

# SOUTHERN ENVIRONMENTAL LAW CENTER

Telephone 205-745-3060

2829 2ND AVENUE SOUTH, SUITE 282  
BIRMINGHAM, AL 35233-2838

Facsimile 205-745-3064

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February 14, 2019

***Via e-mail: vwsettlement@adeca.alabama.gov***

Alabama Department of Economic and Community Affairs  
P.O. Box 5690  
Montgomery, AL 36103-5690

**Re: Comments on the Alabama Proposed Beneficiary Mitigation Plan**

Dear Sir or Madam:

The Southern Environmental Law Center (SELC), on behalf of Gasp, Inc., Energy Alabama, and itself (together, the “Organizations”), submits the following comments on the Alabama Department of Economic and Community Affairs (ADECA) draft Volkswagen (VW) Environmental Mitigation Trust (mitigation trust fund), Beneficiary Mitigation Plan (draft plan), which was posted on ADECA’s website on December 27, 2018 and discussed at a public hearing on January 15, 2019.

The Southern Environmental Law Center is a non-profit environmental organization dedicated to the protection of natural resources, communities and special places in a six-state region of the Southeast. SELC advocates for clean air and clean transportation solutions at the federal, state, and local levels. Energy Alabama works to accelerate Alabama’s transition to sustainable energy. Energy Alabama accomplishes its mission by educating at all levels, informing smart energy policy, building the next generation workforce, and providing technical assistance to deploy more sustainable energy. Gasp is a non-profit health advocacy organization with a mission to advance healthy air and environmental justice throughout Alabama through education, advocacy and collaboration.

We greatly appreciate the opportunity to submit these comments. The mitigation trust fund offers an exciting opportunity for Alabama to make meaningful advances toward the electrification of its transportation system. Electrification is essential to both improve local air quality and make essential reductions in greenhouse gases. As outlined in more detail below, we commend ADECA for proposing to spend the maximum allowable percentage of its mitigation trust fund allotment on electric vehicle charging stations, and we recommend that Alabama spend the remainder of its funding on electric transit and school buses, as well as electric airport ground support equipment. In addition, we recommend that Alabama prioritize funding for communities that have been disproportionately impacted by air pollution. Finally, we recommend that ADECA provide 100% funding for government-owned projects, maximize DERA funding, clarify how projects will be selected, and require emissions reduction information to be made publicly available.

## **I. Introduction**

In considering how to spend its allotted amount from the mitigation trust fund, Alabama should prioritize projects that will directly mitigate the harm caused by Volkswagen's emissions-cheating scheme. The excessive and unlawful diesel emissions caused by VW's actions worsened air quality and heightened health risks in Alabama's cities. VW's deception has also increased Alabama's greenhouse gas emissions that contribute to climate change.

Diesel exhaust presents a serious health risk. Long-term inhalation can cause cancer and other lung damage, and even short-term exposure can cause irritation and inflammation, exacerbating allergies and respiratory illnesses such as asthma.<sup>1</sup> Diesel exhaust includes particulate matter, which can cause premature death in people with heart or lung disease; nonfatal heart attacks; irregular heartbeat; aggravated asthma; decreased lung function; and increased respiratory symptoms, such as irritation of the airways, coughing or difficulty breathing.<sup>2</sup> Diesel exhaust also includes nitrogen oxides (NOx).<sup>3</sup> Like particulate matter, NOx causes and aggravates a range of respiratory diseases.<sup>4</sup> When exposed to sunlight in the atmosphere, NOx emissions go through chemical reactions to produce ozone (O<sub>3</sub>) at ground level. While ozone is a normal part of the upper atmosphere, at ground level it is associated with a variety of detrimental human health and ecological effects.<sup>5</sup> Ozone is more commonly known as "smog."

Unfortunately, the number of people with asthma and other respiratory illnesses continues to climb. One in ten Alabamians now suffer from asthma, and 18.2% of youth in grades 9-12 have asthma.<sup>6</sup> On average, minorities and low-income communities suffer greater exposure to poor air quality than the general population.<sup>7</sup>

## **II. Allocation Recommendations**

The Organizations offer the following recommendations for modifying the percentages allotted to various categories in the draft plan.

### **A. Dedicate the maximum of 15 percent of mitigation trust funds for electric vehicle charging stations.**

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<sup>1</sup> U.S. Env'tl Protection Agency, Health Assessment Document for Diesel Engine Exhaust, EPA/600/8-90/057F ii (2002), <https://cfpub.epa.gov/ncea/risk/recordisplay.cfm?deid=29060>.

<sup>2</sup> *Health and Environmental Effects of Particulate Matter (PM)*, U.S. Env'tl Protection Agency, <https://www.epa.gov/pm-pollution/health-and-environmental-effects-particulate-matter-pm> (last visited Feb. 13, 2019).

<sup>3</sup> U.S. Env'tl Protection Agency, Health Assessment Document for Diesel Engine Exhaust, EPA/600/8-90/057F ii (2002), <https://cfpub.epa.gov/ncea/risk/recordisplay.cfm?deid=29060>.

<sup>4</sup> *Effects of NO<sub>2</sub>*, U.S. Env'tl. Protection Agency, <https://www.epa.gov/no2-pollution/basic-information-about-no2#Effects> (last visited Feb. 13, 2019).

<sup>5</sup> *Ozone Pollution*, U.S. Env'tl. Protection Agency, <https://www.epa.gov/ozone-pollution> (last visited Feb. 13, 2019).

<sup>6</sup> *Alabama Asthma Program*, Ala. Dep't of Pub. Health, <https://www.alabamapublichealth.gov/asthma/index.html> (last visited Feb. 13, 2019).

<sup>7</sup> *Disparities in the Impact of Air Pollution*, Am. Lung Ass'n, <http://www.lung.org/our-initiatives/healthy-air/outdoor/air-pollution/disparities.html> (last visited Feb. 13, 2019).

Light-duty vehicles are the single greatest contributor of NOx emissions in Alabama.<sup>8</sup> Electrification of the light-duty vehicle fleet is the most effective way to mitigate emissions from this source category. However, access to electric vehicle charging is a barrier that must be overcome for EV adoption to rapidly expand in Alabama. Therefore, we support ADECA's decision to allocate the maximum allowable percentage of its mitigation trust funds to electric vehicle charging stations (EVCS) and recommend that ADECA keep the 15% to EVCS as it is set forth in the draft plan.

1. Electric vehicle investment benefits the environment consistent with the directives of the mitigation trust.

Electric vehicles ("EVs") have two important environmental benefits. First, EVs produce fewer greenhouse gas emissions than their gasoline and diesel counterparts on a mile-by-mile basis, reducing greenhouse gas emissions.<sup>9</sup> When considering the life-cycle emissions of a vehicle—meaning the emissions associated with producing and manufacturing the vehicle parts, like batteries, in addition to the emissions it produces while driving—electric vehicles far outpace their traditional counterparts, resulting in as much as *50 percent fewer* greenhouse gas emissions.<sup>10</sup> In Alabama, when considering our sources of electricity, an all-electric vehicle emits an average of 3,931 pounds of CO<sub>2</sub> equivalent annually while a conventional vehicle emits an average of 11,435 pounds of CO<sub>2</sub> equivalent annually.<sup>11</sup>

Second, EVs produce no localized air pollution such as the particulate matter, NOx and ozone discussed above. As such, EVs can help to significantly improve air quality in urban areas and around sensitive populations where vehicular emissions would otherwise be high and concentrated.

EVs also provide opportunities to increase the electric grid's stability and efficiency, and make it easier to integrate renewable energy into the grid. For example, EV charging can be encouraged during off-peak times and EVs can potentially serve as electric storage.

Globally, EVs are on the rise. As battery technology has advanced, the price of batteries needed to power EVs has decreased dramatically over the past decade while energy density has increased almost as rapidly.<sup>12</sup> The global EV stock is now well past one million,<sup>13</sup> and we are seeing growth in Alabama. According to the Alliance for Automobile Manufacturers, there have

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<sup>8</sup> State of Alabama, Volkswagen Environmental Mitigation Trust Beneficiary Mitigation Plan, at 5 (Dec. 27, 2018), <http://adeca.alabama.gov/Divisions/energy/vw/Pages/Mitigation-Plan.aspx> [hereinafter Draft Plan]; Ala. Dep't of Econ. & Cmty. Affairs, Powerpoint Presentation: Volkswagen Settlement Ala. Beneficiary Mitigation Plan, Public Hearing, at p. 15 (Jan. 11, 2019).

<sup>9</sup> See *Emissions from Hybrid and Plug-In Electric Vehicles*, U.S. Dep't of Energy Alternative Fuels Data Center, [https://afdc.energy.gov/vehicles/electric\\_emissions.html](https://afdc.energy.gov/vehicles/electric_emissions.html) (last visited Feb. 13, 2019).

<sup>10</sup> Rachael Nealer, David Reichmuth, Don Anair, *Cleaner Cars from Cradle to Grave: How Electric Cars Beat Gasoline Cars on Lifetime Global Warming Emissions*, Union of Concerned Scientists, at 1 (Nov. 2015), <https://www.ucsusa.org/clean-vehicles/electric-vehicles/life-cycle-ev-emissions#.WkPKh1WnGM8>.

<sup>11</sup> *Emissions from Hybrid and Plug-In Electric Vehicles*, U.S. Dep't of Energy Alternative Fuels Data Center, [https://afdc.energy.gov/vehicles/electric\\_emissions.html](https://afdc.energy.gov/vehicles/electric_emissions.html) (last visited Feb. 13, 2019).

<sup>12</sup> International Energy Agency, *Global EV Outlook 2016* at 5 (2016), [https://www.iea.org/publications/freepublications/publication/Global\\_EV\\_Outlook\\_2016.pdf](https://www.iea.org/publications/freepublications/publication/Global_EV_Outlook_2016.pdf).

<sup>13</sup> *Id.*

been over 454 electric vehicles sold in Alabama in 2018 (through August), up from just 73 sold in 2011.<sup>14</sup> In total, there have been over 2,075 EVs sold in Alabama from 2011 to August 2018.<sup>15</sup>

2. Alabama should invest in a study of the most beneficial locations for charging infrastructure and utilize mitigation funds for a coordinated major project.

Unfortunately, while the growth of EVs continues in Alabama, there is a relative dearth of charging stations. For instance, there is only one publicly-available DC fast charging station in the Birmingham metropolitan area, located in Hoover, Alabama at Benton Nissan, and according to the EV charging website PlugShare, there are only seven in the entire state.<sup>16</sup> This makes it very difficult if not impossible for EV drivers to take trips around the state. In order for Alabama to encourage greater adoption of EVs, it is imperative that the state invest in additional charging stations. The mitigation trust fund can jumpstart the growth of the EV industry.

To ensure the most effective use of the mitigation trust fund, we suggest that Alabama invest in an analysis of where charging stations will be most beneficial. The study should include research into both where EVs are most used currently as well as identify the greatest barriers to widespread adoption and usage. The state should consider placing fast charging stations along major highways such as I-20, I-65 and I-59, as well as close to urban centers, multi-unit dwellings and workplaces. In addition, we recommend that environmental justice and equity be guiding concerns in determining where to local charging stations—considering both how we can use the installation of charging stations to protect vulnerable populations from pollution and how such stations can be installed to enable lower income communities to adopt EVs as their price continues to fall.

This study will help guide both the public and private sectors in the development of Alabama's charging network in the coming years. However, we suggest that the use of mitigation trust funds to establish charging infrastructure be focused on one coordinated major project rather than spread piecemeal throughout the state. Such a project should be well publicized to help raise the profile of EVs, and demonstrate Alabama's commitment to transportation electrification.

**B. Invest in electrification of transit and school buses.**

The draft plan proposes to allocate 25% of funds to cleaner transit buses and school buses.<sup>17</sup> We suggest that Alabama devote a greater share of funds to these uses and that these funds be primarily if not exclusively for electrification of these vehicles. For instance, in Colorado, the Governor has announced that all of the remaining VW settlement money

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<sup>14</sup> *Advanced Technology Vehicle Sales Dashboard*, All. of Automobile Mfrs., <https://autoalliance.org/energy-environment/advanced-technology-vehicle-sales-dashboard/> (last visited Feb. 13, 2019).

<sup>15</sup> *Id.*

<sup>16</sup> See PlugShare, <https://www.plugshare.com> (last visited Feb. 13, 2019). This figure includes CHAdeMO and CCS chargers. There are several Tesla supercharger charging stations in Alabama, but those can only be used by Tesla drivers and are not compatible with other EVs.

<sup>17</sup> Draft Plan at 7.

(Colorado was allocated almost \$70 million) will go toward supporting vehicle electrification, which includes transit buses, school buses and trucks.<sup>18</sup> In South Carolina, the trust beneficiary has chosen to spend 80-100% of its initial funding on buses (although it is not specifically for electric school buses, for which we advocate).<sup>19</sup>

The mitigation trust funds provide an incredible opportunity to reduce pollution around our most vulnerable population—children—through investment in electric school buses. Children are disproportionately affected by pollution.<sup>20</sup> Over 375,000 students in Alabama ride the bus to and from school every day,<sup>21</sup> and these students often congregate after school in lines waiting for their bus to arrive. While buses are idling during loading and unloading, children breathe harmful pollutants into their developing lungs. Students in our urban areas are particularly affected because they are already often exposed to impaired air quality due to the concentration of emissions sources.<sup>22</sup> By investing in electric school buses Alabama can not only improve the air our children breathe, but we will also reduce the cumulative effects of air pollutants that contribute to ozone depletion and climate change.

These buses should be electric. As described above, electrification of vehicles is important both for improving local air quality and for reducing greenhouse gas emissions. Electrification is the best way to move Alabama into a clean, energy independent future. As such, we urge the state to spend all of the remaining mitigation trust funds on either new or replacement electric vehicles and not on alternate-fueled engines such as new diesel and compressed natural gas. Electrification of vehicle fleets is a good investment for Alabama. Although the cheaper upfront costs for new diesel and alternate-fueled engines may be attractive, Alabama should consider the lifetime costs of these vehicles. While upfront costs may initially be higher than alternate-fuel vehicles, the lifetime costs, including fuel and maintenance, are significantly lower.<sup>23</sup> In addition, purchasing electric buses makes economic sense because the mitigation trust funds will contribute to covering that upfront cost, while subsequent fuel and maintenance costs will fall on state and its residents.

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<sup>18</sup> Colo. Exec. Order B 2019 002 at Part II.C., (Jan. 17, 2019),

[https://www.colorado.gov/governor/sites/default/files/b\\_2019-002\\_zev.pdf](https://www.colorado.gov/governor/sites/default/files/b_2019-002_zev.pdf).

<sup>19</sup> S.C. Dep't of Ins., *Beneficiary Mitigation Plan for the State of South Carolina under the Volkswagen Environmental Mitigation Trust* at 9 (Dec. 6, 2018), <https://doi.sc.gov/DocumentCenter/View/11323/Beneficiary-Mitigation-Plan>.

<sup>20</sup> J. Dixon, *Kids need clean air: air pollution and children's health*, *Fam. Community Health* (4):9-26 (Jan. 2002), <https://www.ncbi.nlm.nih.gov/pubmed/11772346>; *Clean School Bus*, U.S. Env'tl Protection Agency, <https://www.epa.gov/cleandiesel/clean-school-bus> (last visited Feb. 13, 2019).

<sup>21</sup> Morgan Young, *Alabama schools enforce law to protect more than 375,000 bus riders*, *WSFA12 News* (Aug. 9, 2018, 10:56 PM), <http://www.wsfa.com/story/38853922/alabama-schools-enforce-laws-to-protect-more-than-375000-bus-riders/>.

<sup>22</sup> *See About Urban Air Toxics*, U.S. Env'tl Protection Agency, <https://www.epa.gov/urban-air-toxics/about-urban-air-toxics> (last visited Feb. 13, 2019).

<sup>23</sup> *See, e.g.,* Marcacci, Silvio, *Electric Buses Can Save Local U.S. Governments Billions. China's Showing Us How It's Done*, *Forbes* (May 21, 2018, 7:30 AM), <https://www.forbes.com/sites/energyinnovation/2018/05/21/electric-buses-can-save-americas-local-governments-billions-chinas-showing-us-how-its-done/#28ec45125f78>; Muoio, Danielle, *The 'Tesla of Buses' Just Set a Range Record that Could Spell the End for Diesel Buses*, *Business Insider* (Sept. 19, 2017, 10:11 AM), <https://www.businessinsider.com/proterra-sets-1000-mile-range-record-2017-9>.

We recommend that replacement of new electric bus purchases be focused in the urban areas most affected by the VW emissions-cheating scheme. Diesel buses disproportionately impact urban disadvantaged communities, meaning that these communities stand to benefit the most from investments in electrification. Additional study and modeling should be performed to see where fleet turnover could have the greatest impact on both greenhouse gas emission reductions and improvements to local air quality.

Similar to our recommendation above with regard to EV charging stations, we recommend that in pursuing transit and school bus replacements Alabama focus its resources on one or two large programs that will have a strong impact and help raise the profile of electrification and Alabama's commitment to a clean energy future. Directing funds to significant fleet replacements, rather than spreading the funds around in a less impactful way will also ensure maximization of the investment through economies of scale, reductions in administration costs, and shared utilization of associated infrastructure such as charging stations.

### **C. Invest in electrification of airport ground support.**

While we suggest that most, if not all the settlement funds be spent on EV charging stations and electric bus purchases and replacements, there is some benefit to directing a small portion of the funds toward the electrification of airport ground support equipment. Currently, ADECA proposes to allocate 4.5% of the funds (\$0.97M) toward airport ground support equipment.<sup>24</sup> We support this amount of funding.

NOx emissions directly impact the formation of regional ozone. Reducing the most polluting vehicles, during the most reactive times of the day, has proven crucial to reducing the formation of overall ozone in our urban areas. Funding electric conversion of tier 0-2 diesel powered ground support equipment could provide the largest NOx reductions for the dollar spent, and reduce operating and maintenance costs more so than diesel or gas replacements.<sup>25</sup>

A recent project in Charlotte, North Carolina, demonstrates the value in investing in the elimination of mobile source pollution from ground support equipment at the airport. In Charlotte, over \$650,000 was invested to replace 65 pieces of airport ground support equipment with electric equipment. Thus far, this initiative has yielded over 227 tons in NOx reductions.<sup>26</sup> Over the life of the equipment, the project is expected to reduce NOx by over 460 tons. The program has had a significant impact on reducing regional ozone formation and led to a designation of attainment for ozone in the Charlotte region this year.

Here in Alabama, we are on our way to making our airport ground support equipment cleaner. At the Birmingham Shuttlesworth International Airport, the Birmingham Airport

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<sup>24</sup> Draft Plan at 7.

<sup>25</sup> Airlines for Am., Airports Council Int'l, Fed. Aviation Admin., & Nat'l Ass'n of State Aviation Officials, *Volkswagen Settlement, Applicability of Funds to Airports and Airlines* (2017), [https://www.faa.gov/airports/environmental/vw\\_settlement/media/vw\\_settlement\\_presentation.pdf](https://www.faa.gov/airports/environmental/vw_settlement/media/vw_settlement_presentation.pdf).

<sup>26</sup> *Grants to Replace Aging Diesel Engines, Quarterly Project Summary, 2018 – 4<sup>th</sup> Quarter*, Mecklenburg County Air Quality, at 14, <https://www.mecknc.gov/LUESA/AirQuality/MobileSources/Documents/GRADEProjectSummary.pdf> (last visited Feb. 13, 2019).

Authority recently installed 27 electric charging stations that will support ground-service equipment.<sup>27</sup> Including funding for airport ground support equipment will help continue the push toward using electric vehicles at the airport.

### **III. Additional Recommendations**

#### **A. Allow government entities to receive 100% of funds for electric vehicles.**

ADECA's draft plan allows government owned eligible buses to receive up to 80% of the cost of repowering a vehicle with a new all-electric engine, and up to 80% of the cost of a new all-electric vehicle. While the Organizations applaud ADECA for providing a higher percentage for electric vehicles than new diesel buses, we recommend that ADECA cover 100% of the costs of electrifying government owned buses, either by repowering the bus or through purchasing a new bus.

The mitigation trust fund allows coverage of up to 100% of the funding for Government owned, eligible projects, for both large trucks (category 1) and buses (category 2). For non-government owned equipment, a match is required. The term "Government" means "a State or local government (including a school district, municipality, city, county, special district, transit district, joint powers authority, or port authority, owning fleets purchased with government funds) . . . ."<sup>28</sup>

Many of our municipalities and school districts struggle to make ends meet. This is particularly true in low-income communities. They simply cannot compete with private companies who are able to match funds to receive the mitigation trust funds. To ensure the funds are used to mitigate the harm caused by VW's actions, it is imperative that ADECA fully fund projects in communities that would not be able to afford the vehicles otherwise.

#### **B. Maximize DERA funding.**

The Diesel Emissions Reduction Act ("DERA") Clean Diesel Funding Assistance Program provides funding to eligible parties<sup>29</sup> for projects that reduce emissions from existing diesel engines.<sup>30</sup> We commend Alabama for allocating 4.5% of the Mitigation Trust funds to the DERA program. By using VW settlement funding and DERA program funds, Alabama could receive additional funding for electrification of its mobile sector. VW settlement funds may be used for the DERA Program's voluntary non-federal match option. We urge ADEM to apply for

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<sup>27</sup> Press Release, Birmingham Airport Authority, BHM adding electric chargers for ground support vehicles, <https://www.flybirmingham.com/bhm-adding-electric-chargers-for-ground-support-vehicles/> (last visited Feb. 13, 2019)

<sup>28</sup> Env'tl. Mitigation Trust Agreement for State Beneficiaries, App. D-2 at 12, *United States v. Volkswagen AG* App. D-2, No. 3:16-cv-00295 (N.D. Cal. Oct. 2, 2017).

<sup>29</sup> See *Eligible Applicants*, U.S. Env't'l Protection Agency, <https://www.epa.gov/cleandiesel/clean-diesel-national-grants#applicants> (last visited Feb. 12, 2019).

<sup>30</sup> *Diesel Emission Reduction Act (DERA)*, U.S. Env't'l Protection Agency, <https://www.epa.gov/cleandiesel/learn-about-clean-diesel#dera> (last visited Feb. 12, 2019); see also *Eligible Uses of Funding*, U.S. Env't'l Protection Agency, <https://www.epa.gov/cleandiesel/clean-diesel-national-grants#funding-costshare> (last visited Feb. 12, 2019).

program funding through DERA from the EPA, and then use Mitigation Trust funds to participate in the DERA voluntary match program. As a result, the EPA will increase their DERA Program funding by an additional 50%.<sup>31</sup>

Because the goal of the DERA program is to reduce NOx emissions, many of the eligible programs are comparable to those outlined in the VW Settlement. For example, funds could be used to assist low-income school districts to purchase electric buses when they are in need of additional buses. Similarly, DERA funds could be used to assist local authorities in replacing diesel buses with electric ones. Applying for DERA funds is an easy way to extend the impact of Alabama's share of the Mitigation Trust Funds.

### **C. Clarify the selection process for projects.**

There is no information in the draft plan regarding how ADECA will select projects that will receive VW funds. If ADECA moves forward with the draft plan without providing clarification on the selection process, it should open a new public comment period once it determines the criteria for selection.

The Organizations recommend that priority be given to projects that will provide the most benefit over the lifetime cost of the project, meaning that they will offset the most air pollution on a NOx lb/\$ ratio. Also, the Organizations request that ADECA prioritize funding in disadvantaged urban communities, particularly those that have been disproportionately impacted by air pollution.

### **D. Require public reporting of emission reductions.**

The Organizations ask ADECA to publicly track and report emissions reductions that result from projects funded through the mitigation trust funds. Doing so will show the public that the trust funds are being used to reduce air pollution throughout Alabama. Electrification provides a benefit in that most electric vehicle chargers meter the energy consumed at the charger. Metering therefore allows ADECA to track the energy consumption of chargers it has funded and to quantify the related air quality improvements.

Investing in projects that make data publicly available further encourages private investment in projects that have quantifiable benefits. It also provides interested members of the public a basis for which to make decisions for their own benefit. We believe measurable results can provide substantial support for public education efforts of organizations and government across Alabama.

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<sup>31</sup> *Frequently Asked Questions (FAQ) For Beneficiaries to the Volkswagen Mitigation Trust Agreements*, Air Enforcement Division, Office of Enforcement and Compliance Assurance, U.S. Env'tl. Protection Agency, at 6 (Oct. 2017), <https://www.epa.gov/sites/production/files/2017-10/documents/faq-ben.pdf>.

**IV. Conclusion**

We believe the VW Mitigation Trust Fund provides an important opportunity for Alabama to raise the profile of electrification in the State. We hope the use of these funds are just the beginning of investment in electrification in our state and our path to a cleaner future. Thank you for the opportunity to submit these comments. Please feel free to call me at 205-745-3060 with any questions or to discuss these ideas in more detail.

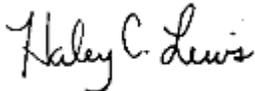
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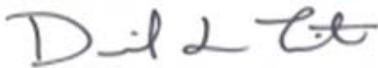
Christina Andreen  
Staff Attorney  
Southern Environmental Law Center



Michael Hansen  
Executive Director  
Gasp



Haley Lewis  
Staff Attorney  
Gasp



Daniel Tait  
Chief Operating Officer  
Energy Alabama