional attention to the unique requirement of the Tribal Allocation Subaccount to allow equitable distribution to the 567 Tribes in Indian Country.
5. It is important to ensure that investments of the Tribal Allocation Subaccount benefit Tribal communities and Tribal businesses.

If it is not possible to designate a separate Trustee for the Tribal Allocation Subaccount, the parties recommend that the following criteria be prioritized when choosing the Trust Agreement Trustee:

1. The parties support using up to 2.5% of the total Tribal Allocation Subaccount to fund the Trustee's work in order to allocate more direct funds to Tribes. If the proposed rate of 5% is finalized, the parties recommend adding language that the Trustee cap the indirect cost rate to 25% to ensure more funding from the Tribal Allocation Subaccount goes directly to Tribes.
2. Demonstrate a previous history of working with Tribes on technical and/or environmental projects;
3. Hire consultants, sub-contractors, attorneys, Tribal entities and other experts that have experience and expertise working with Tribes, including an Indian preference, for purposes of administering the Tribal Allocation Subaccount;
4. Understand that Tribes have less capacity/technical expertise/budget than states, and be able to work with Tribes to ensure equitable access to the Tribal Allocation Subaccount;
5. Provide clear communication to Tribal Beneficiaries as to investment decisions that will impact the Tribal Allocation Subaccount and ensure those investments will also benefit Tribes.

To help guide a successful disbursement of settlement funds, the parties recommend the trustee appoint and support a Tribal Advisory Council, which would serve as the "separate entity" contemplated under the Consent Decree to assist the Trustee with evaluating funding requests to advise the Trustee and recommend further actions to ensure equitable distribution of the Tribal Allocation Subaccount. National and Regional Tribal organizations would work with the Trustee to nominate qualified persons to implement the Tribal Advisory Council. Funding could be used from the Tribal Allocation Subaccount to provide staff and travel support for the Tribal Advisory Council to meet with the Trustee regularly throughout the settlement time frame to ensure the various processes involved in the consent decree are carried out in an equitable way for Tribes. If problems or challenges are experienced by the trustee or the beneficiaries, the Tribal Advisory Council could act to provide solutions.

Ensure Equitable Access of the Tribal Allocation Subaccount for Tribes

It is important that these funds are made easily accessible to Tribes that wish to utilize them. The majority of tribes lack sufficient capacity or expertise to submit complicated technical documents required under the Partial Consent Decree. Because of this, many Tribes will require assistance to plan, draft and submit the required beneficiary claims, and environmental mitigation plans and for reporting back to the Trustee.

The parties recommend the creation of templates for required documents to submit to the Trustee including expected timelines for the processes. Paragraph 2.1.1 of the Partial Consent Decree allows up to 5% of the Tribal Allocation Subaccount funds to be used for technical assistance to help tribes prepare funding requests. The parties recommend that a portion of these funds be used to develop user-friendly templates and train tribes in their use. Funding request templates posted on websites for Tribal use will allow greater access to Settlement Assets, especially to tribes with low capacity or budget.

The parties are concerned that a "first come, first serve" basis for distribution among the 567 Tribes will not ensure equitable access. The parties recommend that the Trustee consult further with Tribes and after the Tribal Advisory Council is created, create a more detailed distribution plan so that Tribes that require more time to learn about the Beneficiary process will not be penalized by taking more time to submit documents to the Trustee.

Six Year Plan for Funding Tribal Projects

The Mitigation Trust Agreement contemplates a six-year funding window for Tribal Beneficiary projects, with a "wind down" allocation that result in all funding utilized by the end of the six-year period. As expressed above, many, if not most, Tribes have limited resources to immediately apply for EMA funding, and the outreach necessary to ensure all 567 Tribes are aware and have the opportunity to participate will likely take many months, if not years. The parties respectfully request that a term be added to the Agreement that automatically allows an annual extension of the six-year period until at least the anticipated end of the Trust – which is ten years. This automatic annual extension would increase the possibilities that the Tribal Allocation is fully used – by the Tribal Beneficiaries – and reduce the likely need to amend the Agreement. Furthermore, if an automatic annual extension is included, then the Agreements default allocation – a pro rata share in the event of oversubscription for funding in any one year – would be unnecessary, as the oversubscriptions can be accommodated in the next funding year without any negative impacts in the future years.

Eligible Mitigation Actions ("EMA's")

The parties recommend that the list of EMA's be expanded to encompass a greater range of diesel NO_X emission reduction projects that may serve to protect human health. The parties suggest that an expanded list should include all projects currently eligible for Diesel Emission Reduction Act (DERA) grants, as well as an "other" section that creates flexibility for future projects that are not explicitly described in the Partial Consent Decree but serve to protect human health by reducing diesel NO_X emissions. Specifically, the parties suggest the following additions to Eligible Mitigation Actions:

1. Replacement of large stationary diesel generators used for electricity in remote and/or off-grid areas (i.e. Alaska Native Villages) with renewable energy generation, battery storage equipment, or cleaner diesel generators.
2. Expand Eligibility to model year 2007-2009 for Class 4-8 model truck classification that begins at 1992 and this should be extended.
3. Include off-road heavy duty diesel equipment, many of which are legacy fleet vehicles for Tribes.
4. Include clear definitions for sea and in-land ferries and tug boats. The definitions should include tow boats and river cruise boats. For example, Tribes utilize diesel-operated vessels within the Great Lakes, Columbia River and other major rivers.
5. Clarity is needed to make sure that long haul vehicles, not just local trucks are eligible.
6. EMA's should include truck stop electrification (TSE) and idle reduction technologies. TSE, an EPA SmartWay verified technology, provides long-haul truck drivers an alternative to idling their diesel engines during their overnight stays. The EPA rates TSE as the single most cost effective activity to mitigate mobile sources of NOX emissions (less than one third of the cost per ton achieved through diesel retrofits).
7. Include outreach and education programs: For example, training programs at Tribal colleges on ZEV vehicles and infrastructure as well as vehicle tampering prevention/identification.
8. Include clarification that ZEV infrastructure plans are applicable to all areas across Indian Country. In terms of a national perspective, ZEV charging stations should be planned for fast charging stations that contribute to connected routes and prioritize stations that utilize renewable energy.
9. Purchase of alternative fleet services and transportation system alternatives that would replace diesel vehicles and/or reduce diesel use such as: bicycles, electric golf carts, construction of bike lanes, pedestrian walkways.
10. Allow education and technical assistance on providing information requirements and project development to utilize the available funds. This could be modeled after the TAMS Center Clean Power Plan Efforts.
11. Each Tribe in Indian Country is unique and unique solutions should be considered by the Trustee on a case by case basis. If a Tribe proposes a mitigation action not listed in Appendix D of the Partial Consent Decree, the Trustee should consider the merits of the Tribe's plan.
12. The parties are concerned that relying on the Diesel Emission Reduction Act ("DERA") to cover all NO_x reduction projects not explicitly described in Appendix D-2 of the Partial Consent Decree leaves Tribes vulnerable if DERA projects are finalized but Congress decides to terminate DERA as DERA is appropriated and authorized by Congress. Tribes should be able to submit alternative plans that are not tied directly to DERA, but still meet the goals of the Settlement and the Agreement.
13. Allow for the purchase of monitoring equipment where applicable to determine how effective the mitigation actions are in decreasing black carbon and NOX emissions.
14. The parties also request clarity in regard to Appendix D-2.10 in regard to the DERA Option. DERA projects are said to be eligible, "under DERA pursuant to all DERA guidance documents available through the EPA." Clarification is required since states follow DERA guidance through their state program, however Tribes submit competitive

grants through a RFP process. Will Tribe be required to submit work plans under the state plan guidance or modify work plans based upon the competitive grant process?

Technical Assistance to Tribes

The parties offer the following suggestions regarding the use of the Tribal Allocation Subaccount to support technical assistance to Tribes:

1. The parties support using up to 2.5% of the total Tribal Allocation Subaccount for technical assistance to Tribes in order to allocate more direct funds to Tribes. If the proposed rate of 5% is finalized, the parties recommend adding language that the Trustee cap the indirect cost rate to 25% to ensure more funding to Tribes of the Tribal Allocation Subaccount to support technical assistance to Tribes.
2. There are many national and regional organizations that work within Indian Country and already provide technical assistance such as the TAMS Center. Funds should be provided to Tribes to ensure that all 567 are made aware of the availability to them and make sure they are informed about all the requirements needed to participate. The parties recommend that the Trustee provide funds to the national and regional Tribal organizations, such as the TAMS Center, that have the expertise to train Tribes on air quality programs and can implement a complete outreach plan. The Tribal Trustee should consult and provide funding to these organizations to ensure a complete implementation of an outreach and training program for all 567 Tribes.
3. Special consideration should be made for Alaskan Native Villages and many rural Tribes in the lower 48 since many are remote and operate with limited internet and other infrastructure. Additional resources may need to be made available to ensure all Alaskan Native Villages and remote, rural Tribes are provided with the technical assistance required to participate.

Zero Emission Vehicle Infrastructure

The Partial Consent Decree allows Tribal Beneficiaries to use no more than 15% of their allocations for the use of Zero Emission Vehicle Infrastructure. The parties support the inclusion of Tribes to participate in funding ZEV infrastructure. Further consultation with Tribes would help find alternative approaches for Tribes on a case by case basis in rural areas. The 15% limit that Beneficiaries may allocate to ZEV infrastructure might be of concern to Tribes that have limited diesel vehicles or diesel operations and an increased limit might incentivize the creation of ZEV infrastructure in Tribal communities.

Other Consent Decree Provisions

Sec. 17 in the Consent Decree contemplates that once the Trustee is selected, the Trustee will have the ability to review and suggest amendments to the Mitigation Trust Agreement. If amendments are recommended, the United States, California, and the non-Tribal beneficiaries have the opportunity to review and approve those amendments. Unfortunately, the Tribal Beneficiaries are not included in either the review or approval process for any amendments. We object to the failure to include the Tribal Beneficiaries in this initial review and amendment

process, and we seek a change in the Consent Decree to include the Tribal Beneficiaries in this initial review and amendment process.

In summary, the parties are pleased to provide the aforementioned comments and recommendations concerning the VW Partial Consent Decree, and also look forward to reviewing and providing comments on forthcoming actions in regard to this historic settlement. To respond to this letter, please direct all correspondence to NTAA Project Director, Andy Bessler at andy.bessler@nau.edu.

Signed,

NTAA

TAMS Steering Committee

NRDC

Mr. John C. Cruden
Assistant Attorney General, Environment and Natural Resources Division
U.S. DOJ—ENRD
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Washington, D.C. 20044-7611
In re: Volkswagen``Clean Diesel'' Marketing, Sales Practices, and Products Liability Litigation, Case No: MDL No. 2672 CRB (JSC), and D.J. Ref. No. 90-5-2-1-11386.

August 5, 2016

Dear Mr. Cruden,

We thank the Court and the Plaintiffs for the opportunity to provide comments. Natural Resources Defense Council ("NRDC") is an environmental organization with over 1.4 members and online activists, supported by the expertise of 500 scientists, lawyers, and policy advocates. NRDC has been involved over the past two decades in policies and programs to reduce criteria, toxic, and greenhouse gas pollution from the transportation sector, including light-duty, medium, and heavy-duty trucks.

Remedying the pollution Volkswagen ("VW") caused and broadening its investment in clean, cheat-proof zero-emission vehicles and charging infrastructure is a good start. We support the U.S. Department of Justice in its efforts to ensure VW is brought to justice for any remaining civil and criminal violations. We also thank the California Air Resources Board ("ARB") and U.S. Environmental Protection Agency ("EPA") in their heroic efforts at catching VW's cheating. We ask all agencies to continue their compliance and enforcement efforts to help prevent any future malfeasance by automakers going forward.

NRDC submits the following comments regarding "Appendix C: ZEV Investment Commitment" and "Appendix D: Form of Environmental Mitigation Trust Agreement" of the Consent Decree.

Appendix C: ZEV Investment Commitment

1. **Targeted investments in ZEV-related infrastructure should be prioritized for states that have "primed" the market through the adoption of Zero Emission Vehicle standards, the implementation of vehicle incentive programs, the establishment of programs to close the charging infrastructure gap, and other market creation programs.**

NATURAL RESOURCES DEFENSE COUNCIL
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The Consent Decree requires VW to invest $2 billion over a period of up to ten years, with $0.8 billion going to California and $1.2 billion going to other states. While the infrastructure investments required as part of the Consent Decree should be national in scope, it should be focused on states that have adopted or are in the process of adopting programs to "prime" the market and are forecast to have robust EV markets.

The most important of these market priming programs are the state ZEV programs that require automakers to sell plug-in electric vehicles. As both EPA and ARB recognized in last month's release of their Draft Technical Assessment Report of Light-Duty GHG Emissions standards, California and the nine other states that have adopted ZEV standards will be driving much of the sales growth across the nation over the next ten years as a direct result of the requirements on automakers in those states.[1]

States that are "priming" the market include those that have (1) implemented ZEV programs that require the deployment of electric-drive vehicles, (2) implemented monetary and/or non-monetary incentives to encourage ZEV sales and charging infrastructure deployment, (3) established a robust public charging infrastructure and public utility programs that accelerate the market for ZEVs, and/or (4) developed partnerships between the state and local government with ZEV stakeholders.[2] For example, in the Midwest, Kansas City, MO has partnered with Kansas City Power & Light to establish a Clean Charge Network to begin priming the market.

By ensuring initial investment commitments are targeted to "primed" markets, EPA and ARB will help avoid charging investments becoming stranded or under-utilized in markets where complementary policies have not been in place or supported. The investments can also be used to leverage existing or future investments being made by state and local government, public-utilities, automakers, and charging service providers.

Volkswagen should also be required to partner with academic universities, research institutes, or national labs to ensure the deployment and siting for ZEV charging infrastructure is optimized, as demonstrated by regional modeling tools. All research findings, as well as any analytical tools created, should be made available to the public and government agencies for planning purposes.

2. **Investments made by VW should be coordinated with other investments being made by public utilities; local, state and federal government; and private companies.**

Over the next decade, it is expected that the electric utility industry, together with private companies, will make large investments in charging infrastructure. In addition, last month

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[1] EPA, ARB, NHTSA (2016), *Draft Technical Assessment Report: Midterm Evaluation of Light-Duty Vehicle Greenhouse Gas Standards and Corporate Average Fuel Economy Standards for Model Years 2022-2025.* https://www3.epa.gov/otaq/climate/mte.htm#tar.

[2] NRDC (2016), *Driving Out Pollution: How Utilities Can Accelerate the Market for Electric Vehicles*, June 2016, https://www.nrdc.org/sites/default/files/driving-out-pollution-report.pdf.

the Obama Administration announced that up to $4.5 billion in loan guarantees would be made available to support electric vehicle charging facilities and the federal government would lead efforts to develop a 2020 vision for a national network of fast chargers for EVs.[3] The Consent Decree with VW presents an opportunity to leverage charging investments in a manner that supports cost-sharing among actors – thereby leveraging limited dollars – as well as coordinating the planning, deployment, and operation of charging infrastructure. The multiple investments also present a unique opportunity to potentially connect regional deployment strategies into a coordinated, national network.

Absent a partnership model - such as between VW, utilities, and local/state government - the investments required under the Consent Decree could be spent inefficiently or even compete against other charging investments. We request EPA and ARB work to ensure VW coordinates investments and leverages dollars by prioritizing projects that are seeking a "cost-share" between utility, private, or the state and federal government.

3. **We support the agencies' inclusion of a ceiling on funds utilized for the 'education and public outreach' category. We request that the agencies also establish clear goals, metrics, and reporting requirements to help ensure funds in this category are effectively spent.**

We support the inclusion of a ceiling, or percentage limit, on education or public outreach efforts in order to ensure on-the-ground investments are prioritized, such as those resulting in infrastructure or public access to ZEVs. While consumer education campaigns are important and have their place, primary responsibility for advertising, marketing, and consumer education should rest with the producers – in this case automakers – that sell zero emission vehicles. We request the agencies take a lead role in determining the goals and metrics that should be monitored for education and outreach efforts, while requiring public reporting on the results of the advertising efforts from a neutral, third-party.

4. **We support ZEV investments being utilized to support public ZEV access and infrastructure in underserved, lower-income, and/or communities of color.**

ZEV car-sharing programs, ride-and-drives, and rental fleets are excellent ways of expanding the market beyond early adopters that are typically high or middle income. We recommend that both ARB and EPA establish a goal for a portion of investments to be targeted in counties and regions that are underserved, lower-income, and/or communities of color. Many of these communities often disproportionally face the brunt of air pollution or have limited access to technologies that currently have higher-up front cost but may have lower total costs of ownership. Targeting funds for these communities could simultaneously reduce pollution exposure while putting the technologies in the reach of a larger portion of the population.

[3] https://www.whitehouse.gov/the-press-office/2016/07/21/fact-sheet-obama-administration-announces-federal-and-private-sector

5. **Settling Defendants should be asked and allowed to frontload investments to accelerate existing or "shovel-ready" programs, as appropriate.**

NRDC interprets the expenditures amounts for the 30 month periods as investment floors, rather than ceilings, and ask EPA and ARB to support frontloading of investments where "shovel-ready" programs may already exist, and where private or public funding may be limited. For example, the California's ZEV investment plan lists "scrap and replacement" programs with ZEV as one potential option. This program has been working and in place, and has shown an ability to mitigate public health impacts exacerbated by VW, but currently is funding-limited. In addition, EV car sharing programs targeting disadvantaged communities is another area that can yield immediate benefits, including providing broader access to the public, but currently faces similar funding limits.

6. **"ZEV Investment" should be defined to expressly include zero emission freight transportation projects in all areas of the country, including but not limited to California.**

Under Appendix C, "ZEV Investments" expressly include "zero emission freight transportation projects" *in California*. We strongly support investments in California, but recommend that freight projects in other areas of the country also become eligible for funding as part of the National ZEV Investment Plan. Given that our nation's freight transportation system extends outside of California, there is no reason to limit eligible investments to that state. Diesel-powered trucks, ships, cargo handling equipment and locomotives contribute to violations of federal clean air standards, and create localized pollution "hot spots" throughout the country. Low-income communities and communities of color bear a disproportionate share of the health harms associated with this pollution. These communities would greatly benefit from zero emission infrastructure investments. Accordingly, while Appendix D ("Mitigation Trust Agreement") is focused on funding zero emission vehicles for freight, Appendix C should be revised to allow for ZEV enabling investments in freight transportation projects in all areas of the country, including but not limited to investments in overhead catenary systems for port-serving trucks and infrastructure to reduce emissions from ocean going vessels including shorepower and emissions capturing systems (an alternative to shorepower).

7. **Anticipated Credible Costs should be audited and reviewed to ensure that they are not excessive, while also ensuring that third-parties are not allowed to win contracts by simply underbidding on prevailing wages.**

Much of the initial federal funding of charging infrastructure nationally was through the American Recovery and Reinvestment Act of 2009, which also required prevailing wages for federal projects under the Davis-Bacon and Related Acts. We support EPA and ARB ensuring that expenditures are credible, not excessive, and audited by an independent third party. However, the language also recommends "Settling Defendants shall not obtain services from affiliated companies pursuant to service level agreements if services of equal quality that meet Settling Defendants' specifications and requirements are available from a

third party at a materially lower cost." The language raises the possibility that an affiliated company "A" that is providing the prevailing wage could be put at a competitive disadvantage versus an affiliate company "B" that undercuts them on wages. We recommend that EPA and ARB clarify the language to avoid this unintended consequence.

Appendix D: Form of Environmental Mitigation Trust Agreement

1. **Beneficiaries should report whether the anticipated air quality and community benefits for a funded project were achieved.**

We strongly support provisions within Appendix D that require funding requests to describe an eligible project's proposed community and air quality benefits, and how the proposed action will mitigate NOx emissions in communities that have historically borne a disproportionate share of these emissions. Such requirements will help ensure that the benefits of the Consent Decree—cleaner air and healthier communities—are targeted to those who need them the most. These requirements, however, should be coupled with an assessment of whether the proposed benefits were achieved. Such assessments could be included within the beneficiary's reporting requirements, and will enable smarter funding decisions throughout the life of the Environmental Mitigation Trust.

2. **The costs of replacement and repowers with all-electric engines should be covered at 100% regardless of whether the engine is government or non-government owned.**

Currently, only the costs of replacing and repowering *government-owned* engines with all-electric engines/vehicles are covered in the amount of 100%. Given the superior environmental benefits of zero emission technologies, and the need to propel these technologies into markets across the country, all-electric engines should be fully subsidized regardless of ownership.[4]

Further, in states like California, where this is a significant need to transition to a zero emissions passenger and goods movement system to meet the state's air quality, health and climate goals, we strongly urge that the consent decree eliminate the incentive for conventional internal combustion engines where electric powertrain options are available including battery-electrics, fuel-cells, or hybrids.

3. **Technologies that can achieve the same or greater emissions benefits as shorepower, as well as other control technologies should be eligible for Environmental Mitigation Trust funds.**

[4] While we strongly support incentivizes for ZE engines, we understand that use of such engines will result in a cost-savings for the owner over the life of the engine given that electricity costs are lower than fuel costs. The amount of cost-savings achieved through the use of all-electric engines should be considered (and discounted) when finalizing the amount of incentives provided.

We strongly support shorepower because of the emissions reductions it achieves for ocean going vessels at berth. Given advances in technology, however, shorepower is not the only option for reducing dockside emissions. Recently, the California Air Resources Board approved the use of emissions capturing systems as an alternative to shorepower, and as a means to comply with California's shorepower regulations. Emissions capturing systems should an eligible Mitigation Action under Appendix D. Further, emissions control technologies, including those being developed for locomotives should also be eligible for funding. Providing multiple options for reducing emissions gives beneficiaries flexibility in securing needed pollution reductions.

4. **Overhead Catenary Systems for Heavy Duty Trucks should be eligible for Environmental Mitigation Trust funds.**

In Southern California, the South Coast Air Quality Management District is implementing a one-mile overhead catenary system designed to provide power to port-serving trucks. This demonstration project will last one-year. If successful, and with sustained funding, this project could revolutionize the movement of goods to and from the Ports of Los Angeles and Long Beach. The Consent Decree should deem such systems eligible for funding.

5. **A list of DERA projects that are eligible for trust funds should be provided to the public for input.**

The consent decree allows beneficiaries to use trust funds for Diesel Emission Reduction Act (DERA) projects. This expands the list of projects eligible for Environmental Mitigation Trust funds beyond those enumerated in 1-9 of Appendix D-2 to include projects like truck-stop electrification, among others. We request that the agencies provide a list of DERA projects that could receive trust funds to the public, and allow for additional public input on this list.

Additional Comments applicable to both Appendix C and D

1. **The Consent Decree should provide the public an opportunity to provide input on the National and California ZEV Investment Plans, Beneficiary Mitigation Plans, and funding requests before they are approved and granted.**

We greatly appreciate the opportunity to comment on the Consent Decree. We also appreciate the provisions within the Consent Decree that make the documents, plans, and reports created in connection with the ZEV investment plans and the Environmental Mitigation Trust expenditures publicly available. In the spirit of promoting additional public engagement, we request that the public be provided a meaningful opportunity to comment on proposed ZEV investment plans, Beneficiary Mitigation Plans, and Beneficiary funding requests before they are approved and granted. Explicitly reserving time for public input will allow for necessary engagement between the public, and States and EPA so that specific infrastructure investments and mitigation projects are intelligently developed. Comments provided by the public should be posted on a public-facing website.

2. **The individual and cumulative air quality, community, and health benefits of the projects funded through the ZEV Investment Plans and the Environmental Mitigation Trust should be reported**.

The VW Consent Decree provides $2.7 billion for NOx mitigation actions and $2 billion for investments in zero-emission infrastructure and vehicles, both of which will result in reductions in criteria, toxic, and GHG pollutants. These environmental and health benefits should be reported as part of the Consent Decree, and posted on a public facing website. Such reporting will increase discourse over the benefits of ZE infrastructure and vehicles, and influence the quality of investments over the life of the Consent Decree. The Consent Decree already requires, e.g., reporting on the utilization rates of funded ZEV infrastructure, and the proposed air quality and community benefits at the time trust fund request are made. Reporting on the actual environmental and health benefits of the expenditures made pursuant to Appendix C and D complement these existing requirements.

We thank you for the opportunity to provide comments.

Melissa Lin Perrella
Director, Western Air Quality and Environmental Justice

Simon Mui, Ph.D.
Director, California Vehicles & Fuels

The State of New Hampshire
Department of Environmental Services

Thomas S. Burack, Commissioner

August 5, 2016

By electronic and first-class mail

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Assistant Attorney General
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Re: Public Comment on proposed Partial Consent Decree, *In re: Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation*, Case No: MDL No. 2672 CRB (JSC) and D.J. Ref. No. 90–5–2–1–11386

Dear Assistant Attorney General:

The New Hampshire Department of Environmental Services (NHDES) appreciates the opportunity to provide comments on the above-referenced proposed Partial Consent Decree ("Consent Decree"), which the United States lodged on June 28, 2016. New Hampshire commends the Department of Justice, the Environmental Protection Agency ("EPA"), and the State of California for obtaining a commitment from the Settling Defendants to get noncompliant 2.0 liter vehicles off the road and to pay for the environmental injury resulting from their excess emissions. NHDES commends the Settling Parties on the scope and breadth of this Consent Decree and respectfully offers specific comments below regarding the Mitigation Trust portion (Appendix D) of the Consent Decree.

Appendix C contains provisions for the ZEV (zero emission vehicle) Investment Commitment. NHDES understands that states will have an opportunity to comment specifically on the Settling Defendants' Draft National ZEV Investment Plan prior to its approval by the EPA. We look forward to working with all parties to design a program that advances the use and availability of ZEVs across the country, and particularly in regions that have made specific commitments to advance the use of ZEVs through state or regional agreements that establish clean vehicle targets, as well as those that have developed collaborative relationships to advance clean vehicle technologies. Some examples include U.S Department of Energy Clean Cities[1] programs, the New England Governors' and Eastern Canadian Premiers' resolutions relative to

[1]The U.S. Department of Energy's (DOE's) Clean Cities program advances the nation's economic, environmental, and energy security by supporting local actions to cut petroleum use in transportation.

the transportation and energy sectors[2], and the mid-Atlantic/Northeast jurisdictions' Transportation and Climate Initiative[3].

Comments on the Environmental Mitigation Trust Agreement

The Mitigation Trust seeks to enable projects that will reduce emissions of oxides of nitrogen (NOx), the pollutant for which the defeat devices were designed. NHDES generally supports the framework established by the proposed Mitigation Trust Agreement (Consent Decree Appendix D) for trust administration by a trustee appointed by the court, allocation of trust funds among states that elect to participate as trust beneficiaries, and disbursement of funds for mitigation actions in response to funding requests submitted by beneficiaries. In addition, NHDES supports comments made by New Hampshire's Attorney General (in conjunction with other Attorneys General) regarding the list of Eligible Mitigation Actions set forth in Appendix D-2, which contains some ambiguities and is overly restrictive. However, NHDES respectfully requests that you modify Appendix D-2, as set forth below, before moving for entry of the Consent Decree.

I. Requests for Changes to Eligible Mitigation Project List.

A. Requests for Clarification.

NHDES requests the following changes to clarify matters that are unclear and/or ambiguous.

1. Clarify Category 1, Definition of Eligible Large Trucks.

Appendix D-2 at Page 11 currently reads as follows:

> *"Class 8 Local Freight, and Port Drayage Trucks (Eligible Large Trucks)" shall mean* ***truck tractors*** *(emphasis added) with a Gross Vehicle Weight Rating (GVWR) greater than 33,000 lbs used for port drayage and/or freight cargo delivery (including waste haulers, dump trucks, concrete mixers).*

As noted in the Attorneys General comments, the vast majority of Class 8 waste haulers, dump trucks and concrete mixers are straight trucks which do not have a detachable tractor. Many state and municipal vehicles that are likely to be targeted for replacement or upgrade under our mitigation plan are straight trucks. We request that you modify the definition to read as follows to ensure that both Class 8 straight trucks and truck tractors are within the category:

> *"Class 8 Local Freight, and Port Drayage Trucks (Eligible Large Trucks)" shall mean straight trucks or truck tractors with a Gross Vehicle Weight Rating (GVWR) greater*

[2] See Resolutions 37-2 and 38-2 at http://www.cap-cpma.ca/about/new-england-governors-and-eastern-canadian-premiers-annual-conference-negecp/negecp-resolutions/

[3] The TCI is a regional collaboration of 12 Northeast and Mid-Atlantic jurisdictions that seeks to develop the clean energy economy and reduce greenhouse gas emissions in the transportation sector.

than 33,000 lbs used for port drayage and/or freight cargo delivery (including waste haulers, dump trucks, concrete mixers).

2. Clarify the Description of Administrative Expenditures for Which Trust Funds May Be Used.

Appendix D-2, at Page 10, states:

"For any Eligible Mitigation Action, Beneficiaries may use Trust Funds for actual administrative expenditures (described below) associated with implementing such Eligible Mitigation Action, but not to exceed 10% of the total cost of such Eligible Mitigation Action."

It is unclear whether only the Beneficiary's administrative expenses may be paid by the Trust, or whether the administrative expenses of the recipient who performs the Eligible Mitigation Action (referred to as "vendor" in Sections 5.2.5 and 5.2.6 of the proposed Mitigation Trust Agreement) may also be paid with Trust Funds. NHDES requests Beneficiaries are given the latitude to use Trust Funds for vendor administrative expenses if deemed appropriate by the program administrator, and that this paragraph be revised to make this option clear.

3. Clarify That a Beneficiary May Pay Less Than the Specified Percentages for Eligible Mitigation Actions.

Please clarify whether a Beneficiary may elect to pay less than the percentages specified in Appendix D-2, Paragraphs 1.d, 1.e, 1.f, 2.d, 2.e, 3.d, 3.e, 4.d, 4.e., 5.b., 5.c, 6.d., 6.e., 7.d., 7.e., 8.d, 8.e, 9.c. for an Eligible Mitigation Action. NHDES favors the flexibility to pay less because it would allow us to spread our allocations among a greater number of NOx emission reducing projects, if deemed appropriate. This intent could be clarified by changing the phrase "in the amount of" in each of the referenced paragraphs to "in an amount of up to."

II. Request for Broadening Eligible Mitigation Actions.

NHDES supports the Attorneys General comments and requests several changes to broaden the list of Eligible Mitigation Actions or otherwise ease restrictions on the States' use of Mitigation Trust Funds to enable us to target sources of NOx emissions for mitigation actions in the manner most effective to achieve the Consent Decree's goal of reducing NOx emissions. It would also assist the States in meeting other important obligations and policy goals, including their State Implementation Plan ("SIP") obligations and priorities for promoting light duty ZEV usage.

A. Changes Requested to Broaden the List of Eligible Projects in Appendix D-2.

NHDES requests the following changes for the purposes of broadening the list of Eligible Mitigation Projects:

1. Category 9, Light Duty Zero Emission Vehicle Supply Equipment.

This category allows each beneficiary to use up to 15% of its allocation of trust funds for acquisition, operation and maintenance of new light duty zero emission vehicle supply equipment. NHDES requests an increase to 25%, and expansion of this category to allow funds to be used for incentives to purchase light duty ZEVs.

Expansion of ZEV use, including light duty electric vehicle (EV) use, can be an effective means to reduce NOx emissions (as recognized by the inclusion of the ZEV Investment Commitment in the Consent Decree) and is a priority for New Hampshire. While New Hampshire state lawmakers have not adopted California's ZEV standards, which require automobile manufacturers to produce ZEVs to improve air quality and reduce emissions contributing to climate change, New Hampshire resident purchases of EVs continue to grow exponentially in the state year after year. NHDES works collaboratively with our neighboring states in an effort to further strengthen the EV market, and our EV charging infrastructure development plan seeks to ensure EV travel throughout the Northeast region. The New England states, through the New England Governors' and Eastern Canadian Premiers' 2014 agreement, have agreed to work toward a five percent penetration of alternative fuel vehicles, including ZEVs, in the light duty fleet[4].

As noted by the Attorneys General, the states have primary responsibility under the Clean Air Act for identifying the sources of pollution to be controlled. New Hampshire and other states have prioritized expansion of the light-duty ZEV fleet as a means to reduce emissions, including NOx emissions that contribute to elevated ground level ozone in this region. There is a strong nexus between promotion of light duty ZEV's and the light duty 2.0 liter vehicles whose excess NOx emissions are responsible for the harm to be mitigated. States should be given the flexibility to use these funds in support of both ZEV fueling/charging infrastructure as well as vehicle purchase incentives.

2. Add a New Category for Non-Road Vehicles and Equipment.

NHDES requests the addition of a new category of Eligible Mitigation Actions for non-road vehicles and equipment. This category could be defined as "non-road vehicles or equipment used in construction, handling of cargo (including at a port or airport), or agriculture."

Nonroad vehicles and equipment are a significant source of NOx emissions. In order to provide the States sufficient flexibility to address these sources, we request that you add a new category of Eligible Mitigation Actions for non-road vehicles and equipment. The types of non-road vehicles and equipment currently listed in Appendix D-2 are limited to freight switchers, ferries and tugs, ocean going vessels and marine shorepower equipment, airport ground support equipment and forklifts. While New Hampshire does have such vehicles and equipment in the state, we also have an abundance of other types of non-road vehicles and equipment, including those used in construction and agriculture, many of which are extremely old and, therefore, high-

[4] NEG/ECP Resolution 38-2 – Sustainable Transportation Systems and Use of Alternative Fuel Vehicles: Continuing Commitment to Regional Initiatives.

emitting. While some of these other types of non-road vehicles and equipment are eligible for funding through the DERA[5] option (Appendix D-2, Category 10), given DERA's much stricter eligibility criteria and lower reimbursement rates for government owned vehicles and equipment (in many cases 25% versus 100%), it is unlikely that NHDES will be able to spend a significant portion of our mitigation fund allocations on these sources using the DERA option. Therefore, NHDES requests the addition of a non-road category as described above.

3. Expand Eligible Model-Year Ranges.

Categories 1 (Eligible Large Trucks), 2 (Eligible Buses), and 6 (Medium Trucks) are limited to 1992-2006 model year vehicles. In each case, an exception is made for states whose regulations require upgrades to those model year vehicles, which also allows eligibility for 2007-2012 model year vehicles. However, most of the states are not in a position to take advantage of this exception.

The 1992-2006 Model Year range is unreasonably restrictive, especially considering the 15 year life of the Mitigation Trust. By 2027, the likely 10 year anniversary of the trust, Eligible Mitigation Actions would be limited to vehicles more than 20 years old. This restrictive date range is likely to be especially problematic for northern states where the corrosive effects of winter salt use on roadways leads to more frequent fleet turnover.

NHDES supports the Attorneys General request that the model-year ranges for Categories 1, 2, and 6 be expanded to include all 2012 model-year and older vehicles for all states or that eligible model-year ranges be adjusted routinely so that all vehicles not meeting the then current NOx standard would be eligible.

4. Expand 100% Government Reimbursement Option to Cover Privately Owned Trucks and Transit Buses Under Contract With a Government.

Category 2 provides for 100% funding of replacement or repowering of *Government Owned Eligible Buses (includes school, shuttle and transit buses) and Privately Owned School Buses Under Contract with a Public School District*. Government entities often contract with private entities for truck services (such as municipalities contracting with private refuse haulers), and transit bus services. NHDES requests modification of Paragraphs 1(f), 2(e) and 6 (e), to provide that privately owned Large and Medium Trucks and Transit Buses under contract with a government entity qualify for up to 100% funding.

5. Add a New Category for Investment in Compressed Natural Gas and Propane Infrastructure.

Within the current categories 1, 2, 3, 4, and 6 (Eligible Large Trucks, Eligible Buses, Freight Switchers, Ferries/Tugs, and Medium Trucks), investments in Alternate Fueled engines, specifically those fueled by compressed natural gas ("CNG"), propane or hybrid or all-electric, are eligible expenditures. The use of alternative fuel heavy- and medium-duty vehicles is contingent upon the availability of fuel infrastructure. NHDES supports including CNG and

[5] The Diesel Emission Reduction Act is part of the Energy Policy Act of 2005

propane fueling infrastructure necessary to support these vehicles as an eligible expenditure within the Mitigation Trust Fund.

III. Change Requested to the Definition of "Government"

At Appendix D-2, Page 11, the term "Government" is defined as:
"Government" shall mean a State agency, school district, municipality, city, county, tribal government or native village, or port authority that has jurisdiction over transportation and air quality.

This definition seemingly limits eligible vehicle and equipment replacement to those owned only by entities that have jurisdiction over both transportation and air quality. NHDES is not aware of any state agency that has such jurisdiction, and certainly no school district. We request that the definition be revised to read:
"Government" shall mean a State agency, school district, municipality, city, county, tribal government or native village, or port authority.

IV. Conclusion.

NHDES appreciates the efforts of the Department of Justice, the State of California and EPA in crafting this Consent Decree, and respectfully request that you consider the changes requested above. If you have any questions regarding the issues raised in this letter please feel free to contact Rebecca Ohler, Administrator, Technical Services Bureau (rebecca.ohler@des.nh.gov; 603-271-6749), or me. Thank you.

Sincerely,

Thomas S. Burack

Thomas S. Burack
Commissioner

cc: Rebecca Ohler, NHDES

State of New Jersey

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

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August 5, 2016

Submitted by e-mail to pubcomment-ees.enrd@usdoj.gov

Assistant Attorney General
U.S. DOJ—ENRD
P.O. Box 7611
Washington, D.C. 20044-7611

Re: In re: Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation, Case No: MDL No. 2672 CRB (JSC)
D.J. Ref. No. 90-5-2-1-11386
Supplemental Comments by the State of New Jersey

Dear Assistant Attorney General:

In addition to the comments submitted jointly on behalf of New Jersey and more than a dozen other states regarding the Partial Consent Decree lodged in the above-captioned matter on June 28, 2016 ("Joint Comments"), New Jersey provides these supplemental comments for your consideration. By submitting these comments on the Partial Consent Decree, New Jersey does not consent to the jurisdiction of the federal courts for any purpose. Nor should these comments be interpreted to waive any rights of New Jersey to pursue relief in any form against Volkswagen AG, Audi AG, Volkswagen Group of America, Inc., Volkswagen Group of America Chattanooga Operations, LLC, Dr. Ing h.c. F. Porsche AG and Porsche Cars North America, Inc. (collectively "Volkswagen").

As indicated in the Joint Comments, New Jersey generally supports the framework established by the proposed Mitigation Trust Agreement (Partial Consent Decree Appendix D) for administration of the trust, but needs clarification regarding the impact of the Partial Consent Decree on remaining enforcement actions and states that choose not to participate. For the reasons explained below, New Jersey respectfully requests that you make the following modifications before moving for entry of the Partial Consent Decree.

First, to avoid any misperception about the intended purposes of the Mitigation Trust Agreement Fund and the ZEV Investment Commitment (Partial Consent Decree Appendix C), the Partial Consent Decree should clearly state that neither of these measures is intended to offset or reduce fines or penalties for which Volkswagen may be liable under federal, State, or local

laws. Specifically, the Partial Consent Decree should expressly state: "By funding the Mitigation Trust Fund and/or the ZEV Investment Commitment, Settling Defendants are not entitled to, and waive the right to request, any reduction or offset of any fines or penalties under applicable federal, State, or local laws, regulations, or permits with respect to any 2.0 or 3.0 Liter vehicles. Neither the Mitigation Trust Fund nor the ZEV Investment Commitment may be considered a Supplemental Environmental Project ("SEP") under any federal, State, or local statute, regulation, rule, or policy."

Second, the Mitigation Trust Agreement should also make clear that "A state's decision not to participate in the Mitigation Trust Fund will not prejudice its right to seek injunctive relief under its laws for environmental harm realized within its borders." The consequence to any state that does not participate in the Mitigation Trust Agreement is not clear in the current draft of the Partial Consent Decree. The proposed Partial Consent Decree should state clearly that it will have no impact on any claims by those states electing not to participate in the Mitigation Trust Agreement.

Third, Appendix C should state that "interested states" may include states that choose not to become beneficiaries under the Mitigation Trust Agreement. In the ZEV Investment Commitment, at Section 2.3, the Settling Defendants must submit a plan to EPA that summarizes how the Settling Defendants will solicit input from interested states, municipal governments, tribes and federal agencies related to the development of their national ZEV investment plan. It is not clear from the existing language of Appendix C whether states that are "excluded entities" under Appendix D would still be considered "interested States." Because there is no reason to preclude states that do not join in the Mitigation Trust Agreement from commenting on the ZEV investment plan, Appendix C should state that "interested states include beneficiary as well as excluded entities under Appendix D."

Thank you for your attention to this matter.

Respectfully submitted,

REBECCA RICIGLIANO
ACTING ATTORNEY GENERAL OF NEW JERSEY

By: /s/ John R. Renella
John R. Renella
Deputy Attorney General

LOWENSTEIN SANDLER LLP

By: /s/ Michael B. Himmel (w/ permission)
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OFFICE OF THE COMMISSIONER

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AUG - 3 2016

Assistant Attorney General John C. Cruden
U.S. Department of Justice
Environmental and Natural Resources Division
P.O. Box 7611
Washington, DC 20044-7611

Re: Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation, Case No: MDL No. 2672 CRB (JSC), and D.J. Ref. No. 90-5-2-1-11386

Dear Mr. Cruden:

The New York State Department of Environmental Conservation (DEC) would like to acknowledge the efforts of the United States Department of Justice (DOJ) and the United States Environmental Protection Agency (EPA) in negotiating this settlement. DEC appreciates the opportunity to comment on the proposed consent decree with Volkswagen AG for violations of the Clean Air Act related to use of defeat devices on subject 2.0 liter diesel vehicles. While New York State is generally very supportive of the consent decree, we wish to offer the following comments:

The partial consent decree establishes a National ZEV Investment Plan under Section 2, Appendix C. Funding for the National ZEV Investment Plan is established at $1.2 billion for "... areas of the United States other than the State of California." The design and distribution of funds from the National ZEV Investment Plan has been largely left to VW with limited comment afforded to the non-California entities. New York is concerned by the lack of specificity as to how the National ZEV Investment plan funds should be distributed. New York State requests that VW be clearly directed to fully coordinate ZEV investment plan projects with the states rather than just seeking input. New York, like many other states, is actively investing in ZEV infrastructure and incentives. It is therefore critical that VW coordinate its actions with States to ensure the optimal expenditure of funds; to avoid overlap and conflict between the State and VW efforts; and to gain and retain the confidence of the public relative to these projects. It is not sufficient that EPA must approve VW's plan prior to implementation, even in consideration of public comment.

In addition, VW should be directed to distribute funds from the $1.2 billion National ZEV Investment Plan in a manner that recognizes the initiative taken by New York and several other states to stimulate electric vehicle development and sales. In particular, New York and nine other states have adopted California's new motor vehicle emissions standards, including the ZEV sales mandate under 42 U.S. Code § 7507 (i.e., Section 177 States). The adoption and implementation of these new vehicle emissions standards are critical to these states' commitment to reducing ozone precursors and

greenhouse gas emissions. New York and seven other states have collectively committed to have at least 3.3 million ZEVs operating on their roadways by 2025.[1] The settlement recognizes California's adoption of a ZEV mandate by committing VW to invest $800 million on ZEV infrastructure development in California. The settlement should require VW to make a comparable commitment to ZEV infrastructure development in the Section 177 States. Given that New York's annual sales of passenger car and light truck sales are approximately 54-68% (2008-2014) of these sales in California, VW should commit to investing the proportional sum of $480 million of the National ZEV Investment Plan (60% of $800 million) on ZEV infrastructure in New York. This specific commitment will help New York to address its ozone nonattainment, which has been hindered by VW's excess emissions.

The partial consent decree establishes the eligible mitigation actions under Appendices D and D-2. New York State agrees that the listed eligible mitigation actions are all worthwhile and have the potential to achieve significant NOx emission reductions. However, New York State strongly recommends the inclusion of additional light duty vehicle projects to the existing list of eligible mitigation actions since VW's actions were exclusively in violation of existing light duty vehicle standards. Specifically, New York State is advocating for incentives for the purchase of new electric vehicles and a complimentary light duty vehicle scrappage program to the list of eligible mitigation actions. These additions would also significantly reduce NOx emissions from the light duty vehicle fleet.

Purchase incentives for electric vehicles have the potential to increase sales of battery electric vehicles (BEVs), fuel cell electric vehicles (FCEVs), and plug-in hybrid electric vehicles (PHEVs). A complimentary light duty vehicle scrappage component could provide additional emission reductions. Older vehicles were certified at higher NOx emission standards than newer vehicles and are likely to be higher emitting vehicles while in use. In order to receive the proposed incremental incentive, a vehicle owner would scrap their current vehicle when purchasing a qualifying BEV, FCEV, or PHEV. Incentives would be tiered, with larger incentives available for older vehicles and lower incentives for newer, relatively cleaner vehicles. The incremental incentives would be available to the owners of qualifying vehicles with a valid registration to induce them to scrap the high emitting vehicle. Scrapped vehicles would be rendered inoperable by destroying the engine, cutting the frame in half, and recycling the vehicle.

New York State finds the proposed mitigation action language dealing with scrapped and repowered vehicles in Appendix D-2, items 1.b., 1.c., 2.b, 2.c., 3.b., 3.c., 4.b., 4.c., 6.b., 6.c., 7.b., 7.c., 8.b., and 8.c. to be unclear. It appears the intent is to primarily scrap the vehicle's engine, but not necessarily the vehicle. New York State suggests revising the language in 1.b., 2.b., 3.b., 4.b., 6.b., 7.b., and 8.b. to state that the engine in eligible vehicles must be scrapped.

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[1] www.nescaum.org/documents/multi-state-zev-action-plan.pdf

Under the DERA Option outlined in Appendix D-2, item 10, New York State requests clarification as to whether Trust Funds may be used for what EPA's DERA Guideline refers to the "cost share" portion of DERA projects. The text in item 10 says that the funds may be used for the "non-federal match or overmatch pursuant to ... 42 U.S.C. 16133." While it is clear that states may use Trust Funds for the state match, the term "overmatch" is not defined or used in the referenced section of law.

New York State also requests quantification of the "excess" NOx emissions that resulted from VW's actions. The Partial Consent Decree and Appendix D both state that the eligible mitigation actions are "...intended to fully mitigate the total, lifetime excess NOx emissions..." from the subject 2.0L diesel vehicles. The only information released to date has vaguely referenced excess NOx emissions up to 40 times the applicable NOx standard. An accurate quantification of the excess NOx emissions will enable New York State to determine if there are, or will be, adverse impacts on its State Implementation Plan for ozone. New York State requests that the quantification be provided within 10 days of closure of the comment period.

New York State requests that a complete list of VINs for the subject 2.0 liter diesel vehicles be provided so that states may determine whether the vehicles are registered in their state and have the ability to track recalls, repairs, and/or scrappage. The Partial Consent Decree states that 487,532 subject vehicles were registered as of October 1, 2015. New York State requests that VW be required to submit VIN stems (e.g., based on the first 10 characters of the VIN) for all affected subject 2.0L diesel vehicles broken down by make, model, model year, EPA engine test group, and state of registration within 10 days of closure of the comment period. This information should also be reported within the required quarterly reports required by Appendix A of the partial consent decree.

New York requests that Appendix D be modified to permit states to fail a subject vehicle pursuant to an Inspection and Maintenance Program if motorists do not avail themselves of a modification within 24 months of the modification offer. This is vital for the integrity of states' Inspection and Maintenance programs.

In closing, New York State reiterates its general support of the consent decree. New York urges DOJ and EPA to better define an equitable distribution of Appendix C funds, consider additional Appendix D mitigation actions focused on light duty vehicles, provide a quantification of the "excess" NOx emissions from the subject 2.0 liter vehicles, and require VW to provide a complete list of VINs for all affected 2.0L diesel vehicles.

Sincerely,

Basil Seggos
Commissioner

NEXTEV

July 27, 2016

The Honorable John C. Cruden
Assistant Attorney General
U.S. Department of Justice
P.O. Box 7611
Washington DC 20044

RE: Proposed Partial Consent Decree - U.S. v. Volkswagen Group of America, et al.

Dear Mr. Assistant Attorney General Cruden:

Thank you for the opportunity to provide comments on the Proposed Partial Consent Decree as part of U.S. v. Volkswagen Group of America, et al. NextEV supports the proposed investment in zero-emission vehicle (ZEV) technology deployment, which will provide important incentives to eliminate mobile source emissions and benefit communities throughout the United States.

NextEV is a technology company that specializes in the design and development of smart high-performance electric vehicles, with locations in Silicon Valley, Shanghai, Munich, London and Hong Kong. NextEV is founded by world-class Internet and technology leaders, and has recruited hundreds of world-class R&D and design personnel who provide an unrivalled understanding of the marketplace, automotive landscape, and zero-emission technology innovation. NextEV's mission is to become the first "User Enterprise" in the world to provide a joyful lifestyle for the users. We aim to create cars at a price point optimized for a much larger segment of the car buying population, which will scale and drive deployment of ZEVs in the United States and beyond.

As part of the National Investment Plan, we applaud the eligibility of ZEV fuelling infrastructure to support the installation of public EV charging infrastructure, and we encourage expanding funding to include investments in light-duty zero-emission vehicle programs and applied battery research and development.

- Expanding the national EV charging network nationwide is critically important, and we hope investments under the National Investment Plan will expand publicly available EV chargers in every state.
- We respectfully request considering expanding eligibility to fund electric passenger vehicle and advanced battery research, development, demonstration and deployment in order to accelerate ZEV technologies and eliminate harmful mobile emissions.

NEXTEV

We appreciate the opportunity to provide comments on the Proposed Partial Consent Decree. We strongly support the efforts to eliminate mobile pollutants, reduce greenhouse gas emissions, and benefit communities through the nation.

Sincerely,

Chris Ricci
EVP, General Counsel
[redacted]