



DIRECTIVE NUMBER: 9834.7-1A

TITLE: Interim Model CERCLA Section 122(g)(4) De Minimis
Waste Contributor Consent Decree and Administrative
Order on Consent

APPROVAL DATE: October 19, 1987

EFFECTIVE DATE: October 19, 1987

ORIGINATING OFFICE: OWPE/OECM

☒ **FINAL**

☐ **DRAFT**

LEVEL OF DRAFT

☐ A — Signed by AA or DAA

☒ B — Signed by Office Director

☐ C — Review & Comment

REFERENCE (other documents): Document #9834.7
Interim Guidance on Settlements with De Minimis Waste
Contributors under Section 122(g) of SARA.

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DIRECTIVE DIRECTIVE DI



United States Environmental Protection Agency
Washington, DC 20460

OSWER Directive Initiation Request

1. Directive Number
9834.7-1A

2. Originator Information

Name of Contact Person Bob Mason	Mail Code WH-527	Office OWPE/OECM	Telephone Code 382-4015
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3. Title

Interim Model CERCLA Section 122(g)(4) De Minimis Waste Contributor Consent Decree and Administrative Order on Consent

4. Summary of Directive (include brief statement of purpose)

The purpose of this memorandum is to provide interim model language to assist the Regions in drafting de minimis waste contributor consent decrees and administrative orders on consent under Section 122(g)(4) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Re-authorization Act of 1986, Pub. L. No. 99-499, 42 U.S.C. 9622(g)(4) ("CERCLA").

5. Keywords

6a. Does This Directive Supersede Previous Directive(s)?

☒ No

☐ Yes

What directive (number, title)

b. Does It Supplement Previous Directive(s)?

☐ No

☒ Yes

What directive (number, title) 9834.7

Interim Model CERCLA Section 122(g)(4) De Minimis Waste Contributor Consent Decree and Administrative Order on Consent

7. Draft Level

☐ A - Signed by AA/DAA

☒ B - Signed by Office Director

☐ C - For Review & Comment

☐ D - In Development

8. Document to be distributed to States by Headquarters?

☒ Yes

☐ No

This Request Meets OSWER Directives System Format Standards.

9. Signature of Lead Office Directives Coordinator

Darlene M. Willard

Date

10/26/87

10. Name and Title of Approving Official

Date

EPA Form 1315-17 (Rev. 5-87) Previous editions are obsolete.

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

9834.7-1A

OCT 19 1987

MEMORANDUM

SUBJECT: Interim Model CERCLA Section 122(g)(4) De Minimis
Waste Contributor Consent Decree and Administrative
Order on Consent

FROM: Edward E. Reich *E. E. Reich*
Associate Enforcement Counsel for Waste
Gene A. Lucero *Gene A. Lucero*
Director, Office of Waste Programs Enforcement

TO: Regional Counsels, Regions I - X
Regional Waste Management Division Directors,
Regions I - X

I. PURPOSE

The purpose of this memorandum is to provide interim model language to assist the Regions in drafting de minimis waste contributor consent decrees and administrative orders on consent under Section 122(g)(4) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499, 42 U.S.C. 9622(g)(4) ("CERCLA"). The attached models are designed to be used in conjunction with the "Interim Guidance on Settlements with De Minimis Waste Contributors under Section 122(g) of SARA," which was issued on June 19, 1987, and published at 52 Fed. Reg. 24333 (June 30, 1987). The models do not pertain to settlements with de minimis landowners under Section 122(g)(1)(B) of CERCLA, 42 U.S.C. 9622(g)(1)(B), which will be addressed by separate guidance.

The attached models contain the basic legal and factual provisions necessary for a de minimis contributor settlement. While the specific language may be varied, consistent with the interim guidance, to suit the facts of the case and the timing of the settlement, use of the models will help the Agency to achieve quick, standardized, and nationally consistent de minimis contributor settlements without engaging in lengthy, resource-intensive negotiations. The models may be revised after we have gained experience in drafting de minimis settlements and have completed our review of public comments received on the interim guidance referenced above.

II. DISCLAIMER

This memorandum and any internal procedures adopted for its implementation 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 a benefit, substantive or procedural, enforceable at law or in equity by any person. The Agency may take action at variance with this memorandum or its internal implementing procedures.

Attachments

INTERIM MODEL SECTION 122(g)(4) CONSENT DECREE

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	Civil Action No. _____
v.)	
)	Judge _____
[INSERT NAME(S) OF DEFENDANT(S)])	
)	
Defendant(s))	

CONSENT DECREE

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

WHEREAS, the United States of America, on behalf of the Administrator of the United States Environmental Protection Agency ("Plaintiff" or "United States") filed a complaint on [insert date] against [insert defendants' names] ("Defendants") pursuant to [insert causes of action and relief sought, e.g., Sections 106 and 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499, 42 U.S.C. 9606 and 9607(a) ("CERCLA"), and Section 7003 of Resource Conservation and Recovery Act, as amended ("RCRA"), 42 U.S.C. 6973, seeking injunctive relief regarding the cleanup of the [insert site name] ("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];

WHEREAS, the United States has incurred and continues to incur response costs in responding to the release or threat of release of hazardous substances at or in connection with the Site;

WHEREAS, the Regional Administrator of the United States Environmental Protection Agency, Region ____ ("Regional Administrator") has determined that prompt settlement of this case is practicable and in the public interest;

- 2 -

WHEREAS, this settlement involves only a minor portion of the response costs at the Site with respect to each [insert "Defendant" or "Settling Defendant" as appropriate];

WHEREAS, [insert the amount and toxicity criteria used to qualify for de minimis treatment under the particular settlement, e.g., "information currently known to the United States indicates that the amount of hazardous substances contributed to the Site by each Settling Defendant does not exceed ____% of the hazardous substances at the Site, and that the toxic or other hazardous effects of the hazardous substances contributed to the Site by each Settling Defendant do not contribute disproportionately to the cumulative toxic or other hazardous effects of the hazardous substances at the Site"];

WHEREAS, the Regional Administrator has, therefore, determined that 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; and

WHEREAS, the United States and the Settling Defendants agree that settlement of this case 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;

NOW, THEREFORE, it is ORDERED, ADJUDGED and DECREED as follows:

I. JURISDICTION

This Court has jurisdiction over the subject matter and the parties to this action. The parties agree to be bound by the terms of this Consent Decree and not to contest its validity in any subsequent proceeding to implement or enforce its terms.

II. PARTIES BOUND

This Consent Decree shall apply to and be binding upon the United States and shall apply to and be binding upon the Settling Defendants, their directors, officers, employees, agents, successors and assigns. Each signatory to this Consent Decree represents that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to bind legally the Party represented by him or her.

[NOTE: It may be necessary to include a Statement of Purpose and/or a Definitions provision.]

III. PAYMENT

1. Each Settling Defendant shall pay to the Hazardous Substance Superfund [insert as appropriate either: "the amount set forth below" or "the amount set forth in Attachment ____ to this Consent Decree, which is incorporated herein by reference,"] within ____ days [insert small amount of time, e.g., 10, 30 or 45] of entry of this Consent Decree.

2. [NOTE: If a premium payment is included in the dollar amount to be paid by each Settling Defendant, the Consent Decree should explain what portion of the total payment compensates the United States for past and projected costs (including possible cost overruns) and what portion of the total payment is the premium amount. Lists may be attached and incorporated by reference as needed. A simple example follows:

Of the total payment of \$30,000 to be made by each Settling Defendant pursuant to Paragraph 1 of this Section, \$10,000 represents each Settling Defendant's share of the response costs incurred by the United States to date and the projected costs, including possible cost overruns, of the remedial action consistent with the Record of Decision ("ROD") for the Site (which currently are estimated to be between \$____ and \$____), and \$20,000 represents each Settling Defendant's share of any costs which may be incurred if EPA determines that the remedial action consistent with the ROD is not protective of public health or the environment.]

[NOTE: This model assumes that there will be only one ROD at the site. If multiple operable unit RODs will be issued at the site, the decree must clearly identify which ROD is being referenced and should be structured to take into account the additional remedial action contemplated in, e.g., the payment, covenant not to sue, and reservation of rights provisions.]

3. Each payment shall be made by certified or cashier's check made payable to "EPA-Hazardous Substance Superfund." Each check shall reference the site name, the name and address of the Settling Party, and the civil action number of this case, and shall be sent to:

EPA Superfund
P.O. Box 371003M
Pittsburgh, Pennsylvania 15251

4. Each Settling Defendant shall simultaneously send a copy of its check to:

[Insert name and address of Regional Attorney or Remedial Project Manager]

IV. CIVIL PENALTIES

In addition to any other remedies or sanctions available to the United States, any Settling Defendant who fails or refuses to comply with any term or condition of this Consent Decree shall be subject to a civil penalty of up to \$25,000 per day of such failure or refusal pursuant to Section 122(1) of CERCLA, 42 U.S.C. 9622(1).

V. CERTIFICATION OF SETTLING DEFENDANTS

[NOTE: The following language regarding disclosure of information concerning waste contributions to the site should be used in cases in which the de minimis settlement is concluded prior to completion of PRP investigations, especially where information requests or subpoenas have not been issued:

Each Settling Defendant certifies that, to the best of its knowledge and belief, it has provided to the United States all information currently in its possession, or in the possession of its officers, directors, employees, contractors or agents which relates in any way to the ownership, operation, generation, treatment, transportation or disposal of hazardous substances at or in connection with the Site.]

VI. COVENANT NOT TO SUE

1. Subject to the reservations of rights in Section VII, Paragraphs 1 and 2, of this Consent Decree, upon payment of the amounts specified in Section III, Paragraph 1, of this Consent Decree, the United States covenants not to sue or to take any other civil or administrative action against any of the Settling Defendants for "Covered Matters." "Covered Matters" shall include any and all civil liability for reimbursement of response costs or for injunctive relief pursuant to Sections 106 or 107(a) of CERCLA, 42 U.S.C. 9606 or 9607(a), and Section 7003 of RCRA, 42 U.S.C. 6973, with regard to the Site.

2. In consideration of the United States' covenant not to sue in Paragraph 1 of this Section, the Settling Defendants agree not to assert any claims or causes of action against the United States or the Hazardous Substance Superfund arising out of Covered Matters, or to seek any other costs, damages, or attorney's fees from the United States arising out of response activities at the Site.

VII. RESERVATION OF RIGHTS

1. Nothing in this Consent Decree is intended to be nor shall it be construed as a release or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the United States may have against any of the Settling Defendants for:

a) any liability as a result of failure to make the payments required by Section III, Paragraph 1, of this Consent Decree; or

b) any matters not expressly included in Covered Matters, including, without limitation, any liability for damages to natural resources. [NOTE: This natural resource damages reservation must be included unless the Federal natural resource trustee has agreed to a covenant not to sue pursuant to Section 122(j)(2) of CERCLA. In accordance with Section 122(j)(1) of CERCLA, where the release or threatened release of any hazardous substance at the site may have resulted in damages to natural resources under the trusteeship of the United States, the Region should notify the Federal natural resource trustee of the negotiations and encourage the trustee to participate in the negotiations.]

2. Nothing in this Consent Decree constitutes a covenant not to sue or to take action or otherwise limits the ability of the United States to seek or obtain further relief from any of the Settling Defendants, and the covenant not to sue in Section VI, Paragraph 1, of this Consent Decree is null and void, if:

a) information not currently known to the United States is discovered which indicates that any Settling Defendant contributed hazardous substances to the Site in such greater amount or of such greater toxic or other hazardous effects that the Settling Defendant no longer qualifies as a de minimis party at the Site because [insert volume and toxicity criteria, e.g., "the Settling Defendant contributed greater than ____% of the

- 6 -

hazardous substances at the Site or contributed disproportionately to the cumulative toxic or other hazardous effects of the hazardous substances at the Site"];

[NOTE: Unless a premium payment is being made under Section III of this Consent Decree which compensates the United States for taking the risk that the events noted in the reservations of rights in Subparagraphs (b) and (c) below may occur, those reservations should be included. A premium may be accepted in lieu of one or both of the reservations of rights in Subparagraphs (b) and (c) below:

b) costs incurred during the completion of the remedial action [if ROD is completed, insert "consistent with the Record of Decision"] at the Site exceed [insert dollar amount of cost ceiling]; or

c) the United States determines, based upon conditions at the Site, previously unknown to the United States, or information received, in whole or in part, after entry of this Consent Decree, that the remedial action [if ROD is completed, insert "consistent with the Record of Decision"] is not protective of public health or the environment.]

3. Nothing in this Consent Decree is intended as a release or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the United States may have against any person, firm, corporation or other entity not a signatory to this Consent Decree.

4. The United States and the Settling Defendants agree that the actions undertaken by the Settling Defendants in accordance with this Consent Decree do not constitute an admission of any liability by any Settling Defendant.

VIII. CONTRIBUTION PROTECTION

Subject to the reservations of rights in Section VII, Paragraphs 1 and 2, of this Consent Decree, the United States agrees that by entering into and carrying out the terms of the Consent Decree, each Settling Defendant will have resolved its liability to the United States for Covered Matters pursuant to Section 122(g)(5) of CERCLA, 42 U.S.C. 9622(g)(5), and shall not be liable for claims for contribution for Covered Matters.

IX. PUBLIC COMMENT

This Consent Decree shall be subject to a thirty-day public comment period. The United States may withdraw its consent to this Consent Decree if comments received disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper or inadequate.

X. EFFECTIVE DATE

The effective date of this Consent Decree shall be the date of entry by this Court, following public comment pursuant to Section IX of this Consent Decree.

The United States of America. [The Settling Defendants]

By: _____ By: _____

SO ORDERED this ____ day of _____, 198_.

United States District Judge

ATTACHMENT 2

INTERIM MODEL SECTION 122(g)(4) ADMINISTRATIVE ORDER ON CONSENT

 IN THE MATTER OF:

[Insert Site Name and Location]

 Proceeding under Section 122(g)(4)
 of the Comprehensive Environmental
 Response, Compensation, and Lia-
 bility Act of 1980, as amended,
 42 U.S.C. 9622(g)(4)

U.S. EPA Docket No. _____

 ADMINISTRATIVE ORDER
 ON CONSENT
I. JURISDICTION

This Administrative Order on Consent ("Consent Order") is issued pursuant to the authority vested in the President of the United States by Section 122(g)(4) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 ("CERCLA"), Pub. L. No. 99-499, 42 U.S.C. 9622(g)(4), to reach settlements in actions under Section 106 or 107(a) of CERCLA, 42 U.S.C. 9606 or 9607(a). The authority vested in the President has been delegated to the Administrator of the United States Environmental Protection Agency ("EPA") by Executive Order 12580, 52 Fed. Reg. 2923 (Jan. 29, 1987) and further delegated to the Regional Administrators of the EPA by EPA Delegation No. 14-14-E (Sept. 13, 1987).

This Administrative Order on Consent is issued to [insert names or reference attached list of respondents] ("Respondents"). Each Respondent agrees to undertake all actions required by the terms and conditions of this Consent Order. Each Respondent further consents to and will not contest EPA's jurisdiction to issue this Consent Order or to implement or enforce its terms.

[NOTE: It may be necessary to include a Statement of Purpose and/or a Definitions provision.]

II. STATEMENT OF FACTS

1. [In one or more paragraphs, insert site name, location, description, NPL status and brief statement of historical hazardous substance activity at the site.]

2. Hazardous substances within the definition of Section 101(14) of CERCLA, 42 U.S.C. 9601(14), have been or are threatened to be released into the environment at or from the Site. [NOTE: Additional information about specific hazardous substances present on- or off-site may be included.]

3. As a result of the release or threatened release of hazardous substances into the environment, EPA has undertaken response action at the Site under Section 104 of CERCLA, 42 U.S.C. 9604, and will undertake response action in the future. [NOTE: A brief recitation of the specific response action undertaken or planned for the site, e.g., whether an RI/FS and ROD have been completed, should be included.]

4. In performing this response action, EPA has incurred and will continue to incur response costs at or in connection with the Site. [NOTE: The dollar amount of costs incurred as of a specific date should be included.]

5. [Identify each respondent and its relationship to the site. If respondents are numerous, state generally that "Information currently known to EPA indicates that each Respondent listed on Attachment _____ to this Consent Order, which is incorporated herein by reference, arranged for disposal or treatment, or arranged with a transporter for disposal or treatment, of a hazardous substance owned or possessed by such Respondent at the Site, or accepted a hazardous substance for transport to the Site."]

6. [In one or more paragraphs, present in summary fashion the factual basis for EPA's determination in Section III below that the respondents are de minimis parties, i.e., that the amount of hazardous substances contributed to the site by each respondent and the toxic or other hazardous effects of the substances contributed to the site by each respondent are minimal in comparison to other hazardous substances at the site. The language will vary depending upon the criteria established for the particular settlement. An example follows:

Information currently known to EPA indicates that the amount of hazardous substances contributed to the Site by each Respondent does not exceed _____% of the hazardous substances at the Site, and that the toxic or other hazardous effects of the substances contributed by each Respondent to the Site do not contribute disproportionately to the cumulative toxic or other hazardous effects of the hazardous substances at the Site. [NOTE: An attachment listing the volume and general nature of the hazardous substances contributed to the site by each respondent, to the

- 3 -

extent available, should be attached and incorporated by reference. The total estimated volume of hazardous substances at the site should be noted on the attachment.]]

7. In evaluating the settlement embodied in this Consent Order, EPA has considered the potential costs of remediating contamination at or in connection with the Site taking into account possible cost overruns in completing the remedial action [if ROD is completed, insert "consistent with the Record of Decision for this Site"], and possible future costs if the remedial action [if ROD is completed, insert "consistent with the Record of Decision for this Site"] is not protective of public health or the environment.

8. Payments required to be made by each Respondent pursuant to this Consent Order are a minor portion of the total response costs at the Site which EPA, based upon currently available information, estimates to be between \$_____ and \$_____. [NOTE: The dollar figure inserted should include the total response costs incurred to date as well as the Agency's projection of the total response costs to be incurred during completion of the remedial action at the site.]

9. EPA has identified persons other than the Respondents who owned or operated the Site, or who arranged for disposal or treatment, or arranged with a transporter for disposal or treatment, of a hazardous substance owned or possessed by such person at the Site, or who accepted a hazardous substance for transport to the Site. EPA has considered the nature of its case against these non-settling parties in evaluating the settlement embodied in this Consent Order.

III. DETERMINATIONS

Based upon the Findings of Fact set forth above and on the administrative record for this Site, EPA has determined that:

1. The [insert site name] site is a "facility" as that term is defined in Section 101(9) of CERCLA, 42 U.S.C. 9601(9).

2. Each Respondent is a "person" as that term is defined in Section 101(21) of CERCLA, 42 U.S.C. 9601(21).

3. Each Respondent is a potentially responsible party within the meaning of Section 107(a) and 122(g)(1) of CERCLA, 42 U.S.C. 9607(a) and 9622(g)(1).

4. The past, present or future migration of hazardous substances from the Site constitutes an actual or threatened "release" as that term is defined in Section 101(22) of CERCLA, 42 U.S.C. 9601(22).

5. Prompt settlement with the Respondents is practicable and in the public interest within the meaning of Section 122 (g)(1) of CERCLA, 42 U.S.C. 9622(g)(1).

6. This Consent Order involves only a minor portion of the response costs at the Site with respect to each Respondent pursuant to Section 122(g)(1) of CERCLA, 42 U.S.C. 9622(g)(1).

7. The amount of hazardous substances contributed to the Site by each Respondent and the toxic or other hazardous effects of the hazardous substances contributed to the Site by each Respondent are minimal in comparison to other hazardous substances at the Site pursuant to Section 122(g)(1)(A) of CERCLA, 42 U.S.C. 9622(g)(1)(A).

IV. ORDER

Based upon the administrative record for this Site and the Findings of Fact and Determinations set forth above, and in consideration of the promises and covenants set forth herein, it is hereby AGREED TO AND ORDERED:

PAYMENT

1. Each Respondent shall pay to the Hazardous Substance Superfund [insert as appropriate either: "the amount set forth below" or "the amount set forth in Attachment ____ to this Consent Order, which is incorporated herein by reference,"] within ____ days [insert small amount of time, e.g., 10, 30 or 45] of the effective date of this Consent Order.

2. [NOTE: If a premium payment is included in the dollar amount to be paid by each respondent, the Consent Order should explain what portion of the total payment compensates EPA for past and projected costs (including possible cost overruns) and what portion of the total payment is the premium amount. Lists may be attached and incorporated by reference as needed. A simple example follows:

Of the total payment of \$30,000 to be made by each Respondent pursuant to Paragraph 1 of this Section, \$10,000 represents each

- 5 -

Respondent's share of the response costs incurred by EPA to date and the projected costs, including possible cost overruns, of the remedial action consistent with the Record of Decision ("ROD") for this Site (which currently are estimated by EPA to be between \$____ and \$____), and \$20,000 represents each Respondent's share of any costs which may be incurred if EPA determines that the remedial action consistent with the ROD is not protective of public health or the environment.]

[NOTE: This model assumes that there will be only one ROD at the site. If multiple operable unit RODs will be issued at the site, the order must clearly identify which ROD is being referenced and should be structured to take into account the additional remedial action contemplated in, e.g., the payment, covenant not to sue, and reservation of rights provisions.]

3. Each payment shall be made by certified or cashier's check made payable to "EPA-Hazardous Substance Superfund." Each check shall reference the site name, the name and address of the Respondent, and the EPA docket number for this action, and shall be sent to:

EPA Superfund
P.O. Box 371003M
Pittsburgh, Pennsylvania 15251

4. Each Respondent shall simultaneously send a copy of its check to:

[Insert name and address of Regional
Attorney or Remedial Project Manager]

CIVIL PENALTIES

5. In addition to any other remedies or sanctions available to EPA, any Respondent who fails or refuses to comply with any term or condition of this Consent Order shall be subject to a civil penalty of up to \$25,000 per day of such failure or refusal pursuant to Section 122(1) of CERCLA, 42 U.S.C. 9622(1).

CERTIFICATION OF RESPONDENTS

6. [NOTE: The following language regarding disclosure of information concerning waste contributions to the site should be used in cases in which the de minimis settlements is concluded prior to completion of PRP investigations, especially where information requests or subpoenas have not been issued:]

- 6 -

Each Respondent certifies that, to the best of its knowledge and belief, it has provided to EPA all information currently in its possession, or in the possession of its officers, directors, employees, contractors or agents, which relates in any way to the ownership, operation, generation, treatment, transportation or disposal of hazardous substances at or in connection with the Site.]

COVENANT NOT TO SUE

7. Subject to the reservations of rights in Section IV, Paragraphs 9 and 10, of this Consent Order, upon payment of the amounts specified in Section IV, Paragraph 1, of this Consent Order, EPA covenants not to sue or to take any other civil or administrative action against any of the Respondents for "Covered Matters." "Covered Matters" shall include any and all civil liability for reimbursement of response costs or for injunctive relief pursuant to Sections 106 or 107(a) of CERCLA, 42 U.S.C. 9606 or 9607(a), or Section 7003 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6973, with regard to the Site.

8. In consideration of EPA's covenant not to sue in Section IV, Paragraph 7, of this Consent Order, the Respondents agree not to assert any claims or causes of action against the United States or the Hazardous Substance Superfund arising out of Covered Matters, or to seek any other costs, damages, or attorney's fees from the United States arising out of response activities at the Site.

RESERVATION OF RIGHTS

9. Nothing in this Consent Order is intended to be nor shall it be construed as a release or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, at law or in equity, which the United States, including EPA, may have against any of the Respondents for:

a) any liability as a result of failure to make the payments required by Section IV, Paragraph 1, of this Consent Order; or

b) any matters not expressly included in Covered Matters, including, without limitation, any liability for damages to natural resources. [NOTE: This natural resource damage reservation must be included unless the Federal natural resource trustee has agreed to a covenant not to sue pursuant to Section 122(j)(2) of CERCLA.]

- 7 -

In accordance with Section 122(j)(1) of CERCLA, where the release or threatened release of any hazardous substance at the site may have resulted in damages to natural resources under the trusteeship of the United States, the Region should notify the Federal natural resource trustee of the negotiations and encourage the trustee to participate in the negotiations.]

10. Nothing in this Consent Order constitutes a covenant not to sue or to take action or otherwise limits the ability of the United States, including EPA, to seek or obtain further relief from any of the Respondents, and the covenant not to sue in Section IV, Paragraph 7, of this Consent Order is null and void, if:

a) information not currently known to EPA is discovered which indicates that any Respondent contributed hazardous substances to the Site in such greater amount or of such greater toxic or other hazardous effects that the Respondent no longer qualifies as a de minimis party at the Site because [insert volume and toxicity criteria from Paragraph 7 of the Findings of Fact, e.g., "the Respondent contributed greater than ____% of the hazardous substances at the Site or contributed hazardous substances which contributed disproportionately to the cumulative toxic or other hazardous effects of the hazardous substances at the Site"];

[NOTE: Unless a premium payment is being made under Section IV, Paragraph 1, which compensates EPA for the risk that the events noted in the reservations of rights in Subparagraphs (b) and (c) below may occur, those reservations should be included. A premium may be accepted in lieu of one or both of the reservations in Subparagraphs (b) and (c) below:

b) costs incurred during the completion of the remedial action [if ROD is completed, insert "consistent with the Record of Decision"] at the Site exceed [insert dollar amount of cost ceiling]; or

c) EPA determines, based upon conditions at the Site, previously unknown to EPA, or information received, in whole or in part, after entry of this Consent Order, that the remedial action [if ROD is completed, insert "consistent with the Record of Decision"] is not protective of public health or the environment.

11. Nothing in this Consent Order is intended as a release or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the United States, including EPA, may have against any person, firm, corporation or other entity not a signatory to this Consent Order.

- 8 -

12. EPA and the Respondents agree that the actions undertaken by the Respondents in accordance with this Consent Order do not constitute an admission of any liability by any Respondent. The Respondents do not admit and retain the right to controvert in any subsequent proceedings, other than proceedings to implement or enforce this Consent Order, the validity of the Findings of Fact or Determinations contained in this Consent Order.

CONTRIBUTION PROTECTION

13. Subject to the reservations of rights in Section IV, Paragraphs 9 and 10, of this Consent Order, EPA agrees that by entering into and carrying out the terms of this Consent Order, each Respondent will have resolved its liability to the United States for Covered Matters pursuant to Section 122(g)(5) of CERCLA, 42 U.S.C. 9622(g)(5), and shall not be liable for claims for contribution for Covered Matters.

PARTIES BOUND

14. This Consent Order shall apply to and be binding upon the Respondents and their directors, officers, employees, agents, successors and assigns. Each signatory to this Consent Order represents that he or she is fully authorized to enter into the terms and conditions of this Consent Order and to bind legally the Respondent represented by him or her.

PUBLIC COMMENT

15. This Consent Order shall be subject to a thirty-day public comment period pursuant to Section 122(i) of CERCLA, 42 U.S.C. 9622(i). In accordance with Section 122(i)(3) of CERCLA, 42 U.S.C. 9622(i)(3), EPA may withdraw consent to this Consent Order if comments received disclose facts or considerations which indicate that this Consent Order is inappropriate, improper or inadequate.

ATTORNEY GENERAL APPROVAL

16. The Attorney General or his designee has issued prior written approval of the settlement embodied in this Consent Order in accordance with Section 122(g)(4) of SARA. [NOTE: Attorney General approval usually will be required for de minimis consent orders because the total past and projected response costs at the site will exceed \$500,000, excluding interest. In the event that

Attorney General approval is not required, the order should not include this Paragraph 16, but should include the following as a separate numbered paragraph in the Determinations section (Section III) above: "The Regional Administrator of EPA, Region ____, has determined that the total response costs incurred to date at or in connection with the Site do not exceed \$500,000, excluding interest, and that, based upon information currently known to EPA, total response costs at or in connection with the Site are not anticipated to exceed \$500,000, excluding interest, in the future." Use of this determination requires changes to the model Findings of Fact in Section II above; specifically, Paragraph 3 of the Findings should not state that further response action will be undertaken in the future, and Paragraph 4 of the Findings should not state that EPA will incur response costs in the future.]

EFFECTIVE DATE

17. The effective date of this Consent Order shall be the date upon which EPA issues written notice to the Respondents that the public comment period pursuant to Section IV, Paragraph 15, of this Consent Order has closed and that comments received, if any, do not require modification of or EPA withdrawal from this Consent Order.

IT IS SO AGREED AND ORDERED:

[Respondent(s)]

By: _____
[Name]

[Date]

U.S. Environmental Protection Agency

By: _____
[Name]

[Date]