

## **FY2015 Tribal Clean Diesel Program (DERA) Programmatic Terms and Conditions**

### **A. Substantial Federal Involvement for Cooperative Agreements**

EPA will provide substantial involvement in the form of technical assistance, development of outputs, and oversight. Specifically, substantial federal involvement will take the form of monitoring the project by EPA, participation and collaboration between EPA and the recipient in program content, review of project progress, and quantification and reporting of results.

### **B. Emissions Control Technologies**

Emissions Reduction Projects funded by the recipient pursuant to this assistance agreement must use verified technologies and/or must use engines and engine configurations certified by EPA and, if applicable, CARB. Technologies are verified under EPA or California's Retrofit Technology Verification Programs. See <http://epa.gov/cleandiesel/verification/verif-list.htm> for an updated list of EPA's verified technologies and <http://www.arb.ca.gov/diesel/verdev/vt/cvt.htm> for a list of CARB's verified technologies. Any question as to the eligibility or preference of a retrofit technology, including vehicle/equipment replacement and repowers, should be directed to the EPA Project Officer. Technology changes may not be allowed after a final workplan has been approved. If technology compatibility issues arise, EPA may elect to terminate the cooperative agreement, at which time assistance funds must be returned to EPA.

### **C. Quarterly Reporting and Environmental Results**

Quarterly progress reports will be required. Quarterly reports are considered project status reports and will address the progress made achieving the work plan goals. In general, quarterly reports will include summary information on technical progress and expenditures, and planned activities for next quarter. A template for the quarterly report is available at <http://www.epa.gov/cleandiesel/grant-reporting.htm>.

Quarterly reports are due according to the following schedule. If a due date falls on a weekend or holiday, the report will be due on the next business day.

April 1 – June 30 Reporting Period: report due date July 30

July 1 – September 30 Reporting Period: report due date October 30

October 1 – December 31 Reporting Period: report due date January 30

January 1 – March 31 Reporting Period: report due date April 30

If a project start date falls within a defined Reporting Period the recipient must report for that period by the given due date. This quarterly reporting schedule shall be repeated for the duration of the award agreement.

### **D. Final Report:**

The final project report will include all categories of information required for quarterly reporting, including a final, detailed fleet description. The final project report will also include a narrative summary of the project or activity, project results (outputs and outcomes) including final emissions benefit calculations, and the successes and lessons learned for the

entire project. To the extent possible, final emission benefit calculations should be based on the actual number and type of technologies, vehicles, equipment and engines implemented under the award and actual vehicle miles traveled, idling and/or operating hours, and fuel use. If actual vehicle miles traveled, idling and/or operating hours, and fuel use are not available, the final report will include a detailed explanation of how these values are derived, as well as any assumptions or default values used, for the purposes of emissions benefit calculations. The final report will also detail the methodologies used for the emission benefit calculation.

For projects involving vehicle/equipment replacement and repowers the recipient must provide in the final report: 1) Evidence that the replacement activity is an “early replacement,” and would not have occurred through normal attrition/fleet turnover (i.e. without the financial assistance provided by EPA) within three years of the project period start date. Supporting evidence can include verification that the vehicles or equipment being replaced have useful life left and fleet characterization showing fleet age ranges and average turnover rates per the vehicle or fleet owner’s budget plan, operating plan, standard procedures, or retirement schedule; 2) Evidence of appropriate scrappage (see E.3.5 and E.3.6 below); and 3) Specification of the model years and the emission standard levels for PM and NOx, for both the engine being replaced and the new engine.

For projects that take place in an area affected by, or includes vehicles, engines or equipment affected by federal law mandating emissions reductions, the recipient must provide in the final report evidence that emission reductions funded with EPA funds were implemented prior to the effective date of the mandate and/or are in excess of (above and beyond) those required by the applicable mandate.

The final report shall be submitted to the EPA Project Officer within 90 days after the project period end date or termination of the assistance agreement. A template for the final report is available at <http://www.epa.gov/cleandiesel/grant-reporting.htm>.

#### **E. Use of Funds Restriction:**

- E.1. **Mandated Measures:** Recipient agrees that funds under this award cannot be used for emissions reductions that are mandated under federal law. This refers to specific compliance dates within the mandate, not when the mandate is passed. Voluntary or elective emissions reductions measures shall not be considered “mandated”, regardless of whether the reductions are included in the State Implementation Plan of a State.
- E.2. **Normal Attrition:** Recipient agrees that funds under this award cannot be used for emission reductions that result from vehicle/equipment replacements or repowers that would have occurred through normal attrition/fleet turnover within three years of the project start date. Any question as to eligibility of a vehicle/equipment replacement or repower should be directed to the EPA Project Officer.
- E.3. **Fleet Expansion:** Recipient agrees that funds under this award, including subawards/subgrants, cannot be used for the purchase of vehicles, engines, or equipment to expand a fleet. The recipient agrees that:
  - E.3.1. The repowered or replacement vehicle, engine, or equipment must be of similar size and/or horsepower, and will perform the same function and operation as the

vehicle, engine, or equipment that is being repowered or replaced (e.g., an excavator used to dig pipelines would be replaced by an excavator that continues to dig pipelines);

- E.3.2. *For Engine Repowers:* Horsepower increases of more than 25 percent will require specific approval by the EPA Project Officer prior to purchase, and the applicant may be required to pay the additional costs associated with the higher horsepower engine.
- E.3.3. *For Nonroad Replacements:* Horsepower increases of more than 25 percent will require written approval by the EPA Project Officer prior to purchase, and the applicant may be required to pay the additional costs associated with the higher horsepower equipment.
- E.3.4. *For Highway Replacements:* The replacement vehicle must not be in a larger weight class than the existing vehicle (Class 5, 6, 7, or 8). The engine's primary intended service class must match the replacement vehicle's weight class (i.e. a LHD diesel engine is used in a vehicle with GVWR 16,001 – 19,500 pounds, a MHD diesel engine is used in a vehicle with a GVWR of 19,501 – 33,000 pounds, and an HHD diesel engine is used in a vehicle with a GVWR greater than 33,000 pounds.) Exceptions may be granted for vocational purposes, however the GVWR must stay within 10 percent of the engine's intended service class and any exceptions will require written approval by the EPA Project Officer prior to purchase.
- E.3.5. *For Engine Repowers:* The engine being replaced will be scrapped or rendered permanently disabled within ninety (90) days of the replacement. Cutting a three inch by three inch hole in the engine block is the preferred scrapping method. Other methods may be considered and will require prior written approval by the EPA Project Officer. Evidence of appropriate disposal is required in a final assistance agreement report submitted to EPA and includes a signed certificate of destruction (to be provided by the EPA Project Officer) and digital photos of the engine tag (showing serial number, engine family number, and engine model year) and the destroyed engine block. If scrapped or salvaged engines are to be sold, program income requirements apply.
- E.3.6. *For Nonroad and Highway Replacements:* The vehicle/equipment being replaced will be scrapped or rendered permanently disabled within ninety (90) days of the replacement. Disabling the engine may be completed as described in E.3.5 above. Disabling the chassis may be completed by cutting completely through the frame/frame rails on each side of the vehicle/equipment at a point located between the front and rear axles. Other acceptable scrapping methods may be considered and will require prior written approval by the EPA Project Officer. Evidence of appropriate disposal is required in a final assistance agreement report submitted to EPA and includes a signed certificate of destruction (to be provided by the EPA Project Officer) and digital photos of the engine tag (showing serial number, engine family number, and engine model year), the destroyed engine block, and cut frame rails or other cut structural components as applicable. Vehicle/equipment components that are not part of the engine or chassis may be salvaged from the unit being replaced (e.g. plow

blades, shovels, seats, etc.). If scrapped or salvaged vehicle/equipment chassis or components are to be sold, program income requirements apply.

- E.3.7. *For Tire Replacement*: The original tires should be scrapped according to local or state requirements, or the tires can be salvaged for reuse or retreading. If salvaged tires are sold, program income requirements apply.
- E.4. Matching Funds: Recipient agrees that funds under this award cannot be used for matching funds for other federal grants, lobbying, or intervention in federal regulatory or adjudicatory proceedings, and cannot be used to sue the Federal Government or any other government entity.
- E.5. Formerly Verified Technologies: Recipient agrees that funds under this award cannot be used for retrofit technologies on EPA's or CARB's, "Formerly Verified Technologies" lists: <http://www.epa.gov/cleandiesel/verification/deleted-list.htm>, [www.arb.ca.gov/diesel/verdev/vt/fv1.htm](http://www.arb.ca.gov/diesel/verdev/vt/fv1.htm), [www.arb.ca.gov/diesel/verdev/vt/fv2.htm](http://www.arb.ca.gov/diesel/verdev/vt/fv2.htm), and [www.arb.ca.gov/diesel/verdev/vt/fv3.htm](http://www.arb.ca.gov/diesel/verdev/vt/fv3.htm). Recipient agrees that funds under this award cannot be used for idle reduction technologies on EPA's "Technologies No Longer Verified" list that can be found at: <http://epa.gov/smartway/forpartners/technology.htm#tabs-4>. Recipient agrees that funds under this award cannot be used for technologies on EPA's De-listed Emerging Technologies list which can be found at: [www.epa.gov/cleandiesel/verification/emerg-list.htm](http://www.epa.gov/cleandiesel/verification/emerg-list.htm).
- E.6. Emissions Testing: Recipient agrees that funds under this award cannot be used for emissions testing and/or air monitoring activities (including the acquisition cost of emissions testing equipment), or research and development.
- E.7. Fueling Infrastructure: Recipient agrees that funds under this award cannot be used for fueling infrastructure, such as that used for the production and/or distribution of biodiesel, compressed natural gas, liquefied natural gas, and or other cleaner fuels.
- E.8. Aluminum Wheels: Recipient agrees that funds under this award cannot be used for the purchase of aluminum wheels except where a fleet is retrofitting from standard dual tires to SmartWay-verified single-wide low rolling resistance tires. In this case, the cost of aluminum single-wide wheels would be acceptable as additional equipment necessary to use the SmartWay- verified technology, as would the cost of steel or light weight steel single-wide wheels.
- E.9. Tires and Aerodynamics: Recipient agrees that funds under this award cannot be used to purchase aerodynamic technologies or low rolling resistance tires, unless they are combined on the same vehicle with a new installation of a verified exhaust control funded under this award. In addition, recipient agrees that funds under this award cannot be used for the purchase of low rolling resistance tires or advanced aerodynamic technologies if similar technologies have previously been installed on the truck or trailer.
- E.10. Auxiliary Power Units: Recipient agrees that funds under this award cannot be used for the purchase of APUs or generators for vehicles with model year 2007 or newer certified engine configurations on long haul Class 8 vehicles.
- E.11. Idle Reduction Technologies: Recipient agrees that funds under this award cannot be used for the purchase of idle reduction technologies unless they are combined on the same vehicle with a new installation of a verified exhaust control funded under this

award, except for use on locomotives and previously retrofitted school buses, and for shore connection systems or truck stop electrification technologies.

- E.12. On-highway Model Year: Recipient agrees that funds under this award cannot be used to retrofit, repower, upgrade or replace a bus or Class 5 – Class 8 heavy-duty highway vehicle with engine model year 1992 or older, or to retrofit, repower, upgrade or replace engine model 2011 or newer, or to retrofit engine model year 2007 or newer with DOCs or DPFs.
- E.13. Nonroad Useful Life and Operating Hours: In general, recipient agrees that funds under this award cannot be used to retrofit, repower, upgrade or replace a nonroad engine or equipment that has less than seven years of useful life remaining. A table distinguishing which nonroad engine model years EPA has determined to have at least seven years of useful life remaining, based on the type and age of vehicle, can be found at <http://www.epa.gov/cleandiesel/documents/fy15-tribal-nonroad-remaining-useful-life.pdf>. However, on a case-by-case basis EPA may allow funds to be used to retrofit, repower, upgrade or replace a nonroad engine or equipment that has less than seven years of useful life remaining in accordance with the final approved workplan. In addition, recipient agrees that funds under this award cannot be used to retrofit, repower, upgrade or replace nonroad engines and equipment that operate less than 500 hours per year.
- E.14. Nonroad Repower/Replacement: Recipient agrees that funds under this award cannot be used to repower or replace nonroad Tier 0 (unregulated), Tier 1, Tier 2 or Tier 3 engines to a nonroad Tier 3 or lower nonroad engine standard, or to repower or replace nonroad Tier 4 engines to a nonroad Tier 4 or lower engine standard, or to retrofit or upgrade nonroad Tier 4 engines.
- E.15. Marine Repower/Replacement/Upgrade: Recipient agrees that funds under this award cannot be used to repower, replace or upgrade Tier 3 or Tier 4 marine engines, or to repower or replace marine engines from a Tier 0 (unregulated), Tier 1 or Tier 2 marine engine standard to a Tier 2 or lower marine engine standard.
- E.16. Locomotive Retrofit/Repower/Replacement/Upgrade: Recipient agrees that funds under this award cannot be used to retrofit unregulated or Tier 0 locomotives with SCR, or to upgrade, repower or replace locomotives from Tier 0/0+/1/1+/2/2+ to Tier 2+ or lower. In addition, recipient agrees that funds under this award cannot be used upgrade, repower or replace line-haul locomotives from Tier 2 to Tier 4, or to upgrade, repower or replace line-haul locomotives from Tier 2+ to Tiers 3 and 4 , or to install Automatic Engine Start-Stop technologies on locomotives currently certified to Tier 0+ or higher.
- E.17. Locomotive Shore Connection: Recipient agrees that funds under this award cannot be used for locomotive shore connection system projects that are expected to be utilized less than 1,000 hours/year.
- E.18. Locomotive and Marine Operating Hours: Recipient agrees that funds awarded under this award cannot be used to retrofit, repower, replace, upgrade or install idle reduction technologies on eligible locomotives or marine engines that operate less than 1000 hours per year.
- E.19. Engine Upgrade: In the case of an engine upgrade with a certified remanufacture system applied at the time of rebuild (not manufacturer upgrades that are retrofits verified by EPA or CARB), recipient agrees that funds under this award cannot be used for the entire cost of the engine rebuild, but only for the incremental cost of the certified

remanufacture system and associated labor costs for installation. Any question as to eligibility of engine upgrade costs should be directed to the EPA Project Officer.

E.20. Expenses Incurred Prior to the Project Period: Recipient agrees that, except for eligible pre-award costs as defined in 2 CFR 200.308 and 200.458, and 2 CFR 1500.8 funds under this award cannot be used to cover expenses incurred prior to the project period and that expenses incurred prior to the project period cannot be used as a cost-share for projects funded under this award.

**F. Drayage Vehicle Replacement Project Requirements:**

- F.1. In addition to the scrappage requirements for all vehicles/equipment described in E.3 above, recipients replacing drayage vehicles are required to establish and document guidelines to ensure that the scrapped vehicle has a history of operating on a frequent basis over the prior year as a drayage truck.
- F.2. The recipient must establish and document guidelines to ensure that all drayage trucks receiving grant funds are operated in a manner consistent with the definition of a drayage truck, defined as any Class 8a and 8b in-use on-road vehicle with a gross weight rating (GVWR) of greater than 33,000 pounds operating on or transgressing through port or intermodal rail yard property for the purpose of loading, unloading or transporting cargo, such as containerized, bulk or break-bulk goods.

**G. Delays or Favorable Developments:**

The recipient agrees that it will promptly notify the EPA Project Officer of any problems, delays, or adverse conditions which may materially impair its ability to deliver on the outputs/outcomes specified in the work plan. This disclosure must include a statement of the action taken, or contemplated, and any assistance needed to resolve the situation. The recipient agrees that it will also notify the EPA Project Officer of any favorable developments which may enable meeting time schedules and objectives sooner or at less cost than anticipated or producing more beneficial results than originally planned.

**H. Employee and/or Contractor Selection:**

EPA will not help select employees or contractors hired by the recipient.

**I. Program Income:**

If program income is generated during the course of the project, program income requirements apply. Program income as defined at 2 CFR 200.80 means gross income received by the grantee or subgrantee that is directly generated by a grant supported activity or earned as a result of the Federal award during the period of performance. "Period of performance" is the time between the start and end dates of the period of performance as included in the Federal award. Program income earned during the project period shall be retained by the recipient and, in accordance with 2 CFR 200.307 recipient is authorized to use program income as follows:

- I.1. Program income may be added to the Federal award by EPA and recipient and used to further eligible project or program objectives. The program income shall be used for the purposes and under the conditions of the grant agreement.

- I.2. Program income may be used to meet the cost sharing or matching requirement of the Federal award, including any mandatory or voluntary cost share. The amount of the Federal award remains the same.
- I.3. Deducted from the total allowable costs to determine the net allowable costs on which the federal share of costs is based. This means that the recipient shall spend program income on project activities before spending/requesting federal funds for project activities. This may result in unspent federal funds at the end of the project period. The recipient will maintain records adequate to document the extent to which transactions generate program income and the disposition of program income.

#### **J. Equipment Use, Management, and Disposition**

These equipment use, management, and disposition instructions are applicable to assistance agreement recipients and subrecipients acquiring equipment under this award. State agencies may use, manage and dispose of equipment acquired a Federal award by the state in accordance with state laws and procedures.

Recipient agrees the equipment acquired under this assistance agreement will be subject to the use and management and disposition regulations at 40 CFR 200.313.

Equipment is defined as tangible personal property having a useful life of more than one year and a per-unit acquisition cost which equals or exceeds the lesser of \$5,000, or the capitalization level established by the non-Federal entity for financial statement purposes (see 2 CFR 200.12 Capital assets). Certified or verified technologies, vehicles, engines and nonroad equipment are considered to be equipment to the extent they fall within this definition.

Recipient agrees that at the end of the project period the recipient will continue to use the equipment purchased under this assistance agreement in the project or program for which it was acquired as long as needed, whether or not the project or program continues to be supported by the Federal award. When acquiring replacement equipment, the non-Federal entity may use the equipment to be replaced as a trade-in or sell the property and use the proceeds to offset the cost of the replacement property. Items of equipment with a current per unit fair market value of \$5,000 or less may be retained, sold or otherwise disposed of with no further obligation to the Federal awarding agency.

#### **K. Procurement and Sub-grant Procedures:**

The recipient must follow applicable procurement and sub-grant procedures. EPA will not be a party to these transactions. If EPA funds are used to purchase goods or services, recipient agrees to compete the contracts for those goods and services and conduct cost and price analyses to the extent required by the fair and open competition for procurement provisions of 2 CFR 200.317 – .326. Approval of a funding proposal does not relieve recipients of their obligations to compete service contracts, conduct cost and price analyses, and use sub-grants only for financial assistance purposes.

#### **L. For-Profit Sub-recipients**

In addition to the EPA General Term and Condition #7 “Establishing and Managing Subawards”, the recipient agrees to:

- L.1. Utilize terms and conditions in all subgrants to for-profit sub-recipients that apply the following regulations to for-profit sub-recipients: 2 CFR Sections 200.0 - .99, 200.212, 200.207, 200.322, 200.208, 200.306, 200.308, 200.501(h), 200.310, 200.313, 200.314, 200.315, 200.316, 200.317 -.324, 200.328, 200.333 - .337, 200.338 - .342. For the purposes of applying the listed regulations to for-profit sub-recipients, the Recipient shall perform the functions that the regulations provide will be performed by EPA.
- L.2. Establish a procedure for resolving disputes with for-profit sub-recipients.
- L.3. Not reimburse a for-profit sub-recipient until receipt of documentation that the sub-recipient has incurred eligible and allowable costs. Per 2 CFR 200.401, the allowability of costs incurred by for-profit organizations is determined in accordance with the provisions of the Federal Acquisition Regulation (FAR) at 48 CFR Part 31.
- L.4. Obtain a final report detailing how the for-profit sub-recipient expended funds in a format prescribed by the Recipient.
- L.5. Ensure that for-profit sub-recipients are aware of requirements imposed upon them by applicable Federal statutes, regulations, and these terms and conditions.