

CALIFORNIA AIR RESOURCES BOARD

NOTICE OF PUBLIC MEETING TO CONSIDER APPROVING CALIFORNIA'S BENEFICIARY MITIGATION PLAN FOR THE VOLKSWAGEN ENVIRONMENTAL MITIGATION TRUST

The California Air Resources Board (CARB or Board) will conduct a public meeting at the time and place noted below to consider approving the proposed *California's Beneficiary Mitigation Plan (Plan) for the Volkswagen (VW) Environmental Mitigation Trust (Trust)*.

DATE: May 25, 2018

TIME: 9:00 a.m.

LOCATION: Sacramento County Administration Building
700 H Street
Sacramento, California 95814

This item will be considered at a meeting of the Board, which will commence at 9:00 a.m., May 25, 2018. Please consult the agenda for the meeting, which will be available at least ten days before May 25, 2018, to determine the order in which this item will be presented.

Background

In September 2015, following a CARB investigation, Volkswagen (VW) officials admitted to having installed software designed to cheat on emissions tests in about 600,000 VW and Audi branded 2.0- and 3.0-liter diesel vehicles sold to customers in the U.S., about 85,000 in California. In October 2016, the United States District Court for the Northern District of California approved a Partial Consent Decree (first Consent Decree) pertaining to the subject 2.0 liter VW diesel cars. A second Partial Consent Decree was approved by the Court in May 2017 that pertains to the subject 3.0-liter diesel cars and augments the first Consent Decree. The Consent Decrees partially resolve Clean Air Act and California state claims against VW for equipping its 2.0-liter and 3.0-liter diesel vehicles with these defeat devices.

The first Consent Decree identifies the primary elements of the settlement in four appendices:

Appendices A and B require VW to offer vehicle buy-back or lease termination programs and offer to correct existing non-compliant vehicles through agency-approved emissions systems modifications.

Appendix C requires VW to invest \$800 million in California over a ten-year period to support the increased use and availability of zero-emission vehicles (ZEV). In

July 2017, the Board approved VW's ZEV Investment Plan describing how VW will spend the first \$200 million, and in April 2018 the Board will hear an update on its implementation.

Appendix D (the Environmental Mitigation Trust) – the subject of this proposal – is intended to fully mitigate past and future excess oxides of nitrogen (NOx) emissions from the subject vehicles. Under the terms of the two Consent Decrees, VW must pay about \$3 billion into a national Environmental Mitigation Trust over a three-year period for specified eligible mitigation actions.

California's total allocation of the trust from both Consent Decrees is about \$423 million. The eligible mitigation actions listed in the Consent Decree include mostly scrap-and-replace projects for the heavy-duty sector.

In addition to the requirements outlined in the Consent Decree, Senate Bill (SB) 92 (Committee on Budgets and Fiscal Review, Chapter 26, Statutes of 2017), passed in June 2017, directs the designated Lead Agency (CARB) to strive to ensure that at least 35 percent of California's Trust allocation benefit low-income or disadvantaged communities that are disproportionately impacted by air pollution. It also requires CARB to strive to ensure that the expenditures align with the state's priorities and provide for public transparency before approval.

As the Lead Agency, CARB must develop a Beneficiary Mitigation Plan that describes how California's Trust allocation will be spent, including the goals for the use of the funds; the eligible mitigation actions to be funded and the corresponding allocations; the estimated emission reductions; and consideration of the emissions benefits for areas disproportionately impacted by air pollution. Staff solicited comments through a public comment docket from September 2017 through April 2018, and has held eight public meetings to solicit input into the Beneficiary Mitigation Plan, including seven workshops in six different locations throughout California and a public board meeting in Riverside.

Summary of Proposed Funding

California has ambitious goals to improve air quality and reduce toxics exposure, deploy zero-emission vehicles (ZEV), and reduce petroleum dependency. Staff is proposing to use California's Trust allocation to not only fully mitigate the excess NOx caused by the VW diesel vehicles, but to accelerate deployment of advanced mobile source technologies to meet the State's goals. CARB's *Mobile Source Strategy* and *Climate Change Scoping Plan* conclude that many of the same actions are needed to meet smog forming, GHG, and toxic pollutant emission reduction goals – specifically, a transition to zero-emission and near zero-emission technologies across all vehicle and equipment categories, including the heavy-duty sector. The 2016 *California Sustainable Freight Action Plan* reiterates the need for this transition as it relates to the freight sector.

In March 2018, the Board directed CARB staff to move forward on nine new measures to reduce emissions and community health impacts from large freight facilities. Many

of the measures, such as those for cargo handling equipment and drayage trucks, are zero emission focused and cannot be achieved without additional funding. Allocating California’s VW Mitigation Trust funding with a focus on zero-emission technology is not only consistent with our overall State priorities, it is the necessary foundation for some of these freight measures.

The funding proposed in this Plan will complement a portfolio of other clean transportation investments from CARB, other State agencies, and local governments. There will be considerable investment in heavy-duty vehicle emission reductions through continued implementation of the Carl Moyer Program, Low Carbon Transportation Investments, the Proposition 1B Goods Movement Emission Reduction Program, and the Community Air Protection Program (Assembly Bill 617).

CARB must fully mitigate the excess NOx caused by the subject VW diesel vehicles in California. Staff estimates the NOx target as 10,000 tons. The estimate assumes an 85 percent recall or buy-back rate by mid-2019 for the subject VW diesel vehicles, as required in the Consent Decree, and takes into account the uncertainty in vehicle or technology market demand, the mix of projects within the recommended funding categories that could be funded, and infrastructure needs.

Table 1 shows the proposed project categories and allocations.

Table 1: Proposed Project Categories and Allocations

Eligible Mitigation Action Project Category	Project Allocation (millions)
Zero-Emission Transit, School, and Shuttle Buses	\$130
Zero-Emission Class 8 Freight and Port Drayage Trucks	\$90
Zero-Emission Freight and Marine Projects Forklifts and Port Cargo Handling Equipment Airport Ground Support Equipment Oceangoing Vessel Shorepower Zero-Emission Ferry, Tugboat, and Towboat Repowers	\$70
Combustion Freight and Marine Projects Low NOx Class 7-8 Freight Trucks Tier 4 Freight Switchers Tier 4 or Hybrid Ferry, Tugboat, and Towboat Repowers	\$60
Light-Duty Zero-Emission Vehicle Infrastructure	\$10
Reserve (including administrative costs)	\$63
TOTAL	\$423

These investments would:

- Fully mitigate the lifetime excess NOx caused by the subject VW diesel vehicles while reducing risk to children and other sensitive populations.

- Support early adoption of commercially available zero-emission technologies in the heavy-duty sector.
- Align with State priorities and help meet California's zero-emission vehicle and petroleum use reduction goals.
- Invest funds statewide with a focus on benefiting disadvantaged or low-income communities.

Staff expects at least 50 percent of the total project allocations will benefit disadvantaged or low-income communities. The Beneficiary Mitigation Plan describes the conditions staff proposes placing on each project category to ensure these targets are met.

Throughout the Beneficiary Mitigation Plan development process, many stakeholders requested that funding be focused on zero-emission vehicles where available and low NOx everywhere else. Several stakeholders also noted a need for near-term and cost-effective NOx mitigation actions, such as low NOx truck and engine replacements, particularly in the San Joaquin Valley and rural areas. Additionally, staff received many comments noting the need for light-duty zero-emission vehicle charging and fueling infrastructure beyond what is available through other funding programs. Staff's proposal attempts to balance the available funding with the needs across all of these categories, while recognizing the requirement to fully mitigate the excess NOx caused by the subject VW diesel vehicles and further the State's air quality and climate objectives.

Proposed Action

CARB staff has prepared the proposed Beneficiary Mitigation Plan, and at the meeting will provide a presentation summarizing the proposed Plan and seek the Board's approval. Copies of the report may be obtained from CARB's Public Information Office, 1001 I Street, First Floor, Environmental Services Center, Sacramento, California, 95814, at least 30 days prior to the scheduled meeting on May 25, 2018. The report may also be obtained from CARB's website at https://www.arb.ca.gov/msprog/vw_info/vsi/vw-mititrust/vw-mititrust.htm.

Interested members of the public may present comments orally or in writing at the meeting and may provide comments by postal mail or by electronic submittal before the meeting. To be considered by the Board, written comments not physically submitted at the meeting, must be received **no later than 5:00 p.m., May 21, 2018**, and addressed to the following:

Postal mail: Clerk of the Board, Air Resources Board
1001 I Street, Sacramento, California 95814

Electronic submittal: <http://www.arb.ca.gov/lispub/comm/bclist.php>

Please note that under the California Public Records Act (Government Code section 6250 et seq.), your written and oral comments, attachments, and associated contact information (e.g., your address, phone, email, etc.) become part of the public record and can be released to the public upon request.

CARB requests that written statements on this item be filed at least ten days prior to the meeting so that CARB staff and Board members have additional time to consider each comment. Further inquiries regarding this matter should be directed to Lisa Williams, Air Pollution Specialist, at (916) 324-7582 or (designated back-up contact) Lisa Jennings, Air Pollution Specialist, at (916) 322-6913.

ENVIRONMENTAL ANALYSIS

CARB conducts any environmental review required by the California Environmental Quality Act (CEQA) under its program certified by the Secretary of Natural Resources Agency (title 17, California Code of Regulations, §§ 60001-60007). Staff has determined that the proposed Beneficiary Mitigation Plan is not a "project" subject to CEQA review because the Beneficiary Mitigation Plan is a government funding mechanism or other government fiscal activity that does not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment (title 14, California Code of Regulations, § 15738(b)(4)). Even if the Beneficiary Mitigation Plan constituted a CEQA "project," CARB's approval of the Beneficiary Mitigation Plan would be exempt from CEQA review under title 14, California Code of Regulations, § 15061(b)(3) because it can be seen with certainty that there is no possibility that the proposed Beneficiary Mitigation Plan may have a significant adverse impact on the environment. The proposed Beneficiary Mitigation Plan sets project eligibility and provides funding opportunities that achieve emission reductions or enable emission reductions beyond what is required by existing regulations. The Plan does not result in any significant adverse impacts on the environment; rather, it has the potential to result in beneficial air quality impacts by reducing emissions of criteria and toxic air pollutants.

SPECIAL ACCOMMODATION REQUEST

Consistent with California Government Code Section 7296.2, special accommodation or language needs may be provided for any of the following:

- An interpreter to be available at the meeting;
- Documents made available in an alternate format or another language; and
- A disability-related reasonable accommodation.

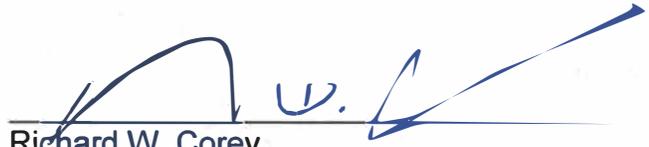
To request these special accommodations or language needs, please contact the Clerk of the Board at (916) 322-5594 or by facsimile at (916) 322-3928 as soon as possible, but no later than ten business days before the scheduled Board meeting. TTY/TDD/Speech to Speech users may dial 711 for the California Relay Service.

Consecuente con la sección 7296.2 del Código de Gobierno de California, una acomodación especial o necesidades lingüísticas pueden ser suministradas para cualquiera de los siguientes:

- Un intérprete que esté disponible en la audiencia;
- Documentos disponibles en un formato alterno u otro idioma; y
- Una acomodación razonable relacionados con una incapacidad.

Para solicitar estas comodidades especiales o necesidades de otro idioma, por favor llame a la oficina del Consejo al (916) 322-5594 o envíe un fax a (916) 322-3928 lo más pronto posible, pero no menos de diez días de trabajo antes del día programado para la audiencia del Consejo. TTY/TDD/Personas que necesiten este servicio pueden marcar el 711 para el Servicio de Retransmisión de Mensajes de California.

CALIFORNIA AIR RESOURCES BOARD



Richard W. Corey
Executive Officer

Date: *April 20, 2018*

The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see our website at www.arb.ca.gov.