

DOJ /EPA VW Emissions Settlement

Presentation to NCAI, 10/11/2016





Agenda

- * Overview of Proposed Consent Decree
- * Review of Comments from NTAA
- * Report on DOJ responses to comments
- * NTAA's VW Settlement Work Group
- * Q&A



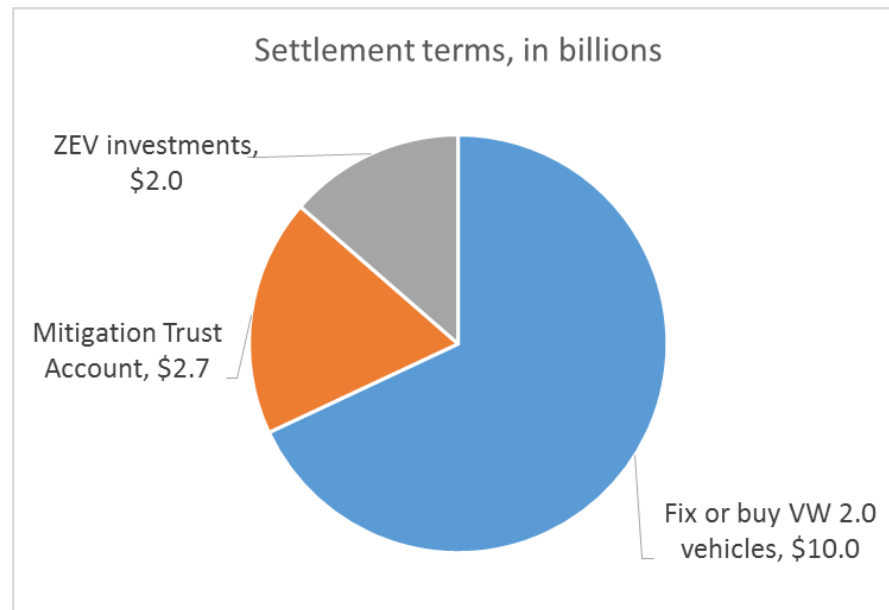
The National Tribal Air Association

- * Since its founding in 2002, the National Tribal Air Association has been a leading voice for Tribal air quality issues, programs, and policies.
- * With 112 principal member Tribes, the NTAA's mission is to advance air quality management and policies and programs, consistent with the needs, interests, and unique legal status of American Indian Tribes and Alaskan Natives.
- * The National Tribal Air Association is funded through a grant from the U.S. EPA's Office of Air & Radiation
- * Administration of the NTAA is vested in an Executive Committee consisting of ten (10) tribal representatives and ten alternates from each of the U.S. EPA Regions and Alaska.



Overview of Consent Decree

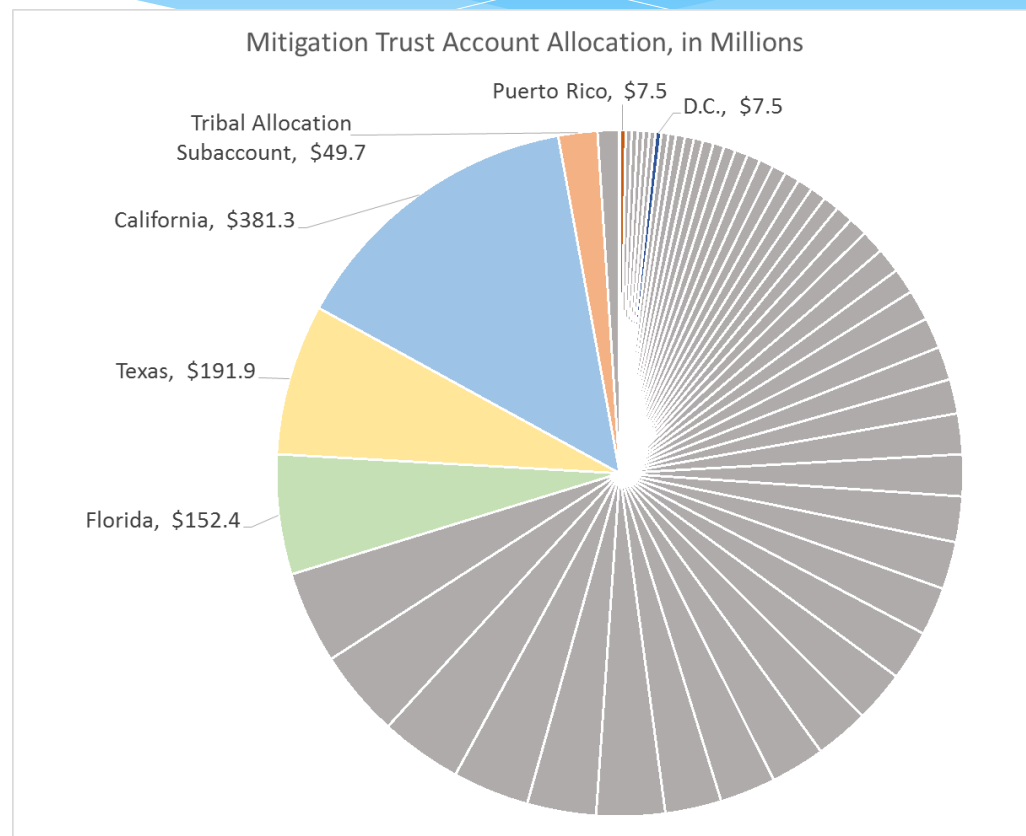
- * DOJ, EPA, California to partially settle VW diesel emissions violations
- * Consent decree entered July 2016, with 30 day comment period





Mitigation Trust Account

- * Trustee selected by Court to manage the trust
 - * Tribes can submit a list of 3-5 proposed trustees
- * Funds used for “Eligible Mitigation Actions” (EMA’s) – projects that result in NOx emission reductions





Eligible Mitigation Actions

- * Repower, replace engines, or new vehicles
 - * Class 8 / Port Drayage Trucks
 - * Class 4 – 8 School Buses, Transit Bus
 - * Ferries, Tugs
 - * Ocean Going Vessels
 - * Class 4 – 7 Local Freight Trucks
 - * Forklifts
- * DERA Option

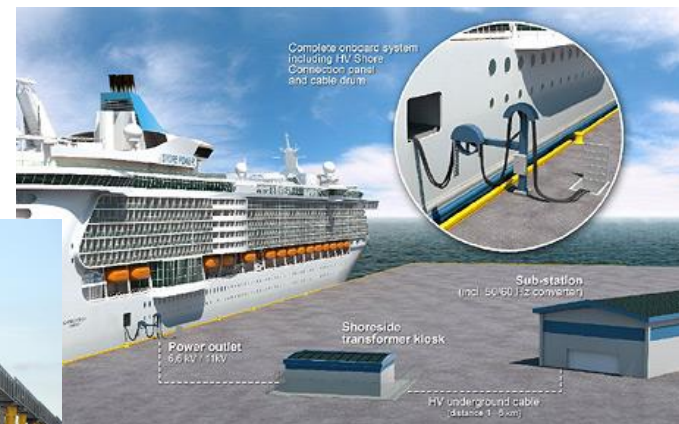


Key NTAA Comments

- * Trustee Selection
 - * Separate trustee for tribal sub-account
 - * Hire tribal consultants and vendors who understand Indian tribes
- * Equitable access to funds
- * Expand 6 year funding window to term of agreement
- * Expand EMAs (generators, engines, monitoring equipment, ZEV infrastructure)

Key NTAA Comments

- * Expand EMAs (generators, engines, monitoring equipment, ZEV infrastructure)





Key NTAA Comments

- * Allocate 2.5% instead of 5% toward technical assistance
- * Trustee should prepare template documents for tribes
- * Include tribes in any initial amendments to trust agreement
- * Case by case approach for allocation of funds towards Zero Emission Vehicle Infrastructure and allow more than 15% of total requested in Environmental Mitigation Action Plans



DOJ Response to NTAA Comments

- * On September 30, 2016, DOJ filed a **MOTION, AND MEMORANDUM IN SUPPORT OF ENTRY OF PARTIAL CONSENT DECREE** with response to 1200 public comments and proposed modifications including:
 - * The addition at subparagraph 2.1.1.2 of Appendix D of a default methodology for distributing technical assistance funds to tribal beneficiaries.
 - * A clarification at subparagraph 4.2.6 of Appendix D and the related Paragraph 6 of Appendix D-3 to make the waiver of claims by tribal beneficiaries effective only upon receipt of funds.
 - * New language in subparagraph 5.2.15 to clarify the difference between a “match” as used in the Diesel Emissions Reduction Act, and a “cost share.”
 - * Certain expansions and clarifications to the list of Eligible Mitigation Actions and related definitions at Appendix D-2.



DOJ Response to NTAA Comments

- * DOJ received three comments from Tribes or tribal-affiliated organizations. These comments advocated for a designated tribal trustee who is separate from the trustee for states.

- * DOJ's response indicated that a separate trustee for the Tribal Allocation Subaccount would:
 - * greatly increase administrative costs
 - * create the potential for confusion in interpretation of Appendix D of the Consent Decree
 - * reduce the amount of money available to tribal Beneficiaries for NOx mitigation projects



DOJ Response to NTAA Comments

- * DOJ responded that the decision whether to use the administrative account funds to support a Tribal Advisory Council and comments regarding funding technical assistance for tribes will be addressed separately in a response to the consultation comments expected in the coming weeks.



VW Settlement Next Steps

- * With motion filed by DOJ, settlement awaits court approval.
- * After court approves CD, Tribes have 30 days to submit one consolidated list of 3-5 candidates to be considered as the Trustee.
- * Once trustee is named, the trustee can modify Appendix D and resubmit to courts.
- * DOJ can review trustee modifications and then disqualify trustee and name another trustee if needed
- * September 1st 2017 is the starting date for the annual allocation of the Tribal Allocation Subaccount that will last for 6 years.



NTAA Next Steps

- * The NTAA recently created a VW Settlement Work Group
- * Tribes are invited to join the NTAA VW Settlement Working Group (next call on Thursday, Oct. 20th)
- * The work group will form list of possible Trustee candidates
- * NTAA VW Settlement Working Group allows Tribes to help Tribes by producing helpful resources and is a possible venue for Tribes to advise DOJ and EPA on the VW Settlement moving forward.



Questions?
Comments?
Concerns?

More information on the VW
Settlement can be found on
www.ntaatribalair.org