

Volkswagen and Audi Settlement - Environmental Mitigation Trust Fund

Air Pollution Control Division

Colorado Department of Public Health and Environment

Summary of Public Comments

October 2017

Updated March 9, 2018

Public Comments on Colorado's Draft Beneficiary Mitigation Plan (BMP) for implementation of the Volkswagen Settlement Environmental Mitigation Trust Fund received during the public comment period are summarized in this document. This summary represents the public comments submitted to the Air Pollution Control Division as of August 28, 2017 and how the comments were addressed in the final BMP.

Introduction and Background

Volkswagen has agreed to settle some of the allegations that it violated the federal Clean Air Act by selling vehicles that emit more air pollution than the Clean Air Act allows, and by cheating on federal emission tests to hide the excess pollution. The affected vehicles exceed emission limits for nitrogen oxides (NOx), a pollutant that harms public health and forms ozone or smog. The settlement was approved by a federal court in California on October 25, 2016. The partial settlement requires Volkswagen to pay \$2.7 billion into an environmental mitigation trust fund. Colorado expects to receive at least \$68 million from the trust between 2017 and 2027. The trust fund will be used to offset the excess air pollution emitted by some of the Volkswagen vehicles that violated the Clean Air Act. The \$68 million allocated to Colorado will fund certain eligible projects to reduce NOx emissions from the transportation sector. The Colorado Department of Public Health and Environment (CDPHE) is the state's lead agency to oversee how this money is distributed and spent. CDPHE partnered with the Colorado Department of Transportation (CDOT), Colorado Energy Office (CEO), and the Regional Air Quality Council (RAQCC) to develop a plan to disperse the funds. The funds will be used to achieve the maximum air quality benefits for the people of Colorado. In addition to cutting NOx emissions, the projects that receive funding are likely to reduce ozone concentrations and emissions of carbon dioxide and other pollutants. The draft Beneficiary Mitigation Plan (BMP) was published for public comment on August 28, 2017. On September 18, 2017, a public comment meeting was held at CDOT to present and solicit comments on the final draft BMP.

Solicitation of Public Comment

Request for comment was released on August 28, 2017 to the public. The public and outside organizations were notified of the solicitation of comments via listserv, personal email, and

a press release. The draft BMP was made available on CDPHE's Volkswagen Settlement website. Deadline for comments were due by October 13, 2017.

Number of Public Comments

Written comments were submitted to the Air Pollution Control Division (APCD) by October 13, 2017. The comments submitted were from the following:

- 2138 group comments signed by individual citizens
- 224 personal citizen comments
- 18 advocacy comments
- 17 government agencies
- 27 industry comments

Comments were received via email and mailed hard copy to the Air Pollution Control Division. Verbal comments were given at the September 18th stakeholder meeting at CDOT. There were 37 oral comments given at the meeting, of which several also submitted written comments.

Example of two grouped comments signed by individuals:

1) *"Dear CDPHE:*

Thank you for the opportunity to comment on the draft proposal to allocate funds in Colorado from the Volkswagen lawsuit.

I encourage the CDPHE to maximize the benefits of access to electric vehicle infrastructure, state connectivity, and climate mitigation by including the following in its final plan:

- 1. Encourage individual charging stations to be put in underserved urban communities and places outside of the Denver Metro;*
- 2. Utilize the \$36 million set aside for transit buses, buses, and trucks go to electric vehicles only, not CNG or new Diesel;*
- 3. The \$12 million of "flex" spending only goes to electric vehicles or electric infrastructure;*
- 4. As specific projects are considered and funded, pay special attention to environmental justice areas in order to ensure the communities who are most impacted by poor air quality benefit from this settlement.*

I appreciate your consideration of my comments and look forward to a cleaner energy future in Colorado! "

2) *"As a Coloradan, I fully support the necessary transition from dirty greenhouse gas emitters to clean energy and green infrastructure. As you consider the allocation of \$36 million to updating Colorado's bus and truck infrastructure, I urge you to invest as much as possible in electric vehicle investments and not on more fossil fuels. In the current draft plan released by CDPHE, propane and compressed natural gas (CNG) technologies are left as viable options for modernizing bus and truck infrastructure. I stand with thousands of Coloradans and the myriad of climate experts who say*

that continued investment in fossil fuels is NOT a viable option for a prosperous future. Our governor, cities across Colorado, and private citizens have already begun making the commitment to get more of their power from clean energy, and now our state has an incredible opportunity to kickstart the clean transportation sector with this VW settlement money. I encourage you to take this opportunity and help us create a future that our families and our neighbors can thrive in. From springtime recreation, to crop yields, to the increasing possibility of longer wildfire seasons, Colorado has a lot to lose if we continue to invest in the same dirty fuels instead of forging ahead to the clean energy future. We continue to risk (and often receive) the pollution of water, air, and land in our state and region. I look forward to hearing that the CDPHE has decided to invest \$36 million in electric buses and trucks to pave the way for Colorado's bright future.”

Summary of Public Comments

Comments submitted to the CDPHE were based upon Colorado’s draft plan, which proposed to distribute funds to both public and private fleets dividing the funds into the following programs:

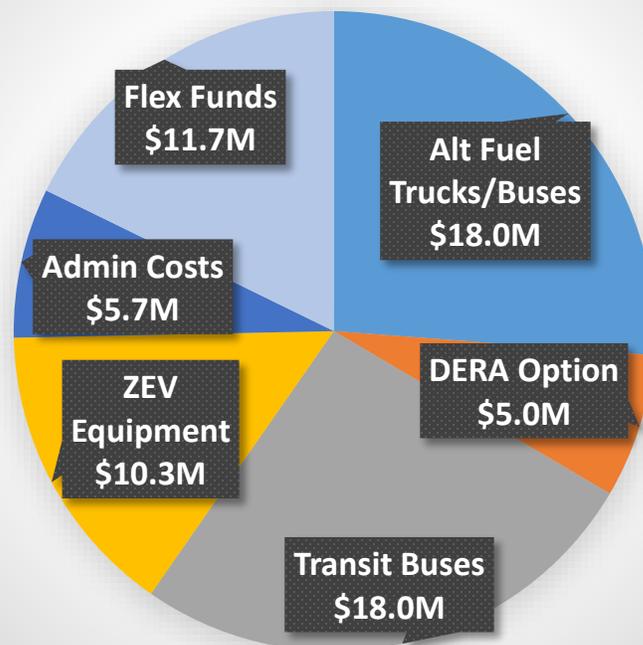
- \$18 million for Alternative Fuel Vehicle Replacement Program
- \$18 million for Transit Bus Replacement Program
- \$10.3 million for ZEV Supply Equipment Program
- \$5 million for DERA Option
- \$5.2 million for Administration costs
- \$12.2 million of Flexible Funds

In the final plan, administrative overhead or “indirect” costs and CDPHE audit costs were added to the final BMP. Government agencies require that a certain percentage is charged for indirect costs for every grant program administered. These indirect costs cover items such as office space used by staff, rent, utilities, equipment and services used by everyone: copiers, phone systems, janitorial service, IT support, etc. Therefore, administration costs have increased to \$5.7 million and Flex Funds have been adjusted to \$11.7 million. The table below describes the revised administrative costs.

Table 1. Administrative Costs

Program	Recipient	Administrative Cost
ZEV Equipment	CEO/RAQC	\$1,545,000
Alt Fuel Vehicle	RAQC	\$1,200,000
Transit Vehicles	CDOT	\$360,000
DERA	CDPHE	\$250,000
CDPHE direct administration, oversight, and audit	CDPHE	\$875,000
CDPHE Indirect Costs	CDPHE	\$815,000
Outreach	CEO	\$657,000
	Total	\$5,702,000

Final Spending Plan



Comments provided covered topics including eligibility issues, incentive levels, expanding the DERA option, removing fleet size limits and scrappage requirements. CDPHE and its partner agencies analyzed these issues, updated the BMP, and have provided clarification below.

1. Hybrid vehicles should be included as eligible projects within the plan.

Under the trust, hybrid vehicles are considered eligible projects. Hybrid vehicles are defined as “a vehicle that combines an internal combustion engine with a battery and electric motor.” Since hybrids have an internal combustion engine and use conventional fuel during a portion of their operation, they will be eligible for 50% of the maximum electric vehicle incentive cap due to their lower emissions benefits.

2. Colorado should acknowledge hydrogen is an eligible project under the trust guidance and identify program incentives for vehicles and infrastructure.

Under the trust, eligible light duty zero emission vehicle supply equipment includes both electric vehicle supply equipment (i.e., electric vehicle charging stations) and hydrogen fuel cell vehicle supply equipment. Colorado will monitor developments in the hydrogen fuel cell vehicle industry and as appropriate, review and modify program incentives where needed to accommodate applications for fueling infrastructure in this sector.

3. The plan should increase incentive caps beyond 40% for public fleets, including school districts.

RAQC conducted vehicle cost research to set appropriate incentives for the spending plan. These incentives were developed based on providing grantees 110% of the incremental cost plus credit for the lost resale value of any scrapped vehicle. The goal of the spending plan is to balance the incentives versus the number of vehicles purchased and subsequent environmental benefits. Increasing the incentives will result in less vehicles being scrapped and reduce the program's environmental benefits.

4. Colorado should investigate increasing DCFC and Level 2 EVSE incentives.

Cost data for previous projects funded under Charge Ahead Colorado (CAC) was reviewed to determine if incentive level changes were justified. The goal of CAC is to provide 80% cost coverage for eligible projects. The analysis indicated increasing the DCFC incentive to \$30,000 for community level DCFC will provide cost coverage at 80%. This analysis also indicated the \$9,000 Level 2 incentive provides 80% cost coverage and does not need to be adjusted.

5. The plan should expand the DERA option to include non-road construction vehicles and locomotives.

CDPHE will investigate expanding the DERA option for non-road construction vehicles. The RAQC and CDPHE will meet with Caterpillar and others interested in deploying electric switcher locomotives to determine the level of interest in developing these types of projects.

6. Colorado should remove the fleet size for pre-2002 medium-duty diesel vehicle replacements.

We reviewed comments limiting diesel vehicle replacement to fleets with nine or less vehicles and have removed this requirement. Clean diesel project emission benefits are cost-effective and provide additional emission reductions when pre-2002 diesel vehicles are replaced and scrapped.

7. Some stakeholders request the scrappage requirements under the Plan be removed, or modified to allow for chassis' not to be cut in half when vehicles are replaced. Other stakeholders commented that pre-2009 natural gas and propane vehicles should be eligible for scrappage when purchasing new natural gas and propane vehicles.

The Volkswagen trust settlement agreement requires that replaced vehicles must be scrapped and the State cannot alter this requirement. The definition of 'scrapped' under the trust "shall mean to render inoperable and available for recycle, and, at a minimum, to specifically cut a 3-inch hole in the engine block for all engines. If any Eligible Vehicle will be replaced as a part of an Eligible Project, scrapped shall also include the disabling of the chassis by cutting the vehicle's frame rails completely in half."

Some older, pre-2009 natural gas and propane vehicles could be candidates for replacement and scrappage due to higher emissions. Stakeholders requested that pre-2009 natural gas, propane and diesel vehicles be eligible for scrappage when purchasing new natural gas and propane vehicles. At this time, unless further clarified by the trustee, Colorado will allow pre-2009 natural gas or propane vehicles be scrapped and replaced with new natural gas or propane vehicles.

8. Denver International Airport (DEN) requests clarity on the application process, funding levels and incentives to be developed for ground support equipment (GSE).

At this time, VW funding will utilize a modified ALT Fuels Colorado (AFC) application process to solicit and select alternative fuel vehicle projects. The VW funds and current AFC funds will not be 'pooled' since current AFC funding allows for fleet expansion and VW funds require scrappage. Any eligible fleet can apply for funding through both pools. The current Plan does not establish incentive levels for GSE since there is current little experience funding these vehicles, but in general incentive levels for GSE will be funded at 110% of the incremental cost plus the lost resale value for the scrapped unit.

CDOT and RAQC met with DEN to discuss potential projects.