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Department or Agency may take action at variance with these models or their internal implementing procedures.

Model Cercla Section 122(g)(4) De MinimisContributor Consent Decree

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Model Cercla Section 122(G)(4) De Minimis Contributor Consent Decree

In the United States District Court for the District of [\_\_\_\_ \_\_\_\_] [\_\_\_ Division 1

United States of America, Plaintiff, v. [Defendants] Defendants. [Civil Action No. 1

## Judge \_

#### Consent Decree

[Note: If the complaint includes causes of action which are not resolved by this consent decree or names defendants who are not signatories to this consent decree, the title should be "Partial Consent Decree."]

#### I. Background

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a complaint in this matter pursuant to [[insert causes of action and relief sought, e.g., "Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. §§ 9606 and 9607, seeking injunctive relief regarding the cleanup of the [insert site name] in [insert City, County, State] ("Site"), and recovery of costs incurred and to be incurred in responding to the release or threat of release of hazardous substances at or in connection with the Site"]].

B. As a result of the release or threatened release of hazardous substances, EPA has undertaken response actions at or in connection with the Site under Section 104 of CERCLA, 42 U.S.C. 9604, and will

undertake response actions in the future. In performing these response actions, EPA has incurred and will continue to incur response costs at or in connection with the Site.

[Note: Insert brief description of response actions undertaken at the site to date by EPA or private parties, noting whether a removal, RI/FS or ROD(s) have been completed. Describe briefly any previous settlements for performance of work or recovery of costs. Note whether further response action is planned.]

C. The Regional Administrator of EPA, Region \_\_\_\_\_, or his/her delegatee, has determined the following:

1. prompt settlement with each Settling Defendant is practicable and in the public interest within the meaning of Section 122(g)(1) of CERCLA, 42 U.S.C.  $9622(g)(\bar{1});$ 

2. the payment to be made by each Settling Defendant under this Consent Decree involves only a minor portion of the response costs at the Site within the meaning of Section 122(g)(1) of CERCLA, 42 U.S.C. 9622(g)(1), based upon EPA's estimate that the total response costs incurred and to be incurred at or in connection with the Site by the EPA Hazardous Substance Superfund and by private parties is [insert either "\$\_\_\_\_" or "between \$\_\_\_\_ and \$\_\_\_\_"]; and

3. the amount of hazardous substances contributed to the Site by each Settling Defendant and the toxic or other hazardous effects of the hazardous substances contributed to the Site by each Settling Defendant are minimal in comparison to other hazardous substances at the Site within the meaning of Section 122(g)(1)(A) of CERCLĂ, 42 U.S.C. 9622(g)(1)(A). This is because [[insert volume and toxicity criteria used to qualify as a *de minimis* party under this consent decree, e.g.: 'the amount of hazardous substances contributed to the Site by each Settling Defendant does not exceed [insert either % of the hazardous substances at the Site," or " pounds/gallons of materials containing hazardous substances,"] and the hazardous substances contributed by each Settling Defendant to the Site are not significantly more toxic or of significantly greater hazardous effect than other hazardous substances at the Site."]]

[Note: Where practicable, an attachment listing the volume and general nature of the hazardous substances contributed to the site by each settling defendant, to the extent available, may be included as an appendix. The total estimated volume of hazardous substances at the site should be noted on the attachment, if one is used.]

D. The Settling Defendants do not admit any liability to Plaintiff arising out of the transactions or occurrences alleged in the complaint.

E. The United States and Settling Defendants agree that settlement without further litigation and without the admission or adjudication of any issue of fact or law is the most appropriate means of resolving this action with respect to Settling Defendants.

Therefore, with the consent of the Parties to this Consent Decree, it is ordered, adjudged, and decreed:

### II. Jurisdiction

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. 1331 and 1345 and 42 U.S.C. 9613(b), and also has personal jurisdiction over Settling Defendants. Settling Defendants consent to and shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

### III. Parties Bound

2. This Consent Decree is binding upon the United States and upon Settling Defendants and their [heirs,] successors and assigns. Any change in ownership or corporate or other legal status of a Settling Defendant, including but not limited to, any transfer of assets or real or personal property shall in no way alter such Settling Defendant's responsibilities under this Consent Decree.

# **IV. Statement of Purpose**

[Note: As drafted, this Statement of Purpose assumes that all settling defendants are making a cash payment, which includes a premium amount, in exchange for a full and final settlement with the United States for all civil liability under CERCLA Sections 106 and 107 with respect to the site as a whole. This Statement of Purpose will need to be amended if the settlement is of narrower scope with respect to some or all settling defendants because, e.g., it relates to only one operable unit, or it includes a reservation of rights for cost overruns. When using this or any other Statement of Purpose, be sure that it is consistent with the Covenant Not to Sue, the Reservations of Rights, and the definition of "matters addressed" in the Contribution Protection provision.]

3. By entering into this Consent Decree, the mutual objectives of the Parties are:

a. to reach a final settlement among the Parties with respect to the Site pursuant to Section 122(g) of CERCLA, 42 U.S.C. 9622(g), that allows Settling Defendants to make a cash payment, including a premium, to resolve their alleged civil liability under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606

<sup>&</sup>lt;sup>1</sup> Follow local rules for caption format.