

APPENDIX D-4
Beneficiary Eligible Mitigation Action Certification

BENEFICIARY ELIGIBLE MITIGATION ACTION CERTIFICATION

Beneficiary State of Kansas

Lead Agency Authorized to Act on Behalf of the Beneficiary Kansas Department of Health and Environment
(Any authorized person with delegation of such authority to direct the Trustee delivered to the Trustee pursuant to a Delegation of Authority and Certificate of Incumbency)

Action Title:	KS Clean Diesel Program - DERA VW 1
Beneficiary's Project ID:	DERA-VWEMT-1
Funding Request No.	<i>(sequential)</i> 1
Request Type: (select one or more)	<input type="checkbox"/> Reimbursement <input checked="" type="checkbox"/> Advance <input type="checkbox"/> Other (specify): _____
Payment to be made to: (select one or more)	<input type="checkbox"/> Beneficiary <input checked="" type="checkbox"/> Other (specify): <u>Kansas Department of Health and Environment (Lead Agency)</u>
Funding Request & Direction (Attachment A)	<input checked="" type="checkbox"/> Attached to this Certification <input type="checkbox"/> To be Provided Separately

SUMMARY

Eligible Mitigation Action	<input type="checkbox"/> Appendix D-2 item (specify): _____
Action Type	<input checked="" type="checkbox"/> Item 10 - DERA Option (5.2.12) (specify and attach DERA Proposal): _____
Explanation of how funding request fits into Beneficiary's Mitigation Plan (5.2.1): Please see Summary Attachment	
Detailed Description of Mitigation Action Item Including Community and Air Quality Benefits (5.2.2): Please see Summary Attachment	
Estimate of Anticipated NOx Reductions (5.2.3): Please see Summary Attachment	
Identification of Governmental Entity Responsible for Reviewing and Auditing Expenditures of Eligible Mitigation Action Funds to Ensure Compliance with Applicable Law (5.2.7.1): Please see Summary Attachment	
Describe how the Beneficiary will make documentation publicly available (5.2.7.2). Please see Summary Attachment	
Describe any cost share requirement to be placed on each NOx source proposed to be mitigated (5.2.8). Please see Summary Attachment	
Describe how the Beneficiary complied with subparagraph 4.2.8, related to notice to U.S. Government Agencies (5.2.9). Please see Summary Attachment	

If applicable, describe how the mitigation action will mitigate the impacts of NOx emissions on communities that have historically borne a disproportionate share of the adverse impacts of such emissions (5.2.10).

Please see Summary Attachment

ATTACHMENTS
(CHECK BOX IF ATTACHED)

- Attachment A Funding Request and Direction.
- Attachment B Eligible Mitigation Action Management Plan Including Detailed Budget and Implementation and Expenditures Timeline (5.2.4).
- Attachment C Detailed Plan for Reporting on Eligible Mitigation Action Implementation (5.2.11).
- Attachment D Detailed cost estimates from selected or potential vendors for each proposed expenditure exceeding \$25,000 (5.2.6). [Attach only if project involves vendor expenditures exceeding \$25,000.]
- Attachment E DERA Option (5.2.12). [Attach only if using DERA option.]
- Attachment F Attachment specifying amount of requested funding to be debited against each beneficiary's allocation (5.2.13). [Attach only if this is a joint application involving multiple beneficiaries.]

CERTIFICATIONS

By submitting this application, the Lead Agency makes the following certifications:

1. This application is submitted on behalf of Beneficiary State of Kansas, and the person executing this certification has authority to make this certification on behalf of the Lead Agency and Beneficiary, pursuant to the Certification for Beneficiary Status filed with the Court.
2. Beneficiary requests and directs that the Trustee make the payments described in this application and Attachment A to this Form.
3. This application contains all information and certifications required by Paragraph 5.2 of the Trust Agreement, and the Trustee may rely on this application, Attachment A, and related certifications in making disbursements of trust funds for the aforementioned Project ID.
4. Any vendors were or will be selected in accordance with a jurisdiction's public contracting law as applicable. (5.2.5)
5. Beneficiary will maintain and make publicly available all documentation submitted in

support of this funding request and all records supporting all expenditures of eligible mitigation action funds subject to applicable laws governing the publication of confidential business information and personally identifiable information. (5.2.7.2)

DATED: 08/14/2019

Lee A. Norman MD *ALP*
[NAME]
[TITLE]

Kansas Department of Health and Environment

[LEAD AGENCY]

for

State of Kansas

[BENEFICIARY]

Beneficiary: State of Kansas

Lead Agency: Kansas Department of Health and Environment

**Summary Attachment
Beneficiary Eligible Mitigation Action Certification**

Explanation of how the funding request fits into the Beneficiary's Mitigation Plan (5.2.1):

This funding request addresses VW EMT action category 10. Diesel Emission Reduction Act (DERA) Option.

The lead agency (KDHE) will use trust funds for the non-federal voluntary match, pursuant to Title VII, Subtitle G, Section 793 of the DERA Program in the Energy Policy Act of 2005 (codified at 42 U.S.C. § 16133).

The federal allocation for Kansas, voluntary match from the VW trust and the federal bonus will be used in the following project.

- Kansas Clean Diesel Program school bus replacements (partial reimbursement per federal requirement)

This category is eligible under DERA pursuant to all DERA guidance documents available through the EPA. VW trust funds will not be used to meet the non-federal mandatory cost share requirements, as defined in applicable DERA program guidance, of any DERA grant.

Detailed description of the proposed Eligible Mitigation Action, including its community and air quality benefits (5.2.2):

The activity offers program support awards for school bus replacements using the established Kansas Clean Diesel Program. Attachment E is the Kansas Clean Diesel Program workplan. The workplan provides a detail description of the work process and includes a timeline that is reportable to the Region 7 EPA DERA grant coordinator. Air Quality benefits include a reduction of oxides of nitrogen, PM2.5, hydrocarbons, CO and CO2. Awards for project support reduce these emissions across the state.

Estimate of the NOx reductions anticipated as a result of the proposed Eligible Mitigation Action (5.2.3):

NOx reductions were calculated using the Diesel Emission Quantifier for school buses on September 25, 2018.

Table 1. Initial estimated NOx reduction	
Category	NOx reduced over life time of equipment
School Bus Replacements	13.3 tons initial estimate

NOx reduction estimates will be recalculated at close out of the project and reported as a final estimate.

Identification of the specific governmental entity responsible for reviewing and auditing expenditures of Eligible Mitigation Action funds to ensure compliance with applicable law (5.2.7.1):

Reviewing and auditing expenditures is a KDHE work process. The payout document is prepared by the project manager. The payout is entered into the system for electronic funds transfer. The payout is reviewed by fiscal staff before it is approved. Names of all authorized instructors and confirmers are listed on the Kansas Delegation of Authority and Exhibit A forms that were submitted to the trust.

Describe how the Beneficiary will make documentation publicly available (5.2.7.2).

To the extent allowable under Kansas law, KDHE is committed to providing documentation submitted by applicants and recipients of Eligible Mitigation Action funds to the public. KDHE will post this documentation on its KS VW Settlement webpage. Electronic and paper copies of these documents can be requested by the public under the Kansas Open Records Act.

Describe any cost share requirement to be placed each NOx source proposed to be mitigated (5.2.8).

Cost-Share is required per cooperative agreement between KDHE and EPA for Clean Diesel/DERA activities. The limits for awards as stated in item 5.2.6 (Attachment D of this PDF) flow through to the awardee and are established in a written agreement that is signed by the Secretary of KDHE and the awardee. Paid receipts are required to be submitted to KDHE and equipment must be verified in person or by photo before reimbursement is made to the awardee.

Describe how the Beneficiary complied with subparagraph 4.2.8, related to notice to U.S. Government Agencies (5.2.9).

KDHE provided the Department of the Interior, Department of Agriculture and a compiled list of tribal contacts and federal land contacts within Kansas with the following notification via e-mail:

Re: Notice of Availability of Mitigation Action Funds pursuant to Section 4.2.8 of the Environmental Mitigation Trust Agreement for State Beneficiaries, in In re: Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation, MDL No. 2672CRB (JSC) (Dkt. No. 2103-1)

This communication is provided to your Federal Agency pursuant to Section 4.2.8 of the above-cited Trust Agreement (copy attached hereto). Please be advised that the Beneficiary Mitigation Plan for the State of Kansas may provide for the availability of funds for which your Federal Agency or other parties could apply for proposed projects for use on lands within your Agency's custody, control, or management (including, but not limited to, Clean Air Act Class I and II areas). The review, consideration and written determinations relating to each such application or request will be subject to the terms of the underlying settlement agreement documents, all applicable laws and regulations of this jurisdiction, and any additional procedures or other measures that will be developed, adopted and published by this jurisdiction relating to the handling of requests or applications for project funding. For further information, please visit our VW Settlement website at <http://www.kdheks.gov/bar/air-monitor/dieselgrant/dieselvw.html>.

Kansas does not have Class I or Class II designated areas.

If applicable, a description of how the Eligible Mitigation Action mitigates the impacts of NOx emissions on communities that have historically borne a disproportionate share of the adverse impacts of such emissions (5.2.10).

The Bureau of Air at KDHE operates the KS Air Monitoring Network. Ozone and particulate matter (PM) exceedances have occurred in past years but none of the Kansas monitors currently violate the health-based standards for these criteria pollutants. Oxides of nitrogen are also a concern though current effort has not detected any exceedances of the health-based standard. Concerns about human exposure to diesel emissions in areas where the concentrations are likely to be increased have lead the KS Clean Diesel Program staff to target school buses for improvements. Equipment operates in neighborhoods and school settings where there is an increased risk of exposure to the public. Finally, using the VW EMT funds, there will be a greater impact than with DERA funding alone.

ATTACHMENT B
PROJECT MANAGEMENT PLAN
PROJECT SCHEDULE AND MILESTONES

Milestone	Date
KDHE named lead agency	12/2016
KDHE holds an informal request for information period	11/2017 to 12/2017
Kansas certified for beneficiary status	1/30/2018
KDHE provides notification to federal agencies	3/2018
KDHE posts EMT plan for formal comments	6/1/2018 to 7/2/2018
KDHE uploads final plan to 3 rd party trust	8/6/2018
KDHE submits 1 st funding request to 3 rd party	7/15/2019
KDHE awards DERA contracts to school districts	10/1/2019
Finalize contracts, finalize bid collection	11/2019
Collect photos of old equipment. Quarterly report to EPA	12/2019
Initiate/complete ordering	1/2020
Continue collecting photos of old buses.	2/2020
Buses begin to arrive, decommission process begins. Provide Report to 3 rd party per requirement.	4/2020 and 5/2020
Continue as above. Quarterly report to EPA	6/2020
Finalize reimbursements.	7/2020 and 8/2020
September 2020: Complete verification, decommission and reimbursement. Quarterly report to EPA	9/2020
October to December 2020: Close out cooperative agreement and issue final report to EPA. Provide final reports to 3 rd party per requirement.	10/2020 and 12/2020

PROJECT BUDGET

Period of Performance: 10/1/2019 to 12/31/2020				
Budget Category	Total Approved Budget	Share of Total Budget to be Funded by the Trust	DERA 2018 <small>10/1/2018 to 9/30/2019</small>	Mandatory Cost Share
1. Equipment expenditure	\$0.00	\$0.00	\$0.00	\$0.00
2. Contractor Support	\$0.00	\$0.00	\$0.00	\$0.00
3. Subrecipient Support	\$657,424.96	\$275,038.00	\$382,386.96	<i>\$2,000,000 estimated</i>
4. Administrative	\$64,927.41	\$34,757.36	\$30,170.04	\$0.00
Project Totals	\$722,352.36	\$309,795.36	\$412,557.00	Unknown at This time
Percentages	100%	43% (mandatory match not included)	57% (mandatory match not included)	Unknown at this time

1. DERA 2018 from grant number 97760701. Projects already underway. VW trust provides the match for required for KDHE to qualify for grant bonus funds.

2. Cost share for school buses is mandatory per EPA grant agreement. Amount as of 6/15/2019 is approximately \$890,000 it is anticipated that cost share from awardees for the entire project will be approximately \$2,000,000.

3. Subrecipient Support = Project support allocated to awardees

4. Administrative is subject to Appendix D-2 15% cap and includes salary/fringe and indirects. For D-4 number 1 administrative is approximately 9% for the VW trust portion.¹

PROJECTED TRUST ALLOCATIONS:

¹ Federal indirect rate = 17.6% at the beginning of the grant period.

	2017	2018	2019	2020	2021
1. Anticipated Annual Project Funding Request to be paid through the Trust	-	-	\$309,795.36	-	-
2. Anticipated Annual Cost Share	-	-	Approximately \$2,000,000	-	-
3. Anticipated Total Project Funding by Year (line 1 plus line 2)	-	-	Approximately \$2,722,352.36 DERA, VW Trust and cost share	-	-
4. Cumulative Trustee Payments Made to Date Against Cumulative Approved Beneficiary Allocation	-	-	\$0	-	-
5. Current Beneficiary Project Funding to be paid through the Trust (line 1)	-	-	\$309,795.36	-	-
6. Total Funding Allocated to for Beneficiary, inclusive of Current Action by Year (line 4 plus line 5)	-	-	\$309,795.36	-	-
7. Beneficiary Share of Estimated	\$15,662,238.80	\$15,662,238.80	\$15,662,238.80	-	-

Funds Remaining in Trust					
8. Net Beneficiary Funds Remaining in Trust, net of cumulative Beneficiary Funding Actions (line 7 minus line 6)	\$15,662,238.80	\$15,662,238.80	\$15,352,443.44	-	-

Attachment C

Kansas Department of Health and Environment (KDHE)

Detailed Plan for Reporting on Eligible Mitigation Action Implementation (5.2.11).

The current project for 2019 involves federal DERA funds intermingled with the VW trust allocation for Kansas.¹ Reporting requirements for both entities will be largely satisfied by following federal reporting requirements in which project activities are reported quarterly. Kansas Department of Health and Environment (KDHE) reports quarterly to EPA and provides a final write up after close out. The contents of the quarterly report include expenditures and outputs including written agreements finalized, bid approvals, equipment verifications and equipment decommission. The final report includes updated emission reductions, all project costs and cost-share contributed by the awardee. In addition to federal requirements, KDHE will provide a semi-annual report directly to the trust no later than six months after reviving the first disbursement. After that KDHE will adhere to the prescribed schedule described in 5.3 of Attachment A of the final trust document. These reports will also be posted to the KS VW Settlement webpage for public viewing.²

Anticipated report dates directly to the trust:

- April 2020 (estimated date, six months after funding is received)
- January 2020 (project funds will have been spent)

¹ Project was planned for 2018 but KDHE did not receive authority to spend VW trust fund allocation until mid 2019. This first request from VW supports DERA grant 97760701 which received a no-cost extension to complete.

² <http://www.kdheks.gov/bar/air-monitor/dieselgrant/dieselvw.html>

Attachment D

Detailed cost estimates from selected or potential vendors for each proposed expenditure exceeding \$25,000 (5.2.6). [Attach only if project involves vendor expenditures exceeding \$25,000.]

It is likely that all awards will be over \$25,000. Vendors are chosen by the awardee and approved by KDHE to assure state bid competition laws are followed.

School district awardees are all required to match projects per federal rules. Both categories order their awarded equipment and are reimbursed after all project requirements are verified by KDHE.

Reimbursement awards will follow federal requirements that are listed in the FY2018 and FY2019 State Clean Diesel Grant Program Information guides.¹

Table 3. Award limits		
DERA/Clean Diesel Eligible Activity	Federal Reimbursement Limit (what is awarded)	Minimum Mandatory Cost-Share (Awardee responsibility)
School bus replacement	25%	75%

School districts are currently submitting bids for similar new buses and the range of costs varies according to type, inclusions of idling reduction equipment and other requirements specific to each district's request.

Range: \$118,521 to \$85,027

Average: \$95,186

Average award: \$24,000 for projects containing one bus

¹ This document is available on the EPA Clean Diesel webpage.

APPENDIX E: KS Clean Diesel Program 2018 – Workplan and Budget Narrative

6/21/2018 – FINAL

FISCAL YEAR 2018 (Project extended until 9/30/2020)

KANSAS CLEAN DIESEL PROGRAM 2018

WORK PLAN AND BUDGET NARRATIVE

The 2018 grant period will be use funds from the VW Environmental Mitigation Trust per the requirements of the federal DERA grant and option number 10 in Appendix D-2 of the final partial consent decree.³

School Buses Process

The program will use the allocated funding to offer partial reimbursement for the purchase of new school buses to replace buses that will be retired and decommissioned ahead of the normal attrition schedules. These projects have already been selected using a random number drawing to award districts that submitted eligible projects during the 2017 award process.

SCOPE OF WORK

STATE/TERRITORY GOALS AND PRIORITIES:

The Bureau of Air at KDHE operates the KS Air Monitoring Network. Ozone and PM exceedances have occurred in past years but none of the Kansas monitors currently violate the health-based standards for these criteria pollutants. Oxides of nitrogen are also a concern though current monitoring effort have not detected any exceedances of the health-based standard. Concerns about human exposure to diesel emissions in areas where the concentrations are likely to be increased have lead the KS Clean Diesel Program staff to target school buses for improvements. School buses operate in neighborhoods and in school yard settings where there is an increased risk of exposure mobile source emissions. Finally, using the VW EMT, there will be a greater impact than with DERA funding alone.

VEHICLES AND TECHNOLOGIES: The following paragraphs provides details as to what type of project will be awarded through the random selection process and defines the eligible entity.

Eligible entity:

For School buses - Public school districts in Kansas that are eligible to receive federal funding.

Eligible vehicles projects: District Owned School Buses

- **District Owned School Buses:** KHDE will make awards for support costs for the partial reimbursement of eligible school buses operated by unified school districts in Kansas. Eligible engine model years include 1995 to 2006 and 2007 to 2009 are eligible if the replacement vehicle is all electric powered. Per EPA guidance, no funds awarded under the (federal) Program shall be used to replace a school bus with engine model year 1994 and older or replace school buses with engine model year 2007 - 2009 other than with an all-electric vehicle or replace school buses with engine model year 2010 or newer. The engine(s) of the bus/buses that will be retired and replaced through this award will be required to be rendered permanently incapacitated (no fleet expansion). The retiring bus/buses must have at least three years of remaining usefulness. All retiring buses replaced through this award must be replaced with buses that contain engines certified to be the latest engine model year. Finally, any new bus must be used for the same purpose as the bus it replaced through this award.

³ KDHE has posted a spending plan on the KDHE website which is open for a 30-day comment period. Plan will be submitted to the third party trust and once approved KDHE may begin a request for draws from the allocation.

Finalize contracts, finalize bid collection	11/2019
Collect photos of old equipment. Quarterly report to EPA	12/2019
Initiate/complete ordering	1/2020
Continue collecting photos of old buses.	2/2020
Buses begin to arrive, decommission process begins.	4/2020 and 5/2020
Continue as above. Quarterly report to EPA, salary transfer. Provide Report to 3 rd party per requirement.	6/2020
Finalize reimbursements.	7/2020 and 8/2020
September 2020: Complete verification, decommission and reimbursement. Quarterly report to EPA	9/2020
October to December 2020: Close out cooperative agreement and issue final report to EPA. Provide final reports to 3 rd party per requirement.	10/2020 and 12/2020

DERA PROGRAMMATIC PRIORITIES:

EPA'S STRATEGIC PLAN LINKAGE AND ANTICIPATED OUTCOMES/OUTPUTS:

The program goal to reduce diesel emissions is supportive of Objective 1.2, Improve Air Quality, in the EPA Strategic Plan (2014 to 2018). Clean Diesel activities are workplan items in the KDHE 105 cooperative agreement for FY2018 and FY2019. These activities are expanded by offering assistance through this allocation. Activities under this agreement also support DERA Programmatic Priorities to reduce exposure to diesel emissions in areas of air quality concern. This award opportunity was offered throughout the state and in the priority counties identified by EPA at: <http://www.epa.gov/sites/production/files/2015-10/documents/fy14-county-area-list.pdf>

BUDGET NARRATIVE

Itemized Project Budget

Budget Category	FY 2017 ⁶			FY 2018 ⁷			Est. Total 2018 and 2019
	EPA Allocation	Voluntary Match (if applicable)	Mandatory Cost-Share (if applicable)	EPA Allocation	Voluntary Match from VW allocation 2019	Est. Mandatory Cost-Share (if applicable)	
1. Personnel	\$10,000	-	-	\$18,096.00	\$22,224.80	-	\$40,320.80
2. Fringe Benefits	\$3,000	-	-	\$5,428.80	\$6,667.44	-	\$12,096.24
3. Travel	\$620	-	-	\$930.00	-	-	\$930.00
4. Supplies	\$1,000	-	-	\$1,200	-	-	\$1,200
5. Equipment	-	-	-	-	-	-	
6. Contractual	-	-	-	-	-	-	
7. Program Income	-	-	-	-	-	-	
8. Other	\$215,412.40	-	-	\$382,386.96	\$275,038.00	\$2,000,000	\$2,657,424.96
9. Total Direct Charges	\$230,032.40	0.00	\$651,942.75	\$408,041.76	\$303,920.24	\$2,000,000	\$2,711,972.00
10. Indirect Charges	\$2,631.60	-	-	\$4,515.24	\$5,865.12	-	\$10,380.37
Total	\$232,664.00	-	-	\$412,557.00	\$309,795.36	\$2,000,000	\$2,722,352.36

Explanation of Budget Framework

- **Personnel - List all staff positions by title. Give annual salary, percentage of time assigned to the project, and total cost for the budget period.**

Title	Hourly rate	%FTE	Salary
Environmental Program Administrator	\$29/hr	0.2FTE	\$12,064
Public Service Administrator	\$19/hr	0.05FTE	\$1,944.80
Program Analyst	\$23/hr	0.05FTE	\$2,392.00
Environmental Specialist	\$24/hr	0.05	\$2,496.00
Environmental Program Administrator Sr:	\$32/hr	0.05 FTE	\$3,328.00
		Total =	Total =
		0.4FTE	\$22,224.80

⁶ FY 2017 budget is only for states and territories with open FY 2017 State DERA grants. The project is complete for FY2017.

⁷ KDHE received extension to complete FY2018 activities using VW trust as match.

Federal funding - The KDHE total for administrative costs = \$25,654.80 (Personnel, Fringe, Travel, Equipment, and Supplies) The amount is 6% of the EPA Allocation, Bonus + Voluntary match, this was used in FY2018.

VW Trust - The KDHE total for administrative costs for 2019 = \$34,757.36 (Indirects, Personnel, Fringe, Travel, Equipment, and Supplies) The amount is 11% of the VW trust amount that will be used in FY2019.

Matching Funds and Cost-Share Funds

Mandatory Match: Mandatory match will be generated from the participating school district. The program offers up to a 25 percent reimbursement of the total cost of a school bus If the average cost of a bus is \$95,000, 25 percent = \$23,750. If KDHE anticipates reimbursing 25 percent of costs for 12 school buses each school district’s match = \$71,250 in mandatory match per bus awarded. KDHE includes a statement on the application that match for new replacement vehicles is required. The KDHE written agreements with the school districts also includes the requirement which is signed by participants and KDHE officials.

Voluntary Match: Voluntary match

The source of non-federal for the FY2018 Clean Diesel grant to KDHE is 100% from the VW trust allocation to Kansas and is equal to \$309,795.36.

Source description	Amount
Base EPA DERA Grant	\$275,038
KDHE Voluntary Match using VW allocation	\$275,038
Bonus from EPA DERA Grant	\$137,519
KDHE Over-match using VW allocation	\$309,795.36
TOTAL	\$722,352.36

Funding Partnerships

KDHE has used the terms subaward and subgrant when for making awards on past applications. KDHE only makes awards for equipment and installations related to the equipment in said award agreements. KDHE provides participant support costs only.