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Volkswagen Settlement/Arkansas Mitigation Plan: Stuart Spencer (Arkansas Department of Environmental Quality) Arkansas Bar Association Environmental Law Section Presentation

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Stuart Spencer of the Arkansas Department of Environmental Quality (“ADEQ”) undertook a presentation at the March meeting of the Arkansas Bar Association Environmental Law Section titled:

Volkswagen Settlement – Environmental Mitigation Trust (“Presentation”)

Stuart serves as Associate Director of ADEQ’s Office of Air Quality.

The *Presentation* addressed the United States Environmental Protection Agency’s (“EPA”) settlement with Volkswagen for alleged Clean Air Act violations and ADEQ’s development of a mitigation plan to use its share of the funds allocated to the States.

Volkswagen’s alleged Clean Air Act violations involved the sale of 500,000 turbocharged direct injection diesel (“TDI”) vehicles equipped with emission control defeat devices. The vehicles were stated to emit up to 40 times more nitrogen oxides than allowed under applicable Clean Air Act Title II emission standards.

The defeat device is stated to have “turned off pollution controls” except during EPA testing.

The *Presentation* addressed three partial consent decrees that Volkswagen entered into with EPA.

The components of the first and second decrees involved vehicle buy backs, lease terminations, emissions modifications, investment in projects to increase the use of zero emission vehicles and/or payments to an Environmental Mitigation Trust.

The third partial consent decree addressed civil penalties and injunctive relief to prevent future violations. It was noted that Volkswagen must pay in total \$14.7 billion in settlement fees.

Federal criminal charges against Volkswagen and one of its officers was also described.

Of relevance to Arkansas is the \$2.7 billion used to establish an Environmental Mitigation Trust for states to invest in transportation projects to reduce emissions of nitrogen oxides. As noted, the States must develop and submit a Beneficiary Mitigation Plan that summarizes how trust funds will be used.

The required elements of the Beneficiary Mitigation Plans are described, which include:

- Goal for use of the funds allocated under the trust;
- Eligible mitigation actions selected and percentage of funds to be used for each action;
- Description of how the beneficiary will consider the beneficial impact of the actions in areas that bear a disproportionate share of air pollution; and
- General description of emissions benefits

The possible 10 eligible mitigation actions include:

- Eligible Large Trucks
- Eligible Buses
- Eligible Freight Switchers
- Eligible Ferries/Tugs
- Eligible Ocean Going Vessels Shorepower
- Eligible Medium Trucks
- Eligible Airport Ground Support Equipment
- Eligible Forklifts and Port Cargo Handling Equipment
- Eligible Light-Duty Zero Emission Vehicle Supply Equipment
- Diesel Emission Reduction Act (DERA) Option

The final portion of the *Presentation* addressed Arkansas's Mitigation Plan. Arkansas is to receive approximately \$14.6 million of which:

- Up to \$4.8 million can be spent in the first year
- Up to \$9.7 million can be spent in the first two years

ADEQ is the lead agency with the Office of Energy and Office of Air quality developing the plan in collaboration with the Governor's Office and other State agencies.

The Arkansas Beneficiary Mitigation Plan was submitted to the Volkswagen Settlement Trustee on June 28, 2018. It describes four new programs that the State agency intends to implement to reduce emissions.

The programs include:

- Arkansas Bus Compressed Natural Gas Pilot Program
- Arkansas Clean Fuels Grant
- Light-Duty Electric Vehicle Infrastructure Rebate Program
- Diesel Emission Reduction Act

A small percentage (8%) of funds are projected to be used to enable State agency classes 4-8 medium- and heavy-duty vehicles to be replaced or repowered with any fuel allowable under the Volkswagen settlement.

Additional information about the program can be found at

<https://www.adeg.state.ar.us/air/planning/vw.aspx>.

As a final matter, referenced is the January 10, 2019, agreement by Fiat Chrysler to pay \$800 million to settle charges that its diesel vehicles sold in the United States had software that allowed it to violate emissions rules. The components of the settlement were described.

A copy of the *Presentation* slides can be found [here](#).