

# **Volkswagen Settlement**

Interim Joint Committee on Appropriations and Revenue  
August 30, 2018



## **Energy and Environment Cabinet (EEC)**

Secretary Charles Snavelly

Deputy Secretary Bruce Scott

Lona Brewer, Office of Energy Policy

# Volkswagen Settlement - Background

- **CY2015 – US EPA enforcement action against Volkswagen (VW):**
  - **September 2015:** Notice of Violation of the CAA to VW alleging that model year 2009 to 2015 VW and Audi diesel vehicles equipped with 2.0 liter engines included software that evaded EPA emissions standards for **nitrogen oxides (NOx)**. This software is also termed as a “defeat device”.
  - **November 2015:** EPA issued a second Notice of Violation to VW alleging that VW developed and installed a “defeat device” in certain light duty diesel vehicles equipped with 3.0 liter engines for model years 2014 to 2016 that increases emissions of **NOx** up to nine times EPA’s standard.
  - **October 2016, May 2017, and April 2017:** the Court approved a settlement between the United States and VW. These settlements resolve allegations that Volkswagen violated the Clean Air Act (CAA) by the sale of approximately **590,000 model year 2009 to 2016 diesel motor vehicles equipped with “defeat devices.”**

# Volkswagen Settlement – Affected Vehicles

- Affected **2.0 liter diesel vehicle models and model years** include:

- Jetta (2009–2015)
- Jetta Sportwagen (2009-2014)
- Beetle (2012–2015)
- Beetle Convertible (2012-2015)
- Audi A3 (2010–2015)
- Golf (2010–2015)
- Golf Sportwagen (2015)
- Passat (2012-2015)

- Affected **3.0 liter diesel vehicle models and model years** include:

- Volkswagen Touareg (2009-2016)
- Porsche Cayenne (2013-2016)
- Audi A6 Quattro (2014-2016)
- Audi A7 Quattro (2014-2016)
- Audi A8 (2014-2016)
- Audi A8L (2014-2016)
- Audi Q5 (2014-2016)
- Audi Q7 (2009-2016)

# Vehicles in KY affected by the Settlement

- Based on data available to the agency there are approximately 3621 vehicles registered in Kentucky that were affected by the VW Settlement.
- A list of the top 10 KY counties (60+% ) is provided in the chart:

Vehicle Registration by County			
Jefferson	873	Fayette	373
Boone	204	Kenton	190
Oldham	169	Campbell	99
Hardin	88	Warren	73
Shelby	71	Bullitt	69

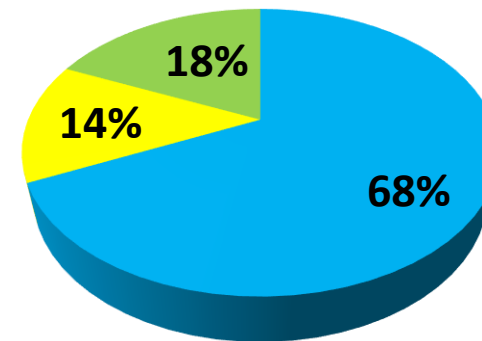
# VW Settlement – Available Funds

## ■ Three Accounts to VW Settlement:

- **\$10.03 Billion** -- Buy Back or modifications on at least 85% of the subject vehicles (Appendix A & B).
- **\$2 Billion** to promote the use of Zero Emission Vehicles (ZEV) (Appendix C).
- **\$2.7 Billion** to remediate the excess NOx emissions (Environmental Mitigation Trust -- Appendix D).
  - **This is the account from which Kentucky is provided funds to expend.**

## ■ Settlement Fund Distribution:

- Vehicle Buy Back -- \$10.03 Billion
- ZEV Investment -- \$2 Billion
- Environmental Mitigation Trust -- \$2.7 Billion



# Timeline Background

- The VW Settlement designates **\$2.7 Billion to be provided nationally for environmental mitigation**. Funds are intended to fully mitigate the excess **NOx emissions** from 2-liter and 3-liter engines.
- **Kentucky's total allocation** from the settlement is : **\$20,378,649.**
- **Dec. 2016** – The **Governor designated EEC as the lead agency** on behalf of the Commonwealth.
- **March 2017**: The Court designated **Wilmington Trust** as the trustee of the Environmental Mitigation Trust. Kentucky is officially listed as a beneficiary. Public facing web site: <https://www.vwenvironmentalmitigationtrust.com/state-trust/kentucky> .
- **October 2, 2017**: Trust Effective Date (TED) – (the **10-year clock starts to expend the funds**).
- Beneficiaries must submit the final Beneficiary Mitigation Plan at least 30 days prior to requesting to draw down available Trust funds.

# Kentucky's Portion of the Mitigation Trust Fund

- When and how much funds are available to Kentucky for use (funds must be expended within 10 year window):
  - **First Year** (Oct. 2, 2017 to Oct. 1, 2018)
    - up to 1/3 of available funding = **\$6,792,833.19**
  - **Second Year** (Oct. 2, 2018 to Oct. 1, 2019)
    - up to 2/3 of available funding = **\$13,585,766.39**
  - **Years 3-10** (any year after Oct. 1, 2019)
    - Total funding available in any given year = **\$20,378,469.58**

# What are Eligible Mitigation Expenditures?

- **States are limited by the Consent Decree on what the Trust Funds are allowed to be used for **NOx** emission reductions:**
  - ✓ **Replacement or repowering** of older diesel engines with new diesel, alternative fuels, or electric.
  - ✓ **Categories:**
    - Class 8 local freight trucks and port drayage trucks
    - Class 4-8 school/shuttle/transit buses
    - Freight switcher locomotives
    - Ferries/tugboats
    - Ocean going vessels shorepower
    - Class 4-7 local trucks
    - Airport ground support equipment
    - Forklifts and cargo handling equipment at ports
  - ✓ Light duty ZEV supply equipment (up to 15% of allocation).
  - ✓ Diesel Emission Reduction Act (DERA).
  - ✓ Administrative Costs for implementation.



# What are Ineligible Mitigation Expenditures

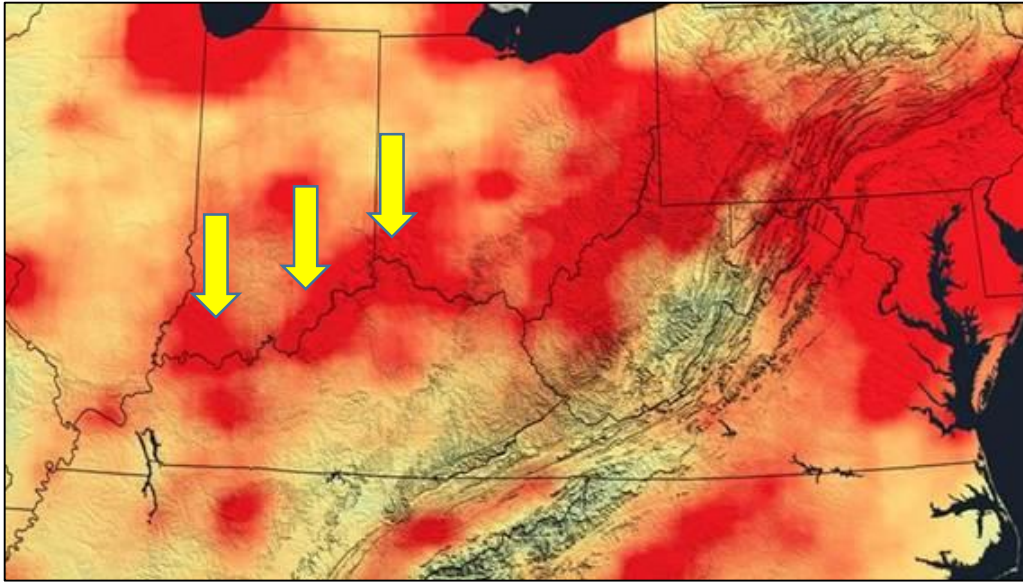
- This is for vehicle replacement, not to provide additional vehicles.
- Vehicles being replaced must be **"Scrapped"**.
- Appendix D2 to the Consent Decree defines "Scrapped" to mean:

*"...to render inoperable and available for recycle, and at a minimum to specifically cut a 3-inch hole in the engine block for all engines. If any Eligible Vehicle will be replaced as part of an eligible project, scrapped shall also include the disabling of the chassis by cutting the vehicle's frame rails complete in half."*

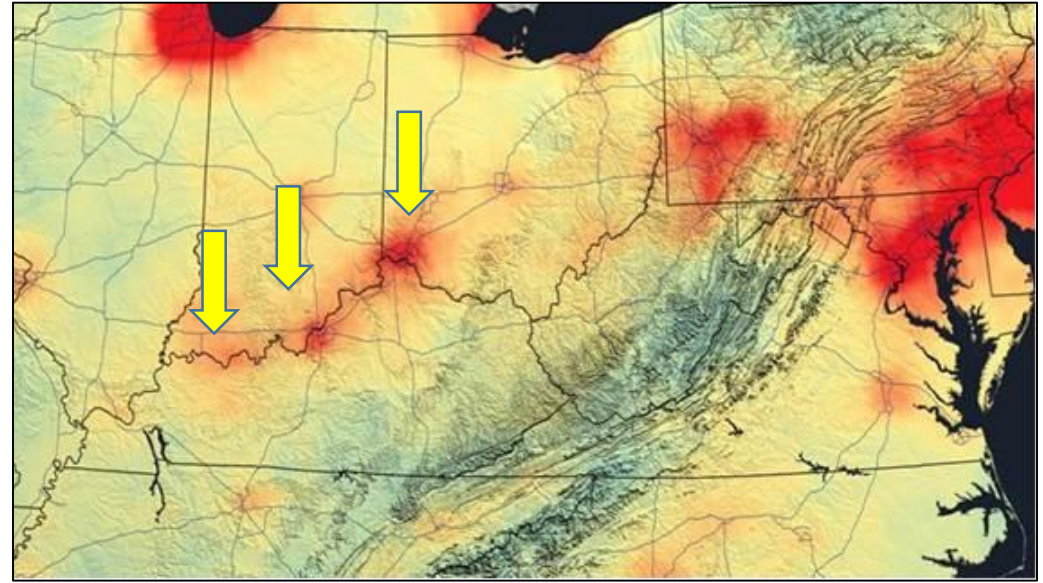


# Where are NO<sub>x</sub> Emissions a Mitigation Concern in KY?

- **NASA Satellite Image:**
  - 2005 Nitrogen Dioxide Emissions



- **NASA Satellite Image:**
  - 2014 Nitrogen Dioxide Emissions



## Comments received on how to use the VW Funds

- EEC has **received numerous comments** from public on what eligible project types should be included in the Beneficiary Mitigation Plan.
- Since April 2017, EEC has provided an **on-line electronic portal** for ease of providing input.
- Several **presentations and discussions** with interested entities/groups on eligible projects have been conducted regarding, what we hear nationally, updates from the national trustee, and information from national working groups.

# Kentucky Proposed Draft Plan

- Vehicle Replacement Funds prioritized to be distributed in areas that are:
  - nonattainment for ozone or fine particulates, and/or
  - maintenance areas for those ozone and fine particulates pollutants (areas that have had air quality exceedances in the past).
- **NOx** emissions impact both both ozone and fine particulates.

County	Ozone		PM2.5	
	Nonattainment	Maintenance	Nonattainment	Maintenance
Boone	X			X
Boyd		X		X
Bullitt	X			X
Campbell	X			X
Christian		X		
Daviess		X		
Edmonson		X		
Fayette		X		
Greenup		X		
Hancock		X		
Jefferson	X			X
Kenton	X			X
Lawrence				X
Livingston		X		
Marshall		X		
Oldham	X			
Scott		X		

# Proposed Mitigation Categories to Fund

Eligible Mitigation Actions	% of Funds to be Allocated	\$\$ Amount Equivalency
<b>CATEGORY 1:</b> Eligible Public Transit Buses	At least 80%	<b>\$16,302,919</b>
<b>CATEGORY 2:</b> Light Duty Zero Emission Vehicle Supply Equipment (Government & Non-Government)	Up to 15%	<b>\$3,056,797</b>
<b>CATEGORY 3:</b> Administrative Costs	Up to 5%	<b>\$1,018,933</b>
<b>Total</b>		<b>\$20,378,649</b>

# CATEGORY 1: Public Transit in Kentucky

- **3 Large Urban Systems**



- **6 Small Urban Systems**

- Ashland, Owensboro, Bowling Green, Elizabethtown, Henderson, Clarksville

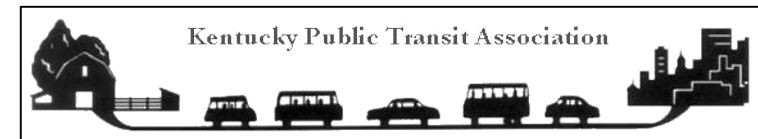
- **26 Suburban and Rural Systems**

- Suburban and rural systems provide transportation in nearly every county in the state

- Provide more than **30 million** trips annually

- To healthcare; to school; to jobs; ...

- **Jobs** - Over **11 million** work-based trips annually supporting **major employers** that have **significant workforce needs** in our Commonwealth.



# CATEGORY 1: Percent of Project Proposed to be Funded

- Plan proposes to leverage funds that are matched by Government or quasi-Government Public Transit agencies via their own funds or federal funds:

<b>CATEGORY 1: Public Transit Bus Allowable Expenditures (no less than \$16,302,919 in available funding)</b>	<b>Government Owned</b>
(a) Repower with new diesel or alternate fueled engine	Up to 80%
(b) Replace with new diesel or alternate fueled vehicle	Up to 80%
(c) Repower with all-electric engine (includes infrastructure)	Up to 80%
(d) Purchase new all-electric vehicle (includes infrastructure)	Up to 80%

# CATEGORY 1: Estimated Transit Bus Replacement Cost

- The three large urban public transit systems have the need to replace many buses that are currently past their federally-defined useful life or will exceed their useful life in the next 24 months. The Public Transit sector preference is to replace these older diesel buses with **Hybrid-Electric Buses**. Hybrid-Electric buses use less fuel, decrease operating costs, and significantly reduce emissions when compared to traditional diesel buses. The needs are as follows:

Northern KY 19 buses @ \$660,000 ea. = \$12,540,000  
Lexington 17 buses @ \$660,000 ea. = \$11,220,000  
Louisville 83 buses @ \$660,000 ea. = \$54,780,000

- If replaced with **standard diesel buses**:

Northern KY 19 buses@ \$550,000 ea. = \$10,450,000  
Lexington 17 buses@ \$550,000 ea. = \$9,350,000  
Louisville 83 buses@ \$550,000 ea. = \$45,650,000



## CATEGORY 1: Leveraging the Purchasing Power of VW Funds

- Examples of Leveraging Power of VW Matching Funds:

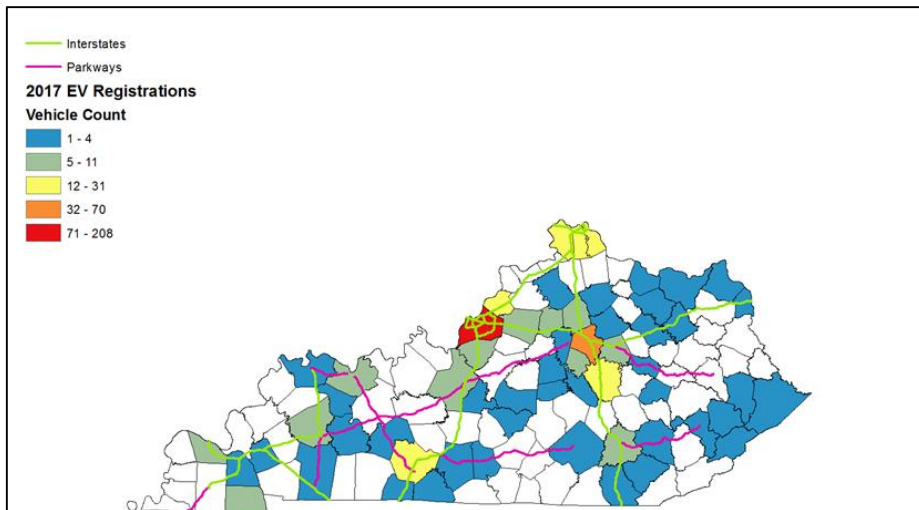
<b>VW Funds:</b>		<b>Federal Funds:</b>		<b>Total Project Cost:</b>
\$1	+	\$4	=	\$5
\$1,000,000	+	\$4,000,000	=	\$5,000,000
\$2,500,000	+	\$10,000,000	=	\$12,500,000

## CATEGORY 2: Light Duty Zero Emission (ZEV) Supply Equipment

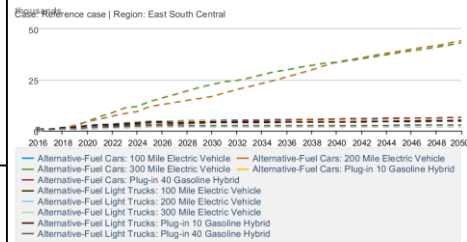
- Three (3) main types of **electric chargers**:
  - **Level 1** – uses the same 120 volt current found in standard household outlets. It is slow and typically provides 3-5 miles of range per hour of charging.
  - **Level 2** – uses 240 volt power to speed up vehicle charging System requires dedicated charging equipment and electrical wiring capable of handling the higher voltage. Charge times are typically 10-20 miles of range per hour of charging.
  - **DC Fast Charger** – allows vehicle to charge a battery (up to 80% of battery capacity) in 20-30 minutes. Requires more expensive charging equipment as well as high voltage – 3 phase power connections.

# CATEGORY 2: EV in Kentucky

## EV Registrations in Kentucky:

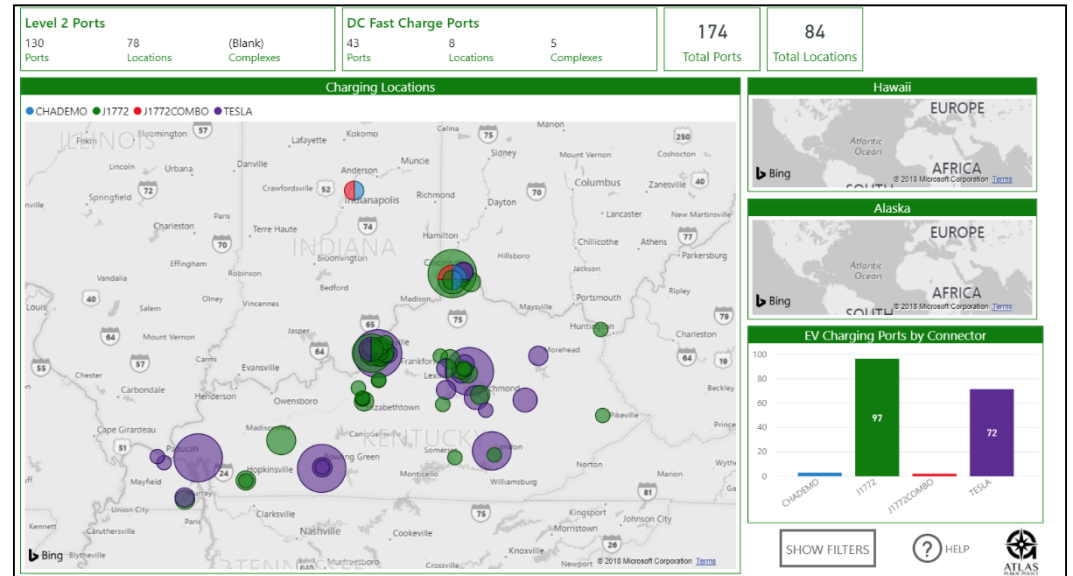


### Light-Duty Vehicle Sales



Source: U.S. Energy Information Administration

## Existing Charging Infrastructure:



## CATEGORY 2: Percent of ZEV Projects Proposed to be Funded

- Plan proposes to leverage funds that can be matched:

CATEGORY 2: ZEV Project Allowable Expenditures (up to \$3,056,797 in available funding)	Percentage Funded through VW Trust
(a) Electric Vehicle Supply Equipment (EVSE) – publicly available at government owned property	Up to 100%
(b) EVSE – publicly available at non-government owned property	Up to 80%
(c) EVSE – at workplace but not available to general public	Up to 60%
(d) EVSE – at multi-unit dwelling but not available to general public	Up to 60%
(e) Fuel Cell Vehicle Supply Equipment (FCVSE)– publicly available and able to dispense at least 250 kg/day	Up to 33%
(f) FCVSE – publicly available and able to dispense at least 100 kg/day	Up to 25%

# Next Steps

- EEC formally **public noticed the Draft Plan** on **August 17, 2018** for public comment.
  - A public meeting will be held on **September 5, 2018** from 4:00 to 6:00 pm at the EEC office at 300 Sower Blvd, Frankfort, KY.
  - Comments are due by **September 17, 2018**.
- **Receive Appropriation Approval** in order to begin capturing administrative expenses for reimbursement from the VW Trust (?).
- **Finalize plan** for submittal to the VW Trustee (Fall 2018).
- Develop **RFP/Application Process** for eligible applicants to apply for available funds (CY2018).
- **Solicit** proposed requests and select recipients (Winter/Spring 2018-19).

# VW related issues from 2018 Legislative Session

- **From page 1, Section 1, of HB 487 (Revenue/tax modernization bill):**  
SECTION 1. A NEW SECTION OF SUBCHAPTER 10 OF KRS CHAPTER 224 IS CREATED TO READ AS FOLLOWS:
  - (1) There is hereby established in the State Treasury a trust and agency account to be known as the **Volkswagen settlement fund**. The fund shall consist of moneys designated to the Commonwealth from that settlement.
  - (2) The fund shall be **administered by the Energy and Environment Cabinet**.
  - (3) Notwithstanding KRS 45.229, fund amounts not expended at the close of the fiscal year shall not lapse but shall be carried forward into the next fiscal year.
  - (4) Any interest earned from moneys deposited in the fund shall become a part of the fund and shall not lapse.
- **From page 48 of 185, of HB 200 (Budget bill):**  
**Volkswagen Mitigation Trust Agreement:** All funds received from the environmental mitigation trust established by Volkswagen pursuant to the partial consent decree shall be held in a trust and agency account. **These funds shall not be expended or appropriated without the express authority of the General Assembly.**

# Legislative Appropriation and Authorization

- Need to determine **next steps** for obtaining **appropriation and authority from the General Assembly**
- **Normally**, when new restricted or federal funds are received during the Biennial enacted budget period, an appropriation increase request is made and approval is provided and the Executive Branch proceeds with use of the funds as appropriate.
- In the case of the VW mitigation funds, the **budget bill** (HB 200) provides **specific language** as previously noted. **Options include:**
  - EEC could send a request as normal during the interim seeking an appropriation increase and authorization, and
  - A&R could approve the request on behalf of the General Assembly, or
  - The matter could be dealt with in some to be determined manner during the 2019 Legislative Session.

# Questions

- **Contact Information:**

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- **Comments** on the draft plan at public notice may be **emailed** directly to the agency at: [Ky.vwsettlement@ky.gov](mailto:Ky.vwsettlement@ky.gov)