**MODEL NOTICE OF ELIGIBILITY**

**TO RECEIVE A *DE MINIMIS* PARTY SETTLEMENT**

**[Date]**

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

**[PRP Name]**

**[Address]**

**[City, State, Zip Code]**

 Re: Offer of *De Minimis* Settlement at the **[Site Name]** in **[Site Location]**

Dear [**PRP Name**]:

The United States Environmental Protection Agency (EPA) is currently working to clean up the [**site name**] Site (“the Site”) located in [**city, state**] under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, commonly referred to as Superfund). The Superfund program is administered by EPA and designed to clean up hazardous substances that may pose a threat to human health or the environment.

The purposes of this letter are to: (1) provide [**you or company name**] with information related to the recent federal cleanup efforts at the [**site name**]; and (2) inform [**you or company name**] that [**you or it**] qualify[ies] for a special *de minimis* party settlement **[if offering specific *de minimis* amount in this letter insert dollar amount here]** at this Site to resolve potential liability that [**you or company name**] may have to EPA under CERCLA. **[If offering a de minimis settlement in this letter, include the following language:** “Details on the terms of this offer and how to accept it are provided below. Please note that the deadline for accepting the offer is **[insert deadline date in bold]**”]**.** **[If a specific de minimis offer is not included in this letter, add either of the following:** “EPA intends to provide [**you or company name**] with a *de minimis* settlement offer at a later time.” **OR** “If you would like to enter into a *de minimis* settlement with EPA, please contact [**insert name and number of regional contact person**] before **[insert date in bold]**.”]

**Background**

**[If there has not been any prior communication with the PRP, include the following paragraph:** “Under Sections 106(a) and 107(a) of CERCLA, potentially responsible parties (PRPs) can be required to perform cleanup actions to protect the public health, welfare, or the environment. PRPs may also be responsible for costs incurred by EPA in performing such cleanups. PRPs include current and former owners and operators of the Site, persons who arranged for treatment and/or disposal of any hazardous substances at the Site, and persons who accepted hazardous substances for transport and selected the site to which the hazardous substances were delivered.”]

EPA has undertaken several response actions to investigate and clean up the [**site name**] under the authority of the Superfund program. A brief description of the response actions taken to date follows: [**insert a brief description of site activities, such as:**

* A preliminary assessment (PA) and site investigation (SI) in order to gain a basic understanding of any risks posed by releases or threatened releases from the Site to human health and the environment.
* A removal action, conducted to reduce any immediate threat to the environment or human health.
* A Remedial Investigation (RI) to identify the Site characteristics and to define the nature and extent of soil, air, surface water, and groundwater contamination at the Site and the risks posed by the Site.
* Remedial Design and Remedial Action (RD/RA) to design and implement the EPA approved cleanup action for the Site.
* Activities to monitor, operate and maintain the cleanup action after the cleanup is completed.]

**Eligibility for a *De Minimis* Settlement**

Based on the information EPA has collected, the Agency believes that, although [**you or company name**] may have liability under CERCLA as [**a/an**] [**insert language identifying PRP class that letter recipient falls into: owner/operator, arranger, or transporter (e.g., “PRP who arranged for the disposal of the hazardous substance TCE”)**] at [**site name**], [**you or company name**] are eligible for a special *de minimis* settlement with EPA.[[1]](#footnote-1) Under CERCLA § 122(g), whenever practicable and in the public interest, EPA may offer special settlements to parties whose waste contribution to a site is minimal in volume and toxicity, that is, *de minimis* parties. **[For *de minimis* waste contributors, Regions may want to add language about why the PRP is potentially liable and why it is a *de minimis* party (e.g., “Shipping receipts for the Site show that you arranged for the shipment of only two barrels of TCE to the Site among the hundreds of barrels of TCE that were disposed of at the Site. Over the years, these barrels have deteriorated and leaked TCE into the ground, and eventually into the groundwater.”) [For *de minimis* landowners, the letter should include the following language:** “In addition, an owner of the real property on which the facility is located may qualify for a *de minimis* settlement if: (1) such owner did not conduct or permit the generation, transportation, storage, treatment, or disposal of any hazardous substances at the facility; and (2) the owner did not have actual or constructive knowledge that the property was used for the generation, transportation, storage, treatment, or disposal of any hazardous substance.”]

[**For *de minimis* waste contributors, add the following paragraph:** “EPA has designated parties contributing less than [**insert pounds/gallons**] of waste to the [**site name**] as *de minimis* waste contributors. EPA considers [**you or company name**] a *de minimis* party because EPA’s analysis indicates that the volume and nature of hazardous substances that you disposed of, or had disposed of, at the Site are below [**insert pounds/gallons**] and are, therefore, minimal compared to the other hazardous substances at the Site. Accordingly, based on currently available information, EPA believes that [**you or company name**] are eligible for a *de minimis* settlement.”]

[**For *de minimis* landowners, add the following paragraph:** “EPA has determined that [**you have or company name has**] demonstrated that [**you or company name**] satisfy all of the requirements for settlement as a *de minimis* landowner under CERCLA § 122(g). Accordingly, you are eligible to receive a *de minimis* landowner settlement.”]

An individual or business that resolves its Superfund liability as a *de minimis* party is not typically required to perform site cleanup. [**For *de minimis* contributors, add the following:** “Instead, EPA typically requires *de minimis* parties to enter into a settlement with EPA under which they pay their fair share of all cleanup costs at a site, plus a “premium” that accounts for, among other things, uncertainties associated with the costs of work to be performed in the future.”] [**For *de minimis* landowners, add the following:**“Instead, EPA typically requires *de minimis* landowners to enter into a settlement with EPA under which they provide [**insert language regarding provisions likely to be included in the settlement agreement, such as** **access, institutional controls, due care, cooperation and, if any, cash payment.**] In return, *de minimis* settlors receive: (1) a covenant not to sue, which is a promise that EPA will not bring any future legal action against the settling party for the specific matters addressed in the settlement; and (2) protection from contribution claims, which provides a settling party with protection from being sued in a contribution action by other responsible parties for the specific matters addressed in the settlement. (The matters addressed in a *de minimis* settlement are typically all cleanup actions and all cleanup costs at the particular site.)

The protection from contribution suits for *de minimis* settlors is based on Sections 113(f)(2) and 122(g)(5) of the CERCLA law, which provide that a person “who has resolved its liability to the United States” in an administrative or judicially approved settlement “shall not be liable for claims for contribution regarding matters addressed in the settlement.” This protection against contribution claims, however, may not extend to claims by third parties that have incurred their own response costs and seek to recover them under Section 107(a)(4)(B). *See United States v. Atlantic Research Corporation*, 172 S.Ct. 2331, 169 L.Ed. 2d 28 (June 11, 2007) (in certain situations, a liable party who has incurred cleanup costs at a site can sue other liable parties under CERCLA § 107(a)(4)(B)).

**Opportunity to Settle**

**[Add the next four paragraphs if a specific settlement amount is offered in this letter:** “By this letter, EPA is offering [**you or company name**] a *de minimis* settlement at the [**site name**] for the amount of [$\_\_\_\_\_]. If [**you or company name**] would like to participate in the settlement, please complete the signature page of the enclosed settlement and return the signed settlement agreement to [**name and address of regional contact**]. In addition, please be prepared to remit payment of [$\_\_\_\_\_] to EPA as directed in the enclosed settlement agreement. We suggest that [**you or company name**] keep a copy of the entire settlement for your files. If we do not receive your signed copy by **[insert deadline date in bold]**, we will assume that [**you or company name**] are not interested in settling at this time.”

**Unless it has already been determined that the recipients of the letter have the ability to pay the settlement amount, add the following language:** “EPA is aware that the financial ability of some PRPs to contribute toward the payment of response costs at a site may be substantially limited. If you believe and can document that [**you or company name**] fall within this category, please contact [**insert name**] at [**insert phone number**] for information on “Ability to Pay Settlements.” You will receive a package of information about such settlements and a form to fill out with information about your finances and will be asked to submit financial records including business [and personal] federal tax returns. If EPA concludes that [**you have or company name has**] a legitimate inability to pay the full amount, EPA may offer a schedule for payment over time or a reduction in the principal payment.”

“Please note that some or all of the costs associated with this offer may be covered by current or past insurance policies issued to [**you or company name**]. Most insurance policies will require that you timely notify your carrier(s) of a claim against you. To evaluate whether [**you or company name**] should notify your insurance carrier(s) of this demand, you may wish to review current and past policies, beginning with the date of [**your or your company’s**] first contact with the [**site name**], up to the present. Coverage depends on many factors, such as the language of the particular policy and state law.”

“Final approval of the settlement is subject to the review of authorized EPA [**unless site costs are less than $500,000, include the following:** and United States Department of Justice (DOJ)] officials.[[2]](#footnote-2)If you have any questions about the [**site name**], EPA’s *de minimis* determination, the terms of the settlement, or how to respond to this settlement offer, please contact [**name and phone number of regional contact**].”]

[**Add one of the following if a specific settlement amount is not offered in this letter:** “EPA intends to provide [**you or company name**] with a *de minimis* settlement offer at a later time. If you have any questions about the [**site name**], EPA’s *de minimis* determination, or anything else in this letter, please contact [**insert name and number of regional contact**].” **OR** “If you would like to enter into a *de minimis* settlement with EPA, please contact [**insert name and number of regional contact**] before [**insert date in bold]**.”]

[**If recipient is likely a small business, insert:** “EPA has created a number of helpful resources for small businesses. EPA has established the National Compliance Assistance Clearinghouse as well as Compliance Assistance Centers which offer various forms of resources to small businesses. You may inquire about these resources at <http://www.epa.gov/compliance/compliance-assistance-centers>. In addition, the EPA Small Business Ombudsman may be contacted at <http://www.epa.gov/resources-small-businesses/forms/contact-us-about-resources-small-businesses>. Finally, EPA has developed a fact sheet about the Small Business Regulatory Enforcement Fairness Act (SBREFA) and information on resources for small businesses, which is enclosed with this letter and available on the Agency’s website at <http://www.epa.gov/compliance/small-business-resources-information-sheet>.”]

Thank you for your prompt attention to this matter.

 Sincerely,

[**Name/Title/Address of Individual Delegated** **Signature Authority**]

Attachment(s)

1. EPA’s offer is based on information currently available and will be voided if [**you or company name**] have failed to disclose all information fully and accurately. [↑](#footnote-ref-1)
2. After the offer close date of [**insert date**] and final EPA [**and DOJ**] approval, EPA will publish the settlement for public comment and, barring any unforeseen circumstances, will notify you of the effective date of the settlement shortly thereafter. [↑](#footnote-ref-2)