



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

Frequently Asked Questions (FAQ) For Beneficiaries to the Volkswagen Mitigation Trust Agreements

Air Enforcement Division
Third Edition, October 2017, Supersedes Prior Editions

Through a series of three partial settlements, the EPA and Volkswagen resolved allegations that VW violated the Clean Air Act by selling approximately 590,000 vehicles equipped with defeat devices. As a part of the settlements, 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 to an Environmental Mitigation Trust to fully remediate the amount of excess NO_x emissions from the illegal vehicles. There will be two Trusts: the Environmental Mitigation Trust for State Beneficiaries (“State Trust Agreement”) and the Environmental Mitigation Trust for Indian Tribe Beneficiaries (“Indian Tribe Trust Agreement”) (collectively, “Trust Agreements”). The trusts will be administered by an independent trustee, Wilmington Trust, N.A. The provisions about the mitigation trust are largely found in paragraphs 14–19 of the 2.0 liter Partial Consent Decree and the Trust Agreements approved by the Court on September 19, 2017. The purpose of the mitigation trust is to fund eligible mitigation actions that reduce excess emissions of oxides of nitrogen (NO_x) caused by the violating 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 cars.

The partial settlements are 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-1B of the Trust Agreements provide the allocation of the funds, under which no state receives less than \$8 million and Indian tribes receive a separate allocation of approximately \$55 million. Appendix D-2 of the Trust Agreements provides a broad array of mitigation actions that Beneficiaries can implement. States, the District of Columbia and Puerto Rico must elect to become Beneficiaries within 60 days of the Trust Effective date (the date the final trust documents were filed with the Court), which is October 2, 2017. ***This means that States, the District of Columbia, and Puerto Rico have until December 1, 2017 to elect to become Beneficiaries.*** Beneficiaries have 10 years from the Trust Effective Date to request their allocation and implement mitigation actions and tribal Beneficiaries have six years from the Trust Effective Date to request their allocations.

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

New- Indicates the question and answer did not appear on the previous FAQ.

Revised- Indicates the question or answer has been revised from how it appeared on the previous FAQ.

1. FAQs: Beneficiary Process

Revised: FAQ 1.1: When are the trusts likely to become effective?

A: The Trust Effective Date is October 2, 2017. Potential State Beneficiaries, including the District of Columbia and Puerto Rico, now have until December 1, 2017 to elect to become Beneficiaries. There are two separate trusts – one for the States (including D.C. and Puerto Rico) and one for the Tribes. The Court approved the Trust Agreements on September 19, 2017. The Volkswagen Defendants and the Court-approved Trustee, Wilmington Trust, N.A., signed and delivered executed copies of the Trust Agreements to the United States, and the United States filed the executed copies with the Court on October 2, 2017. The Trusts are now effective.

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.

Revised: FAQ 1.3: How do potential beneficiaries become beneficiaries?

A: To become a beneficiary, each potential beneficiary must file a certification form (Certification for Beneficiary Status, Appendix D-3) with the Court. States, D.C., and Puerto Rico must file their forms within 60 days of the Trust Effective Date, which is December 1, 2017. Tribal beneficiaries may file within 90 days of the Trust Effective Date, which with federal holidays will fall on January 2, 2018, or by September 1 of years two through six of the Trust (September 1, 2018 through September 1, 2022). 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. Potential beneficiaries should begin filling out their Certification for Beneficiary Status forms as soon as possible. ***States, D.C., and Puerto Rico must file their Certifications for Beneficiary Status by December 1, 2017 in order to become a beneficiary to the Trust. There is no second opportunity if this deadline is missed.***

Revised: FAQ 1.4: After being designated a beneficiary, what is the first step 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 as described in Paragraph 4.1 of the State Trust Agreement. Beneficiary mitigation plans are due at least 30 days prior to the first funding request.

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

A: Prior to submitting its first funding request, beneficiaries must first submit and make publically available a Beneficiary Mitigation Plan, described in FAQ 1.4. The Trustee is also

required to post each funding request on a public-facing website. For a complete list of what is included in each funding request, please see Appendix D-4.

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.

Revised: 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 of October 2, 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 trusts are 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 of October 2, 2017.

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

A: The elements of the Beneficiary Mitigation Plan are listed in paragraph 4.1 of the State Trust Agreement and the elements of the required funding requests are listed in paragraph 5.2 of both Trust Agreements. The Mitigation Trust Agreements are 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 Diesel Emission Reduction Program (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.

The EPA will not offer technical guidance to beneficiaries, and has no role in determining the eligibility of funding requests. The EPA will continue to administer the DERA grants and all applicable DERA guidance, as relates to Eligible Mitigation Action 10.

The state lead agency or tribal lead agency is responsible for self-certifying that their Eligible Mitigation Action funding requests comply with requirements of the Trust Agreements including appendices. The Trustee may approve, deny, request modifications, or request further information related to requests.

FAQ 1.9: May a beneficiary appeal the trustee's denial of a request for funds?

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.

FAQ 1.12: Are there any limits to how much of its total allocation a beneficiary can draw at any given time?

A: No beneficiary may request payout of more than one-third of its allocation during the first year after VW makes the initial deposit of \$900 million to the trust, or two-thirds of its allocation during the first two years after VW makes the initial deposit.

Revised: FAQ 1.13: How will the trustee of the mitigation trusts be selected?

A: On March 15, 2017, the Court appointed Wilmington Trust, N.A. to serve as trustee. The Court appointed Wilmington Trust, N.A. from among a list of final candidates, created pursuant to a process established in paragraph 15 of the 2.0 Liter Partial Settlement.

2. FAQs: Eligible Mitigation Actions (General Issues)

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

A: Eligible mitigation actions are focused on reducing NO_x emissions from mobile sources of pollution. Reducing emissions from mobile sources, such as vehicles, and vessels, has historically proven to be a cost-effective and simple way to reduce NO_x pollution. Appendix D-2 to the Trust Agreements 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.), construction and agricultural equipment, smaller marine vessels, and diesel generators, among others. The list of DERA-eligible project types with their required cost-shares can be found at: www.epa.gov/cleandiesel/vw-settlement-dera-option-supporting-documents

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 Trust Agreements. 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, Appendix D-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

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

A: The Diesel Emission Reduction Act (DERA) 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 voluntary match can be state or territorial funds, private funds, or settlement funds such as those 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.

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. The list of DERA-eligible project types with their required cost-shares can be find at: www.epa.gov/cleandiesel/vw-settlement-dera-option-supporting-documents

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 for DERA tribal grants.

Revised: 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: For any Eligible Mitigation Action, a beneficiary may use Trust funds for actual administrative expenditures described in Appendix D-2 associated with implementing such Eligible Mitigation Action, but not exceed 15% of the total cost of such Eligible Mitigation Action. A beneficiary choosing Eligible Mitigation Action #10 (the DERA Option) may also use up to 15% of the total project cost on administrative expenses as described in current DERA program guidance.

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

A: Under option #10 in Appendix D-2 of the Trust Agreements, the DERA option, beneficiaries may use trust funds for their non-federal match or overmatch pursuant to DERA. If Congress does not appropriate funds for DERA in the future, then option #10, the DERA option, would not be available. Trust funds would still be available for projects under options 1-9 of Appendix D-2.

4. FAQs: Eligible Mitigation Actions: non-DEIRA options

New: FAQ 4.1: What are the parameters for a truck to be considered “local?”

A: Neither the Consent Decree nor the Trust Agreements define what makes a truck local and interpretations of a local truck may vary depending on location; for example, the distinction between local trucks and other trucks may include operation primarily within one metropolitan area.

New: FAQ 4.2: What types of vehicles are considered “freight trucks”?

A: The Consent Decree and Trust Agreements define a freight truck as one used to deliver cargo and freight. Examples provided include courier services, delivery trucks, box trucks moving freight, waste haulers, dump trucks and concrete mixers. These vehicles must have a Gross Vehicle Weight Rating between 14,001 and 33,000 lbs.

New: FAQ 4.3: Can trust funds be used for fleet expansion?

A: No. The EMAs that allow for replacement of vehicles, engines or equipment require scrappage of an identical number of similar vehicles, engines or equipment as an important part of the NOx reduction project. If vehicles, engines or equipment are added to a fleet without removing a dirtier, older engine of a similar size or larger, then **the project would not result in NOx reductions.**

New: FAQ 4.5: What is an ocean-going vessel?

A: Neither the Consent Decree nor the Trust Agreements specifically define "ocean-going vessels" so final eligibility determinations will be made by the lead state or tribal lead agency. For guidance to help assess whether certain vessels qualify, please refer to footnote 1 in EPA's Category 3 Large Marine Engine Regulation at www.gpo.gov/fdsys/pkg/FR-2010-04-30/pdf/2010-2534.pdf. In short, the footnote identifies Category 3 engines as ocean-going vessels as a descriptive term. "While the large majority of these vessels operate in the oceans, some operate solely in our internal waters such as in the Great Lakes. Therefore, we do not use the term ocean-going vessels to exclude the few vessels with Category 3 engines that operate only in fresh-water lakes or rivers or to exclude ocean-going vessels with Category 2 or Category 1 engines, but rather to reflect the way the vessels being regulated are more commonly known to the general public."

New: FAQ 4.6: What is a port?

A: Neither the Consent Decree nor the Trust Agreements define ports. A presentation by the Mobile Sources Technical Review Subcommittee of EPA's Clean Air Act Advisory Committee discusses a definition for ports that the lead agency may consider. This presentation is available at www.epa.gov/sites/production/files/2014-12/documents/kindberg_120914.pdf.

New: FAQ 4.7: Who is responsible for enforcement of projects?

A: The state or tribal lead agency is responsible for ensuring all projects that receive funding from the trusts comply with the eligibility requirements specified in the Trust Agreements as well as the reporting requirements. The Trust requires certain information be posted to public-facing websites as well, as discussed in FAQs 1.4 and 1.5.

New: FAQ: 4.8 Is funding available for infrastructure for CNG, LNG, or propane fueling stations?

A: No, funding is not available for CNG, LNG, or propane fueling infrastructure. However, Eligible Mitigation Action #9 allows a beneficiary to spend up to 15% of its total allocation on light-duty vehicle charging equipment. Other EMAs allow for funding of the infrastructure required for all-electric vehicle or engine replacements.

5. FAQs: Miscellaneous

Revised: FAQ 5.1: What is the connection between beneficiary status and state motor vehicle registration of the 2.0 liter vehicles at issue in the case?

A: In order to become a beneficiary, potential 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.

Revised: FAQ 5.2: Is there any requirement for Beneficiaries to report the anticipated NOx reductions of their mitigation actions?

A: Yes, paragraph 4.1 of the State Trust Agreement explains that Beneficiaries are required to provide a description of the expected emission benefits of their Beneficiary Mitigation Plan. Paragraph 5.2.3 further requires Beneficiaries to estimate the amount of NOx their Mitigation Actions will reduce when submitting funding requests.

New: FAQ 5.3: Where should beneficiaries direct their questions regarding the Mitigation Trust?

A: Questions beyond what is answered in this document should not be directed to the EPA, with the exception of DERA guidance. The EPA will not provide technical guidance or direction about Eligible Mitigation Actions 1-9 and will have no role in determining the eligibility of funding requests. The EPA is not managing the Mitigation Trusts, subject to the United States'

general oversight role.

DERA Option-related questions can be directed to EPA headquarters and regional DERA staff or email cleandiesel@epa.gov.

The EPA page on the DERA Option can be found at:

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

A helpful resource has been created for potential beneficiaries by the National Association of Clear Air Agencies (NACAA) and the National Association of State Energy Officials (NASEO). Potential beneficiaries may want to refer to this resource, which can be found at:

<http://vwclearinghouse.org/>

Wilmington Trust's website has not been created yet, but a website is expected to go live in the next couple of weeks.