

Kansas Department of Health and Environment

NOTICE FOR REQUEST FOR INFORMATION

Input on the State of Kansas Use of Volkswagen Settlement Funds

The Kansas Department of Health and Environment (KDHE), Bureau of Air (BOA) is requesting public input on potential uses of the State of Kansas' Volkswagen (VW) settlement funds, resulting from civil enforcement case, *Volkswagen "Clean Diesel" Marketing, Sales, Practices, and Products Liability Litigation*. The litigation stems from the illegal installation of defeat devices on specific Volkswagen models during the years 2009 to 2016. The devices disabled the emissions control systems during normal operations but allowed affected vehicles to pass emissions testing in states where testing is required. The defeat device installations led to excess oxides of nitrogen (NO_x) being emitted into the atmosphere. The litigation was settled by several Partial Consent Decrees, which put in place a Mitigation Trust Fund that will allocate \$2.925 billion to the states, tribes, Puerto Rico, and the District of Columbia. The purpose of the Mitigation Trust is to fund eligible mitigation actions that replace diesel fueled equipment with cleaner equipment or technology to reduce excess emissions of NO_x caused by the affected vehicles. The State of Kansas is expected to receive a total of \$15.662 million in settlement funds from the mitigation trust. The funding is to be used on eligible mitigation actions, as defined in the Partial Consent Decree and its Appendices, specifically Appendix D-2¹.

The State of Kansas must develop a mitigation plan that outlines the use of the funds for eligible projects over a 10-year period before access to the trust will be granted. The primary goal is to offset excess NO_x emissions from affected vehicles. Governor Brownback selected the KDHE's BOA to serve as the lead agency to coordinate the use of the state's allocation of the VW mitigation trust fund. This Request for Information (RFI) is the first step BOA is taking to formulate the mitigation plan for the state. BOA is soliciting input on this RFI from all interested parties. **Individuals or entities responding to this RFI are asked to provide feedback regarding how the state's allocation of the VW mitigation trust fund should be distributed; how to maximize the air quality benefits resulting from the use of the settlement funds; whether the state should give preference to certain fuels, such as diesel, compressed natural gas, propane, hybrid or all-electric; and how to determine if a proposed mitigation action will benefit vulnerable populations and disadvantaged communities.**

This document is a Request for Information RFI only – it is not being posted as the actual Mitigation Plan, nor does it constitute a Request for Proposal (RFP) or Request for Application (RFA) or a promise to issue a RFP or RFA in the future. Respondents are advised that BOA will not pay for any information or administrative costs incurred in response to this RFI. All costs associated with responding to this RFI will be solely at the interested party's expense. Not responding to this RFI does not preclude participation in any future RFP or RFA.

¹ A list of eligible mitigation actions is located on the KDHE webpage at - <http://www.kdheks.gov/bar/air-monitor/dieselgrant/dieselvw.html>. VW related consent decrees are located at - <https://www.epa.gov/enforcement/third-partial-and-30l-second-partial-and-20l-partial-and-amended-consent-decree>.

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The deadline for RFI responses is December 31, 2017, at 5:00pm. Input should be submitted via e-mail (preferred) or regular mail to the address below.

E-mail: kdhe.ksvwsettlement@ks.gov

Written Correspondence:

**Kansas Department of Health and Environment
Attn: Kathleen Waters, Environmental Program Administrator
Bureau of Air
1000 SW Jackson Street, Suite 310
Topeka, KS 66612**

The following pages contain background information, the timeline, a discussion of NOx emissions in Kansas, details on eligible project categories and the **Request for Information and Public Input** document that begins on page 7.

Background Information: VW Mitigation Trust in Kansas

Introduction

The State of Kansas expects to receive \$15.662 million of settlement funds as a result of the civil enforcement case, *Volkswagen “Clean Diesel” Marketing, Sales, Practices, and Products Liability Litigation*. The litigation stems from Volkswagen’s (VW) use of a defeat device in its diesel vehicles, which enabled the vehicles to emit levels of oxides of nitrogen (NO_x) significantly in excess of the limits set by the U.S. Environmental Protection Agency (USEPA). The settlement funds are primarily intended to mitigate excess NO_x emissions from diesel vehicles. Table 1 shows the timeline for the establishment of the Mitigation Trust (Trust).

Table 1: Timeline for the Mitigation Trust

Event	Approximate Timeline
Court approved partial settlement	October 25, 2016
Wilmington Trust was selected as Trustee	March 2017
The final version of the Trust takes effect (TED)	October 2, 2017
Jurisdictions apply to submit Beneficiary Certification Form to become Beneficiaries of the Trust	Due December 1, 2017
The state is notified of Beneficiary Designation	Due January 30, 2018
The state (BOA) submits Mitigation Plan	Not later than 30 days prior to submitting its first funding request to Trustee
The state may begin to receive funds for projects	2018

NO_x Emissions in the State

Breathing air with elevated levels of NO_x can cause irritation of the respiratory system and aggravate respiratory diseases such as asthma. KDHE’s Bureau of Air compiles the emissions inventory for the state and submits it to EPA’s National Emissions Inventory (NEI) database. Figure 1 and Table 2 below show the total state NO_x emissions for calendar year 2014, which is the most recent emissions inventory year. The sources of NO_x emissions in the state include nonpoint sources, nonroad and on road mobile sources, and point sources. Nonpoint sources include things such as gas stations and auto body shops. Nonroad and on road sources make up the mobile sector. Nonroad sources include construction and lawn/garden equipment, portable generators, locomotives and marine engines; on road sources include any road/highway vehicles. Point sources include manufacturing plants and power plants.

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Table 2: Annual Emissions of NO_x in Kansas for 2014²

Sector	NO _x Emissions (tons/year)	Percentage (%)
Nonpoint Sources	110,825	40
Nonroad Vehicles & Equipment	32,192	12
On road Vehicles	67,615	24
Point Sources	67,015	24
Total	277,647	100

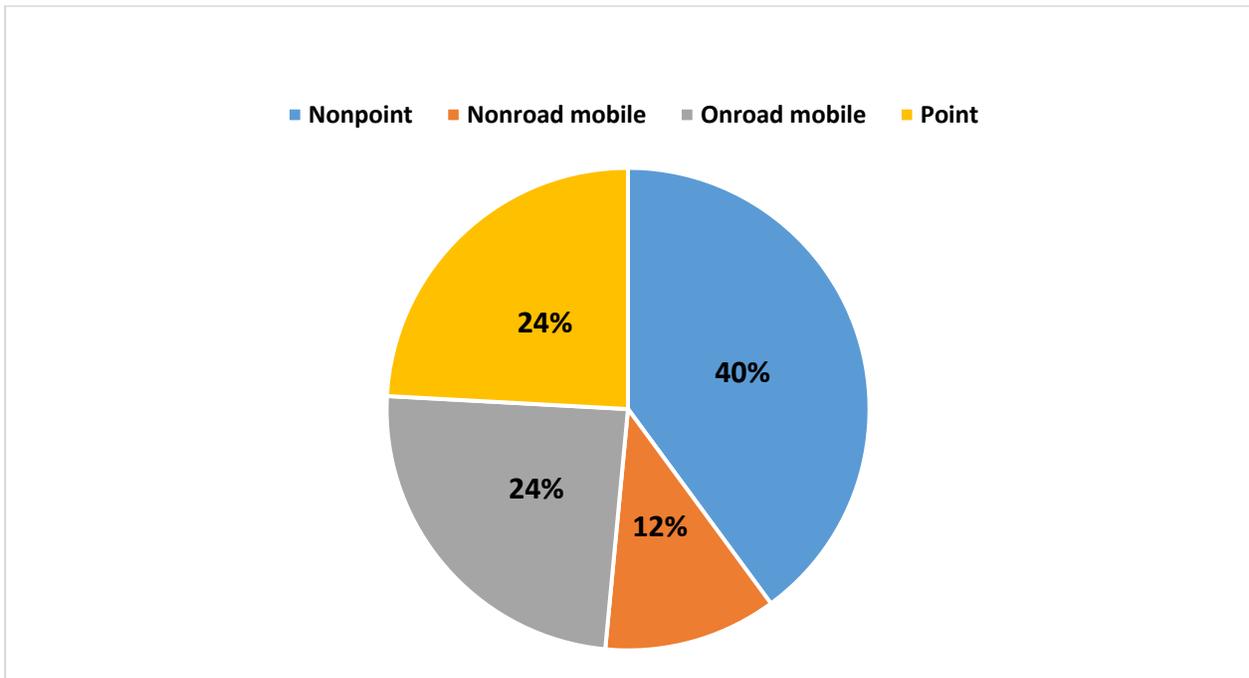


Figure 1: 2014 NO_x Emissions from All Sectors in the state (Total: 277,647 tons/year)³

The mobile sector, which includes on road and nonroad vehicles but not locomotives, is the second largest contributor of NO_x emissions in the state. It contributes 99,807 tons per year or 36 percent of NO_x emissions (see Figure 1).

Table 3 and Figure 2 show emissions from diesel vehicle sub-categories within the mobile sector and locomotives (which are classified in the nonpoint sector) and they contribute a total of 104,453 tons of NO_x emissions per year.

² Source: EPA’s National Emissions Inventory Database v1 and KDHE Emissions Inventory (for point source emissions)

³ Source: EPA’s National Emissions Inventory Database v1 and KDHE Emissions Inventory (for point source emissions)

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Table 3: 2014 NO_x emissions from mobile diesel sources in Kansas (total: 104,453 tons)⁴

Category	2014 NO _x (tons)	Percent
Locomotives	37,220	36%
Nonroad Diesel Equipment	29,559	28%
On road heavy duty vehicle	36,658	35%
On road light duty vehicle	1,016	1%
Total	104,453	100%

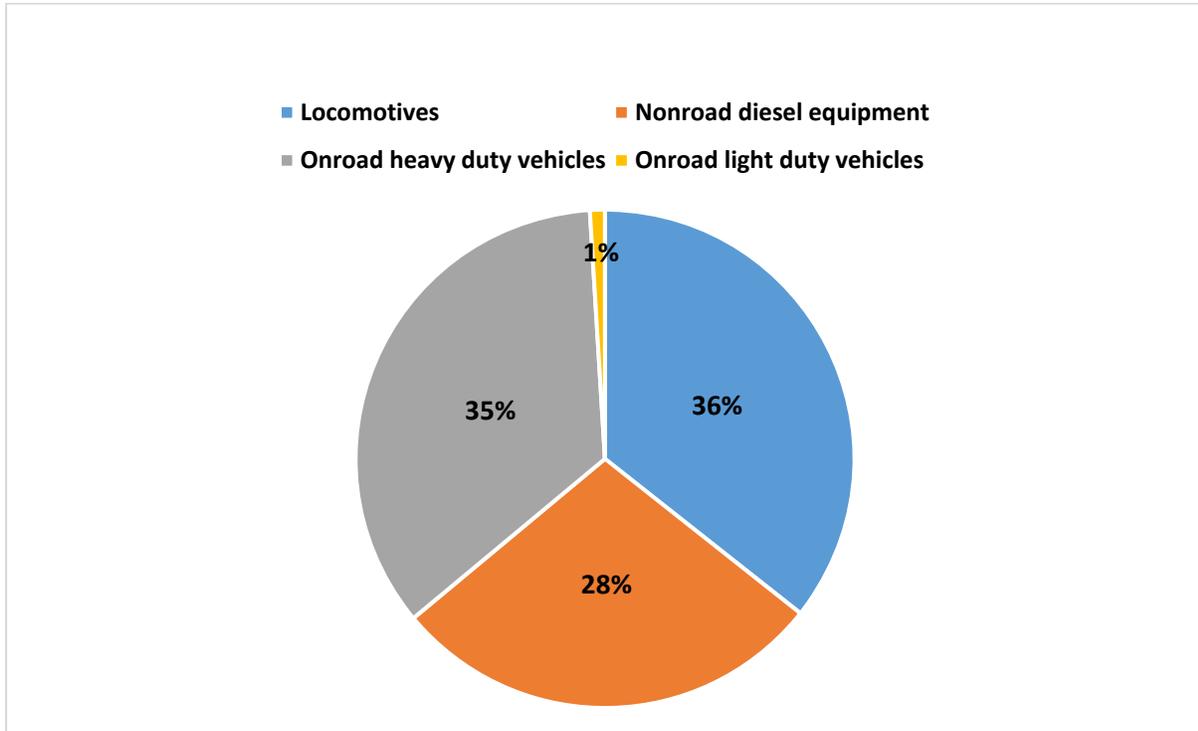


Figure 2: 2014 NO_x Emissions from Mobile Diesel Sources in the state (Total: 104,453 tons/year)⁵

Goals under Consideration for the State's Mitigation Plan

The state plans to select and implement mitigation actions with the VW settlement funds that will achieve the following goals:

- Prioritize emission reduction in areas of the state with the highest emissions of nitrogen oxides and particulate matter from diesel engines
- Maximize emission reduction cost effectiveness; and
- Assist the most vulnerable and impacted populations (including children and seniors), and disadvantaged communities in the state.

⁴ EPA 's National Emissions Inventory Database v1

⁵ EPA 's National Emissions Inventory Database v1

Eligible Mitigation Actions

The state can only use VW settlement funds for eligible mitigation actions. A complete and detailed list of eligible mitigation actions is provided in Appendix D-2 of the VW Consent Decree and on the BOA VW Settlement webpage⁶. Mitigation actions for privately owned vehicles and equipment require matching funds. (One eligible mitigation action is not applicable to the state: Shorepower for Ocean Going Vessels.)

The following is a list of eligible projects to consider including in the mitigation plan:

- Class 8 Local Freight and Port Drayage Trucks - Engine repowers and vehicle replacements
- Class 4-8 School Bus, Shuttle Bus, or Transit Bus - Engine repowers and vehicle replacements
- Freight switchers (locomotives) - Engine repowers and vehicle replacements
- Class 4-7 Local Freight Trucks - Engine repowers and vehicle replacements
- Air Ground Support Equipment - Engine repowered or replaced with an all-electric engine
- Forklifts and Port Cargo Handling Equipment - Engine repowered or replaced with an all-electric engine
- Light Duty Zero Emission Vehicle Supply Equipment - Charging stations or hydrogen dispensing equipment (The state can choose to spend up to 15 percent of the State's allocation of VW settlement funds for this mitigation action)
- Improvements to Ferries and Tugs
- Diesel Emission Reduction Act (DERA) - State-level program expansion

The DERA option provides additional funding for certain mitigation actions through a grant from EPA. If the state matches the VW settlement funds with the DERA grant on a one-to-one basis for DERA-eligible mitigation actions, EPA will provide a 50 percent bonus to the state's base grant. For example, if the state receives a DERA base grant for \$100,000, and then uses \$100,000 of the VW settlement funds as a voluntary match, EPA will provide a 50 percent bonus, or \$50,000 more for the state's DERA grant. The DERA option also expands the list of mitigation actions that are eligible for funding with VW settlement funds.

⁶ A list of eligible mitigation actions is located on the KDHE webpage at - <http://www.kdheks.gov/bar/air-monitor/dieselgrant/dieselvw.html>. VW related consent decrees are located at - <https://www.epa.gov/enforcement/third-partial-and-30l-second-partial-and-20l-partial-and-amended-consent-decree>.

Request for Information and Public Input

BOA seeks comments on the design of a Kansas program in the following four areas that must be part of a proposed mitigation plan. In the sections below, BOA proposes criteria for use of the funds and seeks comments on those proposals and responses to questions posed within each programmatic area. Comments submitted to KDHE need only address the areas of interest of the person or entity providing the information. Please identify responses using the bullet number or number and letter per the list below.

1. BOA proposes that all actions that are eligible under the Partial Consent Decree, as outlined above, except Shorepower for Ocean Going Vessels, be eligible under Kansas' Environmental Mitigation Trust program.
2. BOA proposes that the State use the allowable maximum of 15 percent for acquisition and installation of new light duty electric vehicle charging infrastructure.
 - a. In what location should charging infrastructure be installed? Examples include: Public parking lots of government buildings, private businesses, highway rest stops or private parking lots not open to the public such as private business and multi-unit dwellings.
 - b. What type of charging equipment should be purchased at the preferred location(s)? Examples include: Level One, Level Two or DC Fast Charging Systems⁷.
3. BOA also seeks responses to the following questions:
 - a. To ensure significant potential for substantial emissions benefits and additional benefits to taxpayers through reduced operating and fuel costs, should the initial stages of Kansas' Environmental Mitigation Trust program focus on replacement of publicly owned state and municipal vehicle fleets?
 - b. In order to maximize benefits under projects included in Kansas' Environmental Mitigation Trust program, should state agencies and municipalities be required to provide matching funds, and if so, how much or what percentage?
 - c. To ensure efficient use of funding and effective administration of projects, should Kansas' Environmental Mitigation Trust program establish a minimum project size and encourage grouping of smaller projects under a single entity acting as a lead agent?
 - d. Should BOA put a portion of the allocation towards the DERA option to expand eligibility to nonroad equipment such as backhoes and excavators?
 - e. To ensure efficient use of funding and effective administration of projects, should Kansas use the services of a third party to manage some projects?
 - f. Should Kansas collaborate with private companies on environmental mitigation projects?
 - g. Should Kansas collaborate with other adjoining states to develop funding strategies for equipment such as locomotives and freight switchers operating in multiple states?
 - h. Should Kansas prioritize projects that eliminate diesel fuel use in favor of eligible alternative fuels?

⁷ For more information on charging systems, visit the US Department of Energy, Alternative Fuels Data Center.

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- i. Should a certain percentage of available Trust funds be allocated to each eligible project type, and if so how should the percentage of funding be determined for each eligible project type?
 - j. Should Kansas award funding on a competitive basis where project proposals would be scored based on whether the project would benefit one of the priority areas and the cost effectiveness in dollars per ton of NO_x reduced?
4. BOA seeks responses to the following questions regarding impact on areas that share a disproportionate burden of air pollution:
- a. How should BOA design a program to ensure benefits occur in areas sharing a disproportionate share of NO_x emissions?
 - b. What data should BOA use to determine which areas have a disproportionate share of emissions?
 - c. What data should BOA use to determine where low income areas are located in the state?

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Thank you for participating in the process.