

The DERA Option: Eligible Mitigation Action #10

Environmental Mitigation Trust of the Volkswagen Settlement

Factsheet for Tribal Entities

Background

The U.S. government and Volkswagen (VW) resolved allegations that VW violated the Clean Air Act by selling approximately 590,000 vehicles equipped with defeat devices. As part of this settlement, VW is required to provide \$2.7 billion for the 2.0 liter violating vehicles and \$225 million for the 3.0 liter violating vehicles into an Environmental Mitigation Trust to fully remediate the amount of excess NOx emissions from the illegal vehicles. The trust will be administered by Wilmington Trust. Provisions of the trust may be found in the Environmental Mitigation Trust Agreement for Indian Tribe Beneficiaries.

States, Puerto Rico, the District of Columbia, and federally recognized Indian tribes and Alaska Native Villages (referred to as “tribal entities” throughout this document) may become beneficiaries to the trust. Tribal entities become beneficiaries when they submit their Certification for Beneficiary Status (available in Appendix D-3 of the trust agreement) along with their Beneficiary Eligible Mitigation Action Certification (available in Appendix D-4 of the trust agreement). Appendix D-1B provides an allocation of funds into the Tribal Allocation Subaccount of approximately \$55 million. Appendix D-2 provides a list of Eligible Mitigation Actions (EMAs) that beneficiaries can implement.

EMAs 1-9 may be implemented directly by a beneficiary; eligibility determinations and funding requests under EMAs 1-9 will be handled exclusively by the beneficiary. The Institute for Tribal Environmental Professionals (ITEP) can provide technical assistance to tribes for EMAs 1-9 or provide assistance in filling out paperwork for the trust.

EMA 10 (the DERA Option) allows tribal entities to use trust funds as non-federal voluntary matching funds under EPA’s Tribal Clean Diesel Funding Assistance Program funded by the Diesel Emissions Reduction Act (DERA). This document serves to distinguish between EMAs 1-9 and the DERA Option for tribal entities choosing to implement the DERA Option.

Eligible Mitigation Actions

The information in the table below summarizes the eligible vehicles and equipment, emissions reduction actions, and applicable funding limits allowed under EMAs 1-9 and the DERA Option. 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. Tribal entities may split their trust funds between EMAs 1-9 and the DERA Option as they choose.

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

Under EMA 10, the DERA Option, only a certain portion of the cost of an activity is eligible for funding under EPA’s Tribal Clean Diesel Funding Assistance Program. The DERA funding limits (percentages) in

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 and project partners. Voluntary and mandatory cost-shares are discussed in more detail below under “**Implementing the DERA Option.**”

Full details on EMAs 1-9 may be found in Appendix D-2 of the trust agreement, and full details on eligible DERA activities may be found in the applicable EPA Tribal Clean Diesel Funding Assistance Program Request for Proposals.

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

<p>VW EMAs 1-9 Eligible Activities and Mitigation Trust Funding Limits</p>	<p>VW EMA 10 (DERA Option) Eligible Activities and DERA Funding Limits*</p>
<p>Class 4-7 Local Freight Truck Class 8 Local Freight Trucks Class 8 Port Drayage Trucks</p> <p>Engine Model Year 1992-2009 Engine Replacement: 40-75% non-gov, 100% gov Vehicle Replacement: 25-75% non-gov, 100% gov</p> <p>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</p>	<p>Class 5-8 All Diesel Highway Vehicles</p> <p>Engine Model Year 2006 and older Engine Replacement: 75% Vehicle Replacement: 50% Retrofits +/- Aero, LRR Tires: 100% Idle Reduction: 40% Clean Alternative Fuel Conversion: 50%</p> <p>Engine Model Year 2007-2009 Engine Replacement (All-electric): 75% Vehicle Replacement (All-electric): 60% Retrofits +/- Aero, LRR Tires: 100% Idle Reduction (no APUs or generators): 40% Clean Alternative Fuel Conversion: 50%</p>
<p>Class 4-8 School Bus Class 4-8 Shuttle or Transit Bus</p> <p>Engine Model year 2009 or Older Engine Replacement: 40-75% non-gov, 100% gov Vehicle Replacement: 25-75% non-gov, 100% gov</p> <p>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</p>	<p>Type A, B, C, D Diesel School Bus Class 5-8 Diesel Shuttle, Transit or Other Bus</p> <p>Engine Model Year 2006 and older Engine Replacement: 75% Vehicle Replacement: 50% Retrofits +/- Aero, LRR Tires: 100% Idle Reduction: 40% Clean Alternative Fuel Conversion: 50%</p> <p>Engine Model Year 2007-2009 Engine Replacement (All-electric): 75% Vehicle Replacement (All-electric): 60% Retrofits +/- Aero, LRR Tires: 100% Idle Reduction (no APUs or generators): 40% Clean Alternative Fuel Conversion: 50%</p>

VW EMAs 1-9 Eligible Activities and Mitigation Trust Funding Limits	VW EMA 10 (DERA Option) Eligible Activities and DERA Funding Limits*
<p>Freight Switchers 1000+ hours per year</p> <p>Pre-Tier 4 Engine Replacement: 40-75% non-gov, 100% gov Vehicle Replacement: 25-75% non-gov, 100% gov</p>	<p>Diesel Locomotives 1000+ hours per year</p> <p>Unregulated - Tier 2 Line Haul and Switcher Tier 2+ Switcher Engine Replacement: 75% Remanufacture: 75% Vehicle Replacement: 50% Retrofits: 100% Idle Reduction/Shorepower: 40%</p> <p>Tier 2+ Line Haul Retrofits: 100% Idle Reduction/Shorepower: 40% Remanufacture: 75%</p>
<p>Ferries/Tugs</p> <p>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</p>	<p>Marine Diesel Engines 1000+ hours per year</p> <p>Unregulated-Tier 2 Marine Engines Engine Replacement/Reman/Upgrade: 75%</p>
<p>Ocean Going Vessel and Great Lakes Vessels Shorepower</p> <p>Costs associated with the shore-side system and installation Non-government Owned: 25% Government Owned: 100%</p>	<p>Marine Shore Power Connection Systems</p> <p>Costs associated with the shore-side system and installation: 40%</p>
	<p>Electrified Parking Spaces (EPS)</p> <p>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: 40%</p>

<p align="center">VW EMAs 1-9 Eligible Activities and Mitigation Trust Funding Limits</p>	<p align="center">VW EMA 10 (DERA Option) Eligible Activities and DERA Funding Limits*</p>
<p>Airport Ground Support Equipment (GSE)</p> <p>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 Vehicle Replacement (All-electric): 75% non-gov, 100% gov</p>	<p>Nonroad Diesel Engines</p> <p>Construction, Cargo Handling (Ports and Airports), Agriculture, Mining, Energy Production 500+ hours per year</p> <p>Tier 0-Tier 3 Engine Replacement: 75-80% Vehicle/Equipment Replacement (Diesel, Alt Fuel, Hybrid): 50-80% Vehicle/Equipment Replacement (All-electric): 60% Retrofits: 100% Engine Replacement (Diesel, Alt Fuel): 75% Engine Replacement (All-electric): 75% Engine Upgrade: 75%</p>
<p>Forklifts and Port Cargo Handling Equipment</p> <p>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</p>	
<p>Light Duty Zero Emission Vehicle Supply Equipment</p> <p>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.</p>	

*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 Tribal Clean Diesel Funding Assistance Program.
- 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, tribal entities may use trust funds as their non-federal voluntary match under EPA's Tribal Clean Diesel Funding Assistance Program.

Any voluntary matching funds provided by the tribal entity, including mitigation trust funds, are subject to the DERA funding limits defined in the applicable Tribal Clean Diesel Funding Assistance Program guidance. Voluntary funds may cover expenses such as personnel, fringe benefits, travel, contractual services, and a portion of equipment and supplies. Many of the eligible project types under EPA's Tribal Clean Diesel Funding Assistance 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). *Under the DERA Option, mitigation trust funds cannot be used to meet the non-federal mandatory cost-share requirements of any DERA grants.*

Tribal entities should select "Item 10- DERA Option" as their Eligible Mitigation Action Type on the Beneficiary Eligible Mitigation Action Certification found in Appendix D-4 of the trust agreement. The tribal entity may use one of the following two options as the required Attachment E to the Beneficiary Eligible Mitigation Action Certification submitted to the trustee:

- 1) The tribal entity may submit a copy of the "Project Narrative" portion of its application package submitted (or to be submitted) to EPA under the [Tribal Clean Diesel Funding Assistance Program Fiscal Year \(FY\) 2017 Request for Proposals, Funding Opportunity Number EPA-OAR-OTAQ-17-08](#). The "Project Narrative" should be prepared as described in Section IV.C and Appendix B of the Request for Proposals.
- 2) Alternately, the tribal entity may submit a *Notice of Intent to Participate* (Notice) using the template found at <https://www.epa.gov/cleandiesel/volkswagen-vw-settlement-dera-option> .

The Beneficiary Eligible Mitigation Action Certification and its required attachments are due to the trustee, not EPA. The tribal entity must be selected for DERA funding before trust funds are disbursed. ITEP can provide assistance in completing the necessary paperwork for the Beneficiary Eligible Mitigation Action Certification. Tribal entities may apply for the DERA Option each year that DERA funding is available.

FY 2017 Tribal Clean Diesel Funding Assistance Program Request for Proposals

If a tribal entity would like to apply for a FY 2017 DERA grant and would like to use trust funds for the voluntary match, the Certification for Beneficiary Status and the Beneficiary Eligible Mitigation Action Certification and its attachments must be submitted to the trustee within 90 days of the Trust Effective Date. This date is January 2, 2018.

A Request for Proposal (RFP) under the Tribal Clean Diesel Funding Assistance Program is currently open. Proposals are due by Thursday, January 18, 2018, at 11:59 p.m. Eastern Time. Proposals should be submitted through www.grants.gov.

Tribal entities applying for DERA grants in later years will use the same process, but the Certification for Beneficiary Status (if not already deemed a beneficiary) and the Beneficiary Eligible Mitigation Action Certification form will be due by September 1.

Reporting Requirements

Recipients of DERA grants must submit reports as required under the DERA grant terms and conditions to EPA. A tribal entity implementing the DERA Option may submit its DERA reports to the trustee to fulfill its reporting requirement for any portion of its trust funds utilized under the DERA Option.

Resources

FY 2017 Tribal Request for Proposals: www.epa.gov/cleandiesel/clean-diesel-tribal-grants

Tribal Beneficiary Trust Agreement: www.epa.gov/enforcement/environmental-mitigation-trust-agreements

ITEP website: www7.nau.edu/itep/main/Home/

Questions

Please submit questions related to Appendix D of the VW Consent Decree to the Clean Diesel helpline with the subject line "VW Question- Tribes."

Clean Diesel Helpline: cleandiesel@epa.gov | 1-866-623-2322