

## Appendix C

### **MODEL NOTICE OF INELIGIBILITY TO RECEIVE A *DE MINIMIS* PARTY SETTLEMENT**

[insert date]

#### CERTIFIED MAIL - RETURN RECEIPT REQUESTED

[PRP Name]

[Address]

[City, State, Zip Code]

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

Dear [PRP Name]:

Thank you for your recent [insert date] correspondence requesting a settlement as a *de minimis* party at the [site name.] The United States Environmental Protection Agency (“EPA” or “the Agency”) 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 known as the federal “Superfund” law. Superfund is a program administered by EPA that is designed to clean up hazardous substances that may pose a threat to human health or the environment.

The purpose of this letter is to: (1) provide [you or company name] with information related to recent federal cleanup efforts at the [site name]; and (2) inform [you or company name] that [you do not or company name does not] qualify for a special *de minimis* party settlement at the Site to resolve potential liability that [you or company name] may have to EPA under CERCLA.

#### **Background**

[If this is EPA’s first communication to the PRP with respect to the site, 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 and may also be responsible for costs incurred by EPA in performing such cleanups. PRPs include current and former owners and operators of the Site and persons who arranged for treatment and/or disposal of any hazardous substances at the Site.”]

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 [you or company name] are potentially liable under CERCLA as [a/an] *[insert language identifying the PRP class that the letter recipient falls into: owner/operator, generator, or transporter (e.g., “arranging for the disposal of the hazardous substance TCE”)]* at the [site name]. 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 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 waste contributors, add the following paragraph: “EPA believes that [you or company name] are ineligible for a de minimis settlement. EPA has designated parties contributing less than [insert volume] pounds of waste to the [site name] as de minimis waste contributors. EPA does not consider [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 above [insert volume] pounds and are not minimal compared to the other hazardous substances at the Site.” Regions should add language about why the PRP is potentially liable and it is not a de minimis party (e.g., “Shipping receipts for the Site show that*

*you arranged for the shipment of over 20 barrels of TCE to the Site. Over the years, these barrels have deteriorated and leaked TCE into the ground, and eventually into the groundwater.”)]*

*[For landowners, add the following paragraph: “EPA believes that [you or company name] are ineligible for a *de minimis* landowner settlement because [you have or company name has] not 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 not eligible to receive a *de minimis* landowner settlement.” [Regions should add language about why the PRP is potentially liable and why they are not a *de minimis* party (e.g., “A review of the site history reveals that you knew of the site contamination prior to your purchase.”)]*

EPA may reconsider its determination based on the receipt of new information, such as *[for waste contributors, insert “a revised waste-in list or previously unavailable information that indicates [you or company name] sent less waste to the Site than previously identified.”] [for landowners, insert “additional evidence regarding the inquiry [you or company name] conducted prior to purchasing the property.”]* In such a case, EPA may determine that [you or company name], in fact, qualify for a *de minimis* settlement, which the Agency may offer at that time.

*[If recipient is likely a small business, insert: “Finally, enclosed with this letter is a fact sheet about the Small Business Regulatory Enforcement Fairness Act (“SBREFA”), which includes information that may be helpful to small businesses.”]* If you have any questions about the [site name], EPA’s determination, or anything else in this letter, please contact [name, address, and phone number of regional contact]. We encourage your prompt attention and response to this matter.

Sincerely,

Enclosure(s)