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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

IN RE: VOLKSWAGEN "CLEAN DIESEL"
MARKETING, SALES PRACTICES, AND
PRODUCTS LIABILITY LITIGATION

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

This Document Relates to:

United States v. Volkswagen AG et al., Case No. 15-MD-2672 CRB.
(N.D. Cal.)

)
)
) Date: November 27, 2017
) The Honorable Charles R. Breyer
)
)

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 Florida (“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 Florida Department of Environmental Protection (“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:	Deputy Secretary for Regulatory Programs, Florida Department of Environmental Protection
Address:	3900 Commonwealth Boulevard, MS# 15, Tallahassee, Florida 32399
Phone:	(850) 245-2036
Fax:	(850) 245-2021
Email:	Tori.Deal@dep.state.fl.us

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: Rick Scott

Title: Governor of the State of Florida

Date: 11/27/17

Location: Tallahassee, Florida

[FOR OTHER REQUIRED SIGNATORIES]:

Signature: Pam Bondi

Name: Pam Bondi

Title: Attorney General of the State of Florida

Date: 11-14-17

Location: Tallahassee, Florida



Florida Department of Environmental Protection

Marjory Stoneman Douglas Building
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

Rick Scott
Governor

Carlos Lopez-Cantera
Lt. Governor

Noah Valenstein
Secretary

State of Florida Certification for Beneficiary Status Under Environmental Mitigation Trust Agreement

Exhibit 1: Publicly Available Information

Consistent with the terms of Paragraph 7 of Appendix D-3 (Certification of Beneficiary Status under Environmental Mitigation Trust Agreement), to which this Exhibit is attached, the State of Florida provides the following 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 Paragraph 7 is subject to the Beneficiary's applicable laws governing the publication of confidential business information and personally identifiable information.

The State of Florida has broad policies regarding public access to state public records as outlined in Article I, section 24 of the Florida Constitution. The Constitution provides that "every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf..." Art. I, § 24(a), Fla. Const. The section goes on to explain that these records are open to the public unless a general law is passed by a two-thirds vote of each house of the state legislature creating an exemption. This exemption must have a public necessity and "shall be no broader than necessary to accomplish the stated purpose of the law." Art. I, § 24(c), Fla. Const. State activities associated with the implementation of programs in the State of Florida under the Environmental Mitigation Trust will be conducted in a manner consistent with this constitutional commitment to public access to state public records. The state does not anticipate that any records associated with the state's activities under the Environmental Mitigation Trust would be subject to any statutory exemption, with the limited exception of certain personally identifiable information, trade secret information, and confidential business information, as detailed below.

Refinements and specifics of these public records laws are found in Chapter 119, Florida Statutes (Fla. Stat.). This statute guarantees that all state records are "open for personal inspection and copying by any person." § 119.01(1), Fla. Stat. (2017). Within Chapter 119 are provisions for how state agencies, offices, and departments must act as records custodians for the purposes of retaining public records, as well as facilitating public access. § 119.021, Fla. Stat. (2017). Statutory

provisions expound violations of Chapter 119, as well as how challenges to exemptions are conducted. § 119.10, Fla. Stat. (2017). Many of these protections extend beyond the state-level to county and municipal governments. § 119.01(1), Fla. Stat. (2017). Finally, within Chapter 119, are provisions detailing exemptions from inspection or copying of records. The exemptions include the protection of personal information, such as social security numbers or the identities of those involved in criminal investigations. §§ 119.071(2)-(5), Fla. Stat. (2017). There are also exemptions in place for the disclosure of personal information in public records for specific persons who require additional protection such as judges, firefighters, and others as specified in law. § 119.071(4), Fla. Stat. (2017).

Consistent with the letter and spirit of these constitutional and statutory mandates to provide public access to state public records, the State of Florida will institute a range of methods for posting and maintaining access to records associated with the Environmental Mitigation Trust. This public availability of documentation may extend to and include the development of the state's Beneficiary Mitigation Plan, the development and submittal of project funding requests, the development and implementation of specific mitigation projects, solicitations for input on the state's Beneficiary Mitigation Plan, and public comments on specific mitigation projects.

The Florida Department of Environmental Protection, the "Lead Agency" for Florida's implementation of projects under the Environmental Mitigation Trust, has developed and maintains a public-facing website (https://www.dep.state.fl.us/air/about_air/volkswagen-Settlement.htm) which has been used, and which will continue to be used to solicit input from interested individuals, governmental entities, and non-governmental entities with regard to the development of the state's Beneficiary Mitigation Plan. The Lead Agency will publish to this website the state's Beneficiary Mitigation Plan, all forms, guidance, and links to additional resources or information associated with the implementation of any rebate programs, grant programs, competitive solicitations, or notices of funding availability for projects funded through the Environmental Mitigation Trust at all phases of project development and implementation. The Lead Agency will continuously implement a communications plan (including, but not limited to, publicly-noticed meetings, invitations to submit written comments, and publication of updates on the state's planning and project development activities) aimed at informing individuals and governmental and non-governmental entities about the development of the state's Beneficiary Mitigation Plan, submittal of project funding requests to the Trustee, receipt of project funding from the Trustee, and submittal of progress reports to the Trustee. The Lead Agency's website will be the primary conduit through which such record and documents will be made publicly available. Throughout, the state will consider the public input received through these various mechanisms in decision-making associated with mitigation project development. Additional project- and program-specific public records generated during the development and implementation of discrete mitigation projects, rebate programs, grant programs, and competitive solicitations not posted to

the Lead Agency's website will be made available as soon as possible to any individual, governmental entity, or non-governmental entity that requests such records.

The certification in Paragraph 7 is subject to the Beneficiary's applicable laws governing the publication of confidential business information and personally identifiable information. The State of Florida has numerous protections in place regarding interactions between businesses and the private sector and state agencies. There are exemptions for bids and confidential information that are generated during competitive solicitations. § 119.071(2), Fla. Stat. (2017). There are protections afforded to private entities that protect trade secret information. § 815.045, Fla. Stat. (2017). These protections extend to the data, programs, or supporting documentation that are considered part of trade secrets as well, and are equally exempt from public record disclosures. § 815.04, Fla. Stat. (2017). State activities associated with the implementation of programs in the State of Florida under the Environmental Mitigation Trust will be conducted in a manner consistent with these statutory protections for entities engaged in competitive solicitations and whose interactions with the government involve the sharing of personally identifiable information, trade secrets, or confidential business information.

As detailed above, the State of Florida's broad public records laws combined with the specific programmatic methods that the state will institute to maintain clear and accessible public communication channels for project development, project funding requests, and project tracking and reporting activities, will ensure that the public has access to 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.