**WEST VIRGINIA VOLUNTARY REMEDIATION AGREEMENT**

**FOR NO FURTHER ACTION INVESTIGATION ACTIVITIES**

1. **INTRODUCTION**
2. The West Virginia Department of Environmental Protection (WVDEP), by its Secretary, and [Insert Applicant] (Applicant) hereby enter into this Voluntary Remediation Agreement (Agreement), pursuant to the Voluntary Remediation and Redevelopment Act, W. Va. Code § 22-22-1, et seq. (the Act), for the purpose of investigating and, if warranted, remediating the property that is the subject of this Agreement (the Site).
3. Applicant reserves all rights it may have under common law, the West Virginia Code, and federal statutes to seek contribution or indemnity. WVDEP reserves all rights it may have under common law, the West Virginia Code, and federal statutes to seek contribution or indemnity from persons other than Applicant and those persons identified in W. Va. Code § 22-22-18.
4. By entering into this Agreement, Applicant neither admits nor denies liability for the conditions on the Site.
5. **STATEMENT OF ELIGIBILITY**
6. The Secretary has determined that the Voluntary Remediation Program Application submitted by Applicant is complete and that Applicant is eligible to participate in the Voluntary Remediation Program. However, neither the Secretary’s determination of eligibility nor the entry into this Agreement precludes any finding by the Secretary at a later date that the Site poses an imminent and substantial threat to human health or the environment within the meaning of W. Va. Code § 22-22-7(d). In addition, if the Secretary determines that Applicant withheld or misrepresented information that would be relevant to Applicant’s eligibility, the Secretary may withdraw from this Agreement.
7. **PARTIES BOUND**
8. This Agreement applies to and is binding upon Applicant, its officers, secretaries, principals, employees, agents, successors, subsidiaries, and assigns and upon WVDEP, its employees, agents, and successors. The signatories to this Agreement certify that they are fully authorized to execute and legally bind the parties they represent. No change in ownership, corporate, or partnership status of Applicant shall in any way alter its status or responsibilities under this Agreement unless Applicant or WVDEP withdraws from this Program as provided herein.
9. Applicant shall provide a copy of this Agreement to any subsequent owners or successors before Applicant transfers any ownership rights.
10. **DEFINITIONS**
11. “Day” means a calendar day with the 24-hour period between 12:00 A.M. – 12:00 A.M.
12. “No further action” means a site is eligible to receive a Certificate of Completion on the basis of site assessment sampling or sampling data developed under a Voluntary Remediation Agreement which demonstrates that the site meets applicable standards.
13. “Rule” means the Voluntary Remediation and Redevelopment Rule, 60CSR3, promulgated pursuant to the Act.
14. “Site” has the meaning ascribed to it in the Act and, for purposes of this Agreement, means the property located in [Insert City], West Virginia, and is more particularly described in the Voluntary Remediation Program Application submitted to WVDEP and accepted by letter dated [Insert Date].
15. All other terms contained in this Agreement shall be used in the manner as defined by W. Va. Code § 22-22-2 or the Rule.
16. **STATEMENT OF PURPOSE**
17. This Agreement sets forth necessary terms and conditions to satisfy the requirements of the Act for the investigation and, if warranted, the remediation of the Site.
18. The activities conducted by Applicant under this Agreement are subject to approval by WVDEP as provided herein. The activities conducted by Applicant shall be consistent with this Agreement, all applicable laws and rules, and any appropriate guidance documents.
19. **EVALUATION OF SITE ASSESSMENT**
20. Applicant has submitted a Site Assessment Report as a part of the Voluntary Remediation Program Application. The Site Assessment Report was accompanied by a Final Report prepared by [Insert LRS Name], a Licensed Remediation Specialist (LRS), which states that the Site meets the applicable standard described in Paragraph 15 of this Agreement.
21. The parties agree that the remediation standards for this Site, and where applicable, the engineering or institutional controls and any land use covenant to be imposed for the property, are as follows:

REMEDIATION STANDARDS (as per 60CSR3, Section 9)

|  |  |  |
| --- | --- | --- |
| **Receptors** | **Media** | **Remediation Standards** |
| Human Health | Surface Soils |  |
|  | Subsurface Soils |  |
|  | Groundwater |  |
|  | Sediment |  |
|  | Surface Water |  |
|  |  |  |
| Ecological | Soils |  |
|  | Groundwater |  |
|  | Sediment |  |
|  | Surface Water |  |

ENGINEERING OR INSTITUTIONAL CONTROLS, AND LAND USE COVENANTS

|  |  |  |
| --- | --- | --- |
| **Receptors** | **Media** | **Description of Control** |
| Human Health | Surface Soils |  |
|  | Subsurface Soils |  |
|  | Groundwater |  |
|  | Sediment |  |
|  | Surface Water |  |
|  |  |  |
| Ecological | Soils |  |
|  | Groundwater |  |
|  | Sediment |  |
|  | Surface Water |  |

1. The statutes and rules with which compliance is mandated in connection with the investigation or remediation of this Site are as follows:

1. Air Pollution Control Act, W. Va. Code § 22-5-1, et seq.;
2. Water Pollution Control Act, W. Va. Code § 22-11-1, et seq.;
3. Groundwater Protection Act, W. Va. Code § 22-12-1, et seq.;
4. Hazardous Waste Management Act, W. Va. Code § 22-18-1, et seq.;
5. Section 103(a) of Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9603(a);
6. Section 304 of Emergency Planning and Community Right-To-Know Act, 42 U.S.C. § 11001 to 11050;
7. Occupational Safety and Health Act, 29 U.S.C. § 651 to 678;
8. Resource Conservation and Recovery Act, 42 U.S.C. § 6901, et seq. and its State counterpart, the West Virginia Solid Waste Management Act, W. Va. Code § 22-15-1, et seq.;
9. Toxic Substances Control Act, 15 U.S.C. § 2601, et seq.; and
10. Any applicable rule or regulation promulgated thereunder.
11. WVDEP has reviewed the Final Report and the Site Assessment Report submitted as a part of the Voluntary Remediation Program Application and has concluded that the Site meets the applicable standards described in Paragraph 15 of this Agreement.
12. Nothing herein shall be construed as restricting the inspection or access authority of WVDEP under any law or rule.
13. **RECORD PRESERVATION**
14. Applicant agrees to preserve, for a minimum of three (3) years from the effective date of the Agreement, all documents required by this Agreement and any other documents generated or used to prepare the documents required by this Agreement. Upon request by WVDEP, Applicant shall make available to WVDEP the records, or copies thereof.
15. **RESERVATION OF RIGHTS**
16. WVDEP and Applicant reserve all rights and defenses they may have pursuant to any available legal authority unless expressly waived herein.
17. Nothing herein is intended to release, discharge, or in any way affect any claims, causes of action, or demands in law or equity which the parties may have against any person, firm, partnership, or corporation not a party to this Agreement for any liability it may have arising out of, or relating in any way to, the generation, storage, treatment, handling, transportation, release, or disposal of any materials, hazardous substances, hazardous waste, contaminants, or pollutants at, to, or from the Site. The parties to this Agreement expressly reserve all rights, claims, demands, and causes of action they have against any and all other persons and entities who are not parties to this Agreement, and as to each other for matters not covered hereby.
18. Applicant reserves the right to seek contribution, indemnity, or any other available remedy against any person found to be responsible or liable for contributions, indemnity, or otherwise for any amounts which have been or will be expended by Applicant in connection with the Site.
19. WVDEP acknowledges that, pursuant to W. Va. Code § 22-22-18, Applicant, upon receipt of the Certificate of Completion, is not liable for claims for contribution concerning matters addressed in this Agreement or any related work plan.
20. **ADMINISTRATIVE COSTS**
21. Applicant agrees to reimburse WVDEP for all of its reasonable administrative costs associated with this Agreement in the amount of $[Insert Amount] within thirty (30) days of the effective date of this Agreement. Payment shall be made online at: https://dep.wv.gov/payDEP/Pages/default.aspx. or checks shall be made payable to the West Virginia Department of Environmental Protection for deposit into the Voluntary Remediation Administrative Fund and mailed along with a transmittal letter stating the Site name and address to:

West Virginia Department of Environmental Protection

Office of Environmental Remediation

P.O. Box 681

Charleston, WV 25323

Reimbursable costs under this provision shall be those costs for which reimbursement is required under the Rule.

1. **EFFECTIVE DATE AND SUBSEQUENT MODIFICATION**
2. The effective date of this Agreement is the date on which the Applicant receives notice that the Secretary has signed it.
3. The parties may amend this Agreement by mutual agreement. Amendments shall be in writing and effective when Applicant receives notice that the Secretary has signed it.
4. If the Secretary determines that there is an imminent threat to the public, he or she may unilaterally modify or amend this Agreement.
5. **TERMINATION AND SATISFACTION**
6. Upon completion of the Final Report prepared by the LRS, Applicant may seek a Certificate of Completion from the Secretary. Upon receipt of a request for a Certificate of Completion, the Secretary shall determine whether the Site meets applicable standards for those areas of the Site and for those contaminants identified in this Agreement and whether Applicant has complied with this Agreement and any approved work plans for the Site. Upon making this determination, the Secretary shall issue a Certificate of Completion which conforms substantially to Appendix 60-3C of the Rule. Where this Agreement requires a Land Use Covenant, the Certificate of Completion shall not become effective until it is properly filed with the Clerk of the County Commission of the county in which the property is located.

If the Secretary determines that the Certificate of Completion should not be issued because Applicant has not completed the work required by this Agreement and any approved work plans or because the Site does not meet applicable standards, the Secretary shall initiate the procedures relating to denial of a Certificate of Completion as provided in the Rule.

1. The provisions of this Agreement are satisfied, and this Agreement shall terminate when the Secretary issues the Certificate of Completion.
2. **REOPENER**
3. Upon agreement of the parties or upon occurrence of one or more of the conditions of W. Va. Code § 22-22-15, this Agreement may be reopened in accordance with the provisions of W. Va. Code § 22-22-15.
4. **GOVERNING LAW**
5. This Agreement shall be governed by the laws of the State of West Virginia.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

|  |  |  |
| --- | --- | --- |
| **Applicant** | | |
|  | [Insert Applicant] | |
|  | Printed Name: | [Insert Name] |
|  | Title: | [Insert Title] |

|  |  |  |
| --- | --- | --- |
|  |  |  |
| Signature |  | Date |

|  |  |  |
| --- | --- | --- |
| **West Virginia Department of Environmental Protection** | | |
|  | Printed Name: | Robert Rice |
|  | Title: | Director, Division of Land Restoration |

|  |  |  |
| --- | --- | --- |
|  |  |  |
| Signature |  | Date |

[Include if applicant is not owner of the Site and Agreement calls for a Land Use Covenant:]

[Insert Owner Name], as owner of the Site referenced in the above Agreement, hereby acknowledges that said Agreement requires the imposition of a Land Use Covenant and, in consideration of the benefits accruing to the Site from said Agreement, I hereby agree to the imposition of such Land Use Covenant and agree to cooperate in the execution and filing of such Land Use Covenant.

|  |  |  |
| --- | --- | --- |
|  | Printed Name: | [Insert Name] |

|  |  |  |
| --- | --- | --- |
|  |  |  |
| Signature |  | Date |