



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
ENFORCEMENT AND
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**Frequently Asked Questions (FAQ)
For Beneficiaries to the Volkswagen Mitigation Trust Agreement**

Air Enforcement Division
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The June 2016 partial Volkswagen settlement requires the defendant, Volkswagen, to establish and fund a \$2.7 billion environmental mitigation trust. The trust will be administered by an independent trustee. The [partial settlement](#) and the provisions about the mitigation trust are largely found in paragraphs 14–19 of the Consent Decree and Appendix D to the Consent Decree. The purpose of the mitigation trust is to fund eligible mitigation actions that replace diesel emission sources with cleaner technology to reduce excess emissions of oxides of nitrogen (NO_x) caused by the violating 2.0 liter cars. See EPA, [Securing Mitigation as Injunctive Relief in Certain Civil Enforcement Cases \(2012\)](#). This mitigation work is in addition to the emission reductions achieved by requiring Volkswagen to buy back or modify the violating 2.0 liter cars.

The partial settlement is structured to provide the impacted states, territories, and Indian tribes with the ability to select and implement appropriate mitigation actions funded by Volkswagen. Appendix D-1 to the Consent Decree provides an initial allocation of the funds, under which no state receives less than \$7.5 million. Appendix D-2 provides a broad array of mitigation actions that beneficiaries can implement. Beneficiaries must elect to become beneficiaries within 60 days of when the final trust agreement is filed with the Court (Trust Effective Date). Beneficiaries have 10 years from the Trust Effective Date to request their allocation and implement mitigation actions.

This document is a series of frequently asked questions for beneficiaries to the mitigation trust. The EPA will update this document as necessary.

1. FAQs: Timing

FAQ 1.1: When is the trust likely to become effective?

A: The trust will likely become effective sometime during the first half of 2017. Several steps must occur before the trust becomes effective. First, the Court must approve the settlement, which may happen sometime in the fall of 2016. Second, a trustee must be appointed by the Court, which could happen within 60–90 days after the Court approves the settlement. Third, the trust agreement must be finalized, in a form substantially similar to the one included in the settlement, executed by Volkswagen and the trustee, and filed with the Court.

FAQ 1.2: Who can qualify as a beneficiary?

A: Potential beneficiaries are all 50 states, the District of Columbia, Puerto Rico, and federally recognized tribes.

FAQ 1.3: How do potential beneficiaries become beneficiaries?

A: To become a beneficiary, each potential beneficiary must file a certification form (Appendix D-3) with the Court within 60 days of the Trust Effective Date. The certification form includes, among other things, a waiver of certain claims that may require deliberation and approval by various offices within each potential beneficiary's government. Because the Trust Effective Date will not occur until several months after the settlement is approved, potential beneficiaries will have significantly longer than 60 days to execute their certification forms if they begin the process now. Potential beneficiaries should monitor the case docket as the Trust Effective Date is the date the final trust agreement is filed with the Court.

FAQ 1.4: What is the first step for beneficiaries in deciding which eligible mitigation actions to take?

A: All beneficiaries (except for tribes) must create a mitigation plan that summarizes how the beneficiary intends to use its allotted funds. The plan must address a number of factors, including for example, the expected emission benefits, and how the beneficiary will seek and consider public comment.

FAQ 1.5: What are the documentation requirements for funding specific projects and why are they necessary?

A: Each funding request must have sufficient detail to enable the trustee to determine whether the funds will be spent on eligible mitigation actions, to ensure the money is spent transparently, and that the projected costs are eligible.

FAQ 1.6: What if a project changes such that it costs less, or more, than the beneficiary asks for and receives from the trust?

A: Beneficiaries may adjust their goals and specific spending plans at their discretion and, if they do so, will need to provide the trustee with updates to their Beneficiary Mitigation Plan.

FAQ 1.7: When can beneficiaries actually expect to have access to funds for eligible mitigation actions?

A: The trustee has 120 days from the Trust Effective Date (which, as described above, we anticipate to be sometime in 2017) to file a list of designated beneficiaries. Once designated, each beneficiary may submit funding requests to the trustee for eligible mitigation actions, subject to certain limits during the first three years until the trust is fully funded. The trustee must act upon such funding requests within 60 days of receipt, either by approval, disapproval, requesting changes, or requesting further information. Therefore, beneficiaries should expect to have access to trust funds beginning approximately six months following the Trust Effective Date.

FAQ 1.8: Is there guidance on what information a state must submit about its projects?

A: The elements of Beneficiary Mitigation Plan are listed in paragraph 4.1 and the elements of the required funding requests are listed in paragraph 5.2 of Appendix D. The Mitigation Trust Agreement is designed to be straightforward, with a list of projects that focus on vehicle or vessel equipment or engine replacements that are relatively uncomplicated to implement. A beneficiary may also choose the DERA option, under which it may receive limited and appropriate guidance from an EPA Regional office typical of what is routinely provided to DERA grantees. Consultant fees would also be an eligible administrative cost under the DERA option.

FAQ 1.9: What is the process if a beneficiary disagrees with the trustee's decision?

A: Within 60 days after receiving a beneficiary's funding request, the trustee will be required to transmit to the requesting beneficiary and post on the trust's public website a written determination either approving the request, denying the request, requesting modifications to the request, or requesting further information. Each written determination approving or denying an Eligible Mitigation Action funding request will include an explanation of the reasons underlying the determination, including whether the proposed Eligible Mitigation Action meets the requirements of the Mitigation Trust Agreement. In the unlikely event that a beneficiary ultimately disagrees with the trustee's decision on its request, it may petition the Court to review the decision.

FAQ 1.10: To what extent must a beneficiary take public comment on its mitigation plan?

A: Beneficiaries have discretion in how they seek and consider public input on their Beneficiary Mitigation Plans; however the plans must explain the process for public input.

FAQ 1.11: How long do beneficiaries have to access and spend allocated trust funds?

A: Beneficiaries have 10 years to spend allocated trust funds. After that, unused trust funds will be redistributed as supplemental funding among beneficiaries that have used at least 80% of their allocated trust funds. Such beneficiaries will be given five additional years to use the supplemental funding.

2. FAQs: Eligible Mitigation Actions (General Issues)

FAQ 2.1: What is the range of eligible mitigation actions?

A: Eligible mitigation actions are focused on large mobile sources of NO_x pollution across the country. These eligible mitigation actions have a proven track record of being cost-effective and straightforward in reducing NO_x from older, dirtier diesel engines, vehicles, equipment, and vessels. Appendix D-2 to the Consent Decree details the 10 eligible mitigation actions and eligible expenditures. Actions eligible under the Diesel Emission Reduction Act (DERA) option (eligible mitigation action #10) include truck stop electrification (electrified parking spaces to eliminate long duration idling), fuel efficiency and idle reduction equipment (single-wide tires, fuel-operated heaters, auxiliary power units, etc.), and other types of cleaner cargo handling equipment (rubber-tired gantry cranes, yard hostlers, etc., at ports), construction equipment, smaller marine vessels, and diesel generators.

FAQ 2.2: Why is the eligible mitigation actions list so specific on eligible model years for vehicles that can be taken out of service or replaced?

A: Eligible mitigation actions involving highway vehicles are restricted to model years that predate the EPA's current, more stringent emissions standards. It is important to focus on replacing the older, dirtier vehicles and engines—which might otherwise remain in service for many more years—to ensure substantial air quality gains will be achieved expeditiously in places where people live and work.

FAQ 2.3: What are the ways in which a beneficiary can use its allocated trust funds to replace dirty heavy-duty diesel vehicles with electric vehicles?

A: There are many opportunities for beneficiaries to use trust funds to purchase new all-electric vehicles listed in Appendix D-2 to the Consent Decree. For example, a beneficiary could receive 100% of the cost of a new electric, government-owned school, transit, or shuttle bus to replace an existing diesel, government-owned school, transit, or shuttle bus. In addition, Attachment 2 allows a beneficiary to use trust funds to pay for up to 75% of the cost of a new all-electric replacement vehicle for nongovernment-owned fleets, and 100% of the cost of new all-electric school bus replacements in private fleets contracted with public school districts. The charging infrastructure associated with these electric vehicles can also be purchased with trust funds.

FAQ 2.4: Why is scrappage required?

A. The partial settlement funds the replacement of older, high-polluting heavy-duty vehicles, engines, and/or equipment. To ensure that such replacements achieve the intended emission reductions, the replaced equipment must be scrapped. Beneficiaries are encouraged to recycle scrapped vehicles, engines, and equipment to reduce unnecessary waste.

3. FAQs: Eligible Mitigation Actions: DERA option

FAQ 3.1: How will eligible mitigation action #10 (the DERA option) work for eligible beneficiaries?

A: The DERA program is a Congressionally-authorized program that enables the EPA to offer funding assistance for actions reducing diesel emissions. Thirty percent of annual DERA funds are allocated to the DERA Clean Diesel State Grant Program. Under the DERA Clean Diesel State Grant Program, each state and territory is offered a base amount of EPA DERA funding. States and territories that match the base amount dollar for dollar receive an additional amount of EPA DERA funding to add to the grant (50% of the base amount). This non-federal match can be state or territorial funds, private funds, or funds from the beneficiary's allocation under the mitigation trust. Under the DERA option, beneficiaries may draw funds from the trust for their non-federal match on a 1:1 basis or greater than 1:1 basis as an "overmatch." There is no limit on the amount of money beneficiaries can contribute to an "overmatch." Below are two examples. In both examples, the entire amount (\$500,000 and \$1.3 million) is now included in the EPA DERA grant and subject to the EPA and federal grant rules and practices.

Example A: If a state's DERA allocation in FY2017 is \$200,000 under the DERA Clean Diesel State Grant Program, the state may use \$200,000 in trust funds as the 1:1 match. Then, the state will receive its bonus DERA funds equal to 50% of the base amount (\$100,000), making \$500,000 the total amount the state receives—\$300,000 from DERA and \$200,000 from the trust.

Example B: If a state's DERA allocation in FY2017 is \$200,000 under the DERA Clean Diesel State Grant Program, the state may use a larger amount—\$1 million in this example—in trust funds to overmatch the 1:1 ratio. The state receives its bonus DERA amount of \$100,000 and thus the total amount for the DERA Clean Diesel State Grant Program for FY2017 would be \$1.3 million—\$300,000 from DERA and \$1 million from the trust.

FAQ 3.2: How will eligible mitigation action #10 (the DERA option) work for tribal beneficiaries?

A: Tribal trust beneficiaries may utilize trust funds for the DERA Clean Diesel Tribal Grant Program. Because DERA enables the EPA to offer separate funding assistance to tribes to reduce diesel emissions, this option will enable tribes to utilize trust funds to implement clean diesel actions eligible under DERA, such as repowering fishing vessels, repowering or replacing

generators, and electrifying parking spaces, in addition to those from the eligible mitigation actions list (Appendix D-2). Under the DERA Clean Diesel Tribal Grant Program, tribes submit applications for DERA grant funding in response to an annual Request for Proposals. Tribes will be able to request trust funds annually to use as a voluntary match or overmatch for DERA tribal grants in the same manner as described in FAQ 4.1 above.

FAQ 3.3: Are a beneficiary's administrative expenses covered under eligible mitigation action #10 (the DERA Option) or under the "eligible mitigation action expenditures" listed in Appendix D-2?

A: A beneficiary that chooses any of the actions from 1 through 9 can spend up to 10% of its total mitigation plan budget on administrative expenses as set for in Appendix D-2. As described in current DERA program guidance, DERA Clean Diesel State Administrative expenses can account for up to 15% of the total amount of funding (DERA funds plus matching funds, such as trust funds) for DERA Clean Diesel State Grants.

FAQ 3.4: What are the options for beneficiaries that might want to conduct an eligible mitigation action that does not exactly fit the required criteria for the action?

A: Beneficiaries may use option #10, the DERA option. The DERA program has a process for handling waivers of existing guidelines. Examples of waivers that the EPA has approved with reasonable justification include the following: waivers of model year restrictions, useful life restrictions, and cost-share restrictions.

FAQ 3.5: What if Congress does not fund DERA in the future?

A: Beneficiaries may use trust funds for their non-federal match or overmatch pursuant to DERA. If DERA funding becomes unavailable, then there is nothing to match, and trust funds would not be available for projects under the DERA option in Appendix D-2 of the Consent Decree.

4. FAQs: Miscellaneous

FAQ 4.1: What is the connection between beneficiary status and state motor vehicle registration of the 2.0 liter vehicles at issue in the case?

A: Beneficiaries must file a certification form with the Court that includes certain agreements regarding vehicle registration. The relevant certification form language is at Certification #9 of Appendix D-3.