



# GOVERNMENT OF PUERTO RICO

DEPARTMENT OF ENVIRONMENTAL AND NATURAL RESOURCES




## PUERTO RICO BENEFICIARY MITIGATION PLAN

### VOLKSWAGEN DIESEL EMISSIONS ENVIRONMENTAL MITIGATION TRUST FOR STATE BENEFICIARIES, PUERTO RICO AND THE DISTRICT OF COLUMBIA

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## **EXECUTIVE SUMMARY**

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In September and November 2015, the United States Environmental Protection Agency (EPA) and the California Air Resources Board issued a compliance order due alleged Volkswagen's violation to the Clean Air Act due the secretly installation of software designed to cheat emissions test and deceive federal and state regulators in certain Volkswagen Corporation and its subsidiaries (on thereafter Volkswagen) diesel vehicles.

On October 25, 2016 and May 17, 2017, two Partial Consent Decrees were approved between the United States, California, and Volkswagen. Pursuant to both consent decree, it was established the Volkswagen Diesel Emission Environmental Mitigation Trust for State Beneficiaries, Puerto Rico and the District of Colombia (on thereafter VW Mitigation Trust or Trust).

As a beneficiary of the Trust, the Government of Puerto Rico present this Beneficiary Mitigation Plan (Plan) that summarize how the beneficiary plans to use the mitigation funds. This Plan is intended to provide the public a general vision for use of the mitigation funds and information about potential uses for which funding is expected to be requested. This Plan does not create any binding or rights in any person to claim an entitlement of any kind. Puerto Rico may adjust its goals and spending plans as it seems necessary. In that case, an updated Plan will be presented for public review and submitted to the Trustee with updated information.

We encourage public review and comments to the plan. All comments will be evaluated, and if necessary, the Plan will be reviewed. All comments should be sent to the following e-mail: [VWMitiTrust@jca.pr.gov](mailto:VWMitiTrust@jca.pr.gov).



**REVISIONS**

This section present revision dates with a summary of the changes incorporated in the revision.

<b>Revision</b>	<b>Changes</b>
August 7, 2019	Include the following changes: <ul style="list-style-type: none"> <li>- Add revision section;</li> <li>- Update Lead Agency information;</li> <li>- Include projects that replace or repower airport ground support equipment with all-electric forms (“GSE projects”) as an eligible mitigation action in its Plan; and</li> <li>- Minor corrections and changes.</li> </ul>



## **BACKGROUND**

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On last quarter of year 2015 EPA issued a Notice of Violation (NOV) under the Clean Air Act (CAA) provisions to Volkswagen AG, Audi AG, and Volkswagen Group of America, Inc. The notice alleges that Volkswagen installed software in its model year 2009-2015 2.0-liter diesel cars that circumvents EPA emissions standards. These vehicles emit up to 40 times more pollution than emissions standards allow. EPA issued a second NOV to Volkswagen, Audi, and Porsche for producing and selling certain model year 2014-2016 3.0-liter diesel cars and SUVs that include a software device that circumvents EPA emissions standards for certain air pollutants. These vehicles emit up to nine times more pollution than emissions standards allow. Subsequently, on November 19, 2015, Volkswagen officials informed EPA that the defeat device has existed in all of its U.S. 3.0-liter diesel models since 2009.

On October 25, 2016, the Court entered a Partial Consent Decree related to Volkswagen “Clean Diesel” Marketing, Sales Practices, and Products Liability Litigation, among Volkswagen AG, Audi AG, Volkswagen Group of America, Inc., and Volkswagen Group of America Chattanooga Operations, LLC. The Court also entered a Second Partial Consent Decree, on May 17, 2017, among the Settling Defendants, Dr. Ing. h.c. F. Porsche AG, and Porsche Cars North America, Inc. Pursuant to both consent decrees, the Volkswagen Diesel Emission Environmental Mitigation Trust for State Beneficiaries, Puerto Rico and the District of Columbia<sup>1</sup> (on thereafter VW Mitigation Trust or Trust) was established. The trust was established in order to fund eligible mitigation actions that will reduce nitrogen oxides (NO<sub>x</sub>) emissions in the United States.

## **MITIGATION TRUST**

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On September 30, 2018 the Government of Puerto Rico filed with the Court a Certification for Beneficiary Status under the VW Mitigation Trust. The request identified the Environmental Quality Board (now Department of Natural and Environmental Resources) as “Lead Agency” to act on behalf of Puerto Rico participation in the Trust. On January 29, 2018 the Trustee filed a Notice of Beneficiary Designation with the Court designating Puerto Rico as a Beneficiary of VW Mitigation Trust. On July 8, 2019 the Government of Puerto Rico sent an updated Appendix D-3 to change the Lead Agency to Department of Natural and Environmental Resources (DNER).

As established in Appendix D-1C of the Consent Decree, the weighted average allocation to Puerto Rico is \$8,125,000. Puerto Rico has the right to request funds for eligible mitigation actions up to the total amount allocated. However, after Volkswagen initial depots may not request payouts more than:

- One third of its allocation during the first year (i.e. \$2,708,333), or
- Two thirds of its allocation during first two years (i.e. \$5,416,666)

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<sup>1</sup> Copy of the Trust available at: <https://www.vwenvironmentalmitigationtrust.com/state-trust>



Puerto Rico have ten years to spend their allocation. If there is a balance in the allocation on the tenth anniversary, Puerto Rico may supplement its remaining balance by filling a report in the Court demonstrating that is has obligated at least 80% of the funds allocated. The remaining balance must be spent no later than the fifteenth anniversary of the Trust effective date.

## **MITIGATION PLAN**

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Pursuant to the Trust, the Government of Puerto Rico shall submit and make publicly available a Beneficiary Mitigation Plan that summarize how the beneficiary plans to use the mitigation funds. The plan shall contain:

- Puerto Rico overall goal for the use of funds;
- The categories of eligible mitigation actions that the beneficiary anticipate will be appropriate to achieve the goal;
- A preliminary assessment of how funds are anticipated to be used for each type of mitigation action;
- A description of how beneficiary will consider the potential beneficial impact of the eligible mitigation action on areas with disproportioned share of air pollution; and
- A general description of expected emission benefits.

This Plan is intended to **provide** the public with insight into Puerto Rico **high-level vision** for use of the mitigation funds and information about the potential uses for which funding is expected to be requested. This Plan **does not create any binding or rights** in any person to claim an entitlement of any kind.

This Plan does not have the intention to exclude any Eligible Mitigation Action under Appendix D-2 of the Trust. People could submit for DNER evaluation Mitigation Actions Proposals for Actions under Appendix D-2 that are not included in the Plan. Mitigation Actions Proposals properly document air pollution improvements based on the Plan Goals could be awarded, based on funds availability.

Also, we encourage people to submit comments to the Plan to improve or optimize the use of funds for the mitigation of air pollution. Puerto Rico may adjust its goals and priorities as it seems necessary. In that case, an updated Plan will be presented for public review and submitted to the Trustee with updated information.

### **Goals**

This mitigation plan has been developed to provide the public an overall approach on how the Government of Puerto Rico will utilize the mitigation funds allocated under the Trust. As established in Law 416-2004, as amended, among the primary goals of the state are to establish a public policy that fosters a desirable and convenient harmony between humankind and its environment and promote efforts that would prevent or eliminate environmental and biosphere



harm and foster health and wellness in humankind. In order to accomplish the goal, the Government of Puerto Rico plans to:

- Reduce NO<sub>x</sub> emission island-wide through the implementation of cost-effective eligible mitigation projects under Appendix D-2 of the Trust.
- Minimize the exposure to diesel exhaust emissions of air pollutants.
- Support Puerto Rico strategies related to economic development and health.

### **Maximize public health benefits;**

A high percentage of our population have respiratory afflictions due to anthropogenic and biogenic sources of air pollution. Exposure to diesel exhaust can lead to serious health conditions like asthma and respiratory illnesses and can worsen existing heart and lung diseases, especially in children and the elderly. These conditions can result in increased numbers of emergency room visits, hospital admissions, absences from work and school, and premature deaths<sup>2</sup>.

According to the Centers for Disease Control and Prevention of the United States, Puerto Rico has some of the highest incidences of asthma in the United States. This is in part related to the combustion from mobile and stationary sources which include combustion of diesel fuel, among others.

According to EPA technical bulleting, Nitrogen Oxides (NO<sub>x</sub>), Why and How They Are Controlled<sup>3</sup>, NO<sub>x</sub> represent a family of seven compounds. EPA regulates only nitrogen dioxide (NO<sub>2</sub>) as a surrogate for this family of compounds because it is the most prevalent form of NO<sub>x</sub> in the atmosphere that is generated by human activities<sup>4</sup>. Breathing air with a high concentration of NO<sub>2</sub> can irritate the airways in the human respiratory system. Such exposures over short periods can aggravate respiratory diseases, particularly asthma. Longer exposures to elevated concentrations of NO<sub>2</sub> may contribute to the development of asthma and potentially increase susceptibility to respiratory infections. NO<sub>2</sub> along with other NO<sub>x</sub> contributes to the formation of ground level ozone and particulate matter which negatively impacts the respiratory system and cardiovascular health as well.

### **Priority Areas**

This plan is intended to cover all the island of Puerto Rico. However, priority will be given to projects proposed in the San Juan MSA and Ponce the Metropolitan Statistical Areas (MSA)<sup>5</sup>, as defined by the United States Office of Management and Budget (OMB). Due to the integration, project for reduction of NO<sub>x</sub> from mobile sources are expected to impact all the MSA.

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<sup>2</sup> <https://www.epa.gov/cleandiesel/learn-about-clean-diesel>

<sup>3</sup> <https://www3.epa.gov/ttnca1/dir1/fnoxdoc.pdf>

<sup>4</sup> <https://www.epa.gov/no2-pollution/basic-information-about-no2>

<sup>5</sup> OMB Bulletin No.18-03 available at: <https://www.whitehouse.gov/wp-content/uploads/2018/04/OMB-BULLETIN-NO.-18-03-Final.pdf>



MSA (See figure 1). Within this MSA areas are located the large residential and commercial complexes, commercial and tourism airports, and maritime ports. It consists of urban spaces that combine elements of social, economic, health, and environmental problems, among others.

Figure 1: San Juan and Ponce Metropolitan Statistical Areas



**San Juan MSA**

The San Juan MSA (code 41980) is the densest populated area in Puerto Rico with 2,112,005 inhabitants<sup>6</sup>. Within the area is located the San Juan Maritime Port, which is the principal maritime port in the island, the Carolina Airport and the Isla Grande Airport. This promote a disproportionate quantity of air pollution from heavy duty diesel, maritime traffic, airplanes and vehicle fleets.

The area also contains several industrial parks which include grain handling facilities, food processing, pharmaceutical and chemical plants, biomedical plants, a Portland cement plant, several quarries and the largest fuel distribution facilities, among others. Two of the main electric power generation facilities from the Puerto Rico Electric Power Authority (PREPA)<sup>7</sup> are also located on the San Juan Bay. The San Juan MSA is the MSA in Puerto Rico with the highest number of major sources of air pollutants. Those sources are mostly located near the north and north-west coast of the MSA.

The situation is aggravated due the density of vehicles in the island. According to the Department of Transportation and Public Works (DTOP) data, in 2010 the total number of cars on the island was 3,020,455. Compared to the 2010 U.S. Census, the vehicle per capita in the island reach 810 vehicles per 1,000 persons. This ratio is among the highest in the world with its highest density in the San Juan MSA.

<sup>6</sup> U.S. Census Bureau, data year 2017 projected population.

<sup>7</sup> Government owned Puerto Rico electric power generation and distribution company.





Recently a non-attainment area for sulfur dioxide (SO<sub>2</sub>) was designated within the San Juan MSA. The MSA also contains a maintenance area for particulate matter smaller than 10 micrometers (PM<sub>10</sub>). The San Juan Bay Maritime Port, two of the main PREPA electric generation facilities, the largest grain handling facilities and the highest traffic of heavy-duty vehicles in the island are located within both of the areas mentioned above.

### **Ponce MSA**

The Ponce MSA (code 38660) is the third more populated area in the island with 300,843 inhabitants, just below the Aguadilla-Isabela MSA (302,615 inhabitants). Within the area is located the Ponce Maritime Port and the Mercedita Airport. This promote a disproportionate quantity of air pollution from heavy duty diesel, maritime, airplanes and vehicles fleets.

The area also contains several industrial parks which contains food processing, pharmaceutical and chemical plants, a Portland cement plant, several quarries and the second largest fuel distribution facilities, among others. The second largest electric power generation plant of the island are also located in this area.

### **Government Projects**

Priority will also be given to island wide government owned projects. The Government of Puerto Rico and its Municipalities provide several services to the population and private entities. Services include transportation, refuse collection, maintenance, and public and property protection, among others. Government services require the use of diesel vehicles which include fire trucks, refuse collection trucks, school buses and towing, among others.

Diesel engines can continue operation for decades and due to its longevity and the government fiscal situation, government fleets are composed of equipment with old diesel engines with significant high emissions of air pollutants when compared with new diesel engines technologies. This funding will help to greatly reduce emission of air pollutants from old government fleets at the time it will reduce maintenance and fuel costs associated with the operation of the new equipment.

## **CATEGORIES OF ELIGIBLE MITIGATION ACTIONS**

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The Trust requires to identify categories of Eligible Mitigation Actions that Puerto Rico anticipate will be appropriate to reach its goals. Appendix D-2 of the Consent Decree contains the eligible mitigation actions and mitigation actions expenditures. During the lifespan of the Trust, applicants can submit mitigation actions proposals using the forms that will be developed for such purpose. This section contains mitigation actions expected to be received. This section does not have the intention to limit the mitigation actions available for approval nor bind the government to such mitigation. The government will receive and evaluate any mitigation under Appendix D-2 of the Trust within the priorities established in this mitigation plan. Please refers to appendix D-2 for detailed information.



All replaced vehicles must also be scrapped. For purposes of the Trust, scrapped shall mean: “to render inoperable and available for recycle, and, at a minimum, to specifically cut a 3-inch hole in the engine block for all engines. If any Eligible Vehicle will be replaced as part of an Eligible project, scrapped shall also include the disabling of the chassis by cutting the vehicle’s frame rails completely in half.”

**Trucks replacement or repower for Vehicle Class 4 - 8**

This include Trust Appendix D-2 eligible mitigation actions 1, 2 and 6. Mitigation actions 1, 2 and 6, include vehicles classified from Class 4 to Class 8. In order to have a general information of the vehicle classification system, Table 1 show a general concept of the classification system, as figure 2 provide with visual examples of the vehicles per classification.

Table 1: Vehicle classification description

Vehicle Class	Gross Vehicle Weight Rating (pounds)	GVWR Category
Class 4	14,001 – 16,000	Medium Duty
Class 5	16,001 – 19,500	
Class 6	19,501 – 26,000	
Class 7	26,001 – 33,000	
Class 8	>33,001	
		Heavy Duty

Table 2 show the summary of activities and funds availability. For government, all activities under this item are covered up to 100%, as indicated in Appendix D-2 of the Trust.

Table 2: Funding limits under mitigation actions 1, 2 and 6.

ACTIVITY <sup>1</sup>	TRUST FUNDING LIMIT OF THE ACTIVITY COST			
	Drayage truck	Class 8 local Freight truck	Class 4 – 7 truck	Class 4 – 8 shuttle or transit bus
Repower with a new diesel or alternate fuel engine <sup>2</sup>	40%	40%	40%	40%
New diesel or alternate fuel vehicle	50%	25%	25%	25%
Repower with electric engine <sup>3</sup>	75%	75%	75%	75%
New all electric vehicle <sup>4</sup>	75%	75%	75%	75%

<sup>1</sup> Note that all eligible trucks, busses or engines **must be scrapped**

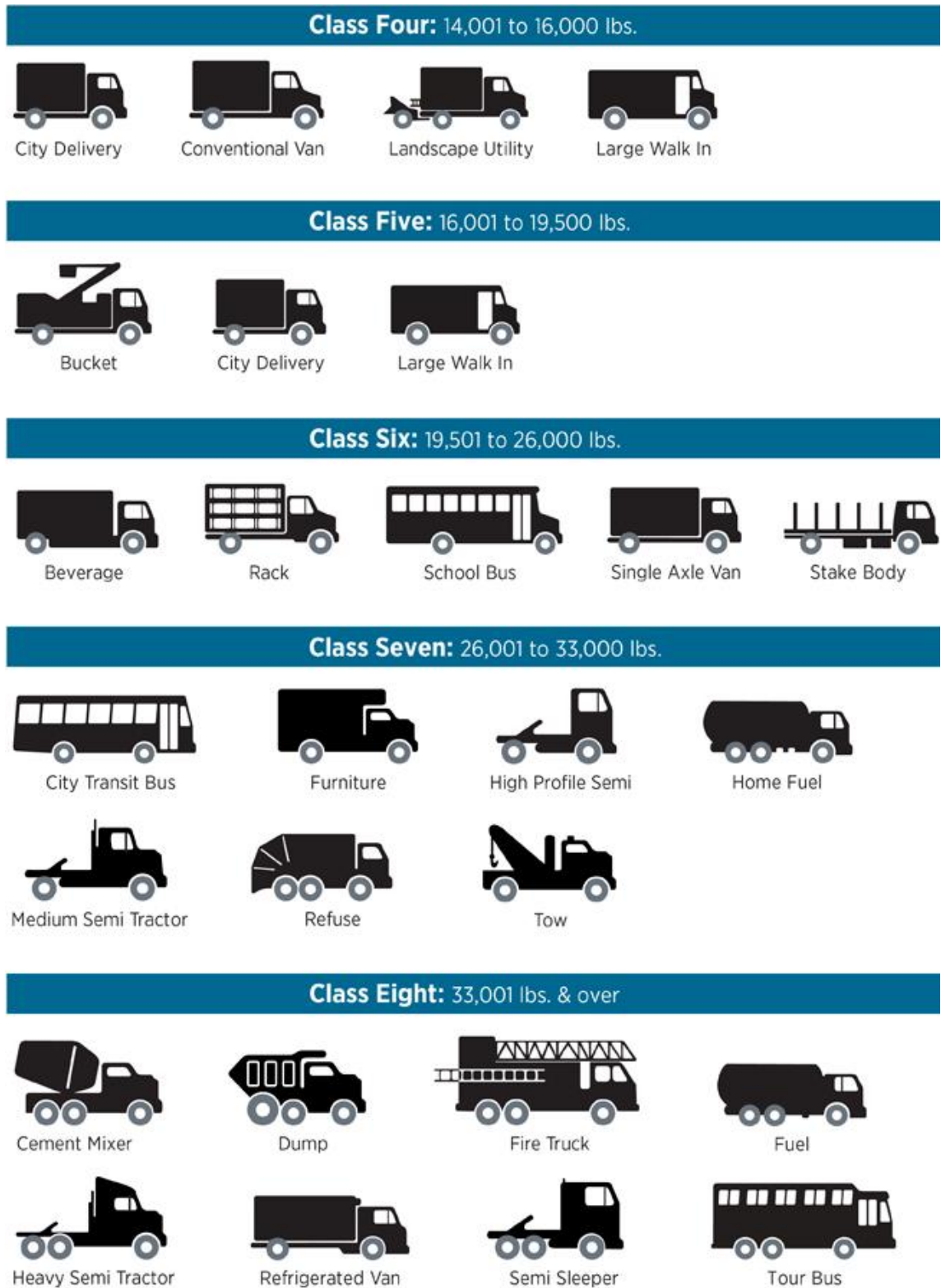
<sup>2</sup> Include engine installation costs. New engine must be same year or a year prior to the year mitigation action occurs.

<sup>3</sup> Include engine installation costs and charging infrastructure. New engine must be same year or a year prior to the year mitigation action occurs.

<sup>4</sup> Include charging infrastructure costs.



Figure 2: Vehicle types examples (source US Department of Energy)







**Action 1: Class 8 Local Freight or Drayage**

This action item include eligible Large Trucks include 1992-2009 engine model year Class 8 Local Freight or Drayage<sup>8</sup>. Where Class 8 Local Freight, and Port Drayage Trucks is defined in the Trust as trucks with a Gross Vehicle Weight Rating (GVWR) greater than 33,000 lbs used for port drayage and/or freight/cargo delivery (including waste haulers, dump trucks, concrete mixers).

**Action 2: Class 4-8 school bus, shuttle bus or transit bus**

Eligible buses which include 2009 engine model year or older class 4-8 school buses, shuttle buses and transit buses. Where Class 4-8 school bus, shuttle bus, or transit bus is defined in the Trust as vehicles with a GVWR greater than 14,001 lbs used for transporting people. School Bus is defined as a Class 4-8 bus sold or introduced into interstate commerce for purposes that include carrying students to and from school or related events. May be Type A-D as shown in figure 3.

Figure 3: School bus classifications (source Minnesota Department of Public Safety)

	<p><b>TYPE A:</b> A Type “A” school bus is a van conversion or bus constructed utilizing a cutaway front section vehicle with a left-side driver’s door. This definition includes two classifications: Type A-I, with a Gross Vehicle Weight Rating (GVWR) less than or equal to 14,500 pounds; and Type A II, with a GVWR greater than 14,500 pounds and less that or equal to 21,500 pounds.</p>
	<p><b>TYPE B:</b> A “type B school bus” is a conversion or body constructed and installed upon a van or front-section vehicle chassis, or stripped chassis, with a gross vehicle weight rating of more than 10,000 pounds, designed for carrying more than ten persons. Part of the engine is beneath or behind the windshield and beside the driver’s seat. The entrance door is behind the front wheels.</p>
	<p><b>TYPE C:</b> A Type “C” school bus is constructed utilizing a chassis with a hood and front fender assembly. The entrance door is behind the front wheels. A “type C school bus” also includes a cutaway truck chassis or truck chassis with cab, with or without a left side door, and with a GVWR greater than 21,500 pounds.</p>
	<p><b>TYPE D:</b> A “type D school bus” is a body installed upon a chassis, with the engine mounted in the front, midship or rear, with a gross vehicle weight rating of more than 10,000, designed for carrying more than ten persons. The engine may be behind the windshield and beside the driver’s seat; it may be at the rear of the bus, behind the rear wheels, or midship between the front and rear axles. The entrance door is ahead of the front wheels. A type D school bus has a maximum length of 45 feet.</p>

<sup>8</sup> Drayage Trucks shall mean trucks hauling cargo to and from ports and intermodal rail yards.



**Action 6: Class 4-7 Local freight trucks**

Eligible medium trucks which include 1992-2009 engine model year Class 4-7 local freight trucks<sup>9</sup>. Where Class 4-7 local freight trucks is defined in the Trust as trucks, including commercial trucks, used to deliver cargo and freight (e.g. courier services, delivery trucks, box trucks moving freight, waste haulers, dump trucks, concrete mixers) with a GVWR between 14,001 and 33,000 lbs.

**Action 7: Airport Ground Support Equipment**

This include Trust Appendix D-2 eligible mitigation action number 7. The mitigation trust is authorized to support fuel switching of diesel and gasoline airport ground support equipment. As defined in the Trust, this type of equipment include airport ground support equipment means vehicles and equipment used at an airport to service aircraft between flights.

To be eligible for funding, airport ground support equipment must be repowered or replaced with all-electric equipment<sup>10</sup>. Electric infrastructure necessary to charge the replacement equipment may also eligible for funding.

Eligible airport ground support equipment includes:

- Tier 0, Tier 1, or Tier 2 diesel powered airport ground support equipment; and
- Uncertified or certified to 3 g/bhp-hr or higher emission, spark ignition engines powered airport ground support equipment.

Table3: Funding limits under mitigation action 7.

ACTIVITY <sup>11</sup>	TRUST FUNDING LIMIT OF THE ACTIVITY COST	
	Non-Government	Government
Repower with a new all electric engine.	75%	100%
New all electric airport ground support equipment	75%	100%

<sup>9</sup> Class 4-7 Local Freight Trucks mean trucks, including commercial trucks, used to deliver cargo and freight (e.g., courier services, delivery trucks, box trucks moving freight, waste haulers, dump trucks, concrete mixers) with a Gross Vehicle Weight Rating (GVWR) between 14,001 and 33,000 lbs

<sup>10</sup> As defined in the Trust, all electric shall mean powered exclusively by electricity provided by a battery, fuel cell or the grid.

<sup>11</sup> Include installation of engines and charging associated infrastructure. All eligible engines or equipment must be scrapped.



### **Action 10: Diesel Emission Reduction Act (DERA)**

Use Trust funds for the non-federal voluntary match for the federal fiscal year 2017 Puerto Rico Clean Diesel Grant Program<sup>12</sup>. The Diesel Emission Reduction Act (DERA) provides funding for projects that reduce emissions from existing diesel engines. Authorized under the Energy Policy Act of 2005 and administered by U.S. EPA, DERA is designed to help replace or retrofit older, dirtier engines still in use with clean diesel or alternative fuel engines, reducing exposure to diesel exhaust and improving human health, and the environment. The work-plan and budget related to this option are reviewed and approved by EPA.

### **Administrative Expenditures**

The Government of Puerto Rico may use up to 15% of eligible mitigation actions costs to cover administrative expenditures. These funds will be used by the Lead Agency to cover any administrative and implementation cost related to the VW Mitigation Trust Fund Agreement; provide necessary and appropriate assistance to entities requesting funds; evaluate mitigation actions request; oversight of mitigation actions implementation; filling reports and any other necessary form or documentation required by the VW Mitigation Trust Fund; and to cover contractual expenses. As indicated in Appendix D-2 of the Trust, eligible expenses include:

1. **Personnel** including costs of employee salaries and wages, but not consultants.
2. **Fringe Benefits** including costs of employee fringe benefits such as health insurance, FICA, retirement, life insurance, and payroll taxes.
3. **Travel** including costs of Mitigation Action-related travel by program staff, but does not include consultant travel.
4. **Supplies** including tangible property purchased in support of the Mitigation Action that will be expensed on the Statement of Activities, such as educational publications, office supplies, etc. Identify general categories of supplies and their Mitigation Action costs.
5. **Contractual** including all contracted services and goods except for those charged under other categories such as supplies, construction, etc. Contracts for evaluation and consulting services and contracts with sub-recipient organizations are included.
6. **Construction** including costs associated with ordinary or normal rearrangement and alteration of facilities.
7. **Other costs** including insurance, professional services, occupancy and equipment leases, printing and publication, public notice, training, indirect costs, and accounting.

This allocation will be reviewed over the life span of the Trust in order to relocate funds to mitigation actions.

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<sup>12</sup> Pursuant to Title VII, Subtitle G, Section 793 of the DERA Program in the Energy Policy Act of 2005.



**PROJECTED FUNDS DISTRIBUTION**

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VW Mitigation Trust actions 1, 2 and 6 were consolidated in a single action item under this mitigation plan. Other eligible mitigation actions expenses are the DERA option and administrative expenses. The following Table 3 show the funds anticipated to be used for the presented mitigation actions:

Table 3: Percent distribution of fund.

<i>Mitigation Action</i>	<i>Estimated distribution of funds</i>	<i>%</i>
<i>Volkswagen Direct*</i>	\$ 6,349,712	78.15%
<i>Diesel Emission Reduction Act (DERA)</i>	\$ 556,538	6.85%
<i>Administrative Expenditures**</i>	<u>\$ 1,218,750</u>	15%
<b><i>Total</i></b>	<b><u>\$ 8,125,000</u></b>	

\* Refers to funds available for mitigation action project including but not limited to: Class 4 - 8 Trucks Replacement and Repower Airport ground support equipment. This includes funds for supplies, equipment, installation and infrastructure as applicable under each mitigation action.

\*\* Administrative expenditures shown separate will be included as part of the Mitigation Project Plan for each mitigation action.

Any Puerto Rico Government entity or private entity may request funds for mitigation actions under the VW Mitigation Trust.

**EXPECTED BENEFITS**

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The repower and replacement of eligible vehicles, engines and equipment will provide emission benefits and health benefits. The mitigation actions will reduce NO<sub>2</sub> emission along with other air pollutants related to the combustion of diesel fuel. However, actual benefits will vary depending on a wide range of variables that includes the type of vehicle or engine replaced, the age of the engine, and/or the engine power rating.

All proposals mitigations actions must include emission benefits and a comparison of costs and benefits. Specific information related to approve mitigation actions projects will be publicly available in the government webpage.

