

Interim
Final



Technical Guidance Manual for the Implementation of the Hawai`i State Contingency Plan

SECTION 15 FAST TRACK CLEANUP



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ACRONYMS AND ABBREVIATIONS

CERCLA	Comprehensive Environmental Response, Compensation and Liability Act (Superfund)
EAL	Environmental Action Level
EHE	Environmental Hazard Evaluation
EHMP	Environmental Hazard Management Plan
FTC	Fast Track Cleanup
HAR	Hawai`i Administrative Rules
Hawai`i SCP	Hawai`i State Contingency Plan (HAR Chapter 11-451)
HDOH	Hawai`i Department of Health
HEER Office	HDOH Hazard Evaluation and Emergency Response Office
HERL	Hawai`i Environmental Response Law (HRS 128D)
HRS	Hawai`i Revised Statutes
NFA	No Further Action
NPL	National Priorities List
RCRA	Resource Conservation and Recovery Act
SHWB	HDOH Solid and Hazardous Waste Branch
UST	Underground Storage Tank
VRP	HEER Office Voluntary Response Program
UECA	Uniform Environmental Covenants Act (HRS 508C)



15.0 FAST TRACK CLEANUP

The Hazard Evaluation and Emergency Response Office (HEER Office) has instituted a process to streamline and clarify the site assessment and removal cleanup process for certain eligible sites. This streamlined process is known as **Fast Track Cleanup (FTC)**. In particular, FTC will help organize an increasing number of cases where site owners or their consultants approach the HEER Office and request approval of site conditions, sampling strategies, or no further action determinations without formally entering the Voluntary Response Program (VRP) or any other cleanup agreement.

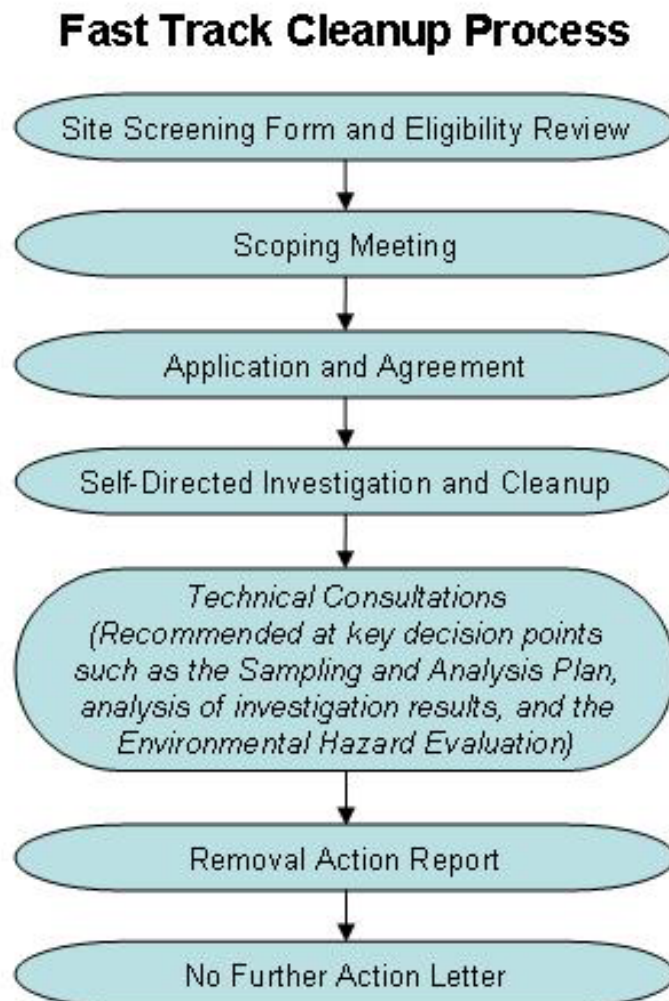
FTC is intended to encourage and facilitate HEER Office involvement in these actions, as well as to help land owners achieve a determination of no further action at sites where a cleanup investigation may have already occurred.



15.1 FTC OVERVIEW

The purpose of *Fast Track Cleanup* is to enable landowners or other private parties to conduct a voluntary site assessment or cleanup under a simple agreement with the HEER Office, without requiring submittal of multiple work plans and interim reports, while still receiving concurrence on the final site status. The focus of FTC is to streamline and expedite site cleanup and the no further action determination at removal action sites. Figure 15-1 provides a simplified flow of a typical site under FTC.

Figure 15-1. Fast Track Cleanup Process



FTC streamlines the review process by enabling a responsible party to conduct the site assessment and carry out cleanup actions without formal and rigorous HEER Office oversight or approval of



each step. Project status and updates are instead conducted through scoping meetings or presentations, as needed.

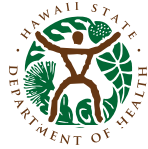
Participants and their consultants who conduct the work under the FTC are expected to follow current environmental laws and HEER Office guidance for site assessment and cleanup activities, including guidance provided in this TGM and in the document entitled the “Evaluation of Environmental Hazards at Sites with Contaminated Soil and Groundwater” (HDOH, 2008).

15.1.1 Difference from Other Approaches

While adhering to the State Contingency Plan, FTC offers a fundamentally different approach by placing a greater burden of technical justification on the participant, with less intermediate regulatory review and approval of sampling plans. If the HEER Office does not judge that the level and the quality of work meet current guidelines or expectations, they may direct work to be redone or terminate the agreement. This puts great responsibility on the participant to (1) hire a knowledgeable environmental consultant who understands the current environmental laws and guidelines, and (2) conduct an adequate and appropriate site assessment and cleanup. The HEER Office offers and encourages periodic consultations, presentations, and informal updates, rather than the submittal of multiple work plan and interim report submittals. This frequent interaction between the participant and the HEER Office will help to reduce the delays encountered when awaiting approval of proposed actions. Such input, provided only upon request, serves to expedite the process by ensuring cleanup actions are consistent with applicable or relevant and appropriate laws and guidance.

15.1.2 FTC Process Completion

Following completion of a site assessment or cleanup, the HEER Office will review the FTC site assessment report or removal action report (including the environmental hazard evaluation) to determine if the response actions were completed to a level that is protective of human health and the environment according to State law (HRS 128D, Part I). In the event that site assessment results demonstrate site contaminant levels are below Environmental Action Levels (EALs) for unrestricted land use, the HEER Office will issue a “No Action” letter. If a removal action has occurred and no additional cleanup is deemed necessary, the HEER Office will issue



a “No Further Action” (NFA) letter. For sites where cleanup decisions are based on commercial/industrial land use or other limited exposures, the HEER Office will issue a NFA Letter with Institutional Controls specifying the land use, property controls, or conditions required to support the NFA determination.



***Fast Track Cleanup vs.
Voluntary Response
Program***

FTC is different from the Voluntary Response Program (VRP) in that (1) the FTC application and agreement process is streamlined; (2) FTC does not require that the HEER Office approve each step of the investigation and cleanup process; and (3) FTC does not provide exemptions from future liability for prospective purchasers, as are provided in the VRP program<link to Section 20.3>.

15.2 LEGAL AUTHORITIES

FTC is implemented as a removal action policy with responsibilities and technical requirements provided under Hawai'i Revised Statutes (HRS) §128D-4(a),17(f); and Hawai'i Administrative Rules (HAR) §11-451-8(i), (j). Under these statutes and rules, the Hawai'i State Department of Health (HDOH) has the authority to arrange, provide oversight, or assist with a cleanup action along with known responsible parties for the removal of any release or threatened release of a hazardous substance, pollutant, or contaminant at any time, provided such arrangements are consistent with the Hawai'i State Contingency Plan (Hawai'i SCP).

HDOH is also granted the responsibility of identifying or developing advisories, criteria, or guidance, such as FTC, considered useful in developing response actions (HAR §11-451-8(i)). The FTC program itself should withstand legal challenge (HRS §128D-17(f)), unless any actions taken under FTC are considered arbitrary and capricious, or an abuse of HDOH discretion.



**FTC Site Screening Form
Submittal**

Send completed FTC screening forms to the FTC Coordinator in the HEER Office in Honolulu, Hawaii. The FTC Coordinator can be reached at:

Hawai'i Department of Health
Office of Hazard Evaluation
and Emergency Response
Attn: FTC Coordinator
919 Ala Moana Blvd
Room 206
Honolulu, Hawai'i 96814

or

Telephone: (808) 586-4249
Fax: (808) 586-7537
E-mail: heer@doh.hawaii.gov

15.3 SCREENING AND ELIGIBILITY

The first step of the process requires that the applicant complete a two-page Site Screening Form (provided in Appendix 15-A). The screening form is intended to present basic information regarding the site in a concise manner and to explain the purpose of entering FTC. The FTC screening forms must be submitted to the FTC Coordinator at the HEER Office, who will use the screening form to evaluate and confirm site eligibility and to guide discussions during the initial scoping meeting with the applicant.

Eligibility into FTC is not determined by the phase or status of the site assessment or cleanup. Sites may enter FTC during any phase of the assessment or cleanup process, such as:

- Following a known or suspected spill or release
- Following a Phase I Environmental Site Assessment where a Recognized Environmental Condition (REC) was identified
- Prior to, during, or following a site investigation
- Prior to, during, or following cleanup

HDOH has issued guidance regarding the investigation and assessment of residual pesticides in soils (see HDOH, 2008 and Section 9). The guidance focuses on the redevelopment of former agricultural land, but is also applicable to golf courses, nurseries, military housing complexes and similar, large-scale projects involving soils that may have been treated with pesticides. HDOH encourages the use of FTC for receiving a No Action Letter regarding residual pesticides at such sites.

FTC is intended to be inclusive of most sites, but there are some conditions that may eliminate a site from consideration:

- No known or suspected spills or releases
- Contamination that is known or likely to extend across a property boundary
- Groundwater contamination, especially in a drinking water aquifer
- Soil contamination that has a migration pathway to a drinking water aquifer
- Site is adjacent to sensitive communities or residences



- Site is adjacent to sensitive ecological receptors
- Site has sensitive current or future land use, such as a school or day care, or unrestricted access such as a public recreational area
- Site cleanup decisions would have a significant impact on the local community and thereby require public review or comment. (Public review or comment may be conducted under FTC, if the participant and the HEER Office believe it would be beneficial; however, this is not a required component of FTC.)
- Investigation or cleanup activities are already governed by a binding agreement, such as a cleanup order or state-led cleanup activity

Each of the above conditions will be assessed on a case-by-case basis. The HEER Office will make the eligibility determination in the application review process or in the scoping meeting.

The following sites are not eligible for participation in the FTC Program:

- A site listed or proposed to be listed on the National Priorities List (NPL) pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)
- A site that has been issued an order or other enforcement action or has entered into an agreement under CERCLA that is still in effect
- A site where the United States Coast Guard has issued a federal Letter of Interest
- A site that is subject to corrective action under Subtitle C of the Resource Conservation and Recovery Act (RCRA) or Chapter 342J
- A site that poses an imminent and substantial threat to human health, the environment, or natural resources as determined by the Director of the HDOH
- A site that is under the jurisdiction or oversight of the HDOH Solid and Hazardous Waste Branch (SHWB), Underground Storage Tank (UST) Section



15.4 APPLICATION AND AGREEMENT

Following review of the screening form, the HEER Office will schedule a scoping meeting with the applicant to discuss the project goals, objectives, resources, plans, guidelines, and schedule. The meeting will also review the requirements of the Application and Agreement Form (provided in Appendix 15-B). The initial scoping meeting is conducted at no cost to the FTC applicant. A flow chart depicting the overall process and key decision points of the FTC is presented in Figure 15-2. Appendix 15-C provides responses to Frequently Asked Questions regarding FTC.

If the site meets eligibility requirements, and all parties concur that FTC will meet the applicant's goals, then the applicant will submit the FTC Application and Agreement. The application includes statements regarding the roles and responsibilities of all parties, known site conditions, project history, status of sampling plan or investigation report, review schedules, and an understanding of the HEER Office cost recovery process. The HEER Office will review the application for completeness and if no modifications are required, will return a signed version of the application constituting an agreement for the FTC. A follow-up meeting may be recommended to ensure understanding of the roles and responsibilities outlined in the agreement.

The agreement is non-binding; The HEER Office or the participant may terminate at any time. Participants may leave the program without cause. The HEER Office may terminate the agreement with cause if it believes that the quality of work is poor or adherence to State guidelines has not been adequately achieved.

Since FTC-eligible sites are without offsite impacts or immediate risks to human health or the environment, the HEER Office would not typically pursue the site as a State-led oversight project while the agreement is in effect.

Since FTC may be used at sites that already have been investigated or cleaned up, the scoping meeting may be used to discuss quality and completeness of existing data and any potential data gaps that would need to be addressed to meet the FTC requirements. The applicant still will be required to submit an application.

FTC Funding

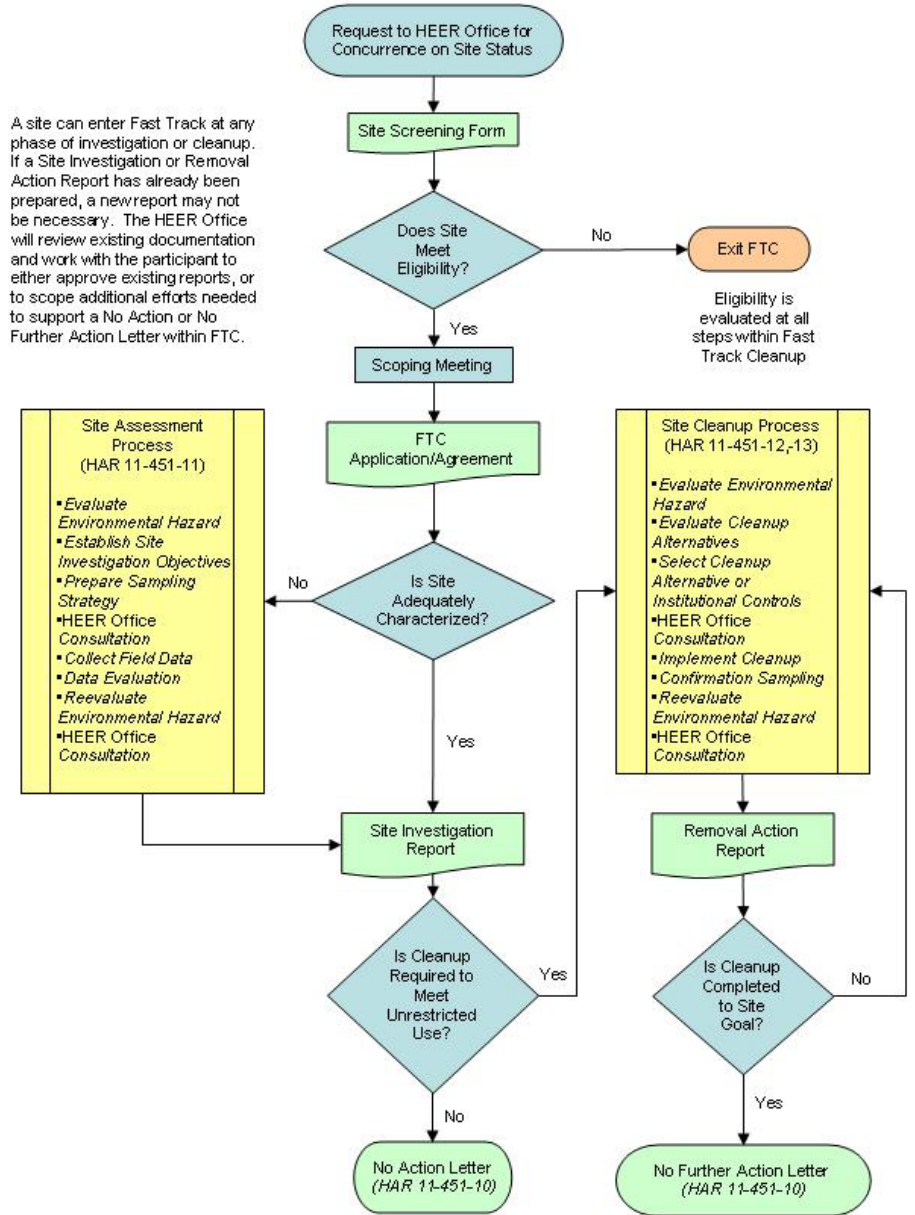
The FTC initiative will be funded completely through cost recovery. HDOH will implement a cost recovery process consistent with cost recovery provisions of HRS 128D-5. The cost recovery framework, including hourly rates for HDOH review and consultation services, a fee schedule, estimated total hours for review services, and justification of rates, will be developed by HDOH and communicated to the public by June 30, 2009.

Sites entering FTC prior to June 30, 2009, will be provided HDOH oversight and consultation services at no cost through that date. Sites that have entered into but not completed FTC at that date will be given 60 days notice of the initiation of cost recovery. Applications received after June 30, 2009, will require a fee/deposit in order to initiate the process.



Figure 15-2. Fast Track Cleanup Process Flow Chart

Fast Track Cleanup Process Flow Chart





15.5 SITE ASSESSMENT PROCESS

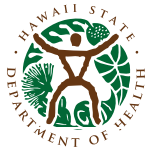
The goal of a site assessment is to characterize site conditions in order to identify the necessity for remediating soil or groundwater that poses unacceptable environmental hazards, either under current site conditions or under uncontrolled, future conditions. The site assessment is carried out by the collection and analyses of samples of soil, groundwater, soil gas, surface water, sediment, air and/or other media as needed. The EALs may be used to identify contamination above levels of potential concern. Information concerning site assessment strategies is included in Section 3.

When representative sampling at release sites demonstrate that contamination in areas of concern (i.e. decision units) are below the EALs, then a more comprehensive assessment or additional evaluation is not generally required. The presence of a contaminant at concentrations above the Tier 1 EAL indicates a potential environmental hazard. The nature and magnitude of tentatively identified hazards are described in the environmental hazard evaluation (EHE) portion of the site assessment report (see Section 13). For some FTC sites, the presence or absence of potential hazards may be identified and the contaminated soil or groundwater quickly remediated without further assessment. In cases where cleanup costs could be significant or the contamination cannot be easily remediated, a more advanced evaluation of specific environmental hazards may be necessary and advantageous to the FTC participant.

The site assessment and EHE are critical steps in the decision-making process to make FTC sites successful. HDOH recommends that participants consult with the HEER Office when developing site objectives, sampling strategies, and hazard evaluations. Coordination between the participant and the HEER Office may significantly improve the quality and timeliness of site assessment actions.

An overview of the critical steps and suggested questions to address in the site assessment process are discussed in Section 3.2. Additional details on site assessment procedures are provided in Sections 3.3 through 3.9.

The FTC process does not require the HEER Office to review or approve the site assessment summary report unless no cleanup action is required. However, the participant is strongly advised to consult with the HEER Office at this step to ensure that the strategy



for progressing into the cleanup process is clear. Information prepared for the site assessment report will be necessary for the removal action report provided following completion of the removal action.

For FTC sites where site conditions and contaminant levels are below the unrestricted EALs, the HEER Office does not recommend cleanup actions. For this scenario, the participant must provide a site assessment summary report for review and approval. The site assessment summary report must include a brief evaluation of site environmental hazards, but need not include a more detailed EHE as is required for sites where contamination exceeds EALs. The participant must provide 30 days (preferably 60 days) advance notice that the FTC site assessment report will be submitted for review. The HEER Office will commit to a 30-day review process and issue the No Action Letter following resolution of any outstanding items identified during the site assessment report review.



15.6 SITE CLEANUP PROCESS

The FTC route for removal actions provides a streamlined process to quickly address contaminant releases. Removal actions under the FTC process are typically effective where site assessment activities have clearly documented that significant contamination in soil is limited in extent and within the reach of common excavation equipment.

The nature of any cleanup action is generally very site-specific. For sites where the extent of contamination is very limited and/or time is of the essence, aggressive remediation of the contamination may be most cost effective. In these cases, the excavation and disposal of contaminated soil may be a practical and cost effective solution. In other cases, it may be appropriate to aggressively remediate contamination that is causing immediate environmental hazards (e.g. vapor intrusion into a building) and prepare an Environmental Hazard Management Plan (EHMP) to address long-term management of contamination that must be left in place.

The HEER Office will ultimately determine if sufficient data is available in the site assessment and EHE to support all removal action decisions, including the acceptability of any management actions in an EHMP. If data is insufficient for a decision, the HEER Office will require additional site investigation or revision of the EHMP. Section 14 provides additional information regarding removal action responses.

Removal actions are documented in a removal action report containing the following minimum elements:

- Location of release or threat
- Cause of release or threat
- Site history
- General site geology, hydrology, groundwater status, adjacent land uses
- Distance to surface water bodies
- Site investigation and environmental hazard evaluation
- Removal alternatives considered
- Removal action summary



- Sampling methods and data on confirmation testing of removal action
- Description of hazardous substances remaining on site
- Environmental hazard evaluation of final site conditions

The participant is encouraged to consult with the HEER Office prior to completion of the removal action report to ensure concurrence that the site goals have been met and that the cleanup has been completed according to the FTC agreement. If requested, the HEER Office can provide approval of a removal action work plan prior to the implementation of the cleanup action. The participant must provide advance notice that the removal action report will be submitted for review. Advance notice must be at least 30 days and preferably 60 days before the date of submittal; if 60 days' advance notice is received, the HEER Office will commit to provide review comments on the report within 30 days. The HEER Office will issue the No Further Action Letter following resolution of any outstanding items identified during the report review.



15.7 NO FURTHER ACTION DETERMINATION

Once the HEER Office concurs that no further action is necessary for a specific release or suspected release site, a no action or no further action letter will be sent to the FTC participant. The letter will only be issued when the HEER Office has determined that remaining contamination at the site does not pose an unacceptable threat to human health or the environment. The Hawai'i SCP (HAR, 1995), Hawai'i Environmental Response Law (HRS 128D), this TGM, the EALs (HDOH, 2008), or other HDOH policy documents will form the basis for all HEER Office determinations.

There are three types of letters that may be issued to finalize the FTC process:

- A *No Action Letter* is issued if no contamination above Tier 1 Unrestricted EALs is identified.
- A *No Further Action Letter* is issued if cleanup activities have resulted in contaminant concentrations that are below the Tier 1 Unrestricted EALs or alternate site-specific EALs approved by the HEER Office.
- A *No Further Action Letter with Institutional Controls* is issued if contaminant concentrations are acceptable for current land use (such as commercial or industrial) but not acceptable for all uses (such as residential). The letter will include specific institutional controls or site conditions that must be maintained in order to support the No Further Action designation.

A determination of no action is made after the HEER Office concurs that a site investigation report adequately documents that a release or threat of release has not occurred.

The determination of no further action is made after an appropriate cleanup action has been successfully completed and documented. The NFA letters will typically:

- Summarize the release or suspected release scenario
- Indicate that all pertinent information and data regarding the site assessment and response action(s) have been reviewed
- State that no further action appears necessary for the release



- State that if new information indicates that contamination is present at levels of concern, additional assessment and cleanup work (as necessary) may be required

In some cases, a response action may address the threat posed by a hazardous substance release by containing the hazardous substances on site so that exposures of human health and the environment are prevented. For example, a barrier cover might be used to prevent direct contact with contaminated soil. To ensure the continued effectiveness of such controls, institutional controls or other conditions are typically included in the no further action letter to assure the appropriate controls will continue to be implemented. The EHMP is typically used to address long-term management requirements associated with contaminated soil and to document any future requirements.



REFERENCES

Hawai`i Administrative Rules (HAR), 1995. State Contingency Plan. Title 11, Chapter 451. August 2, 1995.

<http://gen.doh.hawaii.gov/sites/har/AdmRules1/11-451.pdf>

Hawaii State Department of Health (HDOH), 2008. Evaluation of Environmental Hazards at Sites with Contaminated Soil and Groundwater. Hawai`i Department of Health, Office of Hazard Evaluation and Emergency Response. Summer 2008 (Updated October 2008).

www.hawaii.gov/health/environmental/hazard/eal2005.html; *also see associated EAL Surfer Database.*

Hawai`i Revised Statutes (HRS) 128D. Hawai`i Environmental Response Law (HERL), Chapter 128D.

www.capitol.hawaii.gov/hrscurrent/Vol03_Ch0121-0200D/HRS0128D/

HRS 128E. Hawai`i Emergency Planning and Community Right-To-Know Act, Chapter 128E.

www.capitol.hawaii.gov/hrscurrent/Vol03_Ch0121-0200D/HRS0128E/

HRS 508C. Uniform Environmental Covenants Act (UECA), Chapter 508C. www.capitol.hawaii.gov/hrscurrent/Vol12_Ch0501-0588/HRS0508C/



APPENDIX 15-A

**FAST TRACK CLEANUP
SITE SCREENING FORM**



APPENDIX 15-B

**FAST TRACK CLEANUP
APPLICATION AND AGREEMENT FORM**



APPENDIX 15-C

**FAST TRACK CLEANUP
FREQUENTLY ASKED QUESTIONS**