

APPENDIX D-3
Certification for Beneficiary Status
Under Environmental Mitigation Trust Agreement

APPENDIX D-3

**CERTIFICATION FOR BENEFICIARY STATUS
UNDER ENVIRONMENTAL MITIGATION TRUST AGREEMENT**

1. Identity of Lead Agency

The State of Georgia _____ (“Beneficiary”), by and through the Office of the Governor (or, if not a State, the analogous Chief Executive) of the Appendix D-1 and Appendix D-1A entity on whose behalf the Certification Form is submitted: (i) hereby identifies the Office of Planning and Budget _____ (“Lead Agency”) as the Lead Agency for purposes of the Beneficiary’s participation in the Environmental Mitigation Trust (“Trust”) as a Beneficiary; and (ii) hereby certifies that the Lead Agency has the delegated authority to act on behalf of and legally bind the Beneficiary for purposes of the Trust.

BENEFICIARY’S LEAD AGENCY CONTACT INFORMATION:

Contact:	Teresa A. MacCartney, Director, Office of Planning and Budget
Address:	2 Capitol Square, SW Atlanta, GA 30334
Phone:	(404) 656-3820
Fax:	(404) 656-3828
Email:	Teresa.MacCartney@opb.georgia.gov

2. Submission to Jurisdiction

The Beneficiary expressly consents to the jurisdiction of the U.S. District Court for the Northern District of California for all matters concerning the interpretation or performance of, or any disputes arising under, the Trust and the Environmental Mitigation Trust Agreement (“Trust Agreement”). The Beneficiary’s agreement to federal jurisdiction for this purpose shall not be construed as consent to federal court jurisdiction for any other purpose.

3. Agreement to be Bound by the Trust Agreement and Consent to Trustee Authority

The Beneficiary agrees, without limitation, to be bound by the terms of the Trust Agreement, including the allocations of the Trust Assets set forth in Appendix D-1 and Appendix D-1A to the Trust Agreement, as such allocation may be adjusted in accordance with the Trust Agreement. The Beneficiary further agrees that the Trustee has the authorities set forth in the Trust Agreement, including, but not limited to, the authority: (i) to approve, deny, request modifications, or request further information related to any request for funds pursuant to the Trust Agreement; and (ii) to implement the Trust Agreement in accordance with its terms.

4. Certification of Legal Authority

The Beneficiary certifies that: (i) it has the authority to sign and be bound by this Certification Form; (ii) the Beneficiary’s laws do not prohibit it from being a Trust Beneficiary; (iii) either (a)

the Beneficiary's laws do not prohibit it from receiving or directing payment of funds from the Trust, or (b) if the Beneficiary does not have the authority to receive or direct payment of funds from the Trust, then prior to requesting any funds from the Trust, the Beneficiary shall obtain full legal authority to receive and/or direct payments of such funds within two years of submitting this Certification Form; and (iv) if the Beneficiary does not have the authority to receive or direct payment of funds from the Trust and fails to demonstrate that it has obtained such legal authority within two years of submitting this Certification Form, it shall become an Excluded Entity under the Trust Agreement and its initial allocation shall be redistributed among the Beneficiaries pursuant to subparagraph 5.0.1 of the Trust Agreement.

5. Certification of Legal Compliance and Disposition of Unused Funds

The Beneficiary certifies and agrees that, in connection with all actions related to the Trust and the Trust Agreement, the Beneficiary has followed and will follow all applicable law and will assume full responsibility for its decisions in that regard. The Beneficiary further certifies that all funds received on account of any Eligible Mitigation Action request that are not used for the Eligible Mitigation Action shall be returned to the Trust for credit to the Beneficiary's allocation.

6. Waiver of Claims for Injunctive Relief under Environmental or Common Laws

Upon becoming a Beneficiary, the Beneficiary, on behalf of itself and all of its agencies, departments, offices, and divisions, hereby expressly waives, in favor of the parties (including the Settling Defendants) to the Partial Consent Decree (Dkt. No. 2103-1) and the parties (including the Defendants) to the Second Partial Consent Decree (Dkt. No. 3228-1), all claims for injunctive relief to redress environmental injury caused by the 2.0 Liter Subject Vehicles and the 3.0 Liter Subject Vehicles (jointly, "Subject Vehicles"), whether based on the environmental or common law within its jurisdiction. This waiver is binding on all agencies, departments, offices, and divisions of the Beneficiary asserting, purporting to assert, or capable of asserting such claims. This waiver does not waive, and the Beneficiary expressly reserves, its rights, if any, to seek fines or penalties.

7. Publicly Available Information

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) the procedures by which the records may be accessed, which shall be designed to support access and limit burden for the general public; (ii) for the Beneficiary Mitigation Plan required under Paragraph 4.1 of the Trust Agreement, the procedures by which public input will be solicited and considered; and (iii) a description of 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.

8. Notice of Availability of Mitigation Action Funds

The Beneficiary certifies that, not later than 30 Days after being deemed a Beneficiary pursuant to the Trust Agreement, the Beneficiary will provide a copy of the Trust Agreement with Attachments to the U.S. Department of the Interior, the U.S. Department of Agriculture, and any other Federal agency that has custody, control or management of land within or contiguous to the territorial boundaries of the Beneficiary and has by then notified the Beneficiary of its interest hereunder, explaining that the Beneficiary may request Eligible Mitigation Action funds for use on lands within that Federal agency's custody, control or management (including, but not limited to, Clean Air Act Class I and II areas), and setting forth the procedures by which the Beneficiary will review, consider, and make a written determination upon each such request.

9. Registration of Subject Vehicles

The Beneficiary certifies, for the benefit of the Parties (including the Settling Defendants) to the Partial Consent Decree and the Parties to the Second Partial Consent Decree (including the Defendants) and the owners from time-to-time of Subject Vehicles, that upon becoming a Beneficiary, the Beneficiary:

- (a) Shall not deny registration to any Subject Vehicle based solely on:
 - i. The presence of a defeat device or AECD covered by the resolution of claims in the Partial Consent Decree or in the Second Partial Consent Decree; or
 - ii. Emissions resulting from such a defeat device or AECD; or
 - iii. The availability of an Approved Emissions Modification, an Emissions Compliant Recall or the Buyback, Lease Termination, and Owner/Lessee Payment Program.
- (b) Shall not deny registration to any Subject Vehicle that has been modified in accordance with an Approved Emissions Modification or an Emissions Compliant Recall based solely on:
 - i. The fact that the vehicle has been modified in accordance with the Approved Emissions Modification or the Emissions Compliant Recall; or
 - ii. Emissions resulting from the modification (including, but not limited to, the anticipated emissions described in Appendix B to the Partial Consent Decree and Appendix B to the Second Partial Consent Decree); or
 - iii. Other emissions-related vehicle characteristics that result from the modification; or

- iv. The availability of an Approved Emissions Modification, an Emissions Compliant Recall or the Buyback, Lease Termination, and Owner/Lessee Payment Program.
- (c) May identify Subject Vehicles as having been modified, or not modified, in accordance with the Approved Emissions Modification or the Emissions Compliant Recall on the basis of VIN-specific information provided to the Beneficiary by the Defendants.
- (d) Notwithstanding the foregoing, the Beneficiary may deny registration to any Subject Vehicle on the basis that the Subject Vehicle fails to meet EPA's or the Beneficiary's failure criteria for the onboard diagnostic ("OBD") inspection; or on other grounds authorized or required under applicable federal regulations (including an approved State Implementation Plan) or under Section 209 or 177 of the Clean Air Act and not explicitly excluded in subparagraphs 9(a)-(b).

10. Reliance on Certification

The Beneficiary acknowledges that the Trustee is entitled to rely conclusively on, without further duty of inquiry, and shall be protected in relying upon, this Appendix D-3 Certification, or a subsequent communication from the Lead Agency designating new or additional authorized individuals, as setting forth the Lead Agency and the authorized individuals who may direct the Trustee with respect to all of the Beneficiary's rights and duties under the Trust Agreement. The Beneficiary and its delegated Lead Agency, including all authorized individuals, agree to comply with all security procedures, standard payment and signatory authorization protocols, as well as procedures for designating new or additional authorized individuals, as set forth by the Trustee.

FOR THE GOVERNOR (or, if not a State, the analogous Chief Executive):

Signature: Nathan Deal

Name: Nathan Deal

Title: Governor, State of Georgia

Date: October 11, 2017

Location: Atlanta, Georgia

[FOR OTHER REQUIRED SIGNATORIES]:

Signature: Teresa A. MacCartney

Name: Teresa A. MacCartney

Title: Director, Office of Planning and Budget

Date: October 11, 2017

Location: Atlanta, Georgia

[FOR OTHER REQUIRED SIGNATORIES]:

Signature: _____

Name: _____

Title: _____

Date: _____

Location: _____

ATTACHMENT TO APPENDIX D-3

**STATE OF GEORGIA
CERTIFICATION FOR BENEFICIARY STATUS
UNDER THE ENVIRONMENTAL MITIGATION TRUST AGREEMENT**

Pursuant to Paragraph 7 of Appendix D-3, Certification for Beneficiary Status under the Environmental Mitigation Trust Agreement (the “Beneficiary Certification”), the State of Georgia (the “Beneficiary”) submits the following information in supplement to the Beneficiary Certification:

1. The procedures by which the records submitted by the Beneficiary in accordance with Paragraph 7 of the Beneficiary Certification may be accessed by the public, which shall be designed to support access and limit burden for the general public.

It is the strong public policy of the State of Georgia to encourage openness in government and that public access to public records should be encouraged to foster confidence in government and so that the public can evaluate the expenditure of public funds and the efficient and proper functioning of its institutions. As Lead Agency, the Governor’s Office of Planning and Budget (“OPB”) launched an public website landing page to provide information regarding the Trust Agreement and the Beneficiary’s use of the Trust funds, and to receive public input and comment on the use of funds related to the Trust Agreement (the “OPB VW Mitigation Webpage”). Records submitted by the Beneficiary in accordance with Paragraph 7 of the Beneficiary Certification will be available to the public via the OPB VW Mitigation Webpage. In addition, in accordance with the requirements of the Trust Agreement, the Trustee will establish and maintain a public-facing website onto which it will post those records related to the Beneficiary’s use of the Trust funds (the “Trustee Public Website”). The OPB VW Mitigation Webpage will provide a link to the Trustee Public Website to enable the public to easily access such records. Also, the public may request documents pursuant to the “Open Records Act” which provides the means by which the public can see, inspect and copy governmental records and documents.¹ Information regarding the Open Records Act, including a sample Open Records Request, is available to the public on the website of the Georgia Attorney General at <https://law.georgia.gov/open-government>.

2. The procedures by which public input will be solicited and considered for the Beneficiary Mitigation Plan required under Paragraph 4.1 of the Trust Agreement.

The OPB VW Mitigation Webpage is designed to create a standardized and centralized site for receiving comments and suggestions from the general public on the Beneficiary’s Mitigation Plan. The OPB VW Mitigation Webpage provides general information regarding the Trust

¹ O.C.G.A. Title 50, Section 18, Article 4 “Inspection of Public Records” (O.C.G.A. § 50-18-70 et seq., as amended) (the “Open Records Act”).

Agreement and provides links to enable the general public to obtain more information from the Environmental Protection Agency's Trust Agreement webpage and the U.S. District Court's webpage. The OPB VW Mitigation Webpage also provides individuals the ability to share their comments, ask questions, and offer input on the Beneficiary's potential Mitigation Plan through an online submission option. The OPB VW Mitigation Webpage also provides an email box where the general public may address any additional questions or concerns regarding Georgia's Mitigation Plan. OPB also worked with Georgia's Environmental Protection Division ("EPD") to provide a link from the EPD website to the OPB VW Mitigation Webpage, to reroute individuals looking for information on the Trust Agreement or wishing to make public comment, from the EPD's website to the OPB VW Mitigation Webpage. In addition, OPB created a dedicated page for information on the VW Trust Agreement on the State of Georgia's general website which is designed to be utilized as a search engine for various topics related to the State of Georgia and its agencies.

The proposed Mitigation Plan will be made available to the public via the OPB VW Mitigation Webpage and OPB will provide a public comment period to receive and evaluate questions, comments, and input from the public on the proposed Mitigation Plan.

3. A description of whether and the extent to which the certification stated in Paragraph 7 of the Beneficiary Certification is subject to the Beneficiary's applicable laws governing the publication of confidential business information and personally identifiable information.

The certification is subject to the State of Georgia's applicable laws governing the publication of confidential business information and personally identifiable information. Disclosure of certain private, confidential, and trade secret information are exempted from public disclosure pursuant to O.C.G.A. § 50-18-72.

1 CHRISTOPHER M. CARR
Georgia Attorney General

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3 Deputy Attorney General

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9 Attorneys for the State of Georgia

10 UNITED STATES DISTRICT COURT
11 FOR THE NORTHERN DISTRICT OF CALIFORNIA
12 SAN FRANCISCO DIVISION

13
14 **IN RE: VOLKSWAGEN “CLEAN
15 DIESEL” MARKETING, SALES
16 PRACTICES, AND PRODUCTS
LIABILITY LITIGATION**

17 Relates to: *People of the State of California v.*
Volkswagen AG, et al., No. 16-cv-3620 (N.D.
18 Cal.)

MDL No. 2672 CRB (JSC)

**NOTICE OF FILING OF
CERTIFICATION FOR BENEFICIARY
STATUS UNDER THE
ENVIRONMENTAL MITIGATION
TRUST AGREEMENT FOR THE STATE
OF GEORGIA**

Judge: Hon. Charles R. Breyer

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21 **NOTICE**

22 Pursuant to Section 4.0 of the Environmental Mitigation Trust Agreement for State
23 Beneficiaries in *In re: Volkswagen “Clean Diesel” Marketing, Sales Practices, And Products*
24 *Liability Litigation*, MDL No. 2672 CRB (JSC), Dkt. No. 48-2 at 19, the State of Georgia, through
25 its undersigned attorneys, hereby files the attached Certification for Beneficiary Status under the
26 Environmental Mitigation Trust Agreement (Appendix D-3).

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DATED: October 13, 2017 October 13, 2017

Respectfully submitted,

For the State of Georgia

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By: 
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