

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 Mississippi _____ (“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 Mississippi Department of Environmental Quality _____ (“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: | Mississippi Department of Environmental Quality, attn: Chad LaFontaine |
| Address: | P.O. Box 2261, 515 E. Amite St (39201), Jackson, MS 39225-2261 |
| Phone: | 601-961-5707 |
| Fax: | 601-961-5725 |
| Email: | clafontaine@mdeq.ms.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: Dewey Phillip "Phil" Bryant
Title: Governor of Mississippi
Date: November 13, 2017
Location: Jackson, MS

[FOR OTHER REQUIRED SIGNATORIES]:

Signature: 

Name: James "Jim" Matthew Hood
Title: Attorney General of Mississippi
Date: November 15, 2017
Location: Jackson, MS

[FOR OTHER REQUIRED SIGNATORIES]:

Signature: _____

Name: _____

Title: _____

Date: _____

Location: _____

Volkswagen Certification for Beneficiary Status under
Environmental Mitigation Trust Agreement

The State of Mississippi

Attachment Pursuant to Paragraph 7 – Publicly Available Information

7(i): Procedures by which the records may be accessed:

Mississippi Commission on Environmental Quality's Regulations Regarding the Review and Reproduction of Public Records (11 Miss. Admin. Code Pt. 1, Ch. 2).

These regulations govern public records requests made to the Mississippi Department of Environmental Quality (the Lead Agency) and describe how the public may request public records, how records (including physical and electronic documents) are produced, response time, how the public may obtain copies of the public records, and costs associated with reproducing records. The regulations are on the Lead Agency's website.¹

7(ii): Procedures by which public input will be solicited and considered regarding the Beneficiary Mitigation Plan:

Preliminary Comments: The Lead Agency has established a link on its website dedicated to the Mississippi Volkswagen Environmental Mitigation Trust.² The Lead Agency website includes an email link where the public and interested stakeholders may request information and submit input regarding use of the mitigation trust funds and a link to a fillable web-based pdf form where the public and interested stakeholders may submit comments. In addition, the Lead Agency will engage with industry, community, and non-governmental organizations and conduct

¹[http://www.deq.state.ms.us/mdeq.nsf/pdf/legal_11Miss.Admin.CodePt.1Ch.2.Amendment/\\$File/FINAL%20MDEQs%20Proposed%20Regulation%20Amendment%20-%20Public%20Records%20Act.pdf?OpenElement](http://www.deq.state.ms.us/mdeq.nsf/pdf/legal_11Miss.Admin.CodePt.1Ch.2.Amendment/$File/FINAL%20MDEQs%20Proposed%20Regulation%20Amendment%20-%20Public%20Records%20Act.pdf?OpenElement)

² http://www.deq.state.ms.us/MDEQ.nsf/page/Air_Volkswagen00?OpenDocument

public outreach meetings to solicit input. The Lead Agency will consider these comments in drafting a proposed Mitigation Plan.

Comments Regarding the Proposed Mitigation Plan: After considering the preliminary comments, the Lead Agency will draft a Proposed Mitigation Plan. The Lead Agency will hold at least three public hearings—targeting the northern, central, and southern regions of the state—to solicit input from the public regarding the Proposed Mitigation Plan. In addition to publishing notice of the hearings and comment period on the Mississippi Volkswagen Mitigation Trust website, the Lead Agency will publish notice of the public hearings and comment period once a week for three successive weeks in several regional newspapers and a newspaper having a general circulation throughout the state. The notice will describe the Proposed Mitigation Plan; will notify the public of the time, date, and place of the public hearings; and will contain instructions and the deadline for submitting comments regarding the proposed draft Mitigation Plan. The Lead Agency will provide a minimum of 30 days from the date it publishes the proposed Mitigation Plan for the public to submit comments. Documents submitted by hearing attendees will be submitted to the presiding officer and made part of the record of the hearings. The Lead Agency will record the public hearing by stenographic or electronic means. The Lead Agency will consider comments submitted during the public comment period in drafting a Final Mitigation Plan.

7. (iii): Extent to which the Paragraph 7 certification is subject to applicable laws governing the publication of confidential business information and personally identifiable information:

1. Confidential business information:

Records furnished to public bodies by third parties which contain trade secrets or confidential commercial or financial information are not subject to public inspection until notice

of the request for disclosure is provided to the third party. Miss. Code Ann. § 25-61-9 (Supp. 2016). The public body must release the records no more than 21 days from the date of such notice unless the third party has petitioned the chancery court for a protective order within 21 days from receiving notice. Miss. Code Ann. § 25-61-9 (Supp. 2016). The Lead Agency is governed by regulations promulgated by the Mississippi Commission on Environmental Quality which describe how a third party may request confidentiality of its trade secrets and confidential business information and further provides a hearing process prior to the Lead Agency's disclosure of such records pursuant to a public records request. 11 Miss. Admin. Code Pt. 1, R. 2.7. The regulations are available on the Lead Agency's website.³

2. *Personally identifiable information:*

A. Social Security Numbers:

The Lead Agency is subject to the following state law requiring state agencies to prevent inadvertent disclosure of social security numbers:

When any state agency mails, delivers, circulates, publishes, distributes, transmits, or otherwise disseminates, in any form or manner, information or material that contains the social security number of an individual, the agency shall take such steps as may be reasonably necessary to prevent the inadvertent disclosure of the individual's social security number to members of the general public or to persons other than those persons who, in the performance of their duties and responsibilities, have a lawful and legitimate need to know the individual's social security number.

Miss. Code Ann. § 25-1-111 (Rev. 2010).

³[http://www.deq.state.ms.us/mdeq.nsf/pdf/legal_11Miss.Admin.CodePt.1Ch.2.Amendment/\\$File/FINAL%20MDEQs%20Proposed%20Regulation%20Amendment%20%20-%20Public%20Records%20Act.pdf?OpenElement](http://www.deq.state.ms.us/mdeq.nsf/pdf/legal_11Miss.Admin.CodePt.1Ch.2.Amendment/$File/FINAL%20MDEQs%20Proposed%20Regulation%20Amendment%20%20-%20Public%20Records%20Act.pdf?OpenElement)

B. Other Types of Personally Identifiable Information:

Mississippi has a general policy to protect personal information such as social security numbers, dates of birth, personal addresses, personal telephone numbers, email addresses, and drivers' license numbers and the Mississippi Attorney General has opined that such information should not be made public pursuant to a public records request unless disclosure of such personal information is authorized or required by statute. *See* MS AG Op. Turner (Mar. 27, 2015); and MS AG Op. Neyman (Jan. 31, 2014). The Lead Agency will redact such personally identifiable information from documentation or records prior to publishing such documentation or records or producing same in response to a public records request.