



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

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

SUBJECT: Issuance of the 2022 Model Administrative Settlement Agreement for Removal Action

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

CYNTHIA MACKEY
Digitally signed by CYNTHIA
MACKEY
Date: 2022.09.29 10:25:11 -04'00'

TO: Regional Counsels, Regions 1-10
Superfund National Program Managers, Regions 1-10

I. Introduction

This memorandum transmits the revised Model Administrative Settlement Agreement and Order on Consent for Removal Action ("Removal ASAOC Model"). The Office of Site Remediation Enforcement (OSRE) developed these models in collaboration with HQ and regional offices and the Department of Justice (DOJ).

The revised Removal ASAOC Model is available for use in Word format under the removal category on OSRE's Cleanup Enforcement Model Language and Sample Documents Database at <https://cfpub.epa.gov/compliance/models/>.¹

II. Explanation of Revisions

EPA's Office of Site Remediation Enforcement (OSRE) updated the PRP Removal Model to encourage cleanup by responsible parties. The Removal ASAOC Model incorporates:

- Streamlined provisions and work provisions consistent, where appropriate, with other CERCLA model documents to ensure consistency in the implementation of response actions; and
- Community engagement revisions in support of the Administrator's Regan's prioritization of the protection of communities disproportionately affected by environmental burdens. These changes include provisions for community impact mitigation activities to reduce impacts (e.g., dust, odor, traffic) to areas frequented by community members; monitoring in community areas; and communication regarding validated sampling data.

¹ This model supersedes the 2015 Model Administrative Settlement Agreement and Order on Consent for Removal Actions.

The new community involvement provisions are made also 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). These changes are anchored in the ideas outlined in OECA’s July 1, 2021, memorandum titled “[Strengthening Environmental Justice Through Cleanup Enforcement Actions](#).” These provisions are designed to be included in site-specific removal ASAOs, as appropriate. Regions should 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 Removal ASAO Model is effective as of the date of this transmittal memorandum and should be used for all new removal negotiations with potentially responsible parties (PRPs). For removal negotiations that are already underway, EPA Regions should continue negotiations using the 2015 version of the model ASAO. However, OSRE requests that case teams work with OSRE’s Regional Support Division to incorporate the new environmental justice provisions into the Removal ASAO 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.²

IV. Contacts

Please direct any questions about the PRP Removal Model to Robert Abrams, Regional Support Division (202-564-4805, abrams.robert@epa.gov) or Brian Schlieger, Office of Emergency Management’s (OEM), Preparedness and Response Operations Division (202-564-3128, schlieger.brian@epa.gov).

V. 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.

Attachment

cc: Larry Starfield, Acting Assistant Administrator, Office of Enforcement and Compliance Assurance (OECA)
Kathryn Caballero, Director, Federal Facilities Enforcement Office, OECA
Carlton Waterhouse, Acting Assistant Administrator, Office of Land and Emergency Management (OLEM)
Barry Breen, Principal Deputy Assistant Administrator, OLEM

² Additionally, the 2022 Removal ASAO Model 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.

Larry Douchand, Director, Office of Site Remediation and Technology Innovation, OLEM
Kathleen Salyer, Director, Office of Emergency Management, OLEM
David R. Lloyd, Office of Brownfields and Land Revitalization, OLEM
Greg Gervais, Director, Federal Facilities Restoration and Reuse Office, 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
Superfund Removal Managers, Regions 1-10
Chief, Environmental Enforcement Section, Environment and Natural Resources Division,
Department of Justice

**MODEL ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON
CONSENT FOR REMOVAL ACTION**

September 2022

This document contains automatic section and paragraph numbers, 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 the end for more details.

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. 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 or its internal implementing procedures.

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION ____

IN THE MATTER OF:

[Site Name and Location]

CERCLA Docket No. ____

[Name(s) of Respondent(s)],

Respondent(s)

and

Names of Settling Federal
Agencies

Proceeding Under Sections 104, 106(a), 107 and
122 of the Comprehensive Environmental
Response, Compensation, and Liability Act

**ADMINISTRATIVE SETTLEMENT
AGREEMENT AND ORDER ON
CONSENT FOR REMOVAL ACTION**

Commented [A1]: This caption 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 [A2]: If there are many Respondents, attach an appendix and refer to it instead.

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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 removal action 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 **[insert address or descriptive location of Site]** in **[city or Town, County of _____, state]**.

2. This Settlement is issued under the authority vested in the President of the United States by sections 104, 106(a), 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. **[insert if ¶ 9.f endangerment determination included: 14-14A (Determinations of Imminent and Substantial Endangerment, Jan. 31, 2017), 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. EPA has notified the State [Commonwealth] of _____ (the “State”) of this action pursuant to section 106(a) of CERCLA.

4. EPA, the Respondents, and the 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 the 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, and conclusions of law and determinations in Sections IV and V of this Settlement. Respondents and Settling Federal Agencies agree to comply with and be bound by the terms of this Settlement and 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 **[heirs and]** successors. 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’ obligations under this Settlement.

Commented [A3]: Include “heirs” if Respondent is both an Individual and a prospective owner of the Property.

6. Respondents shall provide notice of this Settlement to officers, directors, employees, agents, contractors, subcontractors, or any person representing Respondents with respect to the Site or the Work. Respondents are responsible for ensuring that such parties act in accordance with the terms of this Settlement.

III. DEFINITIONS

7. Terms not otherwise defined in this Settlement have the meanings assigned in CERCLA or in regulations promulgated under CERCLA. Whenever the terms set forth below are used in this Settlement, the following definitions apply:

“Action Memorandum” means the EPA [insert either Action Memorandum or Action Memorandum/Enforcement] relating to the Site signed on [date], by the Regional Administrator, EPA Region __, or their delegatee, and all attachments thereto. The “Action Memorandum” is attached as Appendix __.

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

“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 XXVII.

“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; [insert as appropriate: (iii) in implementing community involvement activities under ¶ 20;] (iii) in assisting or taking action to obtain access [or use restrictions] under ¶ 35; (iv) [if Financial Assurance included: in taking action under ¶ 41 (Access to Financial Assurance)]; (v) in taking response action described in ¶ 68 because of Respondents’ failure to take emergency action under ¶ 24; (vi) in implementing a Work Takeover under ¶ 31; and (vii) in enforcing this Settlement, including all costs paid under Section XIV (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.]

“Including” or “including” means “including but not limited to.”

Commented [A4]: These definitions may be augmented or omitted as appropriate.

“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>.

“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.

[“Post-Removal Site Control” means actions necessary to ensure the effectiveness and integrity of the Removal Action consistent with sections 300.415(l) and 300.5 of the NCP and “Policy on Management of Post-Removal Site Control” (OSWER 9360.2-02, Dec. 3, 1990).]

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

“Removal Action” means the removal action [use either “selected in the Action Memorandum” or “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 **Error! Reference source not found.**), and all deliverables approved under and incorporated into this Settlement. If there is a conflict between a provision in Sections I through XXVII and a provision in any appendix or deliverable, the provision in Sections I through XXVII controls.

“Settling Federal Agency” means DoD including its past and present components. DoD means the Department of Defense as described in 10 U.S.C. § 111.

“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.

Commented [A5]: NOTE: If including ¶ 75 (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.]

Commented [A6]: Insert the following definition if Past Response Costs are being paid under the Settlement.]

["Past Response Costs" means all costs (including direct, indirect, payroll, contractor, travel, and laboratory costs), that the United States paid in connection with the Site through [either the Effective Date or the date of the ICS used to define past costs], plus all interest on such costs through such date.]

Commented [A7]: 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 [A8]: If there are many Respondents, list them in an appendix and insert this definition: “Respondents” means those Parties identified in Appendix ____.”

If Settling Federal Agencies are participating in this settlement, copy and insert the applicable provisions from the RDRA Consent Decree model.

“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 [insert Site Name, if appropriate] 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 implement and maintain the effectiveness of the Removal Action, 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.

“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 (Coordination and Supervision) through XI (Indemnification and Insurance).

“Work Takeover” means EPA’s assumption of the performance of any of the Work in accordance with ¶ 31.

IV. FINDINGS OF FACT

8.

V. CONCLUSIONS OF LAW AND DETERMINATIONS

9. 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.

Commented [A9]: 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 [A10]: 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” available at _____.

Commented [A11]: Keep this definition if ¶ 49 provides that payments for past or future costs may be deposited into the Site’s Special Account.

Commented [A12]: RD/RA CD definition now reads “State” means the State [or Commonwealth] of _____.

Commented [A13]: Substitute the following definition of “Tribe” for the definition of “State” if the Site is entirely on tribal land. Add a definition for “Tribe” in addition to the definition of “State” if both have a role at or interest in the Site. Additional changes will be needed throughout the Settlement to either add and/or substitute the Tribe for the State.] [“Tribe” means the ____ Tribe.]

Commented [A14]: Because Findings of Fact are site-specific, no model language is provided. Facts should be presented concisely, accurately, and logically. Regions should include a discussion of the following points: identification of Respondents; Site location and description; Site history and operations; Site ownership; enforcement history; general categories of Respondents’ liability; past EPA and/or State activity _____.

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

e. The conditions described in [§§ __ of] the Findings of Fact constitute an actual or threatened “release” of a hazardous substance from the facility as defined by section 101(22) of CERCLA.

f. [The conditions described in [§§ __ of] the Findings of Fact above may constitute an imminent and substantial endangerment to the public health or welfare or the environment because of an actual or threatened release of a hazardous substance from the facility within the meaning of section 106(a) of CERCLA.] [EPA determined in an Action Memorandum dated _____, that the conditions [at the Site] [described in [§§ __ of] the Findings of Fact above] may constitute an imminent and substantial endangerment to the public health or welfare or the environment because of an actual or threatened release of a hazardous substance from the facility within the meaning of section 106(a) of CERCLA.]

g. The Removal Action is necessary to protect the public health, welfare, or the environment.

Commented [A15]: The case team should specify each category of liability under section 107, using these §§.

Commented [A16]: Keep this sentence if an endangerment determination is being made in the Settlement.

Commented [A17]: Keep this sentence if the endangerment determination was made in the Action Memorandum. (Don’t use both sentences.)

VI. ORDER AND AGREEMENT

10. 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 as follows:

VII. COORDINATION AND SUPERVISION

11. Respondents' Project Coordinator

a. Respondents shall designate and notify EPA, within [10] days after the Effective Date, of the name, title, contact information, and qualifications of the Respondents' proposed Project Coordinator. Respondents' Project Coordinator will be responsible for administration of all actions by Respondents required by this Settlement.

b. Respondents' Project Coordinator must have sufficient technical expertise to coordinate the Work. To the greatest extent possible, the Project Coordinator shall be present on Site or readily available during Site work.

c. Notice or communication relating to this Settlement from EPA to Respondents' Project Coordinator constitutes notice or communication to all Respondents.

d. Respondents may change their Project Coordinator by following the procedures under ¶ 12.

12. Procedures for Notice and Disapproval

a. Respondents shall notify EPA of the names, titles, contact information, and qualifications of any contractors or subcontractors retained to perform the Work at least ___ days prior to commencement of such Work.

b. EPA may issue notices of disapproval regarding any proposed Project Coordinator, contractor, or subcontractor, as applicable. If EPA issues a notice of disapproval, Respondents shall, within ___ days, submit to EPA a list of supplemental proposed Project Coordinators, contractors, or subcontractors, as applicable, including a description of the qualifications of each.

c. EPA may disapprove the proposed Project Coordinator, contractor, or subcontractor, based on objective assessment criteria (*e.g.*, experience, capacity, technical expertise), if they have a conflict of interest regarding the project, or any combination of these factors.

13. **EPA On-Scene Coordinator.** EPA designates _____ of the [insert Regional Office, *e.g.*, Emergency and Enforcement Response Branch, Region __], as its On-Scene Coordinator ("OSC"). The OSC has the authorities described in the NCP, including oversight of Respondents' implementation of the Work, authority to halt, conduct, or direct any Work, or to direct any other removal action undertaken at the Site. The OSC's absence from the Site is not a

Commented [A18]: If EPA has already accepted Respondents' designated Project Coordinator, substitute the following sentence for this sentence: Respondents have proposed, and EPA has not disapproved the following Project Coordinator: [name and contact information].

Commented [A19]: In non-time critical removal actions, a Remedial Project Manager (RPM) may oversee the work rather than an OSC. In that case, if the RPM is not also authorized to act as an OSC, replace "On-Scene Coordinator" and "OSC" with "Project Coordinator" here and throughout the Settlement.

cause for stoppage of work. EPA may change its OSC and will notify Respondents of any such change.

VIII. PERFORMANCE OF THE WORK

14. Respondents shall perform the Work in accordance with this Settlement, including all EPA-approved, conditionally approved, or modified deliverables as required by this Settlement. The Work includes, at a minimum, all actions necessary to implement [the Removal Action, including] [the Scope of Work, including] the following: _____.

15. 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.

16. For any regulation or guidance referenced in the Settlement, 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.

17. **Removal Work Plan.** Within ___ days after the Effective Date, Respondents shall submit to EPA for approval in accordance with ¶ 21 (Deliverables: Specifications and Approval) a work plan for performing the Work (the "Removal Work Plan") as described in ¶ 14. [The Removal Work Plan must include a description of, and an expeditious schedule for, the actions required by this Settlement.] [The Removal Work Plan must describe all community impact mitigation activities to be performed to: (a) 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 implementation of the Removal Action; (b) conduct monitoring in Community Areas of impacts from the implementation of the Removal Action; (c) communicate validated sampling data; [and] (d) make adjustments during the implementation of the Removal Action in order to further reduce negative impacts to affected Community Areas [; and (e) **insert other activities as appropriate**]]. The Removal Work Plan shall contain information about impacts to Community Areas that is sufficient to assist EPA's [On-Scene Coordinator/Community Involvement Coordinator] in performing the evaluations described in the *Superfund Community Involvement Handbook*, OLEM 9230.0-51 (Mar. 2020). The Handbook is located at <https://www.epa.gov/superfund/superfund-community-involvement-tools-and-resources#handbook>.

18. **Health and Safety Plan.** Within ___ days after the Effective Date, Respondents shall submit for EPA review and comment a Health and Safety Plan ("HASP") that meets the requirements of 29 C.F.R. § 910.120 for developing the HASP, that describes all activities to be performed to protect on-site personnel and area residents from physical, chemical, biological and all other hazards related to performance of Work under this Settlement. This HASP shall be prepared in accordance with *EPA's Emergency Responder Health and Safety Manual*, OSWER 9285.3-12 (July 2005 and updates), available on the Agency's website at <https://www.epaosoc.org/HealthSafetyManual/manual-index.htm>. In addition, the Respondents

Commented [A20]: This Section should provide a brief description of the Removal Action consistent with the Action Memorandum [or SOW] and should provide sufficient detail to permit Respondent to draft a Removal Work Plan. The EPA Region should ensure the description is sufficiently broad and does not unintentionally limit the Removal Action in terms of hazardous substances to be addressed or to site boundaries if hazardous substances are present or migrate beyond boundaries to be addressed. For sites that are located in, or have a direct impact on, residential areas, the work plan should include provisions for expedited generation and communication of data and other relevant information to residents. Consistent with EPA's *Superfund Community Involvement Handbook*, OLEM 9230.0-51 (Mar. 2020), this may be of particular importance and emphasis for areas where EPA's Environmental Justice Screening and Mapping Tool ("EJScreen") evaluation identifies environmental justice concerns. The EPA Region may append their own SOW or Removal Work Plan; if this situation occurs, modify ¶ 16 (Removal Work Plan) as appropriate. The Handbook is located at <https://www.epa.gov/superfund/superfund-community-involvement-tools-and-resources#handbook>. EJScreen is available at <https://www.epa.gov/ejscreen>.

The Handbook is located at <https://www.epa.gov/superfund/superfund-community-involvement-tools-and-resources#handbook>. EJSCREEN is available at <https://www.epa.gov/ejscreen>.

Commented [A21]: If a planning period of at least 6 months exists, EPA shall require the performance of an Engineering Evaluation/Cost Analysis (EE/CA) as required by the NCP at 40 C.F.R. § 300.415(b)(4). Early Site security requirements, if any, should also be added to this Section.

Commented [A22]: Include this language in ¶ 17 or in the SOW as appropriate based on site-specific circumstances.

shall ensure that the HASP complies with all currently applicable Occupational Safety and Health Administration (“OSHA”) regulations found at 29 C.F.R. part 1910. If EPA determines that it is appropriate, the HASP shall also include contingency planning. **[NOTE: Regions may provide more detail, e.g., evacuation plans, etc.]** Respondents shall incorporate all changes to the HASP recommended by EPA and shall implement the HASP during the pendency of the Work.

19. **Quality Assurance, Sampling, and Data Analysis**

a. Respondents shall use quality assurance, quality control, and other technical activities and chain of custody procedures for all samples consistent with EPA’s *Environmental Information Quality Policy*, CIO 2105.1) (Mar. 2021) at <https://www.epa.gov/irmpoli8/environmental-information-quality-policy>, the most recent version of *Quality Management Systems for Environmental Information and Technology Programs – Requirements with Guidance for Use*, ASQ/ANSI E-4 (Feb. 2014), and *EPA Requirements for Quality Assurance Project Plans*, EPA QA/G-5 (EPA/240/B-01/02) (Mar. 2001) at <https://www.epa.gov/quality/epa-qar-5-epa-requirements-quality-assurance-project-plans>.

b. Respondents shall ensure that EPA personnel and its authorized representatives are allowed access at reasonable times to laboratories used by Respondents in implementing this Settlement. In addition, Respondents shall ensure that such laboratories analyze all samples submitted by EPA pursuant to the Quality Assurance Project Plan for quality assurance monitoring, and that sampling and field activities are conducted in accordance with the *EPA QA Field Activities Procedure*, CIO 2105-P-02.1 (Sept. 23, 2014) available at <http://www.epa.gov/irmpoli8/epa-qa-field-activities-procedures>. Respondents shall ensure that the laboratories they utilize for the analysis of samples taken pursuant to this Settlement meet the competency requirements set forth in the *Policy to Assure Competency of Laboratories, Field Sampling, and Other Organizations Generating Environmental Measurement Data under Agency-Funded Acquisitions* (Directive No. FEM-2011-01) (Nov. 2016) available at <http://www.epa.gov/measurements/documents-about-measurement-competency-under-acquisition-agreements> and that the laboratories perform all analyses according to EPA-accepted methods. Accepted EPA methods are documented in the EPA’s Contract Laboratory Program (<http://www.epa.gov/clp>), *SW 846 Test Methods for Evaluating Solid Waste, Physical/Chemical Methods* (<https://www.epa.gov/hw-sw846>), *Standard Methods for the Examination of Water and Wastewater* (<http://www.standardmethods.org/>), 40 C.F.R. part 136, *Air Toxics - Monitoring Methods* (<http://www3.epa.gov/ttnamti1/airtox.html>).

c. Upon request, Respondents shall provide split or duplicate samples to EPA [and the State] or its [their] authorized representatives. Respondents shall notify EPA [and the State] not less than [seven] days prior to any sample collection activity unless shorter notice is agreed to by EPA. In addition, EPA [and the State] have the right to take any additional samples that EPA [or the State] deem[s] necessary. Upon request, EPA [and the State] may provide to Respondents split and/or duplicate samples in connection with EPA’s [and the State’s] oversight sampling.

d. Respondents shall submit to EPA [and the State] all sampling and test results and other data obtained or generated by or on behalf of Respondents or in connection with

the implementation of this Settlement. Respondents shall expedite all data generation and validation for residential sampling activities.

20. **Community Involvement.** EPA has the lead responsibility for implementing community involvement activities at the Site, including the preparation of a community involvement plan, in accordance with the NCP and EPA guidance. As requested by EPA, Respondents shall participate in community involvement activities, including participation in (a) the preparation of information regarding the Work for dissemination to the public (including compliance schedules and progress reports), with consideration given to the specific needs of the community, including translated materials and mass media and/or Internet notification and (b) public meetings that may be held or sponsored by EPA to explain activities at or relating to the Site.

21. Deliverables: Specifications and Approval

a. **General Requirements for Deliverables.** Respondents shall submit all deliverables to EPA in electronic form, unless otherwise specified by the OSC.

b. **Technical Specifications for Deliverables.** Sampling and monitoring data should be submitted in standard Regional Electronic Data Deliverable (“EDD”) format. [Specify the EDD format that the Region uses.] Other delivery methods may be allowed by the OSC if electronic direct submission presents a significant burden or as technology changes.

c. **Approval of Deliverables.** After review of the Removal Work Plan and any other deliverable required to be submitted for EPA approval under the Settlement, EPA shall: (1) approve, in whole or in part, the deliverable; (2) approve the submission upon specified conditions or required revisions to the deliverable; (3) disapprove, in whole or in part, the deliverable; or (4) any combination of the foregoing. If EPA requires revisions, EPA will provide a deadline for the resubmission, and Respondents shall submit the revised deliverable by the required deadline. Once approved or approved with conditions or required revisions, Respondents shall implement the Removal Work Plan or other deliverable in accordance with the EPA-approved schedule. Upon approval, or subsequent modification, by EPA of any deliverable, or any portion thereof: (1) such deliverable, or portion thereof, and any subsequent modifications, will be incorporated into and enforceable under the Settlement; and (2) Respondents shall take any action required by such deliverable, or portion thereof. Respondents shall not commence or perform any Work except in conformance with the terms of this Settlement.

22. Off-Site Shipments

a. Respondents may ship hazardous substances, pollutants and contaminants from the Site to an off-site facility only if they comply with section 121(d)(3) of CERCLA and 40 C.F.R. § 300.440. Respondents will be deemed to be in compliance with section 121(d)(3) of CERCLA and 40 C.F.R. § 300.440 regarding a shipment if Respondents obtain a prior determination from EPA that the proposed receiving facility for such shipment is acceptable under the criteria of 40 C.F.R. § 300.440(b).

Commented [A23]: Insert this optional ¶ if Post-Removal Site Controls (PRSC) may be needed.

Post-Removal Site Control. Respondents shall submit for approval a Post-Removal Site Control Plan to develop controls to ensure the effectiveness and integrity of the removal action after its completion, and shall implement the Plan and provide verification of any controls put in place.

If the Action Memorandum provides for PRSC that includes some form of property controls consider adding a requirement to develop and implement an “Institutional Controls Implementation and Assurance Plan” (ICIAP). Refer to the Model RDRA SOW for this provision.

Commented [A24]: The information in this paragraph is consistent with the EPA National Geospatial Data Policy 2008, which is under review and 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. Respondents may ship Waste Material from the Site to an out-of-state waste management facility only if, prior to any shipment, they provide written notice to the appropriate state environmental official in the receiving facility's state and to the OSC. This written notice requirement will not apply to any off-site shipments when the total quantity of all such shipments does not exceed 10 cubic yards. The written notice must include the following information, if available: (1) the name and location of the receiving facility; (2) the type and quantity of Waste Material to be shipped; (3) the schedule for the shipment; and (4) the method of transportation. Respondents also shall notify the state environmental official referenced above and the OSC of any major changes in the shipment plan, such as a decision to ship the Waste Material to a different out-of-state facility. Respondents shall provide the written notice after the award of the contract for the Removal Action and before the Waste Material is shipped.

c. 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, 40 C.F.R. § 300.440, EPA's *Guide to Management of Investigation Derived Waste*, OSWER 9345.3-03FS (Jan. 1992) (<https://semspub.epa.gov/work/03/136166.pdf>), and any IDW-specific requirements contained in the Action Memorandum. 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 40 C.F.R. § 300.440.

23. 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 XIII (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 ¶ 23.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 constitutes a permit issued under any federal or state statute or regulation.

24. **Emergency Response.** If any event occurs during performance of the Work that causes or threatens to cause a release of Waste Material 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: (a) immediately take all appropriate action to prevent, abate, or minimize such release or threat of release; (b) immediately notify the OSC or, in the event of their unavailability, the Regional Duty Officer at [insert Regional spill phone number] of the incident or Site conditions; and (c) take such actions in consultation with the OSC or authorized EPA officer and in accordance with all applicable provisions of this

Settlement, including, the Health and Safety Plan, and any other applicable deliverable approved by EPA.

25. **Release Reporting.** Upon the occurrence of any event during performance of the Work that Respondents are required to report under CERCLA § 103 or section 304 of the Emergency Planning and Community Right-to-Know Act (“EPCRA”), 42 U.S.C. § 11004, Respondents shall immediately orally notify the OSC or, in the event of their unavailability, the Regional Duty Officer at [insert Regional spill phone number], and the National Response Center at (800) 424-8802. Respondents shall also submit a written report to EPA within seven days after the onset of such event, (a) describing the event, and (b) all measures taken and to be taken: (1) to mitigate any release or threat of release, (2) to mitigate any endangerment caused or threatened by the release; and (3) to prevent the reoccurrence of any such a release or threat of release. The reporting requirements under this Paragraph are in addition to the reporting required by CERCLA §§ 103 and 111(g) or EPCRA § 304.

26. **Progress Reports.** Commencing upon EPA’s approval of the Removal Work Plan and until issuance of Notice of Completion of Work under ¶ 29, Respondents shall submit written progress reports to EPA on a [monthly/weekly] basis, or as otherwise directed in writing by the OSC. These reports must describe all significant developments during the preceding reporting period, including the actions performed and any problems encountered, analytical data received during the reporting period, and the developments anticipated during the next reporting period, including a schedule of actions to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

27. **[Additional Activities.]** If EPA determines that additional actions not included in the Removal Work Plan or other approved plan(s) are necessary to protect public health or welfare or the environment, [optional: “and such additional activities are consistent with the [insert same language used in ¶ 14, i.e.: [Action Memorandum] [SOW] [the items listed in ¶ 14]”,] EPA will notify Respondents of that determination. Respondents also may request modification of the approved Removal Work Plan or other deliverables. Respondents shall, within [30] days thereafter, submit a revised Removal Work Plan and other deliverables as necessary to EPA for approval. Respondents shall implement the revised Removal Work Plan and any other deliverables upon EPA’s approval in accordance with the procedures of ¶ 21 in accordance with the approved provisions and schedule. This Paragraph does not limit the OSC’s authority to make oral modifications to any plan or schedule pursuant to Section XXII.]

28. **Final Report**

a. Within ___ days after completion of all Work required by this Settlement other than the continuing obligations listed in ¶ 29.a, Respondents shall submit for EPA review [and approval] a final report regarding the Work. The final report must

- (1) summarize the actions taken to comply with this Settlement;
- (2) conform to the requirements of section 300.165 of the NCP (“OSC Reports”);

Commented [A25]: For more extensive removals, the case team may require compliance with “Superfund Removal Procedures: Removal Response Reporting – POLREPS and OSC Reports” (OSWER Directive No. 9360.3-03, June 1, 1994).

- (3) list the quantities and types of materials removed off-site or handled on-site;
- (4) describe the removal and disposal options considered for those materials;
- (5) identify the ultimate destination(s) of those materials;
- (6) include the analytical results of all sampling and analyses performed; and
- (7) include all relevant documentation generated during the Work (e.g., manifests, invoices, bills, contracts, and permits) and an estimate of the total costs incurred to complete the Work.

b. The final report must also include the following certification signed by a responsible corporate official of a Respondent or Respondents' Project Coordinator: "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."

29. Notice of Completion of Work

a. If after reviewing the Final Report under ¶ 28, EPA determines that all Work, other than the continuing obligations, has been fully performed in accordance with this Settlement, EPA will provide notice to Respondents. A notice of completion of work is not a protectiveness determination and does not affect the following continuing obligations:

- (1) [implementing and maintaining the requirements of the Post-Removal Site Controls Plan;]
- (2) obligations under Section IX (Property Requirements)
- (3) payment of Future Response Costs;
- (4) obligations under Section XIX (Records); and
- (5) [add others as appropriate].

b. If EPA determines that any Work other than the continuing obligations has not been completed in accordance with this Settlement, EPA will so notify Respondents and provide a list of deficiencies to be corrected and a schedule for correcting them. Respondents shall promptly correct all identified deficiencies in accordance with the schedule provided and shall submit a modified Final Report following completion of such work. Subsequent

determinations by EPA regarding completion of Work shall be handled in accordance with this Paragraph.

30. **Compliance with Applicable Law.** Nothing in this Settlement affects Respondents' obligations to comply with all applicable state and federal laws and regulations, except as provided in section 121(e) of CERCLA, and 40 C.F.R. §§ 300.400(e) and 300.415(j). In accordance with 40 C.F.R. § 300.415(j), all on-site actions required pursuant to this Settlement shall, to the extent practicable, as determined by EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements ("ARARs") under federal environmental or state environmental or facility siting laws. [Respondents shall include ARARs selected by EPA in the Removal Work Plan.] 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).

31. **Work Takeover**

a. If EPA determines that Respondents: (1) have ceased implementation of any portion of the Work required this Section; (2) are seriously or repeatedly deficient or late in performing the Work required under this Section; or (3) are implementing the Work required under this Section 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 XIV 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 XIV that EPA is required to terminate the Work Takeover.

IX. **PROPERTY REQUIREMENTS**

32. 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, the State, and their 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. 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 the OSC.

Commented [A26]: 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 [A27]: As appropriate, the case team can specifically identify the purposes for which access is anticipated. In that case, convert ¶ 32 into subparagraph 32(a), and add the following optional language:

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, planning, implementing, or monitoring response actions at or near the Site;
- (4) Determining whether the 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 property.

Commented [A28]: Include the ¶ 32(a) below if land, water, or other resource use restrictions are needed. Customize the list as appropriate.

a. Land, Water, or Other Resource Use Restrictions. As used in this subparagraph, "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 Removal Action. Any agreement required under ¶ 32.a must commit the owner to refrain from using its property in any manner that EPA determines will pose an unacceptable risk to human health or to the environment as a result of exposure to Waste Material, or will interfere with or adversely affect the implementation, integrity, or protectiveness of the Removal Action. The following is a list of land, water, or other resource use restrictions applicable:

- (i) Prohibiting the following activities which could interfere with the removal action: _____;
- (ii) Prohibiting use of contaminated groundwater;
- (iii) Prohibiting the following activities which could result in exposure to contaminants in subsurface soils and groundwater: _____;
- (iv) Ensuring that any new structures on the Affected Property will not be constructed in the ...

33. 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 [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, to obtain such access [and/or use restrictions].

34. 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 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 [and the State] 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 IX and Section XIX (Records).

35. Notwithstanding any provision of the Settlement, EPA [and the State] retain[s] all of its [their] access authorities and rights[, as well as all of its [their] rights to require land, water, or other resource use restrictions], including related enforcement authorities under CERCLA, RCRA, and any other applicable statute or regulations.

X. FINANCIAL ASSURANCE

36. To ensure completion of the Work required under Section VIII (Performance of Work), Respondents shall secure financial assurance, initially in the amount of \$ _____ (“Estimated Cost of the Work”), for the benefit of EPA. The financial assurance must: (a) be one or more of the mechanisms listed below, in a form substantially identical to the relevant sample documents available from EPA; and (b) 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;

Commented [A29]: When deciding whether to omit, include, or modify this Section, case teams should consider the facts and circumstances of each case, including: the estimated cost of Work to be performed, the estimated time to complete the Work, the nature and extent of contamination at the Site, whether the financial assurance can be secured before commencement of the Work, the industry sectors in which Respondents operate, and the financial health of Respondents.

Case teams are encouraged to include this Section for the more costly and time-consuming removal actions. The case team may consider establishing a delayed due date for submission of financial assurance documents to give Respondents an incentive to complete the Work before that deadline arrives. When appropriate, this may allow to Respondents to avoid potentially substantial additional resources and costs associated with Financial Assurance if they properly and promptly complete the Work.

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 that an instrument or account is (or can be) established to receive financial assurance resources when needed. Case teams can find the most current ...

Commented [A30]: 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 ¶ 36.e or 36.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 (OSRE). If Financial Assurance requirements are not included in a non-time-critical removal agreement, then a Prior Written Approval or consultation with OSRE may be required. For more specific information and considerations, see “Guidance on Financial Assurance in Superfund Settlement Agreements and Unilateral ...

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 ¶ 37[, 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

Commented [A31]: A sample of a standby funding commitment is available via the link in ¶ 36 comment.

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 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 ¶ 38.

37. Respondents seeking to provide financial assurance by means of a demonstration or guarantee under ¶ 36.e or 36.f shall, within [30] days after 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/>.

38. Respondents providing financial assurance by means of a demonstration or guarantee under ¶ 36.e or 36.f shall also:

- a. annually resubmit the documents described in ¶ 37.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 ¶ 37.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.

39. [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 or otherwise finalized mechanisms or other documents consistent with the EPA-approved form of financial assurance and shall submit such mechanisms and documents to EPA in accordance with ¶ 87.

40. 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 [seven] days. If EPA

Commented [A32]: If the case team and Respondents have pre-negotiated the form of the financial assurance, use this text.

Commented [A33]: Otherwise, use this text.

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 ¶ 42 (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 requirement of this Settlement.

41. Access to **Financial Assurance**

a. If EPA issues a notice of a Work Takeover under ¶ 31.b, then, in accordance with any applicable financial assurance mechanism **[if a standby funding commitment requirement is included in ¶ 36.e, insert: including the 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 ¶ 41.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 ¶ 41.d.

c. If, upon issuance of a notice of a Work Takeover under ¶ 31, 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 ¶ 36.e or 36.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 after such demand, pay the amount demanded as directed by EPA.

d. Any amounts required to be paid under this ¶ 41 must 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 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 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.

42. **Modification of Amount, Form, or Terms of Financial Assurance.** On any 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. Respondents

Commented [A34]: 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.

shall submit any such request to EPA in accordance with ¶ 39, 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 XIV. 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 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.

43. 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 ¶ 29; (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 XIV.

XI. INDEMNIFICATION AND INSURANCE

44. Indemnification

a. The United States 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 the United States, 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 the United States 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 with 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 shall give Respondents notice of any claim for which EPA plans to seek indemnification in accordance with this ¶ 44, and shall consult with Respondents prior to settling such claim.

Commented [A35]: Note that EPA does not have legal authority to commit to funding for a parallel indemnification of Respondents in the event of negligence by EPA or its contractors. Respondents may be able to assert an FTCA claim against the United States for such negligence.

45. Respondents covenant not to sue and shall not assert any claim or cause of action against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, 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 harmless the United States 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.

46. **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 Work under ¶ 29. 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.

XII. PAYMENTS FOR RESPONSE COSTS

47. **[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 Name, Docket Number, and Site/Spill ID number listed in ¶ 91 and the purpose of the payment. Respondents shall send notices of this payment to EPA in accordance with ¶ 91. If the payment required under this Paragraph is late, Respondents shall pay, in addition to any stipulated penalties owed under Section XV, an additional amount for Interest accrued from the Effective Date until the date of payment.]

48. **Payments by Respondents for Future Response Costs**

Commented [A36]: The case team may want to consider requiring higher insurance liability coverage limits at sites where activities could pose higher risks to human health or the environment. The use of existing insurance policies may be acceptable, but potentially not where the policies cover multiple facilities (which could dilute available coverage).

Commented [A37]: 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 [A38]: Keep ¶ 48.a (Periodic Bills) and 50 (Deposit of Payments) in all Settlements. If Respondents will be prepaying any part of EPA's Future Response Costs, add these additional subsections to ¶ 48, 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 ¶ 48.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 ¶ 48.a (Periodic Bills). 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: ¶ 48.d (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 ¶ 48.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 ¶ 48.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 ...

a. **Periodic Bills.** On a periodic basis, EPA will send Respondents a bill for Future Response Costs, including a [name of standard Regionally-prepared cost summary], listing direct and indirect costs paid by EPA, its contractors, and subcontractors. Respondents may initiate a dispute under Section XIV regarding a Future Response Cost billing, but only if the dispute relates to one or more of the following issues: (1) whether EPA has made an arithmetical error; (2) whether EPA has included a cost item that is not within the definition of Future Response Costs; or (3) 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. Respondents shall specify in the Notice of Dispute the contested costs and the basis for the objection.

Commented [A39]: If EPA agrees to provide orphan share compensation to Respondents through forgiveness of oversight costs (i.e., “costs EPA incurs in overseeing Respondents’ performance of the Work, including reviewing deliverables submitted under the Settlement”) modify ¶ 48 to add an exclusion for these costs.

b. **Payment of Bill.** Respondents shall pay the bill, or if they initiate dispute resolution under Section XIV, 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 all payments at <https://www.pay.gov> using the “EPA Miscellaneous Payments Cincinnati Finance Center” link, and including references to the Site Name, Docket Number, and Site/Spill ID number and the purpose of the payment. Respondents shall send notices of this payment to EPA and include these references.

49. **Payments by Settling Federal Agencies.**

Commented [A40]: If SFAs are making payments, insert the following paragraphs.

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 Settling Defendants \$_____ [insert as appropriate: in payment of Settling Defendants’ Past Response Costs and Settling Defendants’ Future Response Costs] by Automated Clearing House (ACH) Electronic Funds Transfer in accordance with instructions provided by Settling Defendants

Commented [A41]: SFAs will usually “cash out” of the various components of response costs. In cases where the SFA’s responsibility for response costs cannot be resolved with a single cash out payment, contact DOJ’s Environmental Defense Section to obtain an alternative payment provision for cost reimbursement. Also consult with the Office of Site Remediation and Enforcement.

b. **Interest.** If any payment required by this paragraph is not made within 120 days after the Effective Date, the United States, on behalf of the 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 payment.

50. 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.

51. **Deposit of Payments.** EPA may, in its unreviewable discretion, deposit the amounts paid under ¶¶ 47, 48, and 49 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.

XIII. FORCE MAJEURE

52. “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 [insert, if applicable: , or a failure to attain [performance standards] set forth in the Action Memorandum].

53. If any event occurs for which Respondents will or may claim a force majeure, Respondents shall notify EPA’s OSC 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: (a) a description of the event and its effect on Respondents’ completion of the requirements of the Settlement; (b) a description of all actions taken or to be taken to prevent or minimize the adverse effects or delay; (c) the proposed extension of time for Respondents to complete the requirements of the Settlement; (d) 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 (e) 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 the late or incomplete notice, is able to assess to its satisfaction whether the event is a force majeure under ¶ 52 and whether Respondents has exercised best efforts under ¶ 52, EPA may, in its unreviewable discretion, excuse in writing Respondents’ failure to submit timely or complete notices under this Paragraph.

54. EPA will notify Respondents of its determination whether Respondents are entitled to relief under ¶ 52, 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 XIV 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 ¶ 52 and that their proposed extension was or will be warranted under the circumstances.

55. 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.

XIV. DISPUTE RESOLUTION

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

57. A dispute will be considered to have arisen when one or more parties sends a written notice of dispute ("Notice of Dispute") to EPA. Disputes arising under this Settlement must in the first instance be the subject of informal negotiations between the parties to the dispute. If Respondents object to any EPA action taken pursuant to this Settlement, they shall send EPA a Notice of Dispute describing the objection(s) within [7] days after such action. The period for informal negotiations may not exceed __ 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 ¶ 58. [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.]

58. Formal Dispute Resolution

a. **Statements of Position.** Respondents may initiate formal dispute resolution by submitting, within [seven] days after the conclusion of informal dispute resolution under ¶ 56, an initial Statement of Position regarding the matter in dispute. The 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. If appropriate, EPA may extend the deadlines for filing statements of position for up to [15] 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, and shall be incorporated into and become an enforceable part of this Settlement.

59. **[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 Federal Deposit Insurance Corporation ("FDIC"); (b) remit to that escrow account funds equal to the amount of the contested Future Response Costs; and (c) send to EPA a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that established and funded the escrow

Commented [A42]: EPA should compile an administrative record regarding the dispute, which would include all statements of position, replies, supplemental statements of position, and the Formal Decision.

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 ¶ 48, if any, by the deadline for such payment in ¶ 48. Respondents are responsible for any balance due under ¶ 48 after the payment by the escrow agent.]

60. 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 ¶ 63.

XV. STIPULATED PENALTIES

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

a. for any failure: (1) to pay any amount due under Section XII; (2) [to establish and maintain financial assurance in accordance with Section X]; (3) [to establish any escrow account required under ¶ 59]; (4) to submit timely or adequate deliverables, specifically **[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 ¶ 61.a:

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

62. **Work Takeover Penalty.** If EPA commences a Work Takeover under ¶ 31, Respondents are liable for a stipulated penalty in the amount of _____. [This stipulated penalty is in addition to the remedy available to EPA under ¶ 41 (Access to Financial Assurance).]

Commented [A43]: Include this language if the FA section is used.

63. **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 XIV, provided, however, that no penalties will accrue as follows:

a. with respect to a submission that EPA subsequently determines is deficient, 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 XIV, during the period, if any, beginning on the 21st day after EPA's Statement of Position is received until the date of the Formal Decision under ¶ 58.b.

64. **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 XIV 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 Name, Docket Number, and Site/Spill ID number and the purpose of the payment. Respondents shall send notices of this payment to EPA. The payment of stipulated penalties and Interest, if any, does not alter any obligation by Respondents under the Settlement.

65. Nothing in this Settlement limits the authority of the EPA 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 sections 106(b) and 122(l) of CERCLA, and punitive damages pursuant to section 107(c)(3), provided, however, that the EPA may not seek civil penalties under section 122(l) 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 or in the event that EPA assumes performance of a portion or all of the Work pursuant to ¶ 31 (Work Takeover).

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

XVI. COVENANTS BY EPA

67. **Covenants for Respondents.** Subject to ¶ 70, 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.

68. **Covenants for Settling Federal Agencies by EPA.** Subject to ¶ 70, 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.

Commented [A44]: If SFAs are parties to the Settlement, insert the this covenant.

Commented [A45]: 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.

69. The covenants under ¶ 67 and ¶ 68: (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.

70. **General Reservations.** Notwithstanding any other provision of this Settlement 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 and Settling Federal Agencies to meet a requirement of this Settlement;
- b. liability for performance of response action other than the Work;
- c. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments; and
- d. liability arising from the past, present, or future disposal, release or threat of release of Waste Materials outside of the Site; and
- e. criminal liability.

71. Subject to ¶ 67, nothing in this Settlement limits any authority of EPA to take, direct, or order all appropriate action to protect human health 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.

XVII. COVENANTS BY RESPONDENTS AND SETTLING FEDERAL AGENCIES

72. Covenants by Respondents

a. Subject to ¶ 73, Respondents covenant not to sue and shall not assert any claim or cause of action against the United States under CERCLA, section 7002(a) of RCRA, 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, regarding the Work, [Past Response Costs,] Future Response Costs, and this Settlement.

b. Subject to ¶ 73, 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, or any claim arising out of response actions at or in connection with the Site.

73. **Respondents' Reservation.** The covenants in ¶ 72 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 ¶¶ 70.a through 70.e.

Commented [A46]: 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 [A47]: If the Settlement contains a Future Response Cost prepayment provision under which Respondents may receive a return of unused amounts under option 3 of ¶ 48.e (Unused Amount), include ¶ 71.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 ¶ 48.e (Unused Amount).]

74. **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 [A48]: 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.

75. **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: (a) 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 (b) 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 with respect to the Site, 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 (c) 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 [A49]: Keep this waiver only for non-NPL sites.

76. **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.

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

Commented [A50]: Keep this waiver only for non-NPL sites that are also MSW Sites.

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 with respect to the Site, 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.

77. [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.]

78. **Covenants 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,] and 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.

XVIII. EFFECT OF SETTLEMENT; CONTRIBUTION

79. 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 EPA 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 EPA 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 ¶¶ 70.a through 70.e, 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.

80. 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 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.

Commented [A51]: 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 ¶ 75 do not apply to Respondent [insert name]’s contractual indemnification claim against [insert name].

Commented [A52]: Needed only for non-NPL sites.

Commented [A53]: 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 [A54]: 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 [A55]: Keep this text if SFAs are participating.

81. **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.

82. [Except as provided in ¶¶ 744-766,] nothing in this Settlement creates any rights in, or grants any defense or cause of action to, any person not a Party to this Settlement. Except as provided in Section XVII (Covenants by Respondents), each of the Parties expressly reserves any and all rights (including pursuant to section 113 of CERCLA), defenses, claims, demands, and causes of action that each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto. Nothing in this Settlement diminishes the right of the United States under section 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).

Commented [A56]: Include and adjust according to site-specific circumstances regarding which waivers (de minimis, de micromis, MSW)

83. [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 ¶ 47 (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 ¶ 79 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 ¶ 99, the tolling period ends 90 days after the date of such notice.]

Commented [A57]: Optional language if the settlement is subject to DOJ approval and a public comment that may cause EPA to withdraw from the settlement after Respondents sign it.

XIX. RECORDS

84. **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 notification of potential liability by the United States or the State; 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.]

Commented [A58]: 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”

85. **Settling Federal Agency Acknowledgement.** 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, section 3007 or RCRA [, and state law].

Commented [A59]: 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.

86. Retention of Records and Information

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 ¶ 29.a (“Record Retention Period”):

- (1) All records regarding Respondents’ liability and the liability of any other person 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. At the end of the Record Retention Period, Respondents shall notify EPA [and the State] that it has [they have] 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 [and the State’s] receipt of the notice. These record retention requirements apply regardless of any corporate record retention policy.

87. Respondents shall provide to EPA [and the State], 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.

88. 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 ¶ 88.b, and except as provided in ¶ 88.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 EPA 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, scientific, chemical, radiological or engineering data, or the portion of any other record that

Commented [A60]: 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.

Commented [A61]: Do not substitute “Record” for “record” here, as this provision is not limited to “Records” referenced in ¶ 86.a.

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.

89. **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). Respondents shall segregate all records or parts thereof submitted under this Settlement which they claim is 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 [A62]: Do not substitute “Record” for “record” here, as this provision is not limited to “Records” referenced in ¶ 86.a.

90. 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.

XX. NOTICES AND SUBMISSIONS

91. 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:*

[EPA On-Scene Coordinator’s email address]

Re: Site/Spill ID # _____

As to *via email to:*

Respondents: [Respondents’ Project Coordinator’s email address]

Commented [A63]: If needed add mailing addresses, and addresses for Director, Superfund & Emergency Management Division, and Regional Financial Management Officer. The section may state that they only need to receive certain notices (e.g., FMO receives only payment notices, Division Director receives only dispute documents.) Include Site/Spill ID. If needed add SDs’ Project Coordinator’s mailing address.

XXI. APPENDIXES

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

“Appendix A” is the Action Memorandum.

[“Appendix B” is the list of Respondents.]

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

XXII. MODIFICATIONS

93. The OSC may modify any plan or schedule [or SOW] in writing or by oral direction. EPA will promptly memorialize in writing any oral modification, which will be effective on the date of the OSC’s oral direction. Any other requirements of this Settlement may be modified in writing by mutual agreement of the parties.

94. If Respondents seek permission to deviate from any approved Removal Work Plan or schedule [or the SOW], Respondents’ Project Coordinator shall submit a written request to EPA for approval outlining the proposed modification and its basis. Respondents may not proceed with a requested deviation until receiving oral or written approval from the OSC pursuant to ¶ 93.

95. No informal advice, guidance, suggestion, or comment by the OSC or other EPA representatives regarding any deliverable submitted by Respondents relieves Respondents of their obligation to obtain any formal approval required by this Settlement, or to comply with all requirements of this Settlement, unless it is formally modified.

XXIII. ATTORNEY GENERAL APPROVAL

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

XXIV. SIGNATORIES

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

XXV. INTEGRATION

98. 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.

XXVI. PUBLIC COMMENT

99. 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 XII (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 Settlement is inappropriate, improper, or inadequate.

Commented [A64]: Attorney General approval is only 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:

“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 [A65]: Optional. Include this Section if the Settlement includes a compromise of any response costs.

XXVII. EFFECTIVE DATE

100. [Subject to the next sentence,]This Settlement is effective when EPA issues notice to Respondents that the Regional Administrator or his/her delegatee has signed the 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 [A66]: Include this clause if the Settlement includes a cost compromise.

IT IS SO AGREED AND ORDERED:

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

Dated

[Name]
Regional Administrator [or designee], Region ____

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 Settlement Regarding _____ Superfund Site

FOR _____:

[Print name of SFA]

Signature Page for Settlement Regarding _____ Superfund Site

FOR:

Commented [A67]: A separate signature page is required for each settler.

_____	_____
Dated	Name:
	Title:
	Address:

Instructions Regarding Automated Features

FEATURE	INSTRUCTIONS
Inserting text copied from a different document	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. Therefore, ALWAYS use the “Paste Special” function to insert text copied from another document. 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.)
Inserting a new paragraph	Click at the end of the ¶ immediately preceding the place where you wish to add the new paragraph , 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.
Adding an updateable section or paragraph cross-reference	(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.
Updating the cross-references	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.”
Updating the table of contents	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.
Inserting a new section heading	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.
Changing the font	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.