

**DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL (DNREC)**

**DIVISION OF WASTE AND HAZARDOUS SUBSTANCES (WHS)**

**REMEDIATION SECTION (RS)**

**VOLUNTARY CLEANUP PROGRAM AGREEMENT**

**DE-XXXX [Site Name]**

IN THE MATTER OF

[Site Name]

 AND

[Name of Person]

# AGREEMENT

This Voluntary Cleanup Program (“VCP”) Agreement is entered into by [Name of Person]

(hereinafter “Respondent”) and the Department of Natural Resources & Environmental Control

(hereinafter “DNREC” or “Department”) pursuant to the Hazardous Substance Cleanup Act (“HSCA”), 7 Del.C. Chapter 91 and the Delaware Regulations Governing Hazardous Substance Cleanup (“Regulations”).

# FINDINGS OF DNREC

1. The property that is the subject of this Agreement, [Site Name, DE-XXXX] (hereinafter “the Site”), is owned by [any additional information about tenants, etc.]. The Site is located at [street address] and is described on the tax maps of [place name] in Attachment #1 to this agreement. The Site encompasses [ ] acres and is bounded generally by [describe Site boundaries]. At the present time the Site encompasses [description of Site area]. The Site boundaries may change based upon the results of the investigation.

1. The Department believes that further investigation should be performed to determine whether a cleanup at the Site is necessary.

1. The intent of this Agreement is to allow Respondent to conduct the activity(s) outlined herein with oversight from the Department and in accordance with the guidance documents described below in Paragraph 5. Respondent has indicated to the Department in its [application or letter] dated , that it wishes to conduct the following activity(s) at the Site with the Department’s oversight:

[ ]  Site entry into Voluntary Cleanup Program through site closeout including COCR and LTS

[ ]  Initial Investigation/Facility Evaluation

[ ]  Remedial Investigation

[ ]  Feasibility Study/Remedial Design/Remedial Action

[ ]  Long Term Stewardship (LTS)

[ ]  Document Review

[ ]  Other

 , of the Site, DE- .

1. By entering into this Agreement, Respondent does not admit to any fact, fault, or liability under any statute, regulation, or common law for conditions which existed before, during, or after Respondent’s execution of this Agreement.

 **Now therefore, based on the foregoing findings and pursuant to 7 Del. C., Chapter 91 and the Regulations, the Department and Respondent hereby agree that, in order to protect public health, welfare and the environment, the following actions shall be taken at the Site:**

## I. RESPONSE ACTION

1. All remedial activity(s) conducted pursuant to this Agreement shall be done in accordance with the Regulations and the following guidance documents:

* 1. Standard Operating Procedures for Chemical Analytical Programs.

* 1. All applicable Policies, Procedures and/or Guidance in accordance with HSCA and the Regulations.

1. Unless otherwise expressly stated, the definitions provided in the Regulations shall control the meaning of terms used in this Agreement.

1. After the Department’s approval of the Consultant and the laboratory as required under Paragraph 10 of this Agreement, Respondent shall conduct a [list

activity(s) see #3 above] in accordance with a DNREC approved conceptual site model(CSM) and sampling and analysis plan (SAP) and any other approved work plan. The CSM, SAP and work plans for the [list activity(ies)] shall be submitted to the Department for review and written approval. After said approval, Respondent shall conduct all work at the Site as required therein. If Respondent chooses to conduct any additional phases of work at the Site beyond what is denoted above, Respondent shall submit a new or revised work plan for the implementation of such additional work when appropriate, for the Department’s review and approval.

1. The Department reserves the right to request any amendments to the SAP during the

 [list remedial activity(s)] if conditions arise which were not expected at the time of the Department’s approval of the SAP. It is understood and agreed by the parties that any such amendments shall be governed by the Regulations and guidance documents in effect as referenced above in Paragraph 5.

1. Within thirty (30) calendar days after the Department’s receipt of any submission pursuant to the SAP, the Department will inform Respondent in writing of any deficiencies in the submission, as determined pursuant to HSCA, the Regulations, and the guidance documents, that will prevent the Department from conducting its review. The Department will notify Respondent in writing of the timeframe required for the Department to complete the review.

1. Within seven (7) days after the effective date of this Agreement, Respondent will submit to the Department: a) the name, address and telephone number of the individual who will be the contact for Respondent regarding technical matters concerning this Agreement; b) the names and addresses of the designated agents for Respondent for the purpose of service for all matters concerning this Agreement including the name of the person who will receive the statement of account from the Department under Paragraph 13 of this Agreement; c) the name of the HSCA certified consulting firm; and, d) the name of the HSCA approved laboratory that will perform the analytical work for the Department’s approval. If the Respondent wishes to later change the consultant, Project Manager, or the laboratory which was initially approved, the Department’s approval will be required for such change. All approvals under this paragraph shall be in writing.

1. Respondent may terminate this Agreement if it determines that it is no longer feasible or desirable to continue with the work required herein, when Respondent:

1. Submits full payment to the Department for any oversight costs incurred by the Department pursuant to this Agreement which Respondent has not paid;

1. Notifies the Department in writing of its intentions to terminate this Agreement at least ten (10) days prior to the date of such termination;

1. Submits all data generated pursuant to this Agreement; and

1. Certifies to DNREC that no environmental hazards exist at the Site as a result of Respondent’s actions pursuant to this Agreement which did not exist prior to such actions, and receives DNREC’s written concurrence as to such certification. Such concurrence will not be unreasonably withheld. If DNREC does not give such concurrence, Respondent shall comply with all reasonable directives by DNREC in order to remove any such environmental hazards.

## II. PROJECT COORDINATION

12. Unless otherwise directed by the Department, Respondent shall submit two (2) copies of all documents required by this Agreement to the person identified below, who shall be the Project Manager for this Site and the Department’s contact person for the Respondent for all matters concerning this Agreement.

 , 391 Lukens Drive, New Castle, DE 19720-2774

## III. FINANCIAL OBLIGATIONS

1. [*Within thirty (30) days of the effective date of this Agreement, Respondent shall pay into the Hazardous Substance Cleanup Fund of the Treasury of the State of Delaware, by check payable to the “Department of Natural Resources & Environmental Control,” the Sum of $\_\_\_\_\_\_\_\_\_ as reimbursement of DNREC’s expenditures incurred in connection with the investigation and other response actions concerning the Site incurred prior to the effective date of the Agreement. Nonpayment of these costs will be a cause for the Department to terminate this Agreement in accordance with Section V of this Agreement. Respondent shall identify to DNREC the name, address, email and telephone number of the contact person for payment of financial obligations under this Agreement. ]*. Respondent shall pay to the Department all costs incurred by the Department in preparing this Agreement, in overseeing work at the Site, and in providing public information and conducting community relations about the site as well as in complying with any public notice, public hearing or comment provisions required or authorized by HSCA.

Respondent shall submit a check to the Department in the amount of $ as a partial payment towards the estimated cost of preparing this Agreement and of oversight by the Department for the review of the CSM and SAP, as well as DNREC-approved work plans for any additional phases of work, and for the work conducted in accordance with the approved work plans. The check shall be drawn in favor of the “Department of Natural Resources & Environmental Control.” The Department will maintain an account in the name of the Site where this money will be deposited. Costs incurred by the Department will be drawn against this account. Following the effective date of this Agreement, the Department will send Respondent a current statement of Respondent’s account once every quarter. Whenever the Department determines that the funds in the account are not sufficient to cover the Department’s estimated future costs for the next thirty (30) days, the Department will send Respondent a current statement of Respondent’s account along with the estimated future costs and a request for a deposit of an additional $5,000.00, or an amount of additional funds sufficient to cover the Department’s estimated future costs for the next quarter, whichever is greater. Within thirty (30) days of this request, Respondent shall submit a check to the Department, in the amount of the request and payable as set out before, for deposit into the Site account. The Department will draw upon these funds to cover the Department’s actual costs as they are incurred during that next quarter. Failure to comply with any of these financial terms will result in the Department suspending further work on the Site until the required payment is received. After completion of all work required by this Agreement and any required public notice and comment as required by HSCA, the Department will return to Respondent any funds which remain in the Site account after all costs, as described above, have been paid to the Department, along with a final accounting of all costs incurred by DNREC and all transactions in the Site account. Before beginning any additional phases of the work beyond that called for herein, a check for the cost of the work and related matters for the next quarter estimated by the Department, less any balance unused from the Site account, shall be submitted by Respondent. *Respondent shall identify to DNREC the name, address, email and telephone number of the contact person for payment of financial obligations under this Agreement*

1. Oversight costs, may include, but are not limited to, costs incurred by the Department after [the date of start of work by DNREC at this Site], in overseeing Respondent’s implementation of the requirements of this Agreement, and activities performed by the Department at the Site as part of the investigation, study and cleanup, in providing public information and conducting community relations, and in complying with any public notice, public hearing or public comment provisions required or authorized byHSCA**.** Costs shall include all direct and indirect costs, including but not limited to, time and travel costs of the Department personnel, and associated indirect costs, contractor costs, collection and analysis of split samples, Site visits, inspection of field activities and review and approval or disapproval of reports.

## IV. RESERVATION OF RIGHTS

1. The Department reserves the right to unilaterally terminate this Agreement in the event that: a) Respondent violates or fails to meet any terms or obligations of this Agreement, b) the Site becomes an imminent threat to public health, welfare, or the environment, c) the Department determines that satisfactory progress is not being made at the Site, d) Respondent declines to implement a work plan after being notified by the Department that it has been approved, or e) Respondent declines to amend a work plan to incorporate any amendments requested by the Department. The Department’s termination of this Agreement shall be effective ten (10) days after notifying the Respondent in writing of its intention to terminate, except as provided in Subparagraph b) above in which event any notice of termination shall become effective immediately.

1. Except as provided in Paragraph 26 below, nothing herein, including any document the Department issues as may be called for herein, shall be interpreted to constitute a release or waiver of liability for any of the conditions which existed before, during, or after the Department’s execution of this Agreement.

## V. GENERAL CONDITIONS

1. Respondent shall, in addition to any other obligation required by law, notify the Department contact person immediately upon knowledge of any condition at the Site which poses an immediate threat to public health and/or the environment.

1. Respondent shall perform all work conducted pursuant to this Agreement in accordance with HSCA, the Regulations, the guidance documents, and applicable professional standards.

1. Respondent shall conform all actions required by this Agreement with all applicable federal, State and local laws and regulations.

1. Nothing in this Agreement shall relieve Respondent from its obligation to comply with all other applicable laws and regulations.

1. Respondent shall preserve all potential evidentiary documentation or materials found at the Site which may provide a nexus between the contaminated Site and any potentially responsible party, or lead to the discovery of other areas of potential contamination at the Site, including without limitation, documents, labels, drums, bottles, boxes or other containers, and/or other physical materials that could lead to the establishment of the identity of any person who generated, treated, transported, stored or disposed of hazardous substances at the Site, until written approval is received from the Department to do otherwise. The Department shall provide the Respondent with such written approval within a reasonable period of time after Respondent informs the Department of the existence of potential evidentiary documentation or materials.

1. Respondent shall submit to the Department all data and information concerning contamination at the Site, including technical records and contractual documents, and raw sampling and monitoring data, developed pursuant to this Agreement. If Respondent believes any such data or information is protected by a confidence and/or privilege, it shall retain the data and information and notify the Department in writing of the general nature of the document and the privilege claimed. Respondent may request that the Department keep information contained in a submission to the Department confidential pursuant to 29 Del. C. Chapter 100.

1. This Agreement shall be governed and interpreted under the laws of the State of Delaware.

1. This Agreement shall be binding, jointly and severally, on each signatory, its successors and assignees. No change in the ownership, corporate, or business status of any signatory, or of the Site, shall alter any signatory’s responsibilities under this Agreement.

1. Respondent shall indemnify the State of Delaware, its agencies, departments, agents and employees and hold them harmless from any and all claims or causes of action arising from or on account of acts or omissions of Respondent, assignees, or any persons including, but not limited to, firms, corporations, subsidiaries, and contractors in carrying out activities under this Agreement. The State of Delaware, or any agency or authorized representative thereof, shall not be held as a party to any contract entered into by Respondent in carrying out activities under this Agreement.

Upon successful completion of all activities required in the Final Plan of Remedial Action , the Department may issue Respondent a “Certification of Completion of Remedy” (“Certificate”) if the Department determines that no additional activities are required to remedy contamination at the Site or protect public health, welfare or the environment. If the Department issues a Certificate, the Respondent shall have resolved its liability to the Department pursuant to 7 Del. C. Chapter 91 for conditions known by the Department to be existing on the Site at the time the Certificate is issued. Whether or not a Certificate is issued by the Department, upon successful completion of all activities required in the Scope of Work and SAP, and any amendments thereto, Respondent shall have resolved its liability to the Department pursuant to 7 Del. C. Chapter 91 for those activities addressed in the Scope of Work and SAP; provided, however, that the Department reserves the right to bring any appropriate enforcement action against

Respondent for any portions of a remedy not addressed in the Scope of Work and SAP, and

Respondent shall not have resolved its liability as to such other portions of a remedy at the Site. The Certificate will be considered invalid, and all rights and entitlements granted thereby shall be considered revoked, if any one of the following occurs:

1. Respondent submits fraudulent information or engages in fraudulent practices during the voluntary \_\_\_\_\_\_\_\_\_\_\_\_[list activity(s)];

1. Future Site development which is inconsistent with the uses permitted under the current zoning classification or future use of the property which is inconsistent with a property environmental covenant, if required by the Department;

1. Respondent violates, or permits others to violate, the terms of any Long Term Stewardship (LTS) Plan or the Certification of Completion of Remedy;

1. Respondent interferes with, or permits others to interfere with, any aspect of the remedy addressed in the Certification of Completion of Remedy; or

1. New information arises which indicates that the remedy was not completed as described in a DNREC-approved work plan or that the work performed is no longer protective of public health, welfare, or the environment.

1. This Agreement shall become effective upon execution hereof by all parties.

1. This Agreement may be amended in writing by mutual consent of the Department and the Respondent. Amendments shall become effective when signed by all parties.

1. Whenever the approval, consent or cooperation of either party is requested or required under the terms of this Agreement, then any such approval, consent or cooperation shall not be unreasonably withheld or delayed.

1. This Agreement may be executed in multiple counterparts each of which shall be deemed an original but which together shall constitute one and the same instrument. An electronic signature may also constitute an original signature in accordance with 6 Del. C. Ch. 12A.

\*\*SIGNATURE PAGE FOLLOWS\*\*

IT IS SO AGREED:

## Department of Natural Resources and Environmental Control

By:

 Qazi Salahuddin, Administrator

 Remediation Section,

 Division of Waste and Hazardous Substances

Date:

## Respondent

By:

 Signature

Print Full Name Signed Above

Title

Date:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

LLS22037

April 2022