

**NASEO and NACAA Volkswagen Settlement Working Group<sup>1</sup> –  
Frequently Asked Questions**

*Updated 3/15/18*

**Disclaimer:** This document is designed to provide general information to state agencies working on developing programs under the VW Environmental Mitigation Trust (EMT). Information provided in this document should not be considered legal advice. NASEO and NACAA strongly urge state agencies to pose questions related to the VW Environmental Mitigation Trust, including proposed program design, to their Attorney General’s office, agency attorneys or other counsel.

Question	Answer
<b>Notification of Federal Agencies</b>	
Beneficiaries need to provide a copy of the Trust Agreement with Attachments to the U.S. Department of the Interior (DOI), the U.S. Department of Agriculture (USDA), and any other Federal agency that has custody, control or management of land within or contiguous to the territorial boundaries of the Beneficiary and has by then notified the Beneficiary of its interest hereunder, explaining that the Beneficiary may request Eligible Mitigation Action funds for use on lands within that Federal agency’s custody, control or management (including but not limited to Clean Air Act Class I and II areas), and setting forth the procedures by which the Beneficiary will review, consider, and make a written determination upon each such request. What agencies does each state need to notify? Where can states get a list of all federal agencies within their state? What should the notification include?	<p>The agreement requires affirmative notification to DOI and USDA. Addresses are included in the trust agreement. <i>See ¶ 4.2.8.</i> These notifications must be submitted within 30 days after being notified of beneficiary status.</p> <p>All other notifications are required only IF so requested by other Federal agencies.</p> <p>Example: South Dakota’s Notice of Availability of Mitigation Action Funds can be <a href="#">found online here</a>.</p>
<b>Beneficiary Mitigation Plan</b>	
What are the minimum requirements for a state plan, and what items may Beneficiaries need to address in either their Beneficiary Mitigation Plans	Minimum requirements for the Beneficiary Mitigation Plan are listed in the VW Environmental Mitigation Trust

<sup>11</sup> The National Association of State Energy Officials (NASEO) and the National Association of Clean Air Agencies (NACAA) compiled this FAQ as a service to states as they develop and implement programs under the Volkswagen Environmental Mitigation Trust. It will be updated with additional questions in the future. If you have questions to recommend for future FAQ documents, contact Cassie Powers of NASEO at [cpowers@naseo.org](mailto:cpowers@naseo.org) or Mary Sullivan Douglas of NACAA at [mdouglas@4cleanair.org](mailto:mdouglas@4cleanair.org).

(BMPs) or their solicitation materials?	Agreement, ¶ 4.1. Additional information may be included at the discretion of the state.
<b>Programmatic Questions</b>	
How are states estimating the excess NO <sub>x</sub> emissions caused by the applicable 2.0 and 3.0 l VW vehicles registered in their state?	States have the discretion to choose their NO <sub>x</sub> emissions estimation methodology or tool. A webinar demonstrating two popular tools, the Diesel Emissions Quantifier (DEQ) and Alternative Fuel Life-Cycle Environmental and Economic Transportation (AFLEET) Tool, can be found on the <a href="#">VW Clearinghouse website here</a> . Other tools are available through the public and private sector.
How are states estimating the NO <sub>x</sub> emission reductions from light-duty Electric Vehicle Supply Equipment (EVSE) projects?	<b>TBD</b>
How can states/are states estimating the cost to repower v. replace vehicles and infrastructure?	<a href="#">AFLEET</a> allows users to estimate the cost of repower/replacement of vehicles. Some states, <a href="#">such as Tennessee</a> , have issued RFIs seeking cost information.
Have states made preliminary eligibility decisions due to the vagueness within Appendix D-2?	States are afforded a great deal of discretion under the VW Environmental Mitigation Trust. States should consult counsel before making investment and eligibility decisions.
Are states thinking of retrofitting vehicles to use B100 biodiesel?	<b>TBD</b>
Can states issue Requests for Proposals and/or solicit projects before the Beneficiary Mitigation Plan has been submitted, or during the initial 30 days after the Beneficiary Mitigation Plan has been submitted?	States are afforded broad discretion to manage their program and involvement, and can issue requests for proposals at any time, including before the Beneficiary Mitigation Plan has been submitted. However, beneficiaries cannot submit a funding request to the Trustee until 30 days after the Beneficiary Mitigation Plan has been submitted.
How are states structuring their Requests for Proposals?	Example: Virginia released a Request for Proposal (RFP) to solicit sealed proposals to establish a contract through competitive negotiation with a qualified source to

	provide turnkey services for establishing a Statewide Public Electric Vehicle Charging Station Network for the Virginia Department of Environmental Quality. A copy of the RFP <a href="#">can be found online here.</a>
Under the EMT, states are allowed to use EMT funds to repower or replace vehicles for most eligible action areas. Are states allowed to offer rebate programs for repower and replacement, as opposed or in addition to advancing funds or reimbursing eligible expenditures through a grant or other contract?	The mechanism of how an agency proposes to implement a project (including rebate programs) is within that agency’s discretion, as long as programs meet the parameters set forth in Appendix D-2, Eligible Mitigation Actions.
Can a “project” or “eligible mitigation action” include a grant program operated by a Lead Agency, allowing them to fund multiple vehicle replacements/repowers under the same program?	States have broad discretion to implement eligible mitigation action programs, as articulated in Appendix D-2. If the states do take a program approach, they must still link administrative expenses to an Eligible Mitigation Action or projects under an Eligible Mitigation Action.
If the “program approach” is allowed, must individual VIN numbers be provided for every repower/replacement?	Although the Trust Agreement does not require Beneficiaries to provide VIN numbers, it is considered a best practice to collect such information.
<b>Administrative Questions</b>	
States are interested in creating/using an existing revolving loan fund for EMT projects. Is this possible under the settlement?	Funds requested and received must be spent on specific Eligible Mitigation Actions and managed to completion. Unused Eligible Mitigation Action funds must be returned to the Trust and will be added to the State’s allocation account. VW Mitigation Trust Agreement ¶ 5.2.17. States should consult counsel on whether funds can be used to seed revolving loan funds.
Can states put EMT funds into an account that accumulates interest?	Funds requested and received must be spent on specific Eligible Mitigation Actions and managed to completion. Unused Eligible Mitigation Action funds must be returned to the Trust and will be added to the State’s allocation account. VW Mitigation Trust Agreement ¶ 5.2.17. States should consult counsel on whether

	advanced funds can be placed into an account that accumulates interest.
Does the trustee fee come out of the states' 15-percent allocation for administrative costs?	The VW Mitigation Trust Agreement created and funded a separate administration cost subaccount to pay the Trustee. The Trustee is financed solely from this subaccount, and from investment management fees. States do not need to account for a Trustee fee in their budget. The Trustee's fees are not part of the 15-percent allocation for administration. Rather, the 15-percent allocation is solely for the states' costs of administration for a specified Eligible Mitigation Action listed in Appendix D-2, including any third-party contractors. (See page 62 of State Trust Agreement.)
Will beneficiaries be able to charge current hours worked on the settlement such as developing the mitigation plan?	The state can bill up to 15 percent in administration costs related to each Eligible Mitigation Action project as part of their funding request. There does not appear to be a mechanism for states to request separate funding to cover other administrative costs.
What is the maximum amount of funding that states can withdraw in advance of project selection and award?	All funding requests must be made in conjunction with specific mitigation action projects. States may not request funds outside of a mitigation action project funding request.
The 15-percent administrative cap includes the aggregated amount of eligible administrative expenditures incurred by the Beneficiary and any third-party contractor(s). Does this mean that sub-recipients (such as grantees) may not be paid for administrative expenditures?	States retain the discretion to manage their programs, including whether or how to address the question of whether and how to allocate administrative costs.
Can EMT funds be used to reimburse vehicle replacements that have already occurred and qualify as an eligible mitigation action?	No. EMT funds are provided for mitigation actions included in the Plan; there is no "reimbursement" for commitments made before the Beneficiary's completion of Trust requirements.
When was the initial deposit made to Wilmington Trust, and are we on "year 2" of funding already?	VW has made two payments; VW will make the third payment in October, 2018.
In regards to the 2nd partial settlement and the	The 3.0L Engine settlement funds are

<p>\$225 million into the mitigation fund; should states add that to their total budget or will it need to be budgeted separately?</p>	<p>included in the pro rata share allocations by state listed Appendix D-1B. These are the state share allocations that the Trustee will be managing.</p>
<p>When does the 10-year timeframe to spend funds start?</p>	<p>October 2, 2017.</p>
<p><b>Questions Related to the Trust</b></p>	
<p><i>A FAQ managed by Wilmington Trust addresses additional questions specifically related to the Trust. The FAQ is updated regularly and can be found here:</i>  <a href="https://www.vwenvironmentalmitigationtrust.com/state-trust.html">https://www.vwenvironmentalmitigationtrust.com/state-trust.html</a></p>	
<p>Are the forms that were posted on Intralinks on 11/28/17 (Cert on Incumbency) and 11/15/17 (Exhibit A) the final versions or should we expect other forms?</p>	<p>Yes, the final versions are posted on Intralinks.</p>
<p>Can the Cert of Incumbency and Exhibit A be submitted prior to or in conjunction with the first D-4 funding request?</p>	<p>Yes, both need to be submitted at the same time as or before the first funding request.</p>
<p>Do the fully completed and notarized Cert of Incumbency and Exhibit A forms need to be mailed in addition to being uploaded on Intralinks?</p>	<p>Forms can be uploaded to Intralinks. Originals are not required.</p>
<p>Please clarify what is the “State’s Trust Public facing website” where the Trustee will post determination notices on submitted D-4s under 5.2.16. Is this on the Intralinks site or is there another website where the Trustee will post notices? If another website, can you please forward the link?</p>	<p>The trustee’s public-facing website is <a href="http://www.vwenvironmentalmitigationtrust.com">www.vwenvironmentalmitigationtrust.com</a>. Go to the main page, click on the “state trust” tab.</p> <p>The website is in the process of being converted to a full portal. When that happens, the trust will provide a link directly to the state’s landing page.</p>
<p>Will there be any modifications made by the Trustee to the existing D-4 funding request template? (6 pages in total, currently)</p>	<p>No.</p>
<p>Does the trustee anticipate producing and disseminating a standard template for beneficiary use for the reporting requirement?</p>	<p>Not at this time. States can use any template that satisfies the requirement.</p>
<p>Will the trustee be providing any guidelines on the funding request procedure?</p>	<p>The trust will not be releasing any formal guidance on this. Generally speaking, it would be helpful for states to provide complete information at the time of submission. The trust has a 60-day review</p>

	process to approve funding requests.
How can beneficiaries obtain their subaccount number for Exhibit A?	Contact the trust for your subaccount number.