NASEO

National Association of State Energy Officials

Jeff Genzer, General Counsel
National Association of State Energy Officials
2107 Wilson Blvd, Suite 850
Arlington, VA, 22201
jcg@dwgp.com

August 5, 2016

Assistant Attorney General
U.S. DOJ-ENRD
P.O. Box 7611
Washington, DC, 20044-7611
Pubcomment-ees.enrd@usdoj.gov

In Re: Volkswagen "Clean Diesel" Marketing , Sales Practices, and Products Liability Litigation
Case No: MDL No. 2672 CRB (JSC), and D.J. Ref. No. 90-5-2-1-11386

Dear Assistant Attorney General,

The United States Department of Justice has requested public comment on the Partial Consent Decree in the Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation (Case No: MDL No. 2672 CRB (JSC), and D.J. Ref. No. 90-5-2-1-11386). The following comments are submitted by the National Association of State Energy Officials (NASEO), the only national non-profit association representing the governor-designated energy officials from the 56 states and territories.

Questions on the attached comments should be directed to Jeff Genzer, NASEO General Counsel (jcg@dwgp.com) or David Terry, NASEO Executive Director (dterry@naseo.org).

Sincerely,

Jeff Genzer
General Counsel, NASEO

NASEO

National Association of State Energy Officials

Comments on the Partial Consent Decree in the

Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation

(Case No: MDL No. 2672 CRB (JSC), and D.J. Ref. No. 90-5-2-1-11386)

Submitted by the

National Association of State Energy Officials (NASEO)

August 5, 2016

National Association of State Energy Officials

Background
The nation's 56 State and Territory Energy Offices have a multi-decade history of implementing programs that reduce emissions, promote alternative fuels, and improve energy efficiency within the transportation sector. Under the American Recovery and Reinvestment Act (ARRA), State Energy Offices, often in partnership with their Clean Cities Coalitions, administered alternative fuel vehicle infrastructure investment programs, and were responsible for building alternative fuel infrastructure networks within their states. For example, Rhode Island Office of Energy Resources used ARRA to invest in electric vehicle chargers along major roadways, at workplaces, and at other public spaces. Other federal resources, such as Congestion Mitigation and Air Quality (CMAQ) funds and State Energy Program funds have been leveraged by State Energy Offices for infrastructure investment and vehicle conversion programs. Using CMAQ funds, the New York State Energy Research and Development Authority (NYSERDA) administers the New York Truck-Voucher Incentive Program, which offers three types of vouchers for the purchase of alternative fuel vehicles and diesel emission control devices. Under Charge Ahead Colorado, the Colorado Energy Office uses SEP funds and other sources to support charging station installations. States have also used money from legal agreements and settlements to support alternative fuel programs. For instance, the Maryland Energy Administration used $1 million of the proceeds from a settlement with the American Electric Power Service Corporation for a public-private grant program to build a statewide network of DC fast charging stations for electric vehicles. The Massachusetts Department of Energy Resources also used $300,000 in AEP settlement proceeds to launch an EV infrastructure program. The Tennessee Department of Environment and Conservation's Office of Energy Programs used $2.5 million of proceeds from a separate settlement to fund an electric vehicle rebate program and will use another $2.5 million to launch a program that will assist Tennessee-based fleets invest in natural gas or propane powered commercial vehicles.

These experiences have given the State Energy Offices tremendous insight into what makes an alternative fuel program a success. In particular, these offices have led the way in taking early action – in partnership with local governments and the private sector – to establish many of the electric vehicle charging stations that are in place today. Building from this administrative and subject-matter expertise, NASEO, on behalf of the State Energy Offices, has compiled recommendations that aim to strengthen the Environmental Mitigation Trust Agreement (Appendix D of the Settlement) by allowing beneficiaries greater flexibility to implement mitigation actions that have a high likelihood of success.

Comments Related to Appendix D: Environmental Mitigation Trust Agreement
NASEO supports the objectives of the Environmental Mitigation Trust Agreement within the Settlement, and is eager to support actions that will decrease NOx emissions from the transportation sector. While the ten "Eligible Mitigation Actions" identified in Appendix D-2 will allow beneficiaries to take bold steps to reduce NOx emissions, NASEO urges the United

States to revise the Settlement to allow beneficiaries greater flexibility in the expenditure of Environmental Mitigation Trust funds. Specifically, NASEO recommends adding the following as allowable expenditures.

- *Allow Alternative Fuel Vehicle Infrastructure Investment*: Most Eligible Mitigation Actions outlined in Appendix D-2 specify that a portion of the settlement funds may be used to invest in electric vehicle charging infrastructure, if the infrastructure is associated with the repower or purchase of an all-electric vehicle or engine. Similarly, Light Duty Zero Emission Vehicle Supply Equipment is an allowed Eligible Mitigation Action under the Settlement. However, costs associated with the purchase and installation of infrastructure for alternative fuels (such as compressed natural gas or propane) is not an Eligible Mitigation Action Expenditure. One of the principle barriers to the adoption of alternative fuel vehicles is the availability of infrastructure, and fleets are unlikely to purchase or repower vehicles with alternative fuel engines if they do not have access to associated infrastructure. With that in mind, **NASEO requests that the Eligible Mitigation Action Expenditures outlined in Appendix D-2 be expanded to include the costs of alternative fueling infrastructure associated with new alternative fueled engines or vehicles.**

- *Allow Light Duty Zero Emission Vehicle Supply Equipment*: Under the settlement, beneficiaries may use up to 15 percent of their allocated Environmental Mitigation Trust funds to purchase and install Light Duty Zero Emission Vehicle Supply Equipment. In July, 2016 the Obama administration announced Federal and Private Sector actions to accelerate Electric Vehicle adoption in the United States, stating increasing access to charging infrastructure will help to promote electric vehicle adoption by making it easy for consumers to charge their vehicles. While the ZEV Investment Plan outlined in Appendix C of the Settlement will facilitate investment in electric vehicle infrastructure by Volkswagen, AG, states with strict air quality goals are motivated to make additional investments in infrastructure that support vehicles with zero tailpipe emissions. With that in mind, **NASEO requests that the Eligible Mitigation Action Expenditures outlined in Appendix D-2 be expanded to allow for up to twenty-five percent (25%) of its allocation of Trust Funds on the costs necessary for, and directly connected to, the acquisition, installation, operation and maintenance of new light duty zero emission vehicle supply equipment.**

- *Allow Loan Programs for Eligible Mitigation Actions*: Under the current settlement, beneficiaries may offer grants or directly invest in vehicles and infrastructure that fall into Eligible Mitigation Actions. **In addition to grants, NASEO requests that revolving loan programs be allowed to support the Eligible Mitigation Action Expenditures.** Loan programs offer many advantages, as they require applicants to invest their own capital in and follow projects through to completion. Additionally, the option to structure the funds as loans (rather than as grants) creates a self-replenishing and larger-impact pool of funds because interest and principal repayments on old loans may be used to issue new loans to more applicants. Thirty-eight State Energy Offices, several of which have launched green banks and energy infrastructure partnerships (such as those in New York, Hawaii, Rhode Island, and Connecticut), have experience administering revolving loan funds and thus would be well-positioned to support this activity. The Nebraska Energy Office's *Dollar and Energy Savings Loan* (DESL) program has been particularly successful. Started in 1990 with an initial deposit of $10 million of Petroleum Violation Escrow (PVE) funds, the program has funded over 28,000 projects with a total investment over $330 million through low interest loans for energy efficiency, renewable energy, and waste minimization projects in all sectors. Nebraska's DESL program was initially a demonstration program under the PVE settlement, and after operating for several years with positive results, the program end date was eliminated. Since inception, the original $10 million of PVE funds have revolved ten times. By structuring eligible mitigation actions as loan programs with minimal administrative restrictions, the lead agencies would ensure significant participation from applicants and could increase the impact of Settlement funds.

- *Allow Purchase Incentives for Light-Duty Electric Vehicles as an Eligible Mitigation Action Expenditure:* The high incremental cost of electric vehicles is one of the leading barriers to alternative fuel vehicle adoption and transportation-sector emissions reduction in the United States. To address this barrier, states across the country are offering rebates, vouchers, tax credits, and other financial incentives to offset the high up-front cost of the vehicle, and these programs are leading to increased sales. Allowing Environmental Trust Mitigation Funds to be used to facilitate the purchase of light-duty vehicles that issue zero NOx emissions supports the spirit of the Settlement, and will also allow States to support a growing market and their own air quality and energy goals. **Given the success of these programs, NASEO requests that Appendix D-2 be amended to add Incentives, (e.g. rebates, revolving loans) for Light-Duty Electric Vehicles as an Eligible Mitigation Action Expenditure.**

- *Allow Idle Reduction Technology as an Eligible Mitigation Action Expenditure:* Idle reduction technology is increasingly being used in fleets to minimize idling and decrease emissions. For example, electrified parking spaces, also known as truck stop electrification, provide truck drivers necessary services (such as heating or air conditioning) without requiring them to idle their engine. Onboard idle reduction equipment, such as automatic engine stop-start controls, can also save fuel and decrease emissions when paired with driver modifying behavior training. These technologies are relatively low-cost and can lead to significant energy savings and air quality improvement. **NASEO requests that idle reduction technology be added to Appendix D-2 as an Eligible Mitigation Action Expenditure.**

- *Allow Training, as well as Vehicle and Facility Maintenance as an Eligible Mitigation Action Expenditure:* One of the key barriers to alternative fuel vehicle adoption by public and private fleets is the maintenance "knowledge gap." Vehicles that run on alternative fuels typically have different engine configurations, and therefore different maintenance needs. Mechanics that have traditionally worked on gasoline and diesel vehicles require training to properly service alternative fuel vehicles. Similarly, maintenance facilities that have only serviced gasoline and diesel-powered vehicles may require upgrades to accommodate vehicles that run on alternative fuels (such as increased ceiling height, installation of gas detection equipment, etc.). For a fleet to adopt alternative fuels, their facilities must be able to accommodate the new vehicles, and the mechanics must be able to service them. **NASEO requests that mechanical training, as well as vehicle and facility maintenance be added to Appendix D-2 as an Eligible Mitigation Action Expenditure.**

- *Allow Replacing or Repowering Non-Road Vehicles and Equipment as an Eligible Mitigation Action Expenditure:* States across the country, particularly those with significant rural areas, have a considerable amount of diesel-powered non-road vehicles and equipment used in sectors such as agriculture and construction that serve as a source of NO_x emissions. Including non-road vehicles and equipment as eligible mitigation actions would not only provide states with greater flexibility to allocate their mitigation trust fund dollars, but would also provide another avenue for landlocked states, which are unlikely to be able to take advantage of eligible mitigation actions for ferries and tugs, ocean going vessels, and marine shorepower equipment, to target NO_x emissions reductions based on activities within their state. **NASEO requests that Replacing or Repowering Non-Road Vehicles and Equipment be added to Appendix D-2 as an Eligible Mitigation Action Expenditure.**

- *Expand the Definition of "Ocean Going Vessels Shorepower" to include Great Lakes Vessels and Shorepower Projects:* Appendix D-2 of the Settlement currently allows expenses associated with ocean going vessels as an Eligible Mitigation Action; however, Great Lakes vessels are not included, despite their significant contribution toward freight-based emissions. **NASEO requests that Appendix D-2's Eligible Mitigation Action 5 – Ocean Going Vessels Shorepower be amended to include Great Lakes Vessels and associated Shorepower projects as an eligible expense.**

- *Clarify and Expand Local Freight Definition:* Appendix D-2's Eligible Mitigation Actions 1 and 6 allow "Local Freight" trucks to be repowered or replaced. It is unclear whether "Local Freight" refers only to vehicles that operate in metropolitan areas or within a state's boundaries, or if the definition allows investment in freight vehicles that with a broader range. **NASEO requests that the definition of "Local Freight" under Eligible Mitigation Actions 1 and 6 in Appendix D-2 be clarified and, if necessary, expanded to allow medium- and long-range vehicles.**

- *Change Mitigation Actions Expenditures Language to Include "Up To:"* Appendix D-2 stipulates that beneficiaries may draw funds from the Trust in the amount of "XX%" for Eligible Mitigation Actions. For example, for Non-Government Owned Eligible Class 8 Local Freight Trucks, beneficiaries may only draw funds from the Trust in the amount of 40% of the cost of a Repower with a new diesel or Alternative Fueled engine, including the costs of installation of such engine. However, not all projects under the Eligible Mitigation Actions will use the full amount of available funding. **To maximize the use of available funds and accommodate low-cost projects, NASEO requests that the language in Appendix D-2 pertaining to mitigation action expenditures be amended to include "up to" ahead of any percentage requirements.**

- *Increase the Threshold of Allowable Administrative Expenses to 15 percent for Beneficiaries*. Administration of a multi-million dollar program over a 10-15 year period will require significant administrative oversight from beneficiaries. The current 10 percent threshold is unlikely to provide sufficient funds for adequate administration of the program and related monitoring, reporting, and compliance oversight functions. If improperly funded, the likelihood of noncompliance with Mitigation Trust Fund requirements and associated audit findings could increase. To ensure adequate funding for essential administrative functions, **NASEO requests that the threshold of allowable administrative expensed be increased to 15 percent for beneficiaries under Appendix D.**

- *Allow Emerging Technologies with Proven Air Quality Benefits as an Eligible Mitigation Action Expenditure:* Beneficiaries have a minimum of ten years to use 80% of allocated funds. Over this ten-year period, it is likely that new fuels and technologies, such as high octane fuels or intelligent transportation communication systems, will come to market and offer significant energy and emission savings. **NASEO requests that the Settlement accommodate pending technological advancements by allowing beneficiaries to include yet-to-be-determined Eligible Mitigation Actions in future revisions of their Beneficiary Mitigation Plans.**

Additional Comments

In addition to the above comments related to the Environmental Mitigation Trust, NASEO requests that funds from the Settlement should be allocated to support air quality remodeling efforts that were adversely effected by the Volkswagen vehicles. Information (on-road mobile source emissions inventories) used by EPA for modeling 2009-2015 data was inaccurate due to the alleged Volkswagen violation, which impacts states' confidence in modeling used to determine the significant contribution to a region's nonattainment. **With that in mind, NASEO requests that a portion of Settlement funds be allocated to remodeling efforts in order to restore integrity into the SIP planning process.**