**SAMPLE GENERAL NOTICE LETTER FOR A SITE AT WHICH THE SUPERFUND ALTERNATIVE APPROACH MAY BE USED**

**CERTIFIED MAIL: RETURN RECEIPT REQUESTED**

[**Date**]

[**Name**]

[**Address**]

[**City, State, Zip Code**]

**RE**: General Notice Letter for the [**Site Name**] in [**Site Location**] and Potential for the Superfund Alternative Approach

Dear [**Name**]:

[***If EPA issued a Section 104(e) letter, insert the following paragraph*:**]

The U.S. Environmental Protection Agency (EPA) received and reviewed your [**insert date**] response to its [**insert date**] Information Request, addressed to [**you or company name**] in connection with the [**site name**] Site (the Site) located in [**city, state**]. Based on your response and other available information, EPA has determined that you may be responsible under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), commonly known as the federal “Superfund” law, for cleanup of the Site or costs EPA has incurred in cleaning up the Site.

[***If EPA did not issue a Section 104(e) letter, insert the following paragraph*:**]

Under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), commonly known as the federal “Superfund” law, the U.S. Environmental Protection Agency (EPA) responds to the release or threat of release of hazardous substances, pollutants, or contaminants into the environment – that is, to stop additional contamination and to clean up or otherwise address any prior contamination. EPA documented that such a release occurred at the [**site name**] Site (the Site) located in [**city, state**]. EPA spent, or is considering spending, public funds to investigate and control releases of hazardous substances or potential releases of hazardous substances at the Site. Based on information presently available to EPA, EPA has determined that [**you or company name**] may be responsible under CERCLA for cleanup of the Site or costs incurred by EPA in cleaning up the Site.

**Explanation of Potential Liability**

Under CERCLA, EPA may require potentially responsible parties (PRPs) to:

(1) perform cleanup actions to protect the public health, welfare, or the environment, and

(2) pay costs incurred by EPA in cleaning up the Site, unless the PRP successfully demonstrates any of the applicable statutory defenses.

PRPs include current and former owners and operators of a site, as well as persons who arranged for treatment and/or disposal of any hazardous substances found at the site, and persons who accepted hazardous substances for transport and selected the site to which the hazardous substances were delivered.

Based on the information collected, EPA believes that [**you or company name**] may be liable under Section 107(a) of CERCLA with respect to the [**insert site name**] Site, as [a/an] [***select from the following***]: (1) arranger, who by contract or agreement, arranged for the disposal, treatment or transportation of hazardous substances at the Site; (2) current or previous owner and/or operator of the Site; (3) transporter, who by contract or agreement, accepted hazardous substances for transportation and disposal at, and selected the Site. [***Additional information as to the nature of the PRP’s liability should be added. For example, if TCE is the contaminant of concern at a Site*:** “Specifically, EPA has reason to believe that [**you or your company**] [contributed TCE to the Site as an [owner/operator, transporter]] OR [arranged for the disposal, treatment, or transportation of TCE to the Site].”]

**Actions Taken at the Site**

To date, EPA [and the State/Commonwealth of \_\_\_\_\_\_\_] [has/have] taken [several] response action[s] at the Site using Superfund authority. Below is a brief description of the actions taken at the Site. [***Insert brief description, including dates of Site activities such as*:**]

* A Preliminary Assessment (PA) and Site Investigation (SI) in order to gain a basic understanding of any risks posed to human health and/or the environment by releases or threatened releases from the Site. [**Started/Completed [mm/yy]**.]
* An Expanded Site Investigation (ESI), to gather more detailed information on certain risks identified at the Site.
* A Removal Action, conducted to reduce any immediate threat to the environment or human health posed by the Site. [**Started/Completed [mm/yy]**.]
* A Remedial Investigation (RI) to identify the Site characteristics and to define the nature and extent of soil, air, surface water, and groundwater contamination at the Site and the risks posed by the Site. [**Started/Completed [mm/yy]**.]
* A Feasibility Study (FS) to evaluate different cleanup options for the Site. [**Started/Completed [mm/yy]**.]

**Potential for a Superfund Alternative Site Approach**

EPA has two main paths to achieve cleanup at Superfund sites that require long-term remediation. The traditional path involves EPA listing the site on the National Priorities List (NPL), identifying the PRPs, and working with them to secure the cleanup or payment for cleanup. An alternative path is known as the Superfund Alternative approach (SA approach), which is designed to parallel the NPL path with the exception of listing the site on the NPL. The threshold criteria for a site to be eligible for the SA approach are:

* be eligible for inclusion on the NPL (*i.e.*, currently proposed to the NPL, or would have a Hazard Ranking System score above 28.5);
* require long-term response action; and
* have financially viable and capable PRPs that the Region believes are willing to perform the cleanup work under an Administrative Settlement Agreement and Order on Consent or a Consent Decree.

The EPA guidance on the SA approach, *Transmittal of Updated Superfund Response and Settlement Approach for Sites Using the Superfund Alternative Approach (SAA Guidance)* (9/28/2012), provides more discussion of the SA approach. The Revised SAS Guidance is available at <http://www.epa.gov/enforcement/transmittal-memo-updated-superfund-response-and-settlement-approach-sites-using>.

Sites where the SA approach is used should meet the same cleanup standards as NPL sites, and negotiated SA approach agreements are very similar to agreements negotiated at NPL sites. SA approach agreements are eligible for the same settlement incentives as those available at NPL sites (*e.g.*, orphan share compensation, special account funds).

EPA Region \_\_\_ believes that the [**Site name**] qualifies for the SA approach. Accordingly, EPA is interested in discussing your willingness to perform a [***insert*** “remedial investigation and feasibility study (RI/FS)”***or***“remedial design and remedial action (RD/RA)”] under the SA approach. If you are not interested in this approach, EPA will pursue the traditional NPL path. If negotiations for an SA approach agreement proceed and subsequently reach an impasse, EPA will consider how to proceed based on site-specific circumstances.

[***If the Region has sufficient information to conclude that the PRP may be eligible for a de minimis settlement, use the “Model Notice of Eligibility to Receive a De Minimis Party Settlement” letter, issued as Appendix A to the “Interim Guidance on the Ability to Pay and De Minimis Revisions to CERCLA § 122(g) by the Small Business Liability Relief and Brownfields Revitalization Act,” instead of this letter*. *[Appendix A has been modified and is available from the Cleanup Enforcement Model Language and Model Documents Database at*** [***http://cfpub.epa.gov/compliance/models/view.cfm?model\_ID=632***](http://cfpub.epa.gov/compliance/models/view.cfm?model_ID=632)***.] If the Region has insufficient information on which to reach this conclusion, but believes it is appropriate to notify the PRP of the existence of de minimis settlements, include the following section****.*]

***De Minimis* Settlements**

Under CERCLA § 122(g), whenever practicable and in the public interest, EPA may offer special settlements [***for a waste contributor PRP, insert,*** “to parties whose waste contribution to a site is minimal in volume and toxicity, that is, *de minimis* parties.”] [***for a landowner, insert,*** “to owners of real property if: (1) such owner did not conduct or permit the generation, transportation, storage, treatment, or disposal of any hazardous substances at the Superfund facility; and (2) the owner did not have actual or constructive knowledge that the property was used for the generation, transportation, storage, treatment, or disposal of any hazardous substance.”]

Individuals or businesses resolving their Superfund liability as *de minimis* parties are not typically required to perform site cleanup. Instead, EPA requires *de minimis* settlors to pay their fair share of cleanup costs incurred, plus a “premium” that accounts for, among other things, uncertainties associated with the costs of work to be performed in the future. In return, *de minimis* settlors receive: (1) a covenant not to sue, which is a promise that EPA will not bring any future legal action against the settling party for the specific matters addressed in the settlement; and (2) protection from contribution claims, which provides a settling party with protection from being sued in a contribution action by other responsible parties for the specific matters addressed in the settlement. (The matters addressed in a *de minimis* settlement are typically all cleanup actions and all cleanup costs at the particular site.) Participation in a *de minimis* settlement means that you are settling directly with EPA as soon as it is possible to do so.

The protection from contribution suits for *de minimis* settlors is based on Sections 113(f)(2) and 122(g)(5) of the CERCLA law, which provide that a person “who has resolved its liability to the United States” in an administrative or judicially approved settlement “shall not be liable for claims for contribution regarding matters addressed in the settlement.” This protection against contribution claims, however, may not extend to claims by third parties that have incurred their own response costs and seek to recover them under Section 107(a)(4)(B). *See United States v. Atlantic Research Corporation*, 127 S.Ct. 2331, 168 L.Ed. 2d 28 (June 11, 2007) (in certain situations, a liable party who has incurred cleanup costs at a site can sue other liable parties under CERCLA § 107(a)(4)(B)).

If [**you or company name**] believe[s] that [you/it] may be eligible for a *de minimis* settlement at this Site, please contact [**name of attorney/RPM/enforcement specialist**] at [**address/phone number/email**] for additional information on *de minimis* settlements. [***Optional*:** Additional information will be sent to you, and you may be asked to respond in writing to questions about your involvement with the Site to assist EPA in making a determination as to whether you may be eligible for such a settlement.]

[***If the Region has sufficient information to conclude that the PRP may be eligible for an inability to pay settlement, use the “Model Notice Approving Reduction in Settlement Amount Based on Inability to Pay*” *letter, issued as Appendix B to the “Interim Guidance on the Ability to Pay and De Minimis Revisions to CERCLA § 122(g) by the Small Business Liability Relief and Brownfields Revitalization Act,” instead of this letter. [Appendix B has been modified and is available from the Cleanup Enforcement Model Language and Model Documents Database at*** [***http://cfpub.epa.gov/compliance/models/view.cfm?model\_ID=427***](http://cfpub.epa.gov/compliance/models/view.cfm?model_ID=427)***.] If the Region has insufficient information on which to reach this conclusion, but believes it is appropriate to notify the PRP of the existence of inability to pay settlements, include the following section.***]

**Financial Concerns / Ability to Pay Settlements**

EPA is aware that the financial ability of some PRPs to contribute toward the payment of response costs at a site may be substantially limited. If you believe, and can document, that you fall within that category, please contact [**name of attorney/RPM/enforcement specialist**] at [**address/phone number/email**] for information on “ability to pay settlements.” In response, you will receive information about the potential for such settlements and a listing of information you will need to provide, including financial records and business [and personal] federal income tax returns. [***If appropriate, insert,***“If EPA concludes that [**you or company name**] have a legitimate inability to pay the full amount of EPA’s costs, EPA may offer a schedule for payment over time or a reduction in the total amount demanded from you.”]

Also, please note that, because EPA has a potential claim against you, you must include EPA as a creditor if you file for bankruptcy.

**Information to Assist You**

EPA encourages communication between you, other PRPs, and EPA concerning the Site. [***Where appropriate, insert*:**“EPA recommends that all PRPs meet to select a “steering committee” that will be responsible for representing the group’s interests. Establishing a manageable group is critical to successful negotiations with EPA. If this is not possible, EPA encourages each PRP to select one person from its company or organization to represent its interests to EPA.”]

To assist you in your efforts to communicate, please find the following attached information:

* A list of names and addresses of PRPs to whom this letter is being sent.
* To the extent information is available, a list of the volume and type of substances contributed by each PRP to the Site to date. This is an initial list and subject to change based upon new information.
* A fact sheet that describes the Site.

[***Insert the appropriate report*:** The Preliminary Assessment (PA) Report, Site Investigation (SI) Report, Expanded Site Investigation (ESI) Report] is/are also available for your review as part of the Administrative Record. General information on [these reports / this report] and on the Hazard Ranking System (HRS) can be found on the “HRS Toolbox” at <http://www.epa.gov/superfund/hrs-toolbox>. The HRS Toolbox provides current guidance documents that may be used to determine if a site is a candidate for inclusion on the National Priorities List.

EPA [has/will] establish[ed] an Administrative Record that contains documents that serve as the basis for EPA’s selection of a cleanup action for the Site. The Administrative Record [is/will be] located at [**address**] and [is/will be] available to you and the public for inspection and comment. The Administrative Record [is also/will also be] available for inspection and comment at the Superfund Records Center, EPA Region [**number and address**].

**Additional Information**

The Superfund Small Business Liability Relief and Brownfields Revitalization Act contains several exemptions and defenses to CERCLA liability, which we suggest that all parties evaluate. You may obtain a copy of the law via the Agency’s website at <http://www.epa.gov/brownfields/brownfields-laws-and-regulations> and review EPA guidance regarding these exemptions at <http://cfpub.epa.gov/compliance/resources/policies/cleanup/superfund/>.

**[*Insert if appropriate*:** In addition, if you are a “service station dealer” who accepts used oil for recycling, you may qualify for an exemption from liability under Section 114(c) of CERCLA. EPA guidance regarding this exemption can be found on the Agency’s website at <http://www.epa.gov/enforcement/model-applicationinformation-request-service-station-dealer-exemption-under-cercla>. If you believe you may qualify for the exemption, please contact [**name, phone number, email of attorney/RPM/enforcement specialist**] to request an application/information request specifically designed for service station dealers.]

**[*Insert if appropriate*:** EPA has a number of resources for small businesses, including the National Compliance Assistance Clearinghouse and Compliance Assistance Centers which offer various forms of resources to small businesses. You may inquire about these resources at <http://www.epa.gov/compliance/compliance-assistance-centers>. In addition, the EPA Small Business Ombudsman may be contacted at <http://www.epa.gov/resources-small-businesses/forms/contact-us-about-resources-small-businesses>.] Finally, EPA has developed a fact sheet about the Small Business Regulatory Enforcement Fairness Act (SBREFA) and information on resources for small businesses, which is enclosed with this letter and available on the Agency’s website at <http://www.epa.gov/compliance/small-business-resources-information-sheet>.

Please give these matters your immediate attention and consider consulting with an attorney. Please contact [**name, phone number, email of regional contact**] within 30 calendar days of the date of this letter regarding: (1) your willingness to enter into negotiations consistent with the Superfund Alternative approach, or (2) information about why you may not be a PRP (*e.g.*, you qualify for an exemption), or the size of your waste contribution to the Site, or your financial status. If you have any questions about this letter, please contact [**name of regional contact**].

Thank you for your prompt attention to this matter.

Sincerely,

[**Name/Title/Address of Individual Delegated Signature Authority**]

Enclosures

cc:

**Online Resources Cited in this General Notice Letter & Others Relevant to this Letter (*Region should modify as appropriate and check links*)**

|  |  |
| --- | --- |
| EPA | www.epa.gov |
| EPA Region [ ] | http://www.epa.gov/aboutepa/#pane-4 |
| Superfund Alternative Approach Guidance | http://www.epa.gov/enforcement/transmittal-memo-updated-superfund-response-and-settlement-approach-sites-using |
| General information on the Superfund Alternative Approach | http://www.epa.gov/enforcement/superfund-alternative-approach |
| General information on Superfund enforcement authorities, liability and settlements | http://www.epa.gov/enforcement/superfund-enforcement |
| For guidance and information on a variety of Superfund enforcement topics, including *de minimis* settlements, ability-to-pay issues, service station dealers, you can search this database by subject, key word, or chronologically | http://cfpub.epa.gov/compliance/resources/policies/cleanup/superfund/ |
| General information on the Superfund cleanup process, methods and standards | http://www.epa.gov/superfund/ |
| HRS Toolbox – information on PA, SI, and ESI reports, and HRS scoring | http://www.epa.gov/superfund/hrs-toolbox |
| For information on cleanup enforcement and Brownfields and Land Revitalization | http://www.epa.gov/enforcement/brownfields-and-land-revitalization-cleanup-enforcement |
| EPA Compliance Assistance Centers | http://www.epa.gov/compliance/compliance-assistance-centers |
| Small Business Information Resource Sheet | http://www.epa.gov/compliance/small-business-resources-information-sheet |