



THE MILLE LACS BAND OF
OJIBWE INDIANS

Legislative Branch of Tribal Government

RESOLUTION 19-03-50-21

A RESOLUTION TO APPROVE WAIVERS OF SOVEREIGN IMMUNITY FOR THE LIMITED PURPOSE OF THE BAND TO OBTAIN SETTLEMENT FUNDS AS AN INDIAN TRIBE BENEFICIARY FROM THE VOLKSWAGEN DIESEL EMISSIONS ENVIRONMENTAL MITIGATION TRUST

- WHEREAS, the Mille Lacs Band of Ojibwe (“Band”) is a federally recognized Indian Tribe, a component reservation of the Minnesota Chippewa Tribe; and
- WHEREAS, the Mille Lacs Band of Ojibwe Band Assembly (“Band Assembly”) is the duly elected legislative governing body of the Band. (3 MLBS §1); and
- WHEREAS, according to 3 MLBS §2(d), the Band Assembly is empowered to adopt resolutions to promote the general welfare of the people; and
- WHEREAS, Volkswagen AG, Audi AG, Volkswagen Group of America, Inc., and Volkswagen Group of America Chattanooga Operations, LLC (collectively as “VW”) fraudulently programmed their diesel engine products’ emission control equipment (software) to give out false readings when these products were going through emissions tests; and
- WHEREAS, VW was caught committing fraud by the US Environmental Protection Agency (“EPA”) resulting in litigation; and
- WHEREAS, VW settled with the EPA by establishing the Volkswagen Diesel Emissions Environmental Mitigation Trust fund (“VW Settlement”) for each of the States and collectively for the Tribes (referred to as “Indian Tribe Trust”), towards diesel engine powered vehicle exhaust mitigation to atone for nitrogen oxides (“NOx”) that were released into the atmosphere by Volkswagen; and
- WHEREAS, diesel-powered engine exhaust further harms children’s development, lung health in the elderly, individuals who exercise along roadways, and operators and passengers of these diesel-powered vehicles; and
- WHEREAS, the Band owns, leases, and operates many diesel-powered vehicles and thus was injured by the acts or omissions by VW; and

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WHEREAS, it is in the best interests of the Band to take all steps required by the VW Settlement to successfully be compensated for the Band's injuries; and

WHEREAS, Tribal-owned and operated qualifying diesel-powered vehicles shall seek to be replaced with non-diesel-powered vehicles; and

WHEREAS, the Band will actively pursue replacement of qualified diesel-powered vehicles that are either Tribal-leased or Tribal-operated with non-diesel-powered vehicles; and

WHEREAS, pursuant to 11 MLBS, the Band Assembly recognizes the duties of the Department of Natural Resources to protect air, land, and water resources, and, therefore, the Department of Natural Resources is the proper department to act as the Band's delegated Lead Agency to obtain VW Settlement funds; and

WHEREAS, the Band may elect to become a Beneficiary by first filing a Certification for Beneficiary Status under Environmental Mitigation Trust Agreement (Appendix D-3), containing each of the certifications required by the VW Settlement and signed by the Chief Executive of the Band; and

WHEREAS, the Band Assembly has reviewed the attached document entitled "Certification for Beneficiary Status Under Environmental Mitigation Trust Agreement" (Appendix D-3), Which contains limited waivers of sovereign immunity; and

WHEREAS, by signing this Certification, the Band is consenting to the venue, jurisdiction and decisions of the U.S. District Court for the Northern District of California for all matters or disputes arising under the VW Settlement Trust Agreement (See Certification at paragraph 2); and

WHEREAS, the Band further is waiving its right to pursue the legal remedy of injunctive relief (but not fines or penalties) for environmental injury within its own jurisdiction (See Certification at paragraph 6);, Provided that these waivers shall not be effective unless the Band actually receives Trust funds; and

WHEREAS, only the Band Assembly can waive the immunity of the Band by ratifying through resolution such waivers of its sovereign immunity pursuant to 24 MLBS §2(b).

NOW, THEREFORE, BE IT RESOLVED, the Band Assembly does hereby approve and consent to the limited waivers of sovereign immunity described above.

WE DO HEREBY CERTIFY that the foregoing Resolution was duly concurred with and adopted at a regular session of the Band Assembly in Legislative Council assembled, a quorum of legislators being present, held on the 10th day of March, 2021, at Nayahshing, Minnesota by a vote of 2 FOR, 0 AGAINST, 1 SILENT.

IN WITNESS WHEREOF, we, the Band Assembly hereunto cause to have set the signature of the Speaker of the Assembly to be affixed to this Resolution.


Sheldon Boyd, Speaker of the Assembly

OFFICIAL SEAL OF THE BAND

Volkswagen Diesel Emissions Environmental Mitigation Trust (/)

Volkswagen Diesel Emissions Environmental Mitigation Trust

Welcome to the website of the **Volkswagen Diesel Emissions Environmental Mitigation Trusts**. Below, you'll find information on the **Trust for State Beneficiaries, Puerto Rico, and the District of Columbia** and the **Trust for Indian Tribe Beneficiaries**.

LOCATE TRUST INFORMATION

Enter State or Indian Tribe **Go**

[Click here to show the full list \(/sitemap\).](#)

Establishment of the State Trust and the Indian Tribe Trust

The State Trust and Indian Tribe Trust (collectively, the "Trusts") have been established by order of the United States District Court for the Northern District of California in accordance with a Partial Consent Decree on October 25, 2016 ("First Partial Consent Decree") in re: Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation, MDL No. 2672 CRB (JSC) (Dkt. No. 2103-1), among Volkswagen AG, Audi AG, Volkswagen Group of America, Inc., and Volkswagen Group of America Chattanooga Operations, LLC (collectively, the "Settling Defendants"), the United States, and the State of California. In that case,

the Court also entered a Second Partial Consent Decree (Dkt. No. 3228-1) on May 17, 2017 (the "Second Consent Decree"), among the Settling Defendants, Dr. Ing. h.c. F. Porsche AG, and Porsche Cars North America, Inc. (collectively, the "Defendants"), the United States, and the State of California. Pursuant to the First Partial Consent Decree and the Second Partial Consent Decree. (The First Partial Consent Decree and the Second Consent Decree are collectively, hereinafter referred to as the "Consent Decrees").

The Defendants and Wilmington Trust, N.A. (the "Trustee") have entered into an Environmental Mitigation Trust Agreement for State Beneficiaries (hereinafter, the "State Trust Agreement")—i.e., for the 50 States, Puerto Rico, and the District of Columbia—and established the environmental mitigation trust described therein (the "State Mitigation Trust" or "State Trust"). They have concurrently entered into a separate Environmental Mitigation Trust Agreement for Indian Tribe Beneficiaries (hereinafter, the "Indian Tribe Trust Agreement")—i.e., for federally-recognized Indian Tribes—and established the environmental mitigation trust described in that agreement ("Indian Tribe Mitigation Trust" or "Indian Tribe Trust").

The State Mitigation Trust and the Indian Tribe Mitigation Trust were both approved by Court Order on September 19, 2017 (the "Approval Order") and final fully-executed versions were filed with the Court on October 2, 2017, establishing **October 2, 2017** as the **Effective Date** for each Trust pursuant to the terms of the Approval Order (the "Effective Date").

Purpose and Funding of the Trusts

The Consent Decrees require the Defendants to establish the State Mitigation Trust and the Indian Tribe Mitigation Trust and to fund each of the State Trust and the Indian Tribe Trust with funds to be used for environmental mitigation projects that reduce emissions of nitrogen oxides ("NOx") where the Subject Vehicles were, are,

or will be operated ("Eligible Mitigation Actions"), and to pay for Trust Administration Costs as set forth in the State Trust Agreement and the Indian Tribe Trust, respectively.

The Defendants and the Trustee acknowledge that the purpose of the State Mitigation Trust and the Indian Tribe Mitigation Trust is to fulfill the Defendants' environmental mitigation obligations under the First Partial Consent Decree and the Defendants' environmental mitigation obligations under the Second Partial Consent Decree. All payments to and expenditures from the State Mitigation Trust and the Indian Tribe Mitigation Trust shall be for the sole purpose of fulfilling the Settling Defendants' environmental mitigation obligations under the First Partial Consent Decree and the Defendants' environmental mitigation obligations under the Second Partial Consent Decree, and for the costs and expenses of administering each trust as set forth in the State Mitigation Trust and the Indian Tribe Mitigation Trust.

The purpose of the State Trust and the Indian Tribe Trust is to expeditiously and efficiently fund Eligible Mitigation Actions to be proposed and administered by the Beneficiaries subject to the requirements of the Consent Decrees and the terms of each of the respective State Trust Agreement and Indian Tribe Trust Agreement and to provide funds for the administration and operation in accordance with the terms of the State Trust and the Indian Tribe Trust. As set forth therein, the goal of each Eligible Mitigation Action shall be to achieve reductions of NOx emissions in the United States.

Selection and Oversight of Eligible Mitigation Actions –

In accordance with the terms of both the State Trust and the Indian Tribe Trust, each Beneficiary is responsible for selecting Eligible Mitigation Actions and certifying that any such Eligible Mitigation Action meets all the requirements of the State Trust or the Indian Tribe Trust, as applicable. The Trustee shall have no duty to

monitor or supervise the use of Trust Funds paid in accordance with the Volkswagen Diesel Emissions Environmental Mitigation Trust (i) Beneficiary's Eligible Mitigation Action Certification (Appendix D-4) and Funding Direction forms or any Beneficiary's compliance with an Eligible Mitigation Action. The Trustee may rely upon, with no further duty of inquiry, and shall be protected in acting upon, the certifications made by and delivered to it by the Beneficiaries. (See paragraph 3.5.4 of the Trusts). Each Beneficiary is responsible for oversight of the proposed Eligible Mitigation Action (see paragraph 5.2.7 of the Trusts) and each Beneficiary is required to maintain and make publicly available all documentation submitted in support of the each funding request and all records supporting all expenditures of Eligible Mitigation Action funds, subject to applicable laws governing the publication of confidential business information, together with an explanation of the procedure by which the Beneficiary shall make such documentation publicly available (see subparagraph 5.2.7.2 of the Trusts). Beneficiaries are also responsible for certifying that all vendors were selected in accordance with state or tribal public contracting laws, as applicable (see paragraph 5.2.5 of the Trusts).

Appointment and Duties of the Trustee

Wilmington Trust, N.A. has been appointed as the Trustee of each of the State Mitigation Trust and the Indian Tribe Mitigation Trust in accordance, respectively, with Paragraph 3.0 of each trust.

Following is a summary of some of the duties of the Trustee. For a complete list, please refer to the State Trust or the Indian Tribe Trust, respectively.

- To establish and maintain a public-facing website onto which it will post all materials as required by each of the State Trust Agreement and the Indian Tribe Trust Agreement

- To distribute Trust Assets for the purposes contemplated by each of the State Volkswagen Diesel Emissions Environmental Mitigation Trust (/) Trust Agreement, the Indian Tribe Trust Agreement, and the Consent Decrees, including distributions of funds to Beneficiaries for approved Eligible Mitigation Actions
- To engage a professional investment manager to receive, manage, invest, reinvest, supervise, and protect the Trust Assets as provided in Paragraph 3.2 of the Trusts for the benefit of the Beneficiaries
- To maintain the books and records relating to the Trust Assets and income and the payment of expenses of and liabilities against each of the Trusts. The detail of these books and records and the duration the Trustee shall keep such books and records shall be such as to allow the Trustee to make a full and accurate accounting of all Trust Assets, as well as to comply with applicable provisions of law and standard accounting practices, including Generally Accepted Accounting Principles ("GAAP").
- To file on behalf of the State Trust and the Indian Tribe Trust all required Tax Returns (which shall be completed in consultation with Tax Professionals), ensure compliance with withholding and reporting requirements, and pay any and all Taxes

Inquiries About the Trusts

The Trustee is happy to respond to inquiries where appropriate and as required by each of the State Trust (/state-trust) and Indian Tribe Trust (/tribe-trust), in accordance with its duties under each of the Trusts. Inquiries to the Trustee that are beyond the scope of its duties, enumerated above, would best be answered by directing them to the appropriate external parties. To direct an inquiry to the Trustee, please do so by using the Contact Us page.

Questions regarding Eligible Mitigation Actions

If you have questions or would like more information regarding Eligible Mitigation Actions, please contact the Lead Agency contact(s) designated for each Beneficiary. This contact information will be posted, in time, on this website.

Select a Trust to learn more

State Trust → (/state-trust)

Indian Tribe Trust → (/tribe-trust)

Disclaimer: This page is intended to be a helpful summary of some of the key points of the State Trust Agreement and the Indian Tribe Trust Agreement. If there is any conflict or discrepancy between the information on this page and the terms of the State Trust Agreement and/or the Indian Tribe Trust Agreement, the terms of the State Trust Agreement and/or the Indian Tribe Trust Agreement shall govern. This website will be updated as more required information is available and approved for release.

[Home \(/\)](#) | [State Trust \(/state-trust\)](#) | [Indian Tribe Trust \(/tribe-trust\)](#) | [Contact Us \(/contact-us\)](#) | [Privacy Policy \(/privacy\)](#) | [Terms of Use \(/terms\)](#) | [Sitemap \(/sitemap\)](#)

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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

Mille Lacs Band of Ojibwe _____ (“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 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:

Contact:	Charles J. Lippert, Air Quality Specialist
Address:	43408 Oodena Drive, Onamia, MN 56359
Phone:	651-271-4391 (Mobile); 320-532-4704 (Office)
Fax:	320-532-7514 (Office)
Email:	charlie.lippert@millelacsband.com

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 agrees, without limitation, that any and all future modifications to the Indian Tribe Trust Agreement done in accordance with the Paragraph 6.5 of the Indian Tribe Trust Agreement shall automatically bind the Beneficiary to the Indian Tribe Trust Agreement without any further action on behalf of the Beneficiary. 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: Melanie Benjamin

Title: Chief Executive

Date: _____

Location: Office of Chief Executive, Onamia, MN

[FOR OTHER REQUIRED SIGNATORIES]:

Signature: _____

Name: Charles J. Lippert

Title: Air Quality Specialist

Date: _____

Location: Dept. of Natural Resources, Onamia, MN

[FOR OTHER REQUIRED SIGNATORIES]:

Signature: _____

Name: _____

Title: _____

Date: _____

Location: _____