



# **Webinar for Prospective Beneficiaries to the Mitigation Trust Under the Partial Settlement with Volkswagen**

November 18, 2016\*

United States Environmental Protection Agency  
Office of Enforcement and Compliance Assurance  
Air Enforcement Division

\*This version includes minor corrections to the version presented on the November 18 webinar.



# Overview

- Today's presentation will
  - Summarize the partial settlement
  - Highlight useful resources
  - Outline the ZEV Investment Requirement
  - Walk through the Mitigation Trust in detail
  - Answer questions
- Today's presentation is a summary, the legal documents are controlling

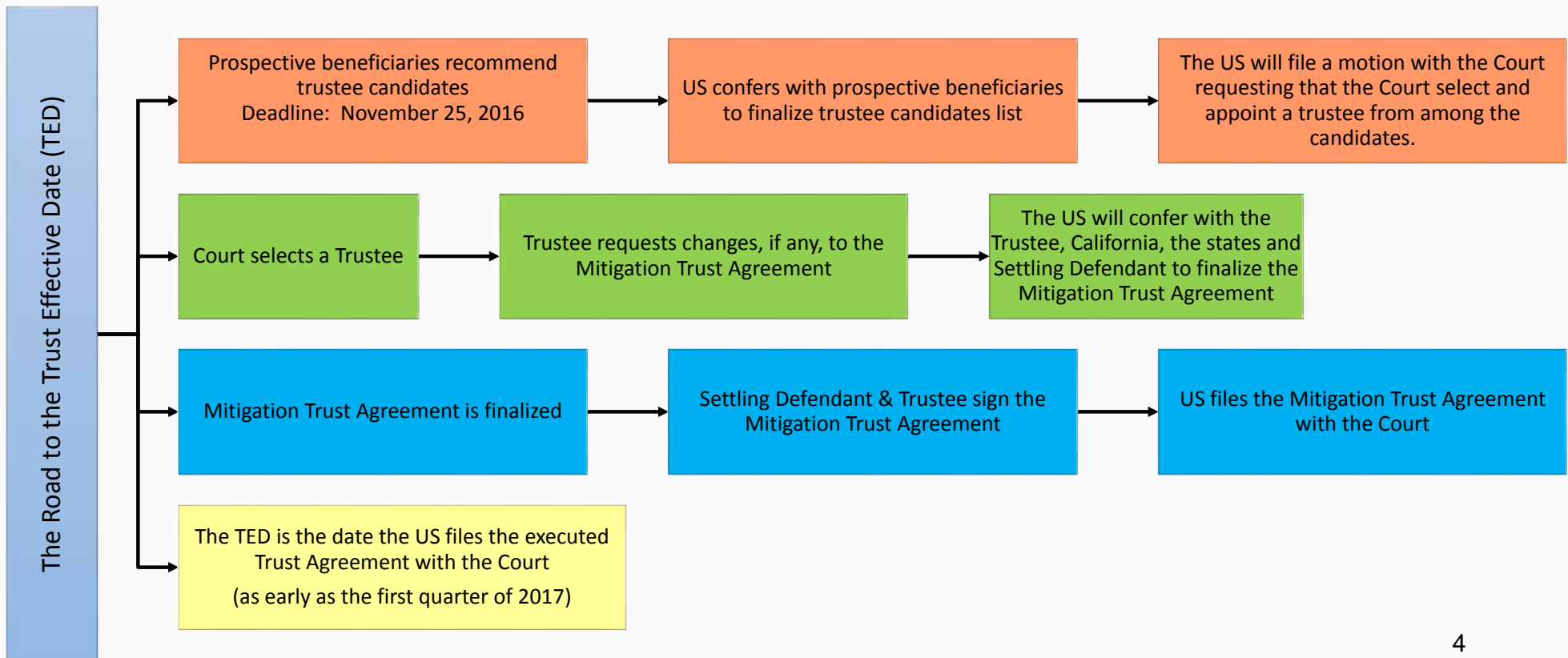


## Overview of Partial Settlement

- On June 28, 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
- CD Entered by the Court on October 25, 2016
- The settlement consists of three major components:
  1. Buyback or emissions modification on at least 85 percent of the subject vehicles (Appendices A & B)
  2. \$2.7 billion to fully remediate the excess NO<sub>x</sub> emissions from the subject vehicles (Appendix D)
  3. Invest \$2 billion to promote the use of zero emission vehicles and infrastructure (Appendix C)

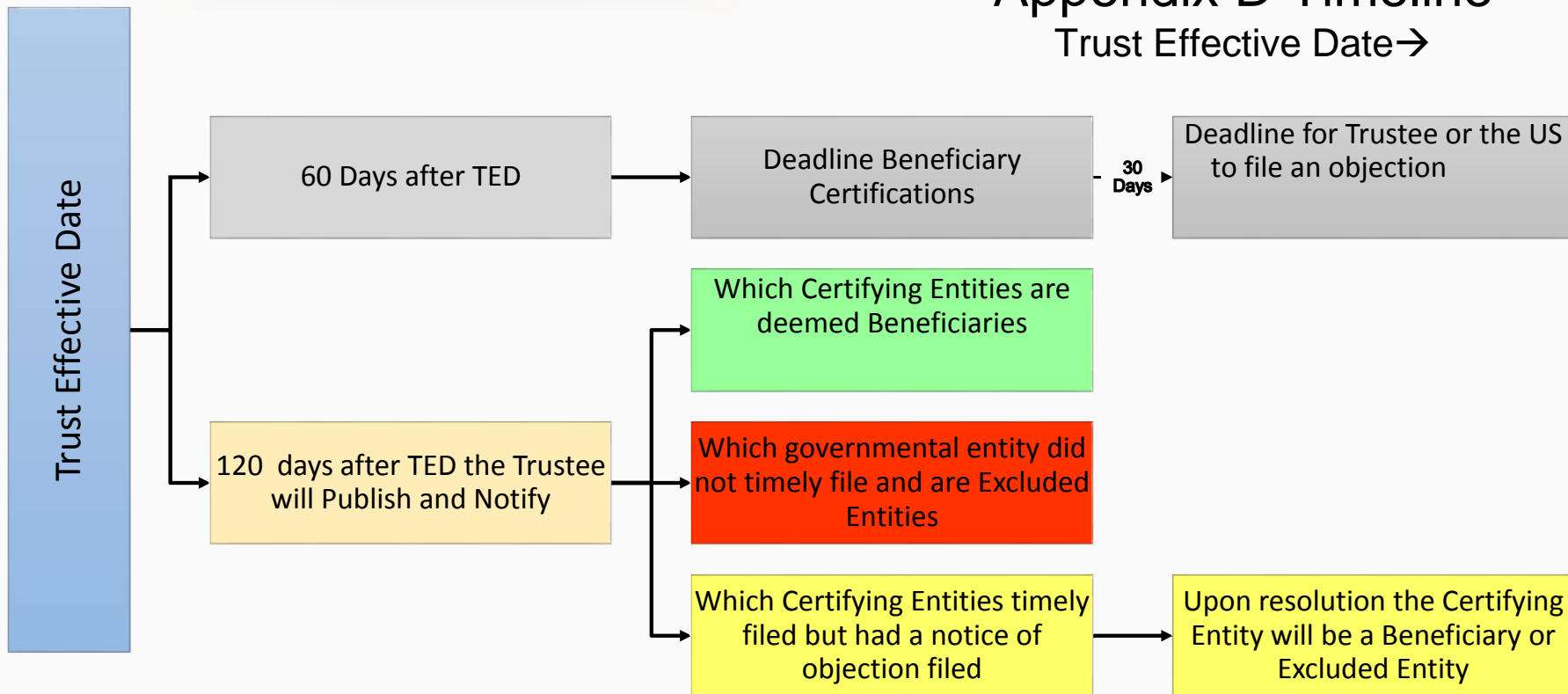


## Appendix D- How the Trust Effective Date (TED) is Established



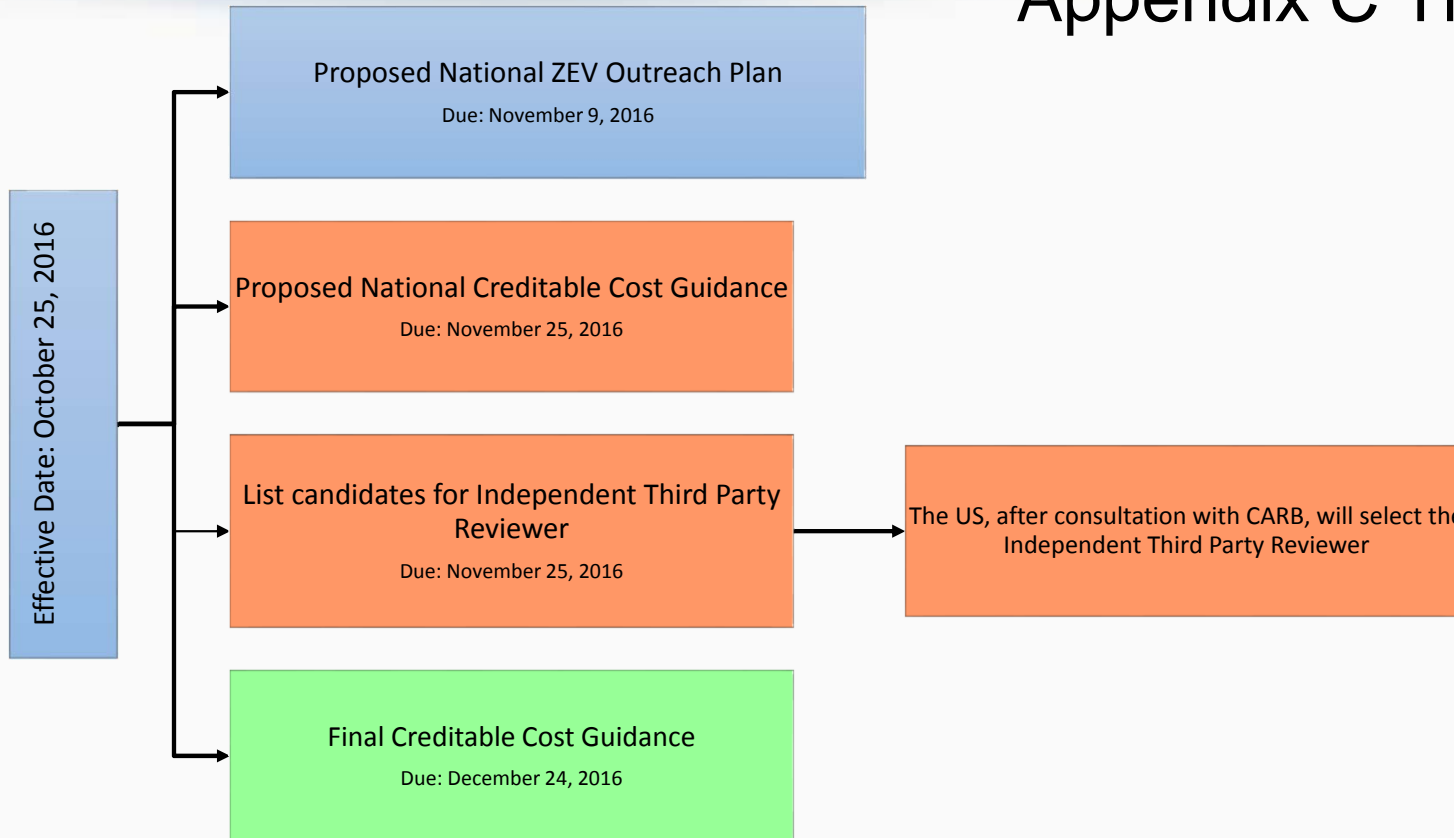


## Appendix D Timeline Trust Effective Date →





# Appendix C Timeline





## Additional Resources

- Web fact sheet: <https://www.epa.gov/enforcement/volkswagen-clean-air-act-partial-settlement>
  - Summary of the settlement
  - Details for prospective Beneficiaries
- FAQ on Mitigation
- The settlement document: <https://www.epa.gov/enforcement/201-partial-and-amended-consent-decree>
  - The language of the settlement document controls
- Consumer site: VW outreach on ZEV: [www.vwcourtsettlement.com](http://www.vwcourtsettlement.com)



## Appendix C: ZEV Investment

- VW must invest \$2 billion over 10 years
  - \$1.2 billion National ZEV Investment (excludes CA)
  - \$800 million California ZEV Investment
- VW investment plan must advance the use and market penetration of ZEVs, have a high likelihood of utilization, provide accessibility/availability where most needed, and build positive awareness of ZEVs
- VW's investments must be additional investments beyond what it planned to invest before the settlement & what is required by law
- For the National ZEV investment, VW is required to develop a National Outreach Plan to solicit input from states, local governments, tribes, & federal agencies





## ZEV Investment Commitment

- VW controls how it spends money to satisfy the investment requirement subject to the CD requirements and restrictions
- There are no named Beneficiaries
- Goal: Facilitate increased use of ZEVs
- \$2 billion
- Appendix C

## Mitigation Trust

- Beneficiaries control how Trust money is spent
- Goal: mitigate NOx emissions
- \$2.7 billion
- Appendix D

ZEV Investment  $\neq$  Mitigation Trust



## Eligible Investment Examples

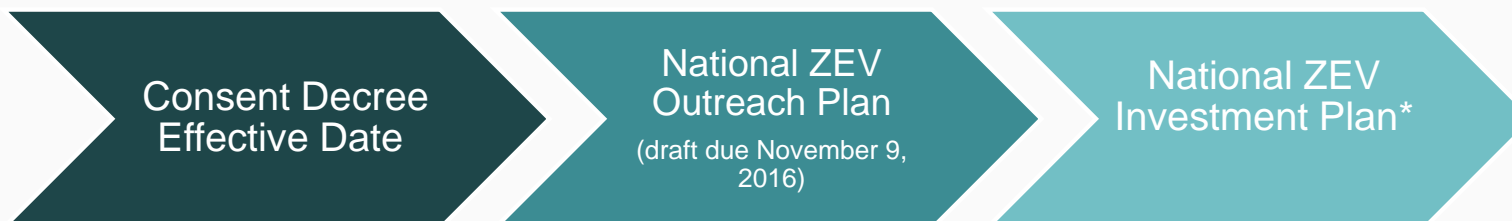
- For the \$1.2 billion National ZEV Investment
  - ZEV infrastructure
    - Level 2 charging at multi-unit dwellings, workplaces, and public sites
    - DC fast charging facilities accessible to all vehicles utilizing non-proprietary connectors
    - Later generations of charging infrastructure
    - Hydrogen or other ZEV fueling stations
  - ZEV Education
    - Brand-neutral education or public outreach
    - Goal is to increase public awareness of ZEVs
  - ZEV Access
    - Programs to increase public exposure and/or access to ZEVs without requiring the consumer to purchase or lease a ZEV at full market value
    - Carshare and ride hailing services, ride and drives
- \$800 million CA Investment additionally allows investments in:
  - Heavy-duty fueling infrastructure
  - Scrap and replace with ZEV vehicles
  - “Green City” initiative



## Process for VW National ZEV Investment

- \$1.2 billion invested over four 30-month cycles, \$300 million each cycle
- For each cycle, VW to submit a draft National ZEV Investment Plan:
  - Description of proposed ZEV Investments, timelines, anticipated creditable costs
  - Explanation of how each investment advances the use and market penetration of ZEVs, has high likelihood of utilization, provides accessibility/availability where most needed, and builds positive awareness
  - The EPA and VW meet and confer about draft plan
- Then, VW will submit a final plan, and EPA will approve or deny the final plan
- Upon approval, VW implements the investment plan, with annual reporting on progress

### Timeline for first 30-month VW National ZEV investment Plan



\*Draft due February 22, 2017 or 30 days after close of comments under outreach plan



## Opportunities for Stakeholder Input

- VW must solicit and consider input from states, municipalities, Tribes, and federal agencies
  - VW must provide reasonable notice for opportunities to provide input on: [www.vw.com](http://www.vw.com) and <https://www.vwcourtsettlement.com/en/>
- Ultimately, VW has discretion to incorporate the input into its plan
- Each of VW's plans must be comprehensive and specify how investments will be made
  - Locations, schedule, maintenance
  - Studies and reports to support that the investments will support increased ZEV use
  - Approved plans will be made publicly available



## Creditable Costs

- Creditable cost guidelines will identify what expenditures can be counted as satisfying the \$1.2 billion National ZEV Investment requirement
  - VW will propose the guidelines and EPA will approve or deny based on the terms of the CD
- An independent third party accountant will audit VW's expenditures to verify if they can count toward VW investment commitment
  - The accountant will use the credible cost guideline to conduct its review and audit
  - EPA will consider the accountant's determination
- California's ZEV Investment Plan will be created and managed similarly



## ZEV Investment Accountability

- Economic incentives
  - It is in VW's business interest to support increased ZEV use
  - Substantial stipulated penalties if VW does not comply with Appendix C
- VW must solicit input from states, Tribes and federal agencies
- Oversight
  - EPA must review and approve VW's plan
  - VW has to meet and confer with EPA to discuss the direction it is proposing
  - Independent auditor of VW's expenditures
  - EPA approves or denies VW's claims for creditable costs
- Transparency
  - The plan must be made publicly available
  - Detailed reports must be made publicly available



## Appendix D: Mitigation Trust Fund

- Volkswagen will fund a \$2.7 billion mitigation trust fund which is intended to fully mitigate the excess NO<sub>x</sub> emissions from the 2.0 liter vehicles
- 50 states, DC, Puerto Rico, and federally recognized Tribes can become beneficiaries
  - Each beneficiary will receive an allocation of funds that can be used for any of the listed eligible mitigation actions
  - The allocation is primarily based on the number of Volkswagen 2.0 Liter Subject Vehicles registered within the jurisdictions of the beneficiaries



## Mechanics of the Mitigation Trust

- VW establishes and funds the mitigation trust
- An independent Trustee administers the trust according to the specific language of the trust document (Appendix D of the CD)
  - The United States has no control over the trust funds
- Every state, the District of Columbia, Puerto Rico and federally recognized Tribes may become Beneficiaries of the trust if they follow the **mandatory procedures**.
  - Beneficiaries of the trust receive allocations from the trust to fund specified and pre-approved mitigation projects
  - **Potential Beneficiaries must take action to become a Beneficiary** (details on slide 20)





## Selection of Trustee

- The procedures to select the Trustee are outlined in ¶ 15 of the Consent Decree
- Prospective Beneficiaries may submit to the United States a list of between 3-5 recommended trustee candidates (one list from Tribes, one list from the states, one list from California)
- The US confers with Prospective Beneficiaries to agree on one list of between 3-5 trustee candidates, and files a motion requesting the Court to select a trustee from among the candidates
- The US files a motion requesting that the Court to select and appoint a trustee from among the candidates
  - If the Court does not select a Trustee, the process is repeated
- If the selection process goes smoothly, then the Trustee will be selected as soon as the first quarter of 2017



## 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 Volkswagen and the Trustee
- The TED is important because the deadlines in the Mitigation Trust flow from the TED

**TED+60 → DEADLINE for Potential Beneficiaries  
to submit the paperwork to become Beneficiaries**



## Timing of the Mitigation Trust

- October 25: Consent Decree finalized
- May take months to choose Trustee, set up Trust
- “Trust Effective Date” – when the Trustee is formally put in place
- **TED + 60 = Deadline for States to certify as Beneficiaries**
- States have 90 days after becoming Beneficiary to write Mitigation Plans
- Beneficiaries may have access to funds by mid-2017



## How To Become a Beneficiary

- Every State, the District of Columbia, Puerto Rico, and Tribes may become a Beneficiary **BUT** they must take action in order to do so
- A potential beneficiary must file a **certification form** (attached as Appendix D-3 to the CD) with the Court in order to become a Beneficiary
- In the certification form each potential beneficiary must:
  - a) Designate one agency or office to act for the Beneficiary
  - b) Submit to jurisdiction of the federal court in California overseeing this settlement and consent to the terms of the trust agreement
  - c) Commit to certain practices for handling funds
  - d) Waive any claim for injunctive relief against VW for environmental matters concerning the 2.0L Subject Vehicles
  - e) Certify that the Beneficiary will make all documentation of its expenditures under the Trust publicly available
  - f) Certify it will not deny DMV registration to any 2.0L Subject Vehicle solely on the basis that the vehicle has the defeat devices or received the Emissions Modification
  - g) Make other certifications to ensure public accountability and proper administration of the Trust



## Beneficiary Mitigation Plan

- After signing the certification each Beneficiary must submit to the Trustee and make publicly available a **Beneficiary Mitigation Plan** before receiving any Trust funds
- This plan must:
  - a) Explain the Beneficiary's overall goal for the use of the Trust funds
  - b) Describe the NOx reductions the Beneficiary expects its plan to achieve
  - c) List the categories of Projects the Beneficiary intends to implement
  - d) Explain how the Beneficiary will consider benefits to air quality in communities with a disproportionate air pollution burden and explain how it will seek and consider public input; and
  - e) Make other statements to allow the public and the Trustee to better understand the goals of the plan



## The Allocation of Trust Funds

- To ensure equitable distribution, funds are allocated proportionally to Beneficiaries primarily based on the number of Volkswagen 2.0 Liter Subject Vehicles registered within the jurisdictions of the Beneficiaries
- Appendix D-1 lists the specific amount and allocated percentage each Beneficiary may receive
  - Allocation amounts range between \$7.5 million and \$381 million
- Allocation amounts may increase proportionally if VW is required to pay more into the Trust



## Distribution of Trust Funds

- The Trustee – NOT THE EPA – decides whether:
  - a) Projects for which a Beneficiary requests funding are allowable under the well-defined list; and
  - b) The costs of the project are allowable under well-defined cost guidance
- Allowed expenditure of Trust funds
  - Beneficiaries may only use their allocation of Trust funds for projects listed on the following slide
  - Must follow cost-sharing guidelines
  - Projects otherwise required by state or federal law are not eligible for Trust funds
  - Beneficiaries may use Trust funds for administrative costs, but administrative costs cannot exceed 15% of allocation amount



## Eligible Mitigation Projects

1. Class 8 local freight trucks and port drayage trucks
2. Class 4-8 school/shuttle/transit buses
3. Freight switcher locomotives
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
- Trust Funds cannot be used to meet DERA non-federal mandatory cost share requirements
- State and tribal DERA grants only





## DERA Option - States

- Trust funds can be used to match the EPA base funding for State DERA grants
  - Example A:
    - State's DERA allocation in FY2017 is ~\$200,000
    - State uses \$200,000 in Trust funds as the 1:1 voluntary non-Federal match
    - State bonus is 50% of the base amount \$100,000
    - Total State funding is \$500,000
      - State will receive - \$300,000 from DERA and \$200,000 from the Trust
  - Trust funds can be greater than the 1:1 voluntary match above
    - Example B:
      - State's DERA allocation in FY2017 is ~\$200,000
      - State may use a larger amount - \$1,000,000 in this example - in Trust funds
      - State bonus DERA amount of \$100,000
      - State's DERA Clean Diesel Grant program and Trust funding for FY2017 would be \$1.3 million
        - \$300,000 from DERA and \$1,000,000 from the Trust.
- Note: Timing of DERA State FY2017 grants will not match up with availability of trust funds
  - Grantees can add voluntary funds (trust funds) later to FY2017 grants or wait until FY2018 grants



## DERA Option - Tribes

- Federally-recognized Tribes can become Beneficiaries
- Tribes can implement Eligible Mitigation Actions 1-9 directly with the Trustee or utilize the “DERA Option”
- 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 submit a *Notice of Intent to Participate* in DERA by Sept 1 each year
  - These notices “reserve” funds for the Tribe
  - Tribes apply to DERA Tribal RFP incorporating these “reserved” funds
  - Winning applications are awarded as DERA tribal grants
  - Funds reserved for non-winning applications revert to the Tribal allocation
- DOJ is responding to Tribal Consultation



## Timeline for DERA Option Implementation

Fall 2016	<ul style="list-style-type: none"><li>• Prepare guidance/info for states and tribes</li><li>• Outreach to potential beneficiaries</li></ul>
Winter 2017	<ul style="list-style-type: none"><li>• State DERA grant program launches*</li><li>• Possible Trust Effective Date**</li></ul>
Spring 2017 and beyond	<ul style="list-style-type: none"><li>• States certify as Beneficiaries</li><li>• States submit Beneficiary Mitigation Plan</li><li>• Adjust DERA Tribal RFP timing as needed</li><li>• Assist states and tribes using DERA option</li></ul>

\*Dependent upon DERA Reauthorization and/or 2017 Appropriation

\*\*Trust Effective Date may be later, pushing timeline back



- Resources on the DERA Option:
  - [cleandiesel@epa.gov](mailto:cleandiesel@epa.gov)
  - 1-877-623-2322
  - [www.epa.gov/cleandiesel](http://www.epa.gov/cleandiesel)
    - VW DERA Option web page
    - Fact sheet
    - State and Tribal program guidance



# Environmental Justice

- Environmental Justice communities will benefit from the Mitigation Trust because:
  - Beneficiaries are required to consider Environmental Justice communities in planning
  - The no cost-share requirement for government-owned equipment will allow governments to direct the Trust Funded projects to low-income communities



## Questions...

- Responses now as we are asked
- Supplementary FAQs based on the questions received today
- [vw\\_settlement@epa.gov](mailto:vw_settlement@epa.gov)