

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

State of Tennessee (“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 Tennessee Department of Environment and Conservation (TDEC) (“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: | Molly R. Cripps, Director, TDEC Office of Energy Programs |
| Address: | 312 Rosa L. Parks Avenue, TDEC / 2nd Floor, Nashville, TN 37243 |
| Phone: | 615-253-1945 |
| Fax: | 615-741-5070 |
| Email: | molly.cripps@tn.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: 

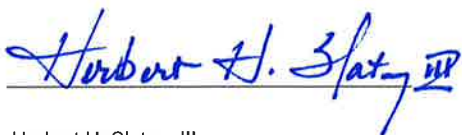
Name: Bill Haslam

Title: Governor of State of Tennessee

Date: 11/13/2017

Location: Nashville, TN

[FOR OTHER REQUIRED SIGNATORIES]:

Signature: 

Name: Herbert H. Slatery III

Title: Attorney General and Reporter of Tennessee

Date: 11/7/2017

Location: Nashville, TN

ATTACHMENT TO APPENDIX D-3

STATE OF TENNESSEE 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 Tennessee (the “Beneficiary”) submits the following information in supplement to the Beneficiary Certification:

7. Publicly Available Information

For purposes of this Attachment to Appendix D-3, use of “TDEC Webpage” refers to the Tennessee Department of Environment and Conservation’s (TDEC) *Tennessee and the Volkswagen Diesel Settlement* public-facing webpage, and use of “Trustee Public Website” refers to the Trustee’s public-facing website established pursuant to Paragraph 3.1.2.2 of the Trust Agreement.

(i) The procedures by which the records may be accessed by the public, which shall be designed to support access and limit burden for the general public.

After being identified by Governor Haslam as Lead Agency, TDEC launched the TDEC Webpage to provide information regarding the Environmental Mitigation Trust Agreement (“Trust Agreement”) and eligible mitigation actions, as well as to receive public comment and input on the development of a Beneficiary Mitigation Plan.

The Beneficiary Mitigation Plan and all documentation and records submitted by the Beneficiary in support of each funding request to the Trustee will be available to the public on the TDEC Webpage. Funding requests submitted by the Beneficiary to the Trustee will also be made available to the public via the Trustee Public Website as provided in Paragraph 5.2.14 of the Trust Agreement. The TDEC Webpage will provide a link to the Trustee Public Website and explain what documents will be made available on the Trustee Public Website.

Summarized details regarding the expenditure of Trust Funds by the Beneficiary (e.g., cumulative totals for categories of eligible mitigation actions identified in the Beneficiary Mitigation Plan, identification of recipients of Trust funds and their project scopes) will be maintained on the TDEC Webpage. Documentation and records supporting all expenditures of the Trust Funds by the Beneficiary will be made publicly available. The general public may request such information by submitting a records request to TDEC. Specific request instructions will be provided on the TDEC Webpage, including the name, title, and contact information for the TDEC staff tasked with responding to such records requests.

(ii) 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 TDEC Webpage was created and is maintained for the following purposes:

- (1) to inform Tennesseans about the settlement of federal and consumer claims relating to Volkswagen's (VW) violation of the Clean Air Act (CAA) by the sale of approximately 590,000 model year 2009 to 2016 motor vehicles containing 2.0 and 3.0 liter diesel engines equipped with defeat devices ("the VW Settlement");
- (2) to share information regarding the Beneficiary's approach to stakeholder outreach and use of mitigation funds available to the Beneficiary under the Environmental Mitigation Trust (for example, the TDEC Webpage includes Frequently Asked Questions, provides links to numerous resources such as the Environmental Protection Agency's and the U.S. Department of Justice's related webpages, and will provide links to the Trustee Public Website);
- (3) to provide notice to the general public regarding public information sessions and/or webinars; and
- (4) to provide a standardized and centralized method for soliciting and receiving comments and input from the general public regarding the development of a Beneficiary Mitigation Plan, as well as a proposed Beneficiary Mitigation Plan.

TDEC will continue to add and/or update information and resources to the TDEC Webpage as such information becomes available. The public may submit comments regarding Tennessee's utilization of its environmental mitigation trust allocation via an Environmental Mitigation Trust Comment Form located on the TDEC Webpage. Additionally, TDEC has also established and will continue to maintain a VW Environmental Mitigation Trust email list ("TDEC Email List"). TDEC has and will continue to utilize the TDEC Email List when sending updates regarding TDEC's environmental mitigation trust efforts, including, but not limited to, the scheduling of public information sessions and release of a proposed Beneficiary Mitigation Plan. The public may request to be added to this email list through a link on the TDEC Webpage, via email, or in-person.

TDEC has participated and will continue to participate as a speaker at various state and local conferences, forums, webinars, and/or other meetings to inform the general public about the VW Settlement, specifically the Environmental Mitigation Trust and the development of a Beneficiary Mitigation Plan. Additionally, TDEC has scheduled three public information sessions during the months of October and November. These sessions will be held in each of the grand divisions of the state (i.e., West, Middle, and East). In the event potential registrants exceed the number of persons the spaces will hold, or TDEC receives comments or requests indicating that additional public information sessions are needed, we will schedule additional public information sessions and/or webinars. These opportunities have provided and/or will provide TDEC with an opportunity to solicit public comments and input regarding the development of a Beneficiary Mitigation Plan.

In the months to come, a proposed Beneficiary Mitigation Plan will be developed and made available to the public via the TDEC Webpage and via email to the TDEC Email List. TDEC will provide a public comment period to receive and evaluate comments and input from the public regarding the proposed Beneficiary Mitigation Plan.

All comments and input received regarding the development of or the proposed Beneficiary Mitigation Plan will be reviewed by TDEC personnel and will be evaluated based on a number of factors, including, but not limited to, related emission benefits, number of requests for same or similar eligible mitigation actions, and environmental justice considerations.

(iii) 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 Tennessee's applicable laws governing the publication of confidential business information. The TDEC Office of Energy Programs (OEP), the Director of which has been named as the Lead Agency contact, will be responsible for preparing Funding Requests and maintaining all documentation and records referenced in Paragraph 7 of the Beneficiary Certification. TDEC OEP is required by Tenn. Code Ann. § 4-3-514(b)(1) to "maintain the confidentiality of all proprietary information it may acquire." Proprietary information is defined in Tenn. Code Ann. § 4-3-514(b)(2) as "trade secrets and commercial or financial information that is used either directly or indirectly in the business of any person submitting information to the office under this chapter, and that gives such person an advantage or an opportunity to obtain an advantage over competitors who do not know or use such information." Solicitations, application or proposal templates, project / program manuals, invoice templates, reporting templates, and other collateral materials developed by TDEC for Environmental Mitigation Trust projects will note that the applicant for and/or recipient of funding from the Environmental Mitigation Trust shall identify any proprietary information in submitted documents. TDEC OEP will review information identified as proprietary to determine that it fits within the aforementioned statutory definition of proprietary information. Further, TDEC OEP will maintain a log of the documents that contain proprietary information in order to ensure that such is redacted prior to being produced in response to a records request or disseminated for other purposes.

The certification is also subject to the State of Tennessee's applicable laws governing the public disclosure of personally identifiable information, which are set forth in Tenn. Code Ann. §10-7-504(a)(29).

Pursuant to Tenn. Code Ann. § 10-7-503(a)(5), "information made confidential by State law shall be redacted whenever possible, and the redacted record shall be made available for inspection and copying."