

## **APPENDIX D-4**

### **Beneficiary Eligible Mitigation Action Certification**

State of New York

New York State Department of Environmental Conservation –

New York State Energy Research and Development Authority

Cooperative Agreement #CA13419

## Eligible Mitigation Action Item 10: Diesel Emission Reduction Act Option

## Advance Funding Request #25

## BENEFICIARY ELIGIBLE MITIGATION ACTION CERTIFICATION

Beneficiary: State of New York

Lead Agency Authorized to Act on Behalf of the Beneficiary: New York State Department of Environmental Conservation (NYSDEC)

*(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:	NYSERDA: Non-Road Program EMA 10: DERA Option	
Beneficiary's Project ID:	CA13419.MAI10	
Funding Request No.	<i>(sequential) 25</i>	
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>New York State Energy Research and Development Authority</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 Type** Appendix D-2, Mitigation Action 10. Diesel Emission Reduction Act Option

**Explanation of how funding request fits into Beneficiary's Mitigation Plan (5.2.1):** VW funding will provide incentives to replace older, diesel-powered non-road vehicles and equipment with new, zero-emission non-road vehicles and equipment as stated in New York's Beneficiary Mitigation Plan (BMP). \$23 million in New York's allocation from the VW Mitigation Trust has been proposed for EMA 10: Federal Diesel Emission Reduction Act Option. See: <https://dec.ny.gov/sites/default/files/2024-11/nysvwmitigationplanrev.pdf> (pp. 2, 17, and 24.)

**Detailed Description of Mitigation Action Item Including Community and Air Quality Benefits (5.2.2):** Non-road vehicle and equipment replacement incentive funding made available through the New York State Energy Research and Development Authority (NYSERDA) New York Truck Voucher Incentive Program (NYTVIP) will replace older non-road vehicles and equipment that often operate in Disadvantaged Communities. The new replacement non-road vehicles and equipment will be zero-emission resulting in significantly decreased NOx emissions and improved local air quality. Existing older diesel-powered non-road vehicles and equipment will be scrapped.

**Estimate of Anticipated NOx Reductions (5.2.3):** The projected three-year vehicle lifetime NOx emission benefit from replacing an older diesel non-road vehicle/equipment with a new zero-emission non-road vehicle/equipment is below. It is possible the existing vehicle/equipment would be retained longer than three years; this would result in additional NOx reductions. Final NOx emission reductions will be calculated based on projects completed under this mitigation action.

• Freight switcher: 11.847 tons	• TRU: 0.547 tons	• Agricultural tractor: 0.880 tons	• Excavator: 2.023 tons
• Terminal tractor: 2.329 tons	• Forklift: 1.355 tons	• Agriculture mower: 0.880 tons	

**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):**

New York State Energy Research and Development Authority

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

New York State submitted an Appendix D-3, Certification for Beneficiary Status Under Environmental Trust Agreement, on November 1, 2017, in which the State of New York (NYS) agreed to 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 the Trust Fund by the State of New York, each until the Termination Date of the Trust pursuant to Paragraph 6.8 of the Trust Agreement. These records will be made accessible to the public through the lead agency, New York State Department of Environmental Conservation (NYSDEC), website at: <http://www.dec.ny.gov/chemical/109784.html>

Documentation will be available to the public in an easy to access web page. For this purpose, the DEC website (<https://dec.ny.gov/environmental-protection/air-quality/controlling-motor-vehicle-pollution/vw-settlement-information/vw-funding-for-diesel-replacement-and-evse-projects>) will link to the Volkswagen Diesel Emissions Environmental Mitigation Trust website (<https://www.vwenvironmentalmitigationtrust.com/state-trust/new-york>). The Volkswagen Diesel Emissions Environmental Mitigation Trust website publicly hosts all necessary or publicly available records associated with DEC funding requests and Trustee payments in Adobe PDF format or equivalent.

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

VW funding, provided through the NYTVIP, will fund a portion of eligible costs as allowed by the applicable USEPA DERA State Grants Program Guide for non-road vehicles and equipment. Applicants shall provide the required "mandatory cost share" to replace diesel-powered, non-road vehicles and equipment with new, zero-emission, non-road vehicles and equipment of the same function. As an example, the 2023-2024 DERA State Grants Program Guide under Table 8, "Cost Share Requirements," requires a mandatory recipient cost share of 55% for non-road vehicle/equipment replacements with zero-tailpipe emission power source.

NYSERDA in consultation with DEC will develop, and periodically update, a publicly available list of eligible, zero-emission, non-road vehicles and equipment under this program. Incentives provided through this program may be adjusted over time to reflect changes in market demand; however, incentives may not exceed the mandatory cost share requirements established by the applicable DERA State Grants Program Guide. Actual incentive amounts shall be based on program guidelines, including the DERA Program Guide and documented invoiced costs.

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

NYSDEC (lead agency) notified the U.S. Government agencies as prescribed in 5.2.9 via email on February 9, 2018. See attached Notice of Availability of Mitigation Action Funds.

**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).**

New York State's Beneficiary Mitigation Plan, Clean Transportation NY, describes the overall goals of improving air quality and accelerating the transition to zero emission transportation through funding made available under the Volkswagen Trust. These air quality improvement goals include reducing nitrogen oxides (NOx), greenhouse gases, particulate matter, hydrocarbon, and mobile source air toxics emissions throughout the state. Funding those projects described in the Plan will result in significant NOx reductions while accelerating the transformation to a zero-tailpipe emission transportation system. Projects will be located throughout New York State, with a particular focus on communities and neighborhoods subject to a disproportionate amount of air pollution from diesel-powered vehicles and equipment.

This non-road vehicle and equipment replacement project will lower NOx emissions and improve local air quality by replacing older diesel powered, higher emitting non-road vehicles and equipment that may operate in residential areas. These replacement non-road vehicles and equipment will be zero-emission and will improve local air quality in communities that have historically borne a disproportionate share of the adverse impact of diesel exhaust emissions. NYSERDA will complete outreach to operators of non-road vehicles and equipment domiciled in, or operated near, NYSERDA defined Disadvantaged Communities and will report on the award of incentives for trucks in these areas.

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 New York, 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:

4/2/2025

Margaret LaFarr  
Margaret LaFarr  
Assistant Director, Division of Air Resources

New York State Department of Environmental Conservation

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**[LEAD AGENCY]**

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for  
State of New York

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**[BENEFICIARY]**

*Mark R. Fahn*

## ATTACHMENTS B, C, D, AND E TO APPENDIX D-4

### ATTACHMENT B to APPENDIX D-4

#### Action Title: NYSERDA 'NYTVIP' – Non-Road Vehicle and Equipment Replacements

#### Eligible Mitigation Action Management Plan including Detailed Budget and Implementation and Expenditures Timeline. (5.2.4)

#### Implementation and Expenditures Milestones and Timeline

Milestone	Date
DEC provides Notice to Proceed	Date
NYSERDA provides DEC with Project Budget Plan within 30 days of Notice to Proceed	Date
NYSERDA provides for DEC review a reporting template for all new zero emission, non-road vehicles and equipment within 60 days of Notice to Proceed	Date
NYSERDA provides DEC with draft Non-Road Vehicles and Equipment Inventory template within 30 days of the Notice to Proceed	Date
NYSERDA provides DEC with Advance Funding Request and Direction form, Schedule 2, Project Management Plan, and Schedule 3, Initial Advance Payment Request Forms within 30 days of Agreement Execution	Date
DEC submits Project Certification and Funding Direction to Trustee for the First Advance Funding available under this Cooperative Agreement	Date
Trustee allocates Advance Funding request to NYSERDA	Date
NYSERDA posts Zero Emission, Non-Road Vehicles and Equipment Voucher Application materials and Program Implementation Manual update on NYSERDA NYTVIP website	Date
Review of submitted applications begins	Date
NYSERDA completes projects representing 35% of total funding available (\$7,000,000) under this Cooperative Agreement and submits documentation to DEC	Date
DEC submits Funding Direction to Trustee for Second Advance Funding under this Cooperative Agreement	Date
NYSERDA completes projects representing 60% of total funding available (\$12,000,000) under this Cooperative Agreement and submits documentation to DEC	Date
DEC submits Funding Direction to Trustee for Third Advance Funding under this Cooperative Agreement	Date
End of Initial Incentive Period	12/31/2029
NYSERDA provides DEC with Milestone Documentation using revised Schedules 2, 3, 4, and 6 to reflect actual, documented Final project expenditures, estimated emission reductions, and required procurement certification documents to support project accounting	Date
NYSERDA returns any unused funds to Trustee	Date
NYSERDA certifies project completion, submits Final Report (Schedule 5)	Date

## Project Budget

**(Mitigation Action Item #10)** – Diesel Emission Reduction Act (DERA) Option. Replace diesel-powered non-road vehicles and equipment with new, zero-emission, non-road vehicles and equipment of the same function.

Item #10 Incentive Costs: \$18,181,819

Item #10 Administrative Costs (Capped at 10% of eligible incentives): \$1,818,181

Funding Method: Advance

Procurement Method: Voucher Incentive

The Cooperative Agreement (CA13419) between DEC and NYSERDA for this project was approved on 3/24/2025.

DEC will direct VW Settlement funding to the NYSERDA 'NYTVIP' non-road vehicle and equipment replacement program in three advance payments as project completion milestones are met. 50% of the CA13419 funding amount will be made available at the start of the non-road vehicle and equipment replacement project, the next 40% of the CA13419 funding amount will become available when 35% of the non-road vehicle and equipment replacement projects are complete, and the final 10% of the CA13419 funding amount will become available when 60% of the non-road vehicle and equipment replacement projects are complete.

## Total Project Budget

Project	Non-Road Vehicle and Equipment Funding Amount	Administrative Costs	Total Project Cost
EMA 10: DERA Option	\$18,181,819	\$1,818,181	\$20,000,000

## Funding Milestones

Initial Advance Funding Amount	\$10,000,000
Second round of funding when 35% of projects completed	\$8,000,000
Third round of funding when 60% of projects completed	\$2,000,000
<b>Total Project Cost</b>	<b>\$20,000,000</b>

**ATTACHMENT C to APPENDIX D-4**

**Action Title: NYSERDA 'NYTVIP' – Non-Road Vehicle and Equipment Replacements**

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

New York State Department of Environmental Conservation will meet the requirements of Appendix D to the Partial Consent Decree, section 5.3:

**5.3 Beneficiary Reporting Obligations:** *For each Eligible Mitigation Action, no later than six months after receiving its first disbursement of Trust Assets, and thereafter no later than January 1 and July 1 of each year, each Beneficiary shall serve upon the Trustee, a semiannual report describing the progress implementing each Eligible Mitigation Action during the six-month period leading up to the reporting date (including a summary of all costs expended on the Eligible Mitigation Action through the reporting date). Such reports shall include a complete description of the status (including actual or projected termination date), development, implementation, and any modification of each approved Eligible Mitigation Action.*

*Beneficiaries may group multiple Eligible Mitigation Actions and multiple sub-beneficiaries into a single report. These reports shall be signed by an official with the authority to submit the report for the Beneficiary and must contain an attestation that the information is true and correct and that the submission is made under penalty of perjury. To the extent a Beneficiary avails itself of the DERA Option described in Appendix D-2, that Beneficiary may submit its DERA Quarterly Programmatic Reports in satisfaction of its obligations under this subparagraph as to those Eligible Mitigation Actions funded through the DERA Option. The Trustee shall post each semiannual report on the Trust's public-facing website upon receipt.*

DEC will post its semiannual reports made to the Trustee on the public-facing website for New York's Volkswagen Settlement at <https://www.dec.ny.gov/chemical/109784.html>.

**ATTACHMENT D to APPENDIX D-4****Action Title: NYSERDA 'NYTVIP' – Non-Road Vehicle and Equipment Replacements****Detailed Costs Estimates from Selected Potential Vendors for Each Proposed Expenditure Exceeding \$25,000 (5.2.6)**

DEC will direct VW Trust funding to the NYSERDA 'NYTVIP' non-road vehicle and equipment replacement program in the form of advance payments for non-road vehicle and equipment replacement project incentives. Preliminary cost estimates for zero-emission non-road vehicles and equipment are provided in the table below.

**Preliminary Non-Road Vehicle and Equipment Cost Estimates**

Non-Road Vehicle and Equipment Category	Cost per Unit
Freight Switcher	\$1,500,000
Terminal Tractor	\$270,000
TRU	\$100,000
Forklift	\$37,000
Agricultural Tractor	\$20,000
Agriculture Mower	\$1,700
Excavator	\$60,000

**ATTACHMENT E to APPENDIX D-4****Action Title: NYSERDA 'NYTVIP' – Non-Road Vehicle and Equipment Replacements  
Approved EPA State Clean Diesel Grant Project****Summary Statement**

The Department of Environmental Conservation (DEC) is revising the FY 2023 workplan to include a new project to replace nonroad diesel vehicles and equipment with zero-emission alternatives under FY23-24 DERA guidelines. The New York State Energy Research & Development Authority (NYSERDA) will coordinate the expenditure of funds, which will focus on purchases of new zero-emission vehicles and equipment such as forklifts, yard tractors, agricultural equipment, freight switcher locomotives and transport refrigeration units (TRUs).

No federal funding will be used to fund this nonroad replacement project. As such, NYS will contribute a larger voluntary match than required by the State Clean Diesel Grant program to achieve additional diesel emission reductions. The additional voluntary funding will come from New York State's Volkswagen Trust allocation.

**VW Settlement Non-Federal Voluntary Matching Funds**

DEC intends to exclusively utilize non-federal voluntary matching funds under SGP FY23 guidelines to fund the replacement of diesel-powered off-road vehicles and equipment with new equivalent zero-emission vehicles and equipment. FFY 23-24 DERA funding will not be used for the NYSERDA Nonroad Vehicle/Equipment Replacement Project. Targeted vehicle and equipment types include agricultural equipment, forklifts, yard tractors, freight switcher locomotives, railcar movers, and TRUs. Funding from this grant will only be available to nonroad vehicles and equipment considered eligible under the "2023-2024 DERA State Grants Program Guide."

**NYSERDA Non-Road Vehicle/Equipment Replacement Project**

This proposed project will replace older, diesel-powered nonroad vehicles and equipment with new, zero-emission equipment of the same vocation that operate across NYS including in communities that are often disproportionately impacted by diesel exhaust emissions by their close proximity to the targeted vehicles and equipment. The project may also allow for funding toward charging equipment to support the adoption of all-electric vehicles or equipment. The NYSERDA nonroad vehicle/equipment replacement project will reduce diesel emissions throughout NYS including in New York City, a designated ozone non-attainment area. This program will also reduce greenhouse gas emissions that contribute to climate change.

Funding will be made available through vouchers distributed by NYSERDA. The mandatory cost share funds as required in the "2023-2024 DERA State Grants Program Guide" will be

provided by applicants. This nonroad program will utilize an incentive period of approximately five years with the option to extend upon mutual agreement, as will be defined in the DEC-NYSERDA cooperative agreement. This timeframe is consistent with other incentive projects that exclusively utilize Volkswagen settlement funding.

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