

# TDEC OEP's VW Diesel Settlement Public Information Sessions – Nashville, Knoxville, and Memphis Public Q&A

---

NASHVILLE – OCTOBER 31, 2017

**Who, and on what basis, determined the 15% cap on charging infrastructure within the Environmental Mitigation Trust?**

Light-Duty Zero  
Emission Vehicle Supply  
Equipment

The 15% allocation cap for Light Duty Zero Emission Vehicle Supply Equipment is dictated by Appendix D-2 to the final, executed [Environmental Mitigation Trust Agreement for State Beneficiaries](#), which was approved by the United States District Court for the Northern District of California and executed by the Settling Defendants and the Court-approved Trustee, Wilmington Trust, N.A.; the State of Tennessee did not create this 15% allocation cap. The [U.S. EPA's Frequently Asked Questions \(FAQs\) for Beneficiaries to the Volkswagen Mitigation Trust Agreements](#) speaks to this cap as well (FAQ #4.8).

**How will the funds from scrappage be handled? Will grant funding be reduced by scrap dollars received?**

Scrappage

Program rules or requirements may apply to income received by grantees that is directly generated by the sale of a scrapped engine or vehicle. TDEC has yet to determine all program requirements for recipients of Environmental Mitigation Trust funding. TDEC will address said program requirements, including the treatment of funds from scrappage, during the design of programs related to the State's Beneficiary Mitigation Plan.

**Are there any opportunities under the VW Diesel Settlement for public education campaigns in Tennessee?**

Outreach

The Environmental Mitigation Trust cannot be used to fund public education campaigns. Section 5.1 of the final, executed [Environmental Mitigation Trust Agreement for State Beneficiaries](#) states that, "The Trustee may only disburse funds for Eligible Mitigation Actions, and for the Eligible Mitigation Action Administrative Expenditures specified in Appendix D-2." To view the comprehensive list of Eligible Mitigation Actions and Eligible Mitigation Action Administrative Expenditures, please refer to Appendix D-2 to the final, executed Trust Agreement.

Under the Zero Emission Vehicle (ZEV) Investment, which is outlined in [Appendix C to the First Partial Consent Decree](#), Volkswagen (VW) will invest \$2 billion over 10 years in projects that support the increased use of ZEV, which are defined as battery electric vehicles, plug-in hybrid electric vehicles, and fuel cell vehicles. Of note, ZEV Investment funding can be spent on "brand-neutral education or public outreach that builds or increases awareness" of ZEVs. The ZEV Investment will be a VW administered program. VW has created a separate entity within VW Group of America, known as Electrify America, LLC, to oversee the investment. On December 9, 2016, VW launched [www.electrifyamerica.com](http://www.electrifyamerica.com), which provides information on VW's Zero Emission Vehicle infrastructure and awareness campaign, as well as details on how states, municipalities, and others can submit proposals to help inform VW's ZEV investment plans over the next ten years.

---

With regard to education and outreach on the State of Tennessee's Beneficiary Mitigation Plan, TDEC's

---

Office of Energy Programs has held Volkswagen Diesel Settlement public information sessions in Nashville (10/31), Knoxville (11/7), Memphis (11/17), and Chattanooga (12/15). Additionally, an online webinar was held on December 19. A video and recording of this webinar has been [uploaded to TDEC OEP's website here](#). To access the slide deck that was utilized during the webinar, [click here](#). The public information sessions and webinar provided an overview of the VW Diesel Settlement, the Environmental Mitigation Trust, TDEC's process for developing a proposed Beneficiary Mitigation Plan for Tennessee, and the types of eligible mitigation actions that may be funded by Tennessee's Environmental Mitigation Trust allocation.

Outside of the Environmental Mitigation Trust, TDEC OEP engages in ongoing education and outreach on sustainable transportation and advanced vehicle technologies. Specifically, TDEC OEP coordinates an annual Sustainable Transportation Awards and Forum and sends out monthly Transportation Edition newsletters, which include news updates, information on upcoming events, and links to related resources. TDEC OEP also serves as the Coordinator for the U.S. Department of Energy Clean Cities Program's Middle-West Tennessee Clean Fuels Coalition, which works with vehicle fleets, fuel providers, community leaders, and other stakeholders to reduce petroleum dependence and improve air quality.

**What is the reduction in emissions gained from Repower/replacement of old diesel engines or vehicles to new diesel engines or vehicles?**

Fuels – Diesel  
Emissions

TDEC is currently calculating emissions reductions estimates for the various Eligible Mitigation Action categories. Emissions reductions may be calculated by using any number of publicly available tools, such as Argonne National Laboratory's [Alternative Fuel Life-Cycle Environment and Economic Transportation \(AFLEET\) Tool](#) or EPA's [Diesel Emissions Quantifier](#).

**Does investing in new diesel undermine efforts to electrify vehicle fleets and move to alternative energy?**

Fuels – Diesel, Electric

The purpose of the Environmental Mitigation Trust, as outlined on page 2 of 80 within the final, executed [Environmental Mitigation Trust Agreement for State Beneficiaries](#), is to fund “environmental mitigation projects that reduce emissions of nitrogen oxides (“NOx”) where the Subject Vehicles were, are, or will be operated.” Section 5.1 of the final, executed Environmental Mitigation Trust Agreement for State Beneficiaries states that, “The Trustee may only disburse funds for Eligible Mitigation Actions, and for the Eligible Mitigation Action Administrative Expenditures specified in Appendix D-2.” To view the comprehensive list of Eligible Mitigation Actions and Eligible Mitigation Action Administrative Expenditures, please refer to Appendix D-2 to the final, executed [Environmental Mitigation Trust Agreement for State Beneficiaries](#).

As required by the Trust Agreement, the Beneficiary Mitigation Plan will address the categories of Eligible Mitigation Actions that Tennessee anticipates that it will use and the expected percentages of funds to be used for each type of action. TDEC is currently in the process of developing a draft Beneficiary Mitigation Plan. With regard to prioritization of projects within the Eligible Mitigation Action categories, TDEC will ultimately determine which projects receive funding after careful consideration of factors including but not limited to projected emissions reduction benefits, availability of other funding sources for the proposed project, and other co-benefits of the project.

**Can remanufactured engines be used in vehicle Repowers or must the engines used be new?**

Repower - Engines

---

According to Appendix D-2 to the Trust Agreement, “Repower” shall mean “to replace an existing engine with a newer, cleaner engine or power source that is certified by EPA and, if applicable, CARB, to meet a more stringent set of air emission standards. Repower includes, but is not limited to, diesel engine replacement with an engine certified for use with diesel or a clean alternate fuel, diesel engine replacement with an electric power source (e.g., grid, battery), diesel engine replacement with a fuel cell, diesel engine replacement with an electric generator(s) (genset), diesel engine upgrades in Ferries/Tugs with an EPA Certified Remanufacture System, and/or diesel engine upgrades in Ferries/Tugs with an EPA Verified Engine Upgrade. All-Electric and fuel cell Repowers do not require EPA or CARB certification.”

If a remanufactured engine is newer and cleaner than the original engine or power source and is certified by EPA and, if applicable, CARB, to meet a more stringent set of air emission standards, then it could be considered eligible. However, it has not been determined whether Tennessee’s Beneficiary Mitigation Plan will allow repowering with remanufactured engines.

**What would be the ongoing requirements for grantees in terms of duration of service, reporting, permission to sell vehicle(s), etc.?**

Administrative

Beneficiaries will need to conform with the Beneficiary Reporting Obligations outlined in Section 5.3 to the final, executed [Trust Agreement for State Beneficiaries](#) (p. 28 of 80). In particular, “for each Eligible Mitigation Action, no later than six months after receiving its first disbursement of Trust Assets, and thereafter no later than January 30 (for the preceding six-month period of July 1 to December 31) and July 30 (for the preceding six-month period of January 1 to June 30) of each year, each Beneficiary shall submit to the Trustee a semiannual report describing the progress implementing each Eligible Mitigation Action during the six-month period leading up to the reporting date (including a summary of all costs expended on the Eligible Mitigation Action through the reporting date). Such reports shall include a complete description of the status (including actual or projected termination date), development, implementation, and any modification of each approved Eligible Mitigation Action.” In addition to the reporting requirements that will be incorporated to inform the semiannual reports mentioned above, TDEC may also incorporate additional reporting requirements in order to gather specific types of data on projects that are funded by the Environmental Mitigation Trust. As such, reporting may be required on a quarterly, semi-annual, or annual basis, depending on the information sought.

TDEC has yet to determine what the additional reporting requirements will be for recipients of Environmental Mitigation Trust funding.

**What is TDEC’s timeline for the administration of the VW Diesel Settlement’s Environmental Mitigation Trust? Specifically, what is the State’s timeline for drafting and releasing a Beneficiary Mitigation Plan?**

Administrative

Below is a projected timeline of TDEC's BMP development process. These timeframes are subject to change, and TDEC will update its stakeholders with any alterations as it progresses through the plan development.

- TDEC expects to submit a *draft* BMP to the Governor’s Office for review within the first calendar quarter of 2018.
  - TDEC expects to release a *proposed* BMP to the public early in the second calendar quarter of 2018, at which time TDEC will accept public comments regarding the *proposed* BMP.
-

- 
- Following the close of this additional public comment period, TDEC will review and consider all comments received. The BMP will then be finalized, submitted to the Trustee, and released to the public. This is expected to occur in the second calendar quarter of 2018, with project solicitation expected to occur in the third calendar quarter of 2018.

---

**Can a repowered school bus have its useful life extended?**

Class 4-8 School Bus,  
Shuttle Bus, or Transit  
Bus

The maximum allowable years of service for a school bus in Tennessee cannot be extended as a result of engine repowering. Tenn. Code Ann. § 49-6-2109 (b) (1) states that conventional and Class D school buses “may be used until the buses reach the eighteenth year from the in-service date of the buses.” Tenn. Code Ann. § 49-6-2109 (b) (2) states that “the Commissioner of Safety, through the inspection process, may approve additional years of service beyond the eighteenth year from the in-service date for conventional and Class D buses on a year-to-year basis,” only if the school bus being operated has less than two hundred thousand (200,000) miles of recorded travel.

---

---

**KNOXVILLE – NOVEMBER 7, 2017**

---

**When will funding be available to local governments?**

Administrative

TDEC submitted its Beneficiary Certification Form both to the Court and to Wilmington Trust prior to the December 1, 2017 deadline and expects to be approved as a Beneficiary in late January (Wilmington Trust must approve or deny Beneficiary status for all Beneficiaries by January 30, 2018, or 120 days from the Trust Effective Date of October 2, 2017).

Below is a projected timeline of TDEC's Beneficiary Mitigation Plan development process. These timeframes are subject to change, and TDEC will update its stakeholders with any alterations as it progresses through the plan development.

- TDEC expects to submit a *draft* BMP to the Governor’s Office for review within the first calendar quarter of 2018.
- TDEC expects to release a *proposed* BMP to the public early in the second calendar quarter of 2018, at which time TDEC will accept public comments regarding the *proposed* BMP.

Following the close of this additional public comment period, TDEC will review and consider all comments received. The BMP will then be finalized, submitted to the Trustee, and released to the public. This is expected to occur in the second calendar quarter of 2018, with project solicitation expected to occur in the third calendar quarter of 2018.

---

**Will the Environmental Mitigation Trust funds be administered through a grant program?**

Administrative

The funding mechanism for project implementation under the Environmental Mitigation Trust is within each Beneficiary’s discretion, as long as such mechanism complies with applicable laws. TDEC will likely administer its EMT allocation through grant programs, but has not yet made a final determination on

---

---

this.

**Will the Environmental Mitigation Trust funds be only offered to predetermined locations? (based on air quality, registrations of offending vehicles, etc.)**

Administrative

The final, executed [State Beneficiary Trust Agreement](#) does not require that Environmental Mitigation Trust funds be spent with any sort of locational or geographic prioritization. However, a state's Beneficiary Mitigation Plan could include such weighting or requirements.

The State Beneficiary Trust Agreement does require Beneficiaries to include within their Beneficiary Mitigation Plans a description of how the Beneficiary will "consider the beneficial impact of Eligible Mitigation Actions on air quality in areas that bear a disproportionate share of the air pollution burden within its jurisdiction." TDEC could define "areas of disproportionate burden" in a number of ways, such as:

- High Emission Areas – areas with higher than average concentrations of NO<sub>x</sub> based on National Emissions Inventory (NEI) data.
- High Pollution Areas – areas located near ports, rail yards, terminals, distribution centers, truck stops, construction sites, bus yards or depots, and other major sources of pollution; and/or areas with higher than Tennessee average criteria pollutant levels.
- Areas or Communities
  - With higher than state average minority or low-income populations, or as identified by EPA's EJSCREEN as being at risk for disproportionate impacts.
  - With higher than state average populations of elderly or young.

We welcome input from the public as to how TDEC should consider or define "areas that bear a disproportionate share of the air pollution burden." Please note that all public comments must be received via the Public Comment Form or directly through email or phone by **11:59 pm Central on January 15, 2018** to be considered for the draft Beneficiary Mitigation Plan. TDEC will review and consider all comments received by this date. TDEC's Volkswagen Diesel Settlement Public Comment Form may be accessed [here](#).

**If states do not designate lead agencies—i.e., if they don't confirm a beneficiary nor accept their allocation—do their funds then get allocated to other states?**

Administrative

All states have identified lead agencies for administering their respective Trust fund allocations and have applied for Beneficiary status. To find out more about specific state activities and contacts, please refer to the [National Association of State Energy Officials \(NASEO\) and National Association of Clean Air Agencies \(NACAA\) Volkswagen Settlement Clearinghouse](#).

Beneficiaries have 10 years from the Trust Effective Date (TED) to request their allocation and implement Eligible Mitigation Actions. If Beneficiaries obligate at least 80% of their allocation by the 10th anniversary of the TED, they may be eligible to receive a supplemental weighted share of the remaining balance in unused funds. Beneficiaries that are eligible to receive such supplemental funding will be granted five years of additional time to select and implement appropriate Eligible Mitigation Actions.

---

**Will this program fund the total cost of a replacement bus for a local school system?**

Class 4-8 School Bus,  
Shuttle Bus, or Transit  
Bus

Eligible Mitigation Action Category #2 (Class 4-8 School Buses, Shuttle Buses, or Transit Buses) within Appendix D-2 to the final, executed [State Beneficiary Trust Agreement](#) states that for Government Owned Eligible Buses (2009 engine model year or older class 4-8 school buses) and Privately Owned School Buses Under Contract with a Public School District, Beneficiaries may draw funds from the Trust in the amount of:

1. Up to 100% of the cost of a Repower with a new diesel or Alternate Fueled (e.g., CNG, propane, Hybrid) engine, including the costs of installation of such engine.
2. Up to 100% of the cost of a new diesel or Alternate Fueled (e.g., CNG, propane, Hybrid) vehicle.
3. Up to 100% of the cost of a Repower with a new All-Electric engine, including the costs of installation of such engine, and charging infrastructure associated with the new All-Electric engine.
4. Up to 100% of the cost of a new All-Electric vehicle, including charging infrastructure associated with the new All-Electric vehicle.

Although match is not required for the abovementioned school bus Repower or replacement projects, Tennessee's Beneficiary Mitigation Plan could require it. TDEC has not yet determined whether its Beneficiary Mitigation Plan will require match for Government Owned school bus projects or for school bus projects that are Privately Owned and Under Contract with a Public School District.

**How will the number of vehicles per project be determined?**

Administrative

TDEC has yet to determine whether it will require a minimum number of vehicles per project or whether it will prioritize projects with more than one vehicle. Related requirements from similar grant programs (e.g., the Diesel Emission Reduction Act (DERA) Program, the Tennessee Natural Gas and Propane Vehicle Grant Program, or the Congestion Mitigation and Air Quality Improvement (CMAQ) Program) may inform requirements that are ultimately incorporated into future TDEC programming under the Environmental Mitigation Trust.

**How many more public information sessions will be held in Tennessee?**

TDEC has hosted four VW Diesel Settlement public information sessions across the state as well as an online webinar, which was recorded and posted to the TDEC website. These meetings provided an overview of the VW Diesel Settlement, the Environmental Mitigation Trust, TDEC's process for developing a proposed Beneficiary Mitigation Plan for Tennessee, and the types of eligible mitigation actions that can be funded by Tennessee's Environmental Mitigation Trust allocation. All of these public information sessions were free and open to the public:

- Nashville: October 31, 2017
- Knoxville: November 7, 2017
- Memphis: November 17, 2017
- Chattanooga: December 15, 2017 -
- Webinar: December 19, 2017 - [Click here for the webinar recording](#), and [click here for a copy of](#)

---

[the presentation.](#)

Any future information sessions and presentations regarding the Volkswagen Diesel Settlement will be posted on TDEC OEP's [Public Information Sessions and Presentations website](#) and distributed to its stakeholders via email. To be apprised of any future announcements related to Volkswagen Diesel Settlement public outreach in Tennessee, you may sign up for the TDEC VW Environmental Mitigation Trust email list here: <https://signup.e2ma.net/signup/1843437/1737620/>.

**How is Tennessee working, if at all, with other southeastern states?**

Administrative

Through the National Association of State Energy Officials (NASEO), TDEC OEP maintains close working relationships with the other State Energy Offices in the Southeast, as well as with State Energy Offices throughout the U.S. Through national and regional meetings that are convened by NASEO, TDEC is able to stay apprised of activity by other states and any opportunities for potential collaboration. Similarly, NASEO and the National Association of Clean Air Agencies (NACAA) have launched the [VW Settlement Clearinghouse](#), which serves as a resource for state and local government offices and agencies as they develop plans and implement projects under the settlement's Environmental Mitigation Trust. The Clearinghouse website provides a variety of resources, information on settlement-related progress and state contacts, as well as mobile source NOx emissions by state, county, and sector. NASEO and NACAA have also launched a Working Group for Beneficiaries under the Environmental Mitigation Trust, to maximize collaboration and coordination among states and territories.

**Will the state be performing air quality modeling exercises to determine where best to spend funds for maximum NOx mitigation?**

Administrative

Emissions

Yes. TDEC is currently calculating emissions reductions estimates for the various Eligible Mitigation Action categories. Emissions reductions may be calculated by using any number of publicly available tools, such as Argonne National Laboratory's [Alternative Fuel Life-Cycle Environment and Economic Transportation \(AFLEET\) Tool](#) or EPA's [Diesel Emissions Quantifier](#).

**Will TDEC consider using Environmental Mitigation Trust funds as DERA non-federal match for eligible projects?**

DERA Option

Administrative

According to a [November 18, 2016 presentation by EPA for prospective Beneficiaries to the Environmental Mitigation Trust](#), Trust Funds cannot be used to meet DERA non-federal mandatory cost share requirements. However, Trust Funds can be used as DERA non-federal voluntary match under [Eligible Mitigation Action Category #10 to the State Beneficiary Trust Agreement](#). The "DERA Funding Limits" defined in Section X of the [FY 2017 STATE CLEAN DIESEL GRANT PROGRAM INFORMATION GUIDE](#) represent the maximum portion of the equipment costs (parts and labor) that can be covered with a combination of DERA funds and any non-federal voluntary matching funds provided by the state. The portion of the costs that exceed the DERA Funding Limit is referred to as the "mandatory cost-share." VW funds may not be used to meet the mandatory cost-shares for the National DERA Grant Program or the DERA School Bus Rebate Program. Further, VW Environmental Mitigation Trust Beneficiaries cannot use DERA funds to meet the cost-share requirements of the VW Mitigation Trust.

A single entity may also receive funding from DERA and from the Volkswagen Environmental Mitigation Trust for separate projects. TDEC will announce if it plans to fund DERA projects with Environmental Mitigation Trust funding in its Beneficiary Mitigation Plan. For more information on eligible activities

---

---

under the DERA Option (Eligible Mitigation Action Category #10 to the Environmental Mitigation Trust), please consult [EPA's VW DERA Option Factsheet for States](#).

**Will TDEC or another state agency provide grant application assistance for those who need it?**

Administrative

Yes. TDEC intends to host application workshops after the release of solicitation(s) for projects. In addition, TDEC will ensure that applicants will have access to technical assistance for responding to aspects of related solicitation(s) (e.g., expected emissions reductions calculations). TDEC will release more information related to application workshops and technical assistance for prospective applicants during the project solicitation phase.

**Are there any restrictions that would prevent the replacement of public electric vehicle supply equipment (EVSE) under Category 9?**

Light-Duty Zero  
Emission Vehicle Supply  
Equipment

Section 9 of Appendix D-2 to the Volkswagen Diesel Settlement's [final, executed State Beneficiary Trust Agreement](#) states that, "Each Beneficiary may use up to fifteen percent (15%) 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." Light duty electric vehicle supply equipment may include Level 1, Level 2 or fast charging equipment (or analogous successor technologies) that is located in a public place, workplace, or multi-unit dwelling and is not consumer light duty electric vehicle supply equipment (i.e., not located at a private residential dwelling that is not a multi-unit dwelling). With regard to electric vehicle supply equipment, costs "directly connected" to the installation and operation of the equipment could include costs associated with an electrical upgrade or replacement to establish the necessary electrical supply levels for the equipment to operate. The costs associated with removal of the original equipment would not be considered eligible under the Environmental Mitigation Trust.

Please note that each Beneficiary will need to determine whether it will include the Light Duty Zero Emission Vehicle Supply Equipment Eligible Mitigation Category in its Beneficiary Mitigation Plan. For more information on the Eligible Mitigation Category pertaining to Light Duty Zero Emission Vehicle Supply Equipment, please refer to [Section 9 of Appendix D-2](#) to the State Beneficiary Trust Agreement.

**Does TDEC have any preference in spending its Environmental Mitigation Trust funds as quickly as allowed (two-thirds in two years) versus spreading the funding out over the maximum allowed ten years?**

Administrative

Beneficiaries have 10 years from the Trust Effective Date (October 2, 2017) to request their allocation and implement Eligible Mitigation Actions.

TDEC has worked with settlement funding in the past. Based on previous experience, TDEC may spread the disbursement of funding across several years in order to accommodate both staff capacity and the potential for financial or program audits. TDEC may also choose to stagger funding so as to focus on one or a few eligible mitigation action categories at a time. Similarly, TDEC may wait to allocate funding toward a certain category if there is an improved or new technology within that category that is expected to become commercially available later on (but still within the allotted 10 year time frame).

**Does TDEC anticipate that the definition of "older" will change as time ticks**

Administrative

**on? (i.e., that 2009 vehicle model year requirement grows to 2010 next year and so on)**

No; eligible model years and engine types for Repower or replacement are detailed within Appendix D-2 to the [final, executed State Beneficiary Trust Agreement](#). These model years and engine types are fixed by the Trust Agreement and will not change. However, TDEC may choose to narrow the model year range or engine type for eligible projects within its Beneficiary Mitigation Plan. TDEC has not yet determined whether its Beneficiary Mitigation Plan will narrow the eligible model year ranges or engine types from what is outlined within Appendix D-2 to the Trust Agreement.

**Can the purchase of vehicles be completed if no replacement vehicle is available?**

Administrative

No. All of the Eligible Mitigation Action Categories outlined within Appendix D-2 to the [final, executed State Beneficiary Trust Agreement](#) (except for Category #9 [Light Duty Zero Emission Vehicle Supply Equipment] and #10 [Diesel Emission Reduction Act (DERA) Option]) are focused on the Repower or replacement of eligible vehicles, vessels, or equipment. For all Repower and replacement projects, scrapping of the original engine or of the original vehicle, vessel, or equipment is required.

**Are airports considered “ports” in the VW Settlement Trust Agreement? (Since air cargo is transferred to and from aircraft and trucks, it could be considered an intermodal port.)**

Administrative

Neither the Consent Decree nor the Trust Agreement defines “port.” A [presentation by the Mobile Sources Technical Review Subcommittee of EPA’s Clean Air Act Advisory Committee](#) suggests that a port may be defined as a node in the larger goods movement supply chain, to include cruise terminals, bulk terminals, container terminals, and intermodal container transfer facilities.

We welcome input from the public as to how TDEC should consider or define “ports” within its Beneficiary Mitigation Plan. Please note that all public comments must be received via the Public Comment Form or directly through email or phone by **11:59 pm Central on January 15, 2018** to be considered for the draft Beneficiary Mitigation Plan. TDEC will review and consider all comments received by this date. TDEC’s Volkswagen Diesel Settlement Public Comment Form may be accessed [here](#).

**Can the Trust funds support the purchase and installation of EVSE in airport public parking lots?**

Light-Duty Zero  
Emission Vehicle Supply  
Equipment

Yes. However, each Beneficiary will need to determine whether it will include the Light Duty Zero Emission Vehicle Supply Equipment Eligible Mitigation Category in its Beneficiary Mitigation Plan. For more information on the Eligible Mitigation Category pertaining to Light Duty Zero Emission Vehicle Supply Equipment, please refer to [Section 9 of Appendix D-2](#) to the State Beneficiary Trust Agreement.

**If an all-electric heavy-duty vehicle is funded, is its associated charging equipment/infrastructure taken from Category 9’s 15% Light-Duty Zero Emission Vehicle Supply Equipment maximum? Or does the associated charging come from the vehicle category itself? (i.e. Electric bus infrastructure comes from Category 2: Class 4-8 School Bus, Shuttle Bus, or**

Light-Duty Zero  
Emission Vehicle Supply  
Equipment  
Fuels – Electric

**Transit Bus)**Heavy Duty ZEV  
Infrastructure

The cost of associated charging infrastructure for an All-Electric heavy-duty vehicle will be tied to the respective Eligible Mitigation Action category that is funding the vehicle's Repower or replacement. Eligible Mitigation Action category #9 (Light Duty Zero Emission Vehicle Supply Equipment) is limited to "the costs necessary for, and directly connected to, the acquisition, installation operation and maintenance of new *light duty* zero emission vehicle supply equipment" and, therefore, cannot be used to fund costs related to the associated charging infrastructure for medium or heavy-duty All-Electric vehicles. To view the comprehensive list of Eligible Mitigation Actions and Eligible Mitigation Action Administrative Expenditures, please refer to [Appendix D-2 to the final, executed Trust Agreement](#).

**What is TDEC doing to reach out to vulnerable communities or those highly impacted by vehicle pollution? What is TDEC doing to engage minority fleets?**

Administrative

TDEC's strategy for proactive community engagement ensures that communities of all types, including vulnerable communities, those highly impacted by vehicle pollution, and minority fleets, have an opportunity to engage in development of Tennessee's Beneficiary Mitigation Plan and utilization of Volkswagen Diesel Settlement Trust Fund. This includes:

1. Engaging the public to raise awareness of TDEC projects or services and to provide stakeholders with a meaningful opportunity to provide input during the decision-making process.
2. Hosting public meetings/hearings in centralized locations and at times accessible to the community (evenings, weekends).
3. Collaborative efforts between TDEC's programs and Office of Communication to share relevant information with Local Media Resources and Minority Newspapers.
4. Utilizing the community contacts maintained by the Regional Directors of TDEC's Office of External Affairs.
5. Accommodating vulnerable or minority communities by utilizing language assistance services for Limited English Proficiency individuals and groups when necessary.
6. Hosting "Enhancing Engagement in Your Community" conversations across the state, which serve as opportunities for TDEC to learn how to improve its outreach within underserved and/or underrepresented communities and to enhance opportunities for communities to provide input on its programming.

In addition to this strategy, TDEC continues to add community leaders and environmental advocacy groups to its TDEC Volkswagen Diesel Settlement stakeholder list, through which TDEC has released program updates, opportunities for public comment, and details on in-person and online public information sessions regarding the settlement.

We seek input on ways in which we could continue to improve our outreach processes and welcome input from our stakeholders on these topics.

**How will TDEC prioritize public versus private fleet grant applications?**

Administrative

TDEC has not yet made any determinations with regard to prioritization of projects proposed by

---

---

Government versus Non-Government entities.

**What will be included in a grant application’s cost-effectiveness evaluation? Direct replacement? Lifetime operation and maintenance costs? Others?**

Administrative

The State Beneficiary Trust Agreement requires Beneficiaries to include within their Beneficiary Mitigation Plans a “description of the expected ranges of emission benefits the Beneficiary estimates would be realized by implementation of the Eligible Mitigation Actions identified in the Beneficiary Mitigation Plan” as well as a description of how the Beneficiary will “consider the beneficial impact of Eligible Mitigation Actions on air quality in areas that bear a disproportionate share of the air pollution burden within its jurisdiction.”

Although “cost-effectiveness” is not a required element for consideration under the Environmental Mitigation Trust, TDEC may consider cost in its overall assessment and evaluation of proposed projects. With regard to prioritization of projects within the Eligible Mitigation Action categories, TDEC will ultimately determine which projects receive funding after careful consideration of factors including but not limited to projected emissions reduction benefits, availability of other funding sources for the proposed project, and other co-benefits of the project (which could include cost-effectiveness).

**Are the presentations from these public information sessions available on TDEC’s website?**

Administrative

Yes. You can find information on all of the past and upcoming Volkswagen Diesel Settlement public information sessions on TDEC OEP’s [VW Public Information Sessions and Presentations webpage](#). You can also find [a copy of the public information session slide deck](#) as well as [a recording of the VW Public Information Webinar](#) held in December 2017.

**Can funding from the Environmental Mitigation Trust be combined with outside DERA funding for the same project?**

DERA Option

According to a [November 18, 2016 presentation by EPA for prospective Beneficiaries to the Environmental Mitigation Trust](#), Trust Funds cannot be used to meet DERA non-federal mandatory cost share requirements. However, Trust Funds can be used as DERA non-federal voluntary match under [Eligible Mitigation Action Category #10 to the State Beneficiary Trust Agreement](#). The “DERA Funding Limits” defined in Section X of the [FY 2017 STATE CLEAN DIESEL GRANT PROGRAM INFORMATION GUIDE](#) represent the maximum portion of the equipment costs (parts and labor) that can be covered with a combination of DERA funds and any non-federal voluntary matching funds provided by the state. The portion of the costs that exceed the DERA Funding Limit is referred to as the “mandatory cost-share.” VW funds may not be used to meet the mandatory cost-shares for the National DERA Grant Program or the DERA School Bus Rebate Program. Further, VW Environmental Mitigation Trust Beneficiaries cannot use DERA funds to meet the cost-share requirements of the VW Mitigation Trust.

A single entity may also receive funding from DERA and from the Volkswagen Environmental Mitigation Trust for separate projects. For more information on eligible activities under the DERA Option (Eligible Mitigation Action Category #10 to the Environmental Mitigation Trust), please consult [EPA’s VW DERA Option Factsheet for States](#).

**Can Environmental Mitigation Trust funds be used to support the purchase of electric light rail vehicles?**

Fuels – Electric

---

No. The Environmental Mitigation Trust cannot be used to power light rail vehicles. Section 5.1 of the final, executed [State Beneficiary Trust Agreement](#) states that, “The Trustee may only disburse funds for Eligible Mitigation Actions, and for the Eligible Mitigation Action Administrative Expenditures specified in Appendix D-2.” To view the comprehensive list of Eligible Mitigation Actions and Eligible Mitigation Action Administrative Expenditures, please refer to [Appendix D-2 to the final, executed Trust Agreement](#).

**Are these funds subject to the same federal laws, regulations, and requirements as with federal transportation funding? (i.e. FHWA, NEPA, etc.)**

Administrative

No. The Environmental Mitigation Trust funds are not federal funds. However, if Trust funds are combined with other State or federal funding (e.g., Tennessee Natural Gas and Propane Vehicle Grant Program Funding or Congestion Mitigation and Air Quality (CMAQ) Program funding), then the applicable State and/or Federal rules, regulations, and/or program regulations will apply.

**Can funds be used to enhance monitoring for inhalable particulate matter?**

Emissions

No. The Environmental Mitigation Trust cannot be used to fund air quality monitoring programs. Section 5.1 of the final, executed [State Beneficiary Trust Agreement](#) states that, “The Trustee may only disburse funds for Eligible Mitigation Actions, and for the Eligible Mitigation Action Administrative Expenditures specified in Appendix D-2.” To view the comprehensive list of Eligible Mitigation Actions and Eligible Mitigation Action Administrative Expenditures, please refer to [Appendix D-2 to the final, executed Trust Agreement](#).

**Does TDEC encourage private business to apply for grants under the Environmental Mitigation Trust?**

Administrative

Yes, provided that the final Beneficiary Mitigation Plan includes Non-Government (i.e., private) projects. At this time, TDEC is not soliciting proposals for projects. To view the comprehensive list of Eligible Mitigation Actions and Eligible Mitigation Action Administrative Expenditures, please refer to [Appendix D-2 to the final, executed Trust Agreement](#).

**Can a City use the funds to upgrade to higher power, more reliable electric vehicle charging infrastructure?**

Light-Duty Zero  
Emission Vehicle Supply  
Equipment

Section 9 of Appendix D-2 to the Volkswagen Diesel Settlement’s [final, executed State Beneficiary Trust Agreement](#) states that, “Each Beneficiary may use up to fifteen percent (15%) 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.” Light duty electric vehicle supply equipment may include Level 1, Level 2 or fast charging equipment (or analogous successor technologies) that is located in a public place, workplace, or multi-unit dwelling and is not consumer light duty electric vehicle supply equipment (i.e., not located at a private residential dwelling that is not a multi-unit dwelling). With regard to electric vehicle supply equipment, costs “directly connected” to the installation and operation of the equipment could include costs associated with an electrical upgrade to establish the necessary electrical supply levels for the equipment to operate. However, each Beneficiary will need to determine whether it will include the Light Duty Zero Emission Vehicle Supply

---

---

Equipment Eligible Mitigation Category in its Beneficiary Mitigation Plan. For more information on the Eligible Mitigation Category pertaining to Light Duty Zero Emission Vehicle Supply Equipment, please refer to [Section 9 of Appendix D-2](#) to the State Beneficiary Trust Agreement.

---

---

**MEMPHIS – NOVEMBER 17, 2017**

**Will the Environmental Mitigation Trust funds be allocated with priority to areas with high populations of offending vehicles? Or are the funds allocated to areas with the worst air quality?**

Administrative

The final, executed [State Beneficiary Trust Agreement](#) does not require that Environmental Mitigation Trust funds be spent with any sort of locational or geographic prioritization. However, a state’s Beneficiary Mitigation Plan could include such weighting or requirements.

The State Beneficiary Trust Agreement does require Beneficiaries to include within their Beneficiary Mitigation Plans a description of how the Beneficiary will “consider the beneficial impact of Eligible Mitigation Actions on air quality in areas that bear a disproportionate share of the air pollution burden within its jurisdiction.” TDEC could define “areas of disproportionate burden” in a number of ways, such as:

- High Emission Areas – areas with higher than average concentrations of NOx based on National Emissions Inventory (NEI) data.
- High Pollution Areas – areas located near ports, rail yards, terminals, distribution centers, truck stops, construction sites, bus yards or depots, and other major sources of pollution; and/or areas with higher than Tennessee average criteria pollutant levels.
- Areas or Communities
  - With higher than state average minority or low-income populations, or as identified by EPA’s EJSCREEN as being at risk for disproportionate impacts.
  - With higher than state average populations of elderly or young.

We welcome input from the public as to how TDEC should consider or define “areas that bear a disproportionate share of the air pollution burden.” Please note that all public comments must be received via the Public Comment Form or directly through email or phone **by 11:59 pm Central on January 15, 2018** to be considered for the draft Beneficiary Mitigation Plan. TDEC will review and consider all comments received by this date. TDEC’s Volkswagen Diesel Settlement Public Comment Form may be accessed [here](#).

**Can food trucks be funded under the Environmental Mitigation Trust?**

Class 4-7 Local Freight Trucks  
Class 8 Local Freight Trucks

---

Appendix D-2 to the final, executed [State Beneficiary Trust Agreement](#) states that Eligible Trucks to be

---

---

Repowered or replaced under the Environmental Mitigation Trust include:

- “Class 8 Local Freight Trucks and Port Drayage Trucks (Eligible Large Trucks)” (Eligible Mitigation Action Category #1) and
- “Class 4-7 Local Freight Trucks (Medium Trucks)” (Eligible Mitigation Action Category #6).

“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). Eligible Large Trucks include 1992-2009 engine model years.

“Class 4-7 Local Freight Trucks (Medium Trucks)” shall mean trucks, including commercial trucks, used to deliver cargo and freight (e.g., courier services, delivery trucks, box trucks moving freight, waste haulers, dump trucks, concrete mixers) with a Gross Vehicle Weight Rating (GVWR) between 14,001 and 33,000 lbs. Eligible Medium Trucks include 1992-2009 engine model years.

If a food truck meets either of the definitions highlighted above, then it could be considered eligible for Repower or replacement, provided that the aforementioned Eligible Mitigation Action Categories are included in the relevant Beneficiary Mitigation Plan.

Additionally, should TDEC elect to include the DERA option in its Beneficiary Mitigation Plan and elect to fund food truck projects under that Eligible Mitigation Action category, then such vehicles could be considered eligible for “Certified Engine Replacement” and/or “Vehicle and Equipment Replacements” at the “Highway Diesel Vehicle (other than Drayage)” rates, as defined in the [2017 State Clean Diesel Grant Program Information Guide](#).

For additional information on Eligible Mitigation Action Categories under the Environmental Mitigation Trust, please refer to Appendix D-2 to the final, executed [State Beneficiary Trust Agreement](#).

**Do projects under the Environmental Mitigation Trust require NEPA approval?**

Administrative

No. The Environmental Mitigation Trust funds are not federal funds. However, if Trust funds are combined with federal funding (e.g., Congestion Mitigation and Air Quality (CMAQ) Program funding), then NEPA rules and regulations may apply.

**Do projects supported by the Environmental Mitigation Trust require inclusion in a Metropolitan Planning Organization’s (MPO’s) Transportation Improvement Plan (TIP)?**

Administrative

The [Federal Transit Administration notes that](#) “Each [metropolitan planning organization](#) (MPO) is required, under 49 U.S.C. 5303(j), to develop a Transportation Improvement Program (TIP)—a list of upcoming transportation projects—covering a period of at least four years. The TIP must be developed in cooperation with the state and public transit providers. The TIP should include capital and non-capital surface transportation projects, bicycle and pedestrian facilities and other transportation enhancements, Federal Lands Highway projects, and safety projects included in the State’s Strategic Highway Safety Plan. The TIP should include all regionally significant projects receiving FHWA or FTA funds, or for which FHWA or FTA approval is required, in addition to non-federally funded projects that are consistent with the [Metropolitan Transportation Plan](#) (MTP). Furthermore, the TIP must be [fiscally constrained](#).” As such, if a project that is supported by the Environmental Mitigation Trust (a non-federal funding source) is relevant to the priorities established within an MPO’s Metropolitan Transportation

---

---

Plan (MTP) and falls within an MPO’s metropolitan planning area, such project should be identified in the TIP.

TDEC’s Beneficiary Mitigation Plan and all documentation and records submitted by the Beneficiary in support of each funding request to the Trustee will be available to the public on the TDEC webpage. Furthermore, summarized details regarding the expenditure of Trust Funds by the Beneficiary (e.g., cumulative totals for categories of eligible mitigation actions identified in the Beneficiary Mitigation Plan, identification of recipients of Trust funds and their project scopes) will be maintained on the TDEC Webpage. Should an MPO need additional information on any projects funded by the Environmental Mitigation Trust for inclusion within a TIP, such information may be requested by submitting a records request to TDEC.

**Will TDEC, TDOT, or another Tennessee State agency be a potential fund recipient? For example, Trust funds used to support installing DC Fast Charging equipment at highway rest stops.** Administrative

“Government” is defined in Appendix D-2 of the [final, executed State Beneficiary Trust Agreement](#) as a State or local government agency (including a school district, municipality, city, county, special district, transit district, joint powers authority, or port authority, owning fleets purchased with government funds), and a tribal government or native village. As such, TDEC, TDOT, and other Tennessee State agencies can be considered eligible recipients of Environmental Mitigation Trust funding for the Repower or replacement of “Government” owned vehicles, vessels, or equipment.

With regard to Eligible Mitigation Action Category #9 (Light Duty Zero Emission Vehicle Supply Equipment), TDEC is currently working with TDOT to evaluate the possibilities to install electric vehicle charging infrastructure at [Tennessee Welcome Centers and Rest Stops](#) along interstate highways. To do this, we have been researching various arrangements that would allow such infrastructure to be placed at these locations while ensuring compliance with the federal Randolph-Sheppard Act.

**What will be the application process be like for the installation of electric vehicle charging infrastructure at commercial properties? And would such a project be funded totally by the Trust funds, or would it require outside match?** Administrative  
Light-Duty Zero  
Emission Vehicle Supply  
Equipment

Section 9 of Appendix D-2 to the Volkswagen Diesel Settlement’s [final, executed State Beneficiary Trust Agreement](#) states that, “Each Beneficiary may use up to fifteen percent (15%) 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.” Light duty electric vehicle supply equipment may include Level 1, Level 2 or fast charging equipment (or analogous successor technologies) that is located in a public place, workplace, or multi-unit dwelling and is not consumer light duty electric vehicle supply equipment (i.e., not located at a private residential dwelling that is not a multi-unit dwelling).

Subject to the 15% limitation above, Section 9.c. of the [final, executed State Beneficiary Trust Agreement](#) states that each Beneficiary may draw funds from the Trust in the amount of:

1. Up to 100% of the cost to purchase, install and maintain eligible light duty electric vehicle supply equipment that will be available to the public at a Government Owned Property.
  2. Up to 80% of the cost to purchase, install and maintain eligible light duty electric vehicle supply
-

---

equipment that will be available to the public at a Non-Government Owned Property.

3. Up to 60% of the cost to purchase, install and maintain eligible light duty electric vehicle supply equipment that is available at a workplace but not to the general public.

4. Up to 60% of the cost to purchase, install and maintain eligible light duty electric vehicle supply equipment that is available at a multi-unit dwelling but not to the general public.

However, each Beneficiary will need to determine whether it will include the Light Duty Zero Emission Vehicle Supply Equipment Eligible Mitigation Category in its Beneficiary Mitigation Plan, as well as whether to require additional match beyond the minimum amounts prescribed within the Trust Agreement.

TDEC has yet to determine what the application process for funding will look like under the Environmental Mitigation Trust. TDEC will address said application process during the design of programs related to the State's Beneficiary Mitigation Plan.

**What would be the expected timeline of a project, from application to receipt of funds to project completion and on?**

Administrative

Below is a projected timeline of TDEC's Beneficiary Mitigation Plan (BMP) development process. These timeframes are subject to change, and TDEC will update its stakeholders with any alterations as it progresses through the plan development.

- TDEC expects to submit a *draft* BMP to the Governor's Office for review within the first calendar quarter of 2018.
- TDEC expects to release a *proposed* BMP to the public early in the second calendar quarter of 2018, at which time TDEC will accept public comments regarding the *proposed* BMP.
- Following the close of this additional public comment period, TDEC will review and consider all comments received. The BMP will then be finalized, submitted to the Trustee, and released to the public. This is expected to occur in the second calendar quarter of 2018, with project solicitation expected to occur in the third calendar quarter of 2018.

Beyond this, TDEC cannot provide definitive timelines for project funding, as many program design elements have yet to be determined or finalized. Furthermore, in addition to preparing the BMP, Beneficiaries are responsible for submitting requests for Eligible Mitigation Action funding by filing with the Trustee a Beneficiary Eligible Mitigation Action Certification form (Funding Request). Funding requests must contain much more detail than the Beneficiary Mitigation Plan. To view the elements that are required within a Funding Request, please [click here](#).

**Why is TDEC considering industrial vehicle applications for funding when the cause of the mitigation is passenger vehicle-related?**

Administrative

The purpose of the Environmental Mitigation Trust, as outlined on page 2 of 80 within the final, executed [Environmental Mitigation Trust Agreement for State Beneficiaries](#), is to fund "environmental mitigation projects that reduce emissions of nitrogen oxides ("NOx") where the Subject Vehicles were, are, or will be operated."

Section 5.1 of the final, executed Environmental Mitigation Trust Agreement for State Beneficiaries states that, "The Trustee may only disburse funds for Eligible Mitigation Actions, and for the Eligible

---

---

Mitigation Action Administrative Expenditures specified in Appendix D-2.” The Eligible Mitigation Actions are dictated by Appendix D-2 to the [Environmental Mitigation Trust Agreement for State Beneficiaries](#), which was approved by the United States District Court for the Northern District of California and executed by the Settling Defendants and the Court-approved Trustee, Wilmington Trust, N.A.; the State of Tennessee did not create these categories.

Please also note that none of the eligible mitigation action categories include light-duty, passenger vehicles. Therefore, Beneficiaries are unable to use their respective Environmental Mitigation Trust allocations to Repower or replace passenger automobiles. Only one of the eligible mitigation action categories (Category #9) focuses on supply equipment or infrastructure for light-duty, zero emission vehicles, and that category is capped at 15% of the Beneficiary’s Trust fund allocation.

**How can the Environmental Mitigation Trust funds be used to support vehicle electrification and associated charging infrastructure?**

Light-Duty Zero  
Emission Vehicle Supply  
Equipment  
Fuels – Electric

Section 9 of Appendix D-2 to the Volkswagen Diesel Settlement’s [final, executed State Beneficiary Trust Agreement](#) states that, “Each Beneficiary may use up to fifteen percent (15%) 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.” Light duty electric vehicle supply equipment may include Level 1, Level 2 or fast charging equipment (or analogous successor technologies) that is located in a public place, workplace, or multi-unit dwelling and is not consumer light duty electric vehicle supply equipment (i.e., not located at a private residential dwelling that is not a multi-unit dwelling). However, each Beneficiary will need to determine whether it will include the Light Duty Zero Emission Vehicle Supply Equipment Eligible Mitigation Action Category in its Beneficiary Mitigation Plan.

Additionally, Eligible Mitigation Action categories 1-8 allow for the Repower or replacement of certain medium and heavy duty diesel vehicles, vessels and equipment to All-Electric technologies, where All-Electric shall mean “powered exclusively by electricity provided by a battery, fuel cell, or the grid.” These projects would also be eligible to receive funding for charging infrastructure associated with the new All-Electric engine, vehicle, vessel, or equipment. To view the comprehensive list of Eligible Mitigation Actions and Eligible Mitigation Action Administrative Expenditures, please refer to [Appendix D-2 to the final, executed Trust Agreement](#).

**Is Tennessee applying to be one of the beneficiaries of the funds?**

Administrative

Yes, TDEC was identified by Governor Haslam as the lead agency for administering Tennessee’s allocation of the Environmental Mitigation Trust. TDEC submitted its Beneficiary Certification Form both to the Court and to Wilmington Trust prior to the December 1, 2017 deadline and expects to be approved as a Beneficiary in late January (Wilmington Trust must approve or deny Beneficiary status for all Beneficiaries by January 30, 2018, or 120 days from the Trust Effective Date of October 2, 2017).

**Is TDOT involved in the Environmental Mitigation Trust decision-making/information process?**

Administrative

Yes. TDEC has consistently engaged with TDOT and other State agencies since the beginning of its work on the Volkswagen Diesel Settlement. TDOT has attended VW Settlement information sessions and

---

---

presentations and will work with TDEC in the future to coordinate on and leverage programs that can enhance the effectiveness of Environmental Mitigation Trust funding (e.g., TDOT's Congestion Mitigation and Air Quality Improvement (CMAQ) Program).

**What other manufacturers besides Volkswagen have been caught cheating?**

Administrative

On January 12, 2017, [EPA accused Fiat Chrysler \(FCA\)](#) of installing software that enables certain diesel trucks to emit far more pollutants than emission requirements allow. On May 23, 2017, [EPA filed a civil complaint](#) in a federal court in Detroit, MI against FCA, alleging that nearly 104,000 light duty vehicles sold in the United States were equipped with software functions that were not disclosed to regulators during the certification application process, and that the vehicles contain defeat devices similar to those in the offending Volkswagen vehicles. The impacted vehicles include 2014- 2016 model year Dodge Ram 1500 pickup trucks and Jeep Grand Cherokees equipped with 3.0-liter EcoDiesel engines. EPA is working on this issue in coordination with the California Air Resources Board (CARB), which has also issued a notice of violation to FCA. EPA and CARB have both initiated investigations based on FCA's alleged actions. You can learn more about EPA's investigation of FCA [here](#).

**How long will TDEC be accepting public comment on its Beneficiary Mitigation Plan/the Environmental Mitigation Trust process?**

Administrative

Below is a projected timeline of TDEC's Beneficiary Mitigation Plan (BMP) development process. These timeframes are subject to change, and TDEC will update its stakeholders with any alterations as it progresses through the plan development.

- TDEC is accepting public comment on the Environmental Mitigation Trust's Eligible Mitigation Action categories until **January 15, 2018 at 11:59 PM CST**. Comments may be accepted through participation in an [online comment form](#), through email, or by phone. These comments will be considered in the compilation of a *draft* BMP.
- TDEC expects to submit a *draft* BMP to the Governor's Office for review within the first calendar quarter of 2018.
- TDEC expects to release a *proposed* BMP to the public early in the second calendar quarter of 2018, at which time TDEC will accept public comments regarding the *proposed* BMP.
- Following the close of this additional public comment period, TDEC will review and consider all comments received. The BMP will then be finalized, submitted to the Trustee, and released to the public. This is expected to occur in the second calendar quarter of 2018, with project solicitation expected to occur in the third calendar quarter of 2018.

**How can an organization that is not requesting funds still influence TDEC's decision-making/the allocation of funds for Tennessee?**

Administrative

TDEC accepts public comment from all stakeholders, including those who will not apply for Environmental Mitigation Trust funds. TDEC has developed a [web-based form](#) to allow interested stakeholders to submit comments regarding the State's utilization of its Environmental Mitigation Trust allocation. All comments are received by TDEC's Office of Energy Programs (OEP) for review. Please note that all public comments must be received via the Public Comment Form or directly through email or phone by **11:59 pm Central on January 15, 2018** to be considered for the draft Beneficiary Mitigation Plan. TDEC will review and consider all comments received by this date.

---

---

TDEC expects to release a proposed Beneficiary Mitigation Plan (BMP) to the public early in the second calendar quarter of 2018, at which time TDEC will accept public comments regarding the proposed BMP.

To be apprised of any future announcements related to the Volkswagen Diesel Settlement in Tennessee, you may sign up for the TDEC VW Environmental Mitigation Trust email list here: <https://signup.e2ma.net/signup/1843437/1737620/>.

---

**Can Environmental Mitigation Trust funds be used to support converting fleet trucks to natural gas?**

Fuels – Natural Gas

Appendix D-2 to the final, executed [State Beneficiary Trust Agreement](#) states that Eligible Trucks to be Repowered or replaced under the Environmental Mitigation Trust include:

- “Class 8 Local Freight Trucks and Port Drayage Trucks (Eligible Large Trucks)” (Eligible Mitigation Action Category #1) and
- “Class 4-7 Local Freight Trucks (Eligible Medium Trucks)” (Eligible Mitigation Action Category #6).

“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). Eligible Large Trucks include 1992-2009 engine model years.

“Class 4-7 Local Freight Trucks (Eligible Medium Trucks)” shall mean trucks, including commercial trucks, used to deliver cargo and freight (e.g., courier services, delivery trucks, box trucks moving freight, waste haulers, dump trucks, concrete mixers) with a Gross Vehicle Weight Rating (GVWR) between 14,001 and 33,000 lbs. Eligible Medium Trucks include 1992-2009 engine model years.

Eligible Large or Medium Trucks can be Repowered or replaced with any new diesel, Alternate Fueled, or All-Electric technologies, where Alternate Fueled shall mean “an engine, or a vehicle or piece of equipment that is powered by an engine, which uses a fuel different from or in addition to gasoline fuel or diesel fuel (e.g., CNG, propane, diesel-electric Hybrid).”

If a fleet truck meets either of the definitions highlighted above, then it could be considered eligible for Repower or replacement to run on natural gas, provided that the aforementioned Eligible Mitigation Action Categories are included in the relevant Beneficiary Mitigation Plan. For additional information on Eligible Mitigation Action Categories under the Environmental Mitigation Trust, please refer to Appendix D-2 to the final, executed [State Beneficiary Trust Agreement](#).

---

---

**CHATTANOOGA – DECEMBER 15, 2017**

---

**At what point in the work plan will TDEC’s outreach to low-income communities be implemented?**

Administrative  
Environmental Justice

TDEC is utilizing several strategies to ensure that communities of all types, including low-income communities, have an opportunity to learn about the VW Settlement, engage in development of Tennessee’s Beneficiary Mitigation Plan, and, in the future, obtain access to information regarding the

---

---

availability of funds for Eligible Mitigation Actions. Thus far, TDEC has offered a number of regional in-person outreach events across the state, and has supplemented these events with alternative means for communities to access information (such as a [webinar recording available online](#)) at a time convenient for them.

Specifically, as part of the process for informing the development of the State of Tennessee’s Beneficiary Mitigation Plan, TDEC has conducted or participated in a number of public outreach events, including information sessions in Knoxville, Nashville, Memphis, and Chattanooga, to better inform the public with respect to the VW Settlement and to ensure that a wide cross-section of Tennesseans have the opportunity to provide input regarding Tennessee’s use of Environmental Mitigation Trust Funds. In addition to these in-person outreach opportunities, TDEC maintains an easily accessible webpage, which includes FAQs, an online public comment form, and various resources. TDEC conducted a webinar in December, and a recording of this informational presentation has been [posted to the TDEC webpage](#). TDEC has also sought to provide regular updates regarding outreach opportunities and updated web content through a stakeholder listserv, which includes representatives of minority and low-income serving organizations. TDEC will continue to use similar mechanisms to keep communities of all types apprised of current progress as it continues to shape its Beneficiary Mitigation Plan and subsequent funding actions.

The VW Settlement Environmental Mitigation Trust also requires TDEC to consider the “potential beneficial impact of the selected Eligible Mitigation Actions on air quality in areas that bear a disproportionate share of the air pollution burden within its jurisdiction” (See [Section 4.1 of the final, executed State Beneficiary Trust Agreement](#)). TDEC could define “areas of disproportionate burden” in a number of ways, such as:

- High Emission Areas – areas with higher than average concentrations of NOx based on National Emissions Inventory (NEI) data.
- High Pollution Areas – areas located near ports, rail yards, terminals, distribution centers, truck stops, construction sites, bus yards or depots, and other major sources of pollution; and/or areas with higher than Tennessee average criteria pollutant levels.
- Areas or Communities
  - With higher than state average minority or low-income populations, or as identified by EPA’s EJSCREEN as being at risk for disproportionate impacts.
  - With higher than state average populations of elderly or young.

We welcome input from the public as to how TDEC should consider or define “areas that bear a disproportionate share of the air pollution burden.” Please note that all public comments must be received via the Public Comment Form or directly through email or phone by 11:59 pm Central on January 15, 2018 to be considered for the draft Beneficiary Mitigation Plan. TDEC will review and consider all comments received by this date. TDEC’s Volkswagen Diesel Settlement Public Comment Form may be accessed [here](#).

**Is this PowerPoint available to us? How do we get it, if so.**

Administrative

Yes. You can find information on all of the past and upcoming Volkswagen Diesel Settlement public information sessions on TDEC OEP’s [VW Public Information Sessions and Presentations webpage](#). You can also find [a copy of the public information session slide deck](#) as well as [a recording of the VW Public Information Webinar](#) held in December 2017.

---

**Could you please elaborate on the role of Wilmington Trust?**

Administrative

On February 23, 2017, the U.S. Department of Justice [filed a motion to request the appointment of Wilmington Trust as the Trustee of the Environmental Mitigation Trust](#) under the Volkswagen Settlement. On March 15, 2017, the U.S. District Court [approved the appointment of Wilmington Trust as the Trustee](#).

The Trustee will be responsible for items such as the approval of Beneficiary status, receipt of Beneficiary Mitigation Plans, approval of funding requests, and the disbursement of funds. A comprehensive listing of Trustee responsibilities is outlined in Sections 3-5 of both the [State Beneficiary Trust Agreement](#) (beginning on page 9 of 80) and [Tribal Beneficiary Trust Agreement](#) (beginning on page 11 of 80).

**Can we apply on our own to Electrify America's 30-month funding/project cycles?**

Administrative

Electrify America

ZEV Investment Plan

Yes. The period to submit proposals for recommendations for the first 30-month investment cycle closed on January 16, 2017, and additional proposals have been considered since then on a rolling basis. On April 9, 2017, Electrify America published the [National ZEV Investment Plan: Cycle 1](#).

Electrify America expects to solicit proposals and recommendations for the second 30-month investment cycle in the first quarter of 2018. The Electrify America website also notes that all submissions will become the property of Volkswagen Group of America and should not include proprietary information as submissions could be shared publicly. For more information, visit [www.electrifyamerica.com](http://www.electrifyamerica.com).

**Can funds be provided for expanding an existing electric bus system, including magnetic induction charging infrastructure?**

Class 4-8 School Bus,  
Shuttle Bus, or Transit  
Bus

Fuels – Electric

Heavy Duty ZEV  
Infrastructure

No. All of the Eligible Mitigation Action Categories outlined within Appendix D-2 to the [final, executed State Beneficiary Trust Agreement](#) (except for Category #9 [Light Duty Zero Emission Vehicle Supply Equipment] and #10 [Diesel Emission Reduction Act (DERA) Option]) are focused on the Repower or replacement of eligible vehicles, vessels, or equipment.

Additionally, Eligible Mitigation Action category #9 (Light Duty Zero Emission Vehicle Supply Equipment) is limited to “the costs necessary for, and directly connected to, the acquisition, installation operation and maintenance of new *light duty* zero emission vehicle supply equipment” and, therefore, cannot be used to fund costs related to the associated charging infrastructure for medium or heavy-duty All-Electric vehicles.

However, if diesel buses were replaced or Repowered with All-Electric vehicle/engine technologies under Eligible Mitigation Action Category #2 (Class 4-8 School Buses, Shuttle Buses, or Transit Buses), any charging infrastructure associated with the new All-Electric engine(s) or vehicle(s) could be funded

---

---

through the Environmental Mitigation Trust.

**Can funds be provided for expanding EPB’s public charging infrastructure for zero emission electric vehicles?**

Light-Duty Zero  
Emission Vehicle Supply  
Equipment

Yes, provided that Eligible Mitigation Action Category #9 is included in Tennessee’s Beneficiary Mitigation Plan (BMP).

Eligible Mitigation Action Category #9 within Appendix D-2 to the [final, executed State Beneficiary Trust Agreement](#) states that, “Each Beneficiary may use up to fifteen percent (15%) 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.” Light duty electric vehicle supply equipment may include Level 1, Level 2 or fast charging equipment (or analogous successor technologies) that is located in a public place, workplace, or multi-unit dwelling and is not consumer light duty electric vehicle supply equipment (i.e., not located at a private residential dwelling that is not a multi-unit dwelling).

For more information on the Eligible Mitigation Category pertaining to Light Duty Zero Emission Vehicle Supply Equipment, please refer to [Section 9 of Appendix D-2](#) to the State Beneficiary Trust Agreement.

**Can funds be provided for expanding a solar electric vehicle charging network? E.g. EPB’s community solar share program?**

Light-Duty Zero  
Emission Vehicle Supply  
Equipment

Yes, provided that Eligible Mitigation Action Category #9 is included in Tennessee’s Beneficiary Mitigation Plan (BMP). Eligible Mitigation Action Category #9 within Appendix D-2 to the [final, executed State Beneficiary Trust Agreement](#) states that, “Each Beneficiary may use up to fifteen percent (15%) 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.” Light duty electric vehicle supply equipment may include Level 1, Level 2 or fast charging equipment (or analogous successor technologies) that is located in a public place, workplace, or multi-unit dwelling and is not consumer light duty electric vehicle supply equipment (i.e., not located at a private residential dwelling that is not a multi-unit dwelling).

For more information on the Eligible Mitigation Category pertaining to Light Duty Zero Emission Vehicle Supply Equipment, please refer to [Section 9 of Appendix D-2](#) to the State Beneficiary Trust Agreement.

**Can funds be provided to replace diesel firetrucks, ambulances, and other emergency vehicles?**

Administrative

Appendix D-2 to the final, executed [State Beneficiary Trust Agreement](#) states that Eligible Trucks to be Repowered or replaced under the Environmental Mitigation Trust include:

- “Class 8 Local Freight Trucks and Port Drayage Trucks (Eligible Large Trucks)” (Eligible Mitigation Action Category #1) and
- “Class 4-7 Local Freight Trucks (Medium Trucks)” (Eligible Mitigation Action Category #6).

“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). Eligible Large Trucks include 1992-2009 engine model years.

“Class 4-7 Local Freight Trucks (Medium Trucks)” shall mean trucks, including commercial trucks, used to deliver cargo and freight (e.g., courier services, delivery trucks, box trucks moving freight, waste haulers, dump trucks, concrete mixers) with a Gross Vehicle Weight Rating (GVWR) between 14,001 and 33,000 lbs. Eligible Medium Trucks include 1992-2009 engine model years.

If an emergency vehicle meets either of the definitions highlighted above, then it could be considered eligible for Repower or replacement, provided that the aforementioned Eligible Mitigation Action Categories are included in the relevant Beneficiary Mitigation Plan.

Additionally, should TDEC elect to include the DERA option in its Beneficiary Mitigation Plan and elect to fund emergency vehicle projects under that Eligible Mitigation Action category, then such vehicles could be considered eligible for “Certified Engine Replacement” or “Vehicle and Equipment Replacement” under the “Highway Diesel Vehicle (other than Drayage)” category, as defined in the [2017 State Clean Diesel Grant Program Information Guide](#).

For additional information on Eligible Mitigation Action Categories under the Environmental Mitigation Trust, please refer to Appendix D-2 to the final, executed [State Beneficiary Trust Agreement](#).

#### **Can funds be provided to replace utility trucks?**

Administrative

Appendix D-2 to the final, executed [State Beneficiary Trust Agreement](#) states that Eligible Trucks to be Repowered or replaced under the Environmental Mitigation Trust include:

- “Class 8 Local Freight Trucks and Port Drayage Trucks (Eligible Large Trucks)” (Eligible Mitigation Action Category #1) and
- “Class 4-7 Local Freight Trucks (Medium Trucks)” (Eligible Mitigation Action Category #6).

“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). Eligible Large Trucks include 1992-2009 engine model years.

“Class 4-7 Local Freight Trucks (Medium Trucks)” shall mean trucks, including commercial trucks, used to deliver cargo and freight (e.g., courier services, delivery trucks, box trucks moving freight, waste haulers, dump trucks, concrete mixers) with a Gross Vehicle Weight Rating (GVWR) between 14,001 and 33,000 lbs. Eligible Medium Trucks include 1992-2009 engine model years.

If a utility truck meets either of the definitions highlighted above, then it could be considered eligible for Repower or replacement, provided that the aforementioned Eligible Mitigation Action Categories are included in the relevant Beneficiary Mitigation Plan.

Additionally, should TDEC elect to include the DERA option in its Beneficiary Mitigation Plan and elect to fund utility truck vehicle projects under that Eligible Mitigation Action category, then such vehicles could be considered eligible for “Certified Engine Replacement” and/or “Vehicle and Equipment Replacement” under the “Highway Diesel Vehicle (other than Drayage)” category, as defined in the [2017 State Clean Diesel Grant Program Information Guide](#).

For additional information on Eligible Mitigation Action Categories under the Environmental Mitigation Trust, please refer to Appendix D-2 to the final, executed [State Beneficiary Trust Agreement](#).

---

## How much money is allocated?

Administrative

The partial settlements require VW to establish a \$2.9 billion Environmental Mitigation Trust fund to be distributed among states for defined eligible projects that reduce NOx. Each state or jurisdiction's allocation is based on the number of registered illegal VW vehicles within its boundaries. Using this allocation methodology, Tennessee is expected to be eligible to receive approximately \$45.7 million. More information is available in Appendix D-1B to final, executed [State Beneficiary Trust Agreement](#).

To learn about additional Volkswagen settlement spending beyond the Environmental Mitigation Trust, required by the first and second partial consent decrees, [click here](#).

## Where would money go? What kind of projects?

Administrative

States have the option to select a number of different Eligible Mitigation Action projects. Generally, these include Repowering with new diesel engines, alternate fueled engines or All-Electric engines, or replacement with any new diesel vehicle, alternate fueled vehicle, or All-Electric vehicle for the following diesel sources: class 8 local freight trucks and port drayage trucks; class 4-8 school bus, shuttle bus, or transit bus; freight switchers; ferries/tugs; shorepower for ocean going vessels; class 4-7 local freight trucks; airport ground support equipment; and/or forklifts and port cargo handling equipment. Additionally, Beneficiaries may choose the Diesel Emissions Reduction Act option and/or use up to 15% of their allocation on costs necessary for and connected to the acquisition, installation, operation and maintenance of new light duty zero emission vehicle supply equipment.

To view the comprehensive list of Eligible Mitigation Actions and Eligible Mitigation Action Administrative Expenditures, please refer to [Appendix D-2 to the final, executed Trust Agreement](#).

## Why clean energy?

Administrative

In 2015, Volkswagen (VW) publicly admitted that it had secretly and deliberately installed a defeat device—software designed to cheat emissions tests and deceive federal and state regulators—in approximately 590,000 model year 2009 to 2016 motor vehicles containing 2.0 and 3.0 liter diesel engines. U.S. EPA filed a complaint against VW, alleging that the company had violated the Clean Air Act (CAA). The parties to the litigation negotiated the terms of the resulting 2.0 and 3.0 liter partial settlements, including the creation and funding of a \$2.9 billion Environmental Mitigation Trust. The Trust is intended to fully mitigate the total, lifetime excess NOx emissions from the offending 2.0 and 3.0 liter vehicles. NOx is the major excess pollutant from these vehicles and is a significant health concern.

---

## WEBINAR – DECEMBER 19, 2017

### Would an All-Electric rail car mover—which functions exactly as a freight switcher—be considered for funding under the freight switcher category?

Freight Switchers

Section 3 of Appendix D-2 to the [final, executed State Beneficiary Trust Agreement](#) states that, “Eligible Freight Switchers 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) Freight Switcher, that is certified to meet the applicable EPA emissions

---

---

standards (or other more stringent equivalent State standard) as published in the CFR for the engine model year in which the Eligible Freight Switcher Mitigation Action occurs.” Additionally, Appendix D-2 specifies that Freight Switcher shall mean “a locomotive that moves rail cars around a rail yard as compared to a line-haul that moves freight long distances” and that a Generator Set shall mean “a switcher locomotive equipped with multiple engines that can turn off one or more engines to reduce emissions and save fuel depending on the load it is moving.”

If an All-Electric rail car mover meets the definitions specified above, then it could be considered an eligible option for Freight Switcher Repower or replacement, provided that the aforementioned Eligible Mitigation Action Category for Freight Switchers is included in the relevant Beneficiary Mitigation Plan.

**Are level 3 charging stations included in electric infrastructure costs?**

Light-Duty and Heavy-Duty Zero Emission Vehicle Supply Equipment

Section 9 of Appendix D-2 to the Volkswagen Diesel Settlement’s [final, executed State Beneficiary Trust Agreement](#) states that, “Each Beneficiary may use up to fifteen percent (15%) 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.” Light duty electric vehicle supply equipment may include Level 1, Level 2 or fast charging equipment (or analogous successor technologies) that is located in a public place, workplace, or multi-unit dwelling and is not consumer light duty electric vehicle supply equipment (i.e., not located at a private residential dwelling that is not a multi-unit dwelling).

However, each Beneficiary will need to determine whether it will include the Light Duty Zero Emission Vehicle Supply Equipment Eligible Mitigation Category in its Beneficiary Mitigation Plan. For more information on the Eligible Mitigation Category pertaining to Light Duty Zero Emission Vehicle Supply Equipment, please refer to [Section 9 of Appendix D-2](#) to the State Beneficiary Trust Agreement.

**Is there a mechanism for states to work together for projects that cross state lines? Urban centers in Memphis, Chattanooga, and the Tri-Cities could benefit from collaborations across state borders.**

Administrative

Through the National Association of State Energy Officials (NASEO), TDEC OEP maintains close working relationships with the other State Energy Offices in the Southeast, as well as with State Energy Offices throughout the U.S. Through national and regional meetings that are convened by NASEO, TDEC is able to stay apprised of activity by other states and any opportunities for potential collaboration. Similarly, NASEO and the National Association of Clean Air Agencies (NACAA) have launched the [VW Settlement Clearinghouse](#), which serves as a resource for state and local government offices and agencies as they develop plans and implement projects under the settlement’s Environmental Mitigation Trust. The Clearinghouse website provides a variety of resources, information on settlement-related progress and state contacts, as well as mobile source NOx emissions by state, county, and sector. NASEO and NACAA have also launched a Working Group for Beneficiaries under the Environmental Mitigation Trust, to maximize collaboration and coordination among states and territories.

---