

## **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 "May 1<sup>st</sup> Status Report"). A copy of the May 1<sup>st</sup> Status Report is attached hereto.

On May 21, 2018, The United States, through the Department of Justice Office of Tribal Justice, held a third discussion session focused on a narrowed set of specific allocation concepts that could potentially form the basis of a new allocation formula. Representatives from approximately 33 Indian Tribes provided input during the session, and were invited to submit written comments by no later than July 2, 2018. In response to specific comments received during the May 21, 2018 call, the United States is currently working with the Trustee to revise the Trust Agreement to reflect these proposed modifications.

As indicated in the May 1<sup>st</sup> Status Report, the United States intended by June 1, 2018 to either lodge a proposed modification to the Trust Agreement pending receipt of comments from interested Indian Tribes or to file another status report with the Court. The United States filed a status report with the Court on June 1, 2018 (the "June 1<sup>st</sup> Status Report"). A copy of the June 1<sup>st</sup> Status Report is attached hereto.

#### **NEXT STEPS**

The United States expects this process to be completed in approximately 21 days. Unless otherwise directed by the Court, by June 22, 2018, the United States will either lodge a proposed modification to the Trust Agreement, pending receipt of comments from interested Indian Tribes, or will file another status report with the Court. Under the terms of the Trust Agreement, the Trustee must provide 30 days' notice of any modification to the Beneficiaries before such

modification shall become effective, and any material modification to the Trust Agreement is ultimately subject to the Court's approval.

In accordance with the Order, the May 1<sup>st</sup> Status Report, and the June 1<sup>st</sup> Status Report, the stay imposed by the Order remains in place until further Court Order.

The Trustee will share any further information it receives from the United States regarding next steps 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:** June 1, 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	)	<b>ORDER STAYING CERTAIN TRUSTEE</b>
	)	<b>OBLIGATIONS UNDER THE</b>
	)	<b>ENVIRONMENTAL MITIGATION TRUST</b>
This Document Relates to:	)	<b>AGREEMENT FOR INDIAN TRIBE</b>
	)	<b>BENEFICIARIES</b>
<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  
United States District Judge

1 BRUCE S. GELBER  
Deputy Assistant Attorney General  
2 Environment and Natural Resources Division

3 JOSHUA H. VAN EATON (WA-39871)  
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6 U.S. Department of Justice  
7 P.O. Box 7611  
8 Washington, D.C. 20044-7611  
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12 Attorneys for Plaintiff United States of America

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:  
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32 *United States v. Volkswagen AG et al.*, )  
33 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.<sup>1</sup> 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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21  
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 <sup>1</sup> 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.<sup>2</sup>

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*

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25 <sup>2</sup> 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.*



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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**  
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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.* The United States filed a status report on May 1, 2018, stating that it would, unless  
8 otherwise directed by the Court, by June 1, 2018, lodge a proposed modification to the Trust Agreement,  
9 or file a another status report. Dkt. No. 5005. The United States files this status report to inform the  
10 Court about steps it has taken and anticipates that it will take regarding the Trust Agreement.  
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#### 12 **I. STEPS TAKEN TO DATE**

13 On March 16, 2018, the United States, through the Office of Tribal Justice (“OTJ”), sent a letter  
14 to Indian Tribe Beneficiaries to participate in a discussion session on March 21, 2018, to present  
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28 *et al.*, Case No. 16-cv-295 (N.D. Cal.), Dkt. No. 51-2.

1 After these two sessions, the United States reviewed the oral and written comments received to  
2 consider appropriate modifications to the Trust Agreement that will yield an equitable allocation  
3 formula that is consistent with the purpose of the Trust. On May 1, 2018, the United States filed a  
4 Status Report with the Court describing this process and setting forth anticipated next steps. Dkt. No.  
5 5005.  
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8 allocation concepts that could potentially form the basis of a new allocation formula. Representatives  
9 from approximately 33 Indian Tribes participated and once again provided input during the session, and  
10 were invited to submit written comments by no later than July 2, 2018. In response to specific  
11 comments received during the May 21, 2018 call, the United States is currently working with the  
12 Trustee to revise the Trust Agreement to reflect these proposed modifications.  
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19 22, 2018, the United States will either lodge a proposed modification to the Trust Agreement pending  
20 receipt of comments from interested Indian Tribes, or will file another status report with the Court.  
21 Under the terms of the Trust Agreement, the Trustee must provide 30 days' notice of any modification  
22 to the Beneficiaries before such modification shall become effective, and any material modification to  
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1 the Trust Agreement is ultimately subject to the Court's approval. Dkt. No. 51-2 at 36, ¶ 6.5.

2  
3 Dated: June 1, 2018

Respectfully submitted,

4 For the United States of America

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