

**Model
Tolling Agreement
January 2003**

This Tolling Agreement (Agreement) is entered into between the United States of America, on behalf of the Secretary of _____ and the State of _____ on behalf of the _____ (who collectively represent all trustees as designated pursuant to [42 U.S.C. § 9606(f)] or [33 U.S.C. § 2706(b)] and are referred to herein as “Trustees”) and the Company(ies).

In consideration of the mutual covenants set forth in this Agreement, the United States, the State of _____, and the Company(ies) agree as follows:

1. Pursuant to the [Comprehensive Environmental, Response, Compensation, and Liability Act, as amended (CERCLA), 42 U.S.C. §§ 9601 *et seq.*,] or [Oil Pollution Act of 1990 (OPA), 33 U.S.C. §§ 2701 *et seq.*,] the Trustees believe the Company(ies) may be a [potentially] responsible party with respect to _____ contamination in _____ located in _____. The United States and the State contend that they presently have a cause of action against the company under Section [107 of CERCLA, 42 U.S.C. § 9607,] or [1006 of OPA, 33 U.S.C. § 2706,] resulting from [releases] or [discharges] of _____ for injury, loss, or damages to natural resources under the trusteeship of the Trustees and costs to be incurred in conducting a natural resource damage assessment and restoration with respect to such injuries.

2. The United States, the State, and the Company(ies) enter into this Agreement in order to pursue good faith negotiations relating to the claim referred to in paragraph 1 of this Agreement in an effort to avoid costly and complex litigation.

3. The Company(ies) denies that it is a [potentially] responsible party with respect to _____ contamination in _____ or that injury, loss, or damages to natural resources under the trusteeship of the Trustees has occurred as a result of [releases] or [discharges] of _____ in _____. This Agreement is not an admission or acknowledgment of any fact or liability by the Company(ies).

4. This Agreement is not an admission or acknowledgment by the United States or the State as to the applicability of any statute of limitations or similar equitable defense to its claim for recovery of response costs, whether under [CERCLA] or [OPA] or any other applicable State or Federal statute or at common law.

5. Any applicable statute of limitations shall be tolled and suspended by this Agreement from the Effective Date of this Agreement until _____. It is the intention of the parties that each party to this Agreement shall be in the same position at the termination of this Agreement, relative to any applicable statute of limitations or equitable defense of a similar nature, as on the Effective date of this Agreement. This Agreement is not intended to affect any rights that existed on the Effective Date, but rather to preserve the status quo as it existed on the Effective Date. During the period of this Agreement, the United States and the State agree not to file an action against the Company(ies) for injury, loss, or damages to natural resources under the trusteeship of the Trustees and costs incurred or to be incurred in conducting a natural resource damage assessment with respect to [releases] or [discharges] of ____.

6. This Agreement contains the entire tolling agreement between the parties, and no tolling statements, promises, or inducements made by any party or its representatives that are not contained or referenced in this Agreement shall be valid or binding. This Agreement may be modified only by the written consent of the United States, the State, and the Company(ies).

7. The undersigned representative of each party hereto represents that he or she has the authority to bind that party to the terms of this Agreement.

8. Signature on the agreement lines provided below shall constitute acceptance of the terms and conditions of this Agreement. This Agreement may be executed in one or more counterparts, all of which shall be considered an original. The Effective Date of this Agreement shall be the last date of execution of any counterpart.