



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
WASHINGTON, D.C. 20460

OFFICE OF  
ENFORCEMENT AND  
COMPLIANCE ASSURANCE

**MEMORANDUM**

**SUBJECT:** Issuance of 2022 Comprehensive Environmental Response, Compensation, and Liability Act Model Remedial Investigation/Feasibility Study Administrative Settlement and Order on Consent and Statement of Work

**FROM:** Cynthia L. Mackey, Director  
Office of Site Remediation Enforcement

**CYNTHIA  
MACKEY**

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CYNTHIA MACKEY  
Date: 2022.09.19 17:50:18  
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**TO:** Regional Counsels, Regions 1-10  
Superfund National Program Managers, Regions 1-10

**I. Introduction**

This memorandum transmits the revised Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) Model Remedial Investigation/Feasibility Study (RI/FS) Administrative Settlement Agreement and Order on Consent ("2022 RI/FS ASAOC") and accompanying, newly-developed CERCLA RI/FS Statement of Work ("2022 RI/FS SOW"). The Office of Site Remediation Enforcement (OSRE) developed these models in collaboration with staff from Environmental Protection Agency (EPA) Headquarters and regional offices and the Department of Justice (DOJ).

The two documents are available from the RI/FS category on the Cleanup Enforcement Model Language and Sample Documents Database ("Models Database") at <https://cfpub.epa.gov/compliance/models>.<sup>1</sup>

**II. Explanation of Revisions**

As an initial matter, the 2022 RI/FS ASAOC contains several conforming streamlining changes contained in the 2021 Model Remedial Design/Remedial Action Consent Decree, adapted to the RI/FS context. In addition, the 2022 RI/FS ASAOC is substantially restructured by removing technical provisions from the settlement document and more appropriately placing them in the new 2022 RI/FS SOW.

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<sup>1</sup> These models supersede the 2016 "Model Administrative Settlement Agreement and Order on Consent for Remedial Investigation/Feasibility Study."

Further, consistent with Administrator Regan's prioritization of EPA's commitment to addressing climate change and to the protection of communities with environmental justice concerns disproportionately impacted by pollution,<sup>2</sup> significant new provisions have been added to the 2022 RI/FS SOW. The new environmental justice and climate change provisions are made in accordance with Executive Order 14008, "Tackling the Climate Crisis at Home and Abroad: Securing Environmental Justice and Spurring Economic Opportunity," 86 Federal Register 7619 (Feb. 1, 2021), Section 219 (Policy) and Section 222(b)(ii) and (c)(ii) (Agency Obligations). Further, the new EJ provisions are anchored in the ideas outlined in OECA's July 1, 2021 memorandum, [Strengthening Environmental Justice Through Cleanup Enforcement Actions](#). These provisions are designed to be included in all site-specific SOWs for RI/FS work. Moreover, it is essential to optimize these provisions and prioritize the use of agency resources at sites with vulnerable communities disproportionately impacted by environmental pollution (i.e., communities with EJ concerns).

### **III. Effective Date/Contacts**

The 2022 RI/FS model ASAOC and SOW are effective as of the date of this transmittal memorandum and should be used for all new RI/FS negotiations. For RI/FS negotiations that are already underway, regions should continue negotiations using the 2016 version of the model ASAOC. However, OSRE requests that case teams work with our Regional Support Division to incorporate the new environmental justice and climate change provisions into the RI/FS ASAOC and SOW being negotiated.

As EPA's model settlements are living documents, further revisions to the models will be considered based on EPA priorities or when other circumstances warrant.<sup>3</sup>

Please direct any questions about the 2022 RI/FS model ASAOC and SOW to Pamela Daugherty, OSRE, Regional Support Division at 202-564-7727 ([daugherty.pamela@epa.gov](mailto:daugherty.pamela@epa.gov)) or Bill Denman, Office of Superfund Remediation and Technology Innovation at 202-566-2211 ([denman.bill@epa.gov](mailto:denman.bill@epa.gov)).

### **IV. Disclaimer**

This memorandum and the documents referenced herein are intended as guidance for EPA employees. They are not rules and do not create any legal obligations. The extent to which EPA applies them in a particular case will depend on the facts of the case.

#### **Attachments**

Cc: Larry Starfield, Acting Assistant Administrator, Office of Enforcement and Compliance (OECA)  
Kathryn Caballero, Director, Federal Facilities Enforcement Office (OECA)

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<sup>2</sup> See, e.g., Exec. Order 14008, "Tackling the Climate Crisis at Home and Abroad: Securing Environmental Justice and Spurring Economic Opportunity," 86 Fed. Reg. 7619 (Feb. 1, 2021), Section 101 (Policy), Section 201 (Policy), Section 219 (Policy) and Section 222(b)(ii). The Executive Order is located at: <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/27/executive-order-on-tackling-the-climate-crisis-at-home-and-abroad/>

<sup>3</sup> Additionally, the 2022 model RI/FS ASAOC and SOW will be released with macro functions at a later date. These macro functions will allow regions to easily tailor the documents to site-specific negotiations such as when a federal PRP will be signing a settlement document.

Barry Breen, Acting Assistant Administrator, Office of Land and Emergency Management (OLEM)

Carlton Waterhouse, Deputy Assistant Administrator, OLEM

Larry Douchand, Director, Office of Site Remediation and Technology Innovation,  
OLEM

Jeffrey Prieto, General Counsel, Office of General Counsel (OGC)

Lorie Schmidt, Associate General Counsel, Solid Waste and Emergency Law Office, OGC

Superfund Regional Counsel Branch Chiefs, Regions 1-10

Superfund Remedial Branch Chiefs, Regions 1-10

Thomas A. Mariani, Jr., Chief, Environmental Enforcement Section, Environment and  
Natural Resources Division, DOJ

**MODEL ADMINISTRATIVE SETTLEMENT AGREEMENT  
AND ORDER ON CONSENT FOR  
REMEDIAL INVESTIGATION / FEASIBILITY STUDY**  
Use with Model RI/FS ASAO Statement of Work

**September 2022**

**Commented [A1]:** This model and any internal procedures adopted for its implementation and use are intended solely as guidance for employees of the U.S. Environmental Protection Agency and the U.S. Department of Justice. They do not constitute rulemaking by EPA and may not be relied upon to create a right or benefit, substantive or procedural, enforceable at law or in equity, by any person. EPA may take action at variance with this model or its internal implementing procedures.

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION \_\_\_\_

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IN THE MATTER OF:

[Site Name and Location]

CERCLA Docket No. \_\_\_\_

[Names of Respondents],

Respondents

and

[Names of Settling Federal Agencies]

**ADMINISTRATIVE SETTLEMENT  
AGREEMENT AND ORDER ON  
CONSENT FOR REMEDIAL  
INVESTIGATION AND FEASIBILITY  
STUDY**

Proceeding Under Sections 104, 107 and 122  
of the Comprehensive Environmental  
Response, Compensation, and Liability Act

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**Commented [A3]:** If there are many Respondents, attach an appendix and refer to it instead.

**Commented [A4]:** If many, reference appendix.

## TABLE OF CONTENTS

I.	JURISDICTION AND GENERAL PROVISIONS.....	4
II.	PARTIES BOUND .....	4
III.	DEFINITIONS.....	5
IV.	FINDINGS OF FACT.....	8
V.	CONCLUSIONS OF LAW AND DETERMINATIONS .....	9
VI.	ORDER AND AGREEMENT.....	10
VII.	PERFORMANCE OF THE WORK.....	10
VIII.	PROPERTY REQUIREMENTS .....	11
IX.	FINANCIAL ASSURANCE .....	12
X.	INDEMNIFICATION AND INSURANCE .....	16
XI.	PAYMENTS FOR RESPONSE COSTS.....	17
XII.	FORCE MAJEURE .....	19
XIII.	DISPUTE RESOLUTION .....	20
XIV.	STIPULATED PENALTIES .....	21
XV.	COVENANTS BY EPA .....	22
XVI.	COVENANTS BY RESPONDENTS AND SETTLING FEDERAL AGENCIES ...	23
XVII.	EFFECT OF SETTLEMENT; CONTRIBUTION .....	25
XVIII.	RECORDS .....	26
XIX.	NOTICES AND SUBMISSIONS .....	28
XX.	APPENDIXES .....	29
XXI.	MODIFICATIONS TO SETTLEMENT .....	29
XXII.	ATTORNEY GENERAL APPROVAL .....	29
XXIII.	SIGNATORIES .....	29
XXIV.	INTEGRATION .....	29
XXV.	PUBLIC COMMENT .....	29
XXVI.	EFFECTIVE DATE.....	29

## I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Settlement Agreement and Order on Consent (“Settlement”) is entered into voluntarily by the United States Environmental Protection Agency (“EPA”) and **[insert names or attach list of Respondents]** (“Respondents”) and **[insert names or, if there are many, attach appendix listing the settling federal agencies]** (“Settling Federal Agencies” or “SFAs”). This Settlement provides for the performance of a Remedial Investigation and Feasibility Study (“RI/FS”) [for the operable unit comprising \_\_\_\_\_] by Respondents and the payment by Respondents of certain response costs incurred by the United States, and the payment, by Settling Federal Agencies, of certain response costs incurred by the United States and Respondents at or in connection with the “**[insert name]** Site” (the “Site”) generally located at **[address or description of location]** in **[city or town]**, \_\_\_\_\_ County, **[state]**.

2. This Settlement is issued under the authority vested in the President of the United States by sections 104, 107, and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”). This authority was delegated to the Administrator of EPA on January 23, 1987, by Executive Order 12580, 52 Fed. Reg. 2923 (Jan. 29, 1987), and further delegated to Regional Administrators by EPA Delegation Nos. 14-14C (Administrative Actions through Consent Orders, Jan. 18, 2017) and 14-14D (Cost Recovery Non-Judicial Agreements and Administrative Consent Orders, Jan. 18, 2017). **[Insert if applicable:** This authority was further redelegated by the Regional Administrator of EPA Region \_\_ to the \_\_\_\_\_ (insert title of manager to whom delegation was made) by (insert numerical designations and dates of each Regional delegation).]

3. In accordance with section 122(j)(1) of CERCLA, EPA notified **[insert the relevant federal natural resource trustee(s)]** on \_\_\_\_\_, 20\_\_ of negotiations with potentially responsible parties regarding the release of hazardous substances that may have resulted in injury to the natural resources under federal trusteeship and encouraged the trustee(s) to participate in the negotiation of this Settlement.

4. EPA, the Respondents, and Settling Federal Agencies recognize that this Settlement has been negotiated in good faith and that the actions undertaken by Respondents, and payments made by the United States on behalf of Settling Federal Agencies, in accordance with this Settlement do not constitute an admission of any liability. Respondents and Settling Federal Agencies do not admit, and retain the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Settlement, the validity of the findings of facts, conclusions of law, and determinations in Sections IV (Findings of Fact) and V (Conclusions of Law and Determinations) of this Settlement. Respondents and Settling Federal Agencies agree not to contest the basis or validity of this Settlement or its terms.

## II. PARTIES BOUND

5. This Settlement is binding upon EPA and Settling Federal Agencies, and upon Respondents and their successors **[and heirs]**. Unless EPA otherwise consents, (a) any change in ownership or corporate or other legal status of any Respondent, including any transfer of assets, or (b) any Transfer of the Site or any portion thereof, does not alter any of Respondents’

**Commented [A5]:** Include “heirs” if any Settling Defendant is both an individual and an owner of the Site.

obligations under this Settlement. Respondents' responsibilities under this Settlement cannot be assigned except under a modification executed in accordance with ¶ 87.

6. Respondents shall be responsible for ensuring that their officers, directors, employees, agents, contractors, or any other person representing Respondents perform the Work in accordance with the terms of this Settlement. Respondents shall provide notice of this Settlement to each person representing Respondents with respect to the Site or the Work. Respondents shall provide notice of this Settlement to each contractor performing any Work and shall ensure that notice of the Settlement is provided to each subcontractor performing any Work.

### III. DEFINITIONS

7. Subject to the next sentence, terms used in this Settlement that are defined in CERCLA or the regulations promulgated under CERCLA have the meanings assigned to them in CERCLA and the regulations promulgated under CERCLA. Whenever the terms set forth below are used in this Settlement, the following definitions apply:

**Commented [A6]:** These definitions may be augmented or omitted as appropriate.

"CERCLA" means the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601-9675.

"Climate Change" means any substantial change in measures of climate (such as temperature or precipitation) lasting for an extended period, including major changes in temperature, precipitation, or wind patterns, among other effects, that occur over several decades or longer.

"Day" or "day" means a calendar day. In computing any period under this Settlement, the day of the event that triggers the period is not counted and, where the last day is not a working day, the period runs until the close of business of the next working day. "Working Day" means any day other than a Saturday, Sunday, or federal or State holiday.

"Effective Date" means the effective date of this Settlement as provided in Section XXVI.

"Engineering Controls" means constructed containment barriers or systems that control one or more of the following: downward migration, infiltration, airborne particles and/or material, or seepage of surface runoff or rain; or natural leaching migration of contaminants through the subsurface over time. Examples include caps, engineered bottom barriers, immobilization processes, and vertical barriers.

"EPA" means the United States Environmental Protection Agency.

"Fund" means the Hazardous Substance Superfund established under section 9507 of the Internal Revenue Code, 26 I.R.C. § 9507.

"Future Response Costs" means all costs (including direct, indirect, payroll, contractor, travel, and laboratory costs) that the United States: (a) pays between \_\_\_\_ **[same cutoff date as in PRC definition]** and the Effective Date; and (b) pays after the Effective Date in



implementing, overseeing, or enforcing this Settlement, including: (i) in developing, reviewing and approving deliverables generated under this Settlement; (ii) in overseeing Respondents' performance of the Work; (iii) in assisting or taking action to obtain access [or use restrictions] under ¶ 26; (iv) in taking action under ¶ 35 (Access to Financial Assurance); (v) in taking response action described because of Respondents' failure to take emergency action under Section 5.6 (Emergency Response and Reporting) in the SOW; (vi) in implementing a Work Takeover under ¶ 25; (vii) in implementing community involvement activities including the cost of any technical assistance grant provided under section 117(e) of CERCLA and (viii) in enforcing this Settlement, including all costs paid under Section XIII (Dispute Resolution) and all litigation costs. Future Response Costs also includes all Interest accrued after **[same cutoff date as in PRC definition]** on EPA's unreimbursed costs (including Past Response Costs) under section 107(a) of CERCLA.

**Commented [A7]:** Note that CERCLA § 104(a)(1) requires that potentially responsible parties must agree to pay oversight costs.

"Greener Cleanup" means strategies designed to help minimize the environmental footprint of cleaning up contaminated sites and ensure a protective remedy within the applicable CERCLA statutory and regulatory framework.

"Institutional Controls" means: (a) Proprietary Controls (i.e., easements or covenants running with the land that (i) limit land, water, or other resource use, provide access rights, or both, and (ii) are created under common law or statutory law by an instrument that is recorded, or for which notice is recorded, in the appropriate land records office); and (b) state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls or notices that: (i) limit land, water, or other resource use to minimize the potential for human exposure to Waste Material at or in connection with the Site; (ii) limit land, water, or other resource use to implement, ensure noninterference with, or ensure protectiveness of the response action; (iii) provide information intended to modify or guide human behavior at or in connection with the Site; or (iv) any combination thereof.

"Including" or "including" means "including but not limited to."

"Interest" means interest at the rate specified for interest on investments of the Fund, as provided under section 107(a) of CERCLA, compounded annually on October 1 of each year. The applicable rate of interest will be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year. As of the date EPA signs this Settlement, rates are available online at <https://www.epa.gov/superfund/superfund-interest-rates>.

**Commented [A8]:** [NOTE: If including ¶ 70 (MSW Waiver), insert the following definition.] ["Municipal solid waste" or "MSW" means waste material: (a) generated by a household (including a single or multifamily residence); or (b) generated by a commercial, industrial, or institutional entity, to the extent that the waste material (1) is essentially the same as waste normally generated by a household; (2) is collected and disposed of with other municipal solid waste as part of normal municipal solid waste collection services; and (3) contains a relative quantity of hazardous substances no greater than the relative quantity of hazardous substances contained in waste material generated by a typical single-family household.]

"National Contingency Plan" or "NCP" means the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to section 105 of CERCLA, codified at 40 C.F.R. part 300, and any amendments thereto.

"Owner Respondent" means any Respondent that owns or controls all or a portion of the Site.

"Paragraph" or "¶" means a portion of this Settlement identified by an Arabic numeral or an upper- or lower-case letter.

"Parties" means EPA, Respondents and Settling Federal Agencies.

**Commented [A9]:** If the settlement will resolve natural resource damages, add a definition for that here. A number of additional provisions addressing NRD also will be needed throughout the Settlement.

“Past Response Costs” means all costs (including direct, indirect, payroll, contractor, travel, and laboratory costs) that EPA paid in connection with the Site through **[insert a cutoff date; may be the date of the most recent cost update]**, plus all interest on such costs accrued under section 107(a) of CERCLA through such date.

“RCRA” means the Solid Waste Disposal Act, 42 U.S.C. §§ 6901-6992k (also known as the Resource Conservation and Recovery Act)

“RI/FS” means the Remedial Investigation and Feasibility Study required under this Settlement.

“Respondents” means **[insert names]**.

“Section” means a portion of this Settlement identified by a Roman numeral.

“Settlement” means this Administrative Settlement Agreement and Order on Consent, all appendixes attached hereto (listed in Section XX), and all deliverables approved under and incorporated into this Settlement. If there is a conflict between a provision in Sections I through XXVI and a provision in any appendix or deliverable, the provision in Sections I through XXVI controls.

“Settling Federal Agency” means DoD acting by and through the **[insert names of DoD service branches (and DLA) addressed in DoD’s investigation, e.g. Air Force, Army, Marine Corps, Navy, as applicable]**. DoD means the Department of Defense as described in 10 U.S.C. § 111.

“Settling Federal Agency” means

“Site” means the \_\_\_\_\_ Superfund Site, comprising approximately \_\_\_\_ acres, located at **[address or description of location]** in **[city]**, \_\_\_\_\_ County, **[state]** and depicted generally on the map attached as Appendix \_\_\_\_.

“Special Account” means the special account, within the Fund, established for the Site by EPA under section 122(b)(3) of CERCLA.

“State” means the State [or Commonwealth] of \_\_\_\_\_.

“Statement of Work” or “SOW” means the document attached as Appendix \_\_\_\_ which describes the activities Respondents shall perform to conduct the RI/FS, and any modifications made thereto in accordance with this Settlement.

“Transfer” means to sell, assign, convey, lease, mortgage, or grant a security interest in, or where used as a noun, a sale, assignment, conveyance, or other disposition of any interest by operation of law or otherwise.

**Commented [A10]:** If SFAs are making payments toward past and/or future response costs incurred by Respondents, please add definitions for “Respondents’ Past Response Costs” and “Respondents’ Future Response Costs.” DOJ’s Environmental Defense Section will generally take the lead in negotiating these definitions

**Commented [A11]:** If there are many Respondents, list them in an appendix and insert this definition: “Respondents” means those Parties identified in Appendix \_\_\_\_.”

**Commented [A12]:** Use the first SFA definition above if the potential liability of DoD or one of its service branches is being resolved and DOD has duly responded to any outstanding section 104(e) information requests, and otherwise represented that it investigated the potential responsibility at the Site of all of its service branches (e.g., Air Force, Army, Marine Corps, Navy) and the Defense Logistics Agency (DLA). Use the second SFA definition if the potential liability of DoD or one of its service branches is being resolved and DoD has represented that only certain service branches were investigated for their potential liability at the Site. Use the third SFA definition for non-DoD SFAs, and generally use the name of the responsible agency component rather than the name of the agency (e.g., U.S. Forest Service rather than U.S. Department of Agriculture). If both DoD SFAs and non-DoD SFAs are involved at the Site, combine the DoD and non-DoD SFA definitions.

**Commented [A13]:** If the Region has any information suggesting federal agency liability, such information should be provided to DOJ as soon as possible. For information regarding CERCLA § 104(e) information requests to federal agencies, please review the “Guidance on Issuing CERCLA § 104(e)(2) Information Requests to Federal Agencies at Privately-owned Superfund Sites” (June 14, 2004), available at

**Commented [A14]:** Keep this definition if ¶ 44 (Deposit of Payments) provides that payments for past or future costs may be deposited into the Site’s Special Account. Modify as appropriate if EPA has established more than one special account.

**Commented [A15]:** Add a definition for “Tribe” if there is one that has a role or interest at the Site:

“Tribe” means the \_\_\_\_\_ Tribe.

If the Site is entirely on tribal land, substitute “Tribe” for “State” throughout the Decree.

“United States” means the United States of America and each department, agency, and instrumentality of the United States, including EPA and Settling Federal Agencies.

“Waste Material” means (a) any “hazardous substance” under section 101(14) of CERCLA; (b) any pollutant or contaminant under section 101(33) of CERCLA; (c) any “solid waste” under section 1004(27) of RCRA; and (d) any [“hazardous material”] under **[insert appropriate State or tribal statutory terminology and citation]**.

“Work” means all obligations of Respondents under Sections VII (Performance of the Work) through X (Indemnification and Insurance).

“Work Takeover” means EPA’s assumption of the performance of any of the Work in accordance with ¶ 25.

#### IV. FINDINGS OF **FACT**

8. [Identification of the Site by name, location, and description, including characteristics of the Site and a description of the surrounding areas, *e.g.*, commercial/industrial/residential area, nearest public supply wells, nearby water bodies, potentially sensitive ecological areas, environmental justice indicators, tribal community.]

9. [A summary of the history of the Site including Site ownership and operations such as process or other activity producing waste, nature of wastes produced.]

10. [Information that there are hazardous substances at the Site by listing specific chemicals found at the Site, and their locations, concentrations, and quantities where known.]

11. [Information that there are hazardous substances and pollutants or contaminants at the Site by listing specific chemicals found at the Site, and their locations, concentrations, and quantities where **known**.]

12. [Description of actual and/or potential release (*i.e.*, leaking drums, contaminated soils, etc.) and contaminant migration pathways, and possible or known routes of exposure, making clear that these are not exclusive.]

13. [Identification of the populations at risk, both human and non-human.]

14. [Health/environmental effects of some of the major contaminants.]

15. **The** \_\_\_\_\_ Site was [listed on] [proposed for inclusion on] the National Priorities List (“NPL”) by EPA pursuant to CERCLA § 105 on [insert month, day, year], [insert Federal Register citation].

16. [Identification of Respondents and Settling Federal Agencies, *i.e.*, name/business; legal status (*i.e.*, corporation, partnership, sole proprietor, trust, individual, federal, state or local government, etc.), general categories of Respondents’ and Settling Federal Agencies’ liability under CERCLA § 107(a) and connection with the Site, *e.g.*, owner or operator of hazardous

**Commented [A16]:** The FOFs are site-specific. The case team should prepare FOFs consistent with the language here. The FOFs should support each conclusion of law.

**Commented [A17]:** Use this FOF if pollutants or contaminants are present at the Site.

**Commented [A18]:** Include if the Site is an NPL site.

waste site, including years of ownership or operation, or person who arranged for disposal or treatment of, or transporter of hazardous substances found at the Site.]

17. [Identification of prior response and enforcement actions, including investigations and assessments, if any, taken at the Site, by EPA or the State.]

18. [The Regional Administrator of EPA Region \_\_\_, or their delegatee, has determined that the total past and projected response costs of the United States at or in connection with the Site will not exceed \$500,000, excluding interest.]

## V. CONCLUSIONS OF LAW AND DETERMINATIONS

19. Based on the Findings of Fact in Section IV [and the administrative record], EPA has determined that:

a. The Site is a “facility” as defined by section 101(9) of CERCLA.

b. The contamination found at the Site, as identified in the Findings of Fact above, includes “hazardous substances” as defined by section 101(14) of CERCLA [and “pollutants or contaminants” as defined by section 101(33) of CERCLA].

c. Each Respondent and Settling Federal Agency is a “person” as defined by section 101(21) of CERCLA.

d. Each Respondent and Settling Federal Agency is a responsible party under section 107(a) of CERCLA.

- (1) Respondents [insert names] and Settling Federal Agencies [insert names] are the “owner(s)” and/or “operator(s)” of the facility, as defined by section 101(20) of CERCLA and within the meaning of section 107(a)(1) of CERCLA.
- (2) Respondents [insert names] and Settling Federal Agencies [insert names] were the “owners” and/or “operators” of the facility at the time of disposal of hazardous substances at the facility, as defined by section 101(20) of CERCLA, and within the meaning of section 107(a)(2) of CERCLA.
- (3) Respondents [insert names] and Settling Federal Agencies [insert names] arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances at the facility, within the meaning of section 107(a)(3) of CERCLA.
- (4) Respondents [insert names] and Settling Federal Agencies [insert names] accept or accepted hazardous substances for transport to the facility, within the meaning of section 107(a)(4) of CERCLA.

**Commented [A19]:** Note: If the Settlement includes a *compromise* of response costs but Site costs will be less than \$500,000, in which case AG approval will not be needed, include this Finding of Fact.

Note: If the Settlement includes a compromise of response costs and total response costs are expected to exceed \$500,000 (excluding interest) in total site costs, inclusive of past and anticipated future costs, then the Attorney General also must approve the settlement.

**Commented [A20]:** Regions may add 19.e describing an Imminent and Substantial Endangerment if there is one present at the site.

**Commented [A21]:** The case team should specify each category of liability under section 107, using these ¶¶.

e. The conditions described in [¶¶ \_\_ of] the Findings of Fact constitute an actual and/or threatened release of a hazardous substance from the facility as defined by section 101(22) of CERCLA.

f. The actions required by this Settlement are necessary to protect the public health or welfare or the environment, are in the public interest, are consistent with CERCLA and the NCP, and will expedite effective remedial action and minimize litigation, in accordance with sections 104(a)(1) and 122(a) of CERCLA.

g. EPA has determined that Respondents are qualified to conduct the RI/FS within the meaning of section 104(a) of CERCLA and will carry out the Work properly and promptly, in accordance with sections 104(a) and 122(a) of CERCLA if Respondents comply with the terms of this Settlement.

## **VI. ORDER AND AGREEMENT**

20. Based upon the Findings of Fact, Conclusions of Law, and Determinations set forth above, [and the administrative record,] it is hereby Ordered and Agreed that Respondents shall comply with all provisions of this Settlement:

## **VII. PERFORMANCE OF THE WORK**

21. **Performance of Work in Accordance with SOW.** Respondents shall develop and perform the RI/FS in accordance with the SOW and all EPA-approved, conditionally approved, or modified deliverables as required by the SOW. All deliverables required to be submitted for approval under the Settlement or SOW shall be subject to approval by EPA in accordance with Section 6.5 (Approval of Deliverables) of the SOW.

22. Respondents' obligations to finance and perform the Work and to pay amounts due under this Settlement are joint and several. In the event of the insolvency of any Respondent or the failure by any Respondent to participate in the implementation of the Settlement, the remaining Respondents shall complete the Work and make the payments.

23. **Modifications to the Work.** EPA may modify the Work under this Settlement if it determines that additional data are needed or that, in addition to tasks defined in the initially approved Work Plan, other additional work may be necessary to accomplish the objectives of the RI/FS. Respondents also may request modification of the approved Work Plan or other deliverables. EPA may notify Respondents of any modification needed under the foregoing two sentences. Respondents shall, within [30] days thereafter, submit a revised work plan and other deliverables as necessary to EPA for approval. Respondents shall implement the revised work plan and any other deliverables upon EPA's approval in accordance with the procedures of Section 6.5 (Approval of Deliverables) of the SOW.

24. **Compliance with Applicable Law.** Nothing in this Settlement affects Respondents' obligations to comply with all applicable federal and state laws and regulations. The activities conducted in accordance with this Settlement, if approved by EPA, will be deemed to be consistent with the NCP as provided under section 300.700(c)(3)(ii).

## 25. Work Takeover

a. If EPA determines that Respondents: (1) have ceased to perform any portion of the Work; (2) are seriously or repeatedly deficient or late in performing the Work; or (3) are performing the Work in a manner that may cause an endangerment to public health or welfare or the environment, EPA may issue a notice of Work Takeover to Respondents, including a description of the grounds for the notice and a period of time (“Remedy Period”) within which Respondents shall remedy the circumstances giving rise to the notice. The Remedy Period will be [20] days, unless EPA determines in its unreviewable discretion that there may be an endangerment, in which case the Remedy Period will be [10] days.

b. If, by the end of the Remedy Period, Respondents do not remedy to EPA’s satisfaction the circumstances giving rise to the notice of Work Takeover, EPA may notify Respondents and, as it deems necessary, commence a Work Takeover.

c. EPA may conduct the Work Takeover during the pendency of any dispute under Section XIII but shall terminate the Work Takeover if and when: (1) Respondents remedy, to EPA’s satisfaction, the circumstances giving rise to the notice of Work Takeover; or (2) upon the issuance of a final determination under Section XIII that EPA is required to terminate the Work Takeover.

## VIII. PROPERTY REQUIREMENTS

26. If the Site, or any other property where access is needed to implement this Settlement, is owned or controlled by any of the Respondents, such Respondents shall, commencing on the Effective Date, provide EPA and its representatives, including contractors, with access at all reasonable times to the Site, or such other property, for the purpose of conducting any activity related to this Settlement. [Owner Respondent shall refrain from using the Site in any manner that EPA determines will pose an unacceptable risk to public health or welfare or the environment because of exposure to Waste Material, or will interfere with the or adversely affect the implementation or integrity of the Work.] Where any action under this Settlement is to be performed in areas owned or controlled by someone other than Respondents, Respondents shall use best efforts to obtain all necessary agreements for access, enforceable by Respondents and EPA, within \_\_\_ days after the Effective Date, or as otherwise specified in writing by EPA’s Project Coordinator. Respondents shall provide a copy of each agreement required under this ¶ 26 to EPA [and the State].

27. As used in this Section, “best efforts” means the efforts that a reasonable person in the position of Respondents would use to achieve the goal in a timely manner, including the cost of employing professional assistance and the payment of reasonable sums of money to secure access and/or use restriction agreements, as required by this Section. If Respondents cannot accomplish what is required through “best efforts” in a timely manner, they shall notify EPA, and include a description of the steps taken to achieve the requirements. If EPA deems it appropriate, it may assist Respondents, or take independent action, in obtaining such access and/or use restrictions.

28. Any Respondent who owns or controls any property at the Site shall, prior to entering into a contract to Transfer any of its property that is part of the Site, or 60 days prior to a

**Commented [A22]:** Here and in other places in this Section, optional text to be used if there is an Owner Respondent is set off in brackets.

**Commented [A23]:** As appropriate, the case team can specifically identify the purposes for which access is anticipated, using the following optional language to paragraph 26:

a. As used in this Section, “Affected Property” means any real property, including the Site, where EPA determines, at any time, that access; land, water, or other resource use restrictions; Institutional Controls; or any combination thereof, are needed to implement the RI.

b. The following is a non-exclusive list of activities for which access is required:

**[NOTE: Augment this list as appropriate.]**

- (1) Implementing the Work and overseeing compliance with the Settlement;
- (2) Conducting investigations regarding contamination at or near the Site;
- (3) Assessing the need for and planning response actions at or near the Site;
- (4) Determining whether the Affected Property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted under the Settlement; and
- (5) Implementing, monitoring, maintaining, reporting on, and enforcing any land, water, or other resource use restrictions regarding the Affected Property.

**Commented [A24]:** Include the ¶ below if land, water, or other resource use restrictions are needed. Customize the list as appropriate.

**a. Land, Water, or Other Resource Use Restrictions.** The following is a list of land, water, or other resource use restrictions applicable:

- (1) Prohibiting the following activities which could interfere with the RI/FS: \_\_\_\_\_; and
- (2) Ensuring that any new structures on the Affected Property will not be constructed in the following manner which could interfere with the RI/FS: \_\_\_\_\_

**Commented [A25]:** Case teams may expand this language to include new leases, licenses, or easements as appropriate given site-specific circumstances.



Transfer of such property, whichever is earlier, (a) give written notice to the proposed transferee that the property is subject to this Settlement; and (b) give written notice to EPA of the proposed Transfer, including the name and address of the transferee. Any Respondent who owns or controls property at the Site also agrees to require that their successors comply with this Section and Section XVIII (Records).

29. Notwithstanding any provision of the Settlement, EPA retains all of its access authorities and rights, as well as all of its rights to require land, water, or other resource use restrictions, including enforcement authorities related thereto under CERCLA, RCRA, and any other applicable statute or regulations.

## IX. FINANCIAL ASSURANCE

30. To ensure completion of the Work required under Section VII, Respondents shall secure financial assurance, initially in the amount of \$\_\_\_\_\_ (“Estimated Cost of the Work”), for the benefit of EPA. The financial assurance must be one or more of the mechanisms listed below, in a form substantially identical to the relevant sample documents available from EPA, and be satisfactory to EPA. As of the date of signing this Settlement, the sample documents can be found under the “Financial Assurance - Settlements” category on the Cleanup Enforcement Model Language and Sample Documents Database at <https://cfpub.epa.gov/compliance/models/>. Respondents may use multiple mechanisms if they are limited to surety bonds guaranteeing payment, letters of credit, trust funds, insurance policies, or some combination thereof. The following are acceptable mechanisms:

- a. A surety bond guaranteeing payment, performance of the Work, or both, that is issued by a surety company among those listed as acceptable sureties on federal bonds as set forth in Circular 570 of the U.S. Department of the Treasury;
- b. An irrevocable letter of credit, payable to EPA or at the direction of EPA, that is issued by an entity that has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency;
- c. A trust fund established for the benefit of EPA that is administered by a trustee that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency;
- d. A policy of insurance that provides EPA with acceptable rights as a beneficiary thereof and that is issued by an insurance carrier that has the authority to issue insurance policies in the applicable jurisdiction(s) and whose insurance operations are regulated and examined by a federal or state agency;
- e. A demonstration by a Respondent that it meets the relevant financial test criteria of ¶ 31 [, accompanied by a **standby funding commitment**, that requires the affected Respondent to pay funds to or at the direction of EPA, up to the amount financially assured through the use of this demonstration in the event of a Work Takeover]; or
- f. A guarantee to fund or perform the Work executed in favor of EPA by a company: (1) that is a direct or indirect parent company of a Respondent or has a “substantial

**Commented [A26]:** Case teams should try to negotiate and finalize the form, substance, and value of Respondents’ financial assurance well before finalizing the Settlement so that the final financial assurance mechanism can take effect within 30 days after the Effective Date. Such review should ensure, among other things, that an instrument or account is established (or can be established) to receive financial assurance resources when needed. Case teams can find the most current sample financial assurance documents in the “Financial Assurance - Settlements” category on the Cleanup Enforcement Model Language and Sample Documents Database at <https://cfpub.epa.gov/compliance/models/>. Case teams should examine the form and substance of all financial assurance mechanisms submitted by Respondents, both initially and over time, to ensure consistency and compliance with this Section (e.g., case teams should ensure that entities providing a demonstration or guarantee pursuant to ¶ 29.e or 29.f have: (a) submitted all required documentation so that EPA can determine whether such financial assurance is adequate; and (b) fully and accurately reflected in their submission all of their financial assurance obligations (under CERCLA, RCRA, and any other federal, state, or tribal environmental obligation) to the United States or other governmental entities so all such obligations have been properly accounted for in determining whether such entity meets the financial test criteria). If a Respondent is a municipality or an individual, or if case teams have financial assurance questions, contact financial assurance team members within the Office of Site Remediation Enforcement. For more specific information and considerations, see “Guidance on Financial Assurance in Superfund Settlement Agreements and Unilateral Administrative Orders” (April 6, 2015), available at <https://www.epa.gov/enforcement/guidance-financial-assurance-superfund-settlements-and-orders>.]

**Commented [A27]:** A sample of a standby funding commitment is available via the link in ¶ 32.b.

business relationship” (as defined in 40 C.F.R. § 264.141(h)) with a Respondent; and  
(2) demonstrates to EPA’s satisfaction that it meets the financial test criteria of ¶ 30.

31. Respondents seeking to provide financial assurance by means of a demonstration or guarantee under ¶ 30.e or 30.f shall, within [30] days of the Effective Date:

- a. Demonstrate that:
  - (1) the affected Respondent or guarantor has:
    - i. two of the following three ratios: a ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; and a ratio of current assets to current liabilities greater than 1.5; and
    - ii. net working capital and tangible net worth each at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; and
    - iii. tangible net worth of at least \$10 million; and
    - iv. assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; or
  - (2) the affected Respondent or guarantor has:
    - i. a current rating for its senior unsecured debt of AAA, AA, A, or BBB as issued by Standard and Poor’s or Aaa, Aa, A or Baa as issued by Moody’s; and
    - ii. tangible net worth at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; and
    - iii. tangible net worth of at least \$10 million; and
    - iv. assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; and



b. submit to EPA for the affected Respondent or guarantor: (1) a copy of an independent certified public accountant's report of the entity's financial statements for the latest completed fiscal year, which must not express an adverse opinion or disclaimer of opinion; and (2) a letter from its chief financial officer and a report from an independent certified public accountant substantially identical to the sample letter and reports available from EPA. As of the date of signature of this Settlement, a sample letter and report are available under the "Financial Assurance - Settlements" subject list category on the Cleanup Enforcement Model Language and Sample Documents Database at <https://cfpub.epa.gov/compliance/models/>.

32. Respondents providing financial assurance by means of a demonstration or guarantee under ¶ 30.e or 30.f shall also:

a. annually resubmit the documents described in ¶ 31.b within 90 days after the close of the affected Respondent's or guarantor's fiscal year;

b. notify EPA within 30 days after the affected Respondent or guarantor determines that it no longer satisfies the relevant financial test criteria and requirements set forth in this Section; and

c. provide to EPA, within 30 days of EPA's request, reports of the financial condition of the affected Respondent or guarantor in addition to those specified in ¶ 31.b; EPA may make such a request at any time based on a belief that the affected Respondent or guarantor may no longer meet the financial test requirements of this Section.

33. Respondents have selected, and EPA has found satisfactory, a [insert type] as an initial form of financial assurance. Respondents shall, within [30] days after the Effective Date, seek EPA's approval of the form of Respondents' financial assurance. Within 30 days after [the Effective Date / EPA's approval,] Respondents shall secure all executed and/or otherwise finalized mechanisms or other documents consistent with the EPA-approved form of financial assurance and shall submit such mechanisms and documents to the Regional Financial Management Officer in accordance with ¶ 85.

**Commented [A28]:** If the case team and Respondents have pre-negotiated the form of the financial assurance, use this text.

**Commented [A29]:** Otherwise, use this text.

34. Respondents shall diligently monitor the adequacy of the financial assurance. If any Respondent becomes aware of any information indicating that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, such Respondent shall notify EPA of such information within [7] days. If EPA determines that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, EPA will notify the affected Respondent of such determination. Respondents shall, within 30 days after notifying EPA or receiving notice from EPA under this Paragraph, secure and submit to EPA for approval a proposal for a revised or alternative financial assurance mechanism that satisfies the requirements of this Section. EPA may extend this deadline for such time as is reasonably necessary for the affected Respondent, in the exercise of due diligence, to secure and submit to EPA a proposal for a revised or alternative financial assurance mechanism, not to exceed [60] days. Respondents shall follow the procedures of ¶ 36 (Modification of Amount, Form, or Terms of Financial Assurance) in seeking approval of, and submitting documentation for, the revised or alternative financial assurance mechanism.

Respondents' inability to secure financial assurance in accordance with this Section does not excuse performance of any other obligation under this Settlement.

35. **Access to Financial Assurance**

a. If EPA issues a notice of a Work Takeover under ¶ 25.b, then, in accordance with any applicable financial assurance mechanism **[if a standby funding commitment requirement is included in ¶ 30.e, insert: and/or related standby funding commitment]**, EPA may require: (1) the performance of the Work; and/or (2) that any funds guaranteed be paid in accordance with ¶ 35.d.

b. If EPA is notified that the issuer of a financial assurance mechanism intends to cancel the mechanism, and the affected Respondent fails to provide an alternative financial assurance mechanism in accordance with this Section at least 30 days prior to the cancellation date, the funds guaranteed under such mechanism must be paid prior to cancellation in accordance with ¶ 35.d.

c. If, upon issuance of a notice of a Work Takeover under ¶ 25, either: (1) EPA is unable for any reason to promptly secure the resources guaranteed under any applicable financial assurance mechanism [including the related standby funding commitment], whether in cash or in kind, to continue and complete the Work; or (2) the financial assurance is a demonstration or guarantee under ¶ 30.e or 30.f, then EPA is entitled to demand an amount, as determined by EPA, sufficient to cover the cost of the remaining Work to be performed. Respondents shall, within \_\_\_ days of such demand, pay the amount demanded as directed by EPA.

d. Any amounts required to be paid under this ¶ 35 will be, as directed by EPA: (i) paid to EPA in order to facilitate the completion of the Work by EPA, the State, or by another person; or (ii) deposited into an interest-bearing account, established at a duly chartered bank or trust company that is insured by the Federal Deposit Insurance Corporation ("FDIC"), in order to facilitate the completion of the Work by another person. If payment is made to EPA, EPA may deposit the payment into the Fund or into the **[Site name]** Special Account to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the Fund.

36. **Modification of Amount, Form, or Terms of Financial Assurance.** Beginning after the first anniversary of the Effective Date or at any other time agreed to by the Parties, Respondents may request to change the form, terms, or amount of the financial assurance mechanism. Respondent shall submit any request to EPA in accordance with ¶ 33, and shall include an estimate of the cost of the remaining Work, an explanation of the bases for the cost calculation, and a description of the proposed changes, if any, to the form or terms of the financial assurance. EPA will notify Respondents of its decision regarding the request. Respondents may modify the form, terms, or the amount of the financial assurance mechanism only in accordance with: (a) EPA's approval; or (b) any resolution of a dispute on the appropriate amount of financial assurance under Section XIII. Any decision made by EPA on a request submitted under this Paragraph to change the form or terms of a financial assurance mechanism shall not be subject to challenge by Respondents pursuant to the dispute resolution provisions of

**Commented [A30]:** Case teams should make sure that the "trigger" for obtaining funds and/or work under the financial assurance mechanism is consistent with the trigger in the Settlement, e.g., if the Settlement allows EPA to access the funds in the event of a Work Takeover or a Respondent's failure to provide alternative financial assurance 30 days prior to an impending mechanism cancellation, the mechanism should contain equivalent language.

this Settlement or in any other forum. Respondents shall submit to EPA, within 30 days after receipt of EPA's approval, or consistent with the terms of the resolution of the dispute, documentation of the change to the form, terms, or amount of the financial assurance instrument.

**37. Release, Cancellation, or Discontinuation of Financial Assurance.**

Respondents may release, cancel, or discontinue any financial assurance provided under this Section only: (a) if EPA issues a Notice of Completion of Work under Section 6.7 of the SOW (Notice of Completion of RI/FS Work); (b) in accordance with EPA's approval of such release, cancellation, or discontinuation; or (c) if there is a dispute regarding the release, cancellation, or discontinuance of any financial assurance, in accordance with the agreement or final decision resolving such dispute under Section XIII.

**X. INDEMNIFICATION AND INSURANCE**

**38. Indemnification**

a. EPA does not assume any liability by entering into this Settlement or by virtue of any designation of Respondents as EPA's authorized representative under section 104(e)(1) of CERCLA. Respondents shall indemnify and save and hold harmless EPA and its officials, agents, employees, contractors, subcontractors, and representatives for or from any claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Respondents, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on Respondents' behalf or under their control, in carrying out activities under this Settlement, including any claims arising from any designation of Respondents as EPA's authorized representatives under section 104(e)(1) of CERCLA. Further, Respondents agree to pay EPA all costs it incurs including attorneys' fees and other expenses of litigation and settlement arising from, or on account of, claims made against EPA based on negligent or other wrongful acts or omissions of Respondents, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control in carrying out activities under this Settlement. EPA may not be held out as a party to any contract entered into by or on behalf of Respondents in carrying out activities under this Settlement. The Respondents and any such contractor may not be considered an agent of EPA.

b. EPA may give Respondents notice of any claim for which EPA plans to seek indemnification in accordance with this ¶ 38, and shall consult with Respondents prior to settling such claim.

39. Respondents covenant not to sue and shall not assert any claim against EPA for damages or reimbursement or for set-off of any payments made or to be made to EPA, arising from or on account of any contract, agreement, or arrangement between any one or more of Respondents and any person for performance of Work or other activities on or relating to the Site, including claims on account of construction delays. In addition, Respondents shall indemnify and save and hold EPA harmless with respect to any claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between any one or more of Respondents and any person for performance of work at or relating to the Site, including claims on account of construction delays.

40. **Insurance.** Respondents shall secure, by no later than 15 days before commencing any on-site Work, the following insurance: (a) commercial general liability insurance with limits of liability of \$1 million per occurrence; (b) automobile liability insurance with limits of liability of \$1 million per accident; and (c) umbrella liability insurance with limits of liability of \$5 million in excess of the required commercial general liability and automobile liability limits. The insurance policy must name EPA as an additional insured with respect to all liability arising out of the activities performed by or on behalf of Respondents under this Settlement. Respondents shall maintain this insurance until the first anniversary after EPA's issuance of the Notice of Completion of RI/FS Work under Section 6.7 of the SOW. In addition, for the duration of this Settlement, Respondents shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Respondents in furtherance of this Settlement. Prior to commencement of the Work, Respondents shall provide to EPA certificates of such insurance and a copy of each insurance policy. Respondents shall resubmit such certificates and copies of policies each year on the anniversary of the Effective Date. If Respondents demonstrate by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then, with respect to that contractor or subcontractor, Respondents need provide only that portion of the insurance described above that is not maintained by the contractor or subcontractor. Respondents shall ensure that all submittals to EPA under this Paragraph identify the [Site name, city, state] and the EPA docket number of this case.

## XI. PAYMENTS FOR RESPONSE COSTS

41. **Payment by Respondents for Past Response Costs.** Within 30 days after the Effective Date, Respondents shall pay EPA, in reimbursement of Past Response Costs in connection with the Site, \$ \_\_\_\_\_. Respondents shall make payment at <https://www.pay.gov> using the "EPA Miscellaneous Payments Cincinnati Finance Center" link, and including references to the Site/Spill ID number listed in ¶ 85 and the purpose of the payment. Respondents shall send notices of this payment to EPA in accordance with ¶ 85. If the payment required under this Paragraph is late, Respondents shall pay, in addition to any stipulated penalties owed under Section XIV, an additional amount for Interest accrued from the Effective Date until the date of payment.

### 42. **Payments by Respondents for Future Response Costs**

a. **Periodic Bills.** On a periodic basis, EPA will send Respondents a bill for Future Response Costs, including a ["SCORPIOS Report" or other standard cost summary] listing direct costs paid by EPA, its contractors, and subcontractors and related indirect costs. Respondents may initiate a dispute under Section XIII regarding a Future Response Cost billing, but only if the dispute relates to one or more of the following issues: (i) whether EPA has made an arithmetical error; (ii) whether EPA has included a cost item that is not within the definition of Future Response Costs; or (iii) whether EPA has paid excess costs as a direct result of an EPA action that was inconsistent with a specific provision or provisions of the NCP. If Respondents submit a Notice of Dispute, Respondents shall within the 30-day period, also as a requirement for initiating the dispute, (a) pay all uncontested Future Response Costs to EPA in the manner

**Commented [A31]:** The pay.gov system includes alternatives for making payment by credit card, debit card, automatic clearinghouse (ACH), and electronic fund transfer (EFT). If a Settling Party cannot make payment using the pay.gov system, the EPA attorney should contact their finance office about alternative methods of payment.

**Commented [A32]:** Keep ¶¶ 41.a (Periodic Bills) and 43 (Deposit Payments) in all Settlements. If Respondents will be prepaying any part of EPA's Future Response Costs, add these additional subsections to ¶ 41, as appropriate. For an explanation of prepaid accounts, including when prepayment is appropriate, see "Additional Guidance on Prepayment of Oversight Costs and Special Accounts" (Dec. 22, 2006), available at <https://www.epa.gov/enforcement/guidance-prepayment-oversight-costs-and-special-accounts>.

c. **Prepayment of Future Response Costs.** Within 30 days after the Effective Date, Respondents shall pay to EPA \$ \_\_\_\_\_ as a prepayment of [if the ¶ 42.d (Shortfall Payments) optional provision for replenishment is used substitute: as an initial payment toward] Future Response Costs. Payment must be made in accordance with ¶ 43.a. The total amount paid will be deposited by EPA in the [Site name] Future Response Costs Special Account. These funds will be retained and used by EPA to conduct or finance future response actions at or in connection with the Site.

[NOTE: ¶ (Shortfall Payments) is an optional provision for replenishment of the Future Response Costs Special Account in the event of a shortfall in the prepayment.]

d. **Shortfall Payments.** If at any time prior to the date EPA sends Respondents the first bill under ¶ 41.a (Periodic Bills), or one year after the Effective Date, whichever is earlier, the balance in the Future Response Costs Special Account falls below \$ \_\_\_\_\_, EPA will so notify Respondents. Respondents shall, within 30 days after receipt of such notice, pay \$ \_\_\_\_\_ to EPA. Payment shall be made in accordance with ¶ 41.a. The amounts paid shall be deposited by EPA in the Future Response Costs Special Account. These funds will be retained and used by EPA to conduct or finance future response actions at or in connection with the Site.

e. **Unused Amount.** After EPA issues the Notice of Completion of Work pursuant to Section 6.7 of the SOW and a final accounting of the Future Response Costs Special Account (including crediting

described in ¶ 41, and (b) establish, in a duly chartered bank or trust company, an interest-bearing escrow account that is insured by the FDIC and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XIII shall be the exclusive mechanisms for resolving disputes regarding Respondents' obligation to reimburse EPA for its Future Response Costs. Respondents shall specify in the Notice of Dispute the contested costs and the basis for the objection.

b. **Payment of Bill.** Respondents shall pay the bill, or if they initiate dispute resolution, the uncontested portion of the bill, if any, within 30 days after receipt of the bill. Respondents shall pay the contested portion of the bill determined to be owed, if any, within 30 days after the determination regarding the dispute. Each payment for: (i) the uncontested bill or portion of bill, if late, and; (ii) the contested portion of the bill determined to be owed, if any, must include an additional amount for Interest accrued from the date of receipt of the bill through the date of payment. Respondents shall make payment at <https://www.pay.gov> using the "EPA Miscellaneous Payments Cincinnati Finance Center" link, and including references to the Site/Spill ID number listed in ¶ 85 and the purpose of the payment. Respondents shall send notices of this payment to EPA.

#### 43. **Payments by Settling Federal Agencies**

a. As soon as reasonably practicable after the Effective Date, the United States, on behalf of Settling Federal Agencies, shall pay:

- (1) To EPA \$\_\_\_\_\_, in payment of Past Response Costs and Future Response Costs;
- (2) To the State \$\_\_\_\_\_ [insert as appropriate: in payment of State Past Response Costs and State Future Response Costs] by Automated Clearing House ("ACH") Electronic Funds Transfer in accordance with instructions provided by the State; and
- (3) To Respondents \$\_\_\_\_\_ [insert as appropriate: in payment of Respondents' Past Response Costs and Respondents' Future Response Costs] by Automated Clearing House ("ACH") Electronic Funds Transfer in accordance with instructions provided by Respondents.

b. **Interest.** If any payment required by ¶ 43.a is not made within 120 days after the Effective Date, the United States, on behalf of Settling Federal Agencies, shall pay Interest on the unpaid balance, with such Interest commencing on the 121st day after the Effective Date and accruing through the date of the payment.

c. The Settling Federal Agencies' payment[s] under this Settlement can only be paid from appropriated funds legally available for such purpose. Nothing in this Settlement constitutes a commitment or requirement that any Settling Federal Agency obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable provision of law.

**Commented [A33]:** If SFAs are making payments, insert the following paragraphs.

44. **Deposit of Payments.** EPA may, in its unreviewable discretion, deposit the amounts paid under ¶¶ 41, 42, and 43.a(1) in the Fund, in the Special Account, or both. EPA may, in its unreviewable discretion, retain and use any amounts deposited in the Special Account to conduct or finance response actions at or in connection with the Site, or transfer those amounts to the Fund.

## **XII. FORCE MAJEURE**

45. “Force majeure,” for purposes of this Settlement, means any event arising from causes beyond the control of Respondents, of any entity controlled by Respondents, or of Respondents’ contractors that delays or prevents the performance of any obligation under this Settlement despite Respondents’ best efforts to fulfill the obligation. Given the need to protect public health and welfare and the environment, the requirement that Respondents exercise “best efforts to fulfill the obligation” includes using best efforts to anticipate any potential force majeure and best efforts to address the effects of any potential force majeure (a) as it is occurring and (b) following the potential force majeure such that the delay and any adverse effects of the delay are minimized to the greatest extent possible. “Force majeure” does not include financial inability to complete the Work or increased cost of performance.

46. If any event occurs for which Respondents will or may claim a force majeure, Respondents shall notify EPA’s Project Coordinator by email. The deadline for the initial notice is \_\_\_ days after the date Respondents first knew or should have known that the event would likely delay performance. Respondents shall be deemed to know of any circumstance of which any contractor of, subcontractor of, or entity controlled by Respondents knew or should have known. Within \_\_\_ days thereafter, Respondents shall send a further notice to EPA that includes: (i) a description of the event and its effect on Respondents’ completion of the requirements of the Settlement; (ii) a description of all actions taken or to be taken to prevent or minimize the adverse effects or delay; (iii) the proposed extension of time for Respondents to complete the requirements of the Settlement; (iv) a statement as to whether, in the opinion of Respondents, such event may cause or contribute to an endangerment to public health or welfare or the environment; and (v) all available proof supporting their claim of force majeure. Failure to comply with the notice requirements herein regarding an event precludes Respondents from asserting any claim of force majeure regarding that event, provided, however, that if EPA, despite late or incomplete notice, is able to assess to its satisfaction whether the event is a force majeure under ¶ 45 and whether Respondents have exercised their best efforts under ¶ 45, EPA may, in its unreviewable discretion, excuse in writing Respondents’ failure to submit timely or complete notices under this Paragraph.

47. EPA will notify Respondents of its determination whether Respondents are entitled to relief under ¶ 45, and, if so, the duration of the extension of time for performance of the obligations affected by the force majeure. An extension of the time for performance of the obligations affected by the force majeure shall not, of itself, extend the time for performance of any other obligation. Respondents may initiate dispute resolution under Section XIII regarding EPA’s determination within 15 days after receipt of the determination. In any such proceeding, Respondents have the burden of proving that they are entitled to relief under ¶ 45 and that their proposed extension was or will be warranted under the circumstances.

48. The failure by EPA to timely complete any activity under the Settlement is not a violation of the Settlement, provided, however, that if such failure prevents Respondents from timely completing a requirement of the Settlement, Respondents may seek relief under this Section.

### XIII. DISPUTE RESOLUTION

49. Unless otherwise provided in this Settlement, Respondents shall use the dispute resolution procedures of this Section to resolve any dispute arising under this Settlement.

**Commented [A34]:** The Regions should develop a record for the dispute and its resolution.

50. A dispute will be considered to have arisen when one or more parties sends a written notice of dispute (“Notice of Dispute”) to EPA. A notice is timely if sent within 30 days after receipt of the EPA notice or determination giving rise to the dispute or within 15 days in the case of a force majeure determination. Disputes arising under this Settlement must in the first instance be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations may not exceed 20 days after the dispute arises, unless EPA otherwise agrees. If the parties cannot resolve the dispute by informal negotiations, the position advanced by EPA is binding unless Respondents initiate formal dispute resolution under ¶ 51. [By agreement of the parties, mediation may be used during this informal negotiation period to assist the parties in reaching a voluntary resolution or narrowing of the matters in dispute.]

#### 51. Formal Dispute Resolution

a. **Statement of Position.** Respondents may initiate formal dispute resolution by serving on EPA, within [20] days after the conclusion of informal dispute resolution under ¶ 50, an initial Statement of Position regarding the matter in dispute. EPA’s responsive Statement of Position is due within [20] days after receipt of the initial Statement of Position. All statements of position must include supporting factual data, analysis, opinion, and other documentation. A reply, if any, is due within [10] days after receipt of the response. If appropriate, EPA may extend the deadlines for filing statements of position for up to [45] days and may allow the submission of supplemental statements of position.

b. **Formal Decision.** The Director of the [Superfund & Emergency Management Division], EPA Region \_\_, will issue a formal decision resolving the dispute (“Formal Decision”) based on the statements of position and any replies and supplemental statements of position. The Formal Decision is binding on Respondents.

52. **Escrow Account.** For disputes regarding a Future Response Cost billing, Respondents shall: (a) establish, in a duly chartered bank or trust company, an interest-bearing escrow account that is insured by the FDIC; (b) remit to that escrow account funds equal to the amount of the contested Future Response Costs; and (c) send to EPA copies of the correspondence and of the payment documentation (e.g., the check) that established and funded the escrow account, including the name of the bank, the bank account number, and a bank statement showing the initial balance in the account. EPA may, in its unreviewable discretion, waive the requirement to establish the escrow account. Respondents shall cause the escrow agent to pay the amounts due to EPA under ¶ 42, if any, by the deadline for such payment in ¶ 42.

**Commented [A35]:** Optional.

Respondents are responsible for any balance due under ¶ 42 after the payment by the escrow agent.

53. The initiation of dispute resolution procedures under this Section does not extend, postpone, or affect in any way any requirement of this Settlement, except as EPA agrees. Stipulated penalties with respect to the disputed matter will continue to accrue, but payment is stayed pending resolution of the dispute, as provided in ¶ 56.

#### **XIV. STIPULATED PENALTIES**

54. Unless the noncompliance is excused under Section XII (Force Majeure), Respondents are liable to EPA for the following stipulated penalties:

a. for any failure: (i) to pay any amount due under Section XI; (ii) [to establish and maintain financial assurance in accordance with Section IX]; (iii) [to establish any escrow account required under ¶ 52]; (iv) to submit timely or adequate deliverables, including **[list major deliverables and compliance milestones]**:

Period of Noncompliance	Penalty Per Noncompliance Per Day
1st through 14th day	\$
15th through 30th day	\$
31st day and beyond	\$

b. for any failure to submit timely or adequate deliverables required by this Settlement other than those specified in ¶ 54.a:

Period of Noncompliance	Penalty Per Noncompliance Per Day
1st through 14th day	\$
15th through 30th day	\$
31st day and beyond	\$

55. **Work Takeover Penalty.** If EPA commences a Work Takeover under ¶ 25, Respondents are liable for a stipulated penalty in the amount of \$\_\_\_\_\_. This stipulated penalty is in addition to the remedy available to EPA under ¶ 35 (Access to Financial Assurance).

56. **Accrual of Penalties.** Stipulated penalties accrue from the date performance is due, or the day a noncompliance occurs, whichever is applicable, until the date the requirement is completed or the final day of the correction of the noncompliance. Nothing in this Settlement prevents the simultaneous accrual of separate penalties for separate noncompliances with this Settlement. Stipulated penalties accrue regardless of whether Respondents have been notified of their noncompliance, and regardless of whether Respondents have initiated dispute resolution under Section XIII, provided, however, that no penalties will accrue as follows:

a. with respect to a submission that EPA subsequently determines is deficient under ¶ [6.5] of the SOW, during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Respondents of any deficiency; or



b. with respect to a matter that is the subject of dispute resolution under Section XIII, during the period, if any, beginning on the 21st day after the later of the date that EPA's Statement of Position is received or the date that Respondents' reply thereto (if any) is received until the date of the Formal Decision under ¶ 51.b.

57. **Demand and Payment of Stipulated Penalties.** EPA may send Respondents a demand for stipulated penalties. The demand will include a description of the noncompliance and will specify the amount of the stipulated penalties owed. Respondents may initiate dispute resolution under Section XIII within 30 days after receipt of the demand. Respondents shall pay the amount demanded or, if they initiate dispute resolution, the uncontested portion of the amount demanded, within 30 days after receipt of the demand. Respondents shall pay the contested portion of the penalties determined to be owed, if any, within 30 days after the resolution of the dispute. Each payment for: (a) the uncontested penalty demand or uncontested portion, if late; and (b) the contested portion of the penalty demand determined to be owed, if any, must include an additional amount for Interest accrued from the date of receipt of the demand through the date of payment. Respondents shall make payment at <https://www.pay.gov> using the link for "EPA Miscellaneous Payments Cincinnati Finance Center," including references to the Site/Spill ID number listed in ¶ 85, and the purpose of the payment. Respondents shall send a notice of this payment to EPA. The payment of stipulated penalties and Interest, if any, does not alter any obligation by Respondents under the Settlement.

58. Nothing in this Settlement limits the authority of EPA: (a) to seek any remedy otherwise provided by law for Respondents' failure to pay stipulated penalties or interest; or (b) to seek any other remedies or sanctions available by virtue of Respondents' noncompliances with this Settlement or of the statutes and regulations upon which it is based, including penalties under section 122(l) of CERCLA, and punitive damages pursuant to section 107(c)(3) of CERCLA, provided, however, that EPA may not seek civil penalties under section 122(l) of CERCLA or punitive damages pursuant to section 107(c)(3) of CERCLA for any noncompliance for which a stipulated penalty is provided for in this Settlement, except in the case of a willful noncompliance with this Settlement.

59. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued under this Settlement.

60. No action or decision by EPA pursuant to this Settlement gives rise to any right to judicial review, except as set forth in section 113(h) of CERCLA.

## **XV. COVENANTS BY EPA**

61. **Covenants for Respondents.** Subject to ¶ 64, EPA covenants not to sue or to take administrative action against Respondents under sections 106 and 107(a) of CERCLA regarding the Work [, Past Response Costs,] and Future Response Costs.

62. **Covenants for Settling Federal Agencies by EPA.** Subject to ¶ 64, EPA covenants not to take administrative action against Settling Federal Agencies pursuant to

sections 106 and 107(a) of CERCLA for the Work [, Past Response Costs,] and Future Response Costs.]

63. The covenants under ¶ 61 and ¶ 62: (a) take effect upon the Effective Date; (b) are conditioned on the complete and satisfactory performance by Respondents and Settling Federal Agencies of the requirements of this Settlement; (c) extend to the successors of each Respondent but only to the extent that the alleged liability of the successor of the Respondent is based solely on its status as a successor of the Respondent; and (d) do not extend to any other person.

64. **General Reservations.** EPA reserves, and this Settlement is without prejudice to, all rights against Respondents and Settling Federal Agencies regarding the following:

- a. liability for failure by Respondents or Settling Federal Agencies to meet a requirement of this Settlement;
- b. liability for performance of response action other than the Work;
- c. liability arising from the past, present, or future disposal, release or threat of release of Waste Materials outside of the Site;
- d. **[if needed:** liability for costs incurred or to be incurred by the Agency for Toxic Substances and Disease Registry regarding the Site;]
- e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments; and
- f. criminal liability.

65. Subject to ¶ 61 and ¶ 62, nothing in this Settlement limits any authority of EPA to take, direct, or order all appropriate action to protect public health and welfare and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site, or to request a Court to order such action.

## **XVI. COVENANTS BY RESPONDENTS AND SETTLING FEDERAL AGENCIES**

### **66. Covenants by Respondents**

a. Subject to ¶ 67, Respondents covenant not to sue and shall not assert any claim or cause of action against the United States under CERCLA, RCRA § 7002(a), the United States Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, the State Constitution, State law, or at common law regarding the Work, [Past Response Costs,] Future Response Costs.]

b. Subject to ¶ 67, Respondents covenant not to seek reimbursement from the Fund through CERCLA or any other law for costs of the Work, [Past Response Costs,] Future Response Costs.]

**Commented [A36]:** EPA's covenant may also be extended to a federal PRP contractor where the federal PRP settlement includes the contractor. This generally occurs where the contractor is indemnified by the United States under the contract.

**Commented [A37]:** If SFAs are parties to the Settlement, insert the this covenant.

**Commented [A38]:** If SFAs are participating and are paying Respondents' past and future response costs, add to this covenant: "Respondents' Past Response Costs and Settling Respondents Future Response Costs."

**Commented [A39]:** If the Settlement contains a Future Response Cost prepayment provision under which Respondents may receive a return of unused amounts under option 3 of ¶ 42.e (Unused Amount), include ¶ 66.c.

c. [any direct or indirect claim for return of unused amounts from the [Site name] Future Response Costs Special Account, except for unused amounts that EPA determines shall be returned to Respondents in accordance with ¶ 42.e (Unused Amount).]

67. **Respondents' Reservation.** The covenants in ¶ 66 do not apply to any claim or cause of action brought, or order issued, after the Effective Date by the United States to the extent such claim, cause of action, or order is within the scope of a reservation under ¶¶ 64.a through 64.e.

68. **De Minimis/Ability to Pay Waiver.** Respondents shall not assert any claims and waive all claims or causes of action (including claims or causes of action under sections 107(a) and 113 of CERCLA) that they may have against any third party who enters or has entered into a *de minimis* or "ability-to-pay" settlement with EPA to the extent Respondents' claims and causes of action are within the scope of the matters addressed in the third party's settlement with EPA, provided, however, that this waiver does not apply if the third party asserts a claim or cause of action regarding the Site against the Respondents. Nothing in this Settlement limits Respondents' rights under section 122(d)(2) of CERCLA to comment on any *de minimis* or ability-to-pay settlement proposed by EPA.

**Commented [A40]:** Keep this ¶ if there are known or potential *de minimis* and/or ability to pay ("ATP") PRPs at the Site. Do not change the scope of the waiver to something less than "the matters addressed in the third party's settlement with EPA." Note that this waiver will not affect Respondents' right to oppose entry of any such future *de minimis* or ATP settlement through the public comment process.

69. **De Micromis Waiver.** Respondents shall not assert any claims and waive all claims or causes of action (including claims or causes of action under sections 107(a) and 113 of CERCLA) that they may have for all matters relating to the Site against any person where the person's liability to Respondents with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of hazardous substances at the Site, or having accepted for transport for disposal or treatment of hazardous substances at the Site, if all or part of the disposal, treatment, or transport occurred before April 1, 2001, and the total amount of material containing hazardous substances contributed by such person to the Site was less than [110] gallons of liquid materials or [200] pounds of solid materials. This waiver does not apply to any claim or cause of action against any person otherwise covered by such waiver if EPA determines that: (i) the materials containing hazardous substances contributed to the Site by such person contributed significantly or could contribute significantly, either individually or in the aggregate, to the cost of the response action or natural resource restoration at the Site; or (ii) such person has failed to comply with any information request or administrative subpoena issued under sections 104(e) or 122(e)(3)(B) of CERCLA or section 3007 of RCRA, or has impeded or is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to the Site; or if (iii) such person has been convicted of a criminal violation for the conduct to which the waiver would apply and that conviction has not been vitiated on appeal or otherwise. This waiver does not apply with respect to any defense, claim, or cause of action that a Respondent may have against any person otherwise covered by this waiver if such person asserts a claim or cause of action relating to the Site against such Respondent.

**Commented [A41]:** Keep this waiver only for non-NPL sites.

70. **MSW Waiver**

a. "Municipal Solid Waste" or "MSW" means waste material: (1) generated by a household (including a single or multifamily residence); or (2) generated by a commercial, industrial, or institutional entity, to the extent that the waste material (i) is essentially the same as waste normally generated by a household; (ii) is collected and disposed of with other municipal solid waste as part of normal municipal solid waste collection services; and (iii) contains a relative quantity of hazardous substances no greater than the relative quantity of hazardous substances contained in waste material generated by a typical single-family household.

**Commented [A42]:** Keep only for non-NPL MSW Sites.

b. Respondents shall not assert any claims and waive all claims or causes of action (including claims or causes of action under sections 107(a) and 113 of CERCLA) that they may have for all matters relating to the Site against any person where the person's liability to Respondents with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of MSW at the Site, if the volume of MSW disposed, treated, or transported by such person to the Site did not exceed 0.2% of the total volume of waste at the Site. This waiver does not apply to any claim or cause of action against any person otherwise covered by such waiver if EPA determines that: (i) the materials containing MSW contributed to the Site by such person contributed significantly or could contribute significantly, either individually or in the aggregate, to the cost of the response action or natural resource restoration at the Site; or (ii) such person has failed to comply with any information request or administrative subpoena issued under sections 104(e) or 122(e)(3)(B) of CERCLA or section 3007 of RCRA, or has impeded or is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to the Site. This waiver does not apply with respect to any defense, claim, or cause of action that a Respondent may have against any person otherwise covered by this waiver if such person asserts a claim or cause of action relating to the Site against such Respondent.

71. Respondents agree not to seek judicial review of the final rule listing the Site on the NPL based on a claim that changed site conditions that resulted from the performance of the Work in any way affected the basis for listing the Site.

72. **Covenant by Settling Federal Agencies.** Settling Federal Agencies shall not seek reimbursement from the Fund through CERCLA or any other law regarding the Work, [Past Response Costs,] Future Response Costs. This covenant does not preclude demand for reimbursement from the Fund of costs incurred by a Settling Federal Agency in the performance of its duties (other than in accordance with this Settlement) as lead or support agency under the NCP.

## XVII. EFFECT OF SETTLEMENT; CONTRIBUTION

73. The Parties agree that: (a) this Settlement constitutes an administrative settlement under which each Respondent and each Settling Federal Agency has, as of the Effective Date, resolved its liability to the United States within the meaning of sections 113(f)(2), 113(f)(3)(B), and 122(h)(4) of CERCLA; and (b) each Respondent and each Settling Federal Agency is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by sections 113(f)(2) and 122(h)(4) of CERCLA, or as may be otherwise provided by law, for the "matters addressed" in this Settlement. The "matters addressed" in this Settlement are the Work [, Past Response Costs,] and Future Response Costs, provided, however, that if the United States exercises rights against Settling Defendants (or if EPA or the federal natural resource trustee [or the State] assert rights against Settling Federal Agencies) under the reservations in ¶¶ 64.a through 64.d, the "matters addressed" in this Settlement will no longer include those response costs or response actions that are within the scope of the exercised reservation.

74. Each Respondent shall, with respect to any suit or claim brought by it for matters related to this Settlement, notify EPA no later than 60 days prior to the initiation of such suit or claim. Each Respondent shall, with respect to any suit or claim brought against it for matters

**Commented [A43]:** If a Respondent asserts that it has a claim against a PRP within the scope of the waiver[s] that is unrelated to the PRP's CERCLA liability at the Site, e.g., a claim for contractual indemnification, add an exception for such claim, such as the following:

c. The waiver[s] under this ¶ 70 do not apply to Respondent [insert name]'s contractual indemnification claim against [insert name].

**Commented [A44]:** Keep only for non-NPL sites.

**Commented [A45]:** If SFAs are participating and are paying Respondents' past and future response costs, add to this covenant: "Respondents' Past Response Costs and Respondents Future Response Costs."

**Commented [A46]:** If SFAs are participating and paying Respondents' past and future response costs, insert: ", Respondents' Past Response Costs and Respondents' Future Response Costs]"

**Commented [A47]:** Keep this text if SFAs are participating.

related to this Settlement, notify EPA within 10 days after service of the complaint on such Respondent. In addition, each Respondent shall notify EPA within 10 days after service or receipt of any Motion for Summary Judgment and within 10 days after receipt of any order from a court setting a case for trial.

75. **Res Judicata and Other Defenses.** In any subsequent administrative or judicial proceeding initiated against any Respondent by EPA or by the United States on behalf of EPA for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site, Respondents shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, claim preclusion (res judicata), issue preclusion (collateral estoppel), claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case.

76. Nothing in this Settlement diminishes the right of the United States under sections 113(f)(2) and (3) of CERCLA to pursue any person not a party to this Settlement to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to section 113(f)(2).

77. Effective upon signature of this Settlement by a Respondent, such Respondent agrees that the time period commencing on the date of its signature and ending when EPA receives from such Respondent the payment(s) required by ¶ 41 (Payment for Past Response Costs) shall not be included in computing the running of any statute of limitations potentially applicable to any action brought by the United States related to the “matters addressed” as defined in ¶ 73 and that, in any action brought by the United States related to the “matters addressed,” such Respondent will not assert, and may not maintain, any defense or claim based upon principles of statute of limitations, waiver, laches, estoppel, or other defense based on the passage of time during such period. If EPA notifies Respondents that it will not make this Settlement effective, as authorized in ¶ **Error! Reference source not found.**, the tolling period ends 90 days after the date of such notice.

## XVIII. RECORDS

78. **Respondents’ Certification.** Each Respondent certifies individually that: (a) it has implemented a litigation hold on documents and electronically stored information relating to the Site, including information relating to its potential liability under CERCLA regarding the Site, since the earlier of notification of potential liability by the United States or the State or the filing of suit against it regarding the Site; and (b) it has fully complied with any and all EPA requests for information under sections 104(e) and 122(e) of CERCLA, and section 3007 of RCRA. **[If needed, add a sentence regarding known document or data losses.]**

79. **Settling Federal Agency Acknowledgment.** The United States acknowledges that each Settling Federal Agency: (a) is subject to all applicable federal record retention laws, regulations, and policies; and (b) has certified that it has fully complied with any and all EPA and State requests for information regarding the Site under sections 104(e) and 122(e)(3)(B) of CERCLA, [and] section 3007 of RCRA [, and State law].

80. **Retention of Records and Information**

**Commented [A48]:** Alternatively, if a Respondent cannot make this certification, it can substitute “to the best of its knowledge and belief, after thorough inquiry it has not altered, mutilated, discarded, destroyed, or otherwise disposed of any Records (other than identical copies) relating to its potential liability regarding the Site since notification of potential liability by EPA or the State.”

**Commented [A49]:** If SFAs, include this paragraph. EPA attorneys must assure that the Agency has received a written response to any information requests that it has sent to SFAs containing a certification substantially similar to that required from private PRPs.

a. Respondents shall retain, and instruct their contractors and agents to retain, the following documents and electronically stored data (“Records”) until 10 years after the Notice of Completion of the Work under Section 6.7 of the SOW (the “Record Retention Period”):

- (1) All records regarding Respondents’ liability under CERCLA regarding the Site;
- (2) All reports, plans, permits, and documents submitted to EPA in accordance with this Settlement, including all underlying research and data; and
- (3) All data developed by, or on behalf of, Respondents in the course of performing the Work.

b. **[If needed: [name of each Respondent that is an owner or operator]** shall retain all Records regarding the liability of any person under CERCLA regarding the Site during the Record Retention Period.]

c. At the end of the Record Retention Period, Respondents shall notify EPA that it has 90 days to request the Respondents’ Records subject to this Section. Respondents shall retain and preserve their Records subject to this Section until 90 days after EPA’s receipt of the notice. These record retention requirements apply regardless of any corporate record retention policy.

81. Respondents shall provide to EPA, upon request, copies of all Records and information required to be retained under this Section. Respondents shall also make available to EPA, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

## 82. Privileged and Protected Claims

a. Respondents may assert that all or part of a record requested by EPA is privileged or protected as provided under federal law, in lieu of providing the record, provided that Respondents comply with ¶ 82.b, and except as provided in ¶ 82.c.

b. If Respondents assert a claim of privilege or protection, they shall provide EPA with the following information regarding such record: its title; its date; the name, title, affiliation (e.g., company or firm), and address of the author, of each addressee, and of each recipient; a description of the record's contents; and the privilege or protection asserted. If a claim of privilege or protection applies only to a portion of a record, Respondents shall provide the record to Plaintiff in redacted form to mask the privileged or protected portion only. Respondents shall retain all records that they claim to be privileged or protected until EPA has had a reasonable opportunity to dispute the privilege or protection claim and any such dispute has been resolved in Respondents’ favor.

c. Respondents shall not make any claim of privilege or protection regarding:  
(1) any data regarding the Site, including all sampling, analytical, monitoring, hydrogeologic,

**Commented [A50]:** The case team has flexibility to add to this paragraph other categories of information that the agency wants the Respondent to retain during the Record Retention Period. Be specific about what the agency wants, and consider proposals to exclude categories of ESI that may be inaccessible. Consult your e-discovery office coordinator for advice regarding inaccessible ESI.

scientific, chemical, radiological or engineering data, or the portion of any other record that evidences conditions at or around the Site; or (2) the portion of any record that Respondents are required to create or generate in accordance with this Settlement.

83. **Confidential Business Information Claims.** Each Respondent is entitled to claim that all or part of a record submitted to EPA under this Section is Confidential Business Information (“CBI”) that is covered by section 104(e)(7) of CERCLA and 40 C.F.R. § 2.203(b). Respondent shall segregate all records or parts thereof submitted under this Settlement which it claims are CBI and label them as “claimed as confidential business information” or “claimed as CBI.” Records that a submitter properly labels in accordance with the preceding sentence will be afforded the protections specified in 40 C.F.R. part 2, subpart B. If the records are not properly labeled when they are submitted to EPA, or if EPA notifies the submitter that the records are not entitled to confidential treatment under the standards of section 104(e)(7) of CERCLA or 40 C.F.R. part 2, subpart B, the public may be given access to such records without further notice to the submitter.

**Commented [A51]:** Don’t substitute “Record” for “record” here, as this provision is not limited to “Records” referenced in ¶ 80.a.

84. Notwithstanding any provision of this Settlement, EPA retains all of its information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

## XIX. NOTICES AND SUBMISSIONS

85. All agreements, approvals, consents, deliverables, modifications, notices, notifications, objections, proposals, reports, waivers, and requests specified in this Settlement must be in writing unless otherwise specified. Whenever a notice is required to be given or a report or other document is required to be sent by one Party to another under this Settlement, it must be sent as specified below. All notices under this Section are effective upon receipt, unless otherwise specified. In the case of emailed notices, there is a rebuttable presumption that such notices are received on the same day that they are sent. Any Party may change the method, person, or address applicable to it by providing notice of such change to all Parties.

As to EPA: *via email to:*  
[Superfund & Emergency Mgmt. Div. Director’s email address]  
and  
[EPA Project Coordinator’s email address]  
Re: Site/Spill ID # \_\_\_\_\_

As to the Regional *via email to:*  
Financial Management \_\_\_\_\_@epa.gov  
Officer: Re: Site/Spill ID # \_\_\_\_\_

As to *via email to:*  
Respondents: [SD Project Coordinator’s email address]

**Commented [A52]:** This block of addresses is a table. To make it easier to navigate within it, turn on gridlines as follows: Click anywhere in the table. Under the “Table Tools” menu that appears in the upper ribbon, click the “Layout” button. In the layout ribbon that appears, on the far left, click the “View Gridlines” button.

**Commented [A53]:** If needed add mailing addresses for Director, Superfund & Emergency Management Division, EPA Project Coordinator, and Regional Financial Management Officer. Include Site/Spill ID. If needed add SDs’ Project Coordinator’s mailing address.



## XX. APPENDIXES

86. The following appendixes are attached to and incorporated into this Settlement:

“Appendix A” is the list of Respondents.

“Appendix B” is the map [description] of the Site.

“Appendix C” is the Statement of Work.

## XXI. MODIFICATIONS TO SETTLEMENT

87. Except as provided in ¶ 23 (Modifications to the Work), both nonmaterial and material modifications to the Settlement and ¶ 6.5 of the SOW (Approval of Deliverables) must be in writing and are effective when signed (including electronically signed) by the Parties.

## XXII. ATTORNEY GENERAL APPROVAL

88. The Attorney General or [his/her] designee has approved the response cost settlement embodied in this Settlement in accordance with section 122(h)(1) of CERCLA.

## XXIII. SIGNATORIES

89. The undersigned representative of EPA and each undersigned representative of a Respondent certifies that he or she is authorized to enter into the terms and conditions of this Settlement and to execute and legally bind such party to this Settlement.

## XXIV. INTEGRATION

90. This Settlement constitutes the entire agreement among the Parties regarding the subject matter of the Settlement and supersedes all prior representations, agreements, and understandings, whether oral or written, regarding the subject matter of the Settlement embodied herein.

## XXV. PUBLIC COMMENT

91. Final consent by EPA of its covenant regarding [Past Response Costs / Future Response Costs / Past and Future Response Costs] is subject to a 30 day public comment period under section 122(i) of CERCLA. EPA may withhold consent regarding, or seek to modify, all or part of Section XI (Payments for Response Costs) and the covenant regarding [Past Response Costs / Future Response Costs / Past and Future Response Costs] if comments received disclose facts or considerations that indicate that the covenant is inappropriate, improper, or inadequate.

## XXVI. EFFECTIVE DATE

92. [Subject to the next sentence, ]This Settlement is effective when EPA issues notice to Respondents that the Regional Administrator or their delegatee has signed the

**Commented [A54]:** Attorney General approval is required if the Settlement includes a compromise of response costs *and* projected response costs for the Site are more than \$500,000 (excluding interest). If AG approval is required, the case team should consult with DOJ during the negotiations process and obtain written DOJ approval before publishing notice of the proposed cost compromise in the Federal Register.

If the Settlement compromises a claim, but AG approval is not required (i.e., if total response costs are less than \$500,000), insert this finding in the findings of fact section.

The Regional Administrator of EPA Region \_\_, or their delegatee, has determined that the total past and projected response costs of the United States at or in connection with the Site will not exceed \$500,000, excluding interest.

**Commented [A55]:** Optional. Include this Section if the Settlement includes a compromise of any response costs.



Settlement. [EPA's] covenant as to [Past Response Costs / Future Response Costs / Past and Future Response Costs] is effective when EPA issues notice to Respondents that public comments received, if any, do not require EPA to modify or withdraw from such covenant].

**Commented [A56]:** Include this clause if the Settlement includes a cost compromise.

Signature Page for [Administrative Settlement Agreement] regarding the [site name] Superfund Site

**IT IS SO AGREED AND ORDERED:**

**BY THE U.S. ENVIRONMENTAL  
PROTECTION AGENCY:**

\_\_\_\_\_  
Dated

\_\_\_\_\_  
[Name]  
Regional Administrator [or designee], Region \_\_\_\_

Signature Page for [Administrative Settlement Agreement] regarding the [site name] Superfund Site

**FOR** \_\_\_\_\_

**Commented [A57]:** A separate signature page is required for each settler.

\_\_\_\_\_  
Dated

\_\_\_\_\_  
[Name]  
[Title]  
[Address]

**FOR:** \_\_\_\_\_

**Commented [A58]:** A separate signature page is required for each settler.

\_\_\_\_\_  
Dated

Name: \_\_\_\_\_  
Title:  
Address:

**If Settling Federal Agencies, insert signature blocks for each Settling Federal Agency. If Settling Federal Agencies are too numerous or signature by each and every SFA is otherwise impractical, DOJ may sign the Settlement on behalf of the Settling Federal Agencies.**

Signature Page for [Administrative Settlement Agreement] regarding the [site name] Superfund Site

**FOR** \_\_\_\_\_:  
[Print name of SFA]

## Instructions Regarding Automated Features

FEATURE	INSTRUCTIONS
<b>Inserting text copied from a different document</b>	Text copied from a different document will usually have embedded formatting codes. Pasting the text into your document will cause the formatting codes to be inserted as well, which will create unpredictable and frustrating formatting and numbering results. <b>Therefore, ALWAYS use the “Paste Special” function to insert text copied from another document.</b> Press Ctrl-Alt-V; in the pop-up menu, click “Unformatted Text” and OK. (You can also click the Home tab, Paste, Paste Special, Unformatted Text and OK.)
<b>Inserting a new paragraph</b>	Click at the end of the ¶ immediately preceding the place where you wish to add the new <b>paragraph</b> , and press Enter. To change the new ¶’s outline level use (under the Home tab) the styles menu. For example, to change ¶12.b into ¶12.a(1), click in that ¶ and then (using the Home tab) click the “LVL 3” style. To change ¶13.a into ¶14, click in that ¶ and then (using the Home tab) click the “LVL 1” Style. Note that in consent decree models, the letters denoting each background paragraph must be manually updated.
<b>Paragraph numbering</b>	Subparagraphs are only necessary if there is more than one subparagraph. If revisions result in there only being one subparagraph, manually incorporate that language into the preceding paragraph and renumber as necessary. For example, at ¶ <b>Error! Reference source not found.</b> , if subparagraph b regarding use restrictions is not included, manually move the language in subparagraph a into the main paragraph and renumber the clauses, as follows:  34. <b>Land, Water, or Other Resource Use Restrictions.</b> Purchaser shall: (a) remain in compliance with any land use restrictions established in connection with any response action at the Property; (b) implement, maintain, monitor, and report on institutional controls; and (c) not impede the effectiveness or integrity of any institutional control employed at the Property in connection with a response action.
<b>Adding an updateable section or paragraph cross-reference</b>	(a) Click where you wish to insert a cross-reference; (b) Click the “References” tab, and, in the “Captions” box, click “Cross-reference;” (c) In the pop-up menu that appears, make sure the “Reference type” field contains “Numbered item” and the “Insert reference to” field contains “Paragraph Number (full context);” (d) In the “For which numbered item” field” select the numbered item (section, paragraph. or subparagraph) you wish to cross-reference and click Insert.
<b>Updating the cross-references</b>	Press Ctrl-A (to select entire document); right click; in the pop-up menu, click “Update Field;” click OK. Note: If a numbered paragraph that has been cross-referenced elsewhere in the document is deleted, remove the obsolete paragraph cross-reference. Otherwise, when you update the cross-references, the following message will appear: “Error! Reference source not found.”
<b>Updating the table of contents</b>	Right-click in the TOC, and in the pop-up menu, left-click “Update Field.” Or click in the TOC, press F9, click Update Entire Table and OK. If you have just added a new section heading, click Update entire table before pressing Enter.
<b>Inserting a new section heading</b>	Click in the text of the new heading and assign the “SECTION” paragraph style to the text by clicking the “Home” tab, and in Styles box, clicking the

	“SECTION” style button.) That will add the section number, change the numbering of later sections, and ensure that the new section will be referenced in the table of contents.
<b>Changing the font</b>	Press Ctrl-A (to select entire document); right click; in the pop-up menu, click “Font;” in the “font” field, select a new font; click OK.

**MODEL REMEDIAL INVESTIGATION/FEASIBILITY STUDY**

**STATEMENT OF WORK**

**[OPERABLE UNIT \_\_\_\_]**

**\_\_\_\_ SUPERFUND SITE**

**\_\_\_\_ City, \_\_\_\_ County, State of \_\_\_\_**

**EPA Region \_\_\_\_**

**(For Use with Model RI/FS Administrative Settlement Agreement Order on Consent)**

**September 2022**

- This model, the guidance documents referenced herein, and any internal procedures adopted for its implementation and use are intended solely as guidance for employees of the U.S. Environmental Protection Agency. They do not constitute rulemaking by the Agency and may not be relied upon to create a right or benefit, substantive or procedural, enforceable at law or in equity, by any person. The Agency may take action at variance with this model, the guidance documents referenced herein, or its internal procedures.
- This document contains automatic section and paragraph numbers and automatic section and paragraph cross references, and an automated Table of Contents. If you add or delete sections or paragraphs, please do not attempt to manually renumber any sections or paragraphs or cross references. Please see instructions at end of document for more details.

**Commented [A1]:** This Model RI/FS SOW is intended to be used for ASAOCs with Potentially Responsible Parties for RI/FS. This Model can be used in other scenarios, such as when a Unilateral Administrative Order is issued, with just a few minor modifications.

## CONTENTS

1.	INTRODUCTION .....	3
2.	COMMUNITY INVOLVEMENT .....	3
3.	REMEDIAL INVESTIGATION .....	5
4.	FEASIBILITY STUDY .....	10
5.	MEETINGS, PERMITS, and REPORTS .....	13
6.	DELIVERABLES .....	15
7.	SCHEDULE.....	19
8.	REFERENCES .....	20
9.	APPENDIX – TECHNICAL ASSISTANCE PLAN INSERTS .....	25



## 1. INTRODUCTION

- 1.1 Purpose of the SOW.** This SOW sets forth the procedures, requirements, and recommendations for implementing the Work to develop and perform the remedial investigation (“RI”) and the feasibility study (“FS”) for [Operable Unit-\_] of the Site. Further, this SOW is a part of and incorporated into the Administrative Settlement Agreement and Order on Consent, CERCLA Docket No. \_\_\_\_ (“Settlement”)
- 1.2** The terms used in this SOW that are defined in CERCLA, in regulations promulgated under CERCLA, or in the Settlement, have the meanings assigned to them in CERCLA, in such regulations, or in the Settlement, except that the term “Paragraph” or “¶” means a paragraph of the SOW and that the term “Section” means a section of the SOW, unless otherwise stated. If there is a conflict between this SOW and the Settlement, the provisions of the Settlement shall govern.
- 1.3** At the completion of the RI/FS, EPA will be responsible for identifying a preferred remedy, soliciting, and reviewing public comments on the proposed plan, and the selection of a site remedy, and will document this selection in a record of decision (“ROD”). The remedial action alternative selected by EPA will meet the cleanup standards specified in CERCLA § 121. As specified in CERCLA § 104(a)(1), as amended, EPA or its representatives will provide oversight of Respondents’ activities throughout the RI/FS [and further as provided].
- 1.4** Modifications to the SOW will follow procedures described in Sections VII (Performance of the Work) and XXI in the Settlement. Respondents shall refer to the Guidance for Conducting Remedial Investigations and Feasibility Studies, OSWER 9355.3-01, EPA/540/G-89/004 (Oct. 1988) (“RI/FS Guidance”) in performing their responsibilities under this SOW.
- 1.5** This SOW is not intended to modify current EPA guidance or regulations, including but not limited to the guidance documents referenced in ¶ 8.1. Current EPA guidance and regulations shall control in the event of any conflict between the SOW and current EPA guidance and regulations.

## 2. COMMUNITY INVOLVEMENT

- 2.1** As requested by EPA, Respondents shall conduct community involvement activities under EPA’s oversight as provided for, and in accordance with this Section. Such activities must include designation of a Community Involvement Coordinator (“CI Coordinator”) [insert, if provided for below: and implementation of a Technical Assistance Grant (TAG)].

### 2.2 Community Involvement Responsibilities

EPA has the lead responsibility for developing and implementing community involvement (“CI”) activities at sites. This includes compliance with 40 C.F.R. § 300.430(c)(2) (outlining the lead agency’s community involvement responsibilities) and the preparation of a Community

**Commented [A2]:** Any deadlines for performing a task or submitting a deliverable should be specified in a central location, specifically the schedule in Section 8, not in the text. This simplifies editing of the SOW and simplifies execution of subsequent mods to SOW deadlines.

**Commented [A3]:** If EPA and the Respondents agree that the settlement will include the option for a Technical Assistance Plan (TAP), then replace TAG with TAP throughout Section 2 as appropriate. Specifically, TAP provisions should be used at non-NPL sites using the Superfund Alternative Approach sites. These are conceptually similar to TAGs, which typically provide an initial \$50,000 for independent technical assistance to communities.

Involvement Plan (CIP) specifying the CI activities expected to be undertaken during the remedy response.

- (a) Such activities include not only notifying the community of the availability of a TAG but also, where appropriate, potential use of EPA's Technical Assistance Services for Communities contract. EPA is also responsible for compliance with § 300.815(a) (making administrative record available to the public) and § 300.430(f)(3)(i)(C) (providing reasonable opportunity for submission of comments on the RI/FS and Proposed Plan), respectively.
- (b) **Respondents' CI Coordinator.** As requested by EPA, Respondents shall designate and notify EPA of Respondents' CI Coordinator. Respondents may hire a contractor for this purpose. Respondents' notice shall include the name, title, and qualifications of their CI Coordinator. Respondents' CI Coordinator is responsible for providing support regarding EPA's CI activities, including coordinating with EPA's CI Coordinator regarding responses to the public's inquiries and/or requests for information or data about the site.
- (c) As requested by EPA, Respondents shall participate in and/or conduct community involvement activities, including participation in (1) the preparation of information regarding the field sampling activities for dissemination to the public, with consideration given to including local and mass media and/or internet notification, and (2) public meetings that may be held or sponsored by EPA to explain activities at or relating to the site [and (3) add other activities EPA decides are necessary to protect and address the concerns of communities with EJ concerns and overburdened communities, *e.g.*, "giving presentations" or providing interpretation and/or translation services]. Respondents' support of EPA's community involvement activities may include providing online access to initial submissions and updates of deliverables to (1) any Community Advisory Groups, (2) any TAG recipients and their advisors, and (3) other entities to provide them with a reasonable opportunity for review and comment. EPA may describe in its CIP Respondents' responsibilities for community involvement activities. All community involvement activities conducted by Respondents at EPA's request are subject to EPA's oversight. Upon EPA's request, Respondents shall establish, as early as feasible, a community information repository at or near the site, as provided in the CIP, to house one copy of the administrative record.

**2.3 Information for the Community.** As requested by EPA, Respondents shall develop and provide to EPA information about the RI/FS including: (1) any validated data from field sampling activities as provided in ¶ (a) below; (2) schedules prepared under Section 7; (3) dates that Respondents completed each task listed in the schedules; and (4) digital photographs of the Work being performed, together with descriptions of the Work depicted in each photograph, the purpose of the Work, the equipment being used, and the location of the Work. The EPA Project Coordinator may use this information for communication to the public via EPA's website, social media, or local and mass media. The information provided to EPA shall be suitable for sharing with the public (*e.g.*, drafted in plain language) and the education levels of the community as indicated in

**EJScreen.** Translations shall be in the dominant language(s) of community members with limited English proficiency.

- (a) As requested by EPA, Respondents shall describe all community impact mitigation activities to be performed: (i) to reduce impacts (e.g., air emissions, dust, odor, traffic, noise, temporary relocation, negative economic effects) to residential areas, schools, playgrounds, healthcare facilities, or recreational public areas frequented by community members (“Community Areas”) during field sampling activities; (ii) to conduct monitoring in Community Areas of impacts from field sampling activities; (iii) to communicate validated sampling data; [and] (iv) to make adjustments during field sampling activities in order to further reduce negative impacts to affected Community Areas [;and (v) any additional activities as appropriate]. Descriptions shall contain information about impacts to Community Areas that is sufficient to assist EPA’s site team in performing the evaluations recommended under the *Superfund Community Involvement Handbook*, OLEM 9230.0-51 (Mar. 2020). EPA’s Remedial Project Manager (“RPM”) and CI Coordinator will review and approve all proposed activities.

[If EPA and Respondents agree to the TAP option, add: 2.4 **Settling Respondents’ Responsibilities for a Technical Assistance Plan** (see appendix for these provisions)]

### 3. REMEDIAL INVESTIGATION

- 3.1 Previous Investigation Summary Report.** Respondents shall prepare a Previous Investigation Summary Report for EPA [and State/Tribe] review and EPA approval. The report shall include available data relating to the varieties and quantities of hazardous substances, pollutants, or contaminants at the site. Available data may include results from any previous sampling or other investigations that have been conducted. Respondents will refer to Table 2-1 of the *Guidance for Conducting Remedial Investigations and Feasibility Studies*, OSWER 9355.3-01, EPA/540/G-89/004 (Oct. 1988) for a comprehensive list of data collection information sources. The report shall also describe releases of hazardous substances, pollutants or contaminants into the environment.
- 3.2 Conceptual Site Model Development and Report.** The Conceptual Site Model (“CSM”) is a representation of the site that summarizes and helps project teams visualize and understand available information, and which is updated as additional information becomes available. Respondents shall develop (or, as appropriate, update) the CSM for EPA [and State/Tribe] review and EPA approval. The CSM shall be based upon all available site-specific information. Respondents shall provide the CSM and an accompanying summary report that documents the information used in developing the CSM, why any available information was not used, and recommendations regarding data gaps. Respondents shall update the CSM, as requested by EPA, to account for information obtained during the RI.
- 3.3 Identification of Preliminary RAOs, PRGs and ARARs.** Respondents shall develop preliminary remedial action objects (“RAOs”), which are medium-specific goals for

**Commented [A4]:** An EJScreen analysis is based on general indicators of population vulnerability (i.e., race and income) and pollution burden to show the relative potential for disproportionate impacts in a given area. Refined analysis of disproportionate impacts goes beyond these indicators to assess vulnerability and pollution burden in ways that can meaningfully inform remedial option selection given a particular site in a particular community. The community involvement process provides an important source of information for refined analysis. It is also critical as a means to learn about the community’s vision for site remediation, and how that fits into broader community goals. Recognizing this broader context, the case team should consider coordinating with other federal agencies, state, tribal, local governments, and stakeholders to address disproportionate impacts beyond those to be addressed through site remediation, with ongoing engagement of the impacted community.

**Commented [A5]:** Project and case teams may want to incorporate the Previous Investigation Summary and Conceptual Site Model Reports into the RI work plan if the team is familiar with the site and/or the RI/FS is not complicated.

**Commented [A6]:** Project and case teams may want to include CSM revisions into the RI/FS Work Plan if field activities and treatability studies are anticipated. The CSM shall be revised after each field activity and shall be discussed during the systematic project planning meetings in ¶ 5.1(b).

protecting human health or the environment that specify the chemicals of concern, exposure route(s) and receptor(s) and preliminary remediation goals (“PRGs”). Respondents shall prepare a memo for EPA [and State/Tribes] review [and EPA approval] providing preliminary identification of potential [state/tribal/territories] and federal chemical-specific, location-specific and action-specific applicable or relevant and appropriate requirements (“ARARs”) to assist in the refinement of RAOs, and the initial identification of remedial alternatives and ARARs associated with particular actions. ARAR identification will continue as site conditions, contamination, and remedial action alternatives are refined. Respondents shall also incorporate federal and [State/Tribal] potential ARAR and “to be considered” materials provided by EPA before or with review comments on each deliverable.

- (a) **Remedial Investigation Work Plan.** Respondents shall submit an RI work plan (“RIWP”) to EPA and [State/Tribes] for review and EPA approval, consistent with OSWER 9835.1(c). The RIWP shall include a comprehensive description of the RI Work to be performed, including the scope, methodologies, and schedule for completion. The RIWP shall also include all requirements under ¶ 3.3 unless EPA decides that one or more provisions is not necessary. The RI is typically conducted over multiple years where tasks are sequenced and scoped based on the best available information and the CSM. Therefore, there is high probability that either the sequence or scope may change as the CSM is refined and the RI progresses. The RIWP describes areas of a site that may pose potential current or future unacceptable risk to public health or welfare or the environment due to the release or threat of release of chemicals. The RIWP will present a statement describing the release or threat of release of hazardous substances, pollutants or contaminants at or from the Site. Respondents will develop a specific project scope based on EPA’s remedial strategy for the Site (“Site Strategy”). [If commingled contamination (e.g., hazardous substances comingled with pollutants or contaminants) is discovered at the site, then addressing the constituents contaminated in the commingled contamination shall be incorporated into the FS.] The RI shall consist of collecting data to characterize site conditions (including meteorology affecting the site, 40 C.F.R. § 300.430(d)(2)(i)), determining the nature and extent of the contamination at or from the site, assessing risk to human health, sensitive populations (40 C.F.R. § 300.430(d)(2)(vii)) and the environment, and conducting treatability testing as necessary to evaluate the potential performance and cost of the treatment technologies that are being considered. Respondents shall identify which climate-related or environmental hazards (e.g., sea level changes, increased severity of wildfire, increased storm intensity, increased flood risk, etc.) may affect the potential remedies at the site. Respondents shall use forward-looking climate data to evaluate the current and potential chemical releases and unacceptable exposure pathways.
- (b) In its description of the methodologies to be used to perform any RI Work, the RIWP shall consider the environmental footprint of all such activities and, to the extent practicable, take actions to minimize said footprint. The RIWP shall be consistent with the *Consideration of Greener Cleanup Activities in the Superfund Cleanup Process* (Aug. 2, 2016). These considerations for greener cleanups are

**Commented [A7]:** Note: Such actions may include reduction in total energy use and increase in the percentage of energy from renewable resources; reduction of air pollutants and greenhouse gas emissions; reduction of water use and preservation of water quality; conservation of material resources and reduction of waste; and protection of land. Respondents shall evaluate options to quantify and reduce the environmental footprint of RI/FS field work to the extent practicable.

not intended to allow cleanups that do not satisfy threshold requirements for protectiveness, or do not meet other site-specific cleanup objectives. Greener cleanup activities refer to strategies designed to help minimize the environmental footprint of cleaning up contaminated sites and ensure a protective remedy within the applicable CERCLA statutory and regulatory framework.

**3.4 RIWP Deliverables.** The Respondents shall submit the following deliverables for EPA review and approval unless EPA decides that one or more provisions is not necessary:

- (a) **Quality Assurance Project Plan** Respondents shall collect, produce, evaluate, or use environmental information under a Quality Assurance Project Plan (“QAPP”) reviewed and approved by EPA with [State/Tribe] consultation. No environmental information, as defined by AQS/ANSI E-4, will be collected, produced, evaluated, or used without an EPA approved QAPP. The QAPP will be consistent with EPA Directive CIO 2105.1 (Environmental Information Quality Policy, 2021), consistent with the most recent version of ASQ/ANSI E-4 (Quality Management Systems for Environmental Information and Technology Programs Requirements with Guidance For Use) and consistent with EPA/G-5 (EPA requirements for QAPPs).
  - (1) **Field Sampling Plan.** The field sampling plan (“FSP”) shall be written so that personnel unfamiliar with the project will be able to gather the samples and field information required. The FSP shall be prepared in accordance with RI/FS Guidance.
- (b) **Emergency Response (ER) and Notification Plan.** The ER and Notification Plan shall describe procedures to be used in the event of an accident or emergency at the site (*e.g.*, power outages, water impoundment failure, treatment plant failure, slope failure, etc.). The ER and Notification Plan shall include:
  - (1) Name of the person or entity responsible for responding in the event of an emergency incident;
  - (2) Plan and date(s) for meeting(s) with the local community, including local, [State/Tribes], and federal agencies involved in the cleanup, as well as local emergency squads and hospitals;
  - (3) If applicable, a Spill Prevention, Control, and Countermeasures Plan consistent with the requirements of 40 C.F.R. part 112 (describing measures to prevent, and contingency plans for, spills and discharges);
  - (4) Notification activities in accordance with ¶ 5.6(b) (Release Reporting) in the event of a release of hazardous substances requiring reporting under sections 103 or 111(g) of CERCLA, or section 304 of the Emergency Planning and Community Right-to-know Act (“EPCRA”), 42 U.S.C. § 11004; and

- (5) A description of all necessary actions to ensure compliance with Section 5 (Meetings, Reporting, and Permits) in the event of an occurrence during the performance of the Work that causes or threatens a release of a hazardous substance, pollutant or contaminant at or from the site that constitutes an emergency or may present an immediate threat to human health or welfare or the environment.
- (c) **Health and Safety Plan.** The Health and Safety Plan (“HASP”) shall describe all activities to be performed to protect on-site personnel from physical, chemical, and all other hazards posed by the field sampling. The HASP shall: (1) be prepared in accordance with EPA’s *Emergency Responder Health and Safety Manual* and Occupational Safety and Health Administration (“OSHA”) requirements under 29 C.F.R. §§ 1910 and 1926; and (2) shall address RI Work and include contingency planning. EPA does not approve the HASP but will review it to ensure that all necessary elements are included and that the plan provides for the protection of human health and the environment.
- (d) **Field Summary [and Other Technical] Reports.** Respondents shall provide a report after the field activity demobilization that addresses the collection, processing, management, distribution, analysis, and archival of data and information. These reports will be reviewed and approved by EPA with [State/Tribe] consultation.
- (e) **Reuse Assessment.** Respondents will prepare a reuse assessment in accordance with the SOW, RIWP, and applicable EPA guidance. The reuse assessment will inform the development of realistic land use assumptions. The reuse assessment also informs the baseline risk assessments when estimating potential future risks and preliminary RAOs and supports the remedy selection process. Respondents shall update the reuse assessment, as requested by EPA, to account for information obtained during the RI.
- (f) **Baseline HHRA and ERA.** Respondents shall perform the Baseline Human Health Risks Assessment (“Baseline HHRA”) and Ecological Risk Assessment (“ERA”) in accordance with the SOW and the NCP, including the 40 C.F.R. § 300.430(d)(2)(vii) provision on sensitive populations, RIWP, and applicable EPA guidance. Additionally, Respondents shall ensure that risk assessments incorporate site-specific exposure assumptions based on: (1) awareness of community practices, (2) environmental justice<sup>1</sup> concerns, and (3) anticipated changes to weather and climate. Respondents shall use current EPA-recommended environmental justice screening tools (e.g., EJScreen as identified by EPA during the scoping of the Baseline HHRA. If requested by EPA, Respondents shall conduct more detailed evaluations of community practices,

**Commented [A8]:** The reuse assessment should provide sufficient information to develop realistic assumptions of the reasonably anticipated future use(s) for a site. Site teams should consider Table 1 of OSWER 9355.7- 06P when scoping a reuse assessment. The scope and level of effort needed to complete a reuse assessment will be dependent on conditions at the site and should be tailored accordingly. Generally, information supporting a reuse assessment should be obtained from existing and readily available sources.

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<sup>1</sup> Environmental justice means the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income, with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.

environmental justice concerns, and potentially exposed populations as identified by EPA as a result of community outreach. If requested by EPA, Respondents shall use climate change screening tools (e.g., forward-looking climate data) to evaluate the affect that anticipated changes to weather and climate have on the results of the Baseline HHRA and ERA. The evaluation of site-specific exposure assumptions shall be discussed in the risk assessment as appropriate. Potential overestimation and/or underestimation of risk associated with community practices, environmental justice concerns, and impacts of climate change shall be presented in the uncertainty discussion. Risk assessments will be reviewed and approved by EPA with [State/Tribe] consultation. Respondents shall identify and document all sources of information reviewed to address the human health and ecological assessment endpoints.

- (g) **Preliminary IC Evaluation.** The Respondents shall submit a preliminary institutional control (IC) evaluation for EPA and [State/Tribe] review and EPA approval. The IC evaluation will describe potential land and/or resource use restrictions and their relationship to the preliminary RAOs. The IC evaluation will also identify potential IC instruments (or layered instruments), including those who potentially are responsible for implementing, maintaining, and enforcing the ICs. The IC evaluation will include an estimate for how long IC instruments (or layered instruments) shall remain in place. The IC evaluation will inform development of the FS (comparative analysis of alternatives) and Institutional Controls Implementation and Assurance Plan (“ICIAP”).
- (h) **Draft RI Report.** Respondents shall submit to EPA for review and approval pursuant to ¶ 6.5 (Approval of Deliverables), a draft RI report consistent with the SOW, RIWP, and with EPA guidance and regulations. This report shall summarize results of field activities to characterize the Site, including the sources of, nature and extent of, and fate and transport of contamination. Respondent will refer to the RI/FS Guidance for an outline of the report format and contents. Following comments by EPA [and the State/Tribes], Respondents will prepare a final RI report which satisfactorily addresses these comments.

**3.5 Treatability Study.** Respondents shall conduct treatability studies, except where the Respondents can demonstrate to EPA’s satisfaction that they are not needed. Respondents shall provide EPA and [State/Tribe] with the following deliverables for review:

- (a) **Identification of Candidate Treatability Study Technologies Memorandum.** This summarizes a literature review of applicable technologies to gather information on performance, relative costs, applicability, removal efficiencies, operation and maintenance requirements, and implementability of candidate treatability study technologies. This memorandum shall be submitted as set forth in the RIWP [or “as specified by EPA,” or other scheduling provision preferred by the Region] for EPA approval.

- (b) **Treatability Test Work Plan.** If EPA determines that treatability testing is required, Respondents shall submit a treatability test work plan, including a schedule, FSP, QAPP and HASP, for EPA review and approval as appropriate.
- (c) **Treatability Study Evaluation Report.** Upon completion of the treatability studies, Respondents shall submit a treatability study evaluation report that includes:
  - (1) An evaluation of the effectiveness, implementability, and cost of each technology.
  - (2) An evaluation of the actual results of each technology as compared with predicted results.
  - (3) An analysis and interpretation of testing results.
  - (4) An evaluation of full-scale application of the technology, including a sensitivity analysis identifying the key parameters affecting full-scale operation.

Following comments by EPA [and the State/Tribes], Respondents will prepare a final report which satisfactorily addresses these comments.

#### **4. FEASIBILITY STUDY**

- 4.1 Feasibility Study.** The FS shall identify and evaluate (based on treatability testing, where appropriate) remedial alternatives to prevent, mitigate, or otherwise respond to or remediate the release or threatened release of hazardous substances, pollutants or contaminants at or from the site. [If there is potential commingling of hazardous substances with pollutants or contaminants at the site, then the evaluation of the potential performance and cost of the treatment technologies should also take into account the ability of those treatment technologies to address the commingled contamination (e.g., hazardous substances comingled with pollutants or contaminants) and any adverse impacts the comingled contamination may have on the ability and cost of the treatment technologies to address the release or threatened release at the site.] The remedial alternatives evaluated shall include, but shall not be limited to, the range of alternatives described in the NCP, 40 C.F.R. § 300.430(e), and shall include remedial actions that utilize permanent solutions and alternative treatment technologies or resource recovery technologies to the maximum extent practicable. Respondents shall also evaluate potential impacts that treatment technologies have on other hazardous substances, pollutants or contaminants at or from the site. In evaluating the alternatives, Respondents shall address the factors required by section 121 of CERCLA, and 40 C.F.R. § 300.430(e).
- 4.2 FS Deliverables.** The Respondents shall develop the FS deliverables in accordance with the RI/FS Guidance. The Respondents shall submit the following deliverables for EPA review and approval unless EPA decides that one or more provisions is not necessary:



- (a) **Refine RAOs, PRGs and ARARs.** Respondents shall prepare a memorandum revising the RAOs, PRGs and ARARs to include potential ARARs specific to actions and locations described in ¶ 3.3 with the findings of the RI. Respondents will review and, if necessary, modify the site-specific RAOs, specifically the PRGs, that were established by EPA prior to or during discussions between EPA and Respondents. The revised RAOs and PRGs will be documented in this memorandum that will be reviewed and approved by EPA. These modified PRGs will specify the contaminants and media of interest, exposure pathways and receptors, and an acceptable contaminant level or range of levels (at locations for each exposure route), basis for the value, and the associated residual risk. This memorandum will discuss the consideration of sensitive subgroups in determining the acceptable exposure levels for sites with systemic toxicants, in accordance with 40 C.F.R. § 300.430(e)(2)(i)(A)(1). In addition, the memorandum will discuss whether the ARARs may not be sufficiently protective given the presence of multiple contaminants at the site or multiple pathways of exposure for sites with known or suspected carcinogens, in accordance with 40 C.F.R. § 300.430(e)(2)(i)(A)(2).
- (b) **Identify and Evaluate Remedial Technologies and Assemble Alternatives.** Concurrent with ¶ 4.2(a), Respondents shall assemble combinations of technologies, and the media to which they would be applied, into remedial alternatives that address contamination on a sitewide basis or for an identified operable unit. Deliverables will be reviewed and approved by EPA with [State/Tribe] consultation. Respondents shall: (i) develop general response actions for each medium of interest defining containment, treatment, excavation, pumping, or other actions, singly or in combination, that may be taken to satisfy the RAOs for the site; (ii) identify volumes or areas of media to which general response actions might be applied, taking into account the requirements for protectiveness as identified in the RAOs and the chemical and physical characterization of the site; and (iii) identify and screen the technologies applicable to each general response action to eliminate those that cannot be implemented technically at the site. The general response actions are further refined to specify remedial technology types (e.g., the general response action of treatment can be further defined to include chemical or biological technology types). Respondents shall assemble the selected representative technologies into alternatives representing a range of treatment and containment combinations, as appropriate.
- (c) **Comparative Analysis of Alternatives.** Upon EPA approval of ¶ 4.2(a) and (b), Respondents shall conduct a comparative analysis of alternatives to evaluate the relative performance of each alternative in relation to the nine evaluation criteria identified below in this paragraph and prepare a summary report. This range of alternatives shall include, as appropriate, options in which treatment is used to reduce the toxicity, mobility, or volume of wastes, but varying in the types of treatment, the amount treated, and long-term residuals or untreated wastes are managed. The analysis will include options involving treatment and/or containment; and a no-action alternative. The evaluation criteria include:

(1) overall protection of human health and the environment; (2) compliance with ARARs; (3) long-term effectiveness and permanence; (4) reduction of toxicity, mobility, or volume through treatment; (5) short-term effectiveness; (6) implementability; (7) cost; (8) state (or support agency) acceptance; and (9) community acceptance. The analysis shall (consistent with 40 C.F.R. § 300.430(e)(9)(iii)(C) and *Consideration of Climate Resilience in the Superfund Cleanup Process for Non-Federal National Priorities List Sites* OLEM 9355.1-120, June 30, 2021) include an assessment of the vulnerability of the protectiveness of each alternative to the impacts of climate change and, for each alternative where appropriate, an evaluation of the possible addition of further measures to ensure the resilience a particular alternative's protectiveness to the impacts of climate change. In addition, where appropriate for particular evaluation criteria, Respondents shall also evaluate, to the extent practicable, opportunities to reduce the environmental footprint of each alternative. Such evaluation shall include the consideration of green remediation best management practices and/or application of the ASTM Standard for Greener Cleanups, consistent with *Consideration of Greener Activities in the Superfund Cleanup Process* (Aug. 6, 2016). These considerations for greener cleanups are not intended to allow cleanups that do not satisfy threshold requirements for protectiveness, or do not meet other site-specific cleanup objectives.

For each alternative, Respondents shall provide: (1) a description of the alternative that outlines the waste management strategy involved and identifies the key ARARs associated with each alternative, and (2) a discussion of the individual criterion assessment. If the Respondents do not have direct input on criteria (8), state (or support agency) acceptance, and criteria (9), community acceptance, these will be addressed by EPA. Note that criteria (8) and (9) are not addressed until after the Proposed Plan.

- (d) **Environmental Justice Concerns about Disproportionate Impacts.** Consistent with 40 C.F.R. § 300.430(e)(2)(i)(A)(1) and with consideration of communities with environmental justice concerns identified in the Baseline HHRA, Respondents shall identify different remedial alternatives in the FS to address, where applicable and in consultation with and as approved by EPA, environmental justice concerns regarding the potential for disproportionate impacts from the contaminated site, including through the site's contribution to cumulative impacts on the affected community. Evaluation of the potential for disproportionate impacts shall consider indicators of population vulnerability and pollutant burden using EJScreen; as well as other available data on population vulnerability and pollution burden (including public health outcomes reflecting cumulative impacts) and information obtained during community outreach efforts. Respondents shall identify and document in a memorandum for EPA review and approval all sources of information reviewed and implemented to address the environmental justice concerns.
- (e) **Refine IC Evaluation.** Concurrent with ¶ 4.2(d), Respondents shall prepare a memorandum revising the ICs in ¶ 3.4 (g) with the findings of the RI.

Respondents will review and, if necessary, modify the site-specific interim and permanent ICs that were established by EPA prior to or during discussions between EPA and Respondents. ICs need to be enforceable under CERCLA, rather than relying on local controls, such as zoning. The ICs evaluation shall also identify how the ICs response actions components fit with the relevant criteria outlined in the NCP (40 C.F.R. § 300.430(e)(9)(iii)) such as: compliance with ARARs; long-term effectiveness and permanence; short-term effectiveness; implementability; cost; state acceptance; and community acceptance. The IC analysis shall be submitted for review and approval by EPA and added as an appendix to the draft FS Report.

- (f) **Draft FS Report.** Following ¶¶4.2(d) and (e), Respondents shall submit to EPA [and State/Tribe] a draft FS report for review and approval pursuant to ¶ 6.5 (Approval of Deliverables). Respondents shall refer to Table 6-5 of the RI/FS Guidance for report content and format. The FS report and the administrative record shall provide sufficient information to support the remedial alternatives analysis and remedy selection under sections 113(k) and 117(a) of CERCLA. Respondents will prepare a final FS report which satisfactorily addresses EPA [and State/tribal] comments.

## 5. MEETINGS, PERMITS, and REPORTS

### 5.1 Meetings

- (a) **Kickoff meeting.** Within \_\_ days of the Effective Date of the Settlement, Respondents shall schedule a kickoff meeting with technical staff, EPA, [State/Tribes], and other stakeholders to discuss the statement of work, a Site visit and document review needs. EPA will determine the site-specific objectives of the RI and will provide Respondents a strategic approach, per ¶ 3.4 of this SOW. The meeting will also be used to outline project-specific requirements including: project objectives, data gaps, potential sampling and analysis methods, and performance goals. The deliverable after the kickoff meeting will be a project schedule and RI work plan under ¶ 3.4. The kickoff meeting and systematic planning meetings referenced in ¶ 5.1(b) will be documented in the QAPP.
- (b) **Systematic Project Planning Meetings.** Within the schedule set forth in the RI Work Plan, Respondents shall schedule systematic project planning meetings with EPA and the [State/Tribe]. Systematic project planning is a process that requires Respondents [, State/Tribal/Territories,] and EPA to convene during key milestones in the RI/FS schedule in order to update the CSM, and to review the sequence and scope of upcoming RI/FS tasks to determine if they are still appropriate or need modification.
- (c) **Meetings.** Respondents shall participate in meetings and make presentations at the request of EPA during the preparation of the RI/FS. Topics will include anticipated problems, RI/FS updates, or new issues. Meetings will be scheduled at EPA's discretion.

**Commented [A9]:** Project teams may want to hold the kickoff meeting after receipt of the Previous Investigation Summary Report (Section 3.1) and the CSM Report (Section 3.2) and prior to the submission of the RI Work Plan (Section 3.3). The Previous Investigation Summary and CSM Reports may be beneficial in discussing the RI/FS Work Plan scope, objectives, and data gaps within the CSM.

**5.2 Progress Reports.** Commencing the [month] following the Effective Date of the Settlement and until EPA approves the FS report, Respondents shall submit progress reports to EPA on a [quarterly/monthly/weekly] basis, or as otherwise requested by EPA. The reports shall cover all activities that took place during the prior reporting period, including:

- (a) Describe the actions that have been taken under this SOW;
- (b) Include all results of sampling and tests and all other data received by Respondents;
- (c) Describe Work planned for the next two months with schedules relating such Work to the overall project schedule for RI/FS completion;
- (d) Describe all problems encountered in complying with the requirements of this SOW and any anticipated problems, any actual or anticipated delays, and solutions developed and implemented to address any actual or anticipated problems or delays;
- (e) Describe of any modifications to the work plans or other schedules Respondents have proposed or that have been approved by EPA; and
- (f) Describe all activities undertaken in support of the CIP during the reporting period and those to be undertaken in the next [six weeks].

**5.3 Notice of Schedule Changes.** If the schedule for any activity described in the Progress Reports, including deliverables required under Section 6, changes, Respondents shall notify EPA of such change at least [seven] days before they perform the activity.

**5.4 Investigation Derived Waste.** Respondents may ship Investigation Derived Waste (“IDW”) from the Site to an off-site facility only if they comply with section 121(d)(3) of CERCLA, section 300.440 (“Off-Site Rule”) of the NCP, *EPA’s Guide to Management of Investigation Derived Waste*, OSWER 9345.3-03FS (Jan. 1992). Wastes shipped off-site to a laboratory for characterization, and RCRA hazardous wastes that meet the requirements for an exemption from RCRA under 40 C.F.R. § 261.4(e) shipped off-site for treatability studies, are not subject to section 300.440 of the NCP.

**5.5 Permits**

- (a) As provided in CERCLA § 121(e), and section 300.400(e) of the NCP, no permit is required for any portion of the Work conducted entirely on-site (*i.e.*, within the areal extent of contamination or in very close proximity to the contamination and necessary for implementation of the Work). Where any portion of the Work that is not on-site requires a federal or state permit or approval, Respondents shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals.

- (b) Respondents may seek relief under the provisions of Section [XII] (Force Majeure) of the Settlement for any delay in the performance of the Work resulting from a failure to obtain, or a delay in obtaining, any permit or approval referenced in ¶ 5.5(a) and required for the Work, provided that they have submitted timely and complete applications and taken all other actions necessary to obtain all such permits or approvals.
- (c) Nothing in the Settlement or this SOW constitutes a permit issued under any federal or state statute or regulation.

## 5.6 Emergency Response and Reporting

- (a) **Emergency Action.** If any event occurs during performance of the Work that causes or threatens to cause a release of hazardous substances, pollutants or contaminants on, at, or from the site and that either constitutes an emergency situation or that may present an immediate threat to public health or welfare or the environment, Respondents shall: (1) immediately take all appropriate action to prevent, abate, or minimize such release or threat of release; (2) immediately notify the authorized EPA officer (as specified in ¶ 5.6(b)) orally; and (3) take such actions in consultation with the authorized EPA officer and in accordance with all applicable provisions of the Health and Safety Plan, the Emergency Response Plan, and any other deliverable approved by EPA under the SOW.
- (b) **Release Reporting.** Upon the occurrence of any event during performance of the RI Work that Respondents are required to report pursuant to sections 103 and 111(g) of CERCLA, or section 304 of EPCRA, Respondents shall immediately notify the authorized EPA officer orally.
- (c) The “authorized EPA officer” for purposes of immediate oral notifications and consultations is the EPA Project Coordinator, the EPA Alternate Project Coordinator (if the EPA Project Coordinator is unavailable), or the EPA [Emergency Response Unit], Region \_\_ if neither EPA Project Coordinator is available.
- (d) For any event covered by ¶ 5.6, Respondents shall: (1) within [14] days after the onset of such event, submit a report to EPA describing the actions or events that occurred and the measures taken, and to be taken, in response thereto; and (2) within 30 days after the conclusion of such event, submit a report to EPA describing all actions taken in response to such event.
- (e) The reporting requirements under ¶ 5.6 are in addition to the reporting required by CERCLA §§ 103 and 111(g) or EPCRA § 304.

## 6. DELIVERABLES

### 6.1 General Requirements for Deliverables

(a) Respondents shall submit deliverables for EPA approval or for EPA comment as specified in the SOW. If neither is specified, the deliverable does not require EPA's approval or comment. Paragraph 6.3(Data Format Specifications) applies to all deliverables. Paragraph 6.4 (Certification) applies to any deliverable that is required to be certified. Paragraph 6.5 (Approval of Deliverables) applies to any deliverable that is required to be submitted for EPA approval. All deliverables shall be submitted by the deadlines in the RI/FS Schedule in ¶ 7.1.

**Commented [A10]:** The SOW describes many deliverables that are to be submitted to EPA. Some are to be submitted "for EPA approval," some "for EPA comment," and some are to be simply submitted without either EPA approval or comment. The model SOW includes careful selections of those deliverables that are to be submitted for "approval," those that are to be submitted for "comment," and those that are to be submitted without the need for "comment" or "approval."

(b) Respondents shall submit all deliverables in electronic form. Respondents shall submit deliverables in paper form if unable to submit electronically. Data format specifications for sampling, analytical and monitoring data, and spatial data are addressed in ¶ 6.3. All other deliverables shall be submitted in the electronic form specified by EPA's Project Coordinator. If any deliverable includes maps, drawings, or other exhibits that are larger than 8.5 x 11 inches, Respondents shall also provide EPA and [State/tribe] paper copies of such exhibits. Respondents shall not submit deliverables to EPA that are marked as "copyright," "trademark," or confidential", as the deliverables are part of the administrative record for the Site and as such are available to the public.

**Commented [A11]:** If paper copies of specific deliverables (in addition to large exhibits) are needed, this paragraph should be edited accordingly.

**6.2 [State/Tribal] Copies.** Respondents shall, at any time they send a deliverable to EPA, send a copy to the [State/Tribe]. EPA shall, at any time it sends a notice, authorization, approval, disapproval, or certification to Respondents, send a copy to the [State/Tribe].

**Commented [A12]:** Substitute "Tribe" for "State" if the Site is entirely on tribal land. Add "and Tribe" after "State" if both have a role at or an interest in the Site.

### **6.3 Data Format Specifications**

(a) Sampling, analytical and monitoring data shall be submitted in standard regional Electronic Data Deliverable format. [Specify the EDD format that the Region uses.] Other delivery methods may be allowed if electronic direct submission presents a significant burden or as technology changes.

**Commented [A13]:** The information in this paragraph is consistent with the EPA National Geospatial Data Policy 2008, which may be revised at any time. The case team should check <https://www.epa.gov/geospatial/geospatial-policies-and-standards> for the latest guidance on the policy and associated EPA and CERCLA procedures and technical specifications, including standards and quality assurance for geographic information system (GIS) deliverables.

(b) Spatial data, including spatially-referenced data and geospatial data, shall be submitted: (1) in the ESRI File Geodatabase format [or insert Regionally-preferred spatial file format]; and (2) as unprojected geographic coordinates in decimal degree format using North American Datum 1983 (NAD83) or World Geodetic System 1984 (WGS84) as the datum. If applicable, submissions shall include the collection method(s). Projected coordinates may optionally be included but shall be documented. Spatial data shall be accompanied by metadata, and such metadata shall be compliant with the Federal Geographic Data Committee ("FGDC") Content Standard for Digital Geospatial Metadata and its EPA profile, the EPA Geospatial Metadata Technical Specification. An add-on metadata editor for ESRI software, the EPA Metadata Editor complies with these FGDC and EPA metadata requirements and is available at <https://www.epa.gov/geospatial/epa-metadata-editor>.

(c) Each file shall include an attribute name for each site unit or sub-unit submitted. Consult <https://www.epa.gov/geospatial/geospatial-policies-and-standards> for any further available guidance on attribute identification and naming.

- (d) Spatial data submitted by Respondents does not, and is not intended to, define the boundaries of the site.

**6.4 Certification.** All deliverables that require compliance with this Section must be signed (which may include electronically signed) by Respondents' Project Coordinator, or other responsible official of Respondents, and shall contain the following statement:

I certify under penalty of perjury that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I have no personal knowledge that the information submitted is other than true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

**Commented [A14]:** The model SOW identifies the deliverables that should be certified in accordance with this Section. If the case team wishes that additional deliverables be so certified, the case team should make sure that the paragraph regarding such additional deliverable also refers to this Section.

**6.5 Approval of Deliverables**

(a) **Initial Submissions**

- (1) After review of any deliverable that is required to be submitted for EPA approval under this SOW, EPA shall: (i) approve, in whole or in part, the submission; (ii) approve the submission upon specified conditions; (iii) disapprove, in whole or in part, the submission; or (iv) any combination of the foregoing.
- (2) EPA also may modify the initial submission to cure deficiencies in the submission if: (i) EPA determines that disapproving the submission and awaiting a resubmission would cause substantial disruption to the Work; or (ii) previous submission(s) have been disapproved due to material defects and the deficiencies in the initial submission under consideration indicate a bad faith lack of effort to submit an acceptable deliverable.

- (b) **Resubmissions.** Upon receipt of a notice of disapproval under ¶ 6.5(a) (Initial Submissions), or if required by a notice of approval upon specified conditions under ¶ 6.5(a), Respondents shall, within \_\_\_ days or such longer time as specified by EPA in such notice, correct the deficiencies and resubmit the deliverable for approval. After review of the resubmitted deliverable, EPA may: (1) approve, in whole or in part, the resubmission; (2) approve the resubmission upon specified conditions; (3) modify the resubmission; (4) disapprove, in whole or in part, the resubmission, requiring Respondents to correct the deficiencies; or (5) any combination of the foregoing.

- (c) **Implementation.** Upon approval, approval upon conditions, or modification by EPA under ¶ 6.5(a) (Initial Submissions) or ¶ 6.5(b) (Resubmissions), of any deliverable, or any portion thereof: (1) such deliverable, or portion thereof, will be

**Commented [A15]:** The provisions of this Section have been carefully integrated. It is recommended that these provisions not be changed unless there is a site-specific reason for doing so. Even then, the case team should ensure that the change is consistent with the other parts of this Section.

incorporated into and enforceable under the Settlement; and (2) Respondents shall take any action required by such deliverable, or portion thereof. The implementation of any non-deficient portion of a deliverable submitted or resubmitted under ¶ 6.5(a) or ¶ 6.5(b) does not relieve Respondents of any liability for stipulated penalties under Section [XIV] (Stipulated Penalties) of the Settlement.

- (d) Notwithstanding the receipt of a notice of disapproval, Respondents shall proceed to take any action required by any non-deficient portion of the submission, unless otherwise directed by EPA.
- (e) In the event that EPA takes over some of the tasks, Respondents shall incorporate and integrate information supplied by EPA into those reports.
- (f) Respondents shall not proceed with any activities or tasks dependent on the following deliverables until receiving EPA approval, approval on condition, or modification of such deliverables: [RI/FS Work Plan; Sampling and Analysis Plan; draft RI Report; Treatability Testing Work Plan; Treatability Testing Sampling and Analysis Plan; Treatability Testing Health and Safety Plan **[delete any of the foregoing not required as a deliverable and add any additional deliverables, if desired]**; and draft FS Report]. While awaiting EPA approval, approval on condition, or modification of these deliverables, Respondents shall proceed with all other tasks and activities that may be conducted independently of these deliverables, in accordance with the schedule set forth under this Settlement.
- (g) For all remaining deliverables not listed in ¶ 5.5(f), Respondents shall proceed with all subsequent tasks, activities, and deliverables without awaiting EPA approval of the submitted deliverable. EPA reserves the right to stop Respondents from proceeding further, either temporarily or permanently, on any task, activity, or deliverable at any point during the Work.
- (h) **Material Defects.** If an initially submitted or resubmitted plan, report, or other deliverable contains a material defect, and the plan, report, or other deliverable is disapproved or modified by EPA under ¶ 6.5(a) (Initial Submissions) or (b) (Resubmissions) due to such material defect, Respondents shall be deemed in violation of this Settlement for failure to submit such plan, report, or other deliverable timely and adequately. Respondents may be subject to penalties for such violation as provided in Section [XIV] (Stipulated Penalties) of the Settlement.

**6.6 [State/Tribal] Review and Comment.** The [State/Tribe] will have a reasonable opportunity for review and comment prior to any EPA approval or disapproval under ¶ 6.5 of any deliverables that are required to be submitted for EPA approval.

**6.7 Notice of Completion of RI/FS Work.** When EPA determines that all RI/FS Work has been fully performed in accordance with this Settlement, with the exception of any continuing obligations required by this Settlement, including **[insert list of such**



**obligations**, e.g., payment of Future Response Costs [, if applicable: land, water, or other resource use restrictions] and Record Retention], EPA will provide written notice to Respondents. If EPA determines that any Work has not been completed in accordance with this Settlement, EPA will notify Respondents, provide a list of the deficiencies, and require that Respondents modify the RI/FS Work Plan, if appropriate, in order to correct such deficiencies. Respondents shall implement the modified and approved RI Work Plan and shall submit a modified draft RI Report and/or FS Report in accordance with the EPA notice. Failure by Respondents to implement the approved modified RI/FS Work Plan shall be a violation of this Settlement.

## 7. SCHEDULE

- 7.1** All deliverables and tasks required under this SOW shall be submitted or completed by the deadlines or within the time durations listed in the RI/FS schedule set forth below. Respondents may submit proposed revised RI/FS schedules for EPA approval. Upon EPA's approval, the revised RI/FS schedule supersedes any prior RI/FS schedule.

Description	Reference	Deadline
Designate CI Coordinator	<b>¶ Error! Reference source not found.</b>	Within X days after EPA request
Technical Assistance Grant [Technical Assistance Plan]	¶ 0	Within X days after EPA request
Previous Investigation Report	¶ 3.1	Within X days after Effective Date
Conceptual Site Model Report	¶ 3.2	Within X days after Effective Date
Remedial Investigation Work Plan	¶ 3.3(a)	Within X days after Effective Date
Identification of Candidate Treatment Technologies Memorandum	¶ 3.5(a)	Within X days after EPA request
Treatability Test Work Plan	<b>¶ 3.5(b) Error! Reference source not found.</b>	X days after EPA approval of Identification of Candidate Treatment Technologies Memorandum (¶ 3.5(a))
Treatability Study Evaluation Report	¶ 3.5(c)	X days after the completion of the Treatability Test Work Plan (¶ 3.5(b))
Refine RAOs and ARARs	¶ 4.2(a)	Within X days after EPA request
Identify and Evaluate Remedial Technologies	¶ 4.2(b)	Within X days after EPA request and concurrent with Refine RAOs and ARARs (¶ 4.2(a))

Comparative Analysis of Alternatives	¶ 4.2(c) <b>Error ! Reference source not found.</b>	X days after EPA approval of Refine RAOs and ARARs (¶ 4.2(a)) and Identify and Evaluate Remedial Technologies (¶ 4.2(b))
Environmental Justice Concerns about Disproportionate Impacts	¶ 4.2(d)	X days after EPA approval of Comparative Analysis of Alternatives (¶ 4.2(c))
Refine IC Evaluation	¶ 4.2(e)	X days after EPA approval of Comparative Analysis of Alternatives (¶ 4.2(c)) and concurrent with Environmental Justice Concerns about Disproportionate Impacts (¶ 4.2(d))
Draft FS Report	¶ 4.2(f) <b>Error ! Reference source not found.</b>	X days after EPA approval of Environmental Justice Concerns about Disproportionate Impacts (¶ 4.2(d)) and Refine IC Evaluation (¶ 4.2(e))
Kickoff Meeting	¶ 5.1(a)	Within X days after Effective Date

## 8. REFERENCES

8.1 The following regulations and guidance documents, among others, apply to the Work. Any item for which a specific URL is not provided below is available on one of the two EPA web pages listed in ¶ 8.2:

- (a) A Compendium of Superfund Field Operations Methods, OSWER 9355.014, EPA/540/P-87/001a (Aug. 1987).
- (b) CERCLA Compliance with Other Laws Manual, Part I: Interim Final, OSWER 9234.1-01, EPA/540/G-89/006 (Aug. 1988).
- (c) Guidance for Conducting Remedial Investigations and Feasibility Studies, OSWER 9355.3-01, EPA/540/G-89/004 (Oct. 1988).
- (d) CERCLA Compliance with Other Laws Manual, Part II, OSWER 9234.1-02, EPA/540/G-89/009 (Aug. 1989).
- (e) Guide to Management of Investigation-Derived Wastes, OSWER 9345.303FS (Jan. 1992).
- (f) Permits and Permit Equivalency Processes for CERCLA On-Site Response Actions, OSWER 9355.703 (Feb. 1992).
- (g) Guidance for Conducting Treatability Studies under CERCLA, OSWER 9380.3-10, EPA/540/R-92/071A (Nov. 1992).

**Commented [A16]:** Case teams may modify the list to add references specific to the RI/FS or to any applicable Regional guidance.

- (h) National Oil and Hazardous Substances Pollution Contingency Plan; Final Rule, 40 C.F.R. part 300 (Oct. 1994).
- (i) EPA Guidance for Data Quality Assessment, Practical Methods for Data Analysis, QA/G-9, EPA/600/R-96/084 (July 2000).
- (j) Guidance for Quality Assurance Project Plans, QA/G-5, EPA/240/R-02/009 (Dec. 2002).
- (k) Institutional Controls: Third Party Beneficiary Rights in Proprietary Controls (Apr. 2004).
- (l) Quality management systems for environmental information and technology programs -- Requirements with guidance for use, ASQ/ANSI E4:2014 (American Society for Quality, Feb. 2014).
- (m) Uniform Federal Policy for Quality Assurance Project Plans, Parts 1-3, EPA/505/B-04/900A through 900C (Mar. 2005).
- (n) Superfund Community Involvement Handbook, OLEM 9230.0-51 (Mar. 2020). More information on Superfund community involvement is available on the Agency's Superfund Community Involvement Tools and Resources web page at <https://www.epa.gov/superfund/community-involvement-tools-and-resources>.
- (o) EPA Guidance on Systematic Planning Using the Data Quality Objectives Process, QA/G-4, EPA/240/B-06/001 (Feb. 2006).
- (p) EPA Requirements for Quality Assurance Project Plans, QA/R-5, EPA/240/B-01/003 (Mar. 2001, reissued May 2006).
- (q) EPA Requirements for Quality Management Plans, QA/R-2, EPA/240/B-01/002 (Mar. 2001, reissued May 2006).
- (r) EPA Directive CIO 2105.1 (Environmental Information Quality Policy (Mar. 31, 2021), [https://www.epa.gov/sites/production/files/2021-04/documents/environmental\\_information\\_quality\\_policy.pdf](https://www.epa.gov/sites/production/files/2021-04/documents/environmental_information_quality_policy.pdf)).
- (s) USEPA Contract Laboratory Program Statement of Work for Organic Superfund Methods (Multi-Media, Multi-Concentration), SOM02.4 (Oct. 2016), <https://www.epa.gov/clp/epa-contract-laboratory-program-statement-work-organic-superfund-methods-multi-media-multi-1>.
- (t) EPA National Geospatial Data Policy, CIO Policy Transmittal 05-002 (Aug. 2008), <https://www.epa.gov/geospatial/geospatial-policies-and-standards> and <https://www.epa.gov/geospatial/epa-national-geospatial-data-policy>.
- (u) Summary of Key Existing EPA CERCLA Policies for Groundwater Restoration, OSWER 9283.1-33 (June 2009).

- (v) Principles for Greener Cleanups (Aug. 28, 2009), <https://www.epa.gov/greenercleanups/epa-principles-greener-cleanups>.
- (w) Consideration of Greener Cleanup Activities in the Superfund Cleanup Process (Aug. 2, 2016), <https://semspub.epa.gov/work/HQ/100000160.pdf>.
- (x) **Providing** Communities with Opportunities for Independent Technical Assistance in Superfund Settlements, Interim (Sept. 2009).]
- (y) Close Out Procedures for National Priorities List Superfund Sites, OSWER 9320.2-22 (May 2011), <https://www.epa.gov/superfund/close-out-procedures-national-priorities-list-superfund-sites>.
- (z) Groundwater Road Map: Recommended Process for Restoring Contaminated Groundwater at Superfund Sites, OSWER 9283.1-34 (July 2011).
- (aa) Recommended Evaluation of Institutional Controls: Supplement to the “Comprehensive Five-Year Review Guidance,” OSWER 9355.7-18 (Sept. 2011).
- (bb) **Updated Superfund Response and Settlement Approach for Sites Using the Superfund Alternative Approach**, OSWER 9200.2125 (Sept. 2012).]
- (cc) Institutional Controls: A Guide to Planning, Implementing, Maintaining, and Enforcing Institutional Controls at Contaminated Sites, OSWER 9355.0-89, EPA/540/R-09/001 (Dec. 2012).
- (dd) Institutional Controls: A Guide to Preparing Institutional Controls Implementation and Assurance Plans at Contaminated Sites, OSWER 9200.0-77, EPA/540/R-09/02 (Dec. 2012).
- (ee) EPA’s Emergency Responder Health and Safety Manual, OSWER 9285.3-12 (July 2005 and updates), [https://www.epaossc.org/\\_HealthSafetyManual/manual-index.htm](https://www.epaossc.org/_HealthSafetyManual/manual-index.htm).
- (ff) Guidance on Systematic Planning Using the Data Quality Objectives Process, EPA QA/G-4, EPA/240/B-06/001, Office of Environmental Information (Feb. 2006), <https://www.epa.gov/sites/production/files/2015-06/documents/g4-final.pdf>.
- (gg) Consideration of Tribal Treaty Rights and Traditional Ecological Knowledge in the Superfund Remedial Program, OLEM 9200.2-177 (Jan. 2017), <https://semspub.epa.gov/src/document/11/500024668>.
- (hh) Smart Scoping for Environmental Investigation Technical Guide, EPA/542/G-18/004 (Nov. 2018), <https://semspub.epa.gov/work/HQ/100001799.pdf>.
- (ii) Strategic Sampling Approaches Technical Guide, EPA/542/-F-18/005 (Nov. 2018), <https://semspub.epa.gov/work/HQ/100001800.pdf>.

**Commented [A17]:** Keep this only if SOW requires a TAP.

**Commented [A18]:** Keep only if site is an SAA Site.

- (jj) Best Practices for Data Management, EPA/542/F-18/003, (Nov. 2018), <https://semspub.epa.gov/work/HQ/100001798.pdf>.
- (kk) Smart Scoping of an EPA-Lead Remedial Investigation/Feasibility Study, EPA/542/F-19/0006 (Oct. 2020), <https://semspub.epa.gov/work/HQ/100002571.pdf>.
- (ll) Interim Final Risk Assessment Guidance for Superfund, Volume I - Human Health Evaluation Manual (Part A), RAGS, EPA/540/1-89/002, OSWER 9285.7-01A (Dec. 1989), <https://www.epa.gov/risk/risk-assessment-guidance-superfund-rags-part>.
- (mm) Interim Final Risk Assessment Guidance for Superfund, Volume I - Human Health Evaluation Manual (Part D, Standardized Planning, Reporting, and Review of Superfund Risk Assessments), OSWER 9285.7-47 (Dec. 2001), <https://www.epa.gov/risk/risk-assessment-guidance-superfund-rags-part-d>.
- (nn) Ecological Risk Assessment Guidance for Superfund: Process for Designing and Conducting Ecological Risk Assessments, (“ERAGS”), EPA/540/R-97/006, OSWER 9285.7-25 (June 1997).
- (oo) Reuse Assessments: A Tool to Implement the Superfund Land Use Directive. OSWER 9355.7-06P (June 4, 2001), <http://www.epa.gov/superfundcommunity/relocationireusefinal.pdf>.
- (pp) ECO Update: The Role of Screening-Level Risk Assessments and Refining Contaminants of Concern in Baseline Ecological Risk Assessments, EPA/540/F-01/014 (June 2001).
- (qq) EPA QA Field Activities Procedure CIO 2105-P-02.1 (Sept. 23, 2014)
- (rr) EPA Requirements for Quality Management Plans (QA/R-2) EPA/240/B-01/002 (Mar. 2001, reissued May 2006).
- (ss) Summary of Key Existing EPA CERCLA Policies for Groundwater Restoration, OSWER 9283.1-33 (June 2009).
- (tt) Considering Reasonably Anticipated Future Land Use and Reducing Barriers to Reuse at EPA-lead Superfund Remedial Sites. OSWER 9355.7-19 (Mar. 2010).
- (uu) Consideration of Climate Resilience in the Superfund Cleanup Process for Non-Federal National Priorities List Sites (June 30, 2021).

**8.2** A more complete list may be found on the following EPA web pages:

- (a) Superfund Laws, Policy, and Guidance: <https://www.epa.gov/superfund/superfund-policy-guidance-and-laws>.

- (b) Collection of Methods: <https://www.epa.gov/measurements/collection-methods>.
- (c) Quality Assurance:
  - (1) EPA QA Field Activities Procedures: <https://www.epa.gov/irmpoli8/epa-qa-field-activities-procedures>.
  - (2) Policy to Assure Competency of Laboratories, Field Sampling, and Other Organizations Generating Environmental Measurement Data under Agency-Funded Acquisitions: [https://www.epa.gov/sites/default/files/2016-11/documents/fem-lab-competency-policy\\_policy\\_updated\\_nov2016.pdf](https://www.epa.gov/sites/default/files/2016-11/documents/fem-lab-competency-policy_policy_updated_nov2016.pdf).
  - (3) Superfund Contract Laboratory Program: <https://www.epa.gov/clp>.
  - (4) Test Methods for Evaluating Solid Waste: Physical/Chemical Methods (SW-846), Second edition (July 1982): <https://www.epa.gov/hw-sw846>.
  - (5) Standard Methods for the Examination of Water and Wastewater: <http://www.standardmethods.org/>.
  - (6) Air Toxics - Monitoring Methods: <https://www.epa.gov/amtic/compendium-methods-determination-toxic-organic-compounds-ambient-air.gov>.
- (d) Superfund Redevelopment Basics: Policy, Guidance, and Resources: <https://www.epa.gov/superfund-redevelopment-initiative/superfund-redevelopment-basics#policy>.
- (e) Superfund Green Remediation: <https://www.epa.gov/superfund/superfund-green-remediation>.
- (f) Superfund Climate Resilience: <https://www.epa.gov/superfund/superfund-climate-resilience>.
- (g) Ecological Risk Assessment: <https://www.epa.gov/risk/ecological-risk-assessment>.

**8.3** For any regulation or guidance referenced in the Settlement or SOW, the reference will be read to include any subsequent modification, amendment, or replacement of such regulation or guidance. Such modifications, amendments, or replacements apply to the Work only after Respondents receive notification from EPA of the modification, amendment, or replacement.

## 9. APPENDIX – TECHNICAL ASSISTANCE PLAN INSERTS

### 2.4 Settling Respondents' Responsibilities for a Technical Assistance Plan

- (a) At EPA's request, Respondents shall arrange for a qualified community group to receive the services of a technical advisor(s) who can: (i) help group members understand Site cleanup issues (specifically, to interpret and comment on Site-related documents developed under this SOW); and (ii) share this information with others in the community. The technical advisor(s) will be independent from Respondents. Respondents' TAP assistance will be limited to \$50,000, except as provided in ¶ 9(d)(3), and will end when EPA issues the ROD based on the RI/FS conducted pursuant to this SOW. Respondents shall implement this requirement under a TAP.
- (b) At EPA's request, Respondents shall cooperate with EPA in soliciting interest from community groups regarding a TAP at the Site. If more than one community group expresses an interest in a TAP, Respondents shall cooperate with EPA in encouraging the groups to submit a single, joint application for a TAP.
- (c) At EPA's request, Respondents shall, within [30] days, submit a proposed TAP for EPA approval. The TAP shall describe Respondents' plans for the qualified community group to receive independent technical assistance. The TAP must include the following elements:
  - (1) For Respondents to arrange for publication of a notice in local media that they have received a Letter of Intent ("LOI") to submit an application for a TAP. The notice shall explain how other interested groups may also try to combine efforts with the LOI group or submit their own applications, by a reasonable specified deadline;
  - (2) For Respondents to review the application(s) received and determine the eligibility of the community group(s). The proposed TAP shall include eligibility criteria as follows:
    - (i) A community group is eligible if it is: (a) comprised of people who are affected by the release or threatened release at the Site, and (b) able to demonstrate its ability to adequately and responsibly manage TAP-related responsibilities by identifying a point of contact for the TAP and provided to EPA a process for communication with the TAP to address community group concerns.
    - (ii) A community group is ineligible if it is: (a) a potentially responsible party ("PRP") at the Site, represents such a PRP, or receives money or services from a PRP (other than through the TAP); (b) affiliated with a national organization; (c) an academic

**Commented [A19]:** First, if this TAP provision is included, then ensure that the Termination provision of the ASAOC itself does not provide for termination of the Respondent's obligations upon EPA's approval of a final RI/FS report. The Termination provision should be modified to reflect that the Respondent's TAP obligation would not expire until EPA's issuance of its ROD. Second, depending on status of the group's efforts and any EPA settlement negotiations for the Respondent to implement the remedy selected in the ROD, EPA may consider negotiating an ASAOC provision (or, more likely, amending the provision in the future) that continues the TAP arrangement beyond ROD issuance and until such remedy negotiations are completed. That would allow the community group to obtain independent technical assistance during such RD/RA negotiations.

**Commented [A20]:** The above paragraph does not necessarily mean that Respondents will transfer funds to the community group. Respondents may elect, for example, to enter into an agreement providing that the community group direct its advisor to provide certain services, with the community group later receiving an invoice from the advisor, approving it, and sending the invoice to Respondents for payment.

**Commented [A21]:** If a community group expresses interest in participating in a TAP and appears to be eligible, then EPA generally will request that Respondents prepare and submit a TAP. See "Interim Guidance: Providing Communities with Opportunities for Independent Technical Assistance in Superfund Settlements" (Sept. 3, 2009).

institution; (d) a political subdivision; (e) a tribal government; (f) a group established or presently sustained by any of the above ineligible entities; or (g) a group in which any of the above ineligible entities is represented.

- (3) For Respondents to notify EPA of their determination on eligibility of the applicant group(s) to ensure that the determination is consistent with the SOW before notifying the group(s);
  - (4) If more than one community group submits a timely application, for Respondents to review each application and evaluate each application based on the following elements:
    - (i) The extent to which the group is representative of those persons affected by the Site; and
    - (ii) The effectiveness of the group's proposed system for managing TAP-related responsibilities, including its plans for working with its technical advisor and for sharing Site-related information with other members of the community.
  - (5) For Respondents to document their evaluation of, and their selection of, a qualified community group, and to brief EPA regarding their evaluation process and choice. EPA may review Respondents' evaluation process to determine whether the process satisfactorily follows the criteria in ¶ 9(c)(4). TAP assistance may be awarded to only one qualified group at a time;
  - (6) For Respondents to notify all applicant(s) about Respondents' decision;
  - (7) For Respondents to designate a person ("TAP Coordinator") to be their primary contact with the selected community group;
  - (8) A description of Respondents' plans to implement the requirements of ¶ 9(d) (Agreement with Selected Community Group); and
  - (9) For Respondents to submit quarterly progress reports regarding the implementation of the TAP.
- (d) Agreement with Selected Community Group
- (1) Respondents shall negotiate an agreement with the selected community group that specifies the duties of Respondents and the community group. The agreement shall specify the activities that may be reimbursed under the TAP and the activities that may not be reimbursed under the TAP. The list of allowable activities shall be consistent with 40 C.F.R. § 35.4070 (e.g., obtaining the services of an advisor to help the group understand the nature of the hazards at the Site and the various stages of the response

**Commented [A22]:** Respondents' obligations to implement a TAP and their obligation to support EPA's Community Involvement Activities are distinct obligations. The EPA Remedial Project Manager (RPM) might not request that Respondents prepare and implement a TAP (and designate a TAP Coordinator) since, historically, community groups have expressed interest in TAPs in only about 20% of settlements that contain TAP provisions. Similarly, the RPM might not request that Respondents designate a CI Coordinator, since the RPM might decide EPA does not need Respondents' support. Therefore, the deadlines for designating a TAP coordinator and for designating a CI Coordinator may be different. However, Respondents generally will designate the same individual for both responsibilities if both requirements are triggered.



action, and communicating Site information to others in the community). The list of non-allowable activities shall be consistent with 40 C.F.R. § 35.4075 (e.g., activities related to litigation or political lobbying).

- (2) The agreement shall provide that Respondents' review of the community group's recommended choice for Technical Advisor will be limited, consistent with 40 C.F.R. §§ 35.4190 and 35.4195, to criteria such as whether the advisor has relevant knowledge, academic training, and relevant experience as well as the ability to translate technical information into terms the community can understand.
- (3) The agreement shall provide that the community group is eligible for additional TAP assistance, if it can demonstrate that it has effectively managed its TAP responsibilities to date, and that at least three of the following eight factors are satisfied:
- (i) EPA expects that more than eight years (beginning with the initiation of the RI/FS) will pass before construction completion will be achieved;
  - (ii) EPA requires treatability studies or evaluation of new and innovative technologies;
  - (iii) The public health assessment (or related activities) for the Site indicates the need for further health investigations and/or health-related activities;
  - (iv) After Respondents' selection of the community group for the TAP, EPA designates additional operable units at the Site;
  - (v) After Respondents' selection of the community group, a legislative or regulatory change results in significant new Site information;
  - (vi) Significant public concern about the Site exists, as evidenced, e.g., by relatively large turnout at meetings, the need for multiple meetings, the need for numerous copies of documents to inform community members, etc.;
  - (vii) Any other factor that, in EPA's judgment, indicates that the Site is unusually complex; or
  - (viii) A RI/FS costing at least \$2 million is being or was performed at the Site pursuant to this Settlement.
- (4) Respondents are entitled to retain any unobligated TAP funds upon EPA's issuance of its ROD.

**Commented [A23]:** EPA has developed a sample agreement to use as a starting point for negotiations between Respondents and the selected community group. The sample agreement is available from the Office of Site Remediation Enforcement upon request.

- (5) Respondents shall submit a draft of the proposed agreement to EPA for its comments.

## Editing Instructions Regarding Automated Features

This document uses styles to make editing easier. Please do not try to format any paragraphs manually. Instead, use the tailor-made “quick style” buttons. They are accessible from the “Home” tab. There is a quick style for each of the six numbered levels, and they are “LVL 1” through “LVL 6.” All Section headings, which have “LVL 1” formatting, will appear in the Table of Contents (TOC). Do not manually renumber any internal cross references, as they are all automatic. Use the “Update Field” command instead [Ctrl-A, right click, “Update Field,” OK]. Cross references to the Settlement are bracketed and in bold in the text as they must be manually updated. There are additional editing instructions are on the next page.

FEATURE	INSTRUCTION
<b>INSERTING TEXT COPIED FROM A DIFFERENT DOCUMENT</b>	Text copied from a different document will usually have embedded formatting codes. Pasting the text into your document will cause the formatting codes to be inserted as well, which will create unpredictable and frustrating formatting and numbering results. <b>Therefore, ALWAYS use the “Paste Special” function to insert text copied from another document.</b> Press Ctrl-Alt-V; in the pop-up menu, click “Unformatted Text” and OK. (You can also click the Home tab, Paste, Paste Special, Unformatted Text and OK.)
<b>INSERTING A NEW PARAGRAPH</b>	Click at the end of the paragraph immediately preceding the place where you wish to add the new <b>paragraph</b> , and press Enter. To change the new paragraph's outline level use (under the Home tab) the styles menu. For example, to change ¶ 2.1.c into ¶ 2.1.b(1), click in that paragraph and then (using the Home tab) click the “LVL 3” style. To change ¶ 3.1.a into ¶ 3.2, click in that paragraph and then (using the Home tab) click the “LVL 2” Style.
<b>ADDING AN UPDATEABLE SECTION OR PARAGRAPH CROSS-REFERENCE</b>	(a) Click where you wish to insert a cross-reference; (b) Click the “References” tab, and, in the “Captions” box, click “Cross-reference;” (c) In the pop-up menu that appears, make sure the “Reference type” field contains “Numbered item” and the “Insert reference to” field contains “Paragraph Number (full context);” (d) In the “For which numbered item” field” select the numbered item (section, paragraph, or subparagraph) you wish to cross-reference and click “Insert”.
<b>UPDATING THE CROSS-REFERENCES</b>	Press Ctrl-A (to select entire document); right click; in the pop-up menu, click “Update Field;” click OK. Note: If a numbered paragraph that has been cross-referenced elsewhere in the document is deleted, remove the obsolete paragraph cross-reference. Otherwise, when you update the cross-references, the following message will appear: “Error! Reference source not found.”
<b>UPDATING THE TABLE OF CONTENTS</b>	Right-click in the TOC, and in the pop-up menu, left-click “Update Field.” Or click in the TOC, press F9, click Update Entire Table and OK. If you have just added a new section heading, click Update entire table before pressing Enter.
<b>INSERTING A NEW SECTION HEADING</b>	Click in the text of the new heading and assign the “LVL 1” paragraph style to the text by clicking the “Home” tab, and in Styles box, clicking the “LVL 1” style button.) That will add the section number, change the numbering of later sections, and ensure that the new section will be referenced in the table of contents.
<b>CHANGING THE FONT</b>	Press Ctrl-A (to select entire document); right click; in the pop-up menu, click “Font;” in the “font” field, select a new font; click OK.