



## **NMED Response to Comments on the Revised New Mexico VW Beneficiary Mitigation Plan**

The comment period on the revised VW Beneficiary Mitigation Plan for the State of New Mexico closed on June 29, 2019. The New Mexico Environment Department (NMED) proposed to revise the Plan as part of its periodic evaluation to reflect changes in project demand and priorities. The proposed revision would direct unallocated funds towards the replacement of diesel-fueled vehicles with alternate fueled vehicles, while maintaining the previous allocations of 15% of the total funding (approximately \$2.7 million) towards light-duty zero emission vehicles (LDZEV) infrastructure, will reduce the amount of funding available through the Diesel Emission Reduction Act (DERA) Option to approximately 1.8% (\$317, 553).

Although All-Electric vehicles are clearly listed as Eligible Mitigation Projects for project funding, NMED understands that the language describing the Plan revisions may have been misinterpreted, as the term “Alternate Fueled” as defined in the Plan does not explicitly include all-electric. To clarify, NMED is proposing to restrict funding of diesel-to-diesel projects to the DERA Option, and is not excluding All-Electric projects from funding opportunities. NMED will revise the introductory language to clarify that unallocated funds will be directed “towards the replacement of diesel-fueled vehicles with alternate fueled and all-electric vehicles.”

Comment Summary: One group of commenters recommended that NMED specify the exact dollar amount of Trust funds allocated to New Mexico (\$17,982,660.90), and that the amount already committed to approved projects be specified. NMED agrees that the exact allocation should be specified in the Plan, and will revise it accordingly. Because the Plan is not required to be revised annually or prior to each funding cycle, there would be no benefit to identifying the amount of funding committed to approved projects in the Plan. Links to documents that identify funding requests for the 2018 Funding Cycle and 2018 Funding Cycle Awardees are provided at: <https://www.env.nm.gov/air-quality/vw-settlement/>.

Comment Summary: Several commenters requested changes to the Plan that do not qualify as eligible projects under the Trust Agreement, including: addressing methane issues in New Mexico; supporting children’s health care and respiratory issues; a rainy-day fund; road cleaning; higher education; expanded vehicle emissions testing; and electrification of the RailRunner.

NMED Response: While worthy programs or initiatives, the Trustee will not reimburse project costs that are not explicitly identified as eligible projects (see pages 6 – 13 of the Beneficiary Mitigation Plan); therefore, NMED would not approve applications for any of these projects.

A number of commenters strongly advocated their support for all-electric vehicles (including school buses, transit buses, and medium-duty trucks), citing the absence of nitrogen oxide (NO<sub>x</sub>) emissions, savings in fuel costs and maintenance, health benefits, reduced emissions of carbon and greenhouse gases; Governor Lujan-Grisham’s Executive Order 2019-033; and the Energy Transition Act.

One group of commenters recommended replacing the section of the Plan titled Pollutants of Concern with two new sections: Pollutants Associated with Diesel-Fueled Vehicle Exhaust, and Health Effects Associated with Diesel-Fueled Vehicle Exhaust. Although not included as one of the Pollutants



Associated with Diesel-Fueled Vehicle Exhaust, this group of commenters recommended including benzene in the discussion of Health Effects Associated with Diesel-Fueled Vehicle Exhaust. This same group advocated for language that gives a preference to electric vehicles and associated infrastructure.

One commenter believes that the Plan puts too much emphasis on fossil-fueled vehicles and that these projects should have a reduced allotment.

NMED is supportive of diesel to all-electric vehicle projects, but recognizes that all-electric vehicles may not be viable in all instances, such as school buses that travel long distances that exceed the range of their battery pack, or a lack of available or proven technology, particularly for heavy-duty vehicles. In addition, because New Mexico only has ten (10) years to allocate funds towards projects, NMED believes it to be prudent to remain receptive to projects that use alternate fuels. One commenter provided information that near-zero compressed natural gas (CNG) technology is in-use and readily available for large freight trucks that are certified to perform at 0.02 grams per brake-horsepower-hour (g/bhp-hr), compared to the 2010 Environmental Protection Agency (EPA) standard of 0.2 g/bhp-hr. This same commenter stated that the use of natural gas vehicles is expanding in the Albuquerque and Santa Fe regions, and that there is significant opportunity in the Santa Teresa and Sunland Park area to achieve attainment of the National Ambient Air Quality Standard (for ozone) through heavy-duty truck replacements with natural gas near-zero emission trucks. Additionally, there is increasing interest in the usage of renewable natural gas (biomethane generated from dairy waste) in New Mexico. Allowing the use of alternate fuels also supports the Clean Fuels and Efficient Transportation Program of the New Mexico Energy, Minerals, and Natural Resources Department's Energy Conservation and Management Division.

The application scoring process allows diesel to all-electric projects to be scored more favorably than propane/CNG/liquified natural gas (LNG) or near-zero CNG; however, NMED must also consider the cost effectiveness of a proposed project. For example, a project to replace a diesel-fueled heavy-duty truck with a near-zero CNG-fueled truck may score higher than a project replacing that same heavy-duty truck with an all-electric engine if the all-electric replacement is not as cost-effective. However, the applicant could increase the score for the all-electric project by increasing their cost contribution towards the project.

NMED also appreciates commenters' concern regarding benzene, carbon pollution, and global warming pollutants; however, the purpose of the Trust is to mitigate excess NO<sub>x</sub> emissions from subject VW vehicles, so that remains the focus of the Plan. The transportation sector is a major contributor to NO<sub>x</sub> concentrations in the ambient air and contributes to the formation of ground-level ozone. Mobile source emissions are a major contributor to the ozone levels in the Sunland Park ozone nonattainment area. There are several counties in New Mexico whose ozone design values are within 95% of the National Ambient Air Quality Standard (NAAQS) for ozone, and NMED is required by statute to develop plans to reduce ozone precursors in these areas. The NO<sub>x</sub> reductions that can be realized by replacing older diesel-fueled vehicles with a combination of low-NO<sub>x</sub> – emitting and all-electric vehicles within the timeframe allowed by the Trust will benefit NMED's initiative to reduce ozone precursors.

NMED recommends that these commenters contact local school districts, the New Mexico Public Education Department, local transportation agencies, and owners of medium-duty fleets to develop



strategic partnerships to accelerate the deployment of all-electric medium- and heavy-duty vehicles throughout New Mexico.

One commenter was opposed to spending state money on electric vehicle (EV) charging stations because electric vehicles do not purchase fuel nor contribute to road taxes, and stated that the funds should benefit the majority of New Mexicans, not the minority of citizens driving electric [vehicles]. Another commenter recommended increasing the funding for EV charging stations from 15% to 25%.

The Trust Agreement allows states to allocate a maximum of 15% of their allocations towards light-duty zero emission vehicle supply equipment, and New Mexico has chosen to take advantage of this opportunity to increase the penetration of electric vehicles in the state. Fuel taxes are beyond the scope of this program.

A number of commenters supported the allocation of 15% of total funding towards light-duty zero emission vehicle supply equipment. These commenters were in favor of increasing the quantity of EV charging stations in locations available to the general public, as well as in rural areas of the state. One group of commenters recommended a change to the Goal No. 2 (page 2) that would separate item f and create a new Goal No. 5 to address rural areas lacking critical EV infrastructure, as the other items in Goal No. 2 specifically address air quality. These same commenters requested a new section, *Rural Areas*, be added on page 17 after the *High Pollution Area* section to address statewide coverage of light-duty zero emission vehicle supply equipment. They also stressed the importance of partnering with businesses that have a vested interest in the communities and a proven track record of dependability, reliability and community growth concern.

NMED agrees with the comment regarding a new Goal No. 5, and will revise the Plan language accordingly. NMED does not agree that a new section titled *Rural Areas* is necessary on page 17. The discussion on Priority Areas that commences on page 15 and ending on page 17 is intended to highlight those areas that tend to bear a disproportionate share of the air pollution burden. NMED is committed to expanding the network of light-duty zero emission vehicle supply equipment statewide, so in addition to creating a new goal to increase EV infrastructure in rural areas, we will prioritize these proposals during application review and scoring. NMED appreciates that comment regarding partnering with businesses that have a vested interest in their communities. For a successful deployment of light-duty zero emission vehicle infrastructure throughout New Mexico, NMED will consider the long-term operation and maintenance of EV charging stations during application review and scoring.

Commenters also support a balance of Level II and DC fast chargers, and that New Mexico consider funding caps to spread the available funding over a larger number of charging stations. One commenter asked for clarification on whether light-duty electric vehicles can be purchased with the Settlement Funds, and if funds can be used to construct charging stations that equipped with solar panels and solar battery storage. One group of commenters commented that funding EV infrastructure would have a greater impact if charging equipment is publicly accessible, as opposed to funding chargers in multi-unit dwellings and workplaces that may be behind fences with accessibility. This same group of commenters recommended that the location of EV charging stations be coordinated to avoid redundancy and to ensure that stations are sited with a frequency to optimize utilization, and referenced the Regional Electric Vehicle (REV) West Electric Vehicle Policy Baseline for the Intermountain States (New Mexico is a



signatory to the Memorandum of Understanding between the Governors of Arizona, Colorado, Idaho, Montana, Nevada, New Mexico, Utah, and Wyoming to create an Intermountain West Electric Vehicle Corridor to facilitate EV travel across the western states' major transportation corridors).

One commenter recommended that NMED focus a significant portion of the light-duty zero emission vehicle supply equipment funding towards Level II charging infrastructure, which can charge all electric vehicles, serves the everyday charging needs of electric vehicles, and is a primary driver of electric vehicle adoption. This commenter recommended a 50/50 split of the \$2.7 million between Level II and DC fast charging infrastructure. This commenter also offered suggestions regarding eligibility requirements, equipment scope, site selection and funding.

NMED Response: NMED appreciates the comments that support maximizing the funds to the installation of light-duty zero emission vehicle supply equipment. Even prior to the release of the revised Plan, NMED received comments from the general public and electric cooperatives that EV charging stations should be sited in rural communities to boost local economies and tourism. NMED will carefully evaluate proposed locations for EV charging stations and will strive to ensure that they are sited appropriately. NMED intends to cap funding on Level II charging stations, and will consider an appropriate cap on DC fast-charging stations. NMED will carefully consider accessibility and whether the applicant has received any community interest for charging stations at the proposed locations, as well as proximity to other existing and planned EV charging stations to ensure that charging stations are reasonably accessible to the general public. Specific comments regarding eligibility requirements, equipment scope and site selection will be considered for inclusion in the application for charging infrastructure.

The purchase of light-duty electric vehicles is not an eligible project under the Trust Agreement. There is no language in the Trust Agreement that prohibits the use of solar power with battery storage for electric vehicle chargers.

One commenter faulted the United States and New Mexico for the lawsuit that resulted in VW deciding to never sell another diesel automobile in the United States. This commenter suggested that we (New Mexico) use our "ill gotten gains" to support infrastructure to support the all-electric market that VW and others are now advocating.

The Settlement Agreement actually allows VW to resell diesel-powered vehicles that have had their emissions systems modified, and these vehicles are currently available for purchase. As stated in the Plan, New Mexico proposes to direct the maximum allowed percentage of our total allocation towards funding light-duty zero emission supply equipment.

One group of commenters recommended that the Plan give greater consideration to environmental justice concerns, and offered more specific language for inclusion in the Plan. NMED believes that proper consideration is given to environmental justice concerns during the scoring of applications, and requires that each application submitted for consideration include an EJSscreen report for the project area. The scoring criteria includes the following: sensitive populations (percent minority and poverty, and proximity to schools and medical institutions); the area's attainment status with respect to the



National Ambient Air Quality Standard for ozone; and high impact areas (e.g., highways, truck stops, airports, transportation terminals, and distribution centers).

One group of commenters indicated that the word “diesel” was inadvertently included in Eligible Mitigation Projects category 2 – Class 4-8 School Bus, Shuttle Bus, or Transit Bus (Eligible Buses), item c, page 7, and that the word “seven” is missing from the first paragraph, third line, on page 14 under the heading *Non-Road/Off-Road Fleet Projects*.

The commenters are correct on both counts, and NMED will revise the language accordingly.

One group of commenters stated that while the intent, inclusion and promotion of the Plan are strong, the availability of alternative-fueled and powered vehicles, particularly for public entities in New Mexico, is weak. These commenters referenced the Statewide Price Agreement administered by the New Mexico General Service Department’s Purchasing Division and the lack of availability of vehicles powered by propane (autogas), compressed natural gas (CNG), and electric power-trains. The Statewide Price Agreement, Request for Quotes or Cooperative Services Agreement are the three general options available to governmental agencies, through which, for example, the Public Education Department could procure propane or electric school buses; however, the commenter indicates that the latter two options can be more expensive and time-consuming than direct purchases under the Agreement. They further stated that the Agreement does not offer refueling equipment, such as electric vehicle charging stations, autogas on-site dispensers, or CNG micro-dispensers, all of which would be ideal for New Mexico public fleets. Unless the process to access alternative-fueled vehicles and related infrastructure is available, the commenters state that governmental awardees are forced to procure vehicles from non-established vendors and manufacturers, potentially costing the awardee financially and operationally if the technology fails. The commenters conclude that a strong presence of alternative-fueled vehicles in government fleets will strengthen alternative-fueled vehicles in the private sector and infrastructure for New Mexico produced natural gas, propane and electricity for transportation.

NMED agrees that a stronger presence of alternative-fueled and all-electric vehicles in New Mexico’s public fleets would strengthen the use of these vehicles in the private sector, and we will continue to reach out to our sister agencies to encourage the use of these lower NO<sub>x</sub>-emitting vehicles.