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May 18, 2017

Gina Allery  
Deputy Director  
U.S. Department of Justice  
Office of Tribal Justice  
950 Pennsylvania Ave, NW  
Washington, DC 20530

**RE: Specific Questions regarding the VW Settlement for Tribes**

Dear Ms. Allery:

Thank you for ensuring your office was represented at the 2017 National Tribal Forum on Air Quality (NTFAQ) earlier this month. Ms. Baum did a great job presenting information on the VW Settlement for Tribes during the full-day training on May 1<sup>st</sup> and the plenary presentation on May 3<sup>rd</sup>.

As she might have shared with you, the training was helpful for over forty attendees and specifically, several questions were raised through the course of the day. NTAA has collected the questions raised and that the trainers were unable to answer. In an effort to assist all Tribes in successfully accessing the VW Settlement Tribal Allocation Subaccount, NTAA requests your response to the questions listed below and if you cannot respond, please indicate who could possibly answer that question. We have copied EPA staffers as well so you can work with them to coordinate a response that I can share with the members of NTAA's VW Settlement Work Group.

Here are the questions raised during the 2017 NTFAQ training on the VW Settlement:

- What if a Tribe gets waitlisted by the Trustee? Do they need to reapply to be considered for the following year?
- What if a Tribe can't spend out its allocation for non-ZEV projects making the ZEV amount more than 15% of the overall project?
- Please clarify that EMA's are specific to Tribally-owned vehicles as covered by EMA's 1-9 or diesel equipment covered under the DERA Option in regards to the location of the equipment and/or vehicles. For example, if Tribally-owned equipment is kept at a State owned location, such as a Tribal marine fleet that docks at a state owned dock, would this prevent the Tribe from using Tribal Allocation Subaccount funds to replace this equipment? Are the specific requirements related to Indian Lands?

- Can the same Tribe apply every year and submit plans each year?
- If States don't become beneficiaries, how can Tribes participate in situations where they would be unable to complete the work without the State as a partner?
- If States don't use all of their funds or don't certify as beneficiaries, please confirm if the Tribal Allocation Subaccount would receive a portion of the allocation from the re-distribution of funds to all beneficiaries based on the initial allocation rate.
- If Tribes work with States, who applies for funding and how is the partnership created (MOU, resolution, etc.)?
- Does the vehicle to be replaced have to be running and in good working order?
- For how long does the Tribe have to have owned said vehicle?
- Can Tribes use VW funds for shipping costs?
- Can Tribes use their tax exception for in-kind costs?
- How will VW Settlement funds be used for administrative costs to support an advisory workgroup?
- How does the trustee review how and where the funding is actually being spent?
- States were given their allocation of VW funds based on registered vehicles. Why can't Tribes be allocated settlement funds based on their reservation population for future litigations?
- Under the DERA option, can the value of vehicles that will be scrapped be used to contribute to the Tribe's non-federal mandatory match?
- Why are Tribes and States treated differently as it relates to the DERA option? As NTAA has indicated to EPA previously, the mandatory match requirements that Tribes must meet in the DERA option are often a significant barrier for Tribes to participate in the DERA program.
- If a State and Tribe partner together on an Environmental Mitigation Plan, would the following be allowed:
  - a. Using State funds for projects on Tribal lands.
  - b. Using Tribal funds for projects on non-Tribal lands.

We look forward to working with you on helping to clarify these details for Tribes to better understand the VW Settlement. Please let us know if you have any questions regarding this request or need clarification on any of these specific questions.

Sincerely,



Wilfred J. Nabahe  
 Chairman  
 National Tribal Air Association

Cc: Brandy Toft, NTAA Vice-Chair  
 Lucita Valiere, U.S. EPA  
 Pat Childers, U.S. EPA  
 Rob Mullaney U.S. DOJ