

ELECTRIFYING THE TRANSPORTATION SECTOR: CHALLENGES, STRATEGIES AND OPPORTUNITIES

**October 10, 2017
APPA Legal and Regulatory Conference
New Orleans, Louisiana**

DWGP

DUNGAN WEINBERG GENZER BEMBRIDGE



VOLKSWAGEN SETTLEMENT UPDATE AND OPPORTUNITIES FOR MUNICIPAL UTILITIES

Matthew R. Rudolphi

Duncan, Weinberg, Genzer, and Pembroke, P.C.

HOW DID WE GET HERE?

- U.S. EPA filed a complaint against Volkswagen alleging that the defendants violated the Clean Air Act with regard to approximately 580,000 model year 2009 to 2016 motor vehicles containing 2.0 and 3.0 liter diesel engines.
- EPA's complaint alleged that vehicle computer algorithms cause the emissions control system of vehicles to perform differently during normal vehicle operation vs. than during emission testing, *i.e.*, During during normal operation the vehicles emit levels of nitrogen oxides (NO_x) significantly in excess of EPA's compliance levels.



SETTLEMENT OVERVIEW

- Volkswagen agreed to pay up to \$14.7 billion to settle allegations emissions irregularities.
 - \$10 billion for vehicle buyback and modification
 - \$2.7 billion for **Environmental Mitigation Trust**
 - \$2 billion for **Zero Emission Vehicle (“ZEV”) Investment**
- Under the settlement, “Government” shall mean 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



ZEV INVESTMENT

- VW will spend \$2 billion over 10 years on actions that will support increased use of ZEV technology in the U.S.
 - \$800 million in California
 - \$1.2 billion in other areas of the U.S.
- VW developed National ZEV Investment Plan and a California ZEV Investment Plan for the first of four investment periods (30 months) that have been approved.
- Additional opportunity will be provided for comment on subsequent periods:
www.electrifyamerica.com



ENVIRONMENTAL MITIGATION TRUST

- \$2.7 billion will be placed in an Environmental Mitigation Trust, and will be allocated to beneficiaries (states, tribes, and certain territories) based on the number of impacted VW vehicles in their jurisdictions
- The Trust will support projects that reduce NO_x emissions where the VW vehicles were, are, or will be operated
- Three separate periods



ENVIRONMENTAL MITIGATION TRUST: BENEFICIARIES AND LEAD AGENCY

- To become a beneficiary, each eligible beneficiary must file a single Certification Form no later than 60 days after the Trust Effective Date
- Each form must include a designation of Lead Agency, indicating which agency, department, office or division will have the delegated authority to act on behalf of each state / tribe



ENVIRONMENTAL MITIGATION TRUST: BENEFICIARIES AND LEAD AGENCY

- After being designated a beneficiary, states / tribes must submit a high-level Beneficiary Mitigation Plan that summarizes how the funds will be spent.
- Plans should address:
 - Overall goal for the use of the funds;
 - Categories of anticipated eligible mitigation actions, and preliminary assessment of the percentages of funds anticipated to be used for each type of action;
 - How the proposed actions will impact air quality in areas that bear a disproportionate share of the air pollution burden within its jurisdiction;
 - Expected ranged of emissions benefits.
- Beneficiaries may adjust their goals and spending plans at their discretion and will provide the Trustee with updates to their Beneficiary Mitigation Plan
- Beneficiaries may use their Final Approved DERA Workplan if they intend to avail themselves of the DERA option



ENVIRONMENTAL MITIGATION TRUST: ELIGIBLE MITIGATION ACTIONS

- **Eligible Large Trucks**
- Eligible Buses
- Eligible Freight Switchers
- Eligible Ferries/Tugs
- Eligible Ocean Going Vessels (OGV) Shorepower
- **Eligible Medium Trucks**
- Eligible Airport Ground Support Equipment
- Eligible Forklifts
- **Light Duty Zero Emission Vehicle Supply Equipment**



ENVIRONMENTAL MITIGATION TRUST: LARGE TRUCKS

- Class 8 (33,001 lbs and over)
 - Cement Mixer
 - Dump
 - Fire Truck
 - Fuel
 - Heavy Semi
 - Refrigerated Van
 - Semi Sleeper
 - Tour Bus



ENVIRONMENTAL MITIGATION TRUST: MEDIUM TRUCKS

- Class Four (14,001 – 16,000 lbs)
 - City Delivery, Conventional Van, Landscape Utility, Large Walk-In
- Class Five (16,001 – 19,500 lbs)
 - **Bucket**, City Delivery, Large Walk-In
- Class Six (19,501 – 26,000 lbs)
 - Beverage, Rack, School Bus, Single Axle Van, Stake Body
- Class Seven (26,001 to 33,000 lbs)
 - City Transit Bus, Furniture, High Profile Semi, Home Fuel, Medium Semi, Tow



ENVIRONMENTAL MITIGATION TRUST: LIGHT DUTY ZEV SUPPLY EQUIPMENT

- Beneficiaries may use up to 15 percent of their allocation of trust funds for the acquisition, installation, operation and maintenance of new light duty zero emission vehicle supply equipment.
- Eligible equipment includes Level 1, Level 2 or DC Fast Charging equipment (or analogous successor technologies) that is located in a public place, workplace, or multi-unit dwelling and is not located at a private residential dwelling that is not a multi-unit dwelling.
- Light duty hydrogen fuel cell vehicle supply equipment is also eligible, and includes hydrogen dispensing equipment capable of dispensing hydrogen at a pressure of 70 megapascals (or analogous successor technologies) that is located in a public place.
- Trust funds may not be made available or used to purchase or rent real-estate, other capital costs (e.g., construction of buildings, parking facilities, etc.) or general maintenance (i.e., maintenance other than of the supply equipment).



ENVIRONMENTAL MITIGATION TRUST: ELIGIBLE MITIGATION ACTIONS

- Diesel Emission Reduction Act (DERA) Option
 - May use Trust Funds for their non-federal match or overmatch for DERA
 - For example, if a state receives \$100,000 for a project through DERA, the state can use Environmental Mitigation Trust funds to provide a voluntary \$100,000 match for the project; DERA will then provide an additional \$50,000 for the project, bringing the project total to \$250,000
 - Allows beneficiaries to use Trust Funds for actions not specified in the settlement, but otherwise eligible under DERA



ENVIRONMENTAL MITIGATION TRUST: ACCESSING AND SPENDING ALLOCATIONS

- State Beneficiaries have up to 10 years to spend 80% of their allocation, and up to 15 years to spend 100% of their allocation
 - Beneficiaries may request up to one-third of its allocation during the first year, and up to two-thirds of its allocation during the first two years
- Beneficiaries can submit requests for Eligible Mitigation Action funding at any time
 - Funding must be approved, approved with modification, or denied within 60 days
- Beneficiaries may use its DERA proposal as its funding requests for Actions that are funded through the DERA option
- Two or more beneficiaries may submit a joint request for Eligible Mitigation Action funds
- Beneficiaries must submit a semiannual report



ENVIRONMENTAL MITIGATION TRUST: ESTIMATED TIMELINE

| Prescribed Timing | Date | Milestone |
|--|-------------------|--|
| Settlement Effective Date | October 25, 2016 | Consent Decree Entered Into Court |
| 30 Days After Settlement Effective Date | November 24, 2016 | Trustee Candidates Submitted |
| N/A | March 15, 2017 | Wilmington Trust Chosen as Trustee |
| Trust Effective Date | TBD | Finalization of Environmental Trust Agreement / Establishment of Environmental Trust |
| 15 Days After Trust Effective Date | TBD | Trustee Established Trust Account |
| 60 Days After Trust Effective Date | TBD | States / Tribes File Certification |
| No Later Than 120 Days After Trust Effective Date | TBD | Trustee Approves/Denies Beneficiary Status |
| No Later Than 90 Days After Being Deemed a Beneficiary | TBD | Beneficiary Mitigation Plan Submitted |

MUNICIPAL OPPORTUNITIES

- Remain vigilant for announcement of Trust Effective Date
- In the meantime, research how your state or tribe is planning on taking advantage of the environmental mitigation trust funding opportunity
- Work with your lead agency to develop plans to include repower or replacement of utility fleet or ZEV infrastructure
- Develop a proposal for the next round of ZEV



QUESTIONS?



DWGP
DUNCAN WEINBERG GENZER PEMBROKE

Matthew R. Rudolphi

202-467-6370

mrr@dwgp.com

