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Section 15
Fast Track Cleanup

APPENDIX 15-B

FAST TRACK CLEANUP

APPLICATION AND AGREEMENT FORM

HAWAII DEPARTMENT OF HEALTH HAZARD EVALUATION AND EMERGENCY RESPONSE OFFICE FAST TRACK CLEANUP

APPLICATION AND AGREEMENT FORM

Fast Track Cleanup (FTC) is a Hawaii Department of Health (HDOH) Hazard Evaluation and Emergency Response Office (HEER Office) program designed to enable landowners or other private parties to conduct a voluntary site assessment or cleanup under a simple agreement with HDOH, without requiring iterative regulatory oversight and approval, while still receiving concurrence on the final site status of no further action. The focus of FTC is to streamline and expedite the assessment, cleanup, and closure process at removal action sites.

The Hawaii Department of Health and _____ [REQUESTING PARTY] hereby enter into this agreement, _____ [EFFECTIVE DATE], relating to the property identified in Item 5 below, and subject to the terms and conditions specified herein.

1. **Introduction and Project Description**

This agreement is made in accordance with Chapter 128D, Hawaii Revised Statutes ("HRS"). FTC is implemented as a removal action policy and all HDOH responsibilities and technical requirements are presented under HRS §128D-4(a), 17(f); and HAR §11-451-8(i), (j). Under these statutes and rules, HDOH has the authority to arrange, provide oversight, or take response with known responsible parties for the removal of any release or threatened release of a hazardous substance, pollutant, or contaminant at any time, provided such arrangements are consistent with the State Contingency Plan.

HDOH is also granted the responsibility of identifying or developing advisories, criteria, or guidance, such as FTC, to be considered useful in developing response actions (HAR §11-451-8(i)).

By participating in the program, the requesting party will conduct investigation and response activities with minimal oversight from the HDOH, Hazard Evaluation and Emergency Response Office ("HEER Office"). When the investigation summary or removal summary reports are completed to HDOH's satisfaction, the requesting party will receive a no action or no further action letter from HDOH.

The requesting party is the current owner or representative of the current owner of the property which has been found to be, or may be, contaminated. The requesting party is participating in Fast Track Cleanups and desires to complete the work described in Item 12. Completing this work may qualify the requesting party or site owner to receive a "No Action Letter", a "No Further Action Letter" or a "No Further Action Letter with Institutional Controls" as described in Section 4 of this Agreement.

2. **Purpose of Agreement**

The purpose of this Agreement is to set forth the terms and conditions of the investigation and response to address contamination at the Property, which upon completion will entitle the requesting party to a no further action letter from HDOH. This Agreement constitutes the final approval of HDOH for Requesting Party to conduct a cleanup action.

3. **Authority to Enter into this Agreement**

The signatories to this Agreement certify that they are fully authorized to execute this Agreement on behalf of the party each represents. No change in ownership, corporate, or partnership status of the Requesting Party shall alter its responsibilities under this Agreement.

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4. Definitions

- a. "Agreement" means this written agreement describing the cleanup action and all associated conditions in order for HDOH to issue a no further action letter for the contaminants, media, and property specified within.
- b. "Contaminants" means those hazardous substances, contaminants and pollutants identified prior to, or during the course of the investigation or cleanup incorporated herein by this reference, cleaned up to the risk-based standard set forth in the provisions of Chapter 128D, HRS.
- c. "No Action Letter" means the letter to be issued by HDOH, in accordance with §128D-10, HRS, subsequent to the satisfactory completion that site conditions are protective of unrestricted land use without cleanup action.
- d. "No Further Action Letter" means the letter to be issued by HDOH in accordance with §128D-10, HRS, subsequent to the satisfactory completion of cleanup activities or site conditions are protective of unrestricted land use.
- e. "No Further Action Letter with Institutional Controls" means the letter to be issued by HDOH, in accordance with §128D-10, HRS, subsequent to the satisfactory completion of cleanup activities or site conditions are protective of current property land use only.
- f. "Property" means the property described in Item 5 that is subject to the cleanup action specified in this Agreement.
- g. "Requesting Party" means the person or persons who have submitted an application to conduct a cleanup action. If the requesting party is not the property owner, then owner consent must be provided.
- h. "Site Closure" means concurrence by HDOH through the issuance of any of the three letters defined in items c, d, or e above.
- i. "Cleanup action" or "work" means the response action to be conducted voluntarily by the Requesting Party pursuant to the provisions of Chapter 128D, HRS, Chapter 11-451, Hawai'i Administrative Rules, this Agreement and the statement of work attached hereto.

5. Site Information and Description

Requesting Party Name Company Address Phone Email	
Property Ownership Name Company Address Phone Email	

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Site Name	
Site Address	
Site Status, Background, History of Property	
Previous Investigations Conducted at Property	
Anticipated Chemicals of Concern	
Anticipated Scope of Work	
Purpose or Goal for Entering FTC	
No Further Action Letter Anticipated	
Estimated Start Date	
Estimated Completion Date	

6. Disclaimer of Admission

The Requesting Party has entered into this Agreement voluntarily. The Agreement is not to be construed as an admission of any liability under the Hawai'i Environmental Response Law, or any other law, whether municipal, local, state or federal, or as a waiver of any defense to such liability.

7. Finding of Eligibility

On [DATE], the Requesting Party submitted a FTC site screening form to HDOH; a scoping meeting was conducted on [DATE]. Site eligibility criteria are presented in the FTC site screening form. Based on the information presented in the screening form and scoping meeting, HDOH has found the Requesting Party and the Property eligible to participate in FTC. By signature at the end of this application and agreement form, HDOH formally approves the site eligibility and agreement in accordance with HRS 128D. Note that updates to site eligibility determinations can be reviewed at any phase of the process.

8. Payment of Fees

HDOH will develop a cost recovery framework pursuant to the cost recovery provisions of HRS 128D-5. The framework will be completed and communicated to the public by June 30, 2009. No fees will be required for a site entering FTC prior to June 30, 2009, for HDOH oversight and services related to site decisions rendered through that date. Sites that have entered into FTC before June 30, 2009, and that continue to incur HDOH labor efforts beyond that date will be given 60 days' notice prior to the assessment of fees. Applications received after June 30, 2009, will require a fee/deposit in order to initiate the process.

9. Right to Termination

Either party may terminate this Agreement in accordance with the provisions contained herein. The Requesting Party may choose to terminate the Agreement at any time. HDOH may terminate the

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Agreement as specified in Chapter 128D, HRS, when: (1) there is an imminent and substantial threat to public health, the environment, or natural resources, (2) Requesting Party is not acting in good faith, (3) Requesting Party fails to comply with the terms of this Agreement (including if HDOH determines that the quality of work is poor or adherence to State guidelines has not been adequately met) and fails to commence such activities to cure such noncompliance within thirty days after HDOH issues to Requesting Party a notice of such non-compliance, (4) additional information is brought to the attention of HDOH which renders the cleanup action inadequate, (5) new information becomes available that necessitates a significant change in the statement of work or the priority with which HDOH must treat the project. For purposes of applying item (5), "the priority with which HDOH must treat the project" shall mean a decision made by HDOH, based upon new information about the Property, that had the new information been known by HDOH prior to entering into the Agreement, HDOH would not have proceeded to enter into the Agreement.

The party initiating termination of this Agreement shall immediately provide written notice to the other party of its intention to terminate the Agreement and the date upon which termination will be effective. Upon termination of this Agreement, HDOH may pursue any action related to the Property within its authority. Since FTC-eligible sites are without offsite impacts or immediate risks to human health or the environment, HDOH provides the general understanding that it would not pursue the site as a State-lead oversight project while the agreement is in effect.

HDOH represents to Requesting Party that it is committed to the cleanup action, intends to cooperate with Requesting Party in good faith in connection with those matters contained in this Agreement and agrees to issue a no further action letter upon reasonable satisfactory completion of the cleanup action.

10. Compliance with Applicable Laws, Rules, and Regulations

All work performed by the Requesting Party under this Agreement shall be performed in compliance with applicable federal, state, and local laws, ordinances and regulations. Requesting Party shall be responsible for obtaining all permits necessary to perform the work specified in this Agreement.

11. Roles and Responsibilities

The requesting party will provide 60 days advance notice that an FTC site investigation or removal summary report will be submitted for review. Documents and written submittals sent by the Requesting Party to the Project Manager will be reviewed by the Project Manager within 30 days from the date of receipt. Within that time, HDOH will provide the Requesting Party with written comments as to the acceptability of the submittal. If more time is needed, the Project Manager will notify the Requesting Party in writing of the need for additional time, the date by which the review will be completed, and the reason why the normal review period is being extended. While the Project Manager may provide informal advice, guidance, or comments, all approvals and decisions regarding the site investigation or removal summary report must be conveyed in writing by the Project Manager to be official. The Requesting Party agrees to perform and submit all work in accordance with state guidelines and policies. If any changes become necessary, the Requesting Party will notify the Project Manager describing the change needed. Verbal agreements for changes are acceptable when necessary and may be relied upon; however, major changes should be followed up in writing or via email by the party who initiated the change within 10 business days of verbal approval. Requests for extensions of time should be made in advance of the date on which the activity or document is due and should include a justification for the delay. All changes acknowledged and approved in writing shall be incorporated into this Agreement.

12. Statement of Work, Submittals, and Schedules

The work to be performed under this Agreement is specified in the statement of work prepared by the requesting party attached hereto as Exhibit A. This statement of work is estimated to be completed in accordance with the schedule provided in Exhibit A. HDOH formal review is expected to be limited to the removal action summary report. In the event that no cleanup actions are required in order to meet the site goals, then HDOH will provide a review of the site investigation report.

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13. **No Further Action Determinations**

Within 30 days of satisfactory completion of the cleanup action as reasonably determined by the HDOH, HDOH will issue to the Requesting Party a no further action letter in accordance with Chapter 128D, HRS and this Agreement.

The letter documents that HDOH is satisfied that the cleanup is protective of human health and the environment and additional clean-up work is not needed at the site. The letter will identify the specific hazardous substances, pollutants, contaminants, media, and land area addressed in the response action. A no action or no further action letter does not provide the liability exemptions like those contaminants covered in a Letter of Completion under Chapter 128D, Part 2, HRS, Voluntary Response Program.

Three letters exist:

- a. A No Action Letter will be issued subsequent to the satisfactory completion that site conditions are protective of unrestricted land use without cleanup action.
- b. A No Further Action Letter will be issued subsequent to the satisfactory completion of cleanup activities or site conditions are protective of unrestricted land use.
- c. A No Further Action Letter with Institutional Controls will be issued subsequent to the satisfactory completion of cleanup activities or site conditions are protective of current property land use only.

If contamination is left on the site above unrestricted land use levels, the letter shall identify land use restrictions and any required management plan at the Property. If any land use restrictions or management requirements that are part of the no further action letter are not subsequently complied with, the letter will be considered void and HDOH may re-open the site for additional investigation and/or action. The No Further Action Letter with Institutional Controls will be placed in the HDOH files and may be included in future HDOH site registries. The benefits and restrictions identified in the letter apply to all future purchasers of the Property.

14. **Rights Reserved by HDOH**

HDOH reserves the right to take action consistent with Chapter 128D, HRS, against responsible parties, and to exercise rights HDOH may have under any law including recovering costs and taking enforcement actions. Furthermore, HDOH may take enforcement action prior to completion of the cleanup action conducted pursuant to this Agreement and exercise other authorities of section 128D-4, HRS.

15. **Site Access**

Access During Conduct of Cleanup Action

During conduct of the cleanup action, Requesting Party agrees to provide HDOH access to the Property at all reasonable times and upon reasonable notice, for the purpose of allowing HDOH to perform its administrative oversight functions in connection with the work.

Access After Cleanup Action Is Completed

Requesting Party agrees to provide employees, contractors and other agents of HDOH access to the Property at all reasonable times and upon reasonable notice as specified below, solely for the purpose of possible follow-up activities associated with any conditions identified in a No Further Action Letter with Institutional Controls. Nothing in this Agreement is to be construed to limit HDOH's rights of access that it may have by operation of any law other than Chapter 128D, HRS.

HDOH shall give Requesting Party reasonable notice before entering upon the Property for any activity, unless HDOH is required to access the Property in the event of an emergency or court order and giving such notice is not possible. In the event of such emergency entry, delivery of

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notice of the entry, along with an explanation of the emergency conditions, shall be given by HDOH to Requesting Party within five business days of HDOH entry onto the Property.

16. General Provisions

16.1. Dispute resolution

Requesting Party and HDOH agree to notify one another as soon as possible if a material disagreement becomes apparent to them. If this occurs, the party that identifies any such disagreement shall notify the representative of the other party. Initial notification will be by phone or in person, at which time the parties will attempt to resolve the disagreement. If the disagreement is successfully resolved, the situation will require no further action. If the disagreement continues, it will be discussed between the Manager of the HEER Office and a representative of Requesting Party. The Manager of the HEER Office will gather whatever additional information he/she feels is necessary and will render a decision in writing regarding the disagreement. If the decision is satisfactory, the parties will abide by the decision and no further action is necessary. If it is not satisfactory, Requesting Party or HDOH may terminate this Agreement.

16.2. Submittals

Requesting Party shall complete submittals as described in Item 12 and Exhibit B, and shall submit them to the following address in a manner that produces a record of submittal such as certified mail, overnight delivery service, facsimile, or courier hand delivery service:

Hawai'i State Department of Health
Office of Hazard Evaluation and Emergency Response
Attn: Fast Track Cleanups Coordinator
919 Ala Moana Boulevard, Room 206
Honolulu, Hawai'i 96814

16.3. Sampling, Data, and Document Availability

Requesting Party shall permit HDOH and its authorized representatives to inspect and copy all sampling, testing, monitoring, or other data generated by Requesting Party pursuant to the work being performed as part of this Agreement.

16.4. Record Retention

Requesting Party will retain all data, reports, and other documents for a minimum of five years after the conclusion of all activities under this Agreement. If HDOH requests that documents be preserved for a longer period of time, then Requesting Party will deliver the documents to HDOH, or permit HDOH to copy the documents prior to destroying them.

16.5. Governmental Liabilities

The State of Hawai'i shall not be liable for any injuries or damages to persons or property resulting from acts or omissions by Requesting Party, nor shall the State be held as party to any contract entered into by and between Requesting Party and a third-party contractor for services pertaining to the statement of work (Exhibit B) attached to this Agreement.

16.6. Modifications

This Agreement may be amended in writing by mutual agreement of HDOH and Requesting Party and shall be effective upon the date the change is signed by both parties and such amendment shall be deemed incorporated into this Agreement.

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16.7. Counterparts

This Agreement may be executed and delivered in any number of parts, each of which shall be deemed to be an original and together constitute one and the same document.

16.8. Third-Party Actions

In the event that Requesting Party is a party to any suit or claim for damages or contribution relating to the Property to which HDOH is not a party, Requesting Party shall notify HDOH in writing within ten days after service of the complaint in the third-party action.

16.9. Governing law

This Agreement shall be construed and governed by the laws of the State of Hawai`i.

16.10. Transfer

With prior written approval of HDOH, all rights and benefits conferred upon Requesting Party under this Agreement may be assigned or transferred to any person. Requesting Party shall notify the Project Manager in writing of its intention to transfer its rights and benefits. Upon receiving the HDOH's approval, the transferee will be bound by all the terms and conditions of this Agreement.

16.11. Integration

This Agreement and its exhibits constitute the entire agreement between the parties hereto pertaining to the subject matter hereof, and the final, complete and exclusive expression of the terms and conditions thereof. All prior agreements, representations, negotiations and understandings of the parties hereto, oral or written, express or implied, are hereby superseded and merged herein.

17. Approvals

The undersigned hereby agree to the terms and conditions set forth above and to all attachments incorporated into this Agreement.

Requesting Party

**State of Hawai`i, Department of Health,
HEER Office**

By:

By:

**Name:
Company:
Title:
Dated:**

**Name:
HDOH HEER Office
Site Discovery and Remediation Manager
Dated:**