

Operating Industries, Inc. Site *De Minimis* Settlement Information

This memorandum explains the *de minimis* settlement offer which the U.S. EPA is now extending to your company, organization, or client (“your company” or “organization”). The U.S. EPA encourages your company to read this memorandum before selecting its preferred settlement option. More importantly, please carefully review the terms of the proposed Administrative Settlement Agreement and Order on Consent (“Settlement Agreement”) as well; the terms of the Settlement Agreement will supersede any conflicting information in any other document.

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The Responsibility of *De Minimis* Waste Generators for OII Site Response Costs

This settlement offer is being made available to a class of potentially responsible parties who disposed of a comparatively small amount of waste¹ at the Operating Industries, Inc. (“OII”) Site, and whose waste was not more toxic or hazardous than other site wastes. This class of potentially responsible parties is referred to as “*de minimis* waste generators.” The U.S. EPA views your company as a waste generator because it, or one of its predecessors, is identified on one or more waste manifests as the generator of wastes disposed of at the OII Site. Copies of the manifests identifying your company are enclosed. The U.S. EPA believes that your company qualifies for the special settlement opportunities open only to *de minimis* parties based on (i) the quantity of waste it disposed of at the OII Site and (ii) the probability that it did not dispose of any hazardous substances which are more toxic or hazardous than those already identified at the OII Site. The Superfund liability of waste generators generally, and the special *de minimis* settlement opportunities allowed by the Superfund law, are discussed below.

Legal Background

1. Superfund Law

Under the Superfund law, formally known as the Comprehensive Environmental Response, Compensation, and Liability Act, or “CERCLA,” parties who may be responsible for the waste at Superfund sites are referred to as “potentially responsible parties” or “PRPs.” PRPs include individuals, businesses, governmental agencies, and other types of organizations. You may be a PRP if you are: 1) a current owner or operator at the OII Site; 2) the former owner or operator of the OII Site during the period of waste disposal; 3) a party that arranged for the treatment, disposal, or transportation of hazardous substances² to the OII Site (referred to as “generators”); or 4) a party that selected the OII Site as a place to dispose of hazardous substances and who transported these substances to the OII Site (referred to as “transporters”). PRPs are obligated to finance or undertake certain actions that the U.S. EPA determines are necessary to protect public health, public welfare, or the environment. PRPs also are responsible for government costs incurred in response to any release or threatened release of a hazardous substance at a Superfund site. These costs are collectively referred to as “response costs.” Government response costs can include expenditures for investigation, planning, site cleanup, and enforcement.

1 This settlement is being offered to “low volume” *de minimis* parties who contributed less than 110,000 gallons of waste.

2 The CERCLA statute, 42 U.S.C. § 9601, *et seq.*, defines the term “hazardous substance.” Hazardous substances include a wide variety of materials, some of which are very common. For example, bleach and many other cleaning agents are hazardous substances. Certain solvents, lubricating agents, metals, pesticides, and other chemicals can also be hazardous substances, as can highly acidic or low pH materials and materials that are very corrosive or explosive. Pure petroleum products are generally excluded from the definition of hazardous substances, but petroleum substances contaminated with hazardous substances (such as waste oils) are considered hazardous substances. Many different hazardous substances were disposed of at the Operating Industries, Inc. Site.

The Superfund law authorizes the U.S. EPA to require potentially responsible parties to perform remedial work at Superfund sites. It also entitles the United States, and the State of California, to sue potentially responsible parties to recover the costs they have expended at the Site. In addition to these government enforcement authorities, the Superfund law allows potentially responsible parties who have contributed work or funds to help clean up a Superfund site to bring private lawsuits against other potentially responsible parties for contribution.

2. Special *De Minimis* Settlement Opportunities

The Superfund law provides for special treatment of *de minimis* parties who choose to settle their liability with the U.S. EPA. Under Superfund, *de minimis* parties are allowed to resolve their liability with greater finality than larger waste contributors. Compared to settlements with larger waste generators, *de minimis* settlements provide broader protection to *de minimis* settlers from lawsuits brought by other potentially responsible parties (called “Contribution Protection”), as well as more comprehensive promises from the United States not to issue orders or sue your company regarding the Site (called “Covenants not to Sue”). Settlements with *de minimis* parties can take the form of simplified, voluntary administrative settlements called an Administrative Settlement Agreement and Order on Consent (“Settlement Agreement”). Your company can participate in a *de minimis* settlement by paying its fair share toward the costs of cleaning up the OII Site.

Overview of the OII Site *De Minimis* Settlement

The U.S. EPA is now providing your company with an opportunity to resolve its liability for the OII Site under Superfund. The proposed settlement has been intentionally structured to encourage your company’s participation by providing advantageous settlement terms, including comparatively low settlement payments. An explanation of how the U.S. EPA set the settlement payment for your company is provided later in this memorandum.

The settlement will take the form of an Administrative Settlement Agreement and Order on Consent. A copy of the proposed Settlement Agreement is enclosed. The settlement allows your company to choose the level of protection it wishes to obtain from contribution actions by other potentially responsible parties or governmental enforcement actions regarding presently unknown site conditions. Your company may obtain a five percent (5%) settlement payment reduction by participating in an expedited settlement. If your company cannot pay the full settlement amount required without severe financial hardship, it may submit an Application for Parties with Limited Financial Abilities to the U.S. EPA. Your company also may submit an Application for Parties Seeking Volume Review if it believes that there is an error in its total volume assessment. These options are discussed in detail later in this memorandum.

Your company’s executed Consent and Authorization signature page, together with any of the optional applications described in this memorandum, must be submitted in time to be received by the U.S. EPA **no later than 5:00 p.m. on Friday, May 7, 2010**. No duplicates or copies sent by facsimile will be accepted. Please send your company’s original signature page to:

Keith Olinger (SFD-7-5)
Enforcement Officer
U.S. Environmental Protection Agency
Region IX
75 Hawthorne Street
San Francisco, California 94105-3901

Do not send payments at this time. Settlement payments are due within thirty (30) days after the U.S. EPA notifies your company that the effective date of the Settlement Agreement has occurred. The settlement process after signature pages are received is discussed in detail later in this memorandum.

1. Qualifying for the *De Minimis* Settlement

This settlement offer is available only to parties who qualify as *de minimis* waste generators. The Superfund law limits *de minimis* waste generator status to parties that contributed comparatively small quantities of wastes which are of comparatively minimal toxic or hazardous effect. In order to ensure that your company meets the requirements for joining the *de minimis* settlement, your company must make certain certifications as part of the Settlement Agreement. The signature of your company's authorized representative constitutes its certification that it contributed less than the *de minimis* threshold of wastes; that it did not contribute any hazardous substances more toxic than those the U.S. EPA has already identified as having been disposed of at the OII Site;³ and that it has cooperated with the U.S. EPA's efforts. Please see the proposed Settlement Agreement to review the exact terms of the certification.

2. The Cost to Join this Settlement

The enclosure entitled "Settlement Cost Summary" shows the amount your company is required to pay to join this settlement. The cost to your company to join in this settlement reflects its share of the total cost of cleaning up the OII Site. Response costs for completed site activities exceed \$406 million, and projected future response costs are expected to exceed \$300 million, resulting in a total of over \$706 million for overall response costs (see Enclosure - OII Total Site Remediation Costs as of 9/30/2008).

Your company's share of the total response costs is based on the amount of waste it contributed to the OII Site, as a portion of the total volume of manifested waste that was disposed of at the Site. Copies of the waste manifests the U.S. EPA attributes to your company are enclosed, together with a summary (entitled "Manifest Summary Report") listing the

³ If your company sent hazardous substances to the OII Site which are more toxic than those found at the Site, it should use the enclosed application entitled "Application for Parties Who Disposed of Additional Contaminants." The list of hazardous substances found at the OII Site is contained as an Attachment to the proposed Settlement Agreement. The U.S. EPA will determine, after reviewing the application, if your company or organization still qualifies as a *de minimis* party.

manifests and the total volume of waste attributed to your company. The memorandum entitled “Manifest and Volume Database Information” explains how the U.S. EPA calculated the total volume of manifested waste attributed to your company, as well as the total volume of manifested waste disposed of at the Site.

The cost per gallon to join this settlement is the total of two components: a base payment and a premium. The premium is to account for uncertainties in projected future response costs. The base payment was determined by dividing the total past costs⁴ by the total volume of manifested waste attributable to viable parties. The premium was set at different rates for the two different settlement tier options.⁵ For Tier I, which provides the broader settlement protections allowed to *de minimis* parties, the premium applied to projected future costs was set at 100%, in accordance with the U.S. EPA’s national policy for *de minimis* settlements. For Tier II, which provides settlement terms more like those used in settlements with larger waste generators, the premium applied to projected future costs was set at 70%, in keeping with the premiums assessed larger waste generators in previous OII Site settlements. Combining the base payment and the premium payment, the cost per gallon to join this settlement is \$3.53 per gallon of waste disposed for parties selecting Tier I, and \$3.19 per gallon for parties selecting Tier II (see Enclosure - 2010 De Minimis Settlement Offer).

The Settlement Cost Summary shows the amount you or your company is required to pay under Tier I or Tier II, calculated by multiplying your company’s total waste volume by the cost per gallon for each tier. If you or your company were provided an opportunity to settle for your waste in 1998, you may be receiving the 1998 offer terms as reflected on your Settlement Cost Summary. In addition, if you or your company has reached a settlement and made payment to the OII Steering Committee⁶, your total payment will be adjusted to reflect that payment.

Finally, the Settlement Cost Summary shows the savings to your company under each tier if it joins the expedited settlement (a discount of five percent (5%)). The next section of this memorandum discusses the two settlement tier options as well as the opportunity to participate in the expedited settlement.

Overview of the Settlement Options

The U.S. EPA is providing your company with several settlement options. Your company can choose between the more comprehensive settlement terms allowed to *de minimis* parties under Superfund (Tier I) or, for an increased risk of future liability but a lower settlement cost, settlement terms more like those offered to larger waste generators (Tier II). Your

4 The total past costs equals the response costs for the OII Site after subtracting the value of settlements that have been or are expected to be reached with potentially responsible parties who did not contribute manifested waste (such as the Site’s owners and operators, and the municipalities who sent household and other trash to the Site).

5 The settlement options are described in detail later in this memorandum.

6 The OII Steering Committee consists of a group of larger waste contributors (referred to as “major” waste generators).

company can also choose to participate in an expedited settlement to qualify for a five percent (5%) settlement payment discount. These options are discussed below.

1. Tier I & Tier II Settlement Options

Your company has a choice of two settlement tiers; it must choose either Tier I or Tier II to join the settlement. The difference between the two tiers relates to the Settlement Agreement's "Covenants Not To Sue" provisions, which primarily address the United States' and the State of California's promises not to issue orders or sue your company regarding the Site, and the "Contribution Protection" pursuant to sections 113(f)(2) and 122(g)(5) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(g)(5), respectively. Contribution protection 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 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, 127 S.Ct. 2331, 168 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 Section 107(a)(4)(B)).

Under the Superfund law, most potentially responsible parties cannot obtain Covenants Not To Sue, nor Contribution Protection, regarding what is referred to as "unknown conditions." Unknown conditions are conditions that could undermine the selected remedy's ability to adequately protect human health and the environment, but that are not known to the U.S. EPA.⁷ If the U.S. EPA discovers an unknown condition, and if that condition causes the Agency to change the selected remedy in order to protect human health and the environment, the U.S. EPA can generally go back to settling parties and obtain additional funds or require them to perform the work needed to implement the changes to the selected remedy. The Superfund law allows the U.S. EPA to provide *de minimis* parties with a special dispensation regarding unknown conditions. Under Superfund, *de minimis* parties can settle their liability for unknown conditions; in other words, if the U.S. EPA were to learn about an unknown condition, *de minimis* parties who had settled for unknown conditions would avoid having to contribute to the increased cost of changes to the remedial action.

The U.S. EPA has decided to allow *de minimis* parties who join this settlement to decide for themselves whether they would prefer more comprehensive settlement terms or a reduced settlement payment cost. Your company should select the **Tier I** option if it would like to eliminate the risk that it might have to pay for unknown conditions by settling for them now. Your company should select the **Tier II** option if it would prefer to reduce its immediate settlement costs and be treated more like larger waste generators, who are exposed to the risk

⁷ The terms of the Settlement Agreement provide further information about what constitutes an "unknown condition."

that they might have to perform the work or contribute toward the cost to implement any changes in the selected remedy resulting from unknown conditions. The U.S. EPA strongly encourages you to review the terms of the Settlement Agreement before selecting the preferred settlement tier.

2. Expedited Settlement Discount

As an incentive to join the expedited settlement, the U.S. EPA is offering your company a **five percent (5%) discount** to its costs to join this settlement if it settles immediately. Your company can select either the Tier I or the Tier II settlement option and still take advantage of the settlement payment discount. The cost to your company to settle with the five percent (5%) discount is provided for both the Tier I and the Tier II options on the enclosed Settlement Cost Summary. Your company will automatically receive the discount if the U.S. EPA receives its Consent and Authorization signature page **no later than Friday, May 7, 2010**. If your company submits a volume challenge or claims an inability to pay, please review the following information regarding whether the 5% discount will be provided.

3. Review for Parties Claiming Limited Financial Abilities

Parties who wish to join this settlement, but who cannot make a single lump sum settlement payment without jeopardizing their ability to conduct their business or maintain their basic living expenses, may ask the U.S. EPA to review their financial condition to determine whether they qualify for a reduced settlement cost. Applicants must follow all of the instructions, use the forms provided, and supply all of the required detailed financial information (including tax returns) specified in the enclosed memorandum entitled “Instructions & Application for Parties with Limited Financial Abilities,” or the U.S. EPA will not be able to conduct the requested review. Parties requesting a review of their limited financial abilities must ensure that their executed Consent & Authorization signature page for this settlement, the completed application, and supporting information are received by the U.S. EPA **no later than Friday, May 7, 2010**.

The U.S. EPA will review the information provided and may require additional financial information before deciding whether a party qualifies for reduced payments due to limited financial abilities. Only those parties who submit complete and timely applications, and who are subsequently informed by the U.S. EPA that they qualify, may participate in a *de minimis* settlement for the OII Site with a reduced payment specified by the U.S. EPA in light of their financial condition. Parties who submit applications for a review of their limited financial abilities but do not qualify for reduced payments will be given the opportunity to participate by making the full settlement payment with the 5% discount. In either event, parties who submit an Application for Parties with Limited Financial Abilities will have the opportunity to withdraw their signature pages within fourteen (14) days of receiving notification from the U.S. EPA regarding a decision on their application. Further information about the review process for parties with limited financial abilities is provided in the enclosed memorandum entitled “Instructions & Application for Parties with Limited Financial Abilities.”

4. Volume Review

Parties who agree in principle to join this settlement, but who in good faith believe that there is a significant error in the total waste volume assessed to them, may apply to the U.S. EPA for a volume review. **The volume review process will consider only issues regarding the volume of waste disposed of at the OII Site; it will not address arguments regarding the content or hazardous nature of the waste.** Applicants must follow all of the instructions, use the forms provided, and supply all of the required manifest copies specified in the enclosed memorandum entitled “Instructions & Application for Parties Seeking Volume Review,” or the U.S. EPA will not be able to conduct the requested review. Parties seeking volume review must ensure that their executed Consent & Authorization signature page, a completed application, and supporting information are received by the U.S. EPA **no later than Friday, May 7, 2010.**

The U.S. EPA will review the information provided in timely and complete applications, and may require additional supporting information before deciding whether a volume assessment was erroneous. Parties who are subsequently informed by the U.S. EPA that their volume assessment was incorrect will be allowed to settle by making a revised payment specified by the U.S. EPA and these companies will be eligible for the 5% settlement discount. Parties who submit volume review applications but are not granted reduced volumes will be allowed to participate by making the full settlement payment, but these parties will not be given the 5% settlement discount. In either event, parties who submit volume review applications will have the opportunity to withdraw their signature pages within fourteen (14) days after they receive notification of the U.S. EPA’s volume review decision. Further information about the volume review process is provided in the enclosed memorandum entitled “Instructions & Application for Parties Seeking Volume Review.”

The De Minimis Settlement Process

Once the U.S. EPA receives the Consent & Authorization signature pages, it will proceed to finalize the settlement process with parties who participate in the expedited settlement and who did not submit any review applications. Many of the parties who submit financial hardship review and/or volume review applications will participate in a later settlement because EPA will need time to review these applications. The expedited settlement and subsequent settlements will follow the same process, which is described below.

The U.S. EPA’s first step in the settlement process after compiling the Consent & Authorization signature pages is to publish a notice in the Federal Register regarding the proposed settlement, initiating a public comment period. The U.S. EPA will accept comments on the terms of the Settlement Agreement during a thirty (30)-day comment period. Under the Resource Conservation and Recovery Act (RCRA) statute, the U.S. EPA is required to hold a public meeting on the settlement if, during the public comment period, it receives a request for such a meeting. The U.S. EPA will then evaluate any issues raised by the comments received during the comment period.

Unless the U.S. EPA modifies or withdraws its consent to the settlement due to issues raised by public comments, or the U.S. EPA fails to obtain the approval of the settlement from the U.S. Attorney General, the U.S. EPA will send a notice of settlement entry letter to all of the settling parties informing them that (i) the public comment period has closed, (ii) the comments the U.S. EPA received, if any, do not require modification or withdrawal of the settlement, and (iii) the U.S. Attorney General has approved the settlement. The notice of settlement entry letter will also include instructions for making the payments required by the settlement, which will be due thirty (30) days from the receipt of the letter. The date that the U.S. EPA issues the notice of settlement entry letter will be the effective date of the Settlement Agreement. The benefits of the settlement to each company will be effective upon receipt of its settlement payment.

How to Obtain More Information about this Settlement

The U.S. EPA is providing several ways for your company to obtain more information about this settlement opportunity. Your company may visit web pages for the OII Site *de minimis* settlement and for more general information about the OII Site. It may review documents related to the OII Site at any of the three document repositories in the Los Angeles area, or at the Superfund Records Center in San Francisco. Your company also may contact the U.S. EPA by calling a special toll-free number or sending an e-mail to an address reserved for *de minimis* settlement inquiries. Potentially responsible parties also are invited to attend a special informational meeting regarding the proposed *de minimis* settlement. Each of these information sources is described below.

OII Site Web Page. The U.S. EPA Region IX website contains a web page with information about the OII Site. The web page includes general descriptions of the OII Site, as well as downloadable documents, photographs, and other information. It may be found at:

<http://www.epa.gov/region09/operatingindustries>

Document Repositories. The U.S. EPA has placed copies of many site-related documents, including general and technical documents, at three document repositories in the Los Angeles area. These repositories are:

Bruggemeyer Memorial Library 318 South Ramona Avenue Monterey Park, CA 91754 (626) 307-1366
Montebello Regional Library 1550 West Beverly Boulevard Montebello, CA 90640 (323) 722-6551

Of these repositories, the Bruggemeyer Memorial Library maintains the most complete set of records on the OII Site (most of which are on microfilm). The U.S. EPA's Superfund Records Center in San Francisco also maintains documents related to the OII Site. If you wish to view

documents at the Superfund Records Center, please call (415) 536-2000 in advance to ensure that the documents are retrieved in time for your visit.

Special Information Line & E-Mail Address. If you have any questions about the *de minimis* settlement, or if you want to hear updated information about the settlement process, we encourage you to call the special information line for the OII Site *de minimis* settlement. The telephone number is **(800) 394-0495**.

We have also set up a special e-mail address for your inquiries. Please briefly describe the nature of your question in the subject line of any e-mail you send to this address, to help the U.S. EPA direct it to the most appropriate person for a prompt response. Please direct e-mail inquiries to the following address: **oii_de_minimis@epa.gov**.

The U.S. EPA may not be able to respond to your telephone or e-mail inquiries immediately, but it will make every effort to respond quickly.

Informational Meeting. The U.S. EPA is offering *de minimis* parties the opportunity to attend an informational meeting to learn more about the OII Site and to ask any questions they may have about this *de minimis* settlement. The meeting will be held on **April 22, 2010**, from 6:00 p.m. to 9:00 p.m., at the **Westin Los Angeles Airport Hotel**, located in Los Angeles, California. Your company is welcome to send a representative to the meeting; however, attendance is voluntary, and parties wishing to minimize their transaction costs need not attend.

The Steering Committee of Larger Waste Generators. Your company also may wish to contact the OII Steering Committee of larger waste contributors (referred to as “major” waste generators) for their views on the OII Site and its progress. Please direct any questions you may have for the OII Steering Committee to Mr. David A. Giannotti of David A. Giannotti, P.C. (<http://www.davidagiannotti.com/>), at **(805) 695-8463 or (310) 385-1318**.