

## Proposed Revisions to South Dakota’s Volkswagen (VW) Beneficiary Mitigation Plan

As part of the Volkswagen settlement, an Environmental Mitigation Trust Agreement was established to mitigate excess nitrogen oxide emissions resulting from the use of emission control defeat devices in the VW light-duty diesel vehicles. South Dakota was allocated \$8,125,000 as part of the agreement. The Trust required states to make publicly available a “Beneficiary Mitigation Plan” (plan) that describes how the state will use the funds allocated to it under this Trust. After a public input process, South Dakota’s plan was approved by the Board of Minerals and Environment (BME) on August 16, 2018. The current plan is available on the website at: <https://denr.sd.gov/des/aq/aaVW.aspx#BeneficiaryMitigationPlan> .

The Department has evaluated implementation of the plan after each year of funding to determine whether any revisions to the plan and funding levels for each of the Eligible Mitigation Actions are appropriate or necessary. During the December 2020 BME meeting, the board recommended that the department consider and recommend changes to the plan.

### South Dakota’s Current Plan

Table 1-1 summarizes South Dakota’s current plan to use the VW trust funds. The table identifies the percentage allotted to the 10 eligible mitigation categories, the corresponding dollar amount, how much of the allocation has currently been obligated, and how much of the allocated funds remain.

**Table 1-1 – South Dakota’s Current Plan**

Category	Eligible Mitigation Action	Allotted % from Trust	Allotted Amount from Trust	Obligated	Remaining Funds
1/6	Class 8/Class 4-7 Local Freight Trucks	50%	\$ 4,062,500	\$ 908,262	\$ 3,154,238
2	Class 4-8 Buses	10%	\$ 812,500	\$ 237,803	\$ 574,697
3	Freight Switcher Locomotives	0%	\$ -	\$ -	\$ -
4	Ferries and Tugs	0%	\$ -	\$ -	\$ -
5	Ocean Going Vessels Shorepower	0%	\$ -	\$ -	\$ -
7	Airport Ground Support Equipment	0%	\$ -	\$ -	\$ -
8	Forklifts and Port Cargo Handling Equipment	0%	\$ -	\$ -	\$ -
9	Light Duty ZEV Supply Equipment	5%	\$ 406,250	\$ 406,245	\$ 5
10	DERA Option	25%	\$ 2,031,250	\$ 1,141,451	\$ 889,799
Admin	Administrative Costs (through 12/2020)	10%	\$ 812,500	\$ 164,147	\$ 648,353
<b>Total VW Trust</b>		<b>100%</b>	<b>\$ 8,125,000</b>	<b>\$ 2,857,908</b>	<b>\$ 5,267,092</b>

### **South Dakota's Overall Goal**

The primary goal of the Federal Clean Air Act and/or South Dakota's Air Pollution Control is to achieve and maintain reasonable levels of air quality which will protect human health and safety, prevent injury to plant and animal life and property, foster the comfort and convenience of its inhabitants, promote the economic and social development of the state and, to the greatest degree practicable, facilitate the enjoyment of the natural attractions of the state. The goal of this Plan is to facilitate the improvement and protection of the ambient air quality throughout South Dakota. South Dakota can contribute to this goal by implementing eligible mitigation projects that:

1. Achieve reductions in diesel engine emissions by providing funding for emission reduction projects throughout the state and in areas of the state that bear a disproportionate share of the impact of nitrogen oxide emissions;
2. Achieve reductions in ground level ozone, for which nitrogen oxide is a precursor, in areas of the state where levels are approaching the federal National Ambient Air Quality Standards;
3. Maximize the use of Trust funds in reducing nitrogen oxide emissions; and
4. Award funds through a public process.

### **Eligible Mitigation Actions**

The VW Partial Consent Decree identified 10 categories that were eligible for mitigation projects. Mobile sources were identified as the largest contributor to South Dakota nitrogen oxide emissions. In addition, on road heavy duty diesel vehicles and gasoline light duty vehicles represented 50% of the nitrogen oxide emissions from the mobile sources. Therefore, VW eligible mitigation projects categories #1 (trucks), #2 (buses), #6 (trucks), #9 (electrical vehicle infrastructure), and #10 (DERA buses) were identified as the best options for South Dakota to mitigate nitrogen oxide emissions.

VW eligible mitigation projects categories #3 (Trains), #4 (Ferries / Tugs), #5 (Ocean Ships), #7 (Airports), and #8 (Cargo/Ship equipment) either did not exist in South Dakota and/or were a small fraction of South Dakota's nitrogen oxide emissions. Therefore, these categories were not allotted funding.

In reviewing this data for any updated information, it was concluded the same VW eligible mitigation projects categories #1 (trucks), #2 (buses), #6 (trucks), #9 (electrical vehicle infrastructure), and #10 (DERA buses) should continue to be funded.

The following information was used as the basis for the proposed changes to the funding allotments for the VW eligible mitigation projects categories #1 (trucks), #2 (buses), #6 (trucks), #9 (electrical vehicle infrastructure), and #10 (DERA buses):

### **Plan Wide Recommendations**

While implementing the VW trust rebate program(s), the costs for the bus, truck, or electrical vehicle projects are quite variable. In addition, the interest in the programs vary depending on the rebate percentage amounts. To accommodate for this variability and provide flexibility to allow some allotments to be readily transferred from one program to another, the department recommends a range representing the minimum and maximum funding amounts for each category.

**Buses** – The state Diesel Emissions Reduction Act (DERA) program has been used to replace old diesel buses since 2009. The program maximizes public health benefits since children are especially vulnerable to the effects of diesel exhaust. The Department chose to use Category 10 funds to meet the State’s Clean Diesel Grant Program’s non-federal voluntary match. In meeting the voluntary match equal to the base allocation offered by the EPA, the EPA provides a matching incentive equal to 50 percent of the base allocation. Based on the 2017 DERA award of \$223,801, it was anticipated that South Dakota would need approximately 25% of the trust funds to meet the non-federal voluntary match. Since 2017, the base funding for DERA has increased each year up to \$327,838 in 2020. This has caused the funds in this category to be depleted at a higher rate than the other categories. Category 2 funds were also added, to be used in response to extensive applications in any particular year.

In using Category 10 funds for match to receive additional incentive funding from EPA, many more high-emitting, diesel buses are taken off the road. The rebates have been up to 25%, 35%, or 45% depending on fuel type of new bus. Since the rebate amount is low, more emissions reduction can be accomplished than with programs giving higher rebate amounts. Replacing buses has been well received.

#### Recommendations:

- The department recommends combining both bus Category 2 and DERA bus Category 10. This will provide flexibility since DERA funding is variable from year to year and it is not clear how much will be needed for match in future years.
- The department recommends increasing funding allocation for buses. DERA base funding has increased significantly since 2017, so more funds are needed to meet the match requirements. By matching DERA base funding, additional incentive funds are awarded by EPA. The bonus funding combined with the low rebate percentages result in increased emission reductions. There has been continued and excess interest for these projects even with the low 25% rebates. Using the current EPA base funding, the department recommends increasing the total for this combined category from 35% to 45%.

**Trucks** – Category 1 and Category 6 were combined since they both dealt with Local Freight Trucks. It was not known which category would have more interest. So far, Category 1 has been more popular. For the sake of flexibility, these categories will remain combined. Rounds one through three provided up to 25, 35, or 45% rebates depending on fuel type of new trucks.

There was very little interest in the program during the first three rounds. Rounds four and five will provide up to 50, 60, or 70% rebates depending on fuel type of the new trucks. The increased rebates provided more interest in the program, but it is costing more for the emission reductions.

Recommendation:

- The department recommends decreasing funding for trucks. Interest for this program increased when the rebate percentages increased, but that results in fewer emission reductions. By decreasing funds in this category, other more popular categories can be increased. The department recommends decreasing the total for this combined category from 50% to 45%.

**Electric Vehicle Charging Stations** - Before opening Category 9, public input was requested on the draft guidelines and application form. The two main comments received were to increase the funding for Category 9 and to raise the rebate percentage. There has been one round for Category 9 projects. The rebate percentage was up to 80%. There was unexpectedly high interest in the charging station program. Seven of the 25 projects were awarded a 72% rebate. The initial allocation of 5% for Category 9 was depleted with only a small percentage of the projects receiving funds.

Recommendation:

- The department recommends increasing funding for electric vehicle charging stations. There was great interest for Category 9 projects. Reducing range anxiety is a main goal for the installation of the stations. Drivers want to know that there are reliable fast-charging stations that will get them across the state, especially along the I-90 and I-29 corridors. The trust has capped the funding for Category 9 at 15%. The department recommends increasing the total for this category from 5% to 15%.

**Administrative Costs** – So far, the administrative costs have been very low. This trend is expected to continue.

Recommendation:

- The trust has capped the funding for administrative costs at 15%. The department recommends maintaining the administrative cost in a range from 0% to 10%. Any remaining funds under the 10% will be used within the three other broad categories.

Table 1-2 summarizes South Dakota's Revised Plan.

**Table 1-2 – South Dakota’s Revised Plan**

Category	Eligible Mitigation Action	Proposed % Range	Allotted Amount	Obligated	Remaining Funds
1/6	Class 8/Class 4-7 Local Freight Trucks	35 to 45%	\$2,843,750 to \$3,656,250	\$908,262	\$1,935,488 to \$2,747,988
2/10	Class 4-8 Buses /DERA Option	35 to 45%	\$2,843,750 to \$3,656,250	\$1,379,254	\$1,464,496 to \$2,276,996
3	Freight Switcher Locomotives	0%	\$0	\$0	\$0
4	Ferries and Tugs	0%	\$0	\$0	\$0
5	Ocean Going Vessels Shorepower	0%	\$0	\$0	\$0
7	Airport Ground Support Equipment	0%	\$0	\$0	\$0
8	Forklifts and Port Cargo Handling Equipment	0%	\$0	\$0	\$0
9	Light Duty ZEV Supply Equipment	10 to 15% <sup>1</sup>	\$812,500 to \$1,218,750	\$406,245	\$406,255 to \$812,505
Admin	Administrative Costs	5 to 10% <sup>1</sup>	\$406,250 to \$812,500	\$ 164,147	\$242,103 to \$648,353
<b>Total VW Trust</b>		<b>100%</b>	<b>\$8,125,000</b>	<b>\$2,857,908</b>	<b>\$5,267,092</b>

<sup>1</sup> – The VW trust limits the maximum amount that may be used in the category to 15%.

**Public Participation**

The department recommends using a similar public participation process as used in the initial plan development. The generic process is to provide the public 30 days to comment on the department’s recommended draft changes. The department will have up to 30 days to respond to those comments and make a final recommendation. After the department makes its final recommendation, a hearing in front of the Board of Minerals and Environment will be scheduled to consider and decide on the final recommendations.

Public input on revising the plan may be given on the website <http://denr.sd.gov/des/aaVW.aspx> or by sending comments by mail to Barb Regynski, Air Quality Program, 523 East Capitol, Pierre, SD, 57501. Comments will be accepted April 9, 2021. Thank you for your assistance in helping DENR maintain a plan that best meets the needs of South Dakota.