

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

NORTH CAROLINA _____ (“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 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:	MICHAEL ABRACZINSKAS, Director of Division of Air Quality, Dept of Environmental Quality
Address:	217 West Jones Street, 1641 Mail Service Center, Raleigh, NC 27699
Phone:	919-707-8447
Fax:	919-707-8447
Email:	michael.abraczinskas@ncdenr.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:

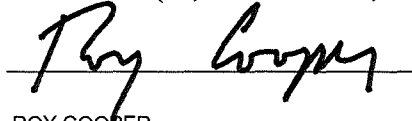
- (a) Shall not deny registration to any Subject Vehicle based solely on:
 - i. The presence of a defeat device or AECD covered by the resolution of claims in the Partial Consent Decree or in the Second Partial Consent Decree; or
 - ii. Emissions resulting from such a defeat device or AECD; or
 - iii. 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: ROY COOPER
Title: GOVERNOR
Date: 11/28/17
Location: 20301 Mail Service Center, Raleigh NC 27699-0301

[FOR OTHER REQUIRED SIGNATORIES]:

Signature: 
Name: TERESA L. TOWNSEND
Title: SPECIAL DEPUTY ATTORNEY GENERAL
Date: 11/28/17
Location: 114 West Edenton Street, Raleigh, NC 27603

State of North Carolina
VW Certification Addendum to Appendix D-3

Pursuant to Paragraph 7 of Appendix D-3, Certification for Beneficiary Status Under Environmental Mitigation Trust Agreement, the State of North Carolina 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.**

The “Lead Agency,” the Department of Environmental Quality (hereafter “Department”) will maintain and make publicly accessible, through a public-facing webpage hosted through the Department’s Division of Air Quality’s (hereafter “DAQ”) existing website, information and documentation related to activities of the Volkswagen Settlement, the Environmental Mitigation Trust, and the Beneficiary as well as copies of records submitted to the Trustee by the State of North Carolina.

The Department’s DAQ’s VW Mitigation webpage and email list will be the main tools for disseminating information regarding the Environmental Mitigation Plan and other activities in accordance with Paragraph 7 of the Beneficiary Certification, and will be made accessible to the public through the Termination Date unless the North Carolina State Government Retention Record requires a longer record retention period. The public may also request documents pursuant to North Carolina’s Public Records Law; North Carolina General Statutes, Chapter 132, Section 1(b).

- (ii) **The procedure by which public input will be solicited and considered for the Beneficiary Mitigation Plan required under Paragraph 4.1 of the Trust Agreement.**

The Department will release a Request for Information (RFI) to gather input on the types and scope of projects to include in the North Carolina Environmental Mitigation Plan (EMP). The RFI will be made available to the general public and government entities on the Department’s DAQ’s VW Mitigation webpage. The Department will also send email updates to interested parties whose email addresses have been provided to the Department to notify stakeholders of public meetings that will serve as an additional opportunity to provide information for consideration of projects in the EMP. Additionally, the Department has created an email address specifically for VW Mitigation correspondence, daq.NC_VWGrants@ncdenr.gov. Responses to the RFI and EMP will be directed to this email address, which will be monitored by all staff assigned to the VW Mitigation project. The Department will review and consider the information received from the RFI for the draft EMP.

The public will be given an opportunity (at least 30 days) to comment on the draft EMP once it is released for public review. All comments and responses received will be made available on the Department’s DAQ’s VW Mitigation webpage. After the comment period ends, the Department will thoroughly review and consider all comments for the final EMP. The final EMP will be made public prior to submittal to the Trustee.

The Department’s staff contact information will be made available on the Department’s DAQ’s webpage. The Department’s DAQ’s VW Mitigation webpage will have instructions for interested parties on how to add their contact information to the VW Mitigation email distribution list. The Department’s DAQ’s VW Mitigation webpage and email distribution list will be the main conduits for disseminating information. The Department will also

publish press releases and forward information to stakeholders for inclusion in third-party newsletters, other forms of public outreach materials, or social media.

- (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.**

There is a general presumption that all documentation and records of North Carolina's participation in the Trust, either relating to a funding request or to an expenditure of funds, are subject to disclosure under the North Carolina Public Records Law, found at N.C. Gen. Stat. § 132-1 *et seq.* Certain personally identifying information (including but not limited to social security numbers, employer taxpayer identification numbers, driver's license numbers, checking account numbers, savings account numbers, credit card numbers, debit card numbers, personal identification codes, digital signatures, biometric data, fingerprints, and passwords) is prohibited from disclosure by N.C. Gen. Stat. § 132-1.10(b), which incorporates certain categories of information listed in N.C. Gen. Stat. 14-113.20(b). Additionally, the North Carolina Public Records Law exempts the disclosure of certain confidential business information which constitutes a "trade secret," as defined at N.C.G.S. § 66-152(3). Other exemptions to disclosure are set forth at N.C.G.S. § 132-1.2. Such prohibited personal information, trade secrets, and other confidential information will not be released to the public, and will be redacted from each document before the document is disclosed to the public.