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

)

IN THE MATTER OF: ) U.S. EPA Docket No. \_\_\_\_\_\_

)

[Site Name and Location] )

)

Proceeding under Section 122(g)(4) )

of the Comprehensive Environmental ) **ADMINISTRATIVE SETTLEMENT**

Response, Compensation, and ) **AGREEMENT AND** **ORDER**

Liability Act, 42 U.S.C. § 9622(g)(4) ) **ON CONSENT**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ )

**MODEL CERCLA SECTION 122(g)(4) NON-EXEMPT DE MICROMIS PARTY ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT**

**September 2014**

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| See the “Revised Settlement Policy and Contribution Waiver Language Regarding Exempt De Micromis and Non-Exempt De Micromis Parties” (Nov. 6, 2002), available online at <https://www.epa.gov/enforcement/guidance-settlement-policy-contribution-waiver-language-regarding-de-micromis-parties>, for the factors to consider when determining whether a party should be treated as a non-exempt de micromis party. As noted in the policy, Regions should consider offering settlements to non-exempt de micromis parties only if such parties (1) have been sued by other potentially responsible parties (PRPs) at the site, or (2) face the concrete threat of litigation from other PRPs at the site. |

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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. |

1. Jurisdiction/Parties Bound. This Administrative Settlement Agreement and Order on Consent (“Settlement Agreement”) is issued under Section 122(g)(4) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or “Superfund”), 42 U.S.C. § 9622(g)(4). This Settlement Agreement is binding upon the United States Environmental Protection Agency (EPA) and upon the parties who are identified in Attachment \_\_ who are signatories to this Settlement Agreement (“Settlors”). Settlors do not admit any liability.
2. Purpose. The purpose of this Settlement Agreement is to reach a final “non-exempt de micromis party” settlement with Settlors, which: a) resolves Settlors’ potential civil liability to the United States under Superfund for payment of response costs and for performance of cleanup at the [**insert site name**]; and b) protects Settlors from any lawsuits seeking recovery of Site cleanup costs.
3. Statement of Facts. The [**insert site name**] (“the Site”) is located at [**insert address or location**] in [**city, county, state**], and is generally [**shown on/described by**] the [**map/property description**] attached to this Settlement Agreement as Attachment \_\_. Under Section 104 of CERCLA, 42 U.S.C. § 9604, EPA has incurred [**approximately $**\_\_\_\_\_\_ **in**] response costs at the Site and [**will/may**] incur additional costs. EPA currently estimates that total past and future response costs at the Site, including the costs of EPA and CERCLA potentially responsible parties, will be [**insert either “$**\_\_\_\_\_\_**” or “between $**\_\_\_\_\_\_ **and $**\_\_\_\_\_\_**” or “in excess of $**\_\_\_\_\_\_**”**]. Each Settlor may have contributed hazardous substances to the Site that are not in excess of [**insert number of pounds or gallons**] of materials containing hazardous substances [**or, stated as a percentage,** \_\_\_**% of the hazardous substances at the Site**] and that are not significantly more toxic or of significantly greater hazardous effect than other hazardous substances at the Site.
4. Determinations. EPA determines that: a) in accordance with Section 122(g) of CERCLA, 42 U.S.C. § 9622(g), it is practicable and in the public interest to reach this final settlement, involving only a minor portion of the response costs at the [**insert site name**] facility, with Settlors who may be potentially responsible parties who each may have contributed a minimal amount of hazardous substances to the Site, the toxic or other hazardous effects of which are minimal in comparison to other hazardous substances at the Site; and b) Settlors are eligible for a non-exempt de micromis party settlement because they each contributed no more than a minuscule amount of hazardous substances to the Site, an amount that is so minor that it would be inequitable to require them to help finance or perform cleanup at the Site[.] [**Insert if applicable:** ; and c) total past and projected response costs of the United States at the Site will not exceed $500,000, excluding interest.]
5. Certification. Each Settlor certifies that to the best of its knowledge it: a) has conducted a thorough, comprehensive, good faith search for documents, and has fully and accurately disclosed to EPA all information currently in its possession, or in the possession of its officers, directors, employees, contractors or agents, if any, that relates in any way to the generation, treatment, transportation, storage, or disposal of a hazardous substance at or in connection with the Site; b) has not altered, destroyed, or disposed of any records, reports, documents, or other information (including records, reports, documents, or other information in electronic form) (other than identical copies) relating to its potential liability at the Site after notification of potential liability by the United States or the state; and c) has and will fully comply with any and all EPA and state requests for information concerning the Site pursuant to Sections 104(e) and 122(e)(3)(B) and (g)(8) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e)(3)(B) and (g)(8), and Section 3007 of RCRA, 42 U.S.C. § 6927, and state law.
6. United States’ Covenant Not to Sue. In consideration of Settlors’ agreement to this Settlement Agreement, and except as specifically provided in Paragraph 7, the United States covenants not to sue or take administrative action against Settlors under Sections 106 or 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607, [and Section 7003 of the Resource Conservation and Recovery Act, 42 U.S.C. § 6973,] [[1]](#footnote-1) relating to the Site.[[2]](#footnote-2) These covenants shall take effect on the effective date as defined by Paragraph 12.
7. United States’ Reservations of Rights. The United States reserves the right to seek additional relief from any Settlor if: 1) information is discovered indicating that such Settlor’s contribution of hazardous substances to the Site is of such greater amount or of such greater toxic or other hazardous effect that it no longer qualifies for settlement under the criteria stated in Paragraph 3; or 2) after Settlor signs this Settlement Agreement, such Settlor becomes an owner or operator of the Site or undertakes any activity with regard to hazardous substances or solid wastes at the Site. The United States also reserves all rights that it may have as to any matter relating in any way to the Site against any person who is not a party to this Settlement Agreement.
8. Settlors’ Covenant Not to Sue.Settlors covenant not to sue and agree not to assert any claims against the United States or its contractors or employees with respect to the Site or this Settlement Agreement. Settlors also agree not to assert and to waive all claims with respect to the Site against each other or against any other person who is a potentially responsible party under CERCLA at the Site, provided, however, that this waiver shall not apply with respect to any defense, claim, or cause of action that a Settlor may have against any person if such person asserts a claim or cause of action relating to the Site against such Settlor. [**NOTE: If a Settlor asserts that it has a claim against a PRP within the scope of this waiver that is unrelated to the PRP’s de micromis CERCLA liability at the Site, e.g., a claim for contractual indemnification, insert exception for such claim to end of proviso, such as:** , and provided further that this waiver shall not apply to Settlor[**insert name**]’s contractual indemnification claim against [**insert name**].]
9. Contribution Protection. The Parties agree that this Settlement Agreement is an administrative settlement under which each Settlor has, as of the effective date as defined by Paragraph 12, resolved liability to the United States within the meaning of Sections 113(f)(2) and 122(g)(5) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(g)(5), and that each Settlor is entitled, as of the effective date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(g)(5) 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 all response actions taken and to be taken and all response costs incurred and to be incurred, at or in connection with the Site, by the United States or by any person (except for the state), except for those limited areas in Paragraph 7 for which the United States has reserved its rights.
10. Contribution Rights. The Parties further agree and this Court finds that this Settlement Agreement is an administrative settlement under which each Settlor has, as of the effective date of this Settlement Agreement, 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).
11. [**NOTE: Insert if total past and projected response costs at the site will exceed $500,000, excluding interest.**] Attorney General Approval. The Attorney General has approved this settlement as required by Section 122(g)(4) of CERCLA, 42 U.S.C. § 9622(g)(4).
12. Public Comment/Effective Date. This Settlement Agreement is subject to public comment under Section 122(i) of CERCLA, 42 U.S.C. § 9622(i), and is effective on the date that EPA issues written notice that the public comment period has closed and that comments received, if any, do not require modification of or EPA withdrawal from this Settlement Agreement.

IT IS SO AGREED AND ORDERED:

U.S. Environmental Protection Agency

Date: \_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[Name]

[Insert Title of Delegated Official]

U.S. EPA Region \_\_

[Address]

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

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

[Print name of Settlor]

Date: \_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[Name and address of Settlor or Settlor’s signatory]

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

1. If including a RCRA § 7003 covenant, pursuant to Section 7003(d) of RCRA, you must offer to have a public meeting regarding the settlement and hold such a meeting if requested. To do this, please include language in the Federal Register notice providing for an opportunity for a public meeting in the affected area. For guidance regarding how to comply with this requirement, see “Revised Model Notice Language for Compliance with Public Participation Requirements of Section 7003(d) of RCRA” (Oct. 30, 1996), available at <https://www.epa.gov/enforcement/guidance-model-language-compliance-public-participation-requirements-under-rcra-section>. [↑](#footnote-ref-1)
2. The federal natural resource trustees have agreed to waive the natural resource damage claim against de micromis settlors whose monetary consideration is $1.00 or less, subject to a right to withdraw that consent in a given case. The Region should notify the trustees as early in the process as possible after it has decided to develop a de micromis settlement offer and must give potentially interested federal trustees 30 days to review the proposed settlement prior to EPA’s signing it. (The 30 days may run concurrently with the period given to the de micromis parties to review and sign the proposed settlement.) Unless a trustee objects within the 30-day period (or an enlarged time period agreed to by the Region and the trustee), the trustee’s generic waiver of natural resource claims applies. This process was outlined in the “Revised Guidance on CERCLA Settlements with De Micromis Waste Contributors” (June 3, 1996, p. 10), available to EPA employees at <https://intranet.epa.gov/oeca/docket/ec-2003-053/cercla-sett-rpt.pdf>. Although this guidance was superseded by the “Revised Settlement Policy and Contribution Waiver Language Regarding Exempt De Micromis and Non-Exempt De Micromis Parties” (Nov. 6, 2002)**,** available at<https://www.epa.gov/enforcement/guidance-settlement-policy-contribution-waiver-language-regarding-de-micromis-parties>, the trustee review process is still in effect. [↑](#footnote-ref-2)