United States Environmental Protection Agency

Office of Transportation and Air Quality
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The DERA Option: Eligible Mitigation Action #10 under the Volkswagen Settlement, Appendix D

Factsheet for States, District of Columbia and Puerto Rico

Background

The United States government and Volkswagen (VW) have resolved allegations that VW violated the Clean Air act by selling approximately 590,000 vehicles equipped with defeat devices. As a part of this settlement, VW is required to provide $2.7 billion for the 2.0 liter violating engines and $225 million for the 3.0 liter violating engines to an environmental trust to fully remediate the amount of excess NOx emissions from the affected vehicles. There are two mitigation trust agreements: one for states, Puerto Rico, and the District of Columbia and one for federally recognized Indian tribes. The trusts will be administered by Wilmington Trust, an independent trustee. The provisions of the mitigation trusts are found largely in paragraphs 14–19 of the Consent Decree and Appendix D to the Consent Decree. The purpose of the mitigation trusts is to fund eligible mitigation actions that replace diesel emission sources with cleaner technology, thereby offsetting the excess emissions of nitrogen oxides (NOx) caused by the violating 2.0 and 3.0 liter vehicles. This mitigation work is in addition to the emission reductions achieved by requiring Volkswagen to buy back or modify the violating 2.0 and 3.0 liter vehicles.

The settlement is structured to provide the states, Puerto Rico, the District of Columbia, and federally recognized Indian tribes with the ability to select and implement appropriate mitigation actions funded by Volkswagen. Appendix D-1B to the Consent Decree provides the allocation of funds, under which no state receives less than $8.125 million and Indian tribes receive a separate allocation of approximately $59 million. Appendix D-2 provides a broad array of Eligible Mitigation Actions (EMAs) that beneficiaries can implement. Beneficiaries must elect to become beneficiaries within 60 days after the executed trust agreements have been filed with the Court (Trust Effective Date). Beneficiaries have 10 years from the Trust Effective Date to request their allocation and implement mitigation actions.

Eligible Mitigation Actions 1-9 may be implemented directly by the beneficiary**;** eligibility determinations and funding requests under EMAs 1-9 will be handled by the beneficiary. EMA Option 10 (DERA Option), allows states and tribes to use mitigation trust funds under specific EPA Diesel Emissions Reduction Program (DERA) grants. This document serves to distinguish between EMAs 1-9 and the DERA Option, as well as provide guidance for those states choosing to implement the DERA Option. For the purposes of this document, the term “state” will be used to describe the 50 states, the District of Columbia and Puerto Rico. Separate guidance will be provided for tribes.

Eligible Mitigation Actions

The information in Table 1 summarizes the eligible vehicles and equipment, emissions reduction activities, and applicable funding limits allowed under EMAs 1-9 versus those allowed under the DERA Option. Many types of projects are eligible under both EMAs 1-9 and the DERA Option. However, there are some differences between the options in terms of project eligibility and funding limits for certain types of projects. Activities allowed under the DERA Option, that are not eligible under EMAs 1-9, are highlighted below in Table 1. Beneficiaries may split their Mitigation Trust Funds between EMAs 1-9 and the DERA Option as they choose.

Under VW EMAs 1-9, only a certain portion of the cost of an activity is eligible for funding through the trust. The mitigation trust funding limits (percentages) shown in Table 1, column 1, represent the maximum portion of the costs that can be covered with mitigation trust funds under EMAs 1-9. The rest of the cost must be borne from other sources of funds.

Under VW EMA 10, the DERA Option, only a certain portion of the cost of an activity is eligible for funding under EPA's State Clean Diesel Grant Program. The DERA funding limits (percentages) shown in Table 1, column 2, represent the maximum portion of the costs that can be covered with a combination of DERA funds and any non-federal voluntary matching funds provided by a grantee. The portion of the costs that exceed the DERA funding limit is referred to as the "mandatory cost-share," and is the responsibility of the grantee. Voluntary and mandatory cost-shares are discussed in more detail below under "Implementing the DERA Option."

Where the funding limit in Table 1 is listed as a range, the funding limit varies based on the specific type of engine purchased (e.g. conventional diesel vs electric). Full details on EMAs 1-9 may be found in Appendix D, and full details on eligible DERA activities may be found in the applicable EPA State Clean Diesel Grant Program Information Guide. Additionally, a more detailed version of the information provided in Table 1, containing more specific eligibility information and funding limits, is available in *Detailed Comparison of Volkswagen Eligible Mitigation Action 1-9 and Eligible Mitigation Action #10 (DERA Option)* at www.epa.gov/cleandiesel/volkswagen-vw-settlement-dera-option.

Table 1. Comparison of EMAs 1-9 and EMA 10 (DERA Option)

<table>
<tr><th>VW EMAs 1-9
Eligible Activities and
Mitigation Trust Funding Limits</th><th>VW EMA 10 (DERA Option)
Eligible Activities and
DERA Funding Limits*</th></tr>
<tr><td>Class 4-7 Local Freight Truck
Class 8 Local Freight Trucks
Class 8 Port Drayage Trucks

Engine Model Year 1992-2009
Engine Replacement: 40-75% non-gov, 100% gov
Vehicle Replacement: 25-75% non-gov, 100% gov

Engine Model Year 2010-2012 only where State regulations already require upgrades to 1992-2009 engine model year trucks
Engine Replacement: 40-75% non-gov, 100% gov
Vehicle Replacement: 25-75% non-gov, 100% gov</td><td>Class 5-8 All Diesel Highway Vehicles
Class 8 Diesel Drayage Trucks

Engine Model Year 1996-2009
Engine Replacement: 40-60%
Vehicle Replacement: 25-45% (50% for Dray)
Retrofits +/- Aero, LRR Tires: 100%
Idle Reduction (no APUs or generators on 2007 or newer model year engines): 25% (100% w/ retrofit)
Clean Alternative Fuel Conversion: 40%

Engine Model Year 1996 or newer
Engine Replacement (All-electric): 60%
Vehicle Replacement (All-electric): 45% (50% for Dray)
Clean Alternative Fuel Conversion: 40%
Clean Alternative Fuel Conversion: 40%</td></tr>
<tr><td>VW EMAs 1-9
Eligible Activities and
Mitigation Trust Funding Limits</td><td>VW EMA 10 (DERA Option)
Eligible Activities and
DERA Funding Limits*</td></tr>
<tr><td>Class 4-8 School Bus
Class 4-8 Shuttle or Transit Bus

Engine Model year 2009 or Older
Engine Replacement: 40-75% non-gov, 100% gov
Vehicle Replacement: 25-75% non-gov, 100% gov

Engine Model Year 2010-2012 only where State regulations already require upgrades to 1992-2009 engine model year buses
Engine Replacement: 40-75% non-gov, 100% gov
Vehicle Replacement: 25-75% non-gov, 100% gov</td><td>Type A, B, C, D Diesel School Bus
Class 5-8 Diesel Shuttle, Transit or Other Bus

Engine Model Year 1996-2009
Engine Replacement: 40-60%
Vehicle Replacement: 25-45%
Retrofits +/- Aero, LRR Tires: 100%
Idle Reduction: 25%
Clean Alternative Fuel Conversion: 40%

Engine Model Year 1996 or newer
Engine Replacement (All-electric): 60%
Vehicle Replacement (All-electric): 45%
Clean Alternative Fuel Conversion: 40%</td></tr>
</table>

Freight Switchers 1000+ hours per year Pre-Tier 4 Engine Replacement: 40-75% non-gov,100% gov Vehicle Replacement: 25-75% non-gov, 100% gov	**Diesel Locomotives** 1000+ hours per year Unregulated - Tier 2 Line Haul and Switcher Tier 2+ Switcher Engine Replacement: 40-60% Remanufacture: 40% Vehicle Replacement: 25-45% Retrofits: 100% Idle Reduction/Shorepower: 40% Tier 2+ Line Haul Retrofits: 100% Idle Reduction/Shorepower: 40% Remanufacture: 40%
Ferries/Tugs Unregulated-Tier 2 Ferry and Tug Engines Engine Replacement/Reman/Upgrade: 40-75% non-gov, 100% gov Vehicle Replacement: 25-75% non-gov, 100% gov	**Marine Diesel Engines** 1000+ hours per year Unregulated-Tier 2 Marine Engines Engine Replacement/Reman/Upgrade: 40-60% Vessel Replacement: 25-45%
Ocean Going Vessel and Great Lakes Vessels Shorepower Costs associated with the shore-side system and installation Non-government Owned: 25% Government Owned: 100%	**Marine Shore Power Connection Systems** Costs associated with the shore-side system and installation: 25%
VW EMAs 1-9 Eligible Activities and Mitigation Trust Funding Limits	**VW EMA 10 (DERA Option)** Eligible Activities and DERA Funding Limits*
	Electrified Parking Spaces (EPS) Costs associated with the equipment and installation to provide off-board electrical power to heating/cooling/electrical systems of hoteling trucks, or to plug-in trailer refrigeration systems: 30%
Airport Ground Support Equipment (GSE) Tier 0-Tier 2 Diesel engines Uncertified, or certified to 3 g/bhp-hr or higher emissions, spark ignition engines Engine Replacement (All-electric): 75% non-gov, 100% gov	**Nonroad Diesel Engines** Construction, Cargo Handling (Ports and Airports), Agriculture, Mining, Energy Production 500+ hours per year (250+ hrs for ag pumps) Tier 0-Tier 3 0-50 HP, 2006 and newer

Vehicle Replacement (All-electric): 75% non-gov, 100% gov **Forklifts and Port Cargo Handling Equipment** Forklifts, reach stackers, side loaders, and top loaders with >8000lbs lift capacity Rubber-tired gantry cranes, straddle carriers, shuttle carriers, terminal tractors Engine Replacement (All-electric): 75% non-gov, 100% gov Vehicle Replacement (All-electric): 75% non-gov, 100% gov	51-300 HP, 1996 and newer 301+ HP, 1986 and newer Engine Replacement/Reman/Upgrade: 40-60% Vehicle/Equipment Replacement (Diesel, Alt Fuel, Hybrid): 25-35% Vehicle/Equipment Replacement (All-electric): 45% Retrofits: 100% Engine Replacement (Diesel, Alt Fuel): 40-50% Engine Replacement (All-electric): 60% Reman/Upgrade: 40%
Light Duty Zero Emission Vehicle Supply Equipment A State may use up to fifteen percent (15%) of its allocation of Trust Funds on costs for the acquisition, installation, operation and maintenance of new light duty zero emission vehicle supply equipment for projects as specified in Appendix D-2, EMA #9.	

*Notes:

- Project eligibility criteria and applicable funding limits for the DERA Option are subject to change pending final program guidance issued by EPA for the State Clean Diesel Grant Program. The summarized criteria come from the FY 2019 State Clean Diesel Grant Program Information Guide.
- Items that are highlighted are allowed under the DERA Option, and are not eligible under EMAs 1-9.

Implementing the DERA Option

As defined in Title 2 Code of Federal Regulations Section 200.99, *voluntary committed cost sharing (or matching)* means funds specifically pledged on a voluntary basis in the proposal's budget or the Federal award on the part of the non-Federal entity and that becomes a binding requirement of Federal award. Under the DERA Option, states may use mitigation trust funds as their non-federal voluntary match under EPA's State Clean Diesel Grant Program. Per DERA's statutory authority, if a state provides a voluntary match equal to the base allocation offered by EPA, EPA will provide a matching incentive equal to 50 percent of the base allocation. For example, if EPA offers a base allocation of $200,000 to the state, the state could contribute $200,000 of its Trust Funds as a voluntary match and the state would receive an additional $100,000 in EPA funding as a matching incentive. The total project budget would then be $500,000, not including any mandatory cost-share funds contributed by project partners, fleet owners, or other another source (not Federal or trust funds). See Figure 1 below for an example. In addition to a voluntary match provided by a state in order to receive the EPA matching incentive, a state may contribute mitigation trust funds as a larger voluntary match in order to achieve additional NOx reductions under their State Clean Diesel Program grant. See Figure 2 below for an example.

Figure 1. DERA Option: Trust Funds as Voluntary Match to Receive EPA Matching Incentive

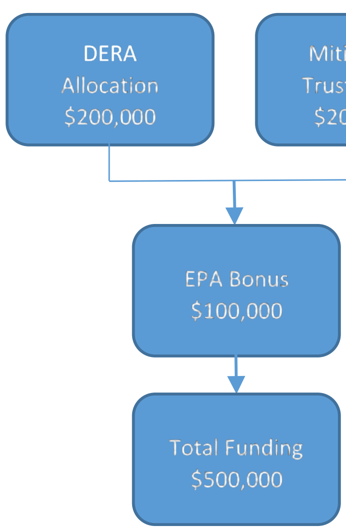
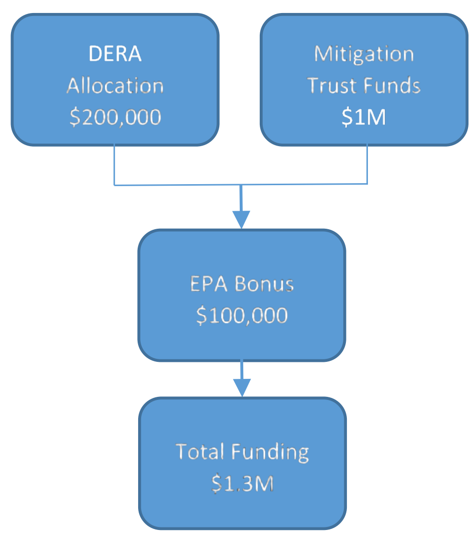


Figure 2. DERA Option: Trust Funds as a Larger Voluntary Match to Achieve Additional NOx Reductions



Any voluntary matching funds provided by the state, including mitigation trust funds, are subject to the DERA funding limits defined in the applicable State Clean Diesel Grant Program guidance. Many of the eligible project types under EPA's State Clean Diesel Grant Program are funded at less than 100% and therefore require a mandatory cost-share. These mandatory cost-share requirements are typically provided by project partners (e.g., fleet owners). **Mitigation trust funds cannot be used to meet the non-federal mandatory cost-share requirements of any DERA grant.** See Table 2 for a summary of DERA funding limits and mandatory cost-shares required under EPA's State Clean Diesel Grant Program.

It is possible that the state entity which is designated as the trust beneficiary is not the same entity that has been designated as the lead state agency which receives and administers DERA funds under the State Clean Diesel Grant Program. In these instances, the beneficiary and the state DERA grantee will need to coordinate project planning, reporting, and funding.

Table 2. Maximum Funding Limits and Minimum Mandatory Cost-Shares for EPA's State Clean Diesel Grant Program

DERA Eligible Activities	**DERA Funding Limits** (DERA Funds + Voluntary Match)	**Minimum Mandatory Cost-Share** (Fleet Owner Contribution)
Exhaust Control Retrofit	100%	0%
Engine Upgrade / Remanufacture	40%	60%
Highway Idle Reduction Bundled with Exhaust Control Retrofit	100%	0%
Stand-alone Highway Idle Reduction	25%	75%
Locomotive Idle Reduction	40%	60%
Marine Shore Power	25%	75%
Electrified Parking Space	30%	70%
Engine Replacement – Diesel or Alternative Fuel	40%	60%
Engine Replacement – Low NOx	50%	50%
Engine Replacement – All-Electric	60%	40%
Vehicle/Equipment Replacement – Diesel or Alternative Fuel	25%	75%
Vehicle/Equipment Replacement – Low NOx	35%	65%
Vehicle/Equipment Replacement – All-Electric	45%	55%
Clean Alternative Fuel Conversion	40%	60%

Note: Project eligibility criteria and applicable funding limits for the DERA Option are subject to change pending final program guidance issued by EPA for the State Clean Diesel Grant Program

How to Apply Trust Funds to State Clean Diesel Grants

At the beginning of the annual State Clean Diesel Grant Program cycle, EPA asks for a Notice of Intent to Participate from each state. After the Notice is submitted, states will submit final workplans and applications to EPA. States choosing to implement the DERA Option may include mitigation trust funds as a non-federal voluntary match in their State Clean Diesel Program applications as shown in Figures 1 and 2 above. States that wish to receive the matching incentive from EPA must include a voluntary match at least equal to the base EPA funding amount on their Notice of Intent to Participate and on their application submitted to EPA.

Note: If DERA funding is not available, then trust funds will not be available under the DERA Option until such time as DERA may be appropriated funding and the state is awarded a new State Clean Diesel Program grant.

Reporting Requirements

Recipients of DERA grants must submit Quarterly Programmatic Reports and a Final Programmatic Report to EPA as required under the DERA grant terms and conditions. A beneficiary implementing the DERA Option may submit its DERA reports to the trustee to fulfill its reporting requirement for any portion of its mitigation trust funds utilized under the DERA Option. Additionally, a beneficiary may submit its state's Final Approved State Clean Diesel Workplan to the trustee as its beneficiary Mitigation Plan and as its funding request for actions funded under the DERA Option.

Resources

Link to Consent Decree: www.epa.gov/enforcement/partial-consent-decree-volkswagen

State Program Guide and information: www.epa.gov/cleandiesel/clean-diesel-state-allocations

Questions

Please submit questions related to the **DERA Option** to the Clean Diesel helpline.
Clean Diesel Helpline: CleanDiesel@epa.gov | 1-866-623-2322

Questions about the rest of the Consent Decree, including EMAs 1-9, should be directed to your state agency designated as the beneficiary.