

The Volkswagen Diesel Emissions Environmental Mitigation Trust

for Indian Tribe Beneficiaries

Update To March 2, 2018 Notice and Court Order Pursuant To Subparagraph 5.2.16 and 5.0.5.2.3 of The Indian Tribe Trust Regarding Approval of Funding Requests and Allocation

On March 5, 2018, the Trustee sent (and posted on the Indian Tribe Trust's public-facing website) notice of the Order of the U.S. District Court for the Northern District of California dated March 2, 2018 (the "Order") which imposed a stay on certain activities of the Trustee for the Volkswagen Diesel Emissions Environmental Mitigation Trust for Indian Tribe Beneficiaries ("the Indian Tribe Trust"). A copy of the Order is attached hereto.

The Order required the United States and interested Beneficiaries to meet and confer, in consultation with the Trustee, to discuss whether any adjustment to the allocation methodology applicable when approvable funding requests from Beneficiaries exceed available funding is necessary to ensure that the Indian Tribe Trust funds are distributed in a manner that is consistent with the purpose of the Indian Tribe Trust.

The United States, through the Department of Justice Office of Tribal Justice, held telephonic discussion sessions on March 21, 2018 and March 27, 2018 with Indian Tribes. The United States also received and reviewed the oral and written comments received thereafter from the Indian Tribes.

As required by the Order, the United States was required to file a report with the Court by no later than May 2, 2018. The United States filed a status report with the Court on May 1, 2018 (the "Status Report"). A copy of the United States Status Report dated May 1, 2018 is attached.

In accordance with the Order and the Status Report, the stay imposed by the Order remains in place until further Order of the Court. The Status Report outlines next steps as detailed by the United States.

The Trustee will share any further information it receives from the United States as soon as it is available.

Any questions you may have regarding this Notice should be jointly addressed in writing to the following:

Volkswagen Diesel Emissions Environmental Mitigation Trust for Indian Tribe
Beneficiaries
c/o Wilmington Trust, N.A. as Trustee
Wilmington Trust, National Association
Rodney Square North
1100 North Market Street
Attn: Capital Markets & Agency Services
Wilmington, DE 19890
Facsimile: 302 636-4145

Director, Air Enforcement Division
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
William J. Clinton South Building
MC 2242A
Washington, DC 20460
E-mail: VW_settlement@epa.gov

U.S. Department of Justice:
Chief, Environmental Enforcement Section
Re: DJ # 90-5-2-1-11386
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, DC 20044-7611
E-mail: eescdcopy.enrd@usdoj.gov
Re: DJ # 90-5-2-1-11386

BY: Wilmington Trust, N.A., as Trustee for the Volkswagen Diesel Emissions
Environmental Mitigation Trust for Indian Tribe Beneficiaries

DATE: May 2, 2018

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

IN RE: VOLKSWAGEN “CLEAN DIESEL”)	MDL No. 2672 CRB (JSC)
MARKETING, SALES PRACTICES, AND)	
PRODUCTS LIABILITY LITIGATION)	ORDER STAYING CERTAIN TRUSTEE
)	OBLIGATIONS UNDER THE
)	ENVIRONMENTAL MITIGATION TRUST
<hr/> This Document Relates to:)	AGREEMENT FOR INDIAN TRIBE
)	BENEFICIARIES
<i>United States v. Volkswagen AG et al.</i> ,)	
Case No. 16-cv-295 (N.D. Cal.))	
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1 Having reviewed and considered information received from the United States and the parties to
2 the Indian Tribe Trust Agreement, the Court hereby:

- 3 1) **ORDERS** the United States and interested Beneficiaries to meet and confer, in consultation
4 with the Trustee, to discuss whether any adjustment to the allocation methodology applicable
5 when approvable funding requests from Beneficiaries exceed available funding is necessary
6 to ensure that the Indian Tribe Trust funds are distributed in a manner that is consistent with
7 the purpose of the Indian Tribe Trust;
- 8 2) **ORDERS** that within 60 days of this Order, the United States shall file a status report to the
9 Court, unless the United States instead files a proposed modification to the Indian Tribe Trust
10 Agreement for the Court's consideration; and
- 11 3) **ORDERS** that the Trustee shall take no further actions related to its obligations under
12 Section V (Distribution of Indian Tribe Mitigation Trust Assets) of the Indian Tribe Trust
13 Agreement, including without limitation, its obligations under subparagraph 5.0.5 (and all the
14 subparagraphs thereof), and Paragraphs 5.1, 5.2 (and all the subparagraphs thereof), 5.3, and
15 5.4, as they relate to the first funding cycle and all future funding cycles under the Indian
16 Tribe Trust, until ordered by the Court to do so.

17 **IT IS SO ORDERED.**

18 Dated: March 2, 2018



19 _____
20 CHARLES R. BREYER
21 United States District Judge

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2 Environment and Natural Resources Division

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13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA
15 SAN FRANCISCO DIVISION

16 IN RE: VOLKSWAGEN “CLEAN DIESEL”) MDL No. 2672 CRB (JSC)
17 MARKETING, SALES PRACTICES, AND)
18 PRODUCTS LIABILITY LITIGATION) **UNITED STATES’ STATUS REPORT RE**
19) **INDIAN TRIBE TRUST AGREEMENT**
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29 This Document Relates to:

30 *United States v. Volkswagen AG et al.*,
31 Case No. 16-cv-295 (N.D. Cal.)
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1 On March 2, 2018, the Court issued an Order in this matter staying certain Trustee obligations
2 under the Environmental Mitigation Trust Agreement for Indian Tribe Beneficiaries (“Trust Agreement”
3 or “Trust”). Dkt. No. 4867. The Court also directed the United States and interested Beneficiaries to
4 meet and confer, in consultation with the Trustee, to discuss whether any adjustment to the Trust
5 Agreement’s allocation methodology is necessary to ensure that funds are distributed in a manner
6 consistent with the Trust’s purpose. *Id.* at 3. The Court ordered the United States to file a status report
7 within 60 Days. *Id.* Pursuant to the Court’s Order, the United States files this status report.

9 **I. STEPS TAKEN TO DATE**

10 On March 16, 2018, the United States, through the Office of Tribal Justice (“OTJ”), sent a letter
11 to Indian Tribe Beneficiaries to participate in a discussion session on March 21, 2018, to present
12 possible approaches to allocation under the Trust Agreement.¹ The letter provided background
13 information, identified key issues for discussion, and set forth a schedule for Indian Tribes to provide
14 written comments. On March 21, OTJ hosted a telephonic discussion session with representatives from
15 approximately 40 Indian Tribes participating. On March 27, 2018, OTJ hosted a second discussion
16 session focused on specific allocation concepts identified during the initial discussion session and in
17 written comments received thereafter. Representatives from approximately 50 Indian Tribes
18 participated and once again provided input during the session, and subsequently submitted written
19 comments.
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22 After these two sessions, the United States reviewed the oral and written comments received to
23 consider appropriate modifications to the Trust Agreement that will yield an equitable allocation
24 formula that is consistent with the purpose of the Trust. The United States is currently working with the
25 Trustee to revise the Trust Agreement to reflect these proposed modifications.
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27 ¹ The Trust Agreement was filed with the Court on October 2, 2017. *United States v. Volkswagen AG*
28 *et al.*, Case No. 16-cv-295 (N.D. Cal.), Dkt. No. 51-2.

1 **II. NEXT STEPS**

2 The United States must further coordinate with the Trustee regarding how any changes to the
 3 equitable allocation formula may necessitate other related modifications throughout the Trust
 4 Agreement, and must obtain approval of the parties to the Trust Agreement. This process should be
 5 completed in approximately 30 days. Unless otherwise directed by the Court, by June 1, 2018, the
 6 United States will either lodge a proposed modification to the Trust Agreement pending receipt of
 7 comments from interested Indian Tribes, or will file another status report with the Court.²

9 Dated: May 1, 2018

Respectfully submitted,

10 For the United States of America

11 BRUCE S. GELBER
 12 DEPUTY ASSISTANT ATTORNEY GENERAL

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28 *Counsel for the United States*

25 ² On April 30, 2018, the United States received a letter from one Indian Tribe Beneficiary
 26 invoking informal dispute resolution under Paragraph 6.2 of the Trust Agreement and asserting that
 27 modification is not appropriate at this time. As set forth above, no modification has yet occurred.
 28 Moreover, material modifications to the Trust may be made only with the United States' consent and the
 Court's approval. Dkt. No. 51-2 at 37, ¶ 6.5. Further, the Trustee shall provide 30 days' notice of any
 modification to the Beneficiaries before such modification shall become effective. *Id.*