

Public Notice

DEM Seeks to Expand Mitigation Efforts Under the Existing State of Rhode Island's Beneficiary Mitigation Plan

The Rhode Island Department of Environmental Management (DEM) is proposing to expand Rhode Island's Volkswagen Beneficiary Mitigation Plan to include environmental mitigation action (EMA) #10, the "DERA Option", which allows beneficiaries to use trust funds for their non-federal voluntary match on state Diesel Emission Reduction Act (DERA) grants.

In the issuance of the [August 2018 Rhode Island Beneficiary Mitigation Plan \(BMP\)](#) DEM outlined a very specific plan on how the state would utilize the \$14,368,858 that was received under the proposed partial Consent Decree with the United States District Court for the Northern District of California in the lawsuit entitled In re: Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation, Case No: MDL No. 2672 CRB (JSC). It has come to our attention that while those funds were held in a trust account, interest was earned. DEM is proposing to expand the BMP and utilize VW trust funds earned interest to match its State DERA allocation.

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, 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 another source (not Federal or trust funds). See Figure 1 below for an example of the 2021 State DERA match incentives and funding amount.

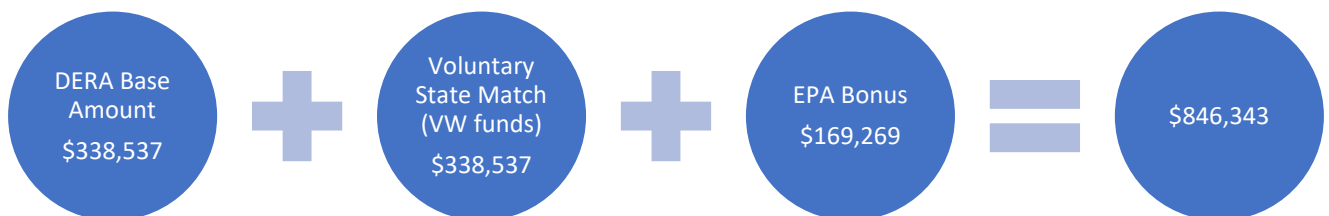


Figure 1. DERA Option: Trust Funds as Voluntary Match to Receive 2021 EPA Matching Incentive

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).

Overall Goal for the Use of the Funds

The overall goal for the use of the voluntary state match funds will remain the same as outlined in the [August 2018 Rhode Island Beneficiary Mitigation Plan \(BMP\)](#). As such, the primary goal of the State’s mitigation plan is to improve and protect ambient air quality by implementing eligible mitigation projects that will:

- Achieve significant and sustained reductions in diesel emission in terms of tons of reductions in diesel emission exposures in areas designated as poor air quality areas, areas with historical air quality issues, and areas that receive a disproportionate quantity of air pollution from diesel fleets, and
- Expedite development and widespread adoption of zero emission vehicles and engines.

Why Use Funds to Expand State DERA?

Over the last 10 years of the State DERA program it has provided over \$2M to local entities to replace and remove older diesel equipment from our roads and waterways. The local entities are required to leverage their own dollars, typically ranging from 25-50% of the overall project costs. Since 2018, the State DERA program has been well oversubscribed. DEM typically receives enough applications requesting more than double the amount of funding available.

Year	Requested DERA Funds for RI Projects	Actual DERA Funds Available for RI Projects
2018	\$1.5M	\$274,250
2019	\$732,000	\$316,000
2020	\$1.8M	\$328,663

Reporting Requirements

All reporting requirements for VW and DERA will be met by the Department. All complete funding request information including documentation from Rhode Island and the Trustee, required semi-annual reports and estimates of remaining fund balances will be reported here:

<https://www.vwenvironmentalmitigationtrust.com/state-trust/rhode-island>

Public Notice

The Department is proceeding with a public comment period to request public input on the proposed expansion of the plan. The approved DERA workplan is attached. At minimum, all voluntary state match funds (\$338,537 from the interest earned on the VW account) will be dedicated to school bus electrification project(s). The Department’s proposed expansion of the plan will allow for support of school bus electrification project(s) while the overall goal for the use of funds will remain the same as outlined in the [August 2018 Rhode Island Beneficiary Mitigation Plan \(BMP\)](#).

You may submit your comments by email to Madeline Haines at Madeline.Haines@dem.ri.gov with the subject line “Expanded RI VW BMP”.

Comments will be accepted through August 31, 2021. Thank you for your assistance in helping DEM maintain a Volkswagen Beneficiary Mitigation Plan that best meets the needs of Rhode Island.