



CITY OF HOUSTON

Sylvester Turner

Mayor

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Texas Commission on Environmental Quality
Air Quality Division
Implementation Grants Section, MC-204
P.O. Box 13087
Austin, Texas 78711-3087

Dear Chairman Shaw,

Thank you for the opportunity to comment upon the Draft Beneficiary Mitigation Plan (“draft plan”) for Texas to be submitted to the Volkswagen Environmental Mitigation Trust. The City of Houston shares the Texas Commission on Environmental Quality’s goal to utilize the funds in a way that best addresses air quality for our residents. We believe there are a few opportunities to improve upon the plan to better meet this goal:

1. The Houston region should receive a greater allocation, both to better reflect where the illegal devices were registered and to best serve TCEQ’s goal of reducing NO_x emissions.

The first section of the “Purpose and Recitals” of the Environmental Mitigation Trust Agreement for State Beneficiaries states “Whereas, the Defendants are required to establish this State Mitigation Trust and to fund it with funds to be used for environmental mitigation projects that reduce emissions of nitrogen oxides (‘NO_x’) **where the Subject Vehicles were, are, or will be operated** (‘Eligible Mitigation Actions’), and to pay for Trust Administration Costs as set forth in this State Trust Agreement” (emphasis added). The statement clearly reflects the intent of the signatories of the Trust Agreements for the funds in the Trust to be used in areas where harm has occurred, is occurring or will occur.

About 24 percent of subject vehicles with illegal defeat devices were register in the Houston region. In the draft plan, however, only 13 percent of funds are allocated to the Houston region. The discrepancy between the proportions of vehicles registered in these regions and the regional apportionment of funds is so great that the Trust Agreement’s stated purpose of utilizing the funds where the subject vehicles caused harm cannot be met by the draft plan. The San Antonio region, which bore just more than 10 percent of the burden of these illegal defeat devices, would receive more than a third of the funds allocated to the entire state. The Houston region had twelve times as many subject vehicles as El Paso, yet both regions would receive nearly the same amount of funds. The draft plan’s regional allocations are not in alignment with the location of Subject Vehicles in Texas, and thus do not meet the goals of the Trust Agreement.

Additionally, TCEQ lists as its “primary goal” in the draft plan “to reduce NO_x emissions in those areas with the potential to be most impacted by NO_x emissions and in particular areas of the state designated nonattainment for National Ambient Air Quality Standards (NAAQS)...” The subject vehicles’ illegal defeat devices prevented TCEQ from developing strategies for NO_x emissions in these areas, the draft plan says. The Houston region has been in nonattainment for 14 years, and with an ozone design of 78 ppb, has the worst air quality in the State. Moreover, nearly 7 million people live in the region. Allocating a greater share to Houston would better meet TCEQ’s goal because it would benefit the most people who are currently suffering from the worst air.

Finally, two of the eligible mitigation activities in the draft plan are specifically for ports and one is specifically for airports. No region in the State other than Houston has a port like Port Houston along with the Port of Galveston and three large airports. The Houston region is best able to address these categories, which can provide significant NO_x reductions.

For all these reasons, Houston should receive a larger share of the settlement funds than the draft plan would allocate. The City requests that the allocation for the Houston area be at least \$50 million to meet both the settlement’s purpose and TCEQ’s stated goal for use of the funds.

2. The local match requirement for governmental entities should be eliminated or lowered.

There is no requirement in the Trust Agreement that mandates that TCEQ place a local match for governmental such as the 40 percent match in the draft plan. In fact, the Trust Agreement allows the settlement funds to be used to cover up to 100 percent of the cost of eligible activities by a governmental entity.

The City of Houston, like many governmental entities along the Gulf Coast, has stretched its budget to its limit recovering from Hurricane Harvey. To balance the Fiscal Year 2019 budget passed earlier this year, the City had to close a deficit of more than \$114 million. Fiscal Year 2020 is currently projected to have a deficit we will have to similarly close. Houston has still not received federal dollars appropriated for disaster relief. In short, the City of Houston is not in a position to cover nearly half the cost of eligible projects.

Additionally, the State must return unused funds on the 10th anniversary of the Trust Effective Date, October 2, 2017, placing a hard deadline by which funds received by the State of Texas must be used. If the final plan makes accessing the funds overly burdensome – as the draft plan does – the State of Texas risks losing these funds. The State cannot reappropriate these funds for other uses. If they are not utilized for eligible projects, the funds are lost.

TCEQ should lower or eliminate the local match, opening up the funds for access by Harvey-stricken local governments like the City of Houston.

3. TCEQ should award grants only on a competitive basis rather than “first come, first serve.”

A competitive award basis would allow TCEQ to fund projects that are the most efficient in reducing NO_x emissions, rather than the first projects presented to the Agency. Under a competitive basis, TCEQ would have the ability to select projects that provide the most benefit to

the most people, rather than simply the first projects entities are able to prepare. TCEQ should switch to a competitive award basis only for the final plan.

* * *

Thank you for your consideration of my comments on behalf of the City of Houston on the draft plan. The City of Houston shares with TCEQ the objectives of this program, and believes implementation of ideas contained in these comments can best achieve that goal.

Sincerely,

A handwritten signature in black ink, appearing to read "Sylvester Turner". The signature is written in a cursive style with a large, prominent initial "S".

Sylvester Turner
Mayor