

APPENDIX D-4
Maine Beneficiary Eligible Mitigation Action Certification

BENEFICIARY ELIGIBLE MITIGATION ACTION CERTIFICATION

Beneficiary: State of Maine

Lead Agency Authorized to Act on Behalf of the Beneficiary: Maine Department of Transportation *(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:	Diesel Emission Reduction Act (DERA) Option
Beneficiary's Project ID:	23901.20
Funding Request No.	01
Request Type: (select one or more)	<input type="checkbox"/> Reimbursement X Advance <input type="checkbox"/> Other (specify): _____
Payment to be made to: (select one or more)	X Beneficiary <input type="checkbox"/> Other (specify): _____
Funding Request & Direction (Attachment A)	X 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 X 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): Increase funding for Maine's DERA program by using Environmental Mitigation Trust funds as voluntary match per Section V.9 of Maine's Beneficiary Mitigation Plan (BMP).
Detailed Description of Mitigation Action Item Including Community and Air Quality Benefits (5.2.2): See Maine BMP, Section VII
Estimate of Anticipated NOx Reductions (5.2.3): See Maine BMP, Section VII
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): For DERA, Maine Department of Environmental Protection, Air Bureau, Mobile Sources Program
Describe how the Beneficiary will make documentation publicly available (5.2.7.2). As stated in Paragraph 7 of Maine's Appendix D-3 filing, the Beneficiary certifies that it will maintain and make publicly available all documentation and records: (i) submitted by it in support of each funding request; and (ii) supporting all expenditures of Trust Funds by the Beneficiary, each until the Termination Date of the Trust pursuant to Paragraph 6.8 of the Trust Agreement, unless the laws of the Beneficiary require a longer record retention period. Together herewith, the Beneficiary attaches an explanation of: (i) To satisfy the procedures by which the records may be accessed, which shall be designed to support access and limit burden for the general public. MaineDOT has established a website (http://www.maine.gov/mdot/vw) to house state-specific documents, guidance, public comments, funding process descriptions, and web links to other sites for useful background information and resources related to the VW Environmental Mitigation Settlement; (ii) As part of Maine's Beneficiary Mitigation Plan required under Paragraph 4.1 of the Trust Agreement, the

procedures by which public input will be solicited and considered included the solicitation of public comments via web notice and comment period on Maine's Beneficiary Mitigation Plan. Two public meetings were held in geographically diverse locations prior to closing of the comment period. Comments were and will continue to be considered through program implementation.

(iii) Whether and the extent to which the certification in this Paragraph 7 is subject to the Beneficiary's applicable laws governing the publication of confidential business information and personally identifiable information. The certification in Paragraph 7 is subject to Maine's Freedom of Access Act (FOAA), 1 M.R.S. §§ 400-414, and other applicable Maine law. All documentation and records submitted by the State in support of each funding request and supporting all expenditures of Trust Funds by the State shall be accessible to the public unless an exception from disclosure under Maine law applies to the document or part thereof. For example, Maine's FOAA, 1 M.R.S. § 402(3), includes in the list of exceptions a general exception for records that have been designated confidential by statute. Any claims for confidentiality under this exception, other enumerated exceptions, or under other Maine law would be reviewed by the Maine Department of Transportation and legal counsel. Documents, or parts of documents, would be protected from disclosure only to the extent required by Maine law. The State has identified the following specific provisions potentially applicable to confidential business information and personally identifiable information.

The enumerated exceptions under Maine's FOAA include records that would be within the scope of a privilege against discovery or use as evidence recognized by Maine courts in civil or criminal trials if the records were sought during the course of a court proceeding. 1 M.R.S. § 402(3)(B). Maine Rule of Civil Procedure 26(c) provides that a trade secret or other confidential research, development, or commercial information may be the subject of a protective order by a court, when sought during discovery. Also, Rule 507 of the Maine Rules of Evidence contains a privilege to refuse to disclose, and prevent others from disclosing, a trade secret. The Maine Supreme Judicial Court has looked to the definition of "trade secret" in Maine's Uniform Trade Secrets Act, 10 M.R.S. § 1542(4), in interpreting "trade secret" claims for non-disclosure under FOAA. That definition includes information that "[d]erives independent economic value, actual or potential, from not being generally known to and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use" and "[i]s the subject of efforts that are reasonable under the circumstances to maintain its secrecy."

Maine's FOAA contains exceptions to disclosure for certain personally identifiable information such as social security numbers. 1 M.R.S. § 402(3)(N).

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

See attached DERA program description.

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

Lead agency contact emailed the State Trust Agreement to specified recipients on February 12, 2018.

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).

Not applicable

ATTACHMENTS
(CHECK BOX IF ATTACHED)

- | | | |
|-------------------------------------|---------------------|---|
| <input checked="" type="checkbox"/> | Attachment A | Funding Request and Direction. |
| <input type="checkbox"/> | Attachment B | Eligible Mitigation Action Management Plan Including Detailed Budget and Implementation and Expenditures Timeline (5.2.4). |
| <input type="checkbox"/> | Attachment C | Detailed Plan for Reporting on Eligible Mitigation Action Implementation (5.2.11). |
| <input type="checkbox"/> | 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.] |
| <input checked="" type="checkbox"/> | Attachment E | DERA Option (5.2.12). [Attach only if using DERA option.] |
| <input type="checkbox"/> | 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 Maine, 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: April 20, 2018



**Judy C. Gates-Kilpatrick
Director, Environmental Office**

**Maine Department of Transportation
[LEAD AGENCY]**

for

**State of Maine
[BENEFICIARY]**

ATTACHMENT A

FUNDING REQUEST AND DIRECTION

(Attachment to Appendix D-4, Beneficiary Eligible Mitigation Action Certification, pursuant to Paragraph 5.2 of the Environmental Mitigation Trust Agreement)

Pursuant to the authority granted to the Maine Department of Transportation (MaineDOT) to act on behalf of Beneficiary State of Maine under the Mitigation Trust, the Maine Department of Transportation directs the Trustee to make the following payments from its subaccount no. 122969-023 to the following payees, for the amounts specified on the dates specified below.

LEAD AGENCY INFORMATION

Beneficiary Name: State of Maine	Lead Agency Contact Person: Judy C. Gates-Kilpatrick
Lead Agency Name: Maine Department of Transportation (MaineDOT)	Lead Agency Email Address: judy.gates@maine.gov
Lead Agency Address: 16 State House Station Augusta, ME 04333	Lead Agency Fax: 207-624-3099
Lead Agency Phone: 207-624-3097	Lead Agency TIN: 016000001

Contact information entered above may correspond to Lead Agency or 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

MITIGATION ACTION INFORMATION

Action Title: DERA Option 2018	Funding Request Number: 01
Beneficiary's Project ID: 23901.20	

PAYMENTS REQUESTED
(attach additional pages if needed)

Amount	Requested Date	Payee	Request Type
\$500,000.00	April 20, 2018	MaineDOT	Advance

PAYEE CONTACT AND WIRE INFORMATION

(fill out both tables below for each payee and payment identified in "Payments Requested" table on p. 1; attach additional pages if needed)

PAYEE CONTACT INFORMATION

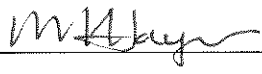
Action Title:	DERA Option 2018	Beneficiary Project ID:	23901.20
Payee Name:	MaineDOT	Payee Contact Person:	Judy C. Gates-Kilpatrick
Payee Address:	16 State House Station Augusta, ME 04333	Payee Email Address:	judy.gates@maine.gov
Payee Phone:	207-624-3097	Payee Fax:	207-624-3099
Payee TIN:	016000001		

Payment Amount	Requested Date	Request Type
\$500,000.00	4/20/2018	Advance

PAYMENT FORM

- X CHECK
 WIRE TRANSFER

SIGNATURE OF AUTHORIZED INSTRUCTOR

Printed Name:	<u>MARY ANN HAYES</u>
Signature:	<u></u>
Date:	<u>6/12/18</u>

**Fiscal Year 2017
 STATE CLEAN DIESEL GRANT PROGRAM
 Region 1 EPA New England**



National Clean Diesel Campaign

Maine Clean Diesel Program

Project Manager and Contact Information

Organization Name	Maine Department of Environmental Protection
Project Manager	Lynne Cayting
Address	17 State House Station, ME 04333-0017
Phone	(207)-287-7599
Fax	(207)-287-7641
Email	Lynne.a.cayting@maine.gov

Project Budget from October 1, 2017 through September 30, 2018

	FY 2017
EPA Base Allocation	\$226,036
State Matching Funds	\$500,000
EPA Match Incentive	\$113,018
Mandatory Cost Share	\$1,192,752
TOTAL	\$2,031,806

The Maine Department of Environmental Protection (Maine DEP) seeks \$339,054 from U.S. EPA to fund the Maine Clean Diesel Program from October 1, 2017 through September 30, 2018. Maine DEP intends to provide State matching funds and therefore will qualify for the EPA match bonus funds. The State will match the federal award using funds from the Maine allocation of the Environmental Mitigation Trust Agreement of the Volkswagen First Partial Consent Decree. Maine potentially will commit \$500,000 of the State's Environmental Mitigation Trust Funds. The mandatory cost share is based on the assumption that most projects will have a 60% cost share.

1. State Goals and Priorities

Maine is in attainment of all National Ambient Air Quality Standards. Maine has two designated Federal Class 1 areas. The Maine Clean Diesel Program's goals and priorities are to maximize public health benefits by employing the most cost effective strategies to reduce diesel emissions. Reducing diesel emissions by replacing unregulated engines from locomotives and marine vessels is a primary goal, as these more polluting engines were built when engine emission standards were lax or non-existent. The school bus fleet is the largest public fleet in the State of Maine and continues to be a priority for the Maine Clean Diesel Program. However, we anticipate that school districts, municipalities and state agencies will apply for funding through the Environmental Mitigation Trust Agreement since up to 100% funding is allowed with no required cost share.

2. *Project Description*

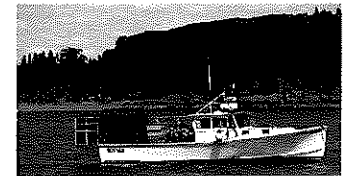
The Maine Clean Diesel Program will fund those projects not listed as eligible mitigation projects specified in the Environmental Mitigation Trust Agreement (Trust Agreement) under Appendix D-2 of the First Partial Consent Decree with Volkswagen. Specifically, the State DERA Program will consider funding for marine repowers, nonroad engine or equipment replacement for construction, forestry or agricultural use, non-ocean going shore power and non-idling technologies for locomotives, long-haul trucks, and school buses.

MaineDOT will be the lead agency for administering funds allocated from the Trust Agreement. Maine DEP in collaboration with MaineDOT will draft the Beneficiary Mitigation Plan (Plan) and seek public input on the overall use of the funds including the percentage of funds allocated for each type of eligible projects. In the Fall of 2017 the Maine DEP and MaineDOT will finalize the BMP based on public input on the anticipated use of funds; after the June 15th deadline for submittal of this work plan. The agencies will solicit for eligible applications for funding through both the DERA Program and eligible mitigation actions as outlined in Appendix D-2 of the First Partial Consent Decree with Volkswagen. Eligible projects selected through the Plan will also consider the State goals and DERA programmatic priorities.

Maine DEP will administer projects such as nonroad engine or equipment replacement and non-idling technologies for school buses and locomotives selected by the Maine Clean Diesel Program for funding through the State DERA Cooperative Agreement. It is anticipated that the majority of the eligible applications will be for marine vessel repower projects. Those marine repower projects will be administered by Maine Marine Trades Association.

Clean Marine Engine Program

The grant will continue to support the Maine Clean Marine Engine Program with repowering commercial fishing vessels. The Maine DEP received to date three eligible applications for the Clean Marine Engine Program. Maine Marine Trades Association (MMTA) will continue to administer the program in collaboration with Maine DEP.



The Department established the Clean Marine Engine Program in 2009 which replaces older in-service marine diesel engines which were built when engine emission standards were non-existent, with the cleanest available engine technology. The Clean Marine Engine Program meets the funding eligibility requirements and reimburses up to 40 percent of the costs to install an EPA certified Tier 3 engine.



The Maine DEP and its partner Maine Marine Trades Association reach out to boat yards for eligible applications. The Maine DEP selects applications based on a cost effectiveness formula for reducing oxides of nitrogen (NOx) and diesel particulate matter (PM) calculated from annual fuel use, rated horse power, engine emission factors and the cost of the new engine. Applicants are not allowed to increase the horse power beyond 20% so as not to negate any emission benefits, but are allowed to reduce their horse power to save fuel. Applicants must sign an Agreement under Maine's Unsworn Falsification Law that the vessel was not scheduled for repower during the grant period. The applicant must also submit a letter of guaranty from a financial institution for meeting the 60 percent cost share. Final reimbursement for 40 percent of the installation costs are paid after demonstration that the old engine has been destroyed. There are no local or state requirements mandating emission reductions from marine engines.

Maine Marine Trades Association will ensure that costs associated with the engine replacement project are eligible for reimbursement. MMTA will remain in close contact with the boat yards and applicants to ensure project delivery dates are met and Maine DEP will provide EPA with quarterly reports of the progress of the grant and a final report.

3. Project Partners

MaineDOT will be the lead agency for administering funds allocated from the Environmental Mitigation Trust Agreement. Maine DEP will administer the DERA grant and will work closely with MaineDOT to ensure the disbursement of funds from the Volkswagen settlement is timely for the reimbursement of completed eligible DERA projects.

Maine Marine Trades Association is a non-profit organization which administers the Clean Marine Engine Program as our partner in a successful public/private partnership.

4. Project Timeline

Months from EPA Award

Activity	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Finalize BMP															
Solicit and approve applications															
Contracts															
Post on website															
Order engines/vehicles															
Engines/vehicles delivered															
Engine installation															
Old engines/vehicles scrapped															
Reimbursement															
Final report to EPA															X

5. DERA Program Priorities

The Maine Clean Diesel Program will ensure that the programmatic priorities in the Diesel Emission Reduction Act of 2010, 42 USC 16131 *et seq.*, and as defined in Section VIII.D of the Program Guide, will be met to the extent practicable. The principle objective is to achieve significant reductions from exposure to diesel emissions from vehicles engines and equipment.

Poor Air Quality Areas Maine is currently in attainment for meeting all National Ambient Air Quality Standards. Coastal Maine including Cumberland County is designated as an 8-hr ozone maintenance area. Portland is the only area in Maine with a metropolitan statistical area of 100,000 people or greater. Portland is within Cumberland County, the only county listed on EPA’s priority location for the DERA Program.

A goal of the Maine Clean Diesel Program is to reduce diesel engine emissions in areas of higher than average populations in Maine and near sensitive receptor locations such as neighborhoods and schools. The Maine Clean Diesel Program focuses on reducing emissions in areas that receive a

disproportionate quantity of air pollution from diesel fleets in ports, rail yards, construction sites, and school bus depots/yards. Priority will be given to projects located in Cumberland County, which is listed on EPA's designated counties of high priority as an 8-hour ozone maintenance area. In addition, priority will be given to projects that impact Federal Class I areas which include Acadia National Park, Roosevelt-Campobello International Park and Moosehorn Wilderness Area.

Maximize Public Health Benefits People with existing heart or lung disease, asthma, or other respiratory problems are most sensitive to the small particles in diesel exhaust. In 2007, the national Center for Disease Control reported Maine as having the highest incidence of adult asthma in the United States. Because of Maine's geographic location, prevailing winds transport air pollutants to Maine from other parts of the country. Implementing new technologies will reduce diesel particulate emissions which exacerbate asthma and other respiratory illnesses.

Funding from this grant will replace non-regulated marine diesel engines which were built when engine emission standards were lax or non-existent, producing higher emissions than newer engines subject to more stringent standards. Funding from this grant can reduce diesel emissions from school buses carrying children that live in urban areas thereby reducing student exposure to harmful air toxics. Projects will be considered which reduce emissions from locomotives with engines that meet Tier 0 emission standards.

Cost-effective All marine engine replacement projects are selected based on cost-effectiveness. The Maine DEP ranks the applications based on the cost effectiveness formula for reducing oxides of nitrogen (NOx) and diesel particulate matter (PM) based on annual fuel use, rated horse power, engine emission factors and the cost of the new engine. Those boats that consume more fuel, have high engine emission factors, and moderate priced engines, rank the highest as the most cost-effective projects. Baseline emissions and projected emissions after repower were calculated using the same methodology as used by EPA's *Diesel Emissions Calculator*. The ranking was based on California's methodology to measure cost effectiveness by calculating the cost per ton of reduced NOx and PM weighted (x7) using a ten year cost recovery factor.

Maximize Useful Life The longevity of heavy-duty diesel engines due to their durability is part of the challenge of reducing emissions. The new engines will be in service for a minimum of ten years which sustain the project benefits beyond the assistance agreement period. The Clean Marine Engine Program will maximize the useful life of the vessel by replacing a non-regulated engine with a Tier 3 compliant engine that will last a minimum of ten years.

6. Supports EPA's Strategic Plan and Anticipated Outputs and Outcomes

The Maine Clean Diesel Grant Program supports the EPA Strategic Plan goal of reducing greenhouse gas emissions from vehicles and trucks. Selected projects will reduce emissions from diesel fleets, thereby reducing local and regional air pollution of criteria pollutants and air toxics. The marine repower projects also meet Goal 1 of the EPA Strategic Plan to improve air quality by replacing non-certified marine engines with EPA Tier 3 compliant engines. Potential selected eligible projects will include:

