\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

)

IN THE MATTER OF: ) SETTLEMENT AGREEMENT

)

)

[Site name] )

[City, County, State] ) U.S. EPA Region \_\_

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

[Names of Settling Parties] )

SETTLING PARTIES ) PROCEEDING UNDER

) SECTION 122(h)(1) OF CERCLA

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ ) 42 U.S.C. § 9622(h)(1)

**MODEL CERCLA SECTION 122(h)(1) SETTLEMENT AGREEMENT**

**FOR RECOVERY OF PAST RESPONSE COSTS**

**March 2023**

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| 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. |

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| 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. |

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# JURISDICTION

1. This Settlement Agreement is entered into pursuant to the authority vested in the Administrator of the U.S. Environmental Protection Agency (EPA) by Section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended, which authority has been delegated to the Regional Administrators of the EPA by EPA Delegation No. 14-14-D (Cost Recovery Non-Judicial Agreements and Administrative Consent Orders) and redelegated to [**insert reference to any Regional redelegations**].
2. This Settlement Agreement is made and entered into by EPA [, and] [insert names or reference attached appendix listing settling parties] (“Settling Parties”) [, and] [insert names or reference attached appendix listing settling federal agencies (“Settling Federal Agencies”)]. Each Settling Party [and Settling Federal Agency] consents to and will not contest EPA’s authority to enter into this Settlement Agreement or to implement or enforce its terms.

# BACKGROUND

1. This Settlement Agreement concerns the [**insert Site name**] (“Site”) located in [**insert Site location**]. EPA alleges that the Site is a “facility” as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).
2. In response to the release or threatened release of hazardous substances at or from the Site, EPA undertook response actions at the Site pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604.[**NOTE: A brief description of the release or threatened release and of the response actions taken by EPA or potentially responsible parties may be included.**]
3. In performing response action, EPA has incurred response costs at or in connection with the Site.
4. EPA alleges that Settling Parties [**if Settling Federal Agencies (SFAs), insert:** and Settling Federal Agencies] are responsible parties pursuant to Section 107(a) of CERCLA.

[**NOTE: If Attorney General approval is not required for this settlement because total past and projected response costs of the United States at the Site are not expected to exceed $500,000, excluding interest, insert the following paragraph.**]

1. [EPA has determined that the total past and projected response costs of the United States at or in connection with the Site will not exceed $500,000, excluding interest.]
2. EPA and Settling Parties [**if SFAs, insert:** and Settling Federal Agencies] recognize that this Settlement Agreement has been negotiated in good faith and that this Settlement Agreement is entered into without the admission or adjudication of any issue of fact or law. The actions undertaken by Settling Parties [and Settling Federal Agencies] in accordance with this Settlement Agreement do not constitute an admission of any liability by any Settling Party [or any Settling Federal Agency]. Settling Parties [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 Agreement, the validity of the facts or allegations contained in this Section.

# PARTIES BOUND

1. This Settlement Agreement shall be binding upon EPA [**if SFAs, insert:** and Settling Federal Agencies,] and upon Settling Parties and their [heirs], successors, and assigns. Any change in ownership or corporate or other legal status of a Settling Party, including but not limited to, any transfer of assets or real or personal property, shall in no way alter such Settling Party’s responsibilities under this Settlement Agreement. Each signatory to this Settlement Agreement certifies that he or she is authorized to enter into the terms and conditions of this Settlement Agreement and to bind legally the party represented by him or her.

# DEFINITIONS

1. Unless otherwise expressly provided in this Settlement Agreement, terms used in this Settlement Agreement that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meanings assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Settlement Agreement or its appendices, the following definitions shall apply:

[NOTE: In the following definition, it is generally sufficient to describe the property using the street address or the tax parcel ID number, but you also may use the legal property description. Legal property descriptions can be lengthy. It is common in conveyance documents to include the legal property description in an attachment. If using a legal property description, it should be the kind found in a deed. If land use restrictions are included, see introductory note in Section XI (Property Requirements).]

“Affected Property” shall mean all real property at the Site and any other real property, owned or controlled by Owner Settling Party, where EPA determines, at any time, that access or land, water, or other resource use restrictions are needed to implement response actions at the Site, including, but not limited to, the following properties [**insert property descriptions**].

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

“Day” or “day” shall mean a calendar day. In computing any period of time under this Settlement Agreement, where the last day would fall on a Saturday, Sunday, or federal or State holiday, the period shall run until the close of business of the next working day.

“DOJ” shall mean the U.S. Department of Justice and its successor departments, agencies, or instrumentalities.

“Effective Date” shall mean the effective date of this Settlement Agreement as provided by Section XVIII.

“EPA” shall mean the United States Environmental Protection Agency.

“EPA Hazardous Substance Superfund” shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

“Interest” shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall 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. Rates are available online at <https://www.epa.gov/superfund/superfund-interest-rates>.

[**NOTE: Insert the following definition if the Settlement Agreement contains the waiver of contribution rights against certain MSW parties at the Site in Section IX (Covenants by Settling Parties [and Settling Federal Agencies]).**]

[“Municipal solid waste” or “MSW” shall mean 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.]

“National Contingency Plan” or “NCP” shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

[“Owner Settling Party” shall mean [**insert name**].]

“Paragraph” shall mean a portion of this Settlement Agreement identified by an Arabic numeral or an upper- or lower-case letter.

“Parties” shall mean EPA [,] [and] Settling Parties [, and Settling Federal Agencies].

“Past Response Costs” shall mean all costs, including but not limited to direct and indirect costs, that EPA or the U.S. Department of Justice on behalf of EPA has paid at or in connection with the Site through [**insert date, e.g., date of last cost summary**], plus accrued Interest on all such costs through such date. [[1]](#footnote-2)

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

“Section” shall mean a portion of this Settlement Agreement identified by a Roman numeral.

“Settlement Agreement” shall mean this Settlement Agreement [and any attached appendices]. In the event of conflict between this Settlement Agreement and any appendix, the Settlement Agreement shall control.

[NOTE: If SFAs, insert the following definition.][[2]](#footnote-3)

[“Settling Federal Agencies” shall mean [insert names of specific federal entities whose liability is being resolved to make clear that only those entities and each of their direct successors is included] and their successor departments, agencies, or instrumentalities.]

“Settling Parties” shall mean [**insert names of settling non-federal parties, or if numerous:** those parties identified in Appendix \_\_.]

[NOTE: If SFAs are making payments toward past response costs incurred by Settling Parties, insert the following definition. DOJ’s Environmental Defense Section (EDS) will generally take the lead in negotiating this definition.]

[“Settling Parties’ Past Response Costs” shall mean \_\_\_\_\_\_.]

“Site” shall mean the \_\_\_\_\_\_ Superfund Site, encompassing approximately \_\_\_ acres, located at [**insert address or description of location**] in [**insert City, County, State**], and [**insert either:** “generally shown on the map included in Appendix \_\_” or “generally designated by the following property description: \_\_\_\_\_\_.”]

“[**Site name**] Special Account” shall mean the special account, within the EPA Hazardous Substance Superfund, established for the Site by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3), and [**if applicable, identify prior settlement under which EPA established the special account**].

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

[NOTE: Insert the following definition if Section XI (Property Requirements) is included in the Settlement Agreement.]

[“Transfer” shall mean 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” shall mean the United States of America and each department, agency, and instrumentality of the United States, including EPA [and Settling Federal Agencies].

# PAYMENT OF RESPONSE COSTS

1. **Payment by Settling Parties for Past Response Costs**. Within 30 days after the Effective Date, Settling Parties shall pay to EPA $\_\_\_\_\_\_, plus an additional sum for Interest on that amount calculated from [**insert date, e.g., date of last cost summary**] through the date of payment. [**NOTE: As an alternative to calculation and payment of interest from the Past Response Costs date through the date of payment, the following alternative language may be used if Settling Parties agree to place the payment amount (plus accrued interest from the Past Response Costs date through the date the escrow account is created) into an interest-bearing escrow account to be disbursed to EPA upon the Effective Date:** Within 7 days after Settling Parties receive notice from EPA that this Settlement Agreement has been signed by EPA [**if DOJ approval is needed, insert:** and approved by the Attorney General or his or her designee], Settling Parties shall deposit $\_\_\_\_\_\_ into an interest-bearing escrow account in a duly chartered bank or trust company that is insured by the Federal Deposit Insurance Corporation. If the Settlement Agreement is not made effective after public comment, the monies placed in escrow, together with accrued interest thereon, shall be returned to Settling Parties. If the Settlement Agreement is made effective after public comment, Settling Parties shall, within 15 days after the Effective Date, cause the monies in the Escrow Account, together with accrued interest thereon, to be paid to EPA in accordance with Paragraph 12 below.]
2. Settling Parties shall make the payment at <https://www.pay.gov> in accordance with the following payment instructions: enter “sfo 1.1” in the search field to access EPA’s Miscellaneous Payment Form – Cincinnati Finance Center. Complete the form including the Site Name, docket number, and Site/Spill ID Number \_\_\_\_\_\_. Settling Parties shall send to EPA in accordance with Section XIV (Notices and Submissions), a notice of this payment including these references.

[NOTE ABOUT SPECIAL ACCOUNTS: The Agreement should specify whether payments made under Paragraph 11 should be deposited in the EPA Hazardous Substance Superfund, or in a site-specific special account within the EPA Hazardous Substance Superfund, or should be split between the Superfund and the Special Account (and should specify the split).]

1. **Deposit of Payment**. [**Insert one of the following three sentences here**.] [The total amount to be paid by Settling Parties pursuant to Paragraph 11 shall be deposited by EPA in the EPA Hazardous Substance Superfund.] [The total amount to be paid pursuant to Paragraph 11 shall be deposited by EPA in the [**Site name**] Special Account to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.] [Of the total amount to be paid by Settling Parties pursuant to Paragraph 11, [“$\_\_\_” or “\_\_\_%”] shall be deposited by EPA in the EPA Hazardous Substance Superfund and [“$\_\_\_ or “\_\_\_%”] shall be deposited by EPA in the [**Site name**] Special Account to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.]

[**If SFAs are making payments, insert the following paragraph.**]

1. [**Payments by Settling Federal Agencies**
   1. As soon as reasonably practicable after the Effective Date, the United States, on behalf of Settling Federal Agencies, shall:
      1. Pay to the EPA $\_\_\_\_\_\_. [**Insert one of the following three sentences.**][The total amount to be paid on behalf of Settling Federal Agencies pursuant to this Paragraph shall be deposited by EPA in the EPA Hazardous Substance Superfund.] [The total amount to be paid on behalf of Settling Federal Agencies pursuant to this Paragraph shall be deposited by EPA in the [**Site name**] Special Account to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.] [Of the total amount to be paid on behalf of Settling Federal Agencies pursuant to this Paragraph, [“$\_\_\_” or “\_\_\_%”] shall be deposited by EPA in the EPA Hazardous Substance Superfund and [“$\_\_\_” or “\_\_\_%”] shall be deposited by EPA in the [**Site name**] Special Account to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.]
      2. Pay to Settling Parties $\_\_\_\_\_\_, in reimbursement of Settling Parties’ Past Response Costs, by Automated Clearinghouse (ACH) Electronic Funds Transfer in accordance with instructions provided by Settling Parties.
   2. **Interest**. In the event that any payment required by Paragraph 14.a is not made within 120 days after the Effective Date, the United States, on behalf of Settling Federal Agencies, shall pay Interest on the unpaid balance, with such Interest commencing on the 121st day after the Effective Date and accruing through the date of the payment.
   3. The Parties to this Settlement Agreement recognize and acknowledge that the payment obligations of Settling Federal Agencies under this Settlement Agreement can only be paid from appropriated funds legally available for such purpose. Nothing in this Settlement Agreement shall be interpreted or construed as 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.]

# FAILURE TO COMPLY WITH SETTLEMENT AGREEMENT

1. **Interest on Late Payments**. If any Settling Party fails to make any payment required by Paragraph 11 (Payment by Settling Parties for Past Response Costs) by the required due date, Interest shall continue to accrue on the unpaid balance through the date of payment.
2. **Stipulated Penalty**
   1. If any amounts due to EPA under Paragraph 11 (Payment by Settling Parties for Past Response Costs) are not paid by the required date, Settling Parties shall be in violation of this Settlement Agreement and shall pay to EPA, as a stipulated penalty, in addition to the Interest required by Paragraph 15 (Interest on Late Payments), $\_\_\_\_\_\_ per violation per day that such payment is late.

[NOTE: If the Settlement Agreement includes any non-payment obligations for which a stipulated penalty is provided, insert the following paragraph.]

* 1. [If Settling Parties do not comply with [**insert reference to any non-payment obligations, including Section XI (Property Requirements)**], Settling Parties shall be in violation of this Settlement Agreement and shall pay to EPA, as a stipulated penalty, $\_\_\_\_\_\_ per violation per day of such noncompliance.][[3]](#footnote-4)
  2. Stipulated penalties are due and payable within 30 days after the date of demand for payment of the penalties by EPA. Settling Parties shall make all payments at <https://www.pay.gov> using the following instructions: enter “sfo 1.1” in the search field to access EPA’s Miscellaneous Payment Form - Cincinnati Finance Center. Complete the form including the Site Name, docket number, and Site/Spill ID Number\_\_\_, and indicate in the comment field that the payment is for stipulated penalties. Settling Parties shall send to EPA, in accordance with Section XIV (Notices and Submissions), a notice of this payment including these references.
  3. Penalties shall accrue as provided in this Paragraph regardless of whether EPA has notified Settling Parties of the violation or made a demand for payment but need only be paid upon demand. All penalties shall begin to accrue on the day after payment [**if non-payment obligations are included, insert:** or performance] is due [**if non-payment obligations are included, insert:** or the day a violation occurs] and shall continue to accrue through the date of payment [**if non-payment obligations are included, insert:** or the final day of correction of the noncompliance or completion of the activity.] Nothing in this Settlement Agreement shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement Agreement.

1. In addition to the Interest and stipulated penalty payments required by this Section and any other remedies or sanctions available to EPA by virtue of Settling Parties’ failure to comply with the requirements of this Settlement Agreement, any Settling Party who fails or refuses to comply with the requirements of this Settlement Agreement shall be subject to enforcement action pursuant to Section 122(h)(3) of CERCLA, 42 U.S.C. § 9622(h)(3). If the United States, on behalf of EPA, brings an action to enforce this Settlement Agreement, Settling Parties shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.
2. The obligations of Settling Parties to pay amounts owed to EPA under this Settlement Agreement are joint and several. In the event of the insolvency of any Settling Party or the failure by any Settling Party to make the payments required under this Settlement Agreement, the remaining Settling Parties shall be responsible for such payments.
3. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Settlement Agreement. Payment of stipulated penalties shall not excuse Settling Parties from payment as required by Section V (Payment of Response Costs) or from performance of any other requirements of this Settlement Agreement.

# COVENANTS BY EPA

1. **Covenants for Settling Parties by EPA**. Except as specifically provided in Section VIII (Reservations of Rights by EPA), EPA covenants not to sue or take administrative action against Settling Parties pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), to recover Past Response Costs. These covenants shall take effect upon the Effective Date. These covenants are conditioned upon the satisfactory performance by Settling Parties of their obligations under this Settlement Agreement. These covenants extend only to Settling Parties and do not extend to any other person.

[**NOTE: If SFAs are making payments for Past Response Costs, insert the following covenant. If they are addressing future response costs, the covenant will require case-specific discussion.**]

1. [**Covenant for Settling Federal Agencies by EPA**. Except as specifically provided in Section VIII (Reservation of Rights by EPA), EPA covenants not to take administrative action against Settling Federal Agencies pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), to recover Past Response Costs. This covenant shall take effect upon the Effective Date. This covenant is conditioned upon the satisfactory performance by Settling Federal Agencies of their obligations under this Settlement Agreement. This covenant extends only to Settling Federal Agencies and does not extend to any other person.][[4]](#footnote-5)

# RESERVATIONS OF RIGHTS BY EPA

1. EPA reserves, and this Settlement Agreement is without prejudice to, all rights against Settling Parties [**if SFAs, insert:** and Settling Federal Agencies] with respect to all matters not expressly included within Paragraph 21 (Covenants for Settling Parties by EPA) [**if SFAs, insert:** and Paragraph 22 (Covenant for Settling Federal Agencies by EPA)]. Notwithstanding any other provision of this Settlement Agreement, EPA reserves, and this Settlement Agreement is without prejudice to, all rights against Settling Parties [**if SFAs, insert:** and Settling Federal Agencies] with respect to:
   1. liability for failure of Settling Parties [or Settling Federal Agencies] to meet a requirement of this Settlement Agreement;
   2. liability for costs incurred or to be incurred by the United States that are not within the definition of Past Response Costs;
   3. liability for injunctive relief or administrative order enforcement under Section 106 of CERCLA, 42 U.S.C. § 9606;
   4. criminal liability; and
   5. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments.
2. Nothing in this Settlement Agreement is intended to be nor shall it be construed as a release, covenant not to sue, or compromise of any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, that the United States may have against any person, firm, corporation or other entity not a signatory to this Settlement Agreement.

# COVENANTS BY SETTLING PARTIES [AND SETTLING FEDERAL AGENCIES]

1. **Covenants by Settling Parties**. Settling Parties covenant not to sue and agree not to assert any claims or causes of action against the United States,[[5]](#footnote-6) or its contractors or employees, with respect to Past Response Costs [**if SFAs are making payments for Settling Parties’ Past Response Costs, insert:** , Settling Parties’ Past Response Costs,] and this Settlement Agreement, including but not limited to:
   1. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;
   2. any claims arising out of the response actions at the Site for which the Past Response Costs [**insert if applicable:** or Settling Parties’ Past Response Costs] were incurred, including any claim under the United States Constitution, the Constitution of the State [Commonwealth] of \_\_\_\_\_\_, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, or at common law; and
   3. any claim pursuant to Section 107 or 113 of CERCLA, 42 U.S.C. § 9607 or 9613, Section 7002(a) of RCRA, 42 U.S.C. § 6972(a), or state law for Past Response Costs [**insert if applicable:** or Settling Parties’ Past Response Costs].

[**If SFAs, insert the following paragraph.**]

1. [**Covenant by Settling Federal Agencies**. Settling Federal Agencies agree not to assert any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund through CERCLA §§ 106(b)(2), 107, 111, 112, 113 or any other provision of law with respect to Past Response Costs [**if SFAs are making payments for Settling Parties’ Past Response Costs, insert:** , Settling Parties’ Past Response Costs,] and this Settlement Agreement. This covenant does not preclude demand for reimbursement from the Superfund of costs incurred by a Settling Federal Agency in the performance of its duties (other than pursuant to this Settlement Agreement) as lead or support agency under the NCP.]
2. Nothing in this Settlement Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).
3. **Waiver of Claims by Settling Parties**
   1. Settling Parties agree not to assert any claims and to waive all claims or causes of action (including but not limited to claims or causes of action under Sections 107(a) and 113 of CERCLA) that they may have:
      1. **De Micromis Waiver**. For all matters relating to the Site against any person where the person’s liability to Settling Parties 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;

[NOTE: Use next paragraph if there is MSW at the Site.]

* + 1. [**MSW Waiver**. For all matters relating to the Site against any person where the person’s liability to Settling Parties with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of MSW at the Site, if the volume of MSW disposed, treated, or transported by such person to the Site did not exceed 0.2 percent of the total volume of waste at the Site; and]

[NOTE: Use the following waiver if there are known or potential *de minimis* and/or ability to pay (ATP) parties at the Site. Include bracketed reference to *de minimis* party settlement, ATP party settlement, or both as appropriate given Site facts. Use the bracketed “[or in the future enters]” if there are known or potential *de minimis* and/or ATP PRPs with whom the United States has not yet settled. Note that inclusion of the future component of the waiver does not affect Settling Parties’ right to oppose entry of any such future settlement through the public comment process and does not have any effect unless and until the United States enters into any such future settlement. The scope of the waiver should generally track the scope of the “matters addressed” in the contribution provision of the concluded *de minimis* or ATP settlement. Normally, this means that the scope will be “response costs” as included below. However, if the settlement included natural resource damages, also include “natural resource damages and assessment costs,” and if the settlement was not site-wide, limit the scope as appropriate. Also, if the “[or in the future enters]” bracket is used and the scope of the future settlement is likely to be different from the past settlement(s), redraft as necessary.]

* + 1. [***De Minimis*/Ability to Pay Waiver**. For response costs relating to the Site against any person that has entered [or in the future enters] into [a final CERCLA Section 122(g) *de minimis* settlement] [, or] [a final settlement based on limited ability to pay] [,] with EPA with respect to the Site.]
  1. **Exceptions to Waiver[s]**
     1. The waiver[s] under this Paragraph 28 shall not apply with respect to any defense, claim, or cause of action that a Settling Party may have against any person otherwise covered by such waiver[s] if such person asserts a claim or cause of action relating to the Site against such Settling Party.

[NOTE: If a Settling Party 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:

* + 1. [The waiver[s] under this Paragraph 28 shall not apply to Settling Party [**insert name**]’s contractual indemnification claim against [**insert name**].]
    2. The waiver under Paragraph 28.a(1) (De Micromis Waiver) shall not apply to any claim or cause of action against any person otherwise covered by such waiver if EPA determines that: (i) the materials containing hazardous substances contributed to the Site by such person contributed significantly or could contribute significantly, either individually or in the aggregate, to the cost of the response action or natural resource restoration at the Site; or (ii) such person has failed to comply with any information request or administrative subpoena issued pursuant to Section 104(e) or 122(e)(3)(B) of CERCLA, 42 U.S.C. § 9604(e) or 9622(e)(3)(B), or Section 3007 of RCRA, 42 U.S.C. § 6927, or has impeded or is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to the Site; or if (iii) such person has been convicted of a criminal violation for the conduct to which the waiver would apply and that conviction has not been vitiated on appeal or otherwise.
    3. [The waiver under Paragraph 28.a(2) (MSW Waiver) shall 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 pursuant to Section 104(e) or 122(e)(3)(B) of CERCLA, 42 U.S.C. § 9604(e) or 9622(e)(3)(B), or Section 3007 of RCRA, 42 U.S.C. § 6927, 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.]

# EFFECT OF SETTLEMENT/CONTRIBUTION

1. Except as provided in Paragraph 28 (Waiver of Claims by Settling Parties), nothing in this Settlement Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Settlement Agreement. Except as provided in Section IX (Covenants by Settling Parties [and Settling Federal Agencies]), each of the Parties expressly reserves any and all rights (including, but not limited to, pursuant to Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action that it 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 Agreement diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613 (f)(2)-(3), to pursue any such persons 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).
2. The Parties agree that this Settlement Agreement constitutes an administrative settlement pursuant to which each Settling Party [**if SFAs, insert:** and each Settling Federal Agency] has, as of the Effective Date, resolved liability to the United States within the meaning of Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), and 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 Agreement. The “matters addressed” in this Settlement Agreement are Past Response Costs [**if SFAs are making payments for Settling Parties’ Past Response Costs, insert:** and Settling Parties’ Past Response Costs.][[6]](#footnote-7)
3. The Parties further agree that this Settlement Agreement constitutes an administrative settlement pursuant to which each Settling Party [**if SFAs, insert:** and each Settling Federal Agency] has, as of the Effective Date, resolved liability to the United States within the meaning of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B).
4. Each Settling Party shall, with respect to any suit or claim brought by it for matters related to this Settlement Agreement, notify EPA in writing no later than 60 days prior to the initiation of such suit or claim. Each Settling Party also shall, with respect to any suit or claim brought against it for matters related to this Settlement Agreement, notify EPA in writing within 10 days after service of the complaint or claim upon it. In addition, each Settling Party 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, for matters related to this Settlement Agreement.
5. In any subsequent administrative or judicial proceeding initiated by EPA, or by the United States on behalf of EPA, for injunctive relief, recovery of response costs, or other relief relating to the Site, Settling Parties shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the Covenants by EPA set forth in Section VII.
6. Effective upon signature of this Settlement Agreement by a Settling Party, such Settling Party agrees that the time period commencing on the date of its signature and ending on the date EPA receives from such Settling Party the payment(s) required by Section V (Payment of Response Costs) and, if any, Section VI (Failure to Comply with Settlement Agreement) 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 Paragraph 30, and that, in any action brought by the United States related to the “matters addressed,” such Settling Party 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 gives notice to Settling Parties that it will not make this Settlement Agreement effective, the statute of limitations shall begin to run again commencing 90 days after the date such notice is sent by EPA.

# PROPERTY REQUIREMENTS

[NOTE: This Section should be used if a Settling Party is a Site owner or otherwise controls access to the Site and access and/or use restrictions are needed. If access is needed to real property owned or controlled by a Settling Party, use Paragraph 35.a. If land, water, or other resource use restrictions are needed on real property owned or controlled by a Settling Party, use Paragraph 35.b. If EPA has issued a record of decision or an action memorandum that provides for institutional controls (ICs) on real property owned by a Settling Party, then relevant provisions from the remedial design/remedial action consent decree or the removal administrative settlement agreement and order on consent, as appropriate, relating to ICs implementation, plan review and approval, payment of future oversight costs, dispute resolution, etc., may be needed and should be adapted for use in this model. Additional changes to this section of the model will be needed in the event that access or land, water, or other resource use restrictions are needed on or affect a federal facility.]

1. **Agreements Regarding Access and Non-Interference**. Owner Settling Party shall, with respect to its Affected Property:
   1. Provide the United States [, the State,] potentially responsible parties who have entered or may enter into an agreement with the United States [or the State] for performance of response actions at the Site (hereinafter “Performing Parties”), and their representatives, contractors, and subcontractors with access at all reasonable times to its Affected Property to conduct any activity relating to response actions at the Site including the following activities:

[NOTE: Augment this list as appropriate.]

* + 1. Verifying any data or information submitted to the United States [or the State];
    2. Conducting investigations regarding contamination at or near the Site;
    3. Obtaining samples;
    4. Assessing the need for, planning, implementing, or monitoring response actions;
    5. Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Owner Settling Party or its agents, consistent with Section XII (Access to Information);
    6. Assessing Owner Settling Party’s compliance with the Settlement Agreement;
    7. Determining whether the Affected Property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted under the Settlement Agreement; and
    8. Implementing, monitoring, maintaining, reporting on, and enforcing [any institutional controls or] any land, water, or other resource use restrictions regarding the Affected Property.
  1. Refrain from using its Affected Property in any manner that EPA determines will (i) pose an unacceptable risk to human health or to the environment due to exposure to hazardous substances or (ii) interfere with or adversely affect the implementation, integrity, or protectiveness of response actions at the Site, including the following restrictions:

[NOTE: Customize and augment this list as appropriate. Be as specific as possible.]

* + 1. Prohibiting the following activities which could interfere with response actions at the Site: \_\_\_\_\_\_;
    2. Prohibiting use of contaminated groundwater;
    3. Prohibiting the following activities which could result in exposure to contaminants in subsurface soils and groundwater:\_\_\_\_\_\_;
    4. Ensuring that any new structures on the Affected Property will not be constructed in the following manner which could interfere with response actions at the Site: \_\_\_\_\_\_; and
    5. Ensuring that any new structures on the Affected Property will be constructed in the following manner which will minimize potential risk of inhalation of contaminants:\_\_\_\_\_\_.

1. If EPA determines in a decision document prepared in accordance with the NCP that institutional controls in the form of state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls or notices are needed regarding the Affected Property, Owner Settling Party shall cooperate with EPA’s [and the State’s] efforts to secure and ensure compliance with such institutional controls.
2. **Notice to Successors-in-Title**
   1. Owner Settling Party shall, within 15 days after the Effective Date, submit for EPA approval a notice to be filed regarding the Affected Property in the appropriate land records. The notice must: (1) Include a proper legal description of the Affected Property; (2) provide notice to all successors-in-title: (i) that the Affected Property is part of, or related to, the Site; (ii) that EPA [performed / has selected] a response action for the Site [**if applicable:** ; and (iii) that potentially responsible parties are required to implement the response action]; and (3) identify the document requiring implementation of the response action, including, if applicable, the name and civil action or docket number of the matter. Owner Settling Party shall record the notice within 10 days after EPA’s approval of the notice and submit to EPA, within 10 days thereafter, a certified copy of the recorded notice.
   2. Owner Settling Party shall, prior to entering into a contract to Transfer its Affected Property, or 60 days prior to Transferring its Affected Property, whichever is earlier:
      1. Notify the proposed transferee that EPA [performed / has selected] a response action regarding the Site [**if applicable:** , that potentially responsible parties are required to implement response actions regarding the Site, including information identifying the document requiring such implementation,]; and
      2. Notify EPA [and the State] of the name and address of the proposed transferee and provide EPA [and the State] with a copy of the above notice that it provided to the proposed transferee.
3. In the event of any Transfer of the Affected Property, unless EPA otherwise consents in writing, Owner Settling Party shall continue to comply with its obligations under the Settlement Agreement.
4. Notwithstanding any provision of this Settlement Agreement, EPA [and the State] retain[s] all of its [their] access authorities and rights, as well as all of its [their] rights to require institutional controls, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statute or regulations.

# ACCESS TO INFORMATION

[**NOTE: This Section may be omitted if Settling Parties have not been and will not be involved in cleanup efforts at the Site and if they do not possess any information beyond that already provided that may assist the Agency in its cleanup or enforcement efforts.**]

1. Settling Parties shall provide to EPA, upon request, copies of all records, reports, documents, and other information (including records, reports, documents, and other information in electronic form) (hereinafter referred to as “Records”) within their possession or control or that of their contractors or agents relating to activities at the Site [**if needed, include:** or to the implementation of this Settlement Agreement], including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information regarding the Site.
2. **Privileged and Protected Claims**
   1. Settling Parties may assert that all or part of a Record is privileged or protected as provided under federal law, provided they comply with Paragraph 41.b, and except as provided in Paragraph 41.c
   2. If Settling Parties 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, 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, Settling Parties shall provide the Record to EPA in redacted form to mask the privileged or protected information only. Settling Parties shall retain all Records that they claim to be privileged or protected until the United States has had a reasonable opportunity to dispute the privilege or protection claim and any such dispute has been resolved in the Settling Parties’ favor.
   3. Settling Parties may make no claim of privilege or protection regarding:
      1. any data regarding the Site, including but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, radiological, or engineering data, or the portion of any other Record that evidences conditions at or around the Site; or
      2. the portion of any Record that Settling Parties are required to create or generate pursuant to this Settlement Agreement.
3. **Business Confidential Claims**. Settling Parties may assert that all or part of a Record submitted to EPA under this Section or Section XIII (Retention of Records) is business confidential to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. 2.203(b). Settling Parties shall segregate and clearly identify all Records or parts thereof submitted under this Settlement Agreement for which Settling Parties assert a business confidentiality claim. Records that Settling Parties claim to be confidential business information will be accorded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies Records when they are submitted to EPA [and the State], or if EPA has notified Settling Parties that the Records are not confidential 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 Settling Parties.
4. Notwithstanding any provision of this Settlement Agreement, the United States [and the State] retain[s] all of its [their] information gathering and inspection authorities and rights, including enforcement actions relating thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

# RETENTION OF RECORDS

1. Until [10] years after the Effective Date, each Settling Party shall preserve and retain all non-identical copies of [Records] [**if Access to Information section is not used, insert:** records, reports, documents, and other information (including records, reports, documents, and other information in electronic form) (hereinafter referred to as “Records”)] now in its possession or control, or that come into its possession or control, that relate in any manner to its liability under CERCLA with respect to the Site, provided, however, that Settling Parties who are potentially responsible as owners or operators of the Site must retain, in addition, all Records that relate to the liability of any person under CERCLA with respect to the Site. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary.
2. After the conclusion of the [10]-year record retention period, Settling Parties shall notify EPA [and the State] at least 90 days prior to the destruction of any such Records and, upon request by EPA [or the State], and except as provided in Paragraph 41 (Privileged and Protected Claims), Settling Parties shall deliver any such Records to EPA [or the State].

[NOTE: If Access to Information section is not used, insert the text of Paragraphs 41 (Privileged and Protected Claims) and 42 (Business Confidential Claims) here.]

1. Each Settling Party certifies individually that, 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 the United States or the State and that it has fully complied with any and all EPA and State requests for information regarding the Site pursuant to Sections 104(e) and 122(e)(3)(B) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e)(3)(B), Section 3007 of RCRA, 42 U.S.C. § 6927, and state law.

[**If SFAs, insert the following paragraph.**]

1. [The United States acknowledges that each Settling Federal Agency (1) is subject to all applicable Federal record retention laws, regulations, and policies; and (2) has certified that it has fully complied with any and all EPA and State requests for information regarding the Site pursuant to Sections 104(e) and 122(e)(3)(B) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), Section 3007 of RCRA, 42 U.S.C. § 6927, and state law.[[7]](#footnote-8)]

# NOTICES AND SUBMISSIONS

1. Whenever, under the terms of this Settlement Agreement, notice is required to be given or a document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Except as otherwise provided, notice by email in accordance with this Section satisfies any notice requirement of this Settlement Agreement regarding such Party.

**As to EPA:**

[**Insert name and email address of EPA Regional Attorney, Remedial Project Manager, or Project Coordinator**]

[**If SFAs, insert**:

**As to Settling Federal Agencies:** [mailprocessing\_eds.enrd@usdoj.gov](mailto:mailprocessing_eds.enrd@usdoj.gov)

Re: DJ # \_\_\_\_\_\_]

**As to Settling Parties:**

[**Insert name and email address of one person who will serve as the contact for all Settling Parties**]

# INTEGRATION[/APPENDICES]

1. This Settlement Agreement [and its appendices] constitute[s] the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Settlement Agreement. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Settlement Agreement. [**The following appendices are attached to and incorporated into this Settlement Agreement:** “Appendix A” is a complete list of the Settling Parties; [and] “Appendix B” is the map of the Site.]

# PUBLIC COMMENT

1. This Settlement Agreement shall be subject to a public comment period of at least 30 days pursuant to Section 122(i) of CERCLA, 42 U.S.C. § 9622(i). In accordance with Section 122(i)(3) of CERCLA, EPA may withhold its consent or seek to modify this Settlement Agreement if comments received disclose facts or considerations that indicate that this Settlement Agreement is inappropriate, improper, or inadequate.

# [ATTORNEY GENERAL APPROVAL]

[NOTE: This Section should be used if Attorney General approval is required for this settlement because total past and projected response costs at the Site will exceed $500,000, excluding interest, and the Settlement Agreement compromises a claim (i.e., recovers less than 100% of past costs, including accrued interest). If Attorney General approval is required, the Region should consult with DOJ during the negotiations process and should obtain written DOJ approval of the settlement before publishing notice of the proposed Settlement Agreement in the Federal Register pursuant to Section 122(i) of CERCLA. The Region should discuss with DOJ any significant comments received during the public comment period. If the Region believes that the Settlement Agreement should be modified based upon public comment, the Region should discuss with the DOJ attorney assigned to the case whether the proposed change will require formal re-approval by DOJ.]

1. [The Attorney General or his or her designee has approved the settlement embodied in this Settlement Agreement in accordance with Section 122(h)(1) of CERCLA, 42 U.S.C. § 9622(h)(1).]

# EFFECTIVE DATE

1. The effective date of this Settlement Agreement shall be the date upon which EPA issues written notice that the public comment period pursuant to Paragraph 50 has closed and the United States has determined not to withhold its consent or seek to modify this this Settlement Agreement based on the comments received, if any. [**NOTE: This notice should inform Settling Parties and SFAs, if any, that payment is now due in accordance with Paragraph 11 (Payment by Settling Parties for Past Response Costs) (and Paragraph 15 (Payments by Settling Federal Agencies) for SFAs) and should include a calculation of any Interest to be included with Settling Parties’ Past Response Cost payment in accordance with Paragraph 11.**]

IT IS SO AGREED:

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

\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Dated [Name]

Regional Administrator, Region \_\_\_

[NOTE: If the Regional Administrator has redelegated authority to enter into past cost settlements, insert name and title of delegated official.]

Signature Page for Settlement Agreement Regarding \_\_\_\_\_\_ Superfund Site

[If Settling Federal Agencies, insert signature blocks for each settling federal agency. If SFAs are numerous or signature by the agency is otherwise impractical, DOJ/EDS may exercise its discretion to sign on behalf of the SFAs.]

**FOR SETTLING FEDERAL AGENCY**:

\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Dated [Name]

[Chief]

U.S. Department of Justice

Environment and Natural Resources Division

Environmental Defense Section

P.O. Box 7611

Washington, D.C. 20044-7611]

Signature Page for Settlement Agreement Regarding \_\_\_\_\_\_ Superfund Site

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

[Print name of Settling Party]

\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Dated [Name]

[Title]

[Company]

[Address]

**[NOTE: A separate signature page must be signed by each settlor.]**

**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. |

1. If the past costs settlement is partial, it may be necessary to continue the definition with a brief description of the past response action(s) that are being paid for or compromised, such as: “. . . for the response action described in the Record of Decision for the First Operable Unit at the Site dated \_\_\_\_\_\_” or “for the removal action described in the Action Memorandum for the Site dated \_\_\_\_\_\_.” Exercise care in describing the activities covered, as this description may affect the scope of the covenant not to sue and contribution provisions. For clarity, the description of the past response action may need to indicate which response actions are not included within the definition of Past Response Costs. Check to be sure that the date used in the definition of Past Response Costs does not inadvertently include costs that are intended to be outside the scope of the definition. In some cases, it may be useful to attach a standard, Regionally-prepared cost summary listing the costs that are within the scope of the definition. This may be done: (1) to be sure that no confusion arises as to which costs are being compromised; or (2) to indicate which outstanding past cost claims are being resolved through the settlement. [↑](#footnote-ref-2)
2. 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 Section 104(e) information requests to federal agencies, review the “Guidance on Issuing CERCLA Section 104(e)(2) Information Requests to Federal Agencies at Privately-owned Superfund Sites” (June 14, 2004), available at <https://www.epa.gov/enforcement/guidance-issuing-superfund-104e2-information-requests-federal-agencies-privately-owned>. [↑](#footnote-ref-3)
3. Escalating penalty payment schedules may be used for payment or non-payment obligations. Regions may include a more detailed stipulated penalties provision to capture the individual requirements of Section XI (Property Requirements). [↑](#footnote-ref-4)
4. In some instances, 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. [↑](#footnote-ref-5)
5. The settlement should resolve claims by Settling Parties against the United States for Past Response Costs and, if such costs are addressed by the settlement, for Settling Parties’ Past Response Costs and State Past Response Costs. [↑](#footnote-ref-6)
6. In general, in this past response costs model, the “matters addressed” will coincide with the payments being made and the covenants being provided. Thus, “matters addressed” will generally include Past Response Costs and, if Settling Federal Agencies are reimbursing the Settling Parties for their past costs, Settling Parties’ Past Response Costs. In exceptional situations, different coverage may apply. *See generally* “Defining ‘Matters Addressed’ in CERCLA Settlements” (Mar. 14, 1997), available at <https://www.epa.gov/enforcement/guidance-defining-matters-addressed-cercla-settlements-0>. [↑](#footnote-ref-7)
7. EPA attorneys must assure that the Agency has received a written response to any information requests that it has sent to Settling Federal Agencies containing a certification substantially similar to that required from private PRPs. [↑](#footnote-ref-8)