

Frequently Asked Questions about the Volkswagen Settlement

How is the Volkswagen (VW) Settlement related to the Clean Air Act (CAA)?

In September 2015, the U.S. Environmental Protection Agency (EPA) issued a Notice of Violation of the CAA to VW alleging that model year 2009 to 2015 VW and Audi diesel vehicles equipped with 2.0 liter engines included software that evaded EPA emissions standards for nitrogen oxides (NOx). This software is also termed as a defeat device. Shortly thereafter, in November 2015, EPA issued a second Notice of Violation to VW alleging that VW developed and installed a defeat device in certain light duty diesel vehicles equipped with 3.0 liter engines for model years 2014 to 2016 that increases emissions of NOx up to nine times EPA's standard. In mid-February the judge granted preliminary approval of the 3.0 liter portion of the settlement.

What vehicles are affected?

Affected 2.0 liter diesel vehicle models and model years include:

- Jetta (2009–2015)
- Jetta Sportwagen (2009-2014)
- Beetle (2012–2015)
- Beetle Convertible (2012-2015)
- Audi A3 (2010–2015)
- Golf (2010–2015)
- Golf Sportwagen (2015)
- Passat (2012-2015)

Affected 3.0 liter diesel vehicle models and model years include:

- Volkswagen Touareg (2009-2016)
- Porsche Cayenne (2013-2016)
- Audi A6 Quattro (2014-2016)
- Audi A7 Quattro (2014-2016)
- Audi A8 (2014-2016)
- Audi A8L (2014-2016)
- Audi Q5 (2014-2016)
- Audi Q7 (2009-2016)

What if I think I have a vehicle equipped with a defeat device?

The CAA partial settlement requires VW to remove from commerce or perform an approved emissions modification on at least 85% of the affected 2.0 liter vehicles by June 2019. To achieve this rate, VW must offer owners and lessees of affected vehicles the opportunity to

have their vehicles bought back by VW at a fair replacement value of the vehicle as of September 17, 2015, or to have their leases terminated at no cost. The buyback or lease termination option will be available for 2 years. Some consumers may also be entitled to additional compensation through related Federal Trade Commission orders and class action settlements. Information regarding the consumer actions for vehicles included in the settlement is available on the Volkswagen/Audi Diesel Emissions Settlement Program website. <https://www.vwcourtsettlement.com/en/>

What actions will VW have to take under the settlement?

In October 2016, the court approved a settlement between the United States and VW which partially resolves allegations that Volkswagen violated the CAA by the sale of 500,000 model year 2009 to 2015 motor vehicles containing 2.0 liter diesel engines equipped with defeat devices. The settlement is basically structured into three parts.

- **Vehicle Recall.** The partial settlement requires VW to remove from commerce in the United States or perform an emissions modification on at least 85% of the affected 2.0 liter vehicles. To achieve this recall, Volkswagen must offer every owner and lessee of an affected vehicle the option of a buyback or lease termination. Additionally, if VW submits an emissions modification proposal, and EPA and the California Air Resources Board approve it, VW must offer owners and lessees the option of an emissions modification. If the 85% recall rate is not achieved, VW must pay additional money into the environmental mitigation trust.
- **Mitigation.** Under the partial settlement, VW will pay \$2.7 billion to remediate the excess NOx emissions from affected 2.0 liter vehicles. This money will be used to establish an environmental mitigation trust that will be administrated through a mitigation trustee, with allocations to specific state, territorial, and tribal government beneficiaries to use for specific NOx reducing actions.
<https://www.vwcourtsettlement.com/en/docs/DOJ/Approved%20Appendix%20D-1.pdf>

On March 15, 2017, the U.S. District Court approved the appointment of Wilmington Trust as the trustee of the Environmental Mitigation Trust under the Volkswagen Settlement.

- **Zero Emissions Vehicle (ZEV) Investment.** The partial settlement will require VW to invest \$2 billion to promote the use of zero emission vehicles (ZEVs) and ZEV technology. VW will submit a series of ZEV national investment plans to EPA for review and approval based on objective criteria, for ZEV investments across the country. VW is also required to provide notice and opportunities for certain government agencies to provide suggestions, observations, and offers of assistance or support for potential ZEV investments that VW may make under its national plans. While Kentucky's Energy and Environment Cabinet (EEC) will take an active role in reviewing the proposed ZEV national investment plan and submitting comments, the ZEV national investment plan is not an item that states are actively involved in implementing.

VW established a non-profit to implement the Zero Emissions Vehicle Program – Electrify America. That organization recently released the plan for the first of four 30 month cycles – outlining how and where funds will be spent.
<https://www.electrifyamerica.com/our-plan>

How is Kentucky's share of environmental mitigation trust fund dollars determined?

The partial settlement requires VW to establish a \$2.7 billion environmental mitigation trust fund to be distributed among jurisdictions for defined eligible projects that reduce NOx. Each state or jurisdiction's allocation is based on the number of registered affected VW vehicles within its boundaries. Using this allocation methodology, Kentucky is expected to be eligible to receive approximately \$19 million under the 2.0 liter settlement and an additional \$1.3 million under the 3.0 liter settlement.

Who is responsible for administering Kentucky's environmental mitigation trust fund dollars?

The Kentucky Energy and Environment Cabinet (EEC) has been named as the lead agency for purposes of administering the state's trust allocation.

What role do states have in implementation of the settlement?

Under the partial settlement, VW will pay \$2.7 billion into an environmental mitigation trust to remediate the excess NOx emissions from affected 2.0 liter vehicles. The environmental mitigation trust will be administered through a trustee to state, territorial, and tribal governments who elect to become beneficiaries for pre-defined NOx reducing actions. Each beneficiary will receive an allocation of funds based on the number of registered affected VW vehicles within its boundaries. Beneficiaries are provided with the ability to select and implement appropriate eligible mitigation actions funded by VW and have 10 years from the trust effective date to request their allocation and implement mitigation actions.

States electing to become beneficiaries must create a beneficiary mitigation plan within 90 days of being deemed a beneficiary that summarizes how they intend to use allotted funds. Specific elements which must be included in the mitigation plan are:

- The beneficiary's overall goal for the use of the funds;
- The categories of eligible mitigation actions the beneficiary anticipates will be appropriate to achieve the stated goals and the preliminary assessment of the percentages of funds anticipated to be used for each type of eligible mitigation action;
- A description of how the beneficiary will 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;

- A general 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; and
- An explanation of the process by which the beneficiary shall seek and consider public input on its beneficiary mitigation plan.

Beneficiaries have the opportunity to adjust goals and spending plans at their discretion provided that updated beneficiary mitigation plans are provided to the trustee. Development of this beneficiary mitigation plan will require EEC to work collaboratively with stakeholders to determine how the state can best use its environmental mitigation trust funds to reduce NOx emissions in Kentucky.

In addition to preparing the beneficiary mitigation plan, beneficiaries (states) are responsible for submitting requests for eligible mitigation action funding associated with specific mitigation projects chosen for funding. These requests must include:

- An explanation of how the funding request fits into the beneficiary's mitigation plan;
- A detailed description of the proposed eligible mitigation action, including its community and air quality benefits;
- An estimate of the NOx reductions anticipated as a result of the proposed eligible mitigation action;
- A project management plan for the proposed eligible mitigation action, including a detailed budget and an implementation and expenditure timeline;
- A certification that all vendors were or will be selected in accordance with applicable state public contracting laws;
- For each proposed expenditure exceeding \$25,000, detailed cost estimates from selected or potential vendors;
- A detailed description of how the beneficiary will oversee the proposed eligible mitigation action;
- A description of any cost share requirement to be placed upon the owner of each NOx source proposed to be mitigated;
- A description of how the beneficiary complied with notice of availability of mitigation action funds requirements;
- A description of how the eligible mitigation action mitigates the impacts of NOx emissions on communities that have historically borne a disproportionate share of the adverse impacts of such emissions; and
- A detailed plan for reporting on eligible mitigation action implementation.⁹

While Kentucky has yet to determine details associated with selection of projects for funding, it is anticipated that EEC will solicit proposals for specific categories of eligible mitigation actions included in its beneficiary mitigation plan from the public. EEC will review these proposals and determine which projects will receive funding after consideration of factors including but not limited to projected emissions reduction benefits of the project, geographic location of the project, availability of other funding sources for the project, other co-benefits of the project, etc.

Lastly, beneficiaries are responsible for reporting semiannually on progress implementing each eligible mitigation action.

What is the timeline associated with distribution of funds to states?

According to EPA, the trust will likely become effective during the first half of 2017. Within 60 days of the trust effective date, potential beneficiaries must file for certification of beneficiary status. The trustee has 120 days from the trust effective date to file a list of designated beneficiaries. After receiving official designation as a beneficiary, each beneficiary must submit a beneficiary mitigation plan within 90 days. After a plan has been submitted, each beneficiary may then submit funding requests to the trustee for eligible mitigation actions. The trustee must act upon funding requests within 60 days of receipt. EPA has indicated that beneficiaries should expect to have access to trust funds beginning approximately six (6) months following the trust effective date.

A Beneficiary cannot request payout of more than (i) one-third of its allocation during the first year following the initial Trust deposit or (ii) two-thirds of its allocation during the first two years following the initial Trust deposit.

What types of projects are eligible to receive environmental mitigation trust fund monies?

States have the option to select a number of different eligible mitigation actions for receipt of environmental mitigation trust fund dollars. 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
- Ocean Going Vessels Shorepower
- Class 4-7 Local Freight Trucks
- Airport Ground Support Equipment
- Forklifts and Port Cargo Handling Equipment
- Additionally, beneficiaries may 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.
- Actions eligible under the Diesel Emission Reduction Act (DERA) but not specifically mentioned as eligible mitigation actions in the settlement are also eligible for funding.

Please reference Appendix D-2 of the Amended Partial Consent Decree for a full listing of eligible mitigation actions and associated requirements and restrictions.

<https://www.vwcourtsettlement.com/en/docs/DOJ/Approved%20Appendix%20D-2.pdf>

What is the timeline associated with Kentucky EEC's distribution of funds to eligible mitigation actions?

EPA has indicated that beneficiaries should expect to have access to trust funds beginning approximately six (6) months following the trust effective date. However, EEC has not yet determined timing associated with project solicitation and award processes at this time. Additional information will be provided to the public as it becomes available and will be posted here.

How can I participate in determining how Kentucky's environmental mitigation trust fund monies are used?

EEC welcomes input from all types of stakeholders on the development of its beneficiary mitigation plan and the shaping of its future granting programs for eligible mitigation actions. For this purpose, a webpage has been developed and dedicated to the most current information pertaining to opportunities to engage in these processes. Please visit the Kentucky VW Diesel Settlement Page for additional information and the latest updates regarding opportunities to get involved. EEC will provide the public an opportunity to provide feedback regarding Kentucky's plans to utilize environmental mitigation trust funds. In fact, the VW Diesel Settlement requires EEC (and all beneficiaries) to provide the public an opportunity for input on its beneficiary mitigation plan prior to finalization.

Interested stakeholders are encouraged to visit the VW Diesel Settlement Page for the latest information. <http://eec.ky.gov/Pages/Volkswagen-Settlement.aspx>

How will Kentucky EEC ensure that vulnerable communities are considered during fund administration?

The VW Diesel Settlement requires beneficiaries to engage with stakeholders of all types, including stakeholders within low-income, minority, and disadvantaged communities, and to describe approaches utilized 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. EEC will use a combination of approaches and tools for this purpose. EEC also plans to gain input from partners who typically work with vulnerable communities and identify those stakeholders and request input from these groups.

Where can I learn more about the VW settlement?

For additional information about the Volkswagen settlement, please visit:

- EPA's Volkswagen Clean Air Act Partial Settlement webpage
<https://www.epa.gov/enforcement/volkswagen-clean-air-act-civil-settlement>

- The U.S. Department of Justice's Volkswagen Settlement webpage
<https://www.justice.gov/opa/pr/volkswagen-spend-147-billion-settle-allegations-cheating-emissions-tests-and-deceiving>
- The Volkswagen/Audi Diesel Emissions Settlement Program website
<https://www.vwcourtsettlement.com/en/>
- The National Association of State Energy Officials' Volkswagen Settlement webpage
<http://www.naseo.org/volkswagen-settlement>

A presentation by EPA (given on 11/18/2016), which summarizes the partial settlement, highlights useful resources, outlines the Zero Emission Vehicle investment requirement, and walks through the environmental mitigation trust in detail. That presentation and additional information may be found here. <https://www.epa.gov/enforcement/volkswagen-clean-air-act-civil-settlement>