NASEO National Association of State Energy Officials

NACAA national association of clean air agencies

Volkswagen Settlement Working Group Call

The National Association of State Energy Officials (NASEO) and National Association of Clean Air Agencies (NACAA) convene the Volkswagen (VW) Settlement Working Group to enable state-to-state communication on the VW settlement's Environmental Mitigation Trust. The VW Working Group facilitates monthly calls with State Energy Offices, Air Agencies, and other state leads to address pressing questions related to the settlement, allow peer-to-peer networking and information sharing, and explore potential multi-state activities under the Environmental Mitigation Trust. Additional information for state and local agencies on the VW Settlement can be found on www.vwclearinghouse.org.

January 23, 2020, 3:00pm ET

Agenda

Welcome and Agenda Overview

Presentation from the Wilmington Trust: Russ Crane, Mike Bochanski Jr., Nick Adams

- D-4 Guidelines: There is a 75-day window after D-4's are submitting before funds are disbursed. First, 60 days for WT to review and reply with comments. Another 15 days after that to disburse the actual funds. WT uses Attachment A to determine how much cash is needed for the project, and when they need to have it liquid and ready for the state.
- Trust treats all assets in the same way. Please see the powerpoint to see specifics on how they are allowed to invest Trust funds.
- Disbursing Agent Services: in response to state requests to disburse checks directly to third-parties, all fees are in line with industry standards. Want to be clear, this is not a requirement! Just an option to simplify things for state beneficiaries.
- CO: We submitted a D-4, which requested the full 15% of funds available for ZEV infrastructure programs. Our Attachment A didn't request all the funds at once. As we submit more Attachment As down the road, do you want to be notified?
    - WT: Yes, you just need to submit the Attachment A, let us know if it's the second of three (or whatever the numbers may be). We just need information to liquidate funds at the right time and provide them to you in the 15-day window.
- WA: If a state submitted a D-4 for a 5 year program, with funds provided over that full period, what I believe you're saying is that the full amount of funds would be swept out of the main account and not earn interest, even if funds aren't required for another year?

- WT: No, the swept funds do earn interest. Also, if there is such a long timeline, please give us a call to discuss it, so we can keep in invested in the best possible options. The sweep funds tend to earn lower returns than the fully invested fund.
- TN: Have a question on the spend down requirements, particularly the requirement that 80% must be obligated by the 10th anniversary of the Trust Effective Date. Is this 80% of initial allocation, or 80% of initial allocation plus any earned interest?
  - WT: We'll need to get back to you, at the very least it would be 80% of initial allocation.
  - NASEO: We will stay in touch with WT and provide an answer once they respond.
- MI: Question on slide 13. Under Tax Reporting Services, one of our programs is structured as a partnership. Does that mean the program lead will get a 1099, and then need to distribute that to the rest of the partners?
  - WT: Not sure how they would need to divide the tax fees, but we can definitely provide the 1099 documents if you'd like.
- PA: For the invested funds, under Attachment B when we add up the new totals based on allocated funds, we've just been basing that off the initial allocation. Is there a point where we need to start accounting for the interest earnings?
  - WT: Not a hard date when you need to account for these, since the actual amount will change daily. However, earned interest is part of the states' funds to be utilized, so should be accounted for if possible. Really up for the states to decide, but updating it on every D-4 will probably drive you crazy.
- MI: About to submit our first reimbursement for administrative costs. Can we do that at the EMA level, or do we need to do it at the project level?
  - WT: The Trust doesn't clearly define this, but we want states to think about this on a D-4 level as much as possible. A single EMA on a single D-4 would be the best.
  - MI: Great, so we can lump admin costs across projects, as long as it is one EMA?
  - WT: Yes.

Question from Oregon: We are currently using VW funds to treat school buses. I would really appreciate any additional information or guidance regarding the concept of "like-for-like" in terms of replacement vehicles. Is this capacity, weight, class, or type criteria?

- TN: We've addressed this in the past under an FAQ for our schoolbus program. Full text is below. We've had several applications for replacement schoolbuses which are larger than the old vehicle. For those, we do a like-for-like compensation, not compensation for the larger bus. Furthermore, our methodology for calculating NOx emissions does not account for changes in wright class or type, it simply uses the average emissions profile for that vehicle type.

  Q: Does the School Bus to be replaced need to be the same Gross Vehicle Weight Rating (GVWR) as the new School Bus to be purchased?

  A: The intent is for entities to replace vehicles with vehicles of a similar weight class, in order to ensure as much of a one-to-one NOx mitigation as possible. Scrappage of an identical number of similar vehicles or engines is required. (If vehicles, engines, or equipment are added to a fleet without removing a dirtier, older engine of a similar size or larger, then the project would not result in NOx reductions.) Vehicles of different weight classes may have different duty cycles and/or varying engine sizes. <u>That being said, if an entity would like to propose to replace a vehicle with a similar vehicle of a different weight class, they will need to provide a justification as to why a vehicle of a different weight class is appropriate</u>.

- TX: We deal with schoolbuses, providing grant amounts by bus type (A, B, C, or D). We do allow recipients to change bus type, but the money is based off the vehicle being replaced.
- Molly: Believe we've addressed a similar question previously. Old notes are included below:
- **From June 2019 Notes:** Montana has an open request for applications for transit buses, and has received several requests to replace a Class 7 diesel truck with a larger, electric Class 8 Truck. They are considering a rule exception to allow replacements of a difference class, since there are no electric Class 7 buses, but would like to hear what other states have done.
  - TN: Our state is holding a schoolbus solicitation. In the FAQs, we say that the intent is to keep the same weight class to keep a one-to-one comparison and keep similar duty cycles. If they want to change weight classes, they can provide reasoning and the TN office will make a decision on a case-by-case basis.
  - TX: We've had similar situations, and focused on ensuring the use and duty cycle of the replacement bus is the same. Use technical, air quality calculations to determine that.
- **From February 2019 Notes:** Can a beneficiary replace an eligible vehicle under the Trust Agreement (e.g., a class 4-8 truck) with a smaller vehicle from class 1-3? Nothing in the Trust Agreement seems to prohibit this and it seems to fit with the spirit of the Trust Agreement, since a smaller vehicle would be more fuel efficient and presumably emit less NOx.
  - Steve (NY): Nothing in the trust that would prohibit this, and fits with sprit of agreement since smaller more efficient would presumably mean less NOx.
  - Molly (TN): The use and duty cycle of the vehicle needs to be focused on, but there is room to look at this as more than just a one-to-one replacement.
    - Relevant notes from the December 6, 2018 call:
      SC – For bus replacement eligibility, does it need to be an exact replacement, based on the type of bus?
      OH – consulted with the EPA on how to address this. Concluded that they would allow bus replacements across weight classes, as long as the change in weight was less than 10%.
      TN – We have noted that the intent is for entities to replace vehicles with vehicles of a similar weight class, in order to ensure as much of a one-to-one NOx mitigation as possible. Scrappage of an identical number of similar vehicles or engines is required. (If vehicles, engines, or equipment are added to a fleet without removing a dirtier, older engine of a similar size or larger, then the project would not result in NOx reductions.) Vehicles of different weight classes may have different duty cycles and/or varying engine sizes. That being said, if an entity would like to propose to replace a vehicle with a similar vehicle of a different weight class, they will need to provide a justification as to why a vehicle of a different weight class is appropriate.
  - TX – when you're changing the class or size of truck, it probably means that the original truck wasn't being used the way it was intended to be used. So this would probably not achieve the same emission reductions that modeling would show. Texas decided not to allow this.
  - Molly – States should review this with their counsel to see how other programs operated in their states have addressed this. It will ultimately be up to the states, but they should focus on the actual function of both the vehicle being replaced and the vehicle being procured.

Question from Colorado: We are interested to hear any specific guidance in terms of what is meant by some of the eligible Administrative Expenditures. In particular, are there examples of: "ordinary or normal rearrangement and alteration of facilities" (line #6); "professional services" and "training" (line #7). We are interested in supporting our transit agencies with as many of these related costs as possible as they transition their bus fleets, but need some clarity on what types of costs are eligible using VW funds versus other state dollars that we can access.

- TN: we've given some consideration to allowing training for EMA #9. Haven't made a decision, but we've determined that this would be an eligible administrative cost if we'd like to allocate funds in that way. We'll circle back on the examples of "rearrangement or alteration of facilities."

Open Forum:

- MI: Have any other states come across the issue of getting 1099s to grantees.
    - MA: We do issue 1099's through our comptroller's office for every grantee.
    - Molly: We will plan to re-examine this on the February call.

- CO: Would solar panels be an eligible cost for an EVSE installation?
    - TX: we've said that they can't do this.
    - Molly: remember to break it out by components. TN does consider this as eligible. Appendix D-2, EMA #9 states that funds should not be available for real estate, or other capital costs (construction of buildings or parking facilities).
    - NASEO: This was discussed on the **February 2019 call**, relevant notes below:
        - Appendix D-2 allows paying up to 100% for the cost of charging infrastructure for electric vehicles. Could VW funds be used to pay for the following: facility costs (siting, maybe some retrofitting) for building out charging infrastructure at existing garages, siting costs for new garage locations (grid reliability study, etc.) or connection costs. Would the installation of solar panels as part of charging infrastructure meet the definition of "charging infrastructure?"
            - Steve (NY): Molly, NASEO, NACAA and I all spoke to Russ, and came to the conclusion that infrastructure costs that are directly supporting a station are eligible. Generally, it will come down to state decisions and what their mitigation plans are, and whether this fits into it. The line is essentially "behind-the-meter", infrastructure costs for power lines are eligible. Can't buy solar infrastructure and feed it into the grid that serves a charging station. But you can attach solar panels to a station to feed electricity directly in.
            - Molly (TN): Wants to bring the focus on what is eligible. Under the bulk of categories, charging infrastructure associated with new electric engines is allowed. When we get to category #9 Light Duty ZEV Infrastructure, it gets broader in definition and can support more aspects, but this spending is capped, so be efficient.
            - Molly (TN): Understand what constitutes an eligible mitigation action administrative cost as opposed to an eligible mitigation action project cost. The former costs are capped at 15% of the related eligible mitigation action category. Appendix D-2 defines costs for professional services and contracts for evaluating and consulting services as eligible mitigation action administrative costs. How would your state approach siting costs for a garage? TN would consider that an administrative cost.

- Becca (NH): trustee has advised that solar panels can be covered by funding? As long as they provide power to a charging station?
    - Steve: Yes, that's pretty much it. The solar panels need to be directly associated with the station. Can't just buy solar from a plant 5 miles away.
    - Becca: I've seen portable solar charging stations and was interested in possibly investing in those.
- Bob (NM): does the allowance for solar panels account for batteries as well?
    - Steve (NY): We did not discuss batteries directly. It would depend on how they were deployed, but if they are exclusively serving the station, it would be OK. Just need to be careful, since they would eat up a lot of funding quickly.
    - Molly (TN): TN examined it, and decided that it was allowed, but it is unlikely that we will pursue it beyond a pilot. If TN does a solar station, it would have storage. In TN's beneficiary mitigation plan for category 9, we added definitions for "Operation and Maintenance Costs" and "Power Supply Equipment."
    - Please see Appendix 4 of the TN Beneficiary Mitigation Plan.

Next Call: February 27, 2020 at 3:00pm EST