

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 Oklahoma _____ (“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 Oklahoma Department of Environmental Quality (DEQ) _____ (“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: | Eddie Terrill, Division Director, Air Quality Division, DEQ |
| Address: | PO Box 1677, 707 N Robinson Ave, Oklahoma City, OK, 73101 |
| Phone: | 1-405-702-4100 |
| Fax: | 1-405-702-4101 |
| Email: | eddie.terrill@deq.ok.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

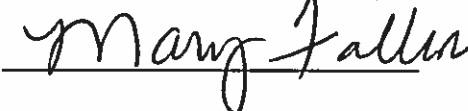
iv. The availability of an Approved Emissions Modification, an Emissions Compliant Recall or the Buyback, Lease Termination, and Owner/Lessee Payment Program.

- (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: Mary Fallin
Title: Governor, State of Oklahoma
Date: 10-30-17
Location: 2300 N. Lincoln Blvd, Room 212, OKC, OK 73105

[FOR OTHER REQUIRED SIGNATORIES]:

Signature: 
Name: Michael J. Teague
Title: Secretary of Energy and Environment, State of Oklahoma
Date: 30 Oct 17
Location: 204 N Robinson Ave, Ste 1010, OKC, OK, 73102

[FOR OTHER REQUIRED SIGNATORIES]:

Signature: 

Name: Scott Thompson

Title: Executive Director, Oklahoma Department of Environmental Quality

Date: 10-30-17

Location: 707 N. Robinson Ave, OKC, OK 73102

**Attachment to Appendix D-3
State of Oklahoma
Certification for Beneficiary Status
Environmental Mitigation Trust Agreement**

Pursuant to Paragraph 7 of Appendix D-3, Certification for Beneficiary Status Under Environmental Mitigation Trust Agreement (Beneficiary Certification), the State of Oklahoma (Beneficiary) submits the following information:

(i) 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.

All documents and records submitted to the Volkswagen Mitigation Trust Trustee, Wilmington Trust (Trustee), by the State of Oklahoma, as beneficiary, and by the Oklahoma Department of Environmental Quality (DEQ), as lead agency, in support of funding requests of Oklahoma's portion of the Volkswagen Mitigation Trust Fund (Trust Fund) pursuant to the Oklahoma Beneficiary Mitigation Plan (Plan) will be maintained and accessible through a public-facing webpage hosted through DEQ's existing website (herein, DEQ's VW Settlement webpage), which can be found at www.deq.state.ok.us/aqdnew/vwsettlement. Further, all documents supporting expenditures of Trust Funds will be made publicly available on DEQ's VW Settlement webpage.

DEQ's VW Settlement webpage will be the main tool for disseminating information regarding the Plan and, pursuant to paragraph 7 of the Beneficiary Certification, said information will be available to the public through the Termination Date of the Trust unless Oklahoma law requires a longer record retention period. In addition to web access, the public may request documents pursuant to Oklahoma's Open Records Act, Title 51, Oklahoma Statutes (O.S.) §§ 24A.1-24A.30, which provides the means for the public to inspect, copy, and reproduce government records during regular business hours.

(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.

Prior to the drafting of Oklahoma's Plan, DEQ, along with the Oklahoma Secretary of Energy & Environment (SOEE) acting as the State's environmental oversight agency, will host a public meeting allowing the public the opportunity to provide written and oral comments on the preparation of said Plan. The public will also be able to submit comment through an electronic form via DEQ's VW Settlement webpage or via email to a designated DEQ representative whose information has been made publicly available on said webpage. DEQ will be sending email updates to interested parties whose addresses have been compiled into a VW group email list to notify stakeholders of the public meeting and the opportunity to submit information relevant to the preparation of the Plan. Additionally, any interested party may subscribe to receive email updates through the DEQ VW Settlement webpage. Further, DEQ will publish a press release and forward information to stakeholders for inclusion in third-party newsletters or other public outreach materials.

Once the plan is written, the public will be given at least 30 days to comment on the draft Plan. At the close of the comment period, DEQ will review and consider all comments. Any response DEQ has to comments received during the comment period will be provided to the public through DEQ's VW Settlement webpage. All comments received on the draft Plan will be given consideration prior to submitting the Plan to the Trustee, and the final Plan, as approved by SOEE, will be made available to the public after submission to the Trustee.

(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 stated in Paragraph 7 of the Beneficiary Certification is subject to the State of Oklahoma's applicable laws governing the publication of confidential business and personally identifiable information. Any information or document provided to DEQ in support of a project eligible for funding under the Plan is subject to public disclosure under the Oklahoma Open Records Act, 51 O.S. §§ 24A.1-24A.30. However, disclosure of certain private, confidential, and trade secret information is exempted from public disclosure pursuant to 51 O.S. §§ 24A.5(1)(c), 24A.5(2), 24A.10, 24A.19, and 24A.22, as well as 27A O.S. § 2-5-105(17). Additionally, the Oklahoma Administrative Code (OAC) Title 252, Chapter 4 sets forth procedures for designation of records filed with DEQ containing information treated as trade secrets and confidential business information. *See* OAC 252:4-1-5. Further, trade secrets are protected under the Oklahoma Uniform Trade Secrets Act, 78 O.S. §§ 85-95, and the Oklahoma Code of Civil Procedure, including, but not limited to, 12 O.S. § 2508.