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Model Cercla Section 107 Consent Decree for Recovery of Past Response Costs

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

#### Consent Decree

United States of America, [and the State of \_\_\_\_\_] Plaintiff[s], v. [Defendants] Defendants.

Civil Action No. \_\_\_\_\_

Judge \_\_\_\_\_

[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 Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9607, as amended ("CERCLA"), seeking reimbursement of response costs incurred and to be incurred for response actions taken at or in connection with the release or threatened release of hazardous substances at the [insert Site Name] in [insert City, County, State] ("the Site").

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

[[.\_\_\_\_\_. The State of \_\_\_\_\_ (the "State") also filed a complaint against the defendants in this Court alleging that the defendants are liable to the State under Section 107 of CERCLA, 42 U.S.C. § 9607, and [list State laws cited in the State's complaint]. The State in its complaint seeks [insert relief sought].]]

B. The defendants that have entered into this Consent Decree ("Settling Defendants") do not admit any liability to Plaintiff[s] arising out of the transactions or occurrences alleged in the complaint[s].<sup>2</sup>

C. The United States and Settling Defendants agree, and this Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that settlement of this matter will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

Therefore, with the consent of the Parties to this 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. §§ 9607 and 9613(b) and also has personal jurisdiction over Settling Defendants. Settling Defendants consent to and shall not challenge entry 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 the State], and upon Settling Defendants and their [heirs,] successors and assigns. Any change in ownership or corporate or other legal status, including but not limited to, any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of Settling Defendants under this Consent Decree.

#### IV. Definitions

3. Unless otherwise expressly provided herein, terms used in this Consent Decree 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 Consent Decree

<sup>2</sup> In situations where the court has entered summary judgment as to liability, we normally should preserve that result in a subsequent settlement by deleting this Paragraph B and replacing it with one that describes the summary judgment decision.

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. "Consent Decree" shall mean this Consent Decree and all appendices attached hereto. In the event of conflict between this Consent Decree and any appendix, the Consent Decree shall control.

c. "Day" shall mean a calendar day. In computing any period of time under this Consent Decree, 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. "DOJ" shall mean the United States Department of Justice and any successor departments, agencies or instrumentalities of the United States.

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

f. "EPA Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

g. "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>3</sup>

[[\_\_\_\_\_. "Owner Settling Defendants" shall mean [insert names].]]<sup>4</sup>

h. "Paragraph" shall mean a portion of this Consent Decree identified by an arabic numeral or an upper or lower case letter.

i. "Parties" shall mean the United States, the State of \_\_\_\_\_,] and the Settling Defendants.

j. "Past Response Costs" shall mean all costs, including but not limited to direct and indirect costs, that EPA or DOJ 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>5</sup>

<sup>3</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>4</sup> This definition is needed if the optional paragraph on Notice of Obligations to Successors-in-Title is used. See *infra* p. 14.

<sup>5</sup> If the past costs settlement is partial, it may be necessary to continue the definition with a brief description of the past response action(s) which are Continued