**SAMPLE SPECIAL NOTICE LETTER**

**SPECIAL NOTICE LETTER**

**URGENT LEGAL MATTER**

**PROMPT REPLY NECESSARY**

**CERTIFIED MAIL: RETURN RECEIPT REQUESTED** **[*If demand for costs is included, send letter by overnight mail.*]**

**[Date]**

**[PRP Name]**

**[Address]**

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

Re: Special Notice Letter for the [**Site Name**] in [**Site Location**]

Dear **[PRP Name]**:

This letter follows the general notice letter that the U.S. Environmental Protection Agency (EPA) sent to [**you or company name**] on **[insert date]** in connection with the **[insert Site name]** Site (“the Site”), located in [**city, state**]. In that letter, EPA notified you of your potential responsibility under Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or “Superfund”), 42 U.S.C. § 9607(a), for the cleanup of the Site, including all costs incurred by EPA in responding to releases at the Site. EPA is now contacting [**you or company name**] in an attempt to resolve your responsibility at the Site.

**Background**

Based on an extensive review of records related to the release and/or disposal of hazardous substances at the Site, EPA identified [**you or company name**] as one of approximately [**insert approximate number of PRPs at the Site**] potentially responsible parties (PRPs) that contributed hazardous substances to the Site. Under the federal Superfund law**,** [**you or company name**] and the other PRPs at the Site are responsible for the costs of cleaning up the Site. EPA has selected a cleanup approach (formally known as a remedial action) for the Site, which is described in a document called a Record of Decision (ROD) issued by EPA on **[insert date or attach ROD, or insert description of planned activities and dates]**.

**Special Notice and Negotiation Moratorium**

EPA has determined that use of the special notice procedures set forth in Section 122(e) of CERCLA, 42 U.S.C. § 9622(e), may facilitate a settlement between [**you or company name**], other PRPs, and EPA for implementation of the response action. Under Section 122(e), this letter triggers a 60-day moratorium on certain EPA response activities at the Site. During this 60-day moratorium, EPA will not begin response action at the Site. However, EPA reserves the right to take action at the Site at any time should a significant threat to the human health or the environment arise.

During this 60-day period, [**you or company name**] and the other PRPs are invited to participate in formal negotiations with EPA in an effort to reach a settlement to conduct or finance the response action at the Site. The 60-day negotiation period ends on **[insert date]**. The 60-day negotiation moratorium will be extended for an additional 60 days if PRPs provide EPA with a “good faith offer” to conduct or finance the response action [and reimburse EPA for its costs incurred to date]. If EPA determines that your proposal is not a “good faith offer,” you will be notified in writing of EPA’s decision to end the moratorium. If the moratorium is extended for an additional 60 days, negotiations will conclude on [**insert date**]. If settlement is reached between EPA and the PRPs within the 120-day negotiation moratorium, the settlement will be embodied in a Consent Decree for Remedial Design/Remedial Action. When approved by EPA and the U.S. Department of Justice (DOJ), the Consent Decree will then be lodged in federal court.

If a “good faith offer” is not received within 60 days, or a timely settlement cannot be reached, EPA may take appropriate action at the Site, which may include either of the following options: (1) EPA may fund the remedial action and pursue a cost recovery claim under Section 107 of CERCLA against [**you or company name**] and/or the other PRPs; or (2) EPA may issue a Unilateral Administrative Order (UAO) to [**you or company name**] and/or the other PRPs under Section 106(a) of CERCLA, 42 U.S.C. § 9606, requiring [**you or company name**] or them to perform the work described in the ROD. If the recipients of a UAO refuse to comply with the UAO, EPA may pursue civil litigation against the recipients to require compliance.

[**If issuing special notice for a RI/FS, insert the following two paragraphs instead of the previous three paragraphs:**] EPA has determined that use of the special notice procedures set forth in Section 122(e) of CERCLA, 42 U.S.C. § 9622(e), may facilitate a settlement between [**you or company name**], the other PRPs, and EPA for performance of a Remedial Investigation and Feasibility Study (RI/FS) at the Site. A Remedial Investigation (RI) identifies site characteristics and defines the nature and extent of soil, air, surface water, and groundwater contamination at the site and the risks posed by the site. A Feasibility Study (FS) evaluates different cleanup options for the site.

Under Section 122(e), this letter triggers a 60-day moratorium on certain EPA response activities at the site. During this 60-day period, [**you or company name**] and the other PRPs are invited to participate in formal negotiations with EPA in an effort to reach a settlement to conduct or finance the RI/FS. The 60-day negotiation period ends on **[insert date]**. The 60-day negotiation moratorium will be extended for an additional 30 days if PRPs provide EPA with a “good faith offer” to conduct or finance the RI/FS. Under this 90-day negotiation moratorium, negotiations will conclude on **[insert date]**. If settlement is reached between EPA and the PRPs within the 90-day negotiation moratorium, the settlement will be embodied in an administrative settlement agreement and order on consent for RI/FS (ASAOC or “Administrative Order”).]

[**If appropriate, insert the following paragraph on orphan share reform for RD/RA special notice:**] Pursuant to the Superfund Reforms announced on October 2, 1995, when EPA enters into future RD/RA settlements, EPA intends to compensate settlors for a portion of the shares specifically attributable to insolvent and defunct PRPs (“orphan share”), if any. EPA believes that there may be PRPs at this Site who are insolvent or defunct. [**Optional: These parties include: (list names of known insolvent and defunct PRPs)**]. [**If no insolvent or defunct PRPs, use the following sentence instead of the previous two sentences:**“At this Site, EPA does not believe that there are any PRPs who are insolvent or defunct and, therefore, this reform is not applicable. However,”] [**use rest of paragraph in all cases:** [If/if] you, either individually or with other PRPs, enter into an RD/RA settlement with EPA and provide sufficient information about the existence, liability, and relative shares of responsibility of insolvent and defunct PRPs, EPA will analyze the information and determine whether to consider the shares of these parties in the amount of EPA’s past costs and future oversight costs to recover in such settlement.]

**Good Faith Offer**

[**Insert the following for RD/RA special notice:**]

A proposed Consent Decree is enclosed to assist you in developing a “good faith offer.”[[1]](#footnote-1) As indicated, the 60-day negotiation moratorium triggered by this letter is extended for 60 days if the PRPs submit a “good faith offer” to EPA. A “good faith offer” to conduct or finance the remedial action is a written proposal that demonstrates your qualifications and willingness to perform such work and includes the following elements:

* A statement of your willingness and financial ability to implement the requirements of the ROD and proposed Consent Decree and that provides a sufficient basis for further negotiation;
* A demonstration of your technical capability to carry out the remedial action, including identification of the firm(s) that may actually conduct the work or a description of the process that will be undertaken to select the firm(s);
* A detailed statement of work or work plan identifying how you intend to proceed with the remedial action;
* A statement of your willingness to reimburse EPA for costs EPA will incur in overseeing your implementation of the remedial action;
* A response to the proposed Consent Decree. If your offer contemplates modifications to the Consent Decree, please make revisions or edits to the Consent Decree and submit a version showing your proposed modifications to it;
* A list identifying each party on whose behalf the offer is being made, including name, address, and telephone number of each party;
* The name, address, and phone number of the party who will represent you in negotiations; and
* A redline/strikeout version of the draft CD in Microsoft Word.

[**Insert the following for RI/FS special notice:**]

A proposed Administrative Order and Statement of Work is enclosed to assist you in developing a “good faith offer.” As indicated, the 60-day negotiation moratorium triggered by this letter is extended for 30 days if the PRPs submit a “good faith offer” to EPA. A “good faith offer” to conduct or finance the RI/FS is a written proposal that demonstrates the qualifications and willingness of the PRPs to conduct or finance the RI/FS, and includes the following elements:

* A statement of willingness by the PRPs to conduct or finance an RI/FS that is consistent with EPA’s Statement of Work and draft Administrative Order and provides a sufficient basis for further negotiations;
* A paragraph-by-paragraph response to EPA’s Statement of Work and draft Administrative Order;
* A detailed description of the work plan identifying how the PRPs plan to proceed with the work;
* A demonstration of the PRPs’ technical capability to carry out the RI/FS, including the identification of the firm(s) that may actually conduct the work or a description of the process they will use to select the firm(s);
* A demonstration of the PRPs’ capability to finance the RI/FS;
* A statement of willingness by the PRPs to reimburse EPA for costs incurred in overseeing the PRPs’ conduct of the RI/FS; and
* The name, address, and phone number of the party or steering committee who will represent the PRPs in negotiations.

**Demand for Reimbursement of Costs**

With this letter, EPA demands that you reimburse EPA for its costs incurred to-date, and encourages you to voluntarily negotiate a consent decree **[consent order]** in which you and other PRPs agree to perform the RD/RA [RI/FS].

In accordance with Section 104 of CERCLA, 42 U.S.C. § 9604, EPA has already taken certain response actions and incurred certain costs in response to conditions at the Site. These response actions include: [**list response actions taken at the Site**]. EPA is seeking to recover from [**you or company name**] and other PRPs at the Site its response costs and all the interest authorized to be recovered under Section 107(a) of CERCLA. To date, the approximate total response costs identified through **[date of most recent cost report]** for the Site are **$\_\_\_\_\_**. Under Section 107(a) of CERCLA, EPA hereby makes a demand for payment from [**you or company name**] and other PRPs for the above amount plus all interest authorized to be recovered under Section 107(a). A summary of these costs is enclosed as Attachment **\_\_**.

[**If a demand for costs incurred is included, insert either of the following two paragraphs, if appropriate:**]

[**For PRPs who have asserted inability to pay, and have provided financial documentation, consider inserting the following paragraph:**] In your letter dated **[insert date]**, you claimed that [**you or company name**] would face a severe financial hardship by remitting the full payment amount and requested that we review your ability to pay. In response, we required that you substantiate your financial hardship claim by submitting detailed financial documentation for our review. Based on our review, we believe the information you provided EPA does not support your inability to pay claim. Therefore, in accordance with Section 107(a) of CERCLA, demand is hereby made on you and other PRPs for the above amount plus any and all interest recoverable under Section 107. EPA also anticipates expending additional funds for response activities, which may include a remedial action or oversight of a remedial action. Whether EPA funds the response action or simply incurs costs by overseeing the parties conducting the response activities, you are potentially liable for the expenditures plus interest.

[**For PRPs who have asserted inability to pay, but have not provided requested documentation, consider inserting the following paragraph:**] In your letter dated **[insert date]**, you claimed that [**you or company name**] would face a severe financial hardship by remitting the full payment amount and requested that we review your financial ability to pay. In response, we required that you substantiate your financial hardship claim by submitting detailed financial documentation for our review. To date, EPA has not received any documentation to support your inability to pay claim. Therefore, in accordance with Section 107(a) of CERCLA, demand is hereby made on you and other PRPs for the above amount plus any and all interest recoverable under Section 107. EPA also anticipates expending additional funds for response activities, which may include a remedial action or oversight of a remedial action. Whether EPA funds the response action or simply incurs costs by overseeing the parties conducting the response activities, you are potentially liable for the expenditures plus interest.

[**If a demand for costs incurred is included, insert the following two paragraphs:**]

Some or all of the costs associated with this notice may be covered by current or past insurance policies issued to [**you or company name**]. Most insurance policies will require that you timely notify your carrier(s) of a claim against you. To evaluate whether you should notify your insurance carrier(s) of this demand, you may wish to review current and past policies, beginning with the date of [**you or your company’s**] first contact with the [**Site name**], up to the present. Coverage depends on many factors, such as the language of the particular policy and state law.

In the event that you file for protection in a bankruptcy court, you must include EPA as creditor, because EPA has a potential claim against you. EPA reserves the right to file a proof of claim or application for reimbursement of administrative expenses.

**PRP Steering Committee**

To assist PRPs in negotiating with EPA concerning this matter, EPA is attaching to this letter a list of the names and addresses of other PRPs to whom it is sending this Notice [**if available, insert,** “and a waste-in list containing the volume and nature of substances contributed by each PRP and a ranking by volume of the substances.”]

EPA recommends that all PRPs meet to select a steering committee responsible for representing the group’s interests. EPA recognizes that the allocation of responsibility among PRPs may be difficult. If PRPs are unable to reach consensus among themselves, we encourage the use of the services of a neutral third party to help allocate responsibility. Third parties are available to facilitate negotiations. At the PRPs’ request, EPA will provide a list of experienced third-party mediators, or help arrange for a mediator.

**Administrative Record**

In accordance with Section 113 of CERCLA, 42 U.S.C. § 9613, EPA has established an Administrative Record containing the documents that serve as the basis for EPA’s selection of the appropriate response action for the Site. This Administrative Record [is/will be] located at [**address and URL if applicable**] and [is/will be] available to 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 [**phone** **number and address**]. You may wish to review the Administrative Record to assist you in responding to this letter, but your review should not delay such response beyond the 60-day period provided by CERCLA.

**PRP Response and EPA Contact Person**

You are encouraged to contact EPA by **[insert date]** to indicate your willingness to participate in future negotiations concerning this Site. You may respond individually or through a steering committee if such a committee has been formed. If EPA does not receive a timely response, EPA will assume that you do not wish to negotiate a resolution of your liabilities in connection with the Site, and that you have declined any involvement in performing the response activities.

Your response to this Special Notice Letter [**if appropriate, insert:** “and the demand for costs included herein”], including written proposals to perform the [remedial action selected] OR [RI/FS] for the Site, should be sent to:

U.S. Environmental Protection Agency

**[Name of Site Manager or Section Chief]**

**[Address]**

**[Telephone Number]**

The factual and legal discussions in this letter are intended solely to provide notice and information, and such discussions are not to be construed as a final EPA position on any matter set forth herein. Due to the seriousness of the environmental and legal problems posed by the conditions at the Site, EPA urges that you give immediate attention and prompt response to this letter.

[**If appropriate, insert:** “In addition, EPA has notified the Federal Natural Resource Trustee[[2]](#footnote-2) of its intention to perform or enter into negotiations for the performance of response actions at the Site.”]

[**If this is the first time the PRP has been notified of its liability, insert the following Resources and Information for Small Businesses language**:]

**Resources and Information for Small Businesses**

As you may be aware, on January 11, 2002, President Bush signed into law the “Small Business Liability Relief and Brownfields Revitalization Act” (SBLRBRA). This Act contains several exemptions and defenses to CERCLA liability, which we suggest that all parties evaluate. You may download a copy of the law at <http://www.gpo.gov/fdsys/pkg/PLAW-107publ118/pdf/PLAW-107publ118.pdf> and review EPA guidances regarding these exemptions at <http://cfpub.epa.gov/compliance/resources/policies/cleanup/superfund/>.

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://www2.epa.gov/enforcement/guidance-superfunds-service-station-dealers-exemption>. 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.

EPA has created a number of helpful resources for small businesses. EPA has established the National Compliance Assistance Clearinghouse as well as Compliance Assistance Centers which offer various forms of resources to small businesses. You may inquire about these resources at <http://www2.epa.gov/compliance/compliance-assistance-centers>. In addition, information on contacting EPA’s Small Business Ombudsman is available at <http://www.epa.gov/sbo>. 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://www2.epa.gov/compliance/small-business-resources-information-sheet>.

If you have any questions regarding the technical aspects of this letter, please contact [**name**], Remedial Project Manager, at [**insert phone number and email**]. If you have an attorney handling your legal matters, please direct his or her questions to [**attorney name**], [**attorney title**], at **[insert number]**. If you have any other questions regarding this letter, you may contact [**name, title, phone number, email of regional contact**].

My staff and I look forward to working with you during the coming months.

Sincerely,

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

Attachments

cc: State Natural Resources Trustee

1. This draft Consent Decree is not currently binding on EPA and is subject to revision and approval by EPA and DOJ. It is based on the 2014 model RD/RA Consent Decree, which is available at <http://www2.epa.gov/enforcement/guidance-2014-cercla-rdra-cd-and-sow>. [↑](#footnote-ref-1)
2. The natural resource trustees are government agencies that have been given the authority to assess the injury to natural resources caused by the release of hazardous substances and to seek the restoration, replacement, or acquisition of equivalent natural resources. The Federal Natural Resource Trustees include the Departments of Agriculture, Commerce, Defense, Energy, and Interior. In addition, States and Tribes are Natural Resource Trustees. [↑](#footnote-ref-2)