

The seal of the State of South Dakota is a circular emblem with a serrated outer edge. It features a central landscape scene with a river, a windmill, and a farm. The text "STATE OF SOUTH DAKOTA" is written in an arc at the top, and "GREAT SEAL" is written in an arc at the bottom. The year "1889" is at the very bottom. A banner across the middle of the seal reads "UNDER THE PEOPLES RULE".

**DENR'S RESPONSE TO COMMENTS  
RECEIVED ON  
South Dakota's  
Draft Volkswagen  
Beneficiary Mitigation Plan**

**South Dakota Department of  
Environment and Natural Resources  
July 10, 2018**

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## 1.0 Introduction

On January 24, 2016, the United States and the State of California filed a lawsuit against Volkswagen alleging it had manufactured diesel cars sold and operated in the U.S. beginning in 2009 with systems intended to defeat emissions tests. These systems allowed vehicles to emit nitrogen oxide (NO<sub>x</sub>) pollution at levels that significantly exceeded the amounts allowed under the Clean Air Act.

As part of the settlement, Volkswagen (VW) is required to fund an Environmental Mitigation Trust in the amount of \$2.925 billion to be used to offset the lifetime excess air pollution emitted by the non-compliant vehicles. The fund is distributed among states, territories and federally-recognized tribes based on the proportion of affected VW diesel vehicles registered in each jurisdiction.

South Dakota's allocation from the Trust is \$8.125 million. A Beneficiary Mitigation Plan (Plan) must be developed that summarizes how the State allocation of mitigation funds will be distributed among the various eligible mitigation actions to reduce nitrogen oxide emissions. The Plan will be developed through a public process, with multiple opportunities for public comment.

DENR developed a website to provide information and to request public input for the Plan. Twenty-five comments were submitted and considered in developing the draft Plan. On May 3, 2018, DENR released the draft Beneficiary Mitigation Plan. The public comment period ran until June 15, 2018. Two public input meetings were also held. DENR received 14 comments during the public comment period.

This document contains DENR's responses to the comments received during the public notice period. The comments received resulted in no change to the draft Plan. A summary of the comments and DENR's responses follows.

The comments received prior to drafting the plan, the draft plan, the comments received in response to the draft plan, and this response to comments are available to all interested parties at the DENR office in Pierre and they may also be viewed on DENR's website at <http://denr.sd.gov/des/aq/aaVW.aspx>.

## 2.0 Comments and Responses

1. **Comment:** MedicAire is requesting the availability of funds for their product, the MediDock, under the DERA option. MediDocks are used to advance Ambulance/Emergency Vehicle idle reduction.

**Response:** South Dakota's draft Plan does not identify a specific technology that must be implemented and used in each category. Under the DERA category, DENR currently is using the funds to replace school buses and if any funds are available will use the funds to replace shuttle and transit buses. If funding in the future becomes available for MediDock's technology under the DERA category, the technology must be an EPA verified technology. DENR reviewed EPA's verified technologies and is unable to find MediDocks on the EPA verified listings. Therefore, MediDock must apply for and receive approval from EPA before it can be considered under the DERA category in the future. DENR is not recommending any changes at this time based on this comment.

2. **Comment:** CHS is requesting the availability of funds for replacing diesel school buses with autogas (propane) buses.

**Response:** South Dakota's draft Plan currently provides funds for propane buses under the Bus category and under the DERA category. In addition, under the DERA category, propane buses may be given an additional 10% rebate compared to diesel buses. DENR is not recommending any changes at this time based on this comment.

3. **Comment:** Dr. Sutliff supports the proposal to mitigate diesel fine particle emissions and the priority of protecting children.

**Response:** South Dakota's draft Plan proposes mitigating diesel fine particle emissions and protecting children by using the funds for school buses under the Bus category and the DERA category and appreciates the support provided by Dr. Sutliff.

4. **Comment:** MPCA suggests a change on page 22, Category 1 and 6. Change 'model year 2007' to 'model year 2010', since the NOx emission standards were federally mandated in 2010.

**Response:** In December 2000, EPA promulgated emission standards for model year 2007 and later for heavy-duty highway engines (e.g. 40 CFR § 86.007-11). The emission standard included a nitrogen oxide standard of 0.20 grams per brake horsepower-hour. The nitrogen oxide standard was phased-in for diesel engines between 2007 and 2010. The phase-in was defined on a percent-of-sales basis: 50% from 2007 to 2009 and 100% in 2010. On page 22 of the draft Plan, DENR used the nitrogen oxide standard for 1992 and compared it to the standard listed for 2007 and later model years. Therefore, for those diesel engines that met

the new standard in 2007 or later, there would be a 96% reduction in nitrogen oxide emissions from the standard in effect in 1992. Since the reference to 2007 matches the description in the federal rule and is used for emission comparison purposes, DENR does not recommend changing the date in the draft Plan.

5. **Comment:** KEW requests allocating 1/8 of the funds towards freight switcher locomotive projects.

**Response:** As shown in Figure 8 on page 18 of the draft Plan, only 8% of the nitrogen oxide emissions from the mobile sector are attributed to locomotives. At this time, DENR does not recommend funding freight switcher locomotive projects.

6. **Comment:** Proterra supports the use of funds to replace school, shuttle and transit buses with battery-electric buses. Proterra recommends South Dakota purchase zero-emission, battery electric buses and not buses fueled by propane or other alternative fuels. They also recommend increasing the bus category to 50% by reducing the large and medium truck and DERA option categories.

**Response:** South Dakota is a rural state and promoting one fuel type (e.g. electric, propane, diesel, etc.) over another may not be the best option for South Dakota. Therefore, DENR does not recommend limiting the draft Plan to just electric based vehicles but allows those purchasing the vehicle to choose the type of vehicle that best fits their needs. The draft Plan does allow under the DERA category to give an additional 20% rebate for electric buses compared to a diesel bus. In addition to school buses, shuttle and transit buses can be purchased under the Bus category and DERA category in the draft Plan. The total anticipated funding for these two categories is currently 35%. The draft Plan does allow the percentage in each category to be adjusted depending on the number and type of requests DENR receives each year. Therefore, DENR does not recommend any changes to the draft Plan at this time based on this comment.

7. **Comment:** North Star Energy supports the use of funds to replace school buses with propane autogas buses instead of clean diesel buses.

**Response:** As stated earlier, DENR does not recommend limiting the draft Plan to just one type of school bus, but allows those purchasing the bus to choose the type of bus that best fits their needs. DENR does provide for funds to be used for propane buses under both the Bus category and DERA category. Under the DERA category, propane buses may be given an additional 10% rebate compared to diesel buses. DENR does not recommend any changes to the draft Plan at this time based on this comment.

8. **Comment:** UPS recommends funding for government entities should be the same as those for non-government agencies. They also state, “While the VW Settlement states electric

vehicles can receive up to 75% reimbursement and 25% for natural gas, that doesn't mean it can't be negotiated."

**Response:** The draft Plan identifies for each category how much of the cost can be funded "up to" if the purchaser is a governmental or non-governmental agency. The "up to" percent is specified in the consent decree and cannot be exceeded but the final funding percentage can be lower. Once the Board of Minerals and Environment approves a Plan, DENR will develop guidelines on how to apply for funds and how DENR will select projects. The actual funding percentage will be based each year on how much of the funds will be allocated that year and the number and types of projects submitted that year. DENR does not recommend any changes to the draft Plan at this time based on this comment but will consider this comment when developing the guidance.

9. **Comment:** SemaConnect recommends increasing the allocation for light duty electric vehicle charging infrastructure from the proposed 5% to the maximum 15% allowable.

**Response:** The draft Plan allows the percentage in each category to be adjusted depending on the number and type of requests DENR receives each year. This flexibility could allow the allocation of funds for light duty zero emission supply equipment to increase depending on the proposals submitted each year.

In addition to the \$8.125 million set aside for South Dakota to allocate in its draft Plan, Volkswagen is required to invest \$2 billion in the zero emissions (electric) vehicle infrastructure, access, and awareness initiatives across the United States. DENR is hopeful some of these funds will be used to improve South Dakota's light duty electric vehicle charging infrastructure.

10. **Comment:** GM encourages SD to commit to the full 15% of funding for EV charging infrastructure, particularly DC fast-charging.

**Response:** DENR responded previously to a similar comment. Please review response to comment #9 for a more detailed response.

11. **Comment:** East River Electric supports the use of funds to replace diesel school buses with electric school buses and to provide funding to government and non-government entities. They also support the use of funds for light duty zero emission vehicle supply equipment, but would like the percent increased from 5% to 15%.

**Response:** DENR agrees the entity purchasing the bus should have the choice to purchase the type of bus that best fits their needs. In addition, funding in the draft plan is available for government and non-government entities. DENR responded previously to a comment similar to East River Electric's comment on increasing the light duty zero emission supply

equipment funding from 5% to 15%. Please review response to comment #9 for a more detailed response related to funding.

12. **Comment:** Natural Gas Vehicles for America (NGVAmerica) supports vehicle replacement with natural gas vehicles. They recommend providing a larger incentive and greater funding for natural gas medium- and heavy-duty vehicles. They recommend prioritizing funds for clean vehicles rather than fueling infrastructure. They recommend prioritizing projects that include partnerships that provide a match such as a CNG or LNG station being built in locations that will receive the VW funding. They recommend using the AFLEET and HDVEC tools for doing emissions measurements.

**Response:** The draft Plan does provide for funds to be used for propane buses under the Bus category and under the DERA category. Under the DERA category, propane buses may be given an additional 10% rebate compared to diesel buses. Once the Board of Minerals and Environment approves a Plan, DENR will develop guidelines on how to apply for funds and how DENR will select projects. At this time DENR has not determined which tools will be used in the guidelines to calculate nitrogen oxide emission reductions from approved projects and will look into the AFLEET and HDVEC tools. The draft Plan does allow the percentage in each category to be adjusted depending on the number and type of requests DENR receives each year. Therefore, DENR does not recommend any changes to the draft Plan at this time based on this comment.

13. **Comment:** ChargePoint supports the use of funds for electric vehicle charging infrastructure and recommends increasing the allocation to 15%. They recommend investing these funds into Level 2 charging stations at workplaces, multifamily dwellings, and publicly accessible locations throughout the state.

**Response:** DENR responded previously to a similar comment. Please review response to comment #9 for a more detailed response.

14. **Comment:** Greenlots encourages investment of the maximum 15% for light-duty EV charging infrastructure. They encourage development of a statewide EV charging infrastructure plan prior to deploying trust funds. They recommend greater funding for buses to be replaced by electric buses.

**Response:** DENR responded previously to similar comments. Please review response to comment #6 and #9 for a more detailed response.