



Department of Environmental Protection

100 Cambridge Street Suite 900 Boston, MA 02114 • 617-292-5500

Maura T. Healey
Governor

Kimberley Driscoll
Lieutenant Governor

Rebecca L. Tepper
Secretary

Bonnie Heiple
Commissioner

April 2023 Amendment to *Final Massachusetts Volkswagen Settlement Beneficiary Mitigation Plan*

Massachusetts is a beneficiary under the Volkswagen (VW) Settlement. MassDEP is the designated Lead Agency for Massachusetts under the VW Settlement and is responsible for developing the beneficiary mitigation plan (BMP) for Massachusetts, which describes how the Commonwealth will spend its funding allocation. Massachusetts' initial allocation under the VW Settlement is \$75,064,424.40 (investment earnings on the balance of funds held in the environmental mitigation trust created under the VW Settlement may result in Massachusetts final allocation being somewhat higher than the initial value). After a public comment period, Massachusetts issued its initial spending plan in a December 7, 2018 *Final Massachusetts Volkswagen Settlement Beneficiary Mitigation Plan* (December 2018 BMP).¹ After an additional public comment period, Massachusetts issued a December 2019 Amendment to the *Final Massachusetts Volkswagen Settlement Beneficiary Mitigation Plan* (December 2019 BMP Amendment).² On December 12, 2022, MassDEP published a draft amendment to the BMP on the MassDEP VW webpage and invited the public to submit comments on the draft amendment over a 33-day comment period that closed on January 13, 2023. After considering public comments, MassDEP is issuing this April 2023 Amendment to the Final Massachusetts Volkswagen Settlement Beneficiary Mitigation Plan.

As indicated in the December 2018 BMP,

The Commonwealth, as allowed by the VW Settlement, may adjust its objectives and spending plan when necessary to achieve the BMP's goals. To reflect such changes, MassDEP will update the BMP as needed and publish an amended BMP on MassDEP's public webpage at <https://www.mass.gov/guides/volkswagen-diesel-settlements-environmental-mitigation>.

and

The Trust agreement requires a Beneficiary to submit and make publicly available its BMP not later than 30 days before submitting its first funding request. Beneficiaries may adjust their goals

¹ Available at <https://www.mass.gov/media/1882436>

² Available at <https://www.mass.gov/doc/amendment-to-massachusetts-volkswagen-settlement-beneficiary-mitigation-plan-december-2019/download>

*and specific spending plans at their discretion and, if they do so, they are to provide the Trustee with updates to their BMP.*³

This April 2023 BMP Amendment allocates the remaining \$34,304,760.74 of VW Settlement funds not allocated in the December 2018 BMP and the December 2019 BMP Amendment in three categories: \$26,754,760.74 for Regional Transit Authority (RTA) electric transit buses and chargers; \$7.5 million for an electrification-only VW Open Solicitation offering as detailed below; and \$50,000 for administrative costs to disburse checks to grantees.

- Eligible Mitigation Activity (EMA) 2: The December 2019 BMP Amendment allocated \$22 million to support the purchase of electric transit buses and chargers by Pioneer Valley Transit Authority (PVTA), Martha's Vineyard Transit Authority (VTA) and Greater Attleboro Taunton Regional Transit Authority (GATRA). This April 2023 BMP Amendment allocates \$26,804,760.74 in additional VW funds for the purchase of electric transit buses and chargers by Cape Ann Transit Authority (CATA), Cape Cod Regional Transit Authority (CCRTA), Montachusett Regional Transit Authority (MRTA), Southeastern Regional Transit Authority (SRTA), and additional funds for GATRA and possibly PVTA (depending on the actual bus and charger costs for the other RTAs). In addition, any investment earnings on the balance of funds in the Trust will also be allocated to RTA electric buses and chargers, in order to completely allocate all of the VW funds that Massachusetts received. The Massachusetts Department of Transportation and MassDEP have been working with all the RTAs on planning to electrify transit buses and have received commitments so far from the RTAs listed above, which have existing buses of the size and age eligible for replacement under the VW Settlement.
- The December 2019 BMP Amendment indicated that the next VW Open Solicitation opportunity would take place after review of the applications submitted in response to the January 2019 VW Open Solicitation was complete. Based on the robust interest in electrification projects under the January 2019 VW Open Solicitation (54 of 98 proposals, representing 50% of the funding), this April 2023 BMP Amendment allocates \$7.5 million to a second VW Open Solicitation for proposals to implement electrification projects eligible under any of the EMAs (except the electric vehicle supply equipment (EVSE) EMA 9) allowed under the VW Settlement. Eligible projects would replace diesel vehicles or equipment with electric vehicles or equipment, or install shorepower. If any grantees withdraw, or equipment invoices come in at lower cost than expected, any unspent funds will be directed to RTA electric transit buses and chargers.
- In addition, the December 2018 BMP indicated that Massachusetts planned to approve \$7.5 million under a VW Open Solicitation for proposals to implement projects eligible under any of the EMAs (except the electric vehicle supply equipment EMA 9) allowed under the VW Settlement. Some January 2019 VW Open Solicitation grantees withdrew,

³ MassDEP will make any changes so submitted available on its VW website: <https://www.mass.gov/guides/volkswagen-diesel-settlements-environmental-mitigation>.

and equipment invoices for some grantees have come in at lower cost than expected. Any unspent funds will be directed to RTA electric transit buses and chargers.

- As stated in Appendix D-2 of the VW Settlement, Trust Funds can be used for the actual administrative expenditures associated with implementing an eligible mitigation project, but not to exceed 15% of the total cost of such eligible mitigation project. The December 2018 BMP indicated that the Commonwealth did not expect to use the entire 15% for this purpose. The Commonwealth has spent administrative funds solely for the accounting purpose of disbursing checks to grantees. From mid-December 2019 to mid-December 2021, this cost was \$10,150. Projecting costs to disburse the remaining checks at an additional \$39,850, total administrative costs would be approximately \$50,000. The net of any additional needed or excess unspent disbursement check costs will come from or be directed to RTA electric transit buses and chargers.

With this April 2023 BMP Amendment, Massachusetts plans for spending its \$75,064,424.40 VW Settlement allocation and any investment earnings are as follows:

- \$48,804,760.74 (plus investment earnings and unspent VW Open Solicitation or administrative funds) to support the purchase of electric transit buses and chargers by RTAs;
- \$11,259,663.66⁴ (plus investment earnings) on the purchase and installation of light duty EVSE to supplement the network of existing EVSE;
- \$7.5 million (less any grantees that withdraw or have lower-than-expected costs) through the January 2019 VW Open Solicitation for proposals to implement projects eligible under any of the EMAs (except the EVSE EMA 9) allowed under the VW Settlement;
- \$7.5 million (less any grantees that withdraw or have lower-than-expected costs) through a second VW Open Solicitation for proposals to implement electrification projects eligible under any of the EMAs (except the EVSE EMA 9) allowed under the VW Settlement; and
- \$50,000 in administrative funds to disburse checks to grantees. The net of any additional needed or excess unspent disbursement check costs will come from or be directed to RTA electric transit buses and chargers.

Two organizations commented on the draft amendment:

- One commenter supported the amendment but requested that MassDEP include “manufacturers of vehicle equipment such as refrigerated box unit, refuse body, mobile medical unit, ambulance, etc.” in its list of eligible vendors, which the commenter claimed

⁴ The final amount spent may be higher due to investment earnings on the balance of funds in the Trust, but not more than the 15% allowed for light duty EVSE.

would allow applicants and grantees to submit one rather than two quotes and invoices. MassDEP does not have a list of eligible vendors and does not predetermine the number of quotes and invoices necessary for MassDEP to ascertain that projects meet VW requirements, and therefore has not adopted the commenter's request.

- The other commenter opposed devoting all the remaining funding to electrification projects, stating that funding recipients should have the flexibility to select propane-fueled school buses and paratransit vehicles for a portion of the funding, in addition to electric vehicles. MassDEP notes that focusing on electrification is consistent with the December 2018 VW BMP goal to "promote electrification of the State's transportation network." In addition, funding electrification projects will assist industry in complying with MassDEP's December 2021 adoption of the Advanced Clean Truck regulations that require increasing sales of electric medium- and heavy-duty vehicles over time. Massachusetts has also committed to electrifying vehicles in the 2025/2030 Clean Energy and Climate Plan (CECP)⁵ and the 2050 CECP.⁶ Therefore, MassDEP is finalizing the April 2023 BMP Amendment without making propane-fueled projects eligible.

MassDEP has submitted this April 2023 BMP Amendment to the Trustee overseeing the VW Settlement funds and published this April 2023 BMP Amendment on MassDEP's public webpage at: <https://www.mass.gov/guides/volkswagen-diesel-settlements-environmental-mitigation>.

⁵ <https://www.mass.gov/info-details/massachusetts-clean-energy-and-climate-plan-for-2025-and-2030>

⁶ <https://www.mass.gov/info-details/massachusetts-clean-energy-and-climate-plan-for-2050>