

North Central Texas Council Of Governments

August 5, 2016

Mr. John C. Cruden
Assistant Attorney General
US Department of Justice
Environment and Natural Resources Division
PO Box 7611
Washington, DC 20044-7611

SUBJECT: Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability
Litigation, Case No: MDL No. 2672 CRB (JSC), and D.J. Ref. No. 90-5-2-1-11386

Dear Assistant Attorney General Cruden:

On behalf of the North Central Texas Council of Governments (NCTCOG) and the Regional Transportation Council (RTC), which serves as the Metropolitan Planning Organization (MPO) for the Dallas-Fort Worth area, the opportunity to provide comments on the Partial Consent Decree for the above-identified lawsuit is appreciated. A roster of RTC members is included as Attachment 1. As staff to an MPO in an ozone nonattainment area, NCTCOG works to implement initiatives that reduce ozone-forming emissions from the transportation sector and has successfully administered eight grants awarded under the Environmental Protection Agency (EPA) Diesel Emissions Reduction Act (DERA) funding programs, with another two DERA projects currently underway. The enclosed comments focus on details of the Environmental Mitigation Trust (the Trust), specifically the Eligible Mitigation Actions and Mitigation Action Expenditures outlined in Appendix D-2. In general, these comments reflect the principle that the Trust should be administered in a way that ensures the funding facilitates implementation of as many eligible activities as possible, thus optimizing nitrogen oxides (NO_x) emissions reductions achieved.

Administration

NCTCOG encourages the Department of Justice to clarify that the Lead Agency identified through the form in Appendix D-3 is authorized to administer the Beneficiary Mitigation Plan through formal partnerships with other agencies as it deems appropriate. For example, a Lead Agency may wish to partner with another State or local government to administer Eligible Mitigation Actions in a more targeted area. NCTCOG recommends adding language that clearly allows this discretion to section IV.4.2.1 of Appendix D, or to the Certification for Beneficiary Status Under Environmental Mitigation Trust Agreement form in Appendix D-3.

Funding Levels

NCTCOG supports the higher funding levels outlined for zero-emissions technology and government-owned vehicles and equipment in various Eligible Mitigation Action categories. NCTCOG recommends that these same higher funding levels also be offered for all new vehicles and equipment powered by an engine that meets the strictest California Air Resources Board (CARB) Optional Low-NO_x Standard of 0.02 grams NO_x per brake horsepower-hour, which will incentivize the use of the cleanest available near-zero emissions technology options in certain applications where purely electric technology is not yet fully mature.

NCTCOG also requests that no eligible activity be allowed 100% funding, and notes that the extent of 100% funding options proposed in the Consent Decree is much more generous than the DERA funding thresholds on which the Consent Decree funding levels are modeled. NCTCOG suggests that 80% funding from the Trust fund is adequate for Eligible Mitigation Actions involving government-owned vehicles or equipment. This funding threshold is consistent with the maximum typically allowed under the Congestion Mitigation and Air Quality Improvement (CMAQ) program.

Expenditure Options

Since the intent of the Trust is to offset unexpected emissions from violating light-duty diesel vehicles that prompted this lawsuit, it is imperative that the Trust facilitate implementation of emission-reducing activities that would not occur without the use of Trust funds. To that end, NCTCOG recommends against the DERA Option. According to the EPA, request to competitive DERA funding programs have exceeded availability of funds by as much as seven to one.¹ In fiscal year 2013, the agency received \$48 million in requests compared to only \$9 million available. This demonstrates that no additional subsidy is needed to implement projects already funded by DERA. Allowing Trust funds to be used for DERA-funded projects will open the door for Trust funds to be exhausted on projects that would have been completed without the extra assistance, thus failing to achieve any additional emissions reductions. Elimination of the DERA Option will ensure that all Mitigation Actions will be above and beyond "existing" projects, thus achieving the additional emissions reductions intended to be gained through this Trust.

In lieu of the DERA Option, NCTCOG recommends adding an option for Beneficiaries to administer funds for Eligible Mitigation Actions through a low-interest revolving loan program. Under a loan, a greater share of expenses could be paid through the Trust up-front, then as the loan is repaid the funds become available for future additional projects. This could accomplish the goal of providing a large Trust percentage of eligible costs while maintaining the sustainability of the Trust long-term to maximize the number of Eligible Mitigation Actions implemented. It also has the potential to increase the fund over time through collection of interest.

¹ Third Report to Congress: Highlights from the Diesel Emission Reduction Program. Environmental Protection Agency. EPA-420-R-16-004. February 2016. <http://nepis.epa.gov/Exe/ZyPDF.cgi?Dockkey=P100OHMK.pdf>.

Eligible Activities

NCTCOG recommends that the Consent Decree use fuel and technology-neutral language when discussing eligible technologies, rather than calling out specific fuel types, to ensure consistent focus on NO_x emissions reductions versus other goals. This can be done by referencing new engines that meet either:

- The most current EPA emissions standards in effect during the year the Eligible Mitigation Action occurs, or
- CARB Optional Low-NO_x Standards, or
- Zero-emission technology.

NCTCOG appreciates inclusion of Ocean Going Vessels Shorepower as a highly cost-effective strategy. However, idle reduction technologies for heavy-duty trucks, school buses, and locomotives are also highly cost-effective methods to reduce emissions. These technologies include auxiliary power units, truck stop electrification or electrified parking spaces, and shore connection systems for locomotives, among others. In fact, the Federal Highway Administration found that idle reduction projects for heavy-duty trucks are the most cost-effective for NO_x emissions among all emissions reduction strategies evaluated within the CMAQ program.² Therefore, NCTCOG recommends adding another Eligible Mitigation Action category for all EPA-verified idle reduction technologies to capture the full spectrum of cost-effective idle reduction activities.

NCTCOG notes that eligibility within these categories appears to be limited to short-haul trucks. NCTCOG recommends consulting with EPA to consider options for encompassing long-haul Class 8 trucks, which also have the potential to be high emitters due to their high mileage and age. Expanding eligibility to all EPA-verified idle reduction technologies as requested above will also support this sector. Moreover, these trucks can rarely benefit from State and local incentive programs because of their national operations. Geographic eligibility could be based upon documentation of the state in which the largest proportion of fuel taxes is paid.

NCTCOG recommends technical revisions to certain Eligible Mitigation Action categories:

- Categories 1, 2, 3, 4, 6, 7, and 8:

NCTCOG recommends clarifying the scrappage requirement to refer only to the engine in the case of a Repower, and the entire vehicle or equipment only in the case of replacement. Also, NCTCOG encourages the Department of Justice to coordinate with EPA to evaluate whether scrapping the engine and emissions system, rather than the entire vehicle or equipment, would be possible for replacements as well. This would retain the air quality benefits while minimizing lost revenue associated with chassis resale, which is often a deterrent to

² Figure 3. Median Cost-Effectiveness Estimates (Cost per Ton Reduced) of NO_x Emissions Reductions. FHWA – Cost Effectiveness Tables Summary.
http://www.fhwa.dot.gov/environment/air_quality/cmaq/reference/cost_effectiveness_tables/index.cfm

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participation. It also minimizes unintended consequences of unnecessarily increasing the solid waste stream.

- NCTCOG recommends changing all references to “all-electric engine” to simply “all-electric” or “electric motor”, as electric vehicles and equipment are powered by motors, rather than engines. Use of the word “engine” when referencing all-electric power sources could create unnecessary confusion.
- Categories 1, 2, and 6:
 - The Trust allows eligible trucks and buses in these categories to include model years 2007-2012 in the event Beneficiaries already have State regulations requiring upgrades to older model years. NCTCOG suggests this eligible age range be limited to trucks and buses powered by 2007-2010 model year engines, reflecting the phase-in years for current heavy-duty engine emissions standards since 2011 and 2012 trucks are already powered by engines that meet the most current emissions standards.

Definitions

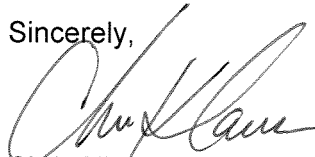
Finally, NCTCOG suggests revising definitions for consistency with other federal programs:

- Change “Alternate Fueled” to “Alternative Fuel” and define by reference to the Energy Policy Act of 1992. This definition would encompass all-electric vehicles and equipment.
- Add a definition for “Hybrid Vehicle” for purposes of adding hybrid vehicles to desired Eligible Mitigation Activity categories, as hybrid technology is not defined as Alternative Fuel by the Energy Policy Act.

Again, the NCTCOG appreciates the opportunity to comment. We look forward to implementation of the Partial Consent Decree as we work with partner agencies toward the common goal of cleaner air.

Should you have any questions, please contact me at (817) 695-9286 or cklaus@nctcog.org.

Sincerely,



Chris Klaus
Senior Program Manager

LPC:mg
Attachment

cc: David Brymer, Air Quality Division Director, Texas Commission on Environmental Quality
Michael Morris, P.E., Director of Transportation, NCTCOG

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