Volkswagen Settlement Offers Funding for Clean Transportation Upgrades

Related People:
Allen R. O'Neil

Environment & Energy Alert

10.19.2017

Local governments and businesses considering investments in clean transportation projects may find funding opportunities resulting from partial settlements in the Volkswagen "clean diesel" emissions litigation. The U.S. District Court for the Northern District of California recently approved the form of the states' environmental mitigation trust agreement,[1] and on October 2, 2017, the U.S. Department of Justice filed the finalized agreement with the court.[2] The long-awaited trust agreement moves the ball forward for local governments and businesses to seek funding to replace or repower diesel vehicles and support equipment, and to build networks for electric and alternative fuel vehicles. Those interested in understanding when, where, and how their state intends to use the allocated funds should engage now with state representatives and the lead agency managing the state's share of funds.

Over the next 10 years, the trust will provide beneficiary states and territories with access to nearly $2.7 billion in funding dedicated to reducing nitrogen oxide (NOx) emissions in the transportation sector. Funds are allocated to beneficiaries using a formula that gives jurisdictions that had higher sales of Volkswagen and Audi vehicles equipped with illegal emissions defeat devices a proportionately greater share of funds. Each state, and the District of Columbia, is eligible to receive a minimum allocation of $8.13 million. The trust provides states with the following initial allocations:

- Massachusetts – $75.1 million
- Connecticut – $55.7 million
- New York – $127.7 million
- New Jersey – $72.2 million
- Pennsylvania – $118.6 million
- Delaware – $9.7 million
- Maryland – $75.7 million
- Virginia – $93.6 million

Procedurally, the filing of the fully executed mitigation trust agreement with the court sets the effective date of the trust and starts the clock on actions that beneficiary states must take to access these trust funds. With this timeline established, now is the time for local governments and businesses to discuss opportunities with their state representatives.

Funds may be used by beneficiary jurisdictions for NOx reduction in 10 categories of programs specified in the mitigation trust agreement. For instance, funds can be used to build zero-emission vehicle charging or fueling station networks. Funds can also be used to repower or replace older-model diesel vehicles and vessels. Trucks, buses, and support equipment deployed at airports, switchyards, and ports that meet program criteria are eligible for repowering or replacement with ones using all electric, cleaner diesel, or alternate fuels such as compressed natural gas, propane, and hybrids.

Vehicles and vessels targeted for replacement may be government-owned or privately owned, with the latter having cost-share requirements. Funds may cover the full cost of replacing or repowering government-owned diesel sources, although funds are capped for privately owned sources at between 25% and 75% of the cost of replacement or repowering. For example, a state could use funds to pay the full cost of replacing a county-owned vehicle. If the vehicle is privately owned, only a portion of the cost is eligible to be covered by the fund. For the privately owned vehicle, the trust funds can cover a cost share of up to 25% of a new diesel vehicle, up to 40% of repowering costs for a new diesel engine, or up to 75% of replacement costs for a new, all-electric vehicle.

The types of vehicles eligible for these benefits span many categories and sectors of industry. At the top of the list are heavy industrial vehicles such as cement mixers, long-haul trucks, and dump trucks. Other prime candidates include mass transportation vehicles such as school and municipal buses, but also include smaller transit and shuttle buses such as those deployed on corporate or college campuses. A wide variety of delivery vehicles also qualify, ranging from parcel delivery trucks to fuel tankers and refrigerated vans.

Covered vehicles also include those that are vital to rail yard and port operations, such as high-volume, freight-switcher locomotives, as well as tugs and ferries, which can be repowered at the same funding percentages listed above. Forklifts and port handling equipment can also be repowered with electric engines, with up to 75% funding eligibility. For marine facilities interested in reducing diesel-powered idling by docked ships, the installation of marine shore power is eligible for funding of up to 25% for a privately owned facility.

A state may dedicate up to 15% of its allocated funds to develop charging infrastructure networks for zero-emission electric vehicles. Funds may be used toward the full cost of purchasing, installing, and maintaining Level 1, Level 2, or fast-charging equipment on government-owned property that is open to the public—*e.g.*, a library or rest stop parking lot. Funds may also be used to pay for a portion of the cost of charging stations located at privately owned multiunit residences and workplaces that are not open to the public. Another option is to use funds for purchasing, installing, and maintaining equipment to supply hydrogen fuel cell vehicles. The trust agreement specifies in detail the permitted mitigation actions, expenditures, and cost shares.

States must develop a high-level description of the state's intended use for the mitigation funds, called a Beneficiary Mitigation Plan. The plan should describe program goals, types of mitigation actions expected to achieve program goals, and the expected portion of funds to be directed to each mitigation action. The plan should also lay out an expected range of emissions-reductions benefits, particularly impacts on areas that bear a disproportionate share of air pollution burdens. Each state's plan is to be provided to the trustee, but the plan itself is non-binding.

Many states' draft plans have already been posted for public comment. Those interested in shaping how funds will ultimately be used may want to reach out now to their lead state agency charged with preparing the Beneficiary Mitigation Plan.

1 *See* Order Approving Trust Agreements and Establishing Trusts, *United States v. Volkswagen AG et al.*, No. 16-cv-295 (N.D. Cal. Sept. 19, 2017), ECF No. 49.

2 *See* United States' Notice of Filing of Trust Agreements, *United States v. Volkswagen AG et al.*, No. 16-cv-295 (N.D. Cal. Oct. 2, 2017), ECF No. 51.