

VW Settlement DERA Option

National Tribal Forum on Air Quality
Tucson, Arizona
May 1, 2017



Overview

- Today's presentation will:
 - Summarize the partial settlement of the VW Consent Decree
 - Explain Appendix D
 - Explain how Eligible Mitigation Action #10 (DERA Option) will work
 - Answer questions
- This presentation is a summary, the legal documents control the settlement.



Overview of Partial Settlement

- On June 28, 2016, the United States lodged with the court a settlement that partially resolves allegations that Volkswagen violated the Clean Air Act by the sale of approximately 500,000 vehicles containing 2.0 liter diesel engines equipped with defeat devices
- The partial settlement was finalized on October 25, 2016
- Under this settlement and other actions, VW is required to:
 - Buyback or perform an emissions modification on at least 85 percent of the affected vehicles (Appendices A & B)
 - Invest an additional \$2 billion to promote the use of zero emission vehicles and infrastructure (Appendix C)
 - Provide \$2.7 billion to fully remediate the excess NO_x emissions from the affected vehicles (Appendix D)



Appendix D

- VW will fund a \$2.7 billion mitigation trust to fully mitigate the total, lifetime excess NO_x emissions from the 2.0 liter vehicles
- 50 states, DC, Puerto Rico, Federally Recognized Tribes and Native Villages are eligible to become beneficiaries
 - Each beneficiary will receive a specific allocation of funds that can be used for any of the listed eligible mitigation actions
 - The tribal allocation is \$49.6 million
 - The allocation structure is primarily based on the number of registered illegal Volkswagen vehicles within the boundaries of the beneficiary



Eligible Mitigation Projects

1. Class 8 local freight trucks and port drayage trucks
2. School/shuttle/transit bus
3. Locomotive switchers
4. Ferries/tugboats
5. Ocean going vessels shorepower
6. Class 4-7 local trucks
7. Airport ground support equipment
8. Forklifts and cargo handling equipment at ports
9. Light duty ZEV supply equipment (up to 15% of allocation)

DERA Option (#10)

- Option to use Trust Funds for actions not specifically listed but otherwise eligible under DERA
- Beneficiaries may use Trust Funds for their DERA non-federal voluntary match
- State and Tribal DERA grants only

[link to DERA Option fact sheets](#)

<https://www.epa.gov/cleandiesel/vw-settlement-dera-option-supporting-documents5>

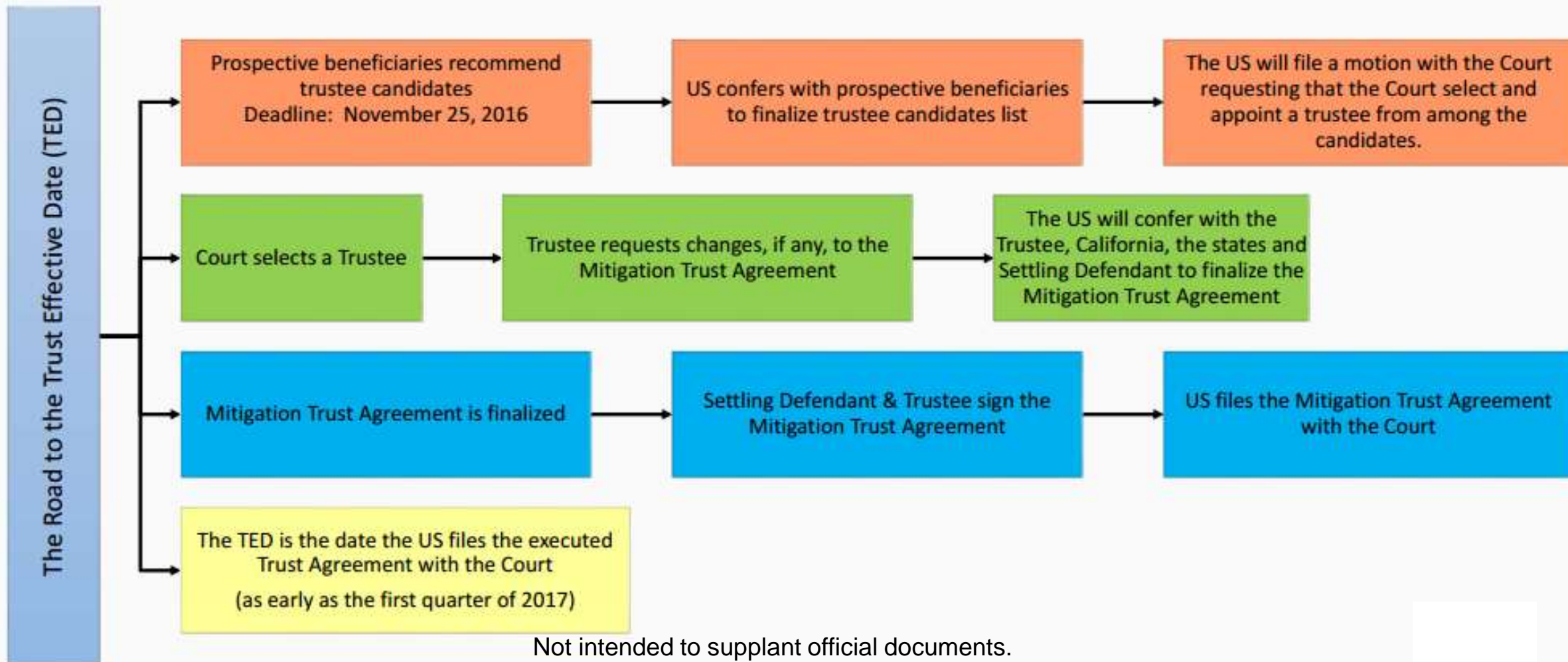


Trust Effective Date

- The Trust Effective Date (TED) is the date the United States files with the Court a finalized Trust Agreement that has been signed by VW and the Trustee
- The TED is important because the deadlines in the Mitigation Trust start from the TED
- Tribes have a September 1 deadline annually (for the next 6 years) to participate in that year's allocation
 - The first deadline to request funding will be the first September 1 after the TED
 - Presumably, September 1, 2017, will be the first deadline



Appendix D- How the Trust Effective Date (TED) is Established





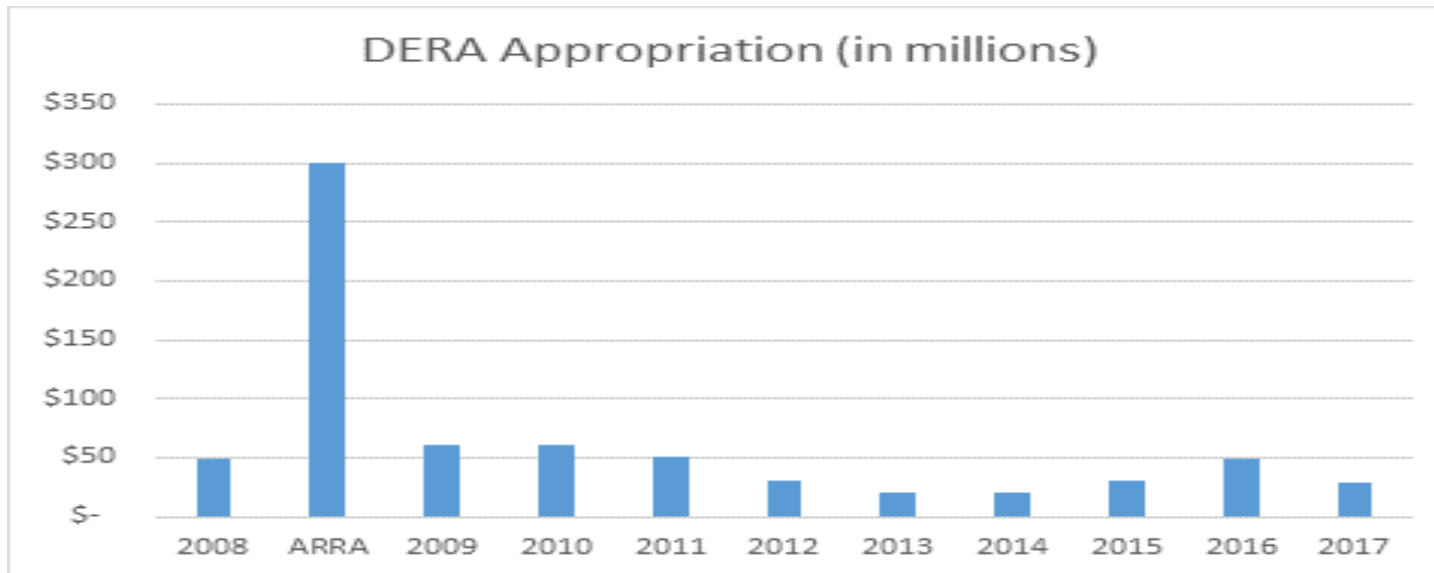
How Tribes Access Trust Funds

- Each tribal Beneficiary must submit to the Trustee a funding request and Beneficiary certifications by September 1 of each year
 - Tribes choosing to request funds for the DERA Option may submit a Notice of Intent to Participate (NOIP) as the funding request
 - The funding request must explain overall goal for the use of Trust funds, describe estimated NOx reductions, list the categories of projects, consider benefits to air quality in communities with disproportionate air pollution burden, seek and consider public input
- A Tribal Beneficiary may split Trust funds between Eligible Mitigation Actions 1-9 and the DERA Option
- Two or more Beneficiaries may submit a joint request

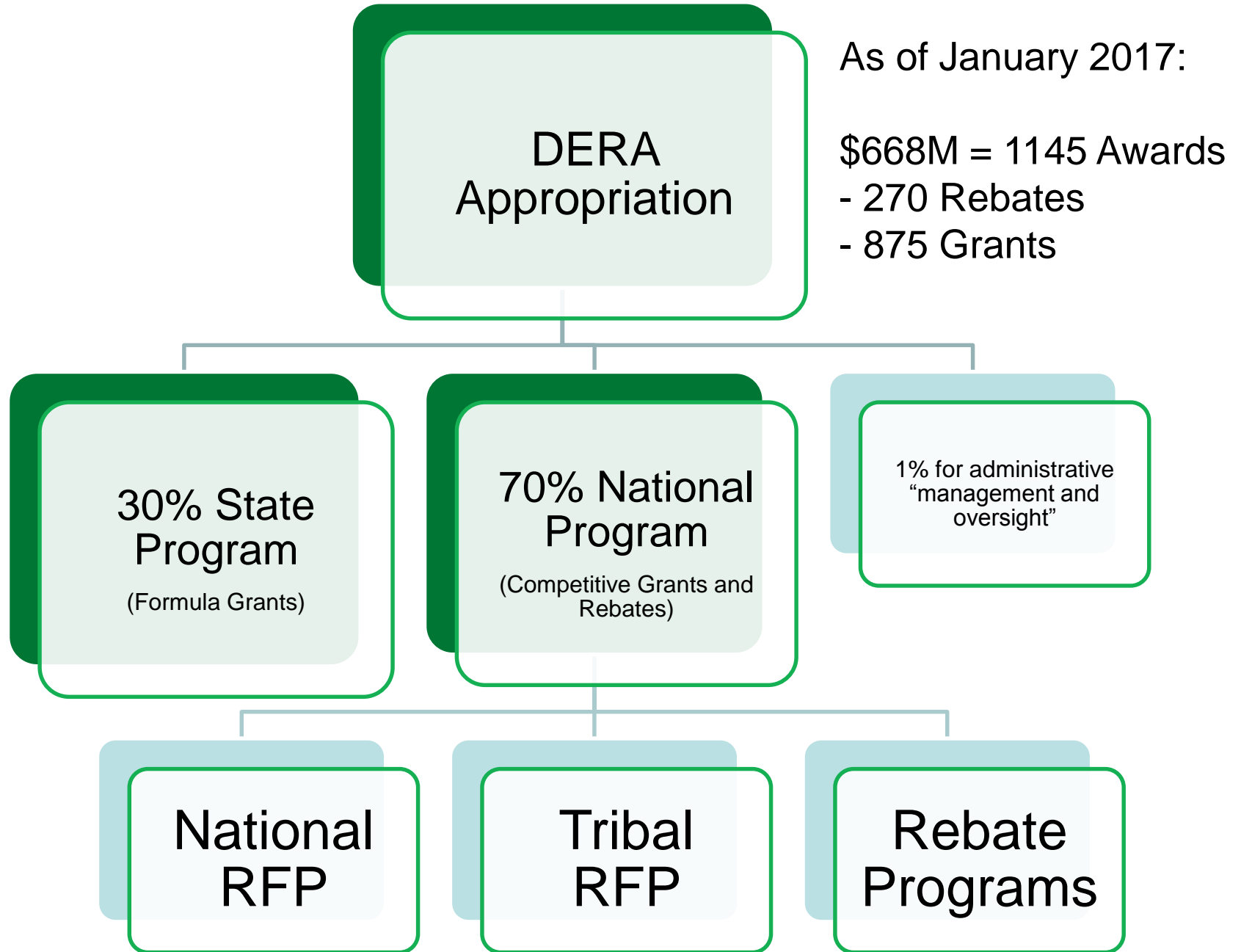
“DERA Option” -- What is DERA?

- Diesel Emissions Reduction Act (DERA) originally authorized under the Energy Policy Act of 2005
- Amended and reauthorized by the Diesel Emissions Reduction Act of 2010 (Public Law 111-364)
 - Passed with unanimous consent, bi-partisan support
- Provides funding, on a competitive basis, to eligible entities, to achieve significant reductions in diesel emissions in terms of pollution produced and diesel emissions exposure, particularly from fleets operating in areas designated by the Administrator as poor air quality areas
- Projects must use an EPA or California -certified engine configuration or a verified technology (aka retrofit)

DERA Funding – Annual Appropriations



* Preliminary for 2017, \$29 million.





DERA Option- Tribes

- Federally-recognized Tribes and Alaskan Native Villages become Beneficiaries at time of applying for “first funding request”
 - Deadline is September 1 annually
- Tribes can implement Eligible Mitigation Actions 1-9 directly with the Trustee and/or utilize the DERA Option with EPA
- DERA Option: Trust funds can be used as a voluntary match for grants for the DERA Tribal RFP
 - Trust funds cannot be used for mandatory cost-shares
 - Tribes choosing the DERA Option submit a *Notice of Intent to Participate (NOIP)* to Trustee by Sept 1 of each year to “reserve” funds for DERA grant.
 - The *Notice of Intent to Participate (NOIP)* should be submitted to the Trustee along with Beneficiary certifications



DERA Cost Share Requirements

DERA Eligible Activities	Maximum Funding Limits (DERA funds + voluntary match)	Minimum Mandatory Cost-Share (Fleet owner contribution)
Retrofits	100%	0%
Engine Upgrade/Remanufacture	75%	25%
Locomotive Idle Reductions	40%	60%
Marine Shore Power	40 %	60%
Electrified Parking Spaces	40 %	60%
Engine Repower- Diesel or Alt Fuel	75%	25%
Engine Repower- All-Electric	75%	25%
Engine Repower- Low NOx	75%	25%
Replacement- Diesel or Alt Fuel	50%	50%
Replacement- All-Electric	50%	50%
Replacement- Low NOx	35%	65%
Stationary Generators	75%	25%
Agricultural Pumps	75%	25%



Reporting Requirements for DERA Option

- A Beneficiary which chooses the DERA Option must submit DERA Quarterly Programmatic Reports and a Final DERA Programmatic Report to EPA as required under the DERA grant terms and conditions
- A Beneficiary may submit its DERA reports to the Trustee to fulfill its reporting requirements for any portion of its Trust funds using the DERA Option



Timeline for DERA Option Implementation

April 2017	<ul style="list-style-type: none">• Prepare guidance/info for tribes• Outreach to potential beneficiaries
June 2017	<ul style="list-style-type: none">• Tribal DERA 2017 grant program launches
Spring 2017 and beyond	<ul style="list-style-type: none">• Trust Effective Date*• Launch competitive Tribal DERA RFP in June• Tribes certify as beneficiaries and submit NOIP by Sept 1• EPA can assist tribes using DERA option• Trustee sends letter to Tribe “reserving” their funding for the DERA Option• Tribes submit proposed work plan for EPA’s Tribal RFP by October 15, 2017**• Grants awarded by January 2018

*Trust Effective Date may be later, pushing timeline back

**RFP deadline may be pushed back.



Resources on the Mitigation Trust:

- <https://www.epa.gov/cleandiesel/volkswagen-vw-settlement-dera-option>
 - Consent decree
 - Settlement highlights
 - FAQ for Beneficiaries
 - Presentation for Prospective Beneficiaries
 - Fact Sheet on DERA Option
 - Detailed Table of Project Eligibility

Resources on the DERA Option:

- cleandiesel@epa.gov
- 1-877-623-2322
- www.epa.gov/cleandiesel
 - Tribal program guidance



Thank you!

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