COMMENTS TO TCEQ REGARDING
VOLKSWAGEN SETTLEMENT BENEFICIARY ADMINISTRATION

Background
The Volkswagen Clean Air Act Civil Settlement was created to help offset emissions from 500,000 Volkswagen diesel vehicles that were produced between 2009 and 2015 and included “defeat devices” that resulted in the emission of significantly higher levels of NOx during normal operations than were permitted under federal law. The exposure of this fraudulent activity led to several settlements between Volkswagen and EPA that require Volkswagen to spend up to $14.7 billion to compensate consumers and fund activities to mitigate the excess pollution emitted by these vehicles. $2.7 billion of this total amount is being used to establish an Environmental Mitigation Trust (also known as the VW Settlement Trust or the Settlement) which can be used by states and territories to invest in transportation-related projects that will reduce mobile source NOx emissions.

The VW Settlement Trust’s effective date occurred on October 2, 2017. For a state to take advantage of the Settlement fund, that state must appoint a beneficiary agency to be responsible for setting funding priorities and policies as well as dispersing funding to program participants. On December 1, 2017, the State of Texas appointed TCEQ as the statewide beneficiary organization. To assist with the development of these funding priorities and policies for the Settlement in the State of Texas, TCEQ is accepting comments and suggestions from stakeholders statewide. To this end, H-GAC staff has been coordinating with regional stakeholders as well as other regional agencies throughout the State to develop of recommendations to TCEQ regarding the implementation of the Settlement.

Current Situation
H-GAC’s recommendations regarding the beneficiary agreement are as follows:

1. **Allow regional governments such as Metropolitan Planning Organizations (MPOs), Councils of Government (COGs), and Clean Cities Coalitions to administer the dispersal of funds on a regional basis through third-party contracts.** Allowing local control of these funds will give agencies such as H-GAC the ability to fund projects that can be tailored to provide the most benefit to their individual region. Regional agencies have strong existing ties with local stakeholders and governments. Due to already existing relationships, these agencies have keen insights into local conditions as well as knowledge of already existing programs and funding sources. By leveraging these relationships and local knowledge, regional governments are the most natural conduit to efficiently and effectively disperse VW Settlement funds within a given region.

   In addition, it is likely that efficiencies resulting from a smaller organizational footprint will enable regional agencies to pass a larger portion of the settlement funds directly to recipients than would be possible through direct State administration due to the nature of
these smaller organizations and the associated lower overhead. These agencies have already negotiated reasonable cognizant agency rates.

2. **For third-party contracts, allow use of Settlement funds for administrative and outreach activities.** To better implement programs with a regional focus, regional subgrant agencies (such as COGs and MPOs as detailed in Item 1) should have access to Settlement funds for administration and outreach. This additional funding will encourage regional entities to provide direct assistance to local grantees to help better understand the available options and recommend the most cost effective and operationally efficient technologies and equipment available under the program.

3. **Support funding the widest possible range of mitigation actions as supported under the final VW Settlement consent decree.** Each region within the State of Texas has a unique economic situation and emissions-related needs. Allowable projects that may be ideal for one region may not be applicable or may not efficiently help to reduce emissions in another region within the State of Texas. Allowing the broadest possible set of Settlement-related projects will give each region the flexibility to focus on those projects that will work best within the prevailing regional conditions without placing undue limitations on the list of available projects.

4. **Focus the dispersal of Settlement funding within nonattainment and near-nonattainment areas.** Due to pre-existing high emissions, nonattainment and near-nonattainment areas are the regions that need the most assistance to meet both regional and statewide emissions goals. These high ozone concentrations result from significant emissions of the ozone precursors NOx and VOC. Since the efforts of the VW Settlement are specifically intended to focus on projects that reduce NOx emissions, focusing the efforts of the VW Settlement on those regions that already record levels of ozone and its precursors can help to maximize the impacts of any reductions that result from Settlement funded projects.

5. **Allow local governments to receive 100 percent of VW Settlement funds without requiring additional cost share to offset grants.** Many regions within the state have recently seen significant effects from natural disasters. This is especially true in the communities throughout the Gulf Coast Region that were adversely impacted by Hurricane Harvey. Because of in-process investments in rebuilding and renovation made necessary due to storm damages, these governments will likely have ongoing difficulties in budgeting sufficient funds to take part in the VW Settlement program if cost share is required for participation. H-GAC stakeholders feel strongly that these areas should not be disadvantaged due to ongoing financial constraints beyond their control and that local governments not be subject to cost share requirements in these areas.
6. **Authorize grantees to replace vehicles destroyed in recent natural disasters.** For the Gulf Coast Region, it is recommended that the State consider replacing vehicles that were operational when the consent decree was initially granted on October 25, 2016 but were destroyed by Hurricane Harvey. These vehicles and equipment pieces that were removed from service involuntarily, but were active during the time of the Volkswagen violations should be considered eligible for this program. Like the recommendation in Item 5, this would ensure that local recipients would not be penalized due to unforeseen and unplanned circumstances.

7. **TCEQ should consider participating in the EPA State Clean Diesel Grant Program.** It is recommended that TCEQ revise the agency’s stance on participating in the EPA State Clean Diesel Grant Program. By participating in this state version of the Diesel Emissions Reduction Act (DERA), Texas would have the opportunity to exercise the “DERA Option” in the VW Settlement which would allow the State to use Settlement funds as non-federal voluntary match on State-offered diesel reduction grants. In addition to making additional funds available for emission reduction, this action could potentially allow Settlement funds to address a wider spectrum of projects than is allowable under the guidelines of the Settlement. In lieu of participation in the State DERA program, TCEQ should focus TERP funding on vehicles and equipment not included in the VW Settlement. This can include construction equipment or maritime emissions treatment systems.

**Action Requested**
Request RAQPAC authorize the drafting of a letter to the Texas Commission on Environmental Quality by H-GAC with recommendations regarding the state beneficiary agreement of the Volkswagen Clean Air Act Civil Settlement and the transmittal of said letter to the H-GAC Board of Directors.