

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

**IN RE: VOLKSWAGEN “CLEAN DIESEL”  
MARKETING, SALES PRACTICES, AND  
PRODUCTS LIABILITY LITIGATION**

This Document Relates to:

*People of the State of California v. Volkswagen AG,  
et al.*, No. 16-cv-3620 (N.D. Cal.)

*United States v. Volkswagen AG, et al.*, No. 16cv-  
295 (N.D. Cal.)

MDL No. 2672 CRB (JSC)

**NOTICE OF MODIFICATION IN THE  
CERTIFICATION FOR BENEFICIARY  
STATUS UNDER THE  
ENVIRONMENTAL MITIGATION  
TRUST AGREEMENT FOR THE  
COMMONWEALTH OF PUERTO  
RICO**

Judge: Hon. Charles R. Breyer

**NOTICE OF MODIFICATION IN THE CERTIFICATION FOR BENEFICIARY  
STATUS UNDER THE ENVIRONMENTAL MITIGATION TRUST AGREEMENT FOR  
THE COMMONWEALTH OF PUERTO RICO**

**TO THE HONORABLE COURT:**

**COMES NOW**, the Commonwealth of Puerto Rico (“Commonwealth”), through the undersigned counsel, and very respectfully **STATES** and **PRAYS** as follow:

1. On November 28, 2017, the Commonwealth filed a Certification for Beneficiary Status under the Environmental Mitigation Trust Agreement (Appendix D-3) with the Court, designating the State Environmental Quality Board (“EBQ”) as the lead agency. See Dkt #52.

2. However, the EBQ was dissolved on August 2, 2018, as part of a reorganization of administrative agencies and public entities in the Commonwealth pursuant to Puerto Rico’s Act No. 117-2018.

3. Therefore, the Commonwealth modified the Certification for Beneficiary Status under the Environmental Mitigation Trust Agreement (Appendix D-3) that was previously file in

this Court (Dkt. #52) and notifies that the Puerto Rico Department of Natural and Environmental Resources is the new lead agency. See Attachment.

4. Thus, the Commonwealth of Puerto Rico respectfully submits the pertinent documents and notifies the change in in the Lead Agency for purposes of its participation in the Environmental Mitigation Trust. See Attachment.

**WHEREFORE**, the Commonwealth requests that this Honorable Court takes notice that the Puerto Rico Department of Natural and Environmental Resources is the new Lead Agency for purposes of the Certification for Beneficiary Status under the Environmental Mitigation Trust Agreement (Appendix D-3).

**I HEREBY CERTIFY** that I electronically filed the foregoing with the Clerk of the Court through the CM/ECF System, who will send notification of such filing to the parties subscribing to the CM/ECF System.

**RESPECTFULLY SUBMITTED.**

**WANDA VÁZQUEZ-GARCED**  
Attorney General  
Department of Justice of Puerto Rico

**JOHAN M. ROSA-RODRÍGUEZ**  
Assistant Attorney General  
Department of Justice of Puerto Rico  
Antitrust Division

/s/ Juan C. Ramírez-Ortiz  
**JUAN C. RAMÍREZ-ORTIZ**  
USDC-PR 306507  
Attorney  
Department of Justice of Puerto Rico  
Federal Litigation & Bankruptcy Division  
P.O. Box 9020192  
San Juan, Puerto Rico 00902-0192  
Email: juramirez@justicia.pr.gov  
Phone: (787) 721-2900, ext. 1421

APPENDIX D-3**CERTIFICATION FOR BENEFICIARY STATUS  
UNDER ENVIRONMENTAL MITIGATION TRUST AGREEMENT**1. Identity of Lead Agency

Commonwealth of Puerto Rico ("Beneficiary"), by and through the Office of the Governor (or the analogous Chief Executive) of the Indian Tribe on whose behalf the Certification Form is submitted: (i) hereby identifies Department of Natural and Environmental Resources ("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:**

<b>Contact:</b>	Luis Sierra-Torres, Acting Manager, Air Quality Area
<b>Address:</b>	PO Box 366147, San Juan, PR 00936
<b>Phone:</b>	787-999-2200 extension 2103
<b>Fax:</b>	787-756-5906
<b>Email:</b>	vwmititrust@drna.pr.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; and (iii) prior

to requesting any funds from the Trust, the Beneficiary has obtained full legal authority to receive and/or direct payments of such funds. If the Beneficiary fails to demonstrate that it has obtained such legal authority, it shall not qualify as a Beneficiary under the Trust Agreement until it has obtained such legal authority.

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 Tribal Allocation Subaccount.

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. No waiver submitted by any Indian Tribe shall be effective unless and until such Indian Tribe actually receives Trust Funds.

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; and (ii) 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 the analogous Chief Executive):

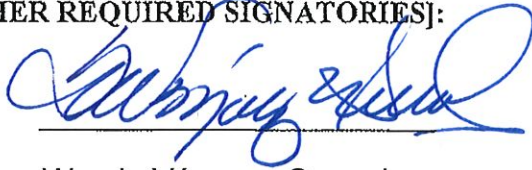
Signature:   
Name: Ricardo A. Rossello Nevares  
Title: Governor  
Date: December 7, 2018  
Location: La Fortaleza

[FOR OTHER REQUIRED SIGNATORIES]:

Signature:   
Name: Tania Vázquez-Rivera  
Title: Secretary  
Date: December 11, 2018  
Location: San Juan, PR

[FOR OTHER REQUIRED SIGNATORIES]:

Signature:



Name: Wanda Vázquez Garced

Title: Attorney General

Date: 12/12/2018

Location: Puerto Rico

