

VOLKSWAGEN SETTLEMENT FUNDING: WHAT CITIES SHOULD KNOW



In October 2016, the U.S. government granted final approval of a \$14.7 billion settlement against Volkswagen (VW) for equipping more than 500,000 of its diesel vehicles to cheat U.S. vehicle emissions tests in violation of the Clean Air Act. Volkswagen will spend \$10 billion on vehicle buybacks and \$4.7 billion to mitigate the pollution from these cars and invest in green vehicle technology. This latter amount will be split between two investment programs that states, cities, and tribes can use to expand alternative fuel vehicle projects and access to zero emission vehicles (ZEVs). Cities can play a key role, starting now, by identifying local emissions-cutting and zero-emission vehicle deployment projects that could benefit from increased investment and proposing ideas to states and Volkswagen about ways these funds can best be leveraged.

Settlement payments totaling \$4.7 billion will be split into two distinct funds. Volkswagen will place \$2.7 billion into an Environmental Mitigation Trust to fund projects that reduce nitrogen oxide (NOx) emissions where VW diesel 2.0 liter vehicles were, are, or will be operated. The remaining \$2 billion will go toward zero emissions vehicle investments to improve infrastructure, access, and education to advance zero emission vehicles.¹ ² This division of funds is shown in **Figure 1**. States will determine how the Environmental Mitigation Trust funds will be spent; Volkswagen will determine how the ZEV funds will be spent, subject to approval of the U.S. Environmental Protection Agency (EPA) and the California Air Resources Board (CARB).

ENVIRONMENTAL MITIGATION TRUST

HOW IS FUNDING DISTRIBUTED?

Volkswagen will place \$2.7 billion into a trust administered by an independent trustee, who will be named in the coming months. Each state has been allocated a certain percentage of the mitigation trust based on the amount of VW 2.0-liter diesel vehicles sold

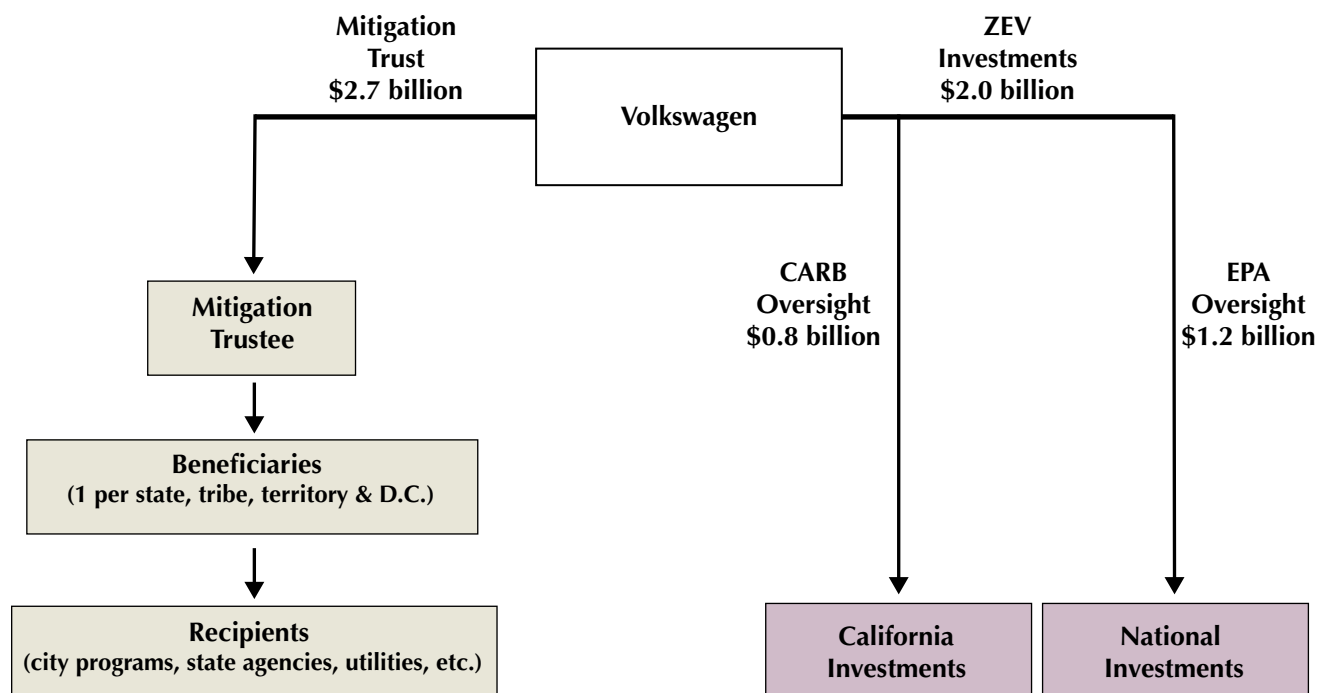
and operated there. Initial allocation of these funds is in **Table 1**.³

Prospective beneficiaries include U.S. states, the District of Columbia, Puerto Rico, and Native American tribes. To obtain funds for designated NOx projects, states must submit to the trustee a certification form, signed by the governor, that includes designation of a lead state agency that will manage the state's allocation. States will then engage with stakeholders, create mitigation plans on how the allocated funds will be used within a 15-year timeframe, and oversee the subsequent distribution of funding for approved projects.⁴

HOW CAN THE MONEY BE SPENT?

Funds from the mitigation trust may be used to upgrade aging diesel-powered vehicles, including repowering or replacing certain school, shuttle, and transit buses and freight trucks with newer, cleaner diesel engines or alternative fuels, including natural gas or electrification. For a complete list of eligible vehicles and cost offsets for non-government owned vehicles, please refer to Appendix D-2 of the consent decree.

- For government vehicles, the funds can cover up to 100 percent of the cost to repower or replace

FIGURE 1: Settlement Plan for Pollution Mitigation

Funding pathways for recipients and investments under Mitigation Trust and ZEV Investment.

Source: "Consent Decree," Filed October 25, 2016, www.cand.uscourts.gov/filelibrary/2869/Order-Granting-Entry-of-Consent-Decree.pdf.

eligible vehicles with a new diesel, alternate fuel (CNG, propane, hybrid), or all-electric engine.

- For non-government vehicles: the funds can cover up to 75 percent of the cost to repower or replace eligible vehicles with all-electric motors, and 25-75 percent of the cost of new diesel or alternate fuel engines.
- Each state may use up to 15 percent of its trust allocation to buy, install, operate and maintain new light-duty ZEV supply equipment, including Level 1, Level 2, or DC fast-charging stations located in a public setting, workplace, or multi-unit dwelling.

Beneficiaries can also use trust funds for projects eligible under the state's Diesel Emission Reduction Act (DERA) Clean Diesel Grant program such as truck stop electrification and idle reduction equipment, though funding is subject to program rules that govern voluntary spending and mandatory cost shares. Additional

information for this option is available at the EPA DERA program website.⁵

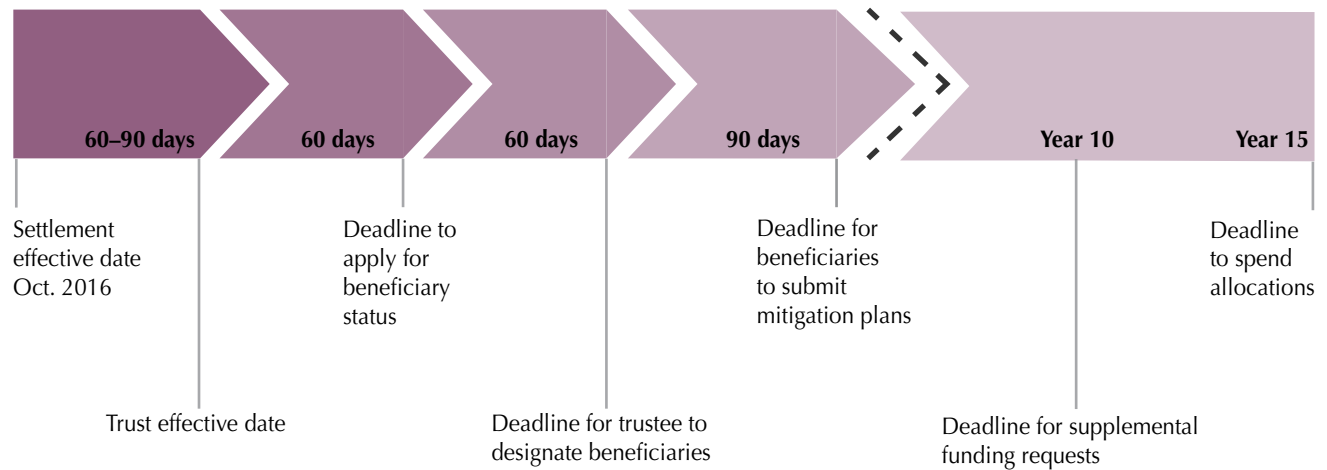
WHAT HAPPENS NEXT?

A trustee will be appointed to oversee the disbursement of funds to certified beneficiaries, and those beneficiaries will identify suitable uses and track progress. A more detailed timeline is provided below in **Figure 2**. Each certified beneficiary may request funding for identified projects at any time. Beneficiaries have up to 15 years to spend funds without restrictions, but may not spend more than one-third of their total allocations in the first year or more than two-thirds by the end of the second year. A full list of requirements for funding requests can be found in Appendix D (Section 5.2) of the consent decree.

- **Trust effective date:** The court will select a trustee from a list of names provided by potential beneficiaries to administer the trust. The trust

TABLE 1: INITIAL ALLOCATION OF MITIGATION TRUST

INITIAL SUBACCOUNTS	INITIAL ALLOCATIONS (IN MILLIONS OF DOLLARS)	INITIAL SUBACCOUNTS	INITIAL ALLOCATIONS (IN MILLIONS OF DOLLARS)
Alabama	\$24.08	New Hampshire	\$29.54
Alaska	\$7.5	New Jersey	\$65.33
Arizona	\$53.01	New Mexico	\$16.9
Arkansas	\$13.95	New York	\$117.4
California	\$381.28	North Carolina	\$87.18
Colorado	\$61.31	North Dakota	\$7.5
Connecticut	\$51.64	Ohio	\$71.42
Delaware	\$9.05	Oklahoma	\$19.09
District of Columbia	\$7.5	Oregon	\$68.24
Florida	\$152.38	Pennsylvania	\$110.74
Georgia	\$58.11	Puerto Rico	\$7.5
Hawaii	\$7.5	Rhode Island	\$13.5
Idaho	\$16.25	South Carolina	\$31.64
Illinois	\$97.7	South Dakota	\$7.5
Indiana	\$38.92	Tennessee	\$42.41
Iowa	\$20.18	Texas	\$191.94
Kansas	\$14.79	Utah	\$32.36
Kentucky	\$19.05	Vermont	\$17.8
Louisiana	\$18.10	Virginia	\$87.59
Maine	\$20.26	Washington	\$103.96
Maryland	\$71.05	West Virginia	\$11.51
Massachusetts	\$69.07	Wisconsin	\$63.55
Michigan	\$60.33	Wyoming	\$7.5
Minnesota	\$43.64	Tribal Allocation Subaccount	\$49.65
Mississippi	\$9.25	Trust Administration Cost Subaccount	\$27
Missouri	\$39.08	Tribal Administration Cost Subaccount	\$0.99
Montana	\$11.6	Total	\$2,700
Nebraska	\$11.53		
Nevada	\$22.26		

FIGURE 2: Mitigation Trust Timeline

Timeframe of relevant dates for beneficiaries to access and spend Mitigation Trust funding.

Sources: "Consent Decree," Filed October 25, 2016, www.cand.uscourts.gov/filelibrary/2869/Order-Granting-Entry-of-Consent-Decree.pdf and "FAQ for Beneficiaries to the Volkswagen Mitigation Trust Agreement," United States Environmental Protection Agency, last modified November 2016, <https://www.epa.gov/sites/production/files/2016-11/documents/faqsecondcondition.pdf>.

BOX 1: How can cities get engaged in Mitigation Trust decisions?

Cities can begin preparing now by identifying local projects that could benefit from increased investment to reduce NO_x emissions in their communities. Tools to estimate the NO_x reduction potential of different projects may be helpful and include the EPA's Diesel Emissions Quantifier⁶ and Argonne National Laboratory's Alternative Fuel Life-Cycle Environmental and Economic Transportation (AFLEET) Tool.⁷ Local officials can engage with state agencies and regional EPA offices and collaborate with non-governmental stakeholders, such as Clean Cities coalitions, school boards, utilities, and advocates of low-income communities, to help identify possible projects. Once the state comment process is defined, cities can formally submit these recommendations for the mitigation plans.

City leaders should identify which state office or agency will be charged with creating the state beneficiary mitigation plan. If this is not already determined, it is expected that state governors' offices will determine the lead agencies soon. Once each state's lead agency has been certified as a beneficiary, they can apply for funds to mitigate NO_x emissions. Each state will develop its own process and timeline for accepting public input. For example, the Colorado Department of Public Health and Environment will be the lead agency in Colorado, and is working with other state agencies to gather public input about how the money should be spent.⁸ Other states, such as California,⁹ Oregon¹⁰ and Michigan,¹¹ have published online their plans to begin outreach in 2016. Many of these states, as well as Connecticut, have established email distribution lists to share updates.¹²

effective date is marked by the court appointment of the trustee. The trustee may be appointed as early as the end of December 2016, but EPA has suggested that the appointment may be more likely in early 2017. All subsequent dates are relative to the trust effective date.

- **Deadline to apply for beneficiary status:** Governors' offices, or equivalent offices, will work with lead agencies to file a certification form to receive beneficiary status and be eligible to receive the allotted funds. These lead agencies will be designated beneficiaries and will work with stakeholders in their areas to identify projects eligible for mitigation funds.
- **Deadline for trustee to designate beneficiaries:** The trustee will file a list of designated beneficiaries within 120 days of the trust effective date, and within 60 days of receiving claims.
- **Deadline for beneficiaries to submit mitigation plans to trustee:** Upon being designated as a beneficiary, each state's lead agency will have 90 days to submit a beneficiary mitigation plan. This plan will serve as a high-level summary of how the state expects to use the mitigation funds. Each plan should provide the beneficiary's goal for using the funds, the categories of eligible actions that may be appropriate for the beneficiary, a description of how air quality will improve through use of the funds, and an estimate of reduced emissions through mitigation actions. Given the preceding timeline requirements, states may not be able to submit their mitigation plans until summer 2017. However, proactive cities and stakeholders can support the process by engaging with states and preparing their intended recommendations now.
- **Deadline to request supplemental funding:** Any beneficiary wishing to supplement its funding must establish with the trustee that it has obligated at least 80 percent of its allocated funds by the 10th anniversary of the trust effective date. The trustee has 90 days to designate any beneficiaries of remainder funds from the mitigation trust.
- **Deadline to spend allocations:** Any unused funds by the 15th anniversary of the trust effective

date will be returned to the mitigation trust and donated to federal agencies that control regions with inordinately high NO_x emissions.

ZEV INVESTMENTS

HOW IS FUNDING DISTRIBUTED?

Volkswagen is required to invest \$2 billion over a period of 10 years in ZEV investments, spending in four 30-month cycles.¹³ The company has sole discretion to determine the location, timeline, and maintenance of the approved investments. VW will make information about its investment process available at electrifyamerica.com.

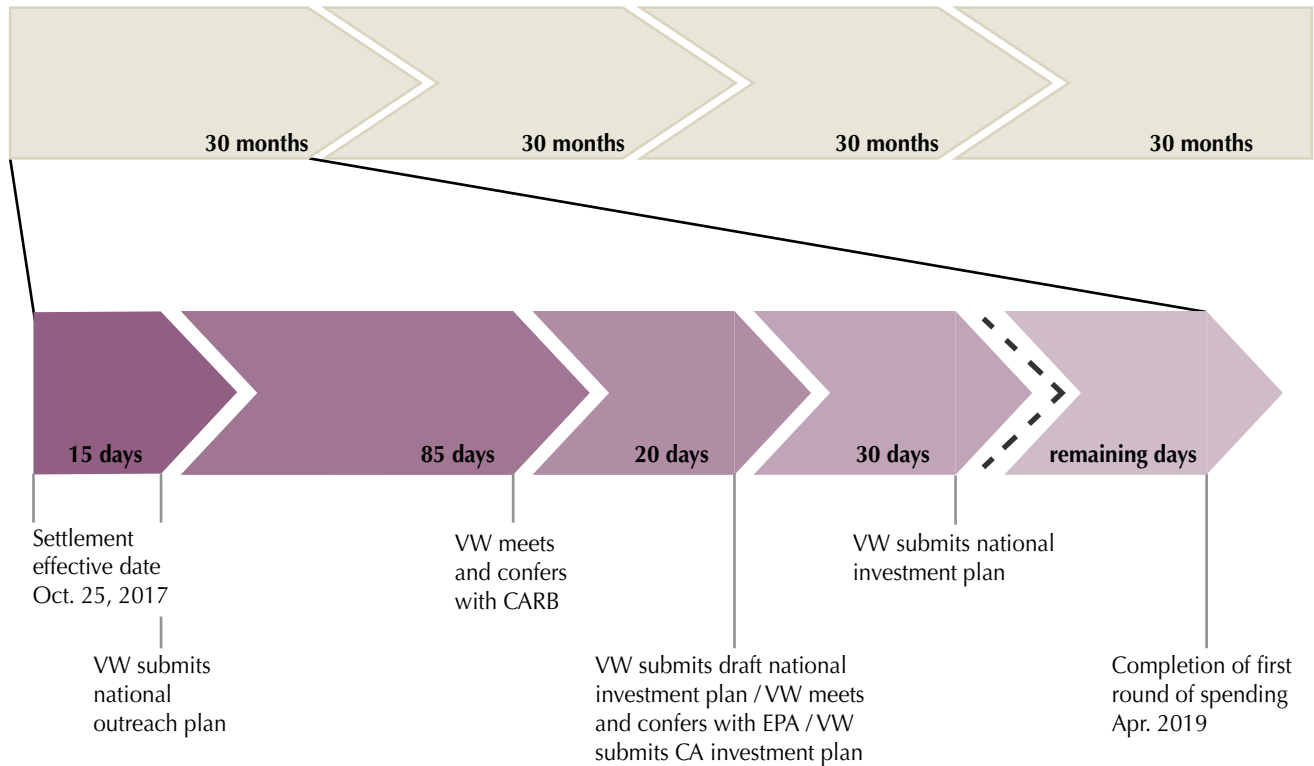
- \$1.2 billion will be directed toward EPA-approved national ZEV investment plans. Volkswagen will be responsible for selecting and managing the ZEV investments. A U.S.-approved independent third party public accounting firm will audit and review costs of the investments, according to Appendix C (Section 2.7) of the consent decree.
- \$800 million will be dedicated to California ZEV investment plans that will be approved by the California Air Resources Board. An independent third party will also audit and review costs of investments in the state.

HOW CAN THE MONEY BE SPENT?

Volkswagen must use the ZEV investments to promote and advance the use and availability of ZEVs within certain categories of action that include:¹⁴

- **ZEV infrastructure:** Eligible activities include designing, planning, constructing, installing, operating and maintaining infrastructure. Infrastructure designations include shared Level 2 charging stations, as would be found at multi-unit dwellings, workplaces, and public locations; public DC fast charging stations that use non-proprietary connections (i.e., do not solely use Tesla's proprietary connection); new heavy-duty ZEV fueling infrastructure (California only); ZEV fueling stations; and next-generation public ZEV charging infrastructure under the same conditions listed above. VW has stated on electrifyamerica.com that it is interested in

FIGURE 3: ZEV Investment Timeline



Milestones for VW to develop and implement ZEV investment plans within the first 30 months. VW must develop and implement ZEV investment plans over four 30-month phases, shown above, and spend all funding within 10 years.

Sources: “Consent Decree,” Filed October 25, 2016, www.cand.uscourts.gov/filelibrary/2869/Order-Granting-Entry-of-Consent-Decree.pdf and “FAQ for Beneficiaries to the Volkswagen Mitigation Trust Agreement,” United States Environmental Protection Agency, last modified November 2016, <https://www.epa.gov/sites/production/files/2016-11/documents/faqsecondedition.pdf>.

BOX 2: How can cities get engaged in ZEV investment decisions?

Cities can submit comments and suggestions for VW’s first investment cycle at www.electrifyamerica.com until January 16, 2017. Comments and suggestions could include recommendations for local investments, in the categories listed above, that would promote and advance the use and availability of ZEVs in the community. The site offers a broad plan for how the company will direct the investments in current and future cycles, and includes a timeline for submissions for the first 30-month investment cycle. Cities should take note that VW has signaled a strong interest in developing DC fast-charging networks in regional corridors and in installing charging stations at diverse public locations in densely populated metropolitan areas. Information about the public comment process for California ZEV investments can be found on the CARB website.¹⁷

installing chargers in approximately 15 metro areas and developing a cross-country network of 200+ fast-charging stations during the first investment cycle.¹⁵

- **Education and public outreach:** All education and outreach activities must build or increase public awareness of ZEVs. In addition, all efforts must be brand-neutral and cannot prominently favor or advertise Volkswagen products. VW has listed on-site events and media-driven campaign as examples of these projects.
- **Exposure and access:** Eligible programs or actions include those that increase public exposure and/or access to ZEVs without requiring consumers to purchase or lease at full market value. Such programs may include ZEV car-sharing and ride-hailing services, which may include but are not limited to autonomous ZEVs. VW has noted that these investments will likely be considered in later investment cycles, along with hydrogen fuel cell vehicle fueling infrastructure.
- **The “Green City” initiative in California:** This initiative promotes but is not limited to ZEV applications in car sharing services, transit, and freight transport projects in select California cities that will be chosen by Volkswagen and local California authorities.

In the context of the settlement, ZEV investments can promote programs and infrastructure that support most on-road cars, trucks, or buses that produce zero exhaust emissions. ZEVs include hydrogen fuel cell vehicles (FCVs), battery electric vehicles (BEVs), or plug-in hybrid electric vehicles (PHEVs) with specified minimum battery ranges. More details on eligible projects can be found in Appendix C (Section 1.9) of the consent decree.¹⁶

WHAT HAPPENS NEXT?

Volkswagen must meet a series of deadlines to draft and implement EPA-approved National ZEV Investment plans, which requires the company to gather input from states, municipalities, tribes, federal agencies and other stakeholders in the near-term. Similarly, the automaker must submit and implement CARB-approved plans specific to California. A more detailed timeline is provided below in **Figure 3**.

- **VW submits national outreach plan:** VW has submitted a plan detailing how the automaker will provide information to allow meaningful feedback from states, municipal governments, tribes, and federal agencies. The national outreach plan at electrifyamerica.com provides a timeline for outreach activities and a portal for interested parties to submit comments and project suggestions. VW is accepting comments for the first cycle until January 16, 2017.
- **VW meets and confers with CARB:** At least 20 days before the California ZEV investment plan is due, VW will meet with CARB and review a draft to determine if any additional information should be included. The draft should provide detailed descriptions of its investments, estimated dates for completion, maintenance plans, a description of brand-neutral media activities, and an explanation of how investments meet California’s ZEV goals.
- **VW Submits California investment plan:** VW must submit the California ZEV investment plan to CARB within 120 days of the settlement effective date, which is February 22, 2017. The plan must be reviewed and approved by CARB and published online.
- **VW Submits draft national investment plan:** VW will submit a draft plan of the proposed investments for at least the next 30 months. The draft must be submitted to EPA within 120 days of the settlement effective date (by Feb. 22, 2017) or 30 days after the end of the comment acceptance period defined in the national outreach plan (whichever is later). The draft will summarize the plan’s key elements, comments received, and how those comments were considered.
- **VW meets & confers with EPA:** EPA will provide VW with preliminary views on the draft. The national investment plan must be submitted to EPA within 30 days of this meeting.
- **VW Submits national ZEV investment plan:** VW must submit a final plan for review and approval by EPA. Following approval, the plan must be published online for public access. The national ZEV investment plan will describe investments, estimated dates for completion, maintenance plans,

brand-neutral media activities, and explain how investments will fit a need and increase the use of ZEVs in the United States. The first national ZEV investment plan is not required to include details on programs that increase public access to ZEVs, but subsequent plans will include this component.

- **Completion of first round of spending:** VW must spend \$300 million on national ZEV investments

and \$200 million on California ZEV investments within 30 months. The automaker may face financial penalties if this is not achieved, though any remaining money could be carried over to the next 30-month investment cycle.

Resources

United States District Court Northern District of California Consent Decree, October 2016

www.cand.uscourts.gov/filelibrary/2869/Order-Granting-Entry-of-Consent-Decree.pdf

EPA's FAQ for Beneficiaries to the Volkswagen Mitigation Trust Agreement, November 2016

<https://www.epa.gov/sites/production/files/2016-11/documents/faqsecondedition.pdf>

EPA's FAQ on the Zero Emission Vehicle Investment, November 2016

<https://www.epa.gov/sites/production/files/2016-11/documents/vw-faq-app-c-final-11-18-16.pdf>

California's FAQ on Consent Decree, November 2016

https://www.arb.ca.gov/msprog/vw_info/vw_faq.htm

Alternative Fuel Life-Cycle Environmental and Economic Transportation (AFLEET) Tool Fact Sheet, October 2016

http://www.afdc.energy.gov/uploads/publication/afleet_measures_impacts.pdf

Diesel Emissions Quantifier (DEQ), October 2016

<https://www.epa.gov/cleandiesel/diesel-emissions-quantifier-deq>

VW Outreach Site for ZEV Investments– Electrify America, December 2016

<https://www.electrifyamerica.com>

ENDNOTES

- 1 “Volkswagen Clean Air Act Partial Settlement,” United States Environmental Protection Agency, last modified October 26, 2016, <https://www.epa.gov/enforcement/volkswagen-clean-air-act-partial-settlement#investment>.
- 2 “Consent Decree,” Filed October 25, 2016, www.cand.uscourts.gov/filelibrary/2869/Order-Granting-Entry-of-Consent-Decree.pdf.
- 3 “Consent Decree,” Filed October 25, 2016, www.cand.uscourts.gov/filelibrary/2869/Order-Granting-Entry-of-Consent-Decree.pdf.
- 4 “FAQ for Beneficiaries to the Volkswagen Mitigation Trust Agreement,” United States Environmental Protection Agency, last modified November 2016, <https://www.epa.gov/sites/production/files/2016-11/documents/faqsecondedition.pdf>.
- 5 “Volkswagen (VW) Settlement: DERA Option,” United States Environmental Protection Agency, last modified November 29, 2016, <https://www.epa.gov/cleandiesel/volkswagen-vw-settlement-dera-option>.
- 6 “Clean Diesel: Diesel Emissions Quantifier (DEQ),” United States Environmental Protection Agency, last modified on October 18, 2016, <https://www.epa.gov/cleandiesel/diesel-emissions-quantifier-deq>.
- 7 “Alternative Fuel Life-Cycle Environmental and Economic Transportation (AFLEET) Tool,” Argonne National Laboratory, last modified May 6, 2016, <https://greet.es.anl.gov/afleet>.
- 8 “Volkswagen and Audi Clean Air Act Partial Settlement,” Colorado Department of Public Health and Environment, accessed November 17, 2016, <https://www.colorado.gov/pacific/cdphe/VW>.
- 9 “Volkswagen Diesel Vehicle Frequently Asked Questions,” California Environmental Protection Agency Air Resources Board, last modified November 10, 2016, https://www.arb.ca.gov/msprog/vw_info/vw_faq.htm.
- 10 “Volkswagen Diesel Settlement,” Oregon Department of Environmental Quality, accessed November 17, 2016, <http://www.deq.state.or.us/aq/vw-settlement.htm>.
- 11 “Volkswagen Settlement Request-for-Information,” Michigan Agency for Energy, released November 7, 2016, <http://www.michigan.gov/energy/0,4580,7-230-71965-396988--,00.html>.
- 12 “VW Settlement FAQ,” Connecticut Department of Energy and Environmental Protection, last modified November 9, 2016, http://www.ct.gov/deep/cwp/view.asp?a=2684&q=587296&deepNav_GID=1619.
- 13 “Volkswagen Clean Air Act Partial Settlement,” United States Environmental Protection Agency, June 28, 2016, <https://www.epa.gov/enforcement/volkswagen-clean-air-act-partial-settlement#investment>.
- 14 “FAQ on the Zero Emission Vehicle Investment,” United States Environmental Protection Agency, last modified November 2016, <https://www.epa.gov/sites/production/files/2016-11/documents/vw-faqs-app-c-final-11-18-16.pdf>.
- 15 “Electrify America,” Electrify America, LLC, last modified December 9, 2016, <https://www.electrifyamerica.com>.
- 16 “Consent Decree,” Filed October 25, 2016, www.cand.uscourts.gov/filelibrary/2869/Order-Granting-Entry-of-Consent-Decree.pdf.
- 17 “Volkswagen Settlement – California ZEV Investments,” California Environmental Protection Agency Air Resources Board, last modified November 14, 2016, https://www.arb.ca.gov/msprog/vw_info/vsi/vw-zevinvest/vw-zevinvest.htm.



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AND ENERGY SOLUTIONS

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