

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX

<p>IN THE MATTER OF:</p> <p>Moss Landing Complex Moss Landing, California</p> <p>Vistra Corp., Moss Landing Energy Storage 1, LLC and Moss Landing Power Company LLC</p> <p>Respondents</p> <p>Proceeding Under Sections 104, 106(a), 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act</p>	<p>CERCLA Docket No. 09-2025-08</p> <p>ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT FOR REMOVAL ACTION</p>
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I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Settlement Agreement and Order on Consent (“Settlement”) is entered into voluntarily by the United States Environmental Protection Agency (“EPA”), Vistra Corp., Moss Landing Energy Storage 1, LLC, and Moss Landing Power Company LLC (“Respondents”). This Settlement provides for the performance of a removal action by Respondents and the payment by Respondents of certain response costs incurred by the United States at or in connection with the Moss Landing complex, inclusive of the “Moss Landing Battery Energy Storage Facility” and the “Moss Landing Power Plant”, generally located at 11283 Dolan Road, in Moss Landing, California (APN 133-181-011-000) (the “Site”).

2. This Settlement is issued under the authority vested in the President of the United States by sections 104, 106(a), 107, and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”). This authority was delegated to the Administrator of EPA on January 23, 1987, by Executive Order 12580, 52 Fed. Reg. 2923 (Jan. 29, 1987), and further delegated to Regional Administrators by EPA Delegation Nos. 14-14A (Determinations of Imminent and Substantial Endangerment, Jan. 31, 2017), 14-14C (Administrative Actions through Consent Orders, Jan. 18, 2017), and 14-14D (Cost Recovery Non-Judicial Agreements and Administrative Consent Orders, Jan. 18, 2017). This authority was further redelegated by the Regional Administrator of EPA Region 9 to the Branch Manager, Superfund and Emergency Management Division (now Assistant Director) by Region IX Delegation Nos. R9 14-14A (May 9, 2018), R9 14-14C (May 1, 2019), and R9 14-14D (May 9, 2018).

3. EPA has notified the State of California (the “State”) of this action pursuant to section 106(a) of CERCLA.

4. EPA and the Respondents recognize that this Settlement has been negotiated in good faith and that the actions undertaken by Respondents in accordance with this Settlement do not constitute an admission of any liability. Respondents do not admit and retain the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Settlement, the validity of the findings of facts, and conclusions of law and determinations in Sections IV and V of this Settlement. Respondents agree to comply with and be bound by the terms of this Settlement and agree not to contest the basis or validity of this Settlement or its terms.

II. PARTIES BOUND

5. This Settlement is binding upon EPA and upon the Respondents and their successors. Unless EPA otherwise consents, (a) any change in ownership or corporate or other legal status of any Respondent, including any transfer of assets, or (b) any Transfer of the Site or any portion thereof, does not alter any of Respondents’ obligations under this Settlement.

6. Respondents shall provide notice of this Settlement to officers, directors, employees, agents, contractors, subcontractors, or any person representing Respondents with respect to the Site or the Work. Respondents are responsible for ensuring that such parties act in accordance with the terms of this Settlement.

III. DEFINITIONS

7. Terms not otherwise defined in this Settlement have the meanings assigned in CERCLA or in regulations promulgated under CERCLA. Whenever the terms set forth below are used in this Settlement, the following definitions apply:

“CERCLA” means the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601-9675.

“Day” or “day” means a calendar day. In computing any period under this Settlement, the day of the event that triggers the period is not counted and, where the last day is not a working day, the period runs until the close of business on the next working day. “Working Day” means any day other than a Saturday, Sunday, or federal or State holiday.

“Effective Date” means the effective date of this Settlement as provided in Section XXV.

“Emergency Response Plan” means the Moss Landing Incident Emergency Response Plan, attached hereto as Appendix A. The Emergency Response Plan shall constitute a Removal Work Plan under this Settlement.

“EPA” means the United States Environmental Protection Agency.

“Fund” means the Hazardous Substance Superfund established under section 9507 of the Internal Revenue Code, 26 I.R.C. § 9507.

“Future Response Costs ” means: all costs (including direct, indirect, payroll, contractor, travel, and laboratory costs) that the United States pays in implementing, overseeing, or enforcing this Settlement, not paid pursuant to ¶ 79 (Payment by Respondents for Past Response Costs) as Past Response Costs, and may include costs incurred: (i) in developing, reviewing and approving deliverables generated under this Settlement; (ii) in overseeing Respondents’ performance of the Work; (iii) in implementing community involvement activities under ¶ 48; (iv) in assisting or taking action to obtain access or use restrictions under ¶ 63; (v) in taking action under ¶ 73 (Access to Financial Assurance); (vi) in taking response action described in ¶ 101 because of Respondents’ failure to take emergency action under ¶ 52; (vii) in implementing a Work Takeover under ¶ 59; and (viii) in enforcing this Settlement, including all costs paid under Section XIV (Dispute Resolution) and all litigation costs. Future Response Costs also includes all Interest accrued after the Effective Date on EPA’s unreimbursed costs (including Past Response Costs) under section 107(a) of CERCLA.

“Including” or “including” means “including but not limited to.”

“Interest” means interest at the rate specified for interest on investments of the Fund, as provided under section 107(a) of CERCLA, compounded annually on October 1 of each year. The applicable rate of interest will be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year. As of the date EPA signs this Settlement, rates are available online at <https://www.epa.gov/superfund/superfund-interest-rates>.

“National Contingency Plan” or “NCP” means the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to section 105 of CERCLA, codified at 40 C.F.R. part 300, and any amendments thereto.

“Paragraph” or “¶” means a portion of this Settlement identified by an Arabic numeral or an upper- or lower-case letter.

“Parties” means EPA and Respondents.

“Past Response Costs” means \$220,318.72.

“RCRA” means the Solid Waste Disposal Act, 42 U.S.C. §§ 6901-6992k (also known as the Resource Conservation and Recovery Act).

“Removal Action” means the removal action required under this Settlement.

“Respondents” means Vistra Corp., Moss Landing Energy Storage 1, LLC and Moss Landing Power Company LLC.

“Section” means a portion of this Settlement identified by a Roman numeral.

“Settlement” means this Administrative Settlement Agreement and Order on Consent, all appendixes attached hereto (listed in Section XXI), and all deliverables approved under and incorporated into this Settlement. If there is a conflict between a provision in Sections I through XXV and a provision in any appendix or deliverable, the provision in Sections I through XXV controls.

“Site” means the Moss Landing complex, inclusive of the Moss Landing Battery Energy Storage Facility and the Moss Landing Power Plant, comprising approximately 115 acres, located at 11283 Dolan Road, in Moss Landing, California, 95039 (APN 133-181-011-000), as depicted in Appendix B.

“Special Account” means the Moss Landing Energy Storage Facility special account, within the Fund, established for the Site by EPA under section 122(b)(3) of CERCLA.

“State” means the State of California.

“Transfer” means to sell, assign, convey, lease, mortgage, or grant a security interest in, or where used as a noun, a sale, assignment, conveyance, or other disposition of any interest by operation of law or otherwise.

“United States” means the United States of America and each department, agency, and instrumentality of the United States, including EPA.

“Waste Material” means (a) any “hazardous substance” under section 101(14) of CERCLA; (b) any “pollutant or contaminant” under section 101(33) of CERCLA; (c) any “solid waste” under section 1004(27) of RCRA; and (d) any “hazardous material” as may be defined under State law.

“Work” means all obligations of Respondents under Sections VII (Coordination and Supervision) through XI (Indemnification and Insurance).

“Work Takeover” means EPA’s assumption of the performance of any of the Work in accordance with ¶ 59.

IV. FINDINGS OF FACT

8. Respondent Vistra Corp. is a corporation, formed in Delaware. Respondent Moss Landing Energy Storage 1, LLC is a limited liability company, formed in Delaware, and is a wholly owned subsidiary of Vistra Corp. Respondent Moss Landing Power Company LLC, an indirect subsidiary of Vistra Corp., owns the property at 11283 Dolan Road, in Moss Landing, California, 95039 (APN 133-181-011-000). Respondents operated multiple battery energy storage systems (“BESS”) at the Site, with a total capacity of 750 mega-watts, and a natural gas-powered electricity generation plant at the Site.

9. One BESS located at the Site is a 300 mega-watt BESS (“ML300 BESS”). The ML300 BESS is located in a two-story, freestanding reinforced concrete and brick building located on the northwest quadrant of the Site. The ML300 BESS was comprised of approximately 100,000 lithium nickel manganese cobalt (“Li-NMC”) battery modules and supporting infrastructure.

10. On January 16, 2025, the ML300 BESS experienced an event that resulted in a fire with an associated smoke plume. During the event, water was applied to certain areas within the ML300 BESS building (the “ML300 Building”) beginning on January 16, 2025. No fire suppression material, other than water, was applied to the ML300 Building.

11. On January 16, 2025, the North County Fire Department (the “Fire Department”), Salinas Fire Hazmat, Monterey County Sheriff’s Department, California Highway Patrol, Monterey County Health Department, and Respondents responded to the initial fire. An evacuation order was put in place for nearby residents and approximately 1,200 people were evacuated on January 16, 2025.

12. The Fire Department and Monterey County, including the Monterey County Health Department and Department of Emergency Management, requested technical assistance with perimeter air monitoring from EPA. On January 17, 2025, EPA's On-Scene Coordinator ("OSC") mobilized with several contractors to the scene to provide initial resources to monitor particulates and mineral acid gases.

13. On January 17, 2025, Respondents mobilized a technical contractor and began conducting roaming community air monitoring for acid gases and particulates in the evacuation area, nearby areas, and at several schools in the surrounding community.

14. On January 17, 2025, three additional EPA OSCs and the EPA Environmental Response Team arrived on the scene with additional equipment and personnel to conduct perimeter monitoring. In the evening of January 17, 2025, evacuation orders were lifted and residents were allowed to return to their properties. Through the night of January 17, 2025, EPA maintained initial monitoring locations and added several new monitoring locations. EPA continued to provide technical assistance with perimeter air monitoring to the Fire Department and the greater incident management team.

15. The California Department of Public Health and the Office of Environmental Health Hazmat Assessment also provided support with the response at the Site on January 17, 2025.

16. On January 18, 2025, Respondent's technical contractor set up stationary air monitoring stations at several schools in the surrounding community in preparation for the school week.

17. The active, visible fire subsided on January 18, 2025.

18. EPA's air monitoring results for hydrogen fluoride in the community and at the fence-line over the course of January 17, January 18, and January 19, showed no exceedances of California's human health standards. In addition, EPA's monitoring showed concentrations of particulate matter to be consistent with the air quality index throughout the Monterey Bay and San Francisco Bay regions, with no measurements exceeding the moderate air quality level.

19. On January 20, 2025, EPA began transitioning air monitoring operations to Respondents. Respondents commenced monitoring from fixed station air monitoring on site around the perimeter of the plant as well as outside of the fence line using EPA's established locations near residential areas to monitor for potential health risks to the Moss Landing community. This fixed station monitoring was in addition to the ongoing 24/7 roaming air monitoring begun by Respondent's contractor on January 17, 2025.

20. On January 20, 2025, Respondents informed EPA that the ML300 Building may have contained residual asbestos containing materials ("ACM"). In 2019, there was a

comprehensive asbestos abatement of the ML300 Building, but some inaccessible ACM may have been left in place. As a result, Respondents began to conduct air sampling for asbestos.

21. On January 21, 2025, Respondents added air sampling for metals to the plant perimeter air monitoring stations. On January 23, 2025, air sampling for asbestos was added to these stations.

22. On January 22, 2025, EPA sent Respondents a Notice of Federal Response Action informing Respondents that EPA believed a response action was necessary, giving Respondents the opportunity to conduct the response, and outlining work that needed to be done at the Site.

23. On January 26, 2025, Respondents submitted an emergency response plan to EPA to prepare for a potential re-ignition event or another incident resulting from the Li-NMC battery modules that were not consumed in the initial incident.

24. Respondents collected surface wipe samples in the community and on site during the period of January 24-29 and on February 9, 2025, with analysis for metals and asbestos. Respondents also collected debris on and off-site to test for asbestos, nickel, manganese and cobalt.

25. The Monterey County Health Department continued to coordinate a multimedia screening and sampling effort throughout the community with the assistance of other state agencies. Respondents also continued to conduct air monitoring and sampling at five fixed stations along the plant perimeter on site and six fixed stations in the nearby community off site.

26. Respondents managed water from fire suppression activities and rain from the ML300 BESS area in the facility's on-site water management system, with additional water storage support provided by on site above ground tanks. Rain water from areas of the power plant property unimpacted by the ML300 BESS fire were managed pursuant to the Moss Landing Power Plant Stormwater Pollution Prevention Plan ("SWPPP").

27. On January 28, according to a fire transition plan proposed by Respondents to the Fire Department, a private fire contractor was mobilized to the Site to assume fire watch activities and provide immediate firefighting services at the direction of the Fire Department. The Fire Department demobilized on January 29, 2025.

28. Respondents monitored the ML300 BESS by conducting drone overflights every hour as well as activated a private fire service to take handheld readings hourly to monitor battery temperatures. Overflights were suspended due to lack of indications of increasing temperatures on February 16, 2025.

29. The fire flared up on February 18, 2025. The Fire Department responded and maintained personnel at the Site to conduct a fire watch until all material was burned out and all drone flights concluded that there was no longer a threat of re-ignition. Respondents resumed drone overflight activities.

30. Respondents conducted emergency response activities and coordinated with local authorities, including the Fire Department, Salinas Fire Hazmat, CalFire, Monterey County Sheriff's Department, California Highway Patrol, Caltrans, Monterey County including the Monterey County Health Department and Department of Emergency Management, California Environmental Protection Agency ("CalEPA").

31. On February 18, 2025, CalEPA requested, on behalf of the State, assistance from EPA in overseeing all on-Site activities associated with the battery removal process. EPA has agreed to perform oversight of the removal actions necessary to address the emergency and imminent hazards posed by battery removal and disposal operations. Any off-Site activities to address impacts of the January and February 2025 fires will be conducted or directed by state and local regulatory agencies.

32. The fire damaged Li-NMC battery modules in the ML300 BESS.

33. The Li-NMC battery modules that were damaged in the event contain nickel, a hazardous substance, and other constituents of concern including, but not limited to, manganese compounds, and cobalt compounds. The fire deposited metals as particulates, including without limitation, nickel, manganese, cobalt, copper and aluminum at the Site. Particulates at the Site may be subject to wind-blown transport or other disturbance prior to disposal. Exposure to metals like nickel, manganese, and cobalt can, at certain levels, have a variety of potential adverse health effects, including without limitation, potential damage to the respiratory system, skin irritation, and nervous system effects. Nickel is classified as a human carcinogen.

34. Li-NMC battery modules in the ML300 BESS that were not burned by the fire likely experienced thermal insult and, as such, they may be unstable and pose a risk of entering thermal runaway, or a secondary fire. Li-NMC batteries may produce hydrogen fluoride, a hazardous substance, and other flammable and toxic gases during thermal runaway because of decomposition of battery components. The damaged Li-NMC battery modules remaining in the ML300 BESS, therefore, pose a threat of release of hydrogen fluoride and other toxic and flammable gases if they go into thermal runaway. Exposure to hydrogen fluoride can cause irritation to the eyes, nose, and throat, irregular heartbeat, and fluid buildup in the lungs, potentially resulting in death at sufficient concentrations.

35. In addition, battery fires pose risks of burn injuries and injuries caused by fires or explosion to nearby human populations, such as Site workers or emergency responders.

36. Should the remaining battery modules ignite and firefighting operations resume, there is the potential for water from firefighting activities entering the facility's on-site water management system. This system is supported by onsite pumping and storage tank capacity to ensure that water does not leave the Site. However, water from firefighting activities has the potential to leave the Site if the stormwater pollution prevention system is overwhelmed. Water from firefighting activities may contain, among other components, metals released by the battery fire and any contaminants from firefighting suppression material, such as per- and polyfluoroalkyl substances, should any material other than water be used for future fire suppression.

V. CONCLUSIONS OF LAW AND DETERMINATIONS

37. Based on the Findings of Fact in Section IV, and the administrative record, EPA has determined that:

- a. The Site is a "facility" as defined by section 101(9) of CERCLA.
- b. The contamination found at the Site, as identified in the Findings of Fact above, includes "hazardous substances" as defined by section 101(14) of CERCLA.
- c. Each Respondent is a "person" as defined by section 101(21) of CERCLA.
- d. Each of Respondents Moss Landing Energy Storage 1, LLC and Moss Landing Power Company LLC is a responsible party under section 107(a) of CERCLA.
 - i. Respondents Moss Landing Energy Storage 1, LLC and Moss Landing Power Company LLC are the "owner(s)" and/or "operator(s)" of the facility, as defined by section 101(20) of CERCLA and within the meaning of section 107(a)(1) of CERCLA.
 - ii. Respondents Moss Landing Energy Storage 1, LLC and Moss Landing Power Company LLC were the "owner(s)" and/or "operator(s)" of the facility at the time of disposal of hazardous substances at the facility, as defined by section 101(20) of CERCLA, and within the meaning of section 107(a)(2) of CERCLA.
- e. Vistra Corp., as the ultimate parent company of Respondents Moss Landing Energy Storage 1, LLC and Moss Landing Power Company LLC, agrees to assume all obligations pursuant to the Settlement.
- f. The conditions described in Section IV (Findings of Fact), above, constitute an actual or threatened "release" of a hazardous substance from the facility as defined by section 101(22) of CERCLA.

g. The conditions described in Section IV (Findings of Fact), above, may constitute an imminent and substantial endangerment to the public health or welfare or the environment because of an actual or threatened release of a hazardous substance from the facility within the meaning of section 106(a) of CERCLA.

h. The Removal Action is necessary to protect the public health, welfare, or the environment.

VI. ORDER AND AGREEMENT

38. Based upon the Findings of Fact, Conclusions of Law, and Determinations set forth above, and the administrative record, it is hereby Ordered and Agreed that Respondents shall comply with all provisions of this Settlement.

VII. COORDINATION AND SUPERVISION

39. Respondents' Project Coordinator

a. Respondents shall designate and notify EPA, within 10 days after the Effective Date, of the name, title, contact information, and qualifications of the Respondents' proposed Project Coordinator. Respondents' Project Coordinator will be responsible for administration of all actions by Respondents required by this Settlement.

b. Respondents' Project Coordinator must have sufficient technical expertise to coordinate the Work. To the greatest extent possible, the Project Coordinator shall be present on Site or readily available during Site work.

c. Notice or communication relating to this Settlement from EPA to Respondents' Project Coordinator constitutes notice or communication to all Respondents.

d. Respondents may change their Project Coordinator by following the procedures under ¶ 40.

40. Procedures for Notice and Disapproval

a. Respondents shall notify EPA of the names, contact information, and qualifications of any contractors or subcontractors retained to perform the Work within 10 days of the Effective Date if the Work has already started, or at least seven days prior to commencement of such Work.

b. EPA may issue notices of disapproval regarding any proposed Project Coordinator, contractor, or subcontractor, as applicable, which indicate the basis for issuing its notice of disapproval. If EPA issues a notice of disapproval, Respondents shall, within seven days, submit to EPA a list of supplemental proposed Project Coordinators, contractors, or subcontractors, as applicable, including a description of the qualifications of each.

c. EPA may disapprove the proposed Project Coordinator, contractor, or subcontractor, based on objective assessment criteria (*e.g.*, experience, capacity, technical expertise), if they have a conflict of interest regarding the project, or any combination of these factors.

41. **EPA On-Scene Coordinator.** EPA designates Ramon D. Albizu Angulo of the Superfund and Emergency Management Division, Region 9, as its primary OSC, and Kazami Brockman and Olivia Trombadore, of the Superfund and Emergency Management Division, Region 9, as its alternate OSCs. Each OSC has the authorities described in the NCP, including oversight of Respondents' implementation of the Work, authority to halt, conduct, or direct any Work, or to direct any other removal action undertaken at the Site. An OSC's absence from the Site is not a cause for stoppage of work. EPA may change its OSCs and will notify Respondents of any such change.

VIII. PERFORMANCE OF THE WORK

42. Respondents shall perform the Work in accordance with this Settlement, including all EPA-approved, conditionally approved, or modified deliverables as required by this Settlement. The Work to be implemented generally includes, but is not limited to: implementing the Emergency Response Plan in the event of a secondary fire; conducting air monitoring and air sampling during ML300 Building demolition activities and ML300 BESS battery module handling operations; conducting air monitoring and air sampling, as necessary, in the event of a secondary fire; sampling fire suppression water prior to disposal; sampling fire suppression water, as necessary, in the event of a secondary fire; dismantling the ML300 Building, as necessary to remove all Li-NMC battery modules; characterizing the battery modules from the ML300 BESS as Damaged, Defective, or Recalled ("DDR") and non-DDR; and removing, treating, and packaging the DDR and non-DDR battery modules for off-site transportation and disposal according to their proper characterization as DDR or non-DDR.

43. Respondents' obligations to finance and perform the Work and to pay amounts due under this Settlement are joint and several. In the event of insolvency of any Respondent or the failure by any Respondent to participate in the implementation of the Settlement, the remaining Respondent(s) shall complete the Work and make the payments.

44. For any regulation or guidance referenced in the Settlement, the reference will be read to include any subsequent modification, amendment, or replacement of such regulation or guidance. Such modifications, amendments, or replacements apply to the Work only after Respondents receive notification from EPA of the modification, amendment, or replacement.

45. **Removal Work Plan(s).** Within 15 days after the Effective Date, unless previously submitted, Respondents shall submit to EPA for approval in accordance with ¶ 49 (Deliverables: Specifications and Approval) one or more work plans for performing the Work outlined in ¶ 42 (the "Removal Work Plan(s)"). The Removal Work Plan(s) must specifically describe, and

propose an expeditious schedule for, each aspect of the Work set forth in this Paragraph below, with the understanding that the Removal Work Plan(s) may be supplemented closer in time to the performance of the specific activities to which they pertain:

a. Emergency Response: In the event of fire or smoke at the Site, Respondents shall implement the Emergency Response Plan, unless otherwise directed by EPA.

b. Air monitoring: Environmental air monitoring (i.e., at or beyond the perimeter/fenceline) shall be conducted during all ML300 Building demolition activities and ML300 BESS battery module handling operations, including monitoring for, at a minimum, hydrogen fluoride and particulates as a general indicator for metals. In addition, if the battery modules catch fire again, environmental air monitoring shall be conducted, including monitoring for, at a minimum, hydrogen fluoride, hydrogen cyanide, total volatile organic compounds ("VOCs"), lower explosive limit ("LEL"), percent oxygen, particulates as a general indicator for metals, and carbon monoxide, unless otherwise directed by EPA. Additional monitoring instruments will be available for hydrogen (carbon monoxide sensor cross sensitivity approved) to be used to assess safe approach distances in the event of a fire. In the event of such fire, EPA may require environmental air monitoring in the community around the Site. The monitoring data must be able to be visualized through a telemetry system which is compliant with the requirements of the QAPP(s) and the Data Management Plan established pursuant to ¶ 47.

c. Air sampling: Environmental air sampling (i.e., at or beyond the perimeter/fenceline) shall be conducted during all ML300 Building demolition activities and ML300 BESS battery module handling operations, including sampling for, at a minimum, asbestos and metals that are contaminants of concern for the site (including cobalt, manganese, nickel, aluminum, copper, lithium, and lead). Personal air sampling (i.e., Site personnel wearing a sampling pump) may also be conducted in compliance with applicable personal air sampling requirements, such as Cal/OSHA requirements, as determined by Respondents. In addition, if the remaining battery modules catch fire, environmental air sampling shall be conducted as directed by EPA. In the event of such fire, EPA may require environmental air sampling in the community around the Site.

d. Fire suppression water management: If fire suppression operations resume at the Site, Respondents shall ensure that no fire suppression water leaves the Site by way of the SWPPP outfalls. Additionally, during demolition and construction activities, Respondents shall employ storm water pollution prevention best practices for construction sites, consistent with the September 8, 2022 [California State Water Resource Control Board's NPDES General Permit for Stormwater Discharges Associated with Construction and Land Disturbance Activities, Order WQ 2022-0057-DWQ, NPDES No. CAS000002](#) ("Construction General Permit").

e. Fire suppression water sampling: Sampling of stored fire suppression water on-site shall be conducted at the request of EPA and, in any case, prior to disposal of any fire suppression water from the Site. In addition, if fire suppression operations resume at the Site, additional fire suppression water sampling shall be conducted at the request of EPA, including:

- i. If fire suppression water is migrating off-site, sample runoff water every 12 hours. If runoff water samples exceed discharge parameters for target analytes, all fire suppression runoff water shall be collected and stored at the Site until such time that the water can be disposed of at an appropriate facility. In no event shall Respondents permit fire suppression water to leave the Site by way of the SWPP outfalls. However, unimpacted stormwater may be discharged if it meets permit requirements; provided that any discharges during building demolition and on-site construction activities shall also comply with the stormwater discharge requirements for construction provided in the Construction General Permit, as necessary.
- ii. If fire suppression water is being contained on-site, sample water prior to disposal.
- iii. All fire suppression water samples shall be collected as directed by EPA. Samples shall be run with an expedited turn-around time and sampling data shall be sent electronically to EPA's OSC within 24 hours after results are received.

f. Building demolition: Dismantle the ML300 Building as necessary to remove all Li-NMC battery modules in accordance with sound construction, structural, and civil engineering principles.

g. Battery Module Characterization: Prior to arranging for disposal, obtain an assessment of all Li-NMC battery modules from the ML300 BESS to characterize such battery modules as either DDR or non-DDR. In assessing battery modules as DDR or non-DDR, an assessment or evaluation should be performed based on the manufacturer's safety criteria for the battery modules. Characterization of the battery modules shall be conducted according to the document titled, "ML300 Module Sorting and Staging Procedure, Procedure No. MLB25FO-BMH-021," Version 0, dated May 20, 2025 (and subsequent versions, as approved by EPA), unless otherwise directed by EPA. An assessment or evaluation may include, but is not limited to, the following criteria:

- i. Acute hazard, such as gas, fire, or electrolyte leaking;
- ii. The use or misuse of the cell or battery;

- iii. Signs of physical damage, such as deformation to cell or battery casing, or colors on the casing;
- iv. External and internal short circuit protection, such as voltage or isolation measures;
- v. The condition of the cell or battery safety features; and
- vi. Damage to any internal safety components, such as the battery management system.

After individual assessment of each battery module and prior to disposal, provide a report or similar document to EPA reporting the number of battery modules categorized by type (e.g., type 1-5) and the number of battery modules in each category characterized as DDR or non-DDR.

h. Treatment and packaging of Li-NMC battery modules for transportation off-site and/or disposal: Arrange for the proper handling, removal, proper packaging, shipment, and disposal of all DDR battery modules, non-DDR battery modules, and any other hazardous waste resulting from the fire event(s), according to their proper characterization as DDR or non-DDR, based on the assessment described above. The Removal Work Plan(s) must include a sub-Removal Work Plan for battery module disposal which specifies:

- i. Respondents' proposed methods of disposal of the battery modules according to their characterization as DDR or non-DDR battery modules;
- ii. The estimated quantities of the battery modules to be disposed of by each method(s) according to their characterization as DDR or non-DDR battery modules;
- iii. The proposed receiving facility(ies) for such battery modules and quantities proposed to be disposed of at each facility; and
- iv. Upon disposal of all DDR or non-DDR battery packs, Respondents shall provide cop(ies) of all manifests or similar documents to EPA indicating the type and quantity of DDR and non-DDR battery modules disposed; the name and location of the receiving facility(ies); and the method(s) of transportation.

i. Maintain security and restrict access to the Site for the duration of the Work.

j. Community impact mitigation: Perform community impact mitigation activities to: (a) reduce impacts (e.g., air emissions, dust, odor, traffic, noise, temporary relocation, negative economic effects) to surrounding businesses and any other places frequented by community members ("Community Areas") during implementation of the Removal Action; and (b) make adjustments during the implementation of the Removal Action in order to further reduce negative impacts to affected Community Areas.

46. Health and Safety Plan(s). Within 15 days after the Effective Date, unless previously submitted to EPA, Respondents shall submit for EPA review and comment one or more Health and Safety Plan(s) ("HASP(s)") that describes all activities to be performed to protect on-site personnel from physical, chemical, biological, and all other hazards related to performance of Work under this Settlement, which may, in turn, also help to protect area residents from potential off-site impacts. The HASP(s) shall be prepared in accordance with EPA's Emergency Responder Health and Safety Manual, OSWER 9285.3-12 (July 2005 and updates), available at <https://www.epaossc.org/HealthSafetyManual/manual-index.htm>. In addition, Respondents shall ensure that the HASP(s) comply with all currently applicable Occupational Safety and Health Administration ("OSHA") regulations found at 29 C.F.R. part 1910. Within seven days of the Effective Date, unless previously submitted to EPA, Respondents shall submit to the OSC proof of compliance with 29 C.F.R. § 1910.120: Hazardous Waste Operations and Emergency Response ("HAZWOPER") for all of Respondents' employees and contractors that may handle hazardous waste or be exposed to hazardous substances (as defined pursuant to 29 C.F.R. § 1910.120) in areas where Work is conducted (proof of compliance must include: the written safety and health program plan and all ancillary plans required pursuant to 29 C.F.R. § 1910.120(b)(1); proof of a medical surveillance program pursuant to 29 C.F.R. § 1910.120(f); and proof of training pursuant to 29 C.F.R. § 1910.120(e)). If EPA determines that it is appropriate, the HASP(s) shall also include contingency planning. Respondents shall incorporate all changes to the HASP(s) recommended by EPA and shall implement the HASP(s) during the pendency of the Work. In addition to providing one or more HASP(s), Respondents shall prepare and submit to EPA, for each task or phase of the Removal Action, as identified in the Removal Work Plan(s), a job hazard analysis or a comparable document ("JHA") at least 5 days prior to commencement of such task or phase. Pending EPA's review of the applicable JHA, Respondents may commence the corresponding task or phase unless otherwise directed by EPA.

47. Quality Assurance Project Plan(s); Data Management Plan; Quality Assurance, Sampling, and Data Analysis

a. Within 15 days after the Effective Date, unless previously submitted, Respondents shall submit to EPA for approval in accordance with ¶ 49 (Deliverables: Specifications and Approval) one or more Quality Assurance Project Plan(s) ("QAPP(s)") for the sampling activities provided for in the Removal Work Plan(s) for the Site and consistent with the requirements of this ¶ 47.

b. Respondents shall use quality assurance, quality control, and other technical activities and chain of custody procedures for all samples consistent with EPA's *Environmental Information Quality Policy*, CIO 2105.1) (Mar. 2021) at <https://www.epa.gov/irmpoli8/environmental-information-quality-policy>, the most recent version of *Quality Management Systems for Environmental Information and Technology Programs – Requirements with Guidance for Use*, ASQ/ANSI E-4 (Feb. 2014), and *EPA Requirements for Quality Assurance Project Plans*, EPA QA/G-5 (EPA/240/B-01/02) (Mar. 2001) at <https://www.epa.gov/quality/epa-qar-5-epa-requirements-quality-assurance-project-plans>.

c. Respondents shall ensure that EPA personnel and its authorized representatives are allowed access at reasonable times to laboratories used by Respondents in implementing this Settlement. In addition, Respondents shall ensure that such laboratories analyze all samples submitted by EPA pursuant to the QAPP(s) for quality assurance monitoring, and that sampling and field activities are conducted in accordance with the *EPA QA Field Activities Procedure*, CIO 2105-P-02.1 (Sept. 23, 2014), available at <http://www.epa.gov/irmpoli8/epa-qa-field-activities-procedures>. Respondents shall ensure that the laboratories they utilize for the analysis of samples taken pursuant to this Settlement meet the competency requirements set forth in the *Policy to Assure Competency of Laboratories, Field Sampling, and Other Organizations Generating Environmental Measurement Data under Agency-Funded Acquisitions* (Directive No. FEM-2011-01) (Nov. 2016), available at <http://www.epa.gov/measurements/documents-about-measurement-competency-under-acquisition-agreements> and that the laboratories perform all analyses according to EPA-accepted methods. Accepted EPA methods are documented in the EPA's Contract Laboratory Program (<http://www.epa.gov/clp>), *SW 846 Test Methods for Evaluating Solid Waste, Physical/Chemical Methods* (<https://www.epa.gov/hw-sw846>), *Standard Methods for the Examination of Water and Wastewater* (<http://www.standardmethods.org/>), 40 C.F.R. part 136, *Air Toxics - Monitoring Methods* (<http://www3.epa.gov/ttnamti1/airtox.html>).

d. Upon request, Respondents shall provide split or duplicate samples to EPA or its authorized representatives. Respondents shall notify EPA not less than seven days prior to any sample collection activity unless shorter notice is agreed to by EPA. In addition, EPA has the right to take any additional samples that EPA deems necessary. EPA may forward information to the State regarding collection of samples and may collect samples on the State's behalf.

e. Within 15 days after the Effective Date, unless previously submitted, Respondents shall submit to EPA for approval in accordance with ¶ 49 (Deliverables: Specifications and Approval) a Data Management Plan ("Data Management Plan"). The Data Management Plan shall contain the data management procedures used for the various data streams that are collected, managed, analyzed, and reported under this Settlement and show how data is supplied to EPA as part of any deliverable required under this Settlement.

f. Respondents shall submit to EPA all sampling and test results and other data obtained or generated by or on behalf of Respondents or in connection with the implementation of this Settlement in accordance with the Data Management Plan.

48. **Community Involvement Plan; Community Involvement.** Within 15 days after the Effective Date, unless previously submitted, Respondents shall submit to EPA for approval in accordance with ¶ 49 (Deliverables: Specifications and Approval) a preliminary Community Involvement Plan (“Community Involvement Plan”) which sets forth a site-specific strategy to enable meaningful community involvement during the Removal Action, with the understanding that the preliminary Community Involvement Plan shall address the subject matter as directed by EPA through its community involvement coordinators (“CICs”), and, a final Community Involvement Plan shall be submitted to EPA for approval as directed by EPA through its CICs. The Community Involvement Plan shall contain information about impacts to Community Areas that is sufficient to assist EPA’s OSC in performing the evaluations described in the Superfund Community Involvement Handbook, OLEM 9230.0-51 (Mar. 2020). The Handbook is located at <https://www.epa.gov/superfund/superfund-community-involvement-tools-and-resources#handbook>. In developing the Community Involvement Plan, Respondents agree to provide the support activities described in the document titled “Support Requested from Vistra to Develop the Moss Landing Battery Fire Community Relations (Involvement) Plan,” dated June 9, 2025, attached hereto as Appendix C, as mutually agreed to by Respondents and EPA. EPA has the lead responsibility for implementing community involvement activities at the Site in accordance with the NCP and EPA guidance. As requested by EPA, Respondents shall participate in community involvement activities, including participation in (a) the preparation of information regarding the Work for dissemination to the public (including compliance schedules and progress reports), with consideration given to the specific needs of the community, including translated materials and mass media and/or Internet notification and (b) meetings that may be held or sponsored by EPA to explain activities at or relating to the Site.

49. **Deliverables: Specifications and Approval**

a. **General Requirements for Deliverables.** Respondents shall submit all deliverables to the primary OSC, Ramon D. Albizu Angulo, via email at Albizu.Ramon@epa.gov, with copies to the alternate OSCs, Kazami Brockman and Olivia Trombadore, via email at brockman.kazami@epa.gov and trombadore.olivia@epa.gov, in electronic form unless otherwise specified by EPA.

b. **Technical Specifications for Deliverables.**

- i. Sampling and monitoring data should be submitted in standard Regional Electronic Data Deliverable (“EDD”) format. Other delivery methods may be authorized by the OSC if electronic direct submission presents a significant burden or as technology changes.

- ii. Spatial data, including spatially-referenced data and geospatial data, should be submitted: (a) in the ESRI File Geodatabase format; and (b) as unprojected geographic coordinates in decimal degree format using North American Datum 1983 (NAD83) or World Geodetic System 1984 (WGS84) as the datum. If applicable, submissions should include the collection method(s). Projected coordinates may optionally be included but must be documented. Spatial data should be accompanied by metadata, and such metadata should be compliant with the Federal Geographic Data Committee ("FGDC") Content Standard for Digital Geospatial Metadata and its EPA profile, the EPA Geospatial Metadata Technical Specification. An add-on metadata editor for ESRI software, the EPA Metadata Editor ("EME"), complies with these FGDC and EPA metadata requirements and is available at <https://edg.epa.gov/EME/>. Other delivery methods may be allowed by the OSC if data is already included in the EDD submission, if this method presents a significant burden, or as technology changes.
- iii. Each file must include an attribute name for each site unit or sub-unit submitted. Consult <https://www.epa.gov/geospatial/geospatial-policies-and-standards> for any further available guidance on attribute identification and naming.
- iv. Spatial data submitted by Respondents does not, and is not intended to, define the boundaries of the Site.

c. **Approval of Deliverables.** After review of a Removal Work Plan or any other deliverable required to be submitted for EPA approval under the Settlement, EPA shall: (1) approve, in whole or in part, the deliverable; (2) approve the submission upon specified conditions or required revisions to the deliverable; (3) disapprove, in whole or in part, the deliverable; or (4) any combination of the foregoing. If EPA requires revisions, EPA will provide a deadline for the resubmission, and Respondents shall submit the revised deliverable by the required deadline. Once approved or approved with conditions or required revisions, Respondents shall immediately implement the Removal Work Plan or other deliverable in accordance with the EPA-approved schedule. Upon approval, or subsequent modification, by EPA of any deliverable, or any portion thereof: (1) such deliverable, or portion thereof, and any subsequent modifications, will be incorporated into and enforceable under the Settlement; and (2) Respondents shall take any action required by such deliverable, or portion thereof. Respondents shall not commence or perform any Work except in conformance with the terms of this Settlement.

50. Off-Site Shipments

a. Respondents may ship hazardous substances, pollutants and contaminants from the Site to an off-site facility only if they comply with section 121(d)(3) of CERCLA and 40 C.F.R. § 300.440. Respondents will be deemed to be in compliance with section 121(d)(3) of CERCLA and 40 C.F.R. § 300.440 regarding a shipment if Respondents obtain a prior determination from EPA that the proposed receiving facility for such shipment is acceptable under the criteria of 40 C.F.R. § 300.440(b).

b. Respondents may ship Investigation Derived Waste (“IDW”) from the Site to an off-site facility only if they comply with section 121(d)(3) of CERCLA, 40 C.F.R. § 300.440, EPA’s *Guide to Management of Investigation Derived Waste*, OSWER 9345.3-03FS (Jan. 1992), available at <https://semspub.epa.gov/work/03/136166.pdf>, and any IDW-specific requirements contained in the Removal Work Plan(s). Wastes shipped off-site to a laboratory for characterization, and RCRA hazardous wastes that meet the requirements for an exemption from RCRA under 40 C.F.R. § 261.4(e) shipped off-site for treatability studies, are not subject to 40 C.F.R. § 300.440.

51. Permits

a. As provided in section 121(e) of CERCLA, and 40 C.F.R. § 300.400(e), no permit is required for any portion of the Work conducted entirely on-site (i.e., within the areal extent of contamination or in very close proximity to the contamination and necessary for implementation of the Work). Where any portion of the Work that is not on-site requires a federal or state permit or approval, Respondents shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals.

b. Respondents may seek relief under the provisions of Section XIII (Force Majeure) of the Settlement for any delay in the performance of the Work resulting from a failure to obtain, or a delay in obtaining, any permit or approval referenced in ¶ 51.a and required for the Work, provided that they have submitted timely and complete applications and taken all other actions necessary to obtain all such permits or approvals.

c. Nothing in the Settlement constitutes a permit issued under any federal or state statute or regulation.

52. **Emergency Response.** If any event occurs during performance of the Work that causes or threatens to cause a release of Waste Material on, at, or from the Site and that either constitutes an emergency situation or that may present an immediate threat to public health or welfare or the environment, Respondents shall: (a) immediately take all appropriate action to prevent, abate, or minimize such release or threat of release; (b) immediately notify the OSC or, in the event of their unavailability, the Regional Duty Officer at (800) 300-2193, ext. 3, of the incident or Site conditions; and (c) take such actions in consultation with the OSC or authorized

EPA officer and in accordance with all applicable provisions of this Settlement, including, the HASP(s), and any other applicable deliverable approved by EPA.

53. **Release Reporting.** Upon the occurrence of any event during performance of the Work that Respondents are required to report under section 103 of CERCLA, or section 304 of the Emergency Planning and Community Right-to-Know Act ("EPCRA"), 42 U.S.C. § 11004, Respondents shall immediately orally notify the OSC or, in the event of their unavailability, the Regional Duty Officer at (800) 300-2193, ext. 3, and the National Response Center at (800) 424-8802. Respondents shall also submit a written report to EPA within seven days after the onset of such event, (a) describing the event, and (b) all measures taken and to be taken: (1) to mitigate any release or threat of release, (2) to mitigate any endangerment caused or threatened by the release; and (3) to prevent the reoccurrence of any such a release or threat of release. The reporting requirements under this Paragraph are in addition to the reporting required by sections 103 and 111(g) of CERCLA or section 304 of EPCRA.

54. **Progress Reports.** Commencing upon EPA's approval of any Removal Work Plan(s) and until issuance of Notice of Completion of Work under ¶ 57, Respondents shall submit written progress reports to EPA on a weekly basis, or as otherwise directed in writing by the OSC. These reports must describe all significant developments during the preceding reporting period, including the actions performed and any problems encountered, analytical data received during the reporting period, and the developments anticipated during the next reporting period, including a schedule of actions to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

55. **Additional Activities.** If EPA determines that additional actions not included in the Removal Work Plan(s) or other approved plan(s) are necessary to protect public health or welfare or the environment, and such additional activities are consistent with the items listed in ¶ 42, EPA will notify Respondents of that determination. Respondents also may request modification of the approved Removal Work Plan(s) or other deliverables. EPA may notify Respondents of any modification needed under the foregoing two sentences. Respondents shall, within 30 days thereafter, submit revised Removal Work Plan(s) and other deliverables as necessary to EPA for approval. Respondents shall implement the revised Removal Work Plan(s) and any other deliverables upon EPA's approval in accordance with the procedures of ¶ 49 in accordance with the approved provisions and schedule. This Paragraph does not limit the OSC's authority to make oral modifications to any plan or schedule pursuant to Section XXII.

56. **Final Report**

a. Within 60 days after completion of all Work required by this Settlement other than the continuing obligations listed in ¶ 57.a, Respondents shall submit for EPA review and approval a final report ("Final Report") regarding the Work. The Final Report must:

- i. summarize the actions taken to comply with this Settlement;

- ii. conform to the requirements of 40 C.F.R. § 300.165 (“OSC Reports”);
- iii. list the quantities and types of materials removed off-site or handled on-site;
- iv. describe the removal and disposal options considered for those materials;
- v. identify the ultimate destination(s) of those materials;
- vi. include the analytical results of all sampling and analyses performed; and
- vii. include all relevant documentation generated during the Work (e.g., manifests, invoices, bills, contracts, and permits) and an estimate of the total costs incurred to complete the Work.

b. The Final Report must also include the following certification signed by a responsible corporate official of a Respondent or Respondents’ Project Coordinator: “I certify under penalty of perjury that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I have no personal knowledge that the information submitted is other than true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

57. Notice of Completion of Work

a. If after reviewing the Final Report under ¶ 56, EPA determines that all Work, other than the continuing obligations, has been fully performed in accordance with this Settlement, EPA will provide notice (“Notice of Completion of Work”) to Respondents. A Notice of Completion of Work is not a protectiveness determination and does not affect the following continuing obligations:

- i. obligations under Section IX (Property Requirements);
- ii. payment of Future Response Costs; and
- iii. obligations under Section XIX (Records).

b. If EPA determines that any Work other than the continuing obligations has not been completed in accordance with this Settlement, EPA will so notify Respondents and provide a list of deficiencies to be corrected and a schedule for correcting them. Respondents shall promptly correct all identified deficiencies in accordance with the schedule provided and shall submit a modified Final Report following completion of such work. Subsequent determinations by EPA regarding completion of Work shall be handled in accordance with this Paragraph.

58. **Compliance with Applicable Law.** Nothing in this Settlement affects Respondents' obligations to comply with all applicable state and federal laws and regulations, except as provided in section 121(e) of CERCLA, and 40 C.F.R. §§ 300.400(e) and 300.415(j). In accordance with 40 C.F.R. § 300.415(j), all on-site actions required pursuant to this Settlement shall, to the extent practicable, as determined by EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements ("ARARs") under federal environmental or state environmental or facility siting laws. Respondents shall include ARARs selected by EPA in the Removal Work Plan(s). The activities conducted in accordance with this Settlement, if approved by EPA, will be deemed to be consistent with the NCP as provided under section 300.700(c)(3)(ii).

59. **Work Takeover**

a. If EPA determines that Respondents: (1) have ceased implementation of any portion of the Work required under this Section; (2) are seriously or repeatedly deficient or late in performing the Work required under this Section; or (3) are implementing the Work required under this Section in a manner that may cause an endangerment to public health or welfare or the environment, EPA may issue a notice of Work Takeover to Respondents, including a description of the grounds for the notice and a period of time ("Remedy Period") within which Respondents shall remedy the circumstances giving rise to the notice. The Remedy Period will be 20 days, unless EPA determines in its unreviewable discretion that there may be an endangerment, in which case the Remedy Period will be 10 days.

b. If, by the end of the Remedy Period, Respondents do not remedy to EPA's satisfaction the circumstances giving rise to the notice of Work Takeover, EPA may notify Respondents and, as it deems necessary, commence a Work Takeover. Funding of Work Takeover costs is addressed under ¶ 73 (Access to Financial Assurance).

c. EPA may conduct the Work Takeover during the pendency of any dispute under Section XIV but shall terminate the Work Takeover if and when: (1) Respondents remedy, to EPA's satisfaction, the circumstances giving rise to the notice of Work Takeover; or (2) upon the issuance of a final determination under Section XIV that EPA is required to terminate the Work Takeover.

IX. PROPERTY REQUIREMENTS

60. If the Site, or any other property where access is needed to implement this Settlement, such Respondents shall, commencing on the Effective Date, provide EPA, the State, and their representatives, including contractors, with access at all reasonable times to the Site, or such other property, for the purpose of conducting any activity related to this Settlement. Where any action under this Settlement is to be performed in areas owned or controlled by someone other than Respondents, Respondents shall use best efforts to obtain all necessary agreements for access, enforceable by Respondents and EPA, within seven days after the Effective Date, or as otherwise specified in writing by the OSC.

a. **Access Requirements.** The following is a list of activities for which access is required regarding the Site and any other property where access is needed to implement this Settlement:

- i. Monitoring the Work;
- ii. Verifying any data or information submitted to the United States;
- iii. Conducting investigations regarding contamination at or near the Site;
- iv. Obtaining samples;
- v. Assessing the need for, planning, implementing, or monitoring response actions;
- vi. Assessing implementation of quality assurance and quality control practices as defined in the approved quality assurance quality control plan as defined in the approved QAPP(s);
- vii. Implementing the Work pursuant to the conditions set forth in ¶ 59 (Work Takeover);
- viii. Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Respondents or their agents, consistent with Section XIX (Records);
- ix. Assessing Respondents' compliance with this Settlement;
- x. Determining whether the Site, or such other property, is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted under the Settlement; and

- xi. Implementing, monitoring, maintaining, reporting on, and enforcing any land, water, or other resource use restrictions regarding the Site, or such other property.

61. As used in this Section, “best efforts” means the efforts that a reasonable person in the position of Respondents would use to achieve the goal in a timely manner, including the cost of employing professional assistance and the payment of reasonable sums of money to secure access or use restriction agreements, as required by this Section. If Respondents cannot accomplish what is required through “best efforts” in a timely manner, they shall notify EPA, and include a description of the steps taken to achieve the requirements. If EPA deems it appropriate, it may assist Respondents, or take independent action, to obtain such access and/or use restrictions.

62. Any Respondent who owns or controls any property at the Site shall, prior to entering into a contract to Transfer any of its real property that is part of the Site, or 60 days prior to a Transfer of such property, whichever is earlier, (a) give written notice to the proposed transferee that the property is subject to this Settlement; and (b) give written notice to EPA and the State of the proposed Transfer, including the name and address of the transferee. Any Respondent who owns or controls property at the Site also agrees to require that its successors comply with this Section IX and Section XIX (Records).

63. Notwithstanding any provision of the Settlement, EPA and the State retain all of their access authorities and rights, as well as all of their rights to require land, water, or other resource use restrictions, including related enforcement authorities under CERCLA, RCRA, and any other applicable statute or regulations.

X. COST ESTIMATES AND FINANCIAL ASSURANCE

64. **Cost Estimates.** Within 15 days after the Effective Date, Respondents shall submit to EPA a detailed written initial estimate, in current dollars, of the cost of hiring a third party to perform the Work described under Section VIII (Performance of the Work) (the “Cost Estimate”). A third party is a party who: (i) is neither a parent nor a subsidiary of any Respondent and (ii) does not share a common parent or subsidiary with any Respondent. The initial Cost Estimate must account for the total costs of the work activities described in Section VIII (Performance of the Work) for the entire period of this Removal Action, including any necessary long-term costs, such as operation and maintenance costs, monitoring costs, and institutional controls. The Cost Estimate must not incorporate any salvage value that may be realized from the sale of wastes, facility structures or equipment, land or other assets associated with the Site.

65. Concurrent with the submission of any Work Plan(s) for additional work required under ¶ 55 (Additional Activities), Respondents shall submit revised detailed written estimate(s), in current dollars, of the cost of hiring a third party to perform the Work.

66. Respondents must annually adjust the Cost Estimate(s) for inflation within thirty (30) days after the close of Respondents' fiscal year until the Work is completed. In addition, Respondents must adjust the Cost Estimate if EPA determines that any additional work is required, pursuant to ¶ 55 (Additional Activities), or if any other conditions increase the cost of the Work to be performed under this Settlement.

67. Respondents shall submit each Cost Estimate to EPA for review, pursuant to ¶ 49 (Deliverables: Specifications and Approval).

68. **Assurances of Financial Responsibility for Completing the Work.** To ensure completion of the Work required under Section VIII (Performance of the Work) Respondents shall secure financial assurance, initially in an amount equal to the Cost Estimate ("Estimated Cost of the Work"), for the benefit of EPA. The financial assurance must: (a) be one or more of the mechanisms listed below, in a form substantially identical to the relevant sample documents available from EPA; and (b) be satisfactory to EPA. As of the date of signing this Settlement, the sample documents can be found under the "Financial Assurance - Settlements" category on the Cleanup Enforcement Model Language and Sample Documents Database at <https://cfpub.epa.gov/compliance/models/>. Respondents may use multiple mechanisms if they are limited to surety bonds guaranteeing payment, letters of credit, trust funds, insurance policies, or some combination thereof. The following are acceptable mechanisms:

a. a surety bond guaranteeing payment, performance of the Work, or both, that is issued by a surety company among those listed as acceptable sureties on federal bonds as set forth in Circular 570 of the U.S. Department of the Treasury;

b. an irrevocable letter of credit, payable to EPA or at the direction of EPA, that is issued by an entity that has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency;

c. a trust fund established for the benefit of EPA that is administered by a trustee that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency;

d. a policy of insurance that provides EPA with acceptable rights as a beneficiary thereof and that is issued by an insurance carrier that has the authority to issue insurance policies in the applicable jurisdiction(s) and whose insurance operations are regulated and examined by a federal or state agency;

e. a demonstration by a Respondent that it meets the relevant financial test criteria of ¶ 69, accompanied by a standby funding commitment, that requires the affected Respondent to pay funds to or at the direction of EPA, up to the amount financially assured through the use of this demonstration in the event of a Work Takeover; or

f. a guarantee to fund or perform the Work executed in favor of EPA by a company: (1) that is a direct or indirect parent company of a Respondent or has a “substantial business relationship” (as defined in 40 C.F.R. § 264.141(h)) with a Respondent; and (2) demonstrates to EPA’s satisfaction that it meets the financial test criteria of ¶ 70.

69. Respondents seeking to provide financial assurance by means of a demonstration or guarantee under ¶ 68.e or 68.f, shall, within 15 days of EPA’s approval of the affected Respondent’s form of financial assurance:

a. Demonstrate that:

i. the affected Respondent or guarantor has:

1. two of the following three ratios: a ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; and a ratio of current assets to current liabilities greater than 1.5; and
2. net working capital and tangible net worth each at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; and
3. tangible net worth of at least \$10 million; and
4. assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; or

ii. the affected Respondent or guarantor has:

1. a current rating for its senior unsecured debt of AAA, AA, A, or BBB as issued by Standard and Poor’s or Aaa, Aa, A or Baa as issued by Moody’s; and
2. tangible net worth at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations

financially assured through the use of a financial test or guarantee; and

3. tangible net worth of at least \$10 million; and
4. assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; and

b. Submit to EPA for the affected Respondent or guarantor: (1) a copy of an independent certified public accountant's report of the entity's financial statements for the latest completed fiscal year, which must not express an adverse opinion or disclaimer of opinion; and (2) a letter from its chief financial officer and a report from an independent certified public accountant substantially identical to the sample letter and reports available from EPA. As of the date of signature of this Settlement, a sample letter and report are available under the "Financial Assurance - Settlements" subject list category on the Cleanup Enforcement Model Language and Sample Documents Database at <https://cfpub.epa.gov/compliance/models/>.

70. Respondents providing financial assurance by means of a demonstration or guarantee under ¶ 68.e or 68.f, shall also:

- a. annually resubmit the documents described in ¶ 69.b within 90 days after the close of the affected Respondent's or guarantor's fiscal year;
- b. notify EPA within 30 days after the affected Respondent or guarantor determines that it no longer satisfies the relevant financial test criteria and requirements set forth in this Section; and
- c. provide to EPA, within 30 days of EPA's request, reports of the financial condition of the affected Respondent or guarantor in addition to those specified in ¶ 69.b; EPA may make such a request at any time based on a belief that the affected Respondent or guarantor may no longer meet the financial test requirements of this Section.

71. Respondents shall, within 15 days after EPA's approval of the Cost Estimate, seek EPA's approval of the form of Respondents' financial assurance. Within 15 days after EPA's approval, Respondents shall secure all executed or otherwise finalized mechanisms or other documents consistent with the EPA-approved form of financial assurance and shall submit such mechanisms and documents to EPA in accordance with ¶ 112.

72. Respondents shall diligently monitor the adequacy of the financial assurance. If any Respondent becomes aware of any information indicating that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, such Respondent shall notify EPA of such information within seven days. If EPA determines that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, EPA will notify the Respondents of such determination. Respondents shall, within 30 days after notifying EPA or receiving notice from EPA under this Paragraph, secure and submit to EPA for approval a proposal for a revised or alternative financial assurance mechanism that satisfies the requirements of this Section. EPA may extend this deadline for such time as is reasonably necessary for the Respondents, in the exercise of due diligence, to secure and submit to EPA a proposal for a revised or alternative financial assurance mechanism, not to exceed 60 days. Respondents shall follow the procedures of ¶ 74 (Modification of Amount, Form, or Terms of Financial Assurance) in seeking approval of, and submitting documentation for, the revised or alternative financial assurance mechanism. Respondents' inability to secure financial assurance in accordance with this Section does not excuse performance of any other requirement of this Settlement.

73. Access to Financial Assurance

a. If EPA issues a notice of a Work Takeover under ¶ 59.b, then, in accordance with any applicable financial assurance mechanism including the related standby funding commitment, EPA may require: (1) the performance of the Work; and/or (2) that any funds guaranteed be paid in accordance with ¶ 73.d.

b. If EPA is notified that the issuer of a financial assurance mechanism intends to cancel the mechanism, and the Respondents fail to provide an alternative financial assurance mechanism in accordance with this Section at least 30 days prior to the cancellation date, the funds guaranteed under such mechanism must be paid prior to cancellation in accordance with ¶ 73.d.

c. If, upon issuance of a notice of a Work Takeover under ¶ 59, either: (1) EPA is unable for any reason to promptly secure the resources guaranteed under any applicable financial assurance mechanism including the related standby funding commitment, whether in cash or in kind, to continue and complete the Work; or (2) the financial assurance is a demonstration or guarantee under ¶ 68.e or 68.f, then EPA is entitled to demand an amount, as determined by EPA, sufficient to cover the cost of the remaining Work to be performed. Respondents shall, within 30 days after such demand, pay the amount demanded as directed by EPA.

d. Any amounts required to be paid under this ¶ 73 must be, as directed by EPA: (i) paid to EPA in order to facilitate the completion of the Work by EPA, the State, or by another person; or (ii) deposited into an interest-bearing account, established at a duly chartered bank or trust company that is insured by the FDIC, in order to facilitate the

completion of the Work by another person. If payment is made to EPA, EPA may deposit the payment into the Fund or into the Special Account to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the Fund.

74. **Modification of Amount, Form, or Terms of Financial Assurance.** At any other time agreed to by the Parties, Respondents may request to change the form, terms, or amount of the financial assurance mechanism. Respondents shall submit any such request to EPA in accordance with ¶ 71, and shall include an estimate of the cost of the remaining Work, an explanation of the bases for the cost calculation, and a description of the proposed changes, if any, to the form or terms of the financial assurance. EPA will notify Respondents of its decision regarding the request. Respondents may modify the form, terms, or the amount of the financial assurance mechanism only in accordance with: (a) EPA's approval; or (b) any resolution of a dispute on the appropriate amount of financial assurance under Section XIV. Any decision made by EPA on a request submitted under this Paragraph to change the form or terms of a financial assurance mechanism shall not be subject to challenge by Respondents pursuant to the dispute resolution provisions of this Settlement or in any other forum. Respondents shall submit to EPA, within 30 days after receipt of EPA's approval, or consistent with the terms of the resolution of the dispute, documentation of the change to the form, terms, or amount of the financial assurance instrument.

75. **Release, Cancellation, or Discontinuation of Financial Assurance.** Respondents may release, cancel, or discontinue any financial assurance provided under this Section only: (a) if EPA issues a Notice of Completion of Work under ¶ 57; (b) in accordance with EPA's approval of such release, cancellation, or discontinuation; or (c) if there is a dispute regarding the release, cancellation, or discontinuance of any financial assurance, in accordance with the agreement or final decision resolving such dispute under Section XIV.

XI. INDEMNIFICATION AND INSURANCE

76. Indemnification

a. The United States does not assume any liability by entering into this Settlement or by virtue of any designation of Respondents as EPA's authorized representative under section 104(e)(1) of CERCLA. Respondents shall indemnify and save and hold harmless the United States, its officials, agents, employees, contractors, subcontractors, and representatives for or from any claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Respondents, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on Respondents' behalf or under their control, in carrying out activities under this Settlement, including any claims arising from any designation of Respondents as EPA's authorized representatives under section 104(e)(1) of CERCLA. Further, Respondents agree to pay EPA all costs it incurs including attorneys' fees and other expenses of litigation and settlement arising from, or on account of,

claims made against the United States based on negligent or other wrongful acts or omissions of Respondents, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control in carrying out activities under with this Settlement. EPA may not be held out as a party to any contract entered into by or on behalf of Respondents in carrying out activities under this Settlement. Respondents and any such contractor may not be considered an agent of EPA.

b. EPA shall give Respondents notice of any claim for which EPA plans to seek indemnification in accordance with this ¶ 76, and shall consult with Respondents prior to settling such claim.

77. Respondents covenant not to sue and shall not assert any claim or cause of action against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between any one or more of Respondents and any person for performance of Work or other activities on or relating to the Site, including claims on account of construction delays. In addition, Respondents shall indemnify and save and hold harmless the United States with respect to any claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between any one or more of Respondents and any person for performance of work at or relating to the Site, including claims on account of construction delays.

78. **Insurance.** Respondents shall secure, by no later than 15 days before commencing any on-site Work, the following insurance: (a) commercial general liability insurance with limits of liability of \$1 million per occurrence; (b) automobile liability insurance with limits of liability of \$1 million per accident; and (c) umbrella liability insurance with limits of liability of \$5 million in excess of the required commercial general liability and automobile liability limits. The insurance policy must name EPA as an additional insured with respect to all liability arising out of the activities performed by or on behalf of Respondents under this Settlement. Respondents shall maintain this insurance until the first anniversary after EPA's issuance of the Notice of Completion of Work under ¶ 57. In addition, for the duration of this Settlement, Respondents shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Respondents in furtherance of this Settlement. Within 10 days of the Effective Date, Respondents shall provide to EPA certificates of such insurance and a copy of each insurance policy. Respondents shall resubmit such certificates and copies of policies each year on the anniversary of the Effective Date. If Respondents demonstrate by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then, with respect to that contractor or subcontractor, Respondents need provide only that portion of the insurance described above that is not maintained by the contractor or subcontractor. Respondents shall ensure that all submittals to EPA under this

Paragraph identify the Moss Landing complex, Moss Landing, California, and the EPA docket number of this case.

XII. PAYMENTS FOR RESPONSE COSTS

79. **Payments by Respondents for Past Response Costs.** Within 30 days after the Effective Date, Respondents shall pay EPA the Past Response Costs. Respondents shall make payment at <https://www.pay.gov> using the “EPA Miscellaneous Payments Cincinnati Finance Center” link, and including references to the Site Name, Docket Number, and Site/Spill ID number listed in ¶ 116 and the purpose of the payment. Respondents shall send notices of this payment to EPA in accordance with ¶ 116. If the payment required under this Paragraph is late, Respondents shall pay, in addition to any stipulated penalties owed under Section XV, an additional amount for Interest accrued from the Effective Date through the date of payment. The Past Response Costs is based on an unreconciled accounting of response costs through June 16, 2025. Upon a final accounting of Future Response Costs, EPA will bill Respondents the balance of the total, reconciled response costs as Future Response Costs under ¶ 80.

80. Payments by Respondents for Future Response Costs

a. **Periodic Bills.** On a periodic basis, EPA will send Respondents a bill for Future Response Costs, including a cost summary, listing unreimbursed direct and indirect costs paid by EPA, its contractors, and subcontractors. Respondents may initiate a dispute under Section XIV regarding a Future Response Cost billing, but only if the dispute relates to one or more of the following issues: (1) whether EPA has made an arithmetical error; (2) whether EPA has included a cost item that is not within the definition of Future Response Costs; or (3) whether EPA has paid excess costs as a direct result of an EPA action that was inconsistent with a specific provision or provisions of the NCP. Respondents shall specify in the Notice of Dispute the contested costs and the basis for the objection.

b. **Payment of Bill.** Respondents shall pay the bill, or if they initiate dispute resolution under Section XIV, the uncontested portion of the bill, if any, within 30 days after receipt of the bill. Respondents shall pay the contested portion of the bill determined to be owed, if any, within 30 days after the determination regarding the dispute. Each payment for: (i) the uncontested bill or portion of bill, if late, and; (ii) the contested portion of the bill determined to be owed, if any, must include an additional amount for Interest accrued from the date of receipt of the bill through the date of payment. Respondents shall make all payments at <https://www.pay.gov> using the “EPA Miscellaneous Payments Cincinnati Finance Center” link, and including references to the Site Name, Docket Number, and Site/Spill ID number and the purpose of the payment. Respondents shall send notices of this payment to EPA and include these references.

81. **Deposit of Payments.** EPA may, in its unreviewable discretion, deposit the amounts paid under ¶ 79, ¶ 80, and ¶ 82 in the Fund, in the Special Account, or both. EPA may, in its unreviewable discretion, retain and use any amounts deposited in the Special Account to

conduct or finance response actions at or in connection with the Site, or transfer those amounts to the Fund.

82. **Interest.** In the event that any payment for Past Response Costs and/or Future Response Costs is not made by the date required, Respondents shall pay Interest on the unpaid balance in accordance with ¶ 79 and ¶ 80. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of Respondents' failure to make timely payments under this Section, including but not limited to, payment of stipulated penalties pursuant to ¶ 92 (Stipulated Penalties).

XIII. FORCE MAJEURE

83. "Force majeure," for purposes of this Settlement, means any event arising from causes beyond the control of Respondents, of any entity controlled by Respondents, or of Respondents' contractors that delays or prevents the performance of any obligation under this Settlement despite Respondents' best efforts to fulfill the obligation. Given the need to protect public health and welfare and the environment, the requirement that Respondents exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure and best efforts to address the effects of any potential force majeure (a) as it is occurring and (b) following the potential force majeure such that the delay and any adverse effects of the delay are minimized to the greatest extent possible. "Force majeure" does not include financial inability to complete the Work or increased cost of performance.

84. If any event occurs for which Respondents will or may claim a force majeure, Respondents shall notify EPA's OSC by email. The deadline for the initial notice is five days after the date Respondents first knew or should have known that the event would likely delay performance. Respondents shall be deemed to know of any circumstance of which any contractor of, subcontractor of, or entity controlled by Respondents knew or should have known. Within five days thereafter, Respondents shall send a further notice to EPA that includes: (a) a description of the event and its effect on Respondents' completion of the requirements of the Settlement; (b) a description of all actions taken or to be taken to prevent or minimize the adverse effects or delay; (c) the proposed extension of time for Respondents to complete the requirements of the Settlement; (d) a statement as to whether, in the opinion of Respondents, such event may cause or contribute to an endangerment to public health or welfare, or the environment; and (e) all available proof supporting their claim of force majeure. Failure to comply with the notice requirements herein regarding an event precludes Respondents from asserting any claim of force majeure regarding that event, provided, however, that if EPA, despite the late or incomplete notice, is able to assess to its satisfaction whether the event is a force majeure under ¶ 83 and whether Respondents have exercised best efforts under ¶ 83, EPA may, in its unreviewable discretion, excuse in writing Respondents' failure to submit timely or complete notices under this Paragraph.

85. EPA will notify Respondents of its determination whether Respondents are entitled to relief under ¶ 83, and, if so, the duration of the extension of time for performance of the obligations affected by the force majeure. An extension of the time for performance of the obligations affected by the force majeure shall not, of itself, extend the time for performance of any other obligation. Respondents may initiate dispute resolution under Section XIV regarding EPA's determination within 15 days after receipt of the determination. In any such proceeding, Respondents have the burden of proving that they are entitled to relief under ¶ 83 and that their proposed extension was or will be warranted under the circumstances.

86. The failure by EPA to timely complete any activity under the Settlement is not a violation of the Settlement, provided, however, that if such failure prevents Respondents from timely completing a requirement of the Settlement, Respondents may seek relief under this Section.

XIV. DISPUTE RESOLUTION

87. Unless otherwise provided in this Settlement, Respondents shall use the dispute resolution procedures of this Section to resolve any dispute arising under this Settlement.

88. A dispute will be considered to have arisen when one or more parties sends a written notice of dispute ("Notice of Dispute") to EPA. Disputes arising under this Settlement must in the first instance be the subject of informal negotiations between the parties to the dispute. If Respondents object to any EPA action taken pursuant to this Settlement, they shall send EPA a Notice of Dispute describing the objection(s) within seven days after such action. The period for informal negotiations may not exceed 30 days after the dispute arises, unless EPA otherwise agrees. If the parties cannot resolve the dispute by informal negotiations, the position advanced by EPA is binding unless Respondents initiate formal dispute resolution under ¶ 89.

89. Formal Dispute Resolution

a. **Statements of Position.** Respondents may initiate formal dispute resolution by submitting, within seven days after the conclusion of informal dispute resolution under ¶ 87, an initial Statement of Position regarding the matter in dispute. The EPA's responsive Statement of Position is due within 20 days after receipt of the initial Statement of Position. All Statements of Position must include supporting factual data, analysis, opinion, and other documentation. If appropriate, EPA may extend the deadlines for filing statements of position for up to 15 days and may allow the submission of supplemental statements of position.

b. **Formal Decision.** The Director of the Superfund and Emergency Management Division, EPA Region 9, will issue a formal decision resolving the dispute ("Formal Decision") based on the statements of position and any replies and supplemental statements of

position. The Formal Decision is binding on Respondents, and shall be incorporated into and become an enforceable part of this Settlement.

90. **Escrow Account.** For disputes regarding a Future Response Cost billing, Respondents shall: (a) establish, in a duly chartered bank or trust company, an interest-bearing escrow account that is insured by the Federal Deposit Insurance Corporation (“FDIC”); (b) remit to that escrow account funds equal to the amount of the contested Future Response Costs; and (c) send to EPA a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that established and funded the escrow account, including the name of the bank, the bank account number, and a bank statement showing the initial balance in the account. EPA may, in its unreviewable discretion, waive the requirement to establish the escrow account. Respondents shall cause the escrow agent to pay the amounts due to EPA under ¶ 80, if any, by the deadline for such payment in ¶ 80. Respondents are responsible for any balance due under ¶ 80 after the payment by the escrow agent.

91. The initiation of dispute resolution procedures under this Section does not extend, postpone, or affect in any way any requirement of this Settlement, except as EPA agrees. Stipulated penalties with respect to the disputed matter will continue to accrue, but payment is stayed pending resolution of the dispute, as provided in ¶ 94.

XV. STIPULATED PENALTIES

92. Unless the noncompliance is excused under Section XIII (Force Majeure), Respondents are liable to EPA for the following stipulated penalties:

a. for any failure: (1) to pay any amount due under Section XII; (2) to establish and maintain financial assurance in accordance with Section X; (3) to establish any escrow account required under ¶ 90; or (4) to submit timely or adequate deliverables, specifically the Removal Work Plan(s) in accordance with Section VIII:

Period of Noncompliance	Penalty Per Noncompliance Per Day
1st through 14th day	\$1,000
15th through 30th day	\$2,500
31st day and beyond	\$5,000

b. for any failure to submit timely or adequate deliverables required by this Settlement or implement any Work Plan or requirement other than those specified in ¶ 92.a:

Period of Noncompliance	Penalty Per Noncompliance Per Day
1st through 14th day	\$500
15th through 30th day	\$1,500
31st day and beyond	\$3,000

93. **Work Takeover Penalty.** If EPA commences a Work Takeover under ¶ 59, Respondents are liable for a stipulated penalty in the amount of \$45,000,000. This stipulated penalty is in addition to the remedy available to EPA under ¶ 73 (Access to Financial Assurance).

94. **Accrual of Penalties.** Stipulated penalties accrue from the date performance is due, or the day a noncompliance occurs, whichever is applicable, until the date the requirement is completed or the final day of the correction of the noncompliance. Nothing in this Settlement prevents the simultaneous accrual of separate penalties for separate noncompliances with this Settlement. Stipulated penalties accrue regardless of whether Respondents have been notified of their noncompliance, and regardless of whether Respondents have initiated dispute resolution under Section XIV, provided, however, that no penalties will accrue as follows:

a. with respect to a submission that EPA subsequently determines is deficient, during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Respondents of any deficiency; or

b. with respect to a matter that is the subject of dispute resolution under Section XIV, during the period, if any, beginning on the 21st day after EPA's Statement of Position is received until the date of the Formal Decision under ¶ 89.b.

95. **Demand and Payment of Stipulated Penalties.** EPA may send Respondents a demand for stipulated penalties. The demand will include a description of the noncompliance and will specify the amount of the stipulated penalties owed. Respondents may initiate dispute resolution under Section XIV within 30 days after receipt of the demand. Respondents shall pay the amount demanded or, if they initiate dispute resolution, the uncontested portion of the amount demanded, within 30 days after receipt of the demand. Respondents shall pay the contested portion of the penalties determined to be owed, if any, within 30 days after the resolution of the dispute. Each payment for: (a) the uncontested penalty demand or uncontested portion, if late, and; (b) the contested portion of the penalty demand determined to be owed, if any, must include an additional amount for Interest accrued from the date of receipt of the demand through the date of payment. Respondents shall make payment at <https://www.pay.gov> using the link for "EPA Miscellaneous Payments Cincinnati Finance Center," including references to the Site Name, Docket Number, and Site/Spill ID number and the purpose of the payment. Respondents shall send notice of this payment to EPA. The payment of stipulated penalties and Interest, if any, does not alter any obligation by Respondents under the Settlement.

96. Nothing in this Settlement limits the authority of the EPA to seek any other remedies or sanctions available by virtue of Respondents' noncompliance with this Settlement or of the statutes and regulations upon which it is based, including penalties under sections 106(b) and 122(l) of CERCLA, and punitive damages pursuant to section 107(c)(3) of CERCLA, provided, however, that the EPA may not seek civil penalties under section 122(l) of

CERCLA for any noncompliance for which a stipulated penalty is provided for in this Settlement, except in the case of a willful noncompliance with this Settlement or in the event that EPA assumes performance of a portion or all of the Work pursuant to ¶ 59 (Work Takeover).

97. Notwithstanding any other provision of this Section, the EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued under this Settlement.

XVI. COVENANTS BY EPA

98. **Covenants for Respondents.** Subject to ¶ 100, EPA covenants not to sue or to take administrative action against Respondents under sections 106 and 107(a) of CERCLA regarding the Work, Past Response Costs, and Future Response Costs.

99. The covenants under ¶ 98: (a) take effect upon the Effective Date; (b) are conditioned on the complete and satisfactory performance by Respondents of the requirements of this Settlement; (c) extend to the successors of each Respondent but only to the extent that the alleged liability of the successor of the Respondent is based solely on its status as a successor of the Respondent; and (d) do not extend to any other person.

100. **General Reservations.** Notwithstanding any other provision of this Settlement, EPA reserves, and this Settlement is without prejudice to, all rights against Respondents regarding the following:

- a. liability for failure by Respondents to meet a requirement of this Settlement;
- b. liability for performance of response action other than the Work;
- c. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- d. liability arising from the past, present, or future disposal, release or threat of release of Waste Materials outside of the Site; and
- e. criminal liability.

101. Subject to ¶ 98, nothing in this Settlement limits any authority of EPA to take, direct, or order all appropriate action to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site, or to request a Court to order such action.

XVII. COVENANTS BY RESPONDENTS

102. Covenants by Respondents

a. Subject to ¶ 103, Respondents covenant not to sue and shall not assert any claim or cause of action against the United States under CERCLA, section 7002(a) of RCRA, the United States Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, the State Constitution, State law, or at common law regarding the Work, Past Response Costs, Future Response Costs, and this Settlement.

b. Subject to ¶ 103, Respondents covenant not to seek reimbursement from the Fund through CERCLA or any other law for costs of the Work, Past Response Costs, Future Response Costs, or any claim arising out of response actions at or in connection with the Site.

103. Respondents' Reservation. The covenants in ¶ 102 do not apply to any claim or cause of action brought, or order issued, after the Effective Date by the United States to the extent such claim, cause of action, or order is within the scope of a reservation under ¶¶ 100.a through 100.e.

104. De Minimis/Ability to Pay Waiver. Respondents shall not assert any claims and waive all claims or causes of action (including claims or causes of action under sections 107(a) and 113 of CERCLA) that they may have against any third party who enters or has entered into a *de minimis* or "ability-to-pay" settlement with EPA to the extent Respondents' claims and causes of action are within the scope of the matters addressed in the third party's settlement with EPA, provided, however, that this waiver does not apply if the third party asserts a claim or cause of action regarding the Site against Respondents. Nothing in this Settlement limits Respondents' rights under section 122(d)(2) of CERCLA to comment on any *de minimis* or ability-to-pay settlement proposed by EPA.

105. De Micromis Waiver. Respondents shall not assert any claims and waive all claims or causes of action (including claims or causes of action under sections 107(a) and 113 of CERCLA) that they may have for all matters relating to the Site against any person where the person's liability to Respondents with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of hazardous substances at the Site, or having accepted for transport for disposal or treatment of hazardous substances at the Site, if all or part of the disposal, treatment, or transport occurred before April 1, 2001, and the total amount of material containing hazardous substances contributed by such person to the Site was less than 110 gallons of liquid materials or 200 pounds of solid materials. This waiver does not apply to any claim or cause of action against any person otherwise covered by such waiver if EPA determines that: (a) the materials containing hazardous substances contributed to the Site by such person contributed significantly or could contribute significantly, either individually or in the aggregate, to the cost of the response action or natural resource restoration at the Site; or (b) such person has failed to comply with any information request or administrative subpoena issued under sections 104(e) or 122(e)(3)(B) of CERCLA or

section 3007 of RCRA with respect to the Site, or has impeded or is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to the Site; or if (c) such person has been convicted of a criminal violation for the conduct to which the waiver would apply and that conviction has not been vitiated on appeal or otherwise. This waiver does not apply with respect to any defense, claim, or cause of action that a Respondent may have against any person otherwise covered by this waiver if such person asserts a claim or cause of action relating to the Site against such Respondent.

XVIII. EFFECT OF SETTLEMENT; CONTRIBUTION

106. The Parties agree that: (a) this Settlement constitutes an administrative settlement under which each Respondent has, as of the Effective Date, resolved its liability to EPA within the meaning of sections 113(f)(2), 113(f)(3)(B), and 122(h)(4) of CERCLA; and (b) each Respondent is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by sections 113(f)(2) and 122(h)(4) of CERCLA, or as may be otherwise provided by law, for the “matters addressed” in this Settlement. The “matters addressed” in this Settlement are the Work, Past Response Costs, and Future Response Costs, provided, however, that if EPA exercises rights under the reservations in ¶¶ 100.a through 100.e, the “matters addressed” in this Settlement do not include those response costs or response actions that are within the scope of the exercised reservation.

107. Each Respondent shall, with respect to any suit or claim brought by it for matters related to this Settlement, notify EPA no later than 60 days prior to the initiation of such suit or claim. Each Respondent shall, with respect to any suit or claim brought against it for matters related to this Settlement, notify EPA within 10 days after service of the complaint on such Respondent. In addition, each Respondent shall notify EPA within 10 days after service or receipt of any Motion for Summary Judgment and within 10 days after receipt of any order from a court setting a case for trial.

108. **Res Judicata and Other Defenses.** In any subsequent administrative or judicial proceeding initiated against any Respondent by EPA or by the United States on behalf of EPA for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site, Respondents shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, claim preclusion (*res judicata*), issue preclusion (*collateral estoppel*), claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case.

109. Except as provided in ¶¶ 104-105, nothing in this Settlement creates any rights in, or grants any defense or cause of action to, any person not a Party to this Settlement. Except as provided in Section XVII (Covenants by Respondents), each of the Parties expressly reserves any and all rights (including pursuant to section 113 of CERCLA), defenses, claims, demands, and causes of action that each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto. Nothing in this

Settlement diminishes the right of the United States under section 113(f)(2) and (3) of CERCLA to pursue any person not a party to this Settlement to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to section 113(f)(2) of CERCLA.

XIX. RECORDS

110. Respondents' Certification. Each Respondent certifies to the best of its knowledge and belief, after thorough inquiry it has not altered, mutilated, discarded, destroyed, or otherwise disposed of any Records (other than identical copies) relating to its potential liability regarding the Site since notification of potential liability by EPA or the State.

111. Retention of Records and Information

a. Respondents shall retain, and instruct their contractors and agents to retain, the following documents and electronically stored data ("Records") until 10 years after the Notice of Completion of the Work under ¶ 57.a ("Record Retention Period"):

- i. All records regarding Respondents' liability and the liability of any other person under CERCLA regarding the Site;
- ii. All reports, plans, permits, and documents submitted to EPA in accordance with this Settlement, including all underlying research and data; and
- iii. All data developed by, or on behalf of, Respondents in the course of performing the Work.

b. At the end of the Record Retention Period, Respondents shall notify EPA and the State that they have 90 days to request the Respondents' Records subject to this Section. Respondents shall retain and preserve their Records subject to this Section until 90 days after EPA's and the State's receipt of the notice. These record retention requirements apply regardless of any corporate record retention policy.

112. Respondents shall provide to EPA and the State, upon request, copies of all Records and information required to be retained under this Section. Respondents shall also make available to EPA, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

113. Privileged and Protected Claims

a. Respondents may assert that all or part of a record requested by EPA is privileged or protected as provided under federal law, in lieu of providing the record, provided that Respondents comply with ¶ 113.b, and except as provided in ¶ 113.c.

b. If Respondents assert a claim of privilege or protection, they shall provide EPA with the following information regarding such record: its title; its date; the name and email address of the author, of each addressee, and of each recipient; a description of the subject matter of the record's contents; and the privilege or protection asserted. If a claim of privilege or protection applies only to a portion of a record, Respondents shall provide the record to EPA in redacted form to mask the privileged or protected portion only. Respondents shall retain all records that they claim to be privileged or protected until EPA has had a reasonable opportunity to dispute the privilege or protection claim and any such dispute has been resolved in Respondents' favor.

c. Respondents shall not make any claim of privilege or protection regarding: (1) any data related to the January 16, 2025 fire and any subsequent ignition event, including all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, radiological or engineering data, or the portion of any other record that evidences conditions at or around the Site related to the January 16, 2025 fire and any subsequent ignition event; or (2) the portion of any record that Respondents are required to create or generate in accordance with this Settlement.

114. Confidential Business Information Claims. Each Respondent is entitled to claim that all or part of a record submitted to EPA under this Section is Confidential Business Information ("CBI") that is covered by section 104(e)(7) of CERCLA and 40 C.F.R. § 2.203(b). Respondents shall segregate all records or parts thereof submitted under this Settlement which they claim is CBI and label them as "claimed as confidential business information" or "claimed as CBI." Records that a submitter properly labels in accordance with the preceding sentence will be afforded the protections specified in 40 C.F.R. part 2, subpart B. If the records are not properly labeled when they are submitted to EPA, or if EPA notifies the submitter that the records are not entitled to confidential treatment under the standards of section 104(e)(7) of CERCLA or 40 C.F.R. part 2, subpart B, the public may be given access to such records without further notice to the submitter.

115. Notwithstanding any provision of this Settlement, EPA retains all of its information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

XX. NOTICES AND SUBMISSIONS

116. All agreements, approvals, consents, deliverables, modifications, notices, notifications, objections, proposals, reports, waivers, and requests specified in this Settlement must be in writing unless otherwise specified. Whenever a notice is required to be given or a report or other document is required to be sent by one Party to another under this Settlement, it must be sent as specified below. All notices under this Section are effective upon receipt, unless otherwise specified. In the case of emailed notices, there is a rebuttable presumption that such notices are received on the same day that they are sent. Any Party may change the method, person, or address applicable to it by providing notice of such change to all Parties.

As to EPA: *via email to:*

Ramon D. Albizu Angulo, Albizu.Ramon@epa.gov

Re: Site/Spill ID # A9F4

with copies (which shall not constitute notice) to:

via email to:

Kazami Brockman, brockman.kazami@epa.gov, and

Olivia Trombadore, trombadore.olivia@epa.gov

As to the State: *via email to:*

Hasti Javid, hasti.javid@calepa.ca.gov

As to *via email to:*

Respondents: Scott Van Allen, Scott.VanAllen@vistracorp.com

XXI. APPENDIXES

117. The following appendixes are attached to and incorporated into this Settlement:

“Appendix A” is the Emergency Response Plan.

“Appendix B” is the map of the Site.

“Appendix C” is the Support Document to Develop the Community Relations Plan.

XXII. MODIFICATIONS

118. The OSC may modify any plan or schedule in writing or by oral direction. EPA will promptly memorialize in writing any oral modification, which will be effective on the date of the OSC’s oral direction. Any other requirements of this Settlement may be modified in writing by mutual agreement of the parties.

119. If Respondents seek permission to deviate from any approved Removal Work Plan or schedule, Respondents' Project Coordinator shall submit an oral or written request to EPA for approval outlining the proposed modification and its basis. Respondents shall document any such oral request in writing, as requested by EPA. Respondents may not proceed with a requested deviation until receiving oral or written approval from the OSC pursuant to ¶ 118.

120. No informal advice, guidance, suggestion, or comment by the OSC or other EPA representatives regarding any deliverable submitted by Respondents relieves Respondents of their obligation to obtain any formal approval required by this Settlement, or to comply with all requirements of this Settlement, unless it is formally modified.

XXIII. SIGNATORIES

121. The undersigned representative of EPA and each undersigned representative of a Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this Settlement and to execute and legally bind such party to this Settlement.

XXIV. INTEGRATION

122. This Settlement constitutes the entire agreement among the Parties regarding the subject matter of the Settlement and supersedes all prior representations, agreements and understandings, whether oral or written, regarding the subject matter of the Settlement.

XXV. EFFECTIVE DATE

123. This Settlement is effective when EPA issues notice to Respondents that the Assistant Director of the Superfund and Emergency Management Division, Region 9, has signed the Settlement.

IT IS SO AGREED AND ORDERED:

**BY THE U.S. ENVIRONMENTAL PROTECTION
AGENCY:**

LYNN KELLER

Digitally signed by LYNN KELLER
Date: 2025.07.17 11:59:10 -07'00'

Lynn M. Keller, Acting Assistant Director
Superfund and Emergency Management
Division, EPA Region 9

Signature Page for Settlement Regarding the Moss Landing Energy Storage Facility Emergency Response

FOR: Vistra Corp.

Date: July 15, 2025

By: 

Name: Cynthia Vodopivec

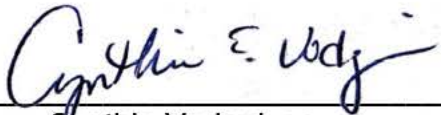
Title: SVP - Environmental, Health & Safety

Address: 6555 Sierra Drive, Irving, TX 75039

Signature Page for Settlement Regarding the Moss Landing Energy Storage Facility Emergency Response

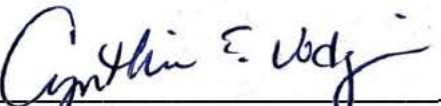
FOR: Moss Landing Energy Storage 1, LLC

Date: July 15, 2025

By: 
Name: Cynthia Vodpivec
Title: SVP - Environmental, Health & Safety
Address: 6555 Sierra Drive, Irving, TX 75039

FOR: Moss Landing Power Company LLC

Date: July 15, 2025

By: 
Name: Cynthia Vodpivec
Title: SVP - Environmental, Health & Safety
Address: 6555 Sierra Drive, Irving, TX 75039

Appendix A – Emergency Response Plan

APPLIES TO: Moss Landing 300	EFFECTIVE DATE: 6/20/2025	VERSION 2	PROCEDURE NO. MLB25FO-SAF-002
SUBJECT ML300 Emergency Response Plan			

1. Scope

- 1.1. This Emergency Response Plan (ERP) describes actions to be taken in the event of emergency situations including fire or smoke, medical incident, or chemical release at the Moss Landing (ML) 300 incident site during battery module removal and demolition. Evacuation procedures and environmental monitoring are included.
- 1.2. The Moss Landing Power Plant (MLPP) maintains a Facility Emergency Plan (FEP) that addresses reasonably anticipated emergency situations including spills or releases, fire, natural disasters, and medical events. The FEP includes detailed plans for each type of emergency, along with the incident command protocol, contact information, and maps.
- 1.3. The on-site fire service will be present during any entry into the ML 300 exclusion zone to assist with fire safety, rescue, or medical support. The onsite fire personnel are trained in fire protection, confined space rescue, hazardous materials response, and first aid.
- 1.4. ASAO Requirement 52

52. **Emergency Response.** If any event occurs during performance of the Work that causes or threatens to cause a release of Waste Material on, at, or from the Site and that either constitutes an emergency situation or that may present an immediate threat to public health or welfare or the environment, Respondents shall: (a) immediately take all appropriate action to prevent, abate, or minimize such release or threat of release; (b) immediately notify the OSC or, in the event of their unavailability, the Regional Duty Officer at (800) 300-2193, ext. 3, of the incident or Site conditions; and (c) take such actions in consultation with the OSC or authorized EPA officer and in accordance with all applicable provisions of this Settlement, including, the HASP(s), and any other applicable deliverable approved by EPA.

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2. Emergency Contact Information

- 2.1. In the event of an emergency, contact the resources listed in the following table. Specific contact information will depend on the type of emergency. Notify the US EPA On Scene Coordinator at +1 (415) 515-9569 of any incidents, after calling the MLPP Emergency number (+1 (831) 633-7333).

Moss Landing Power Plant	
Site Address:	7301 State Highway 1, Moss Landing, CA 95039
Site Emergency Contact:	Moss Landing Power Plant Energy Management Center – +1 (831) 633-7333
Alternate Site Contact:	BESS 24/7 Contact – +1 (831) 854-5160
Spill Response	
US EPA On Scene Coordinator	+1 (415) 515-9569
US EPA Region 9 Duty Phone	+1 (800) 300-2193, ext 3
National Response Center	+1 (800) 424-8802
Emergency Services	
MLPP Emergency Response:	+1 (831) 633-7333
Local Emergency Response (called by MLPP Operations):	911
Medical Facility:	Watsonville Community Hospital
Medical Facility Address:	75 Nielson Street, Watsonville, CA
Medical Facility – Level 2 Trauma:	Natividad Hospital
Medical Facility Address:	1441 Constitution Blvd, Salinas, CA

3. ML 300 Emergency Notification

- 3.1. All emergency situations on the Moss Landing Power Plant (MLPP) property, including ML 300, are reported to the MLPP Operations Shift Supervisor at (831) 633-7333. This number is provided to all employees and contractors during the initial safety orientation and is provided as a hard hat sticker for reference. This number is answered by the MLPP Operations Shift Supervisor, who then records caller information and contacts emergency services in accordance with North County Fire Protection District (NCFPD) protocol.
- 3.2. In the event of an incident within ML 300, the entry team will notify the access control coordinator via radio. The access control coordinator will notify the MLPP Operations Shift Supervisor at 831-633-7333 and request outside assistance if needed.

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- 3.3. The MLPP Operations Shift Supervisor is responsible for calling 911, following instructions in the MLPP FEP and the following table.

Moss Landing 300 Emergency Services Notification		
Emergency Type	Contact Number	Script/Necessary Information to Relay
Medical/Injury	911	Suspected Nature and cause of injury, number of injured persons, ongoing first aid/CPR/AED, scene safety
Non-Battery Fire	911	"Report of non-battery related fire" , suspected cause, fuel source
Smoking Battery	→	Contact Corporate EHS or BESS Management for guidance, as reporting protocol will depend on incident-specific information.
Fire Involving Batteries	911	"Report of fire involving batteries at Moss Landing Battery Facility."

- 3.4. The MLPP Operations Shift Supervisor acts as the Incident Commander until external resources arrive.
- 3.5. MLPP Operations staff will guide external responders to the incident location.
4. Fire Watch
- 4.1. The on-site fire personnel serve as the primary fire watch at ML 300, with additional support from contractors as needed. The fire watch team is stationed near ML 300 and conducts routine visual inspections around the perimeter of the building, outside the exclusion zone. IR cameras may be used to look for hot spots during building rounds and while work is ongoing inside the building.
- 4.2. The onsite fire personnel participate in all ML 300 building entries in order to provide interior fire watch duty alongside the entry teams.
- 4.3. In the event of a fire, and until conditions are stabilized and controlled, a 24-hour fire watch will be maintained to rapidly identify any new indication of fire or status change. A drone team may be included in the fire watch plan to conduct periodic overhead assessment of building conditions.
5. Fire Response
- 5.1. In the event of a fire, the on-site private fire service will conduct an initial assessment. For a non-battery fire, the on-site fire personnel may suppress the fire directly, or isolate the area until NCFPD arrival. For a battery fire, the on-site fire personnel will isolate the area and monitor the situation until NCFPD arrival. The onsite private fire service is equipped with water pumps, and hose line, and will have a non-PFAS foam available to use if directed by NCFPD.
- 5.2. The on-site fire service maintains the following personnel and equipment:
- 4 personnel days/2 personnel nights
 - 2 each 500 gpm Type 3 engine
 - 800 feet of 3" supply line

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- 500 gallons of water
- 2 master stream monitors for truck
- 400 feet of 1.5" hand lines

5.3. When NCFPD arrives on site, they will assume incident command, relieving the MLPP Operations Shift Supervisor. NCFPD will assess the situation with the on-site fire personnel and direct the fire response actions.

5.4. Fire suppression

5.4.1. If a battery fire occurs, it may be allowed to burn, without water or foam. Water may be used for temperature control of nearby batteries if deemed appropriate by NCFPD. Because of the unique nature of battery fires, each situation will be addressed on a case-by-case basis with NCFPD.

5.4.2. Non-battery fires may be suppressed with water and/or non-PFAS foam.

5.5. Air monitoring

5.5.1. During a fire or smoke incident, PM_{2.5} and HF concentrations will be monitored continuously from the existing plant perimeter and community air monitoring station telemetry system. If needed, additional real-time hand-held roaming air monitoring for PM_{2.5} and/or HF will be conducted at these or other downwind locations.

5.6. Air Monitoring and Sampling

5.6.1. If a fire or smoke incident occurs inside ML 300, hand-held instruments will be used to monitor PM_{2.5} and HF concentrations near entry personnel. Real-time hand-held air monitoring may also include measurement of hydrogen cyanide (HCN), volatile organic compounds (VOCs), percent lower explosive limit (LEL), percent oxygen (O₂), carbon monoxide (CO), and hydrogen (H₂).

5.6.2. Environmental monitoring and sampling stations operate continuously around the MLPP perimeter and in the community. Data from the monitoring equipment is logged and transmitted via telemetry. Sample media for metals and asbestos are collected daily and chain of custody forms are completed. These samples are only sent to the laboratory for analysis in the event of a fire or smoke incident.

5.6.2.1. Six fixed environmental monitoring stations are currently located around the perimeter of the Moss Landing Power Plant (MLPP). Each of these stations includes a TSI DustTrak 8533 for real-time PM_{2.5} monitoring and a Honeywell SPMflex for real-time hydrogen fluoride monitoring. Each station also includes air sampling pumps that can be used for metals, asbestos, or other analytes if needed (e.g., time-weighted average sampling for hydrogen fluoride in the event of an ongoing fire). In addition, MLPP has hand-held Draeger pumps and detector tubes for hydrogen fluoride.

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5.6.2.2. Six fixed environmental monitoring stations are currently located in the community and can be redeployed to downwind locations if wind patterns shift during a fire or smoke event. Each of these stations includes a TSI DustTrak 8533 for real-time PM_{2.5} monitoring. In the event of a fire or smoke event, roaming hydrogen fluoride readings will be taken at these stations every 30 minutes, or more often if requested by response personnel. Each station also includes air sampling pumps that can be used for metals, asbestos, or other analytes if needed (e.g., time-weighted average sampling for hydrogen fluoride in the event of an ongoing fire).

6. Water Management

- 6.1. All water entering the ML 300 area must be controlled and contained to prevent off-site migration. This includes firefighting water, rain or stormwater, dust control water, water system leaks, and any other source. Any water that contacts the ML 300 building footprint or adjacent areas may contain fire-related contaminants. Firewater may also contain fire suppressants, while dust control water may contain dust suppressants.
- 6.2. In accordance with the MLPP Stormwater Pollution Prevention Plan (SWPPP), all stormwater release valves in the MLPP storm drain system remain in the closed position unless specifically opened for a rain event. Firefighting related discharges are not subject to the stormwater Industrial General Permit requirements. However, this water will be managed in the same manner as other water sources in accordance with the MLPP SWPPP as a best practice to ensure environmental stewardship.
- 6.3. Collection and Storage – Water collected inside ML 300 will be vacuumed up by a third-party contractor and contained in totes, tanks, or the above ground on site pond. Water outside the ML 300 building drains to the closed storm drain system servicing this area. Water will be pumped from the access vault in this storm drain area and transferred into designated storage tanks or the on-site above ground pond.
- 6.4. Sampling – Collected and stored water will be profiled for disposal by a licensed waste disposal company. All stormwater is tested for Total Suspended Solids (TSS), pH, Oil and Grease (O&G), and iron (Fe). In addition, an analysis for CAM-17 metals will be conducted.
- 6.5. Disposal – If analytical results indicate that collected firefighting water has been impacted by ML 300 contaminants, the water will be transported by a licensed waste vendor for disposal at an appropriate off-site facility in accordance with the requirements of the waste profile. If the analytical results do not indicate any impact from ML 300 and if all constituents are within MLPP SWPPP requirements, on site disposal following approved MLPP SWPPP procedures may be considered.

7. Medical Incidents

- 7.1. The ML 300 access control room contains a first aid kit and AED. The on-site fire personnel are trained in medical response and can initiate care.

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- 7.2. If an injury or need for medical assistance occurs inside ML 300, notify all entry teams and the access control coordinator. The injured person and buddy will safely stop work and exit the building through the contaminant reduction zone (CRZ). If the injured person is unable to self-rescue, they will wait in place for the on-site fire personnel, staying in radio contact with the access control coordinator. The on-site fire personnel will assist in removal from the building. If the medical incident is severe, exit may be made through the nearest building exit rather than the CRZ. PPE removal and decon will be conducted if the injury allows and as long as this does not delay critical medical care.
- 7.3. First aid cases can be treated on site.
- 7.4. Additional care may be provided through off-site urgent care clinics. Each contractor working on site has a designated urgent care facility and workers' compensation claim process. If an injury occurs outside of clinic hours, urgent care can be received at Watsonville Community Hospital. The injured individual will be transported by on-site personnel to the clinic or hospital.
- 7.5. If a serious injury occurs, the injured person will be transported by external responders to the most appropriate hospital based on injury care needs.
8. Chemical Release
 - 8.1. Any observed chemical leak from the battery modules will be reported to the Project Manager. For all leaks or spills, the area will be isolated to prevent entry. The Safety Officer will assess the spill to determine appropriate clean up materials and procedures. Spill cleanup materials will be labeled and disposed of as hazardous waste.
 - 8.2. If an individual becomes contaminated with battery-related liquids or excessive amounts of contaminated dust or debris, contact the onsite fire personnel accompanying the entry teams. The fire team will alert the decon team to set up the gross decon pool and equipment. When the decon team is ready, the contaminated individual will be escorted to the gross decon area and the Decontamination procedure will be followed.
9. Evacuation Procedures
 - 9.1. Communications
 - 9.1.1. All personnel working inside the ML 300 exclusion zone (EZ) will carry radios for communication. The Access Control Coordinator located at the ML 300 Access Control Point will be responsible for contacting all entry teams within the building by radio to notify them of the evacuation.
 - 9.1.2. If the MLPP oscillating siren is activated, the Access Control Coordinator will notify all entry teams to evacuate ML 300.
 - 9.2. Battery Event Notification and ML 300 Evacuation
 - 9.2.1. In the event of fire or smoke observation, detection of an unanticipated battery temperature increase, electrolyte leak, or electrical arcing, notify all entry teams and the access control coordinator by radio. Exit the building through the contaminant reduction zone (CRZ) if safe to

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do so. If the egress is blocked, exit through the nearest door and walk to the access control room.

9.2.2.If the incident threatens the access control room, all personnel will walk to either MLPP assembly point 1 (NW corner of plant) or MLPP assembly point 3 (near Dolan Road gate), based on wind direction. The access control coordinator can use the weather station located in the room to determine the best assembly location. The designated assembly location will be conveyed by the access control officer to all ML 300 personnel by radio.

9.2.2.1. The access control coordinator will record all personnel present and report to the MLPP Operations Shift Supervisor. All personnel will remain at the assembly point until cleared by the MLPP Operations Shift Supervisor to either return to work or evacuate the plant.

9.3. The Incident Commander will determine if a site evacuation is needed. This may include a partial evacuation, full evacuation, or shelter-in-place. Evacuations will be conducted following the procedures in the FEP. All MLPP personnel are trained on evacuation procedures, and the plant conducts an evacuation drill at least once per year.

10. Attachments

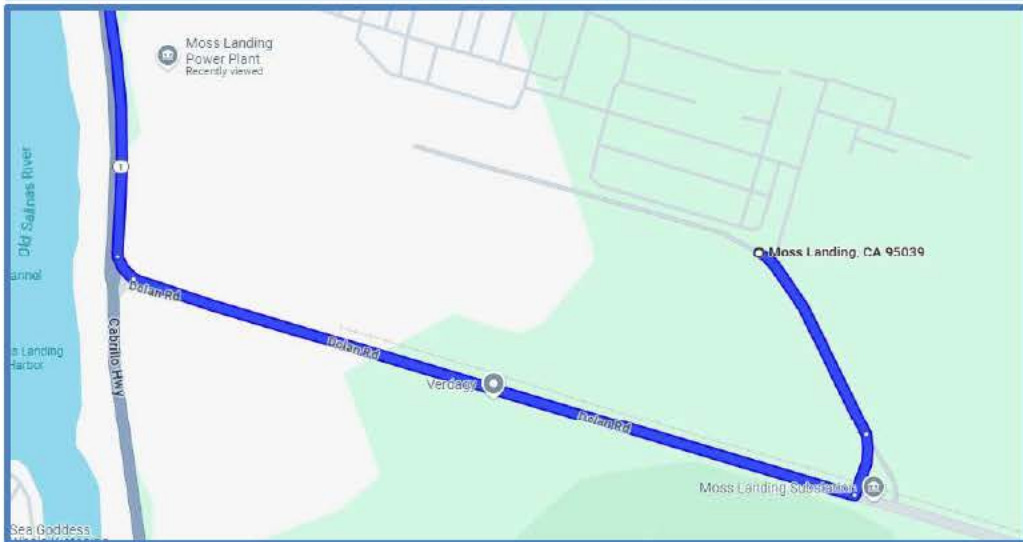
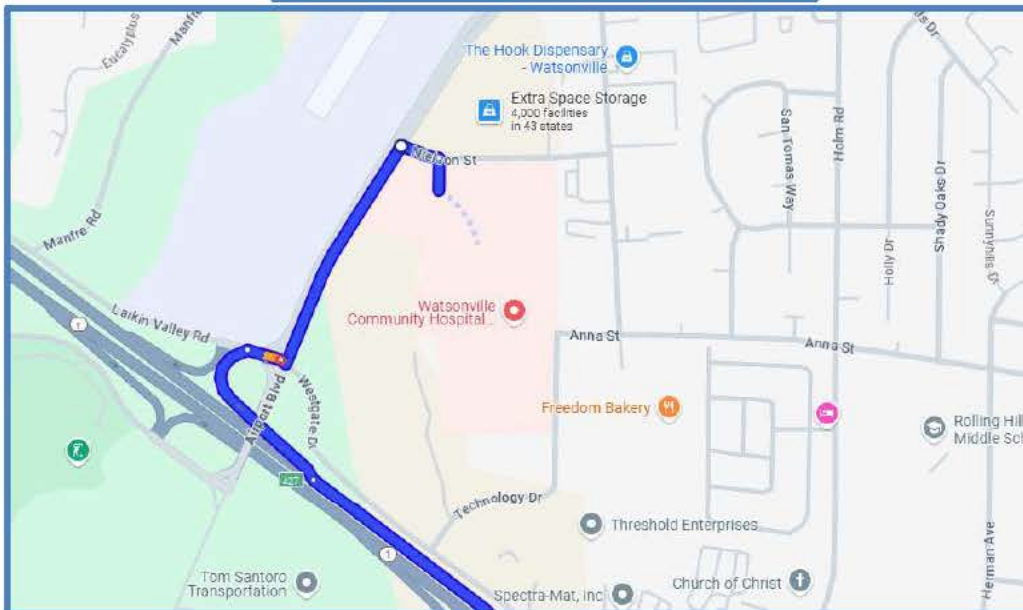
- 10.1. Attachment A: Emergency Medical Facility Map and Directions
- 10.2. Attachment B: LG Chem Energy Storage System (ESS) Product Emergency Response Guide
- 10.3. Attachment C: Document Control

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Attachment A Emergency Medical Facility Map and Directions

- > Take Dolan Rd to CA-1 N
2 min (0.9 mi)
- > Follow CA-1 to Larkin Valley Rd in Watsonville.
Take exit 427 from CA-1
10 min (9.2 mi)
- > Take Airport Blvd to your destination
1 min (0.3 mi)

Watsonville Community Hospital
75 Nielson St, Watsonville, CA 95076



Attachment B: LG Chem Energy Storage System (ESS) Product Emergency Response Guide

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Appendix B – Map of the Site



Appendix C – Support Document to Develop the Community Relations Plan

Site Name: Moss Landing Vistra Battery Fire
Site Location: Moss Landing, California
Work Duration: Present – Completion of battery removal/disposal
EPA Project Leads: Hiruni Jayasekera and David Yogi given tight scheduling over the *course of the development period, either Hiruni or David will give final decisions on CI-related items unless otherwise directed by EPA)*

Section 1: Support requested from Vistra to develop the Moss Landing Battery Fire [Community Relations \(Involvement\) Plan](#)¹.

(1) Develop a schedule for completion of Community Involvement Plan and develop a plan for rolling-out to the community and local government.

- Schedule will be developed in consultation/coordination with EPA project leads.

(2) Community Involvement Plan Document Development

Vistra will look at past Community Involvement Plans text, graphics, and other elements that can be used as a touchstone to complete the Moss Landing CIP.

Vistra will also review the content of EPA's [Community Involvement Plan tool](#) for further guidance on developing each of the components of the plan.

Summary of Tasks

- Create Community Involvement Plan graphic design and provide recommendations to EPA for overall information architecture.
- Develop, edit, review Community Involvement Plan content.²

An outline of the sections that make up the Community Involvement Plan should be presented to EPA to ensure the Community Involvement Plan addresses the necessary categories of information are set, prior to submission of a complete draft of the Community Involvement Plan.

¹ The National Contingency Plan calls for a Community *Relations* Plan to be developed. For purposes of this Moss Landing project, we will refer to this plan as a Community Involvement Plan. The scope/level of effort of/for this plan however, will be consistent with other Community Relations Plans.

² General categories of information are listed in this section, but Vistra should review past Community Involvement Plans and Community Relations Plans for a full accounting of the type of categories of information expected to be produced for Moss Landing.

As previously provided, the [Waymire Drum Community Involvement Plan](#) is one example. Another example is the [Montrose-Del Amo Community Involvement Plan](#). While the Montrose plan is much more extensive than required for Moss Landing, it may be used as a touchstone for understanding the type of work EPA does to understand community concerns and then develop its action plan.

All content must follow the principles outlined in the federal [Plain Writing Act of 2010](#).

The Community Involvement Plan content should include at a minimum:

- An introduction, background, site activity/work timeline, and community profile section, the last of which will also describe the area evaluated when creating the profile.
- A description and summary of information collected from the Community Involvement Plan interviews and other research.
- A Community Engagement Action Plan.
- Create, revise, and/or identify figures, photos, graphics, maps, and other materials to include and/or hyperlink to in the Community Involvement Plan.
- Provide EPA drafts of the Community Involvement Plan for review and comment before finalizing.
- Translate document(s) as needed.
- Ensure final document and all associated graphics, figures and other visuals in the plan (and any supplemental information, if applicable), meet the requirements of [Section 508 of the federal Rehabilitation Act of 1973](#), which addresses electronic and information technology accessibility.
- Coordinate with EPA to place copies of the Community Involvement Plan in the site's information repository when complete.

(3) Coordinate, gather background information, summarize interviews, track interview information, and offer activities for EPA's consideration that could be used to meet information needs identified in the interviews.

- Assist in planning and outreach for interviews.
- Facilitate (and participate, if interviewee requests) up to 20 virtual or in-person interviews with community members and groups.
- Summarize, synthesize/compile/categorize, and track interview answers and other feedback provided during the interview.
- Providing interpretation and translation services (if needed) for interview.

(4) Develop an overview PowerPoint presentation of the findings of the Community Involvement Plan and next steps for implementation.

- Presentation is intended to be presented to key local government and other stakeholders post-completion of plan.

Section 2: Additional information on key tasks above

Key Tasks	Additional Detail
ITEM (1) <i>(no additional notes)</i>	
ITEM (2)	
Reviewing background information	<ul style="list-style-type: none"> Review existing background information on the environmental and public health issues for the site, understanding the stakeholder community. Review materials provided or identified by EPA.
Providing/facilitating interpretation and translation services (we anticipate up to two languages in addition to English)	<ul style="list-style-type: none"> Provide translation services on outreach materials, presentation materials, interview questions, final documents and associated documents. Provide interpretation services for in-person and/or virtual engagements with stakeholders. Translation and interpretation services should be provided by an accredited service provider.
Drafting CIP text	<ul style="list-style-type: none"> Develop draft CIP text, first in Microsoft Word, for review by EPA. The CIP, which should follow the guidelines presented in the EPA CIP tool, will include the following: <ul style="list-style-type: none"> A description of the site. A characterization of the community, including brief historical context. Description of socio-economic, demographic information about the community. An overview of community involvement efforts related to EPA's response work. An overview of community concerns regarding the site including details of the residents directly impacted by EPA activities. An action plan based on <ul style="list-style-type: none"> interviews desktop or in-person research other applicable information from publicly-available documents (e.g., Monterey County's public health survey) other information sources, to be determined A list of local, state and federal officials and agency representatives and other key contacts.

Key Tasks	Additional Detail
Revising CIP text based on EPA and other stakeholders' comments	<ul style="list-style-type: none"> • Revise draft CIP text based on the EPA's comments in Microsoft Word. • Revise additional drafts of CIP based on EPA's feedback. • Vistra to work with EPA to ensure text and graphics/other images final before putting the into graphic design/layout for efficiency reasons.
Ensuring reading accessibility	<ul style="list-style-type: none"> • Perform a plain language check of the CIP to ensure the reading level of the document is around the 9th grade reading level.
Formatting CIP	<ul style="list-style-type: none"> • Format final CIP content in InDesign or other accessible graphic design program EPA can access/modify using its systems.
Creating and/or identifying figures, photos, graphics, maps and other supporting materials	<ul style="list-style-type: none"> • Identify and/or create figures, photos, graphics, maps, and other supporting materials as needed, including requesting photos from the EPA and other entities and acquiring image use permissions as needed. • Develop captions for figures, photos, graphics, maps, etc., as needed. • Insert hyperlinks, when applicable, to other supporting information sources. Hyperlinks should help contextualize elements of the plan.
Incorporating text into the draft graphics, maps, etc. as above and provided by the EPA	<ul style="list-style-type: none"> • Update graphics as discussed with EPA
Finalizing CIP based on comments	<ul style="list-style-type: none"> • Revise formatted CIP based on the EPA's comments. • Finalize and perform 508-compliance on CIP and, if necessary, all associated supporting materials.
ITEM (3)	

Key Tasks	Additional Detail
Planning and outreach for interviews	<ul style="list-style-type: none"> • Assist in identifying additional stakeholder groups and interviewees as needed. • Coordinate with EPA on a general schedule and format for interviews, including up to three days of in-person interviews on June 24-26, if possible. <ul style="list-style-type: none"> ○ When scheduling interviews, it can be asked if the weekend of June 21-22 would work as well. • Secure a venue for up to three days of in-person interviews or coordinate to meet an interviewee at a location that works for EPA's schedule and the schedule of the interviewee. <ul style="list-style-type: none"> ○ Goal for interview locations is to be as accessible to community members/organizations as possible. <ul style="list-style-type: none"> ▪ This may lead us to interview at the interviewees' home or business. ▪ If an unaffiliated location is desired, Vistra would help find and facilitate using this location, in consultation with EPA. • Reach out to community members and stakeholders via email and phone as needed to schedule and coordinate/finalize interviews. <ul style="list-style-type: none"> ○ EPA will make initial introduction to potential interviewees and then will hand off scheduling to be handled between Vistra and interviewee directly. • Once confirmed, email interview questions no later than 48 hours in advance of interview. • Develop an interview schedule (including contact information for all interviewees) that can be shared with EPA for its awareness and tracking. <ul style="list-style-type: none"> ○ A table in Word or Excel would be preferred. • Set up virtual meeting platform and call-in numbers for confirmed interviews, as needed. • Coordinate with stakeholders via phone or email as needed.
Assisting with interviews	<ul style="list-style-type: none"> • Manage in-person and virtual interview logistics, assist with asking questions (if needed), and take notes during interviews.
Developing a table summary of feedback from interviews and supporting documentation	<ul style="list-style-type: none"> • Analyze, evaluate and summarize interview responses into one consolidated table and submit to EPA. • Revise this table and summary based on the EPA feedback. • Polish summary table to insert into CIP and integrate with Community Engagement Action Plan. • Develop a document for each interview that includes the interview question and the interviewee's answer. This will be for documentation purposes only.

Key Tasks	Additional Detail
Supporting CIP design, organization and editing/review of CIP content	<ul style="list-style-type: none"> • Coordinate with EPA project leads to propose CIP design and organization based on an EPA Region 9 template (i.e., design of past Community Involvement Plans). • Edit and review CIP content based on feedback from EPA, as needed.
Ensure all federal record-keeping requirements are maintained throughout the development process	<ul style="list-style-type: none"> • More information to be shared by EPA project leads.
ITEM (4)	
PowerPoint Presentation on CIP	<ul style="list-style-type: none"> • Presentation text, images and graphics should be submitted to EPA in Microsoft Word in advance for review. • Content should include, but not limited to: <ul style="list-style-type: none"> ○ Background ○ CIP development methodology ○ Overview of CIP interviewees ○ Results/findings/statistics about CIP interviews ○ Overview of action plan developed to be responsive to interview findings ○ Schedule/next steps for implementing action plan • All edits provided by EPA should be incorporated in Word document. • Once final, text would be inserted into PowerPoint presentation along with images and other figures.