

**Notice of Filing of Certification for Beneficiary Status
Under the Environmental Mitigation Trust Agreement
for the Commonwealth of Massachusetts**

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 Commonwealth of Massachusetts _____ (“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 Massachusetts 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:	Martin Suuberg, Commissioner
Address:	One Winter Street, Boston, MA 02108
Phone:	617-292-5856
Fax:	617-574-6880
Email:	Martin.Suuberg@state.ma.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:

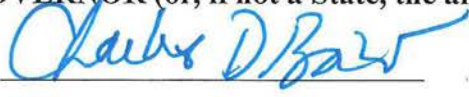
- (a) Shall not deny registration to any Subject Vehicle based solely on:
 - i. The presence of a defeat device or AECD covered by the resolution of claims in the Partial Consent Decree or in the Second Partial Consent Decree; or
 - ii. Emissions resulting from such a defeat device or AECD; or
 - iii. 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: Charles D. Baker

Title: Governor

Date: 11/15/17

Location: Massachusetts

[FOR OTHER REQUIRED SIGNATORIES]:

Signature: 

Name: Maura Healey

Title: Attorney General

Date: 11/15/17

Location: Massachusetts

Attachment to Appendix D-3:

CERTIFICATION FOR BENEFICIARY STATUS

PUBLICLY AVAILABLE INFORMATION (PARAGRAPH 7)

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

Records that MassDEP submits in support of each funding request and records that support expenditures of Trust Funds by MassDEP fall within the purview of the Massachusetts Public Records Law (M.G.L. c. 66, § 10, M.G.L. c. 4, § 7(26) and regulations (950 CMR 32.00)), which provide that each person has a right of access to public records, subject to narrowly construed exemptions. The Public Records Law broadly defines "public records" to include "all books, papers, maps, photographs, recorded tapes, financial statements, statistical tabulations, or other documentary materials or data, regardless of physical form or characteristics, made or received by any officer or employee" of any Massachusetts governmental entity. The right of access to public records includes the right to inspect, copy or, upon the payment of a reasonable fee, have copies of records provided. A request for public records can be made in person, or by letter, fax, or e-mail.

The Public Records Law was updated in 2016, with changes effective January 1, 2017. Among other things, the updated law sets limits on fees, provides deadlines for the provision of records, and requires each state agency to designate a "Records Access Officer" to facilitate the agency's timely response to a public records request. Under the new provisions, within ten business days of receipt of a request, MassDEP is required to provide non-exempt records or send a letter acknowledging receipt of the request with a good faith estimate of copying fees. At that time, MassDEP may advise the requester that it will require an additional five business days to respond, or MassDEP may negotiate a longer time period to respond.

In addition to compliance with the Public Records Law, and in order to enhance access and reduce the burden for the general public, MassDEP will continue to post appropriate records regarding the VW settlement agreement and MassDEP's implementation of the Beneficiary Mitigation Plan, including such records submitted by MassDEP in support of funding requests and expenditures of Trust Funds, on its searchable website at <http://www.mass.gov/dep>. The website can be used to easily access and produce electronic copies of such records without the need for a formal public records request.

- (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*

The solicitation and consideration of input from the public will consist of several types of outreach, both electronic and interactive.

In May 2017, MassDEP established a web page that summarizes the VW settlement and its key elements and includes an on-line survey for members of the public to complete

(<http://www.mass.gov/eea/agencies/massdep/air/programs/vw.html>). Among other things, the survey provides respondents the opportunity to propose eligible environmental mitigation projects to be implemented with the Trust funds. Respondents submitting specific project proposals are asked how their particular project would reduce NOx and greenhouse gas emissions, promote electrification of the state's transportation system, and whether it would benefit people living in areas recognized as environmental justice communities.

The webpage also offers the public the opportunity to register for a MassDEP email list to receive updates on MassDEP's efforts regarding the Beneficiary Mitigation Plan and the implementation of environmental mitigation projects.

To solicit the input and interest of the public in implementing eligible environmental mitigation projects, MassDEP will conduct a number of meetings with a wide range of stakeholders within the Commonwealth. Such stakeholders will include environmental advocacy and environmental justice groups; trade groups associated with the auto manufacturer, diesel engine, marine, airline and other industries; organizations and collaboratives working with electric vehicle and other advanced vehicle technologies; and local, state and regional governments/agencies. Meetings will be held at multiple locations in the various geographic regions of the Commonwealth.

To ensure that people living in areas recognized as environmental justice communities are adequately involved in the public process, MassDEP will work with its environmental justice coordinator to identify appropriate groups to invite to the stakeholder process. The environmental justice coordinator is also responsible for engaging foreign language experts to translate fact sheets and other documents, as necessary. Finally, MassDEP will engage media outlets to publicize the availability of Trust funds in environmental justice areas within the state.

For citizens who are unable to access MassDEP's electronic media, MassDEP staff will distribute relevant documents in hard copy, as necessary.

Following the stakeholder process, MassDEP will post an announcement of the availability of Trust funds for eligible environmental mitigation projects and the opportunity to submit funding proposals to MassDEP on the state's official procurement website, COMMBUYS (<https://www.commbuys.com/bsa/>). Managed by the state's Operational Services Division (OSD), COMMBUYS is used to post bids, responses, awards and other documents relating to procurements in the state. MassDEP also will post a Request for Information (RFI) on COMMBUYS to obtain the public's input on potential environmental mitigation projects. To further publicize the opportunity for public input, MassDEP will announce postings on its Twitter account.

- (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*

This certification is subject to narrowly construed exemptions and common law privileges to the broad definition of "public records" in Massachusetts. Among other things, these exemptions prevent the release of certain documents, or portions of documents, which would constitute (1) an unwarranted invasion of personal privacy or (2) the disclosure of trade secrets, commercial or financial information. Massachusetts regulations regarding the identification and definition of trade secrets and confidential business information are currently being amended; amendment details will be available on MassDEP's website once promulgated.