

State of California  
AIR RESOURCES BOARD

**CALIFORNIA'S BENEFICIARY MITIGATION PLAN FOR VOLKSWAGEN  
ENVIRONMENTAL MITIGATION TRUST**

Resolution 18-21

**May 25, 2018**

Agenda Item No.: 18-4-4

WHEREAS, on October 25, 2016, the United States District Court for the Northern District of California (Court) approved the 2.0-liter Partial Consent Decree (First Partial Consent Decree) between the United States Department of Justice, the United States Environmental Protection Agency, and the State of California, by and through the California Air Resources Board (CARB or Board) and the Attorney General of the State of California, and Volkswagen AG, Audi AG, Volkswagen Group of America, Inc., and Volkswagen Group of America Chattanooga Operations, LLC (collectively, Volkswagen (VW)) for violations of federal and state laws and regulations by VW regarding its 2.0-liter diesel engine vehicles;

WHEREAS, Appendix D of the 2.0-liter Partial Consent Decree requires VW to pay money into a national Environmental Mitigation Trust (Trust) to mitigate the excess oxides of nitrogen (NOx) emissions caused by VW's use of defeat devices in its 2.0-liter vehicles, about \$381 million of which is allocated for California to be spent primarily on replacing older, dirtier heavy-duty vehicles and equipment with cleaner vehicles and equipment;

WHEREAS, on May 17, 2017, the Court approved the 3.0-liter Partial Consent Decree (Second Partial Consent Decree) between the United States Department of Justice, the United States Environmental Protection Agency, and the State of California, by and through CARB and the Attorney General of the State of California, and Volkswagen AG, Audi AG, Volkswagen Group of America, Inc., and Volkswagen Group of America Chattanooga Operations, LLC (collectively, VW), for violations of federal and state laws and regulations by VW regarding its 3.0-liter diesel engine vehicles;

WHEREAS, the 3.0-liter Partial Consent Decree requires VW to pay money into the Trust to mitigate the excess NOx emissions caused by VW's use of defeat devices in its 3.0-liter vehicles, about \$41 million of which is allocated to California to be spent primarily on replacing older, dirtier heavy-duty vehicles and equipment with cleaner vehicles and equipment;

WHEREAS, Appendix D of the 2.0-liter Partial Consent Decree specifies the types of eligible mitigation actions that a Beneficiary may choose to be funded from the Trust and the maximum funding amounts for each;

WHEREAS, Appendix D of the 2.0-liter Partial Consent Decree specifies up to 15 percent of the State's allocation may be used for actual administrative expenditures associated with implementing eligible mitigation actions and incurred by the Beneficiary and any third-party contractor(s);

WHEREAS, Wilmington Trust, N.A., was appointed by the Court in March 2017 as Trustee for the Trust;

WHEREAS, a Trust Agreement was approved by the Court on October 2, 2017, establishing the Trust Effective Date;

WHEREAS, each government entity identified in the 2.0-liter Partial Consent Decree Appendix D-1 may elect to become a Beneficiary of the Trust by filing with the Trustee and the Court a Beneficiary Certification Form within 60 days of the Trust Effective Date;

WHEREAS, California filed with the Trustee and the Court in November 2017, a Beneficiary Certification Form, where the Governor designated CARB as the Lead Agency to act on the State's behalf as Beneficiary in implementing the State's allocation of the Trust;

WHEREAS, the Trustee filed with the Court a Notice of Beneficiary Designation on January 29, 2018, designating California a Beneficiary of the Trust;

WHEREAS, Appendix D of the 2.0-liter Partial Consent Decree requires Beneficiaries to submit and make publicly available a Beneficiary Mitigation Plan that does all of the following:

- summarize how the Beneficiary plans to use the mitigation funds allocated under the Trust Agreement;
- address the overall goal for the use of the funds;
- address the categories of eligible mitigation actions that will be appropriate to achieve the stated goals;
- address the percentages of funds anticipated to be used for each type of eligible mitigation action;
- describe how the potential beneficial impact of the selected eligible mitigation actions on air quality in areas that bear a disproportionate share of the air pollution burden will be considered;
- estimate the expected ranges of emission benefits realized by the selected eligible mitigation actions;
- explain the process by which public input was sought and considered for the Beneficiary Mitigation Plan;

WHEREAS, on June 27, 2017, Senate Bill 92 (Committee on Budget and Fiscal Review, Chapter 26, Statutes of 2017) was chaptered, which provided direction on Appendices C and D of the 2.0-liter Partial Consent Decree;

WHEREAS, SB 92, section 68, codified at Health and Safety Code section 39614, subdivision (b)(2), requires:

- CARB, as the lead agency, to strive to ensure that investments made pursuant to Appendix D of the 2.0-liter Partial Consent Decree are aligned with the State's priorities before approval of the Plan;
- CARB, as the lead agency, to strive to ensure that investments made pursuant to Appendix D of the 2.0-liter Partial Consent Decree provide for public transparency before approval of the Plan,

WHEREAS, Health and Safety Code section 39614, subdivision (d)(1), requires CARB, as the lead agency, to strive to ensure, to the maximum extent allowable under the 2.0-liter Partial Consent Decree, that 35 percent of the moneys received pursuant to Appendix D of the 2.0-liter Partial Consent Decree benefit low-income or disadvantaged communities disproportionately affected by air pollution;

WHEREAS, Health and Safety Code section 39614, subdivision (d)(2), requires CARB, as the lead agency, to report annually to the Legislature on the proposed and actual expenditures of the moneys received pursuant to Appendix D of the 2.0-liter Partial Consent Decree;

WHEREAS, recognizing that the transportation sector is the largest contributor to greenhouse gas and criteria pollutant emissions in California, the California Air Resources Board (CARB or Board) has developed a comprehensive strategy for reducing those transportation sector emissions, including initiatives supporting the expanded use of zero-emission vehicles (ZEVs);

WHEREAS, Executive Order B-16-12 sets goals that, by 2020:

- ZEVs be accessible to mainstream consumers and
- the private sector's role in the supply chain for ZEV component development and manufacturing will be expanding,

WHEREAS, Executive Order B-16-12 sets goals that, by 2025:

- over 1.5 million ZEVs be on California roads,
- Californians have easy access to ZEV infrastructure, and
- the ZEV industry be a strong and sustainable part of California's economy,

WHEREAS, CARB staff estimates the excess lifetime NO<sub>x</sub> emissions that must be mitigated from the subject VW diesel vehicles is 10,000 tons, which assumes an 85 percent recall or buy-back rate, and accounts for uncertainties in the heavy-duty advanced technology vehicle market demand, the mix of projects within the proposed project categories that could be funded, and the supportive infrastructure needs;

WHEREAS, CARB staff conducted seven workshops in developing the proposed Beneficiary Mitigation Plan on October 9, 2017, February 26, 2018, February 28, 2018, March 1, 2018, March 5, 2018, March 7, 2018, and March 8, 2018, and released a discussion document with recommended eligible mitigation actions and funding allocations on February 16, 2018, for public review and discussion at the last six public workshops;

WHEREAS, between September 2017 and April 2018, stakeholders and other members of the public have submitted more than 70 individual comments and more than 4,000 form letter comments to help CARB staff develop California's proposed Beneficiary Mitigation Plan;

WHEREAS, staff released California's Proposed Beneficiary Mitigation Plan for the Volkswagen Environmental Mitigation Trust, to the public on April 20, 2018;

WHEREAS, CARB staff recommends that the Board approve the proposed Beneficiary Mitigation Plan, including Appendix A: Emission Reductions: Quantification Methodology;

WHEREAS, CARB's regulatory program that involves the adoption, approval, amendment, or repeal of standards, rules, regulations, or plans has been certified by the Secretary for Natural Resources under Public Resources Code section 21080.5 of the California Environmental Quality Act (CEQA; California Code of Regulations, title 14, section 15251(d)), and CARB conducts its CEQA review according to this certified program (California Code of Regulations, title 17, sections 60000-60007);

WHEREAS, staff has determined that the proposed Beneficiary Mitigation Plan is not a "project" subject to CEQA review because the proposed Beneficiary Mitigation Plan constitutes a government funding mechanism or other government fiscal activity which does not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment (California Code of Regulations, title 14, section 15378(b)(4)). The proposed Beneficiary Mitigation Plan is a statewide program implemented by the local air districts or other third party administrator. The air districts or other third party administrators receive reimbursements from the Volkswagen Environmental Mitigation Trust but select the projects to fund. Staff has further determined that even if the proposed Beneficiary Mitigation Plan constituted a CEQA "project," CARB's approval of the proposed Beneficiary Mitigation Plan would be exempt from CEQA review under the California Code of Regulations, title 14, section 15061(b)(3) because it can be seen with certainty that there is no possibility that the proposed revisions may have a significant adverse impact on the environment.

WHEREAS, in consideration of the proposed Beneficiary Mitigation Plan for the Volkswagen Environmental Mitigation Trust, staff presentation, and public testimony and comments, the Board finds that:

- CARB staff has met the requirements established in the Consent Decree in developing the proposed Beneficiary Mitigation Plan for the Volkswagen Environmental Mitigation Trust, selecting eligible mitigation actions from the eligible mitigation actions listed in the Consent Decree that are intended to reduce NOx emissions and establishing expenditure limits consistent with those established in the Consent Decree;
- CARB staff has proposed the following eligible mitigation actions for funding with Volkswagen Environmental Mitigation Trust funds: Zero-Emission Transit, School, and Shuttle Buses; Zero-Emission Class 8 Freight and Port Drayage Trucks, Zero-Emission Freight and Marine Projects; Combustion Freight and Marine Projects; and Light-Duty Zero-Emission Vehicle Infrastructure;
- CARB staff has proposed a reserve of 15 percent of the State's allocation (about \$63 million) to pay administrative costs associated with implementing eligible mitigation actions and incurred by CARB, project administrators, and any third-party contractors, and to reallocate to other project categories as necessary to ensure meeting the NOx mitigation target;
- The proposed mitigation action project categories and allocations will reduce more than 10,000 tons of NOx over a 10-year period, fully mitigating the excess NOx caused by the subject 2.0-liter and 3.0-liter VW diesel cars in California;
- CARB staff has incorporated the requirements established in Health and Safety Code, section 39614 for expenditures and moneys received pursuant to the Consent Decree ensuring that expenditures are aligned with states priorities and that CARB staff will strive to ensure that 35 percent of the moneys received benefit low-income or disadvantaged communities disproportionately affected by air pollution;
- The proposed mitigation action project categories and allocations are consistent with and furthers the goals of Executive Order B-16-12 and the Governor's 2016 ZEV Action Plan;
- The proposed reallocation measures and reserve category are necessary to provide flexibility to adjust funding targets to address fluctuations in project demand, and enable funding to be redirected among project categories as necessary to meet project category demand based on cost-effectiveness, technology availability, market demand, and ability to fully mitigate NOx emissions;
- The proposed Beneficiary Mitigation Plan for the Volkswagen Environmental Mitigation Trust was developed in an open public process, in consultation with affected parties, through numerous public workshops, individual meetings, and other outreach efforts, and these efforts are expected to continue;
- The proposal is consistent with CARB's environmental justice policies and does not disproportionately impact people of any race, culture, or income;
- CARB staff received no public comments to indicate that the proposed revisions to the proposed Beneficiary Mitigation Plan for the Volkswagen Environmental Mitigation Trust would cause any significant adverse impact on the environment.

NOW, THEREFORE, BE IT RESOLVED that the Board hereby approves the proposed Beneficiary Mitigation Plan for the Volkswagen Environmental Mitigation Trust as set forth in Attachment A.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to enter into mitigation action project agreements, interagency agreements, or other appropriate funding agreements to administer each of the project categories identified in the Beneficiary Mitigation Plan statewide with provisions to make modifications as necessary as specified in the approved Beneficiary Mitigation Plan.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to provide direction to air pollution control or air quality management districts, other government entities, or non-profit organizations that are administering the project categories identified in the Plan, including direction to conduct working group meetings or other outreach, as necessary, for developing project solicitations and further refining project implementation.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to monitor project performance and make funding available for proposed mitigation actions through project category funding installments and changes to installments as necessary to ensure full NOx mitigation.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to consult with project administrators during project implementation to determine if the demand exceeds the available funding in any project category, and if any project category is undersubscribed, to reallocate up to 20 percent of each undersubscribed project category's original allocation to another project category with unmet demand, based on cost-effectiveness, technology availability, market demand, and ability to fully mitigate NOx emissions.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to ensure, prior to any reallocation, that the required NOx mitigation target will be met and to analyze alternative funding scenarios for emissions benefits and alignment with the guiding principles;

BE IT FURTHER RESOLVED that the Board directs the Executive Officer, prior to any reallocation of project category funding, and no later than one year after releasing the first project solicitation, to consider the potential for alternate funding scenarios to meet the required NOx mitigation target and guiding principles.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to propose to the Board for their approval any reallocation in excess of 20 percent of a project category.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to coordinate implementation of the projects covered in the Beneficiary Mitigation Plan with other funding programs including, but not limited to, Low Carbon Transportation Investments, the Air Quality Improvement Program, the Carl Moyer Program, and the Community Air Protection Program.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to conduct fiscal audits in accordance with Generally Accepted Government Auditing Standards and program reviews, including audits and reviews of project administrators and their processes and of funded projects, to ensure effective program implementation and accountability.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to submit the approved Beneficiary Mitigation Plan and any subsequent updated Plans to the Trustee, Wilmington Trust, N.A., as required by the Consent Decree.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to submit funding requests to the Trustee, report semi-annually to the Trustee, and communicate with the Trustee as necessary or required by the Trust Agreement and Consent Decree.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to report annually to the State Legislature on the proposed and actual expenditures, as required by Senate Bill 92.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to provide annual updates to the Board on implementation of the Beneficiary Mitigation Plan.

I hereby certify that the above is a true and correct copy of Resolution 18-21 as adopted by the Air Resources Board.

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Rana McReynolds, Clerk of the Board

Resolution 18-21

**May 25, 2018**

**Identification of Attachments to the Board Resolution**

**Attachment A:** Proposed Beneficiary Mitigation Plan for the Volkswagen Environmental Mitigation Trust, released April 20, 2018.