

has been delegated to the Regional Administrators of the EPA by EPA Delegation No. 14-14-D.

[Note: Also reference any internal Regional redelegations of authority under 14-14-D.]

2. This Agreement is made and entered into by EPA and the [insert names or reference attached appendix listing settling parties] ("Settling Parties"). Each Settling Party consents to and will not contest EPA's jurisdiction to enter into this Agreement or to implement or enforce its terms.

## II. Background

3. This 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).

4. 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 undertaken may be included.]

5. In performing this response action, EPA incurred response costs at or in connection with the Site.

6. EPA alleges that Settling Parties are responsible parties pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and are jointly and severally liable for response costs incurred at or in connection with the Site.

[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 and renumber all subsequent paragraphs.]

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

7. EPA and Settling Parties desire to resolve Settling Parties' alleged civil liability for Past Response Costs without litigation and without the admission or adjudication of any issue of fact or law.

## III. Parties Bound

8. This Agreement shall be binding upon EPA 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 Agreement. Each signatory to this Agreement certifies that he or she is authorized to enter into the terms and conditions of this Agreement and to bind legally the party represented by him or her.

## IV. Definitions

9. Unless otherwise expressly provided herein, terms used in this Agreement which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Agreement or in any appendix attached hereto, the following definitions shall apply:

a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, *et seq.*

b. "Agreement" shall mean this Agreement and any attached appendices. In the event of conflict between this Agreement and any appendix, the Agreement shall control.

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

d. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities of the United States.

e. "Interest" shall mean interest at the current rate specified for interest on investments of the 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).<sup>1</sup>

f. "Paragraph" shall mean a portion of this Agreement identified by an arabic numeral or a lower case letter.

g. "Parties" shall mean EPA and the Settling Parties.

h. "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], plus accrued Interest on all such costs through such date.<sup>2</sup>

<sup>1</sup> The Superfund currently is invested in 52-week MK bills. The interest rate for these MK bills changes on October 1 of each year. To obtain the current rate, contact Vince Velez, Office of Administration and Resource Management, Financial Management Division, Superfund Accounting Branch, at (202) 260-6465.

<sup>2</sup> If the past costs settlement is partial, it may be necessary to continue the definition with a brief

i. "Section" shall mean a portion of this Agreement identified by a roman numeral.

j. "Settling Parties" shall mean [insert names of settling parties, or if very numerous, "those parties identified in Appendix \_\_\_\_\_."]

k. "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 "depicted more clearly on the map included in Appendix \_\_\_\_\_" or "designated by the following property description: \_\_\_\_\_."]

l. "United States" shall mean the United States of America, including its departments, agencies and instrumentalities.

## V. Reimbursement of Response Costs

10. Within 30 days of the effective date of this Agreement, the Settling Parties shall pay to the EPA Hazardous Substance Superfund \$\_\_\_\_\_ in reimbursement of Past Response Costs, plus an additional sum for Interest on that amount calculated from the date set forth in the definition of Past Response Costs through the date of payment.<sup>3</sup>

11. Payments shall be made by certified or cashier's check made payable to "EPA Hazardous Substance Superfund." Each check shall reference the name and address of the party making payment, the Site name, the EPA Region and Site/Spill ID Number \_\_\_\_\_ [insert 4-digit number, first 2

description of the past response action(s) which 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 protection. 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 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, *i.e.*, to indicate that the recovered costs are to be applied to particular portions of the debt.

<sup>3</sup> As an alternative to calculation and payment of interest from the Past Response Costs date through the date of payment, settling parties may agree to place the amount agreed upon into an interest-bearing escrow account to be disbursed to EPA upon the effective date of the Agreement. If this method is used, accrued interest from the Past Response Costs date through the date the escrow account is created should be calculated and included in the escrow deposit.