

## ATTACHMENT C

### Memorandum of Agreement (MOA) between Wisconsin Department of Natural Resources (WDNR) and the United States Environmental Protection Agency (EPA) Region V for Integrated Assessments, Time-Critical and Non-Time-Critical Removal Actions September 5, 2006

#### ***I. Introduction & Purpose***

WDNR Remediation and Redevelopment Program and U.S. EPA Region V Superfund Emergency Response Branch have been working cooperatively on emergency, time-critical and non-time-critical removal actions over the past 10 years. Coordination of emergency response actions are covered by the Memorandum of Agreement for Emergency Responses to Oil and Hazardous Substances Releases between the Wisconsin Department of Military Affairs, Division of Emergency Management, the WDNR and USEPA Region V and the US Coast Guard, Ninth District signed October 7, 1998.

The purpose of this MOA is to document: the process for site notification, sharing of information, coordinating efforts, defining WDNR & USEPA roles and responsibilities with respect to site lead and support, applicable or relevant and appropriate requirements (ARARs), community relations, and post-removal site control for integrated assessments, time-critical and non-time-critical removal actions.

#### ***II. Notification, Communication and Coordination***

EPA and WDNR will have conference calls, at least quarterly or as needed to keep the agencies informed of ongoing and future activities. The agencies will also discuss and plan for mutual goals; continue to develop a rapport between the agencies; and discuss issues that have arisen during the last quarter regarding program communication and coordination.

The WDNR is the lead State agency for conducting/overseeing time-critical and non-time-critical removal actions in Wisconsin. However, the WDNR may request technical and/or enforcement assistance from EPA, if WDNR is unable to adequately respond due to limitations on resources or authority. To request EPA assistance, WDNR will submit a Regional Information Site Evaluation (RISE) form (Attachment A) and request letter to EPA Region V. EPA will review the information submitted, hold a conference call with WDNR and may conduct a site visit to assess site conditions. Based on the data collected, EPA will determine whether the criteria for a response action in the National Oil and Hazardous Substances Pollution Contingency Plan, also known as the NCP or 40 CFR part 300, are met and a removal action is warranted.

The WDNR's Federal Removals Coordinator (FRC), Amy Walden, 608/267-5063 will act as a point of contact during integrated assessments, time critical and non-time critical removals and facilitate communication between EPA and WDNR and ensure all site-related documents are received, reviewed and comments provided to EPA in a timely manner. The FRC, on behalf of the WDNR, will assure that removal actions are conducted effectively and efficiently, are consistent with the NCP and that WDNR ARARs are provided to EPA and considered to the extent practicable. Regional spills coordinators or other WDNR staff may also be involved in the review of documents and site activities. Although EPA takes the lead on the site actions, WDNR will remain involved to allow PRPs to conduct a one-time cleanup at the site and gather sufficient information to submit to WDNR for site closure. While EPA will endeavor to work with the parties to address a one-cleanup approach, the agency however cannot order a PRP to do work outside of the scope of a removal action as defined by the NCP.

#### ***III. Site-specific Roles and Responsibilities***

##### ***A. EPA – Lead Role***

In addition to the responsibilities defined in the NCP, the On-Scene Coordinator (OSC) will provide written and/or verbal notification to WDNR prior to any field work that is to be conducted (e.g., sampling, drilling, etc.). The OSC may provide a draft copy of any Removal Assessment Report and other removal reports to the WDNR for comment as appropriate. The EPA is not required to release draft documents but may do so in the interest of making clear the findings of fact or the list of removal actions needed. Sharing draft documents may help facilitate conversations that clarify historical information regarding the site, WDNR expectations and EPA's authority for the WDNR project managers.

The OSC will send the draft Action Memorandum or list of proposed actions with the request for ARARs letter to facilitate WDNR's analysis of site specific ARARs. WDNR has prepared a comprehensive analysis of ARARs that would apply to various kinds of response actions (Attachment B). This will serve as a basis for a site specific ARARs analysis. Upon timely receipt of the State ARARs, EPA shall ensure that all practicable requirements are met within the response action. The OSC will also submit all sampling data collected at the site to WDNR for the site record. EPA and WDNR agree to the following general principles:

1. ARARs for a removal action shall be met to the extent practicable, considering the exigencies of the situation. A determination of "practicability" shall be based solely on the urgency of the situation and the scope of the response action to be conducted.
2. It will generally be practicable for removal actions to comply with ARARs that are consistent with the goals and focus of the removal. ARARs that would delay rapid response when it is necessary, or cause the response to exceed the scope of a removal action may be determined to be impracticable.
3. Off-site response actions will comply with both the substantive and administrative aspects of applicable requirements.
4. As they are completed, all final documents and data will be provided to WDNR for their site records.

#### B. WDNR – Supporting Role

WDNR will be provided the opportunity to be present at site-related or issue-related meetings/discussions, and review and comment on documents leading to or documenting site actions. Comments from the FRC and/or regional contact will be considered by the OSC in finalizing these documents and final copies will be provided to the FRC and regional contact.

#### C. EPA/WDNR Joint Role – Community Relations and Post Removal Site Control

##### *1. Community Relations*

EPA and WDNR agree that the responsibility for notifying third parties, such as the general public, local officials and PRPs, will be determined on a case-by-case basis. The WDNR and EPA community relations coordinators (CRCs) will share responsibility for community relations at removal sites in Wisconsin. In their public statements, the agencies will strive to speak from a unified position.

Community relations activities shall be conducted in the following manner: for removal actions, the EPA OSC/CRC shall submit to the state CRC for review and comment, documents designed to inform the public about site activities prior to issuing such documents. The EPA CRC will undertake community relations activities with support from the State CRC on an as needed basis. Community relations fact sheets and press releases will generally be issued by EPA and may be the result of a joint effort between

EPA and WDNR. Draft fact sheets and press releases will be provided to WDNR/EPA for review and comment prior to issuing such documents. Final press releases will be faxed or e-mailed to WDNR/EPA at the time they are released to the press. Both agencies should be identified in these documents, as well as the roles they have assumed (i.e., lead or support or title/expertise) during the response action. The state will also assist EPA in the development of the Administrative Record.

2. *Post-Removal Site Control*

EPA and the WDNR will work together to ensure provisions are made for post-removal site control, as needed. This would entail the maintenance and operation of the response action once it has been implemented (e.g., mowing grass, gathering data from monitoring wells, flaring gas, posting warning signs etc.) The emergency response program does not have the authority to fund post-removal site control. Therefore, as part of the response action, EPA will attempt to secure funding from other parties, PRPs, or if an NPL site, the remedial program or the WDNR.

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Mark F. Giesfeldt, P.E. Director  
Bureau for Remediation and Redevelopment  
Wisconsin Department of Natural Resources

\_\_\_\_\_  
Date

\_\_\_\_\_  
Linda Nachowicz, Chief  
Emergency Response Branch  
U.S. Environmental Protection Agency, Region V

\_\_\_\_\_  
Date

**Date:** 4/20/2004

**To:** Chris Fields, EPA Region 10, Removal Program

**From:** Sheila Monroe, Oregon DEQ, Eastern Region Cleanup Manager

**Through:** Joni Hammond, Oregon DEQ, Eastern Region Division Administrator  
Ann Levine, Oregon DEQ, Headquarters Cleanup Program Manager  
David Anderson, Oregon DEQ, Project Manager

**Subject:** Request for EPA Removal Support – Burns Air Force Site, Burns, Oregon  
ECSI No. 1703

The purpose of this memorandum is to request removal support from the EPA Removal Program for the Burns Air Force Site Located in Burns, Oregon. DEQ has already declared the Burns site as an Orphan Site, as defined in Oregon Revised Statute (ORS) 465.381. It is DEQ's determination that the currently identified responsible parties are either unwilling or unable to undertake required cleanup actions.

DEQ has scored the site a high priority for addressing asbestos and other residual hazardous substances. The asbestos in particular provides a direct contact and air inhalation exposure pathway. Trespassers and workers maintaining communications equipment at the site may have been exposed to asbestos containing material (ACM). Without cleaning up friable ACM and preventing continued vandalism of building materials containing asbestos, potential human exposure to ACM will continue. Currently, the site contamination poses a significant, ongoing threat to human health and the environment. DEQ believes that an interim removal action measure (IRAM), is needed to ensure protection of human health and the environment.

DEQ is requesting that EPA's Removal Program conduct asbestos removal and demolition of on-site buildings to reduce the current threat to human health and the environment. Following the asbestos removal and demolition of the buildings, DEQ will continue to characterize the site through the Orphan Site Program.

The following sections provide additional background and detail for the site.

### **Location and History**

The site is located in Harney County on Burns Butte, overlooking the cities of Burns and Hines, which are 5 miles to the east. Between 1954 and 1958, the Air Force acquired a total of 31.91 acres from the Bureau of Land Management (BLM) for an Aerospace Defense Command site on Burns Butte. Improvements constructed by the Department of Defense (DOD) on this site included several large antennas, power-generation facilities, and numerous support facilities.

Beginning in approximately 1970, DOD began selling portions of the property to various entities and individuals, including 5.53 acres that were returned to BLM. The remaining acres were assigned to the Department of Health, Education, and Welfare, which conveyed the property to Burns Union High School District No. 2 effective December 1973. The school district deeded the lands back to the federal government in 1977. The portion of the property that presents the environmental concerns described below was acquired by Russell and Aileen Wilson in approximately 1980. Mr. Wilson recently informed DEQ that the property had been transferred to another private party, Mr. Wade Towery.

### **Environmental Background**

The U.S. Army Corps of Engineers (Corps) conducted a site visit on August 19, 1987, under authority of the Defense Environmental Restoration Program for Formerly Used Defense Sites (DERP-FUDS). Under DERP-FUDS and associated Federal laws, the Corps is responsible for addressing environmental contamination at facilities formerly owned or operated by the Department of Defense. The Corps' 1987 evaluation identified the following hazards:

- Twenty-four (24) underground storage tanks (USTs) with associated equipment, a hydraulic cylinder with oil storage, two overhead fuel storage tanks with piping equipment, and nine transformers.
- Two abandoned disposal sites, each approximately 5,000 square feet in size. One site contained four (4) visible 55-gallon drums.
- Numerous buildings in various states of disrepair due to vandalism. Also, several open sewer manholes and open pits over six feet in depth, all holding several feet of water.

Although the records are not entirely clear, it appears that the Corps carried out actions that included removal of: 1) three USTs and two ASTs; 2) floor-drain material containing heating oil, sludge, lead and PCBs; 3) transformer oil containing PCBs and pesticides; 4) six transformer carcasses; and 5) approximately 84.7 tons of PCB-contaminated soil and debris. It is not clear whether the Corps removed the 21 remaining USTs.

The Corps decided not to address the abandoned disposal sites because it did not believe they were of Air Force origin. The Corps also declined to address an asbestos problem identified at the site because it believed releases of friable asbestos were caused by vandalism and neglect of the structures after DOD had conveyed the property to other owners. In addition, the Corps asserted that under its DERP-FUDS policy, the Corps may conduct asbestos abatement only when such abatement is incidental to carrying out another, eligible project.

A federal Preliminary Assessment was conducted at the site in 1996 for the U.S. Environmental Protection Agency (EPA). The PA concluded that the site was not a high enough priority for consideration for the National Priorities List (NPL), but that the site would be added to DEQ's database of sites.

### **Current Environmental Concerns**

DEQ's Air Quality (AQ) Program documented friable asbestos at the site during an investigation on April 9, 2002. AQ requested that the owner put up appropriate signs at the site. AQ has also coordinated with the Oregon Department of Human Services (ODHS), which performed a site tour on November 7, 2002. In its ensuing health assessment (May 2003), ODHS indicated that

the site may pose a public health threat due to the presence of exposed friable asbestos, especially to trespassers and site workers. Because the site has been subject to vandalism, ODHS also identified physical hazards as a concern. ODHS recommended the following:

1. Remediate friable asbestos and physical hazards throughout the site.
2. Restrict access to the property until such remediation is completed.
3. Conduct an inventory of all physical hazards.
4. Evaluate contamination at the two former disposal sites and at the radome building.

DEQ has scored the site a high priority for addressing asbestos and other residual hazardous substances. The asbestos in particular provides a direct contact and air inhalation exposure pathway. Trespassers and workers maintaining communications equipment at the site may have been exposed to asbestos containing material (ACM). Until signs were recently posted, hikers may not have known they were “trespassing” on private property, or that they risked exposure to asbestos fibers carried by the wind. Trespassers inside buildings would have increased exposure during asbestos-disturbing activities such as driving on fragmented tile, vandalizing walls or piping, or scavenging building materials. Teens using the site as a hangout would increase health risks due to possible prolonged exposure to ACM.

With the owners approval, DEQ recently posted “No Trespassing” and asbestos warning signs at the site. While these signs may have discouraged some former trespassers from accessing the site, it is unrealistic to expect trespassing to stop entirely, given the lack of fencing, limited sheriff’s patrols, remote location, and historic use of the site by area teens. Workers will also continue to access the site to maintain communications equipment. Without cleaning up friable ACM and preventing continued vandalism of building materials containing asbestos, potential human exposure to ACM will continue.

### **Current Potentially Responsible Party Status**

The currently identified potentially responsible parties are unwilling or financially unable to undertake necessary investigation and cleanup actions at the site. As described above, the Corps has refused to address the asbestos and landfill issues under DERP-FUDS. DOD has asserted that it is not a potentially responsible party (PRP) and has refused to carry out actions at the site. The owner of the property for much of the time after DOD, Mr. Wilson, has told DEQ that he is financially unable to address site contamination. The current owner, Mr. Towery, has told DEQ that he is financially unable to address environmental problems at the site. DEQ will continue to evaluate the liability of other parties connected with the site.

ATTACHMENT E

**REMOVAL ACTION CONTRACT**  
**for the**  
**Oklahoma Refining Company**  
**Located in Cyril, Caddo County, Oklahoma**  
**OKD091598870 EPA ID: 06D9**  
**BETWEEN THE U.S. ENVIRONMENTAL PROTECTION AGENCY**  
**AND THE OKLAHOMA DEPARTMENT OF ENVIRONMENTAL QUALITY**

**1. GENERAL AUTHORITY**

This Removal Action Contract (hereinafter "Contract" or "RAC") is entered into pursuant to §§ 104(a)(1) and (d) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S.C. 9601 et seq., at 42 U.S.C. §§ 9604(a)(1) and (d), as amended to date; the National Oil and Hazardous Substances Pollution Contingency Plan, 55 F.R. 8666 et seq., (40 C.F.R. Part 300 (hereinafter referred to as the "NCP")); and other applicable Federal regulations, including 40 CFR Part 35, Subpart O (Cooperative Agreements and Superfund State Contracts for Superfund Response Actions), and 40 CFR Part 31; and pursuant to §1-3-101.B.10 of the Oklahoma Environmental Quality Act, 27A O.S. §§ 1-1-101 et seq., and 2-3101.B.2 of the Oklahoma Environmental Quality Code, 27A O.S. §§ 2-1-101 et seq.

**2. PURPOSE**

This Contract is an agreement between the United States Environmental Protection Agency ("EPA") and the Oklahoma Department of Environmental Quality (DEQ or the "State") (hereinafter EPA and DEQ may be referred to collectively as the "parties" or individually as the "party"). The DEQ is authorized by the Oklahoma Environmental Quality Code to interact with the EPA on behalf of the State of Oklahoma] (the "State") concerning response actions at the Oklahoma Refining Company Superfund Site (hereinafter the "Site"), Cyril, Oklahoma. This Contract documents the responsibilities of the Lead Agency (EPA), and of the Support Agency (DEQ) during the CERCLA removal action. This is a Removal Action Contract and does not apply to a remedial action. Thus, it is not narrowly subject to all Superfund State Contract (SSC) requirements at 40 C.F.R. Part 35, Subpart O. The EPA objective of the removal action is to remove or eliminate principal threat wastes, thereby eliminating or reducing risks to the potential exposure pathways from those wastes at the Site.

**3. DURATION OF THIS CONTRACT**

This Contract is effective upon execution by the EPA and the DEQ, and shall remain in effect, until the removal action at the Site is technically complete and/or the final reconciliation of costs for the removal action at the Site has been satisfied (See Reconciliation Provision, Section 27, below), whichever is longer. The EPA and the DEQ may agree to extend, by amendment (See Amendability, Section 26, below), the duration of this Contract when the removal action for the Site takes longer or more time is needed for closeout or for reconciliation.

**4. DESIGNATION OF PRIMARY CONTACTS AND THEIR RESPONSIBILITIES**

A. The EPA has designated:

**Rita Engblom  
Removal Team 2 (6SF-R2)  
U.S. Environmental Protection Agency  
1445 Ross Avenue, Suite 1200  
Dallas, Texas 75202-2733  
(214) 655-8341**

to serve as the On-Scene-Coordinator ("OSC") for this Contract. The designated OSC may be changed by letter to the DEQ signatories and incorporated by reference herein without amending this Contract.

B. The DEQ has designated:

**Rita Kottke, Ph.D  
Land Protection Division  
Oklahoma Department of Environmental Quality  
707 North Robinson, P.O. Box 1677  
Oklahoma City, Oklahoma 73101-1677  
(405) 702-5127**

to serve as the State Project Manager ("SPM") for this Contract. The designated SPM may be changed by letter to the EPA signatories and incorporated by reference herein without amending this Contract.

C. The OSC and the SPM may make necessary project changes that do not substantially alter the scope of the removal action at the Site or increase the cost of the removal action. Significant changes will be documented in writing. Any disagreements between the OSC and SPM shall be resolved in accordance with the Issue Resolution Section, (Section 25), set forth below.

**5. NEGATION OF AGENCY RELATIONSHIP**

Nothing contained in this Contract shall be construed to create, either expressly or by implication, the relationship of agency between the EPA and the DEQ. Any standards, procedures, or protocol prescribed in this Contract to be followed by the EPA or its contractors during the performance of its obligations under this Contract are for assurance of the quality of the final product of the actions contemplated by the Contract and do not constitute a right to control the actions of the EPA. The EPA (including its employees, agents, and contractors) is not authorized to represent or act on behalf of the DEQ in any matter relating to the subject matter of this Contract, and the DEQ (including its employees, agents, and contractors) is not authorized to represent or act on behalf of the EPA in any matter relating to this Contract.

**6. SITE DESCRIPTION**

A description of the Site, including the location, background of events, physical characteristics (i.e., Site geology and proximity to drinking water supplies), the nature of the release (contaminant type and affected media); past response actions at the Site conducted by the EPA, the DEQ, or others; and description of the removal action to be conducted at the Site is included in the Action Memorandum (AM) and is attached as Appendix 1 and incorporated herein by reference.

**7. SITE-SPECIFIC STATEMENT OF WORK**

A site-specific Statement of Work (SOW), indicating the tasks to be performed for the removal action is attached, as Appendix 2 and incorporated herein by reference.

**8. PROJECT SCHEDULE**

A general description of the project schedule/milestones for the Site, either by calendar year or Federal Fiscal quarter, is specified in the AM. This project schedule may be adjusted by the joint authority of the OSC and the SPM, without a written amendment, unless there is an extended delay to the schedule. Changes that increase the project costs, or alter the scope of work, thereby affecting the DEQ's ability to meet the conditions set out in this Contract, including "cost-share" shall necessitate a written amendment to this Contract (see Amendability, Section 26, below).

**9. SITE ACCESS**

A. Site Access

The EPA shall use its own authority to secure access to the Site and adjacent properties, as well as the rights-of-way and easements necessary for the EPA or its contractors to complete the removal action undertaken pursuant to this Contract.

B. DEQ Access

Representatives of the DEQ shall have access to the Site to review work in progress and shall comply with the Site safety plan. The DEQ and the EPA may coordinate visits to the Site in advance.

C. EPA Liability Waiver

The EPA shall not be responsible for any harm to any DEQ representative or other person arising out of, or resulting from, any act or omission by the DEQ in the course of a visit to the Site by the DEQ.

D. DEQ Liability Waiver

The DEQ shall not be responsible for any harm to any EPA representative or other person arising out of, or resulting from, any act or omission by the EPA in the course of a visit to the Site by the EPA.

**10. SITE SAFETY PLAN**

The EPA will be responsible for the development and implementation of the Site safety plan for this project. The Site safety plan will be consistent with the requirements of the NCP and applicable Federal and State safety standards and guidance.

**11. THIRD PARTIES**

A. Exclusion of Third-Party Benefits

This Contract benefits only the DEQ and the EPA. It extends no benefit or right to any third party not a signatory to this Contract.

B. Liability

The EPA does not assume any liability to third parties with respect to losses due to bodily injury or property damages that exceed the limitations contained in the provisions of 28 U.S.C. §§ 1346(b), 2671-2680. To the extent permitted by State law, the State does not assume liability to any third parties with respect to losses due to bodily injury or property damage.

**12. EMERGENCY RESPONSE ACTIVITIES**

Any emergency response activities, as determined by the OSC, shall not be restricted by the terms of this Contract. The EPA, in consultation with the DEQ, may suspend or modify the removal activities defined in the SOW for this Contract during and/or subsequent to any emergency response actions, in which case, the removal activities, cost share, or terms may be subject to amendment.

**13. STATE REVIEW**

The DEQ shall review and provide comment, if necessary, on matters relating to the implementation of the removal action, pursuant to this RAC, within 30 calendar days of receipt of the documents.

**14. TECHNICAL REPORTS**

The EPA agrees to submit technical reports to the SPM after completion of the work. The reports will detail the technical progress made at the Site during the removal action. The EPA agrees to include the DEQ in its distribution of Pollution Reports (POLREPs), which describes progress as work proceeds.

**15. RECORDS ACCESS**

At the EPA's request and to the extent allowed by State law, the DEQ shall make available to the EPA any information in its possession concerning the Site. At the DEQ's request and to the extent allowed by Federal law, the EPA shall make available to the DEQ any information in its possession concerning the Site. The recipient of any records must comply with the requirements regarding records access described in 40 C.F.R. §31.42(e). The recipient of any records must also require its contractor(s) to comply with the requirements regarding records access described in 40 C.F.R. § 31.36(i)(10). The EPA shall not disclose information submitted by the DEQ under a claim of confidentiality unless the EPA is required to do so by Federal law and has given the DEQ advance notice of its intent to release that information. Absent a prior confidentiality claim by the DEQ, and with the exception of certain policy, deliberative, and enforcement documents which may be held confidential, the EPA may make said information available to the public without further notice.

The DEQ shall not disclose information submitted by the EPA under a claim of confidentiality unless the DEQ is required to do so by law and has given the EPA advance notice of its intent to release the information.

**16. RECORDS RETENTION**

All financial and programmatic records, supporting documents, statistical records, and other records related to the Site must be maintained by the DEQ for a minimum of ten years following the submission of the final Financial Status Report to the EPA. If any litigation, claim, negotiation, audit, cost recovery, or other action involving the records has been started before the expiration of the ten-

year period, the records must be retained by the DEQ until completion of the action and resolution of all issues which arise from it, or until the end of the regular ten-year period, whichever is later. Microfilm copying must be performed in accordance with the technical regulations and records management procedures contained in 36 C.F.R. Part 1230 and EPA Order 2160.

## **17. FINANCIAL RESPONSIBILITIES OF THE PARTIES AND PAYMENTS**

- A. The EPA will contribute ninety percent (90%) of the cost of the removal action described in the AM and the SOW, including change orders and claims agreed to by the EPA and the DEQ.
- B. The DEQ has agreed to pay ten percent (10%) of the current total estimated cost for the removal action, up to \$400,000, towards the cost of the defined removal action described in the AM and the SOW, including change orders and claims agreed to by the EPA and the DEQ. It should be noted that the DEQ is voluntarily contributing to the removal action at the Site because immediate action is appropriate to protect human health and the environment. Additionally, the State or a political subdivision did not operate the Site at the time of the disposal of hazardous substances as referenced in 40 C.F.R. § 300.525. The DEQ shall not be responsible for any portion of the EPA's intramural costs. DEQ is not required to provide any portion of cost associated with the Classic Emergency Response Actions at the Site or activities conducted under the Oil Pollution Act. The current total estimated cost for the removal action, excluding EPA's indirect costs, is \$4,000,000. The DEQ agrees to contribute a combination of cash and approved services up to \$400,000.
- C. EPA Invoices and Reports to DEQ

The DEQ shall not be billed for any removal action costs associated with the Site until the removal action is complete. An itemization of costs (invoice) will be furnished to the DEQ by the EPA within ninety days after completion of the removal action for the State cost share requirements. This invoice will show total costs, Federal cost share, and the State cost share not to exceed \$400,000. The EPA will include an accounting system report for costs of contractors retained by the EPA to perform the removal action work, including change orders and claims. Final reconciliation of removal action costs will be made at that time. The due date for payment will be forty-five (45) calendar days after billing.

All the EPA invoices shall be sent to the Patrick Farris, Comptroller, of the DEQ as specified below, with a copy to the SPM at the address indicated in Paragraph 4(B) of this Contract:

Patrick Farris, Comptroller  
Oklahoma Department of Environmental Quality  
P.O. Box 2036 [Finance uses P.O. Box 2036]  
Oklahoma City, Oklahoma 73101-2036  
(405) 702-7137

D. State Payments To EPA

All State payments shall be made payable to the EPA and sent to the Regional Financial Management Office as specified below, with a copy to the OSC at the address indicated in Paragraph 4(A) of this Contract:

United States Environmental Protection Agency  
Financial Management Office  
Attn: Collection Officer for Superfund  
Oklahoma Refining Company Superfund Site  
P.O. Box 360582M  
Pittsburgh, PA 15251

To ensure proper credit to the account, the words "Oklahoma Refining Company Superfund Site, Cyril, Oklahoma" must appear on the face of the check.

E. Interest

In the event the EPA does not receive a payment within forty-five (45) calendar days from the billing date outlined in the invoice, interest shall accrue from the invoice date in accordance with 40 C.F.R. § 31.52 and 40 C.F.R. § 35.6815. Such interest shall be at an annualized rate as reported by the State Treasurer based on an average of the interest rate for thirty-day time deposits of State funds during the last calendar quarter of the last preceding fiscal year, 62 O.S. § 41.4b.

The due date is the date or dates specified in this Contract unless the State invokes the provisions of Section 25, Issue Resolution, set forth in this Contract. If issue resolution is invoked, for purposes of interest calculation, interest will accrue on the unpaid portion of the final resolution amount, consistent with 62 O.S. Section 41.4b, as referenced above.

**18. CHANGE ORDER AND CLAIMS MANAGEMENT**

The EPA or its agent(s) will conduct technical and administrative reviews of any contractor change order requests or claims. These reviews will examine the technical basis for the change order or claims and will determine whether they are merited. If any requested change orders/claims would alter the removal action or increase the costs, the EPA will consult with the DEQ.

**19. INSPECTION OF THE WORK**

A. A pre-final inspection will be conducted upon preliminary project completion for the removal action at the Site. The pre-final inspection will be led by the OSC, and may include participants, to accompany the OSC, including the SPM, the removal action contractor, and the EPA oversight contractor.

- B. The pre-final inspection will consist of a walk-through inspection of the entire project Site. This inspection will survey the completed Site work, determining whether the project is complete and consistent with the SOW. Jointly, the EPA and the DEQ will determine if there are any outstanding items. An attempt shall be made to resolve all remaining issues.
- C. A pre-final inspection report, which may be in the form of a POLREP, will be provided by the EPA to the DEQ for review. Acceptance of the resolutions specified in this report is constituted by the DEQ's signature on the report.

**20. JOINT FINAL INSPECTION OF THE WORK**

**A. FINAL INSPECTION**

A final inspection shall be conducted upon completion of any outstanding construction items for the State cost share removal action at or in connection with the Site. The final inspection will be led by the OSC, and may include participants, to accompany the OSC, including the SPM and all other appropriate parties as determined by the OSC.

**B. FINAL CERTIFICATION**

The final inspection will consist of a drive-through/walk-through inspection of the project Site, with the inspection focusing on the outstanding construction items identified in the pre-final inspection. The OSC and the SPM will confirm that all outstanding items have been resolved. If any items are still unresolved, the inspection shall be considered a pre-final inspection requiring another pre-final inspection report. Upon satisfactory completion of the final inspection, the EPA will provide a copy of the final POLREP to the DEQ.

**C. ACCEPTANCE OF THE WORK**

The POLREP will be reviewed by the EPA and the DEQ. The OSC will coordinate, with the SPM, the DEQ's acceptance that the work is complete for the Site. EPA will provide the DEQ a copy of the final Removal Report when it is available.

**21. PROJECT CLOSEOUT**

The EPA, in consultation with the DEQ, will determine when the removal action described in the AM and the SOW has been completed. Enforcement actions and other necessary activities may proceed independent of project closeout.

**22. RESPONSIBLE PARTY ACTIVITIES**

If at any time during the period of this contract, a responsible party comes forward and agrees to perform any work covered by this Contract, this agreement shall be amended or terminated, as deemed

appropriate by the EPA in consultation with the DEQ.

## **23. ENFORCEMENT, LITIGATION, AND COST RECOVERY**

### Notice of Intent to Settle or Initiate Proceedings

The EPA and the DEQ may be entitled to assert claims against a third party (herein referred to as the potentially responsible party or "PRP") for reimbursement of any services, materials, monies or other things of value expended by the EPA or the DEQ for the removal action.

The EPA and the DEQ hereby agree that they shall cooperate in and coordinate efforts to recover their respective costs of the removal actions taken at the Site, including the negotiation of settlement and the filing and management of any judicial actions against PRPs. The parties shall promptly inform one another on the status of negotiations. Neither the EPA nor the DEQ shall enter into a settlement with or initiate a judicial or administrative proceeding against any PRP for the recovery of such sums, except after having given notice in writing to the other party to this Contract, at least thirty (30) days prior to the date of proposed settlement or commencement of the proposed judicial or administrative proceedings. Neither the EPA nor the DEQ shall attempt to negotiate for, or collect, reimbursement of any RAC-specific response costs, related to the Removal Action at the Site described in the SOW, on behalf of the other party, and any authority to do so is hereby expressly negated and denied.

## **24. FAILURE TO COMPLY WITH TERMS OF THE CONTRACT**

If the DEQ fails to comply with the terms of this Contract, the EPA, after providing sixty (60) days notice, may proceed under the provisions of Section 104(d)(2) of CERCLA, 42 U.S.C. § 9604(d)(2), and may seek in the appropriate court of competent jurisdiction to enforce this Contract or to recover any funds advanced or any costs incurred due to a breach of the Contract. If the EPA fails to comply with any requirements of this Contract, the DEQ, after providing sixty (60) days notice, may seek in the appropriate court of competent jurisdiction to enforce the Contract or recover any funds advanced or any costs incurred due to a breach of the Contract.

## **25. ISSUE RESOLUTION**

In the event disputes arise at the Site or questions are raised regarding any term or condition of this Contract, the OSC and the SPM will seek resolution through meeting as many times as necessary to discuss and attempt to resolve any such issues that may exist. If the issue is not resolved through these meetings, the OSC and the SPM will seek resolution in a higher chain of command. Note that matters unrelated to this RAC, such as those between the State and other Federal agencies, are not subject to the terms of this Contract, since the RAC is a bilateral agreement between the EPA Region 6 and the State.

When the issue is referred to a higher level of authority, the issue will be submitted in writing as soon as practicable (but in no event later than ten (10) working days after the failure to agree) to the Chief,

Response and Prevention Branch, Superfund Division, U.S. EPA Region 6 and to the DEQ Superfund Program Manager, Land Protection Division. Should they be unable to agree within ten (10) working days, the matter shall be elevated to the Director, Superfund Division, EPA Region 6, and to the DEQ Land Protection Division Director. If the dispute is not resolved at this level of authority within twenty (20) working days, the matter shall be referred to the Regional Administrator of the EPA Region 6 and to the DEQ Executive Director for resolution. In the event that the Regional Administrator and the DEQ Executive Director are unable to resolve the issue or dispute, the EPA and the DEQ shall retain any authority they may have under Federal or State laws.

**26. AMENDABILITY**

This Contract may be amended at any time for reasons including, but not limited to, the revision of costs or terms to undertake modifications to the removal activities. Written amendments are required when alterations to CERCLA-funded activities are necessary, or when alterations impact the State's cost share amount set forth in this Contract.

Such amendments must include a SOW for the amendment. Any change(s) in this Contract must be made in writing and agreed to by both the DEQ and the EPA, except as provided in this Contract, and must be reflected in all response agreements affected by the change(s).

**27. RECONCILIATION PROVISION**

The EPA will not use overpayments by the DEQ under this Contract to satisfy obligations at another site.

**28. TERMINATION OF THIS CONTRACT**

This Contract shall terminate when:

- A. Termination may occur for cause, conclusion, or failure to comply. The parties may enter into a written termination agreement, which will establish the effective date for the termination of this Contract, the basis for settlement of termination costs, and the amount and date of any sums due either party. Such reconciliation costs will include all project costs incurred, as well as any close-out costs, or
- B. If, at any time during the period of this Contract, performance of either all or part of the work described in the SOW is voluntarily undertaken, or undertaken for any other reason by persons or entities not party to this Contract, then this Contract will be modified or terminated as appropriate to allow these actions. Upon modification or termination, the parties to this agreement shall be relieved from further duties to perform those actions undertaken by persons or entities not party to this Contract, or
- C. (1) Removal activities at the Site have been satisfactorily completed and payments have been

made, as specified under this Contract, and

- (2) All State cost-share payments have been submitted to the EPA, and
- (3) The Financial Management Officer has a final accounting of all project costs, including change orders and contractor claims, and
- (4) A final cost reconciliation is made in accordance with Section 27 of this Contract, and
- (5) The EPA provides written notice to the DEQ.

**29. EXECUTION**

In witness whereof, the parties hereto have executed this Contract in two (2) copies, each of which shall be deemed an original. The undersigned representative of each party to this Contract certifies that he or she is fully authorized by the U.S. Environmental Protection Agency or the Oklahoma Department of Environmental Quality, respectively, to enter into the terms and conditions of this Contract and to execute and legally bind that party to it.

This Contract and its attachments constitute the complete agreement of the parties and there are no other agreements, oral or otherwise, upon which any party relies.

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

\_\_\_\_\_ Date \_\_\_\_\_  
Myron O. Knudson, P.E., Director  
Superfund Division

**OKLAHOMA DEPARTMENT OF ENVIRONMENTAL QUALITY**

\_\_\_\_\_ Date \_\_\_\_\_  
Steven A. Thompson  
Executive Director

ATTACHMENT  
F

**MEMORANDUM OF UNDERSTANDING**

**BETWEEN THE**

**KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT**

**AND THE**

**U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION VII**

**FOR**

**REMOVAL ACTIVITIES IN THE STATE OF KANSAS**

**March 2003**

**Purpose**

The purpose of this Memorandum of Understanding (MOU) is to document an agreement between the U.S. Environmental Protection Agency (EPA), Region VII, Superfund Division and the Kansas Department of Health and Environment (KDHE), Bureau of Environmental Remediation. Both parties have agreed to implement elements described in the Association of State and Territorial Solid Waste Management Officials (ASTSWMO) guidance document "Guide for Coordination of Federal Removal Actions with State Remedial Activities." This document outlines the need for communication and coordination between EPA and KDHE for EPA lead removal activities and it facilitates the transition of a removal completion to another remedial program. The use of this document will establish a forum for discussion and a mechanism to document the needs of one party to the other.


**Goal**

The goal of this MOU and the use of the ASTSWMO guide is to establish a formal mechanism to communicate and coordinate EPA lead removal activities with KDHE. With improved communication and coordination each party will understand the needs or requirements of the other party. This understanding will enhance the current communication and coordination system and will document the proposed actions to be taken by both parties. This enhancement will save time and money and will facilitate the transition from a removal activity to long-term care and maintenance or to another remedial program.

Scope

The guidance document provides a series of subjects that should be discussed prior, during, and after an EPA removal action. Some of the subjects include, but are not limited to: State and EPA objectives and responsibilities, site access, integrated assessment actions, clean-up standards, land use assumptions, community relations, liability assurances, schedules, notifications, documentation, institutional controls, and post-closure activities. The EPA and KDHE have agreed to have a minimum of one formal site planning meeting to discuss these subjects prior to the signature of the removal action memorandum for large removal sites. For purposes of this MOU large removal sites are defined as those sites identified by EPA which are believed to be more than \$50,000 dollars. This formal meeting can occur face-to-face or with a teleconference. For the small removal sites (less than \$50,000) EPA and KDHE have agreed to a minimum of a telephone notification or teleconference. The type and manner of communication will be decided by KDHE and EPA based on time constraints and the complexity of the removal activity.

This document represents our mutual intent to cooperate, communicate and coordinate in the area of removal activities in the State of Kansas.

  
\_\_\_\_\_  
Ronald F. Hammerschmidt, PhD  
Director, Division of Environment  
Kansas Department of Health and Environment

3/14/03  
Date

  
\_\_\_\_\_  
Andrea Jirka  
Acting Director, Superfund Division  
U.S. Environmental Protection Agency, Region VII

5/14/03  
Date

## ATTACHMENT G

### MEMORANDUM OF AGREEMENT BASF (FEDERAL MARINE TERMINALS) SITE RIVERVIEW, MICHIGAN

#### **INTRODUCTION AND PURPOSE**

This Memorandum of Agreement (“MOA”) is meant to clarify mutual expectations and commitments of the United States Environmental Protection Agency (“U.S. EPA”) and the Michigan Department of Environmental Quality (“MDEQ”) with respect to the upland portion of the BASF (a.k.a. Federal Marine Terminals) Facility (“Upland Facility”). On September 30, 1980, the United States Department of Justice (U.S. DOJ), on behalf of the U.S. EPA, filed a Complaint against the BASF Wyandotte Corporation seeking injunctive relief pursuant to the Refuse Act, 33 U.S.C. Section 407 and Section 7003 of the Resource Conservation and Recovery Act, 42 U.S.C. Section 6973, to abate an imminent and substantial endangerment to health and the environment caused by the disposal and discharges of hazardous substances into the ground, groundwater, and navigable waters from the Site (United States *et al.* v BASF Wyandotte Corp. *et al.* Civ. No. 80-73699, (E.D. Mich.)).

The Attorney General for the State of Michigan, on behalf of the Water Resources Commission and the Director of the Michigan Department of Natural Resources (“MDNR”), filed a Complaint in Intervention on or about April 1, 1981, incorporating by reference the United States’ Complaint and asserting pendent state claims. Pursuant to Executive Orders No. 1995-16 and 1995-18, all powers and duties of the Water Resources Commission have been transferred to the MDEQ, and all powers and duties of the Director of the MDNR, as they pertain to this case, have been transferred to the MDEQ.

On July 18, 1984, A consent Decree was executed by all parties and entered by the Court in an attempt to resolve the violations set forth in the Complaint and Complaint in Intervention. The 1984 Consent Decree required BASF to undertake certain remedial actions at the Site in order to control conditions at the Site that could endanger health, welfare, or the environment and to take measures to prevent the contamination of water located on, under, and around the Site by industrial waste located on the Site.

The MDEQ and the U.S. EPA have determined that the remedial action program implemented by BASF pursuant to the 1984 Consent Decree did not achieve the mutual intent and purpose of the parties to control conditions at the Site that could endanger health, welfare, or the environment and to prevent the contamination of water located on, under, and around the Site by industrial wastes located on the Site. The U.S. EPA and the MDEQ agree that further Investigation and remedial work are required to address current and potential risks to human health and the environment.

The 1984 Consent Decree defines the "Site" as follows: "The property which is the subject of this Consent Decree (hereinafter "the Site") is described in Appendix A. It is located between Bridge Road and Biddle Avenue in Riverview, Michigan and the Trenton Channel of the Detroit River. It is approximately 30 acres in size and is bordered on the north by Firestone Steel Products property and on the south by the City of Riverview boat dock property." Appendix A is a legal description of the Site.

For purposes of this MOA, the Upland Facility shall be defined as the Site and any area, place, or property where a hazardous substance released at the Site has come to be located in concentrations which exceed the requirements of Section 20120a(1)(a) or (17) of Part 201, Environmental Remediation, of Michigan's Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA"), excluding any sediments in the Trenton Channel of the Detroit River or any other surface water body. For further purposes of defining the Upland Facility, sediments shall not include any soils, wastes, debris, rip-rap, and other materials located above the Detroit River low water datum level, which is defined as the sloping surface of the Detroit River when Lake St. Clair is at an elevation of 571.5 feet above sea level and Lake Erie is at an elevation of 568.6 feet above sea level (Reference: National Oceanic and Atmospheric Administration, National Ocean Service, Detroit River Soundings, 9<sup>th</sup> Edition, March 9, 1985).

### **ROLES AND RESPONSIBILITIES RELATING TO CONTAMINATION AT THE UPLAND FACILITY**

The U.S. EPA and the MDEQ are concerned with on-going releases and the possible threats of releases from the Upland Facility and the possible exposure risks associated with the current environmental conditions at the Upland Facility. Both the U.S. EPA and MDEQ have an interest in requiring that additional response activities be conducted by BASF to promptly address these risks. The MDEQ is currently working the BASF to abate and prevent the on-going release of groundwater containing hazardous substances in excess of the MDEQ's Groundwater Surface Water Interface ("GSI") criteria from the Upland Facility through submission, approval, and implementation of an Interim Response Activity ("IRA") Design Work Plan. The MDEQ has also initiated actions to assure that BASF adequately evaluates and addresses all other relevant exposure pathways associated with the Upland Facility in a manner which protects the public health and welfare and the environment. This will be accomplished through the development, submission, approval, and implementation of an Interim Response Activity Plan ("IRAP") consistent with the requirements of Part 201 of the NREPA ("Part 201"). The U.S. EPA believes that, at this time, the MDEQ should continue its efforts to address risks associated with the Upland Facility.

It is therefore agreed that the MDEQ will enter into negotiations with MASF and, within nine months from January 31, 2001, secure a judicial consent judgment consisting of an agreement under Part 201. The judicial consent judgment shall include a detailed scope of work and schedules and shall require BASF to: (1) implement the IRA to address the on-going releases and threats of releases of hazardous substances in excess of GSI criteria

and (2) develop and implement, after public comment and upon MDEQ approval, the IRAP to address contamination at the Upland Facility. This work, to be performed by BASF, will follow Michigan's Part 20; process for investigation, alternative evaluation, and decision-making. In recognition of the MDEQ's current level of activity at the Upland Facility and in order to eliminate duplication of effort, the Upland Facility will be designated as a state-enforcement lead. The MDEQ will give the U.S. EPA an opportunity to comment on planned response activities by providing the U.S. EPA with a copy of the draft IRA Work Plan and the draft IRAP and schedules for accomplishing response activities at least 21 calendar days prior to releasing the documents for public comment or MDEQ's approval, whichever comes first.

U.S. EPA with a copy of the draft IRA Work Plan and the draft PRAP and schedules for accomplishing response activities at least 21 calendar days prior to releasing the documents for public comment or MDEQ's approval, whichever comes first.

If the MDEQ is unable to secure a judicial consent judgment with BASF to perform an appropriate scope of work within the nine-month time frame, the U.S. EPA will take appropriate enforcement action pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. Section 9601 *et seq.*, the National Contingency Plan, and other applicable federal authorities.

### **RESERVATION OF RIGHTS**

The U.S. EPA recognizes that the MDEQ has implemented Part 201, and the MDEQ has the ability to select and implement cleanups that are protective of human health and the environment. Nonetheless, the U.S. EPA reserves its authority to commence appropriate federal enforcement actions, including, without limitation, enforcement actions against BASF if: (1) the approved IRA Design Work Plan or IRAP and associated schedules, or the actions BASF takes under agreement with the MDEQ are in any way insufficient to address the risks to human health and the environment presented by releases of hazardous substances from the Site or (2) the BASF fails to comply with its obligations under the judicial consent judgment related to the Upland Facility.

Notwithstanding any provision of his MOA, the MDEQ, the Attorney General of the State of Michigan, and the U.S. EPA shall each retain all of their respective information-gathering, inspection, access, and enforcement authorities, rights, and defenses under Part 201, the CERCLA, and any other applicable statute or regulation. The MDEQ and the U.S. EPA acknowledge and agree that this MOA does not constitute a warranty or representation of any kind by the MDEQ or the U.S. EPA that the response activities performed by BASF as described by the Scope of Work, IRA Design Work Plan, or IRAP will result in the achievement of the remedial criteria established by law. This MOA does not create any rights or benefits for any party not a signatory to this MOA and does not limit or affect the rights of the State of Michigan or the United States against any third parties. This written MOA constitutes the entire agreement between the parties, and no other consideration has been promised.

**MODIFICATION**

This MOA may only be modified by the written agreement of the U.S. EPA and the MDEQ.

**EXECUTION AND EFFECTIVE DATE**

The parties hereto have executed this MOA in two (2) copies, each of which shall be deemed an original. The effective date of the MOA shall be the later of the two signatory dates.

**SIGNATORIES**

For the Michigan Department of Environmental Quality

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Chief, Environmental Response Division

Date

For the U.S. Environmental Protection Agency, Region 5

---

Director, Superfund Division

Date

AMENDMENT #1  
SUPERFUND STATE CONTRACT FOR REMOVAL ACTIVITIES  
AT VELVICOL/PINE RIVER SITE BETWEEN THE STAT OF MICHIGAN AND THE  
U.S. ENVIRONMENTAL PROTECTION AGENCY

1. GENERAL AUTHORITY

This Contract is entered into pursuant to §§104(a)(1) and (d) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), 42 U.S.C. 9601 et seq., as amended; the National Oil and Hazardous Substances Pollution Contingency Plan, 55 F.R. 8666 et seq. (40 CFR part 300, March 8, 1990, hereinafter referred to as the “NCP”); other applicable Federal regulations including 40 CFR Part 35, Subpart O, and 40 CFR part 31, applicable State laws, and Paragraph 26 of the document “Superfund State Contract for Removal Activities at Velsicol/Pine River site, Between the State of Michigan and the U.S. Environmental Protection Agency” (The Removal Action SSC) signed on September 14, 1998 and October 12, 1998.

2. PURPOSE OF THIS SUPERFUND STATE CONTRACT (SSC) AMENDMENT

1. This contract amendment is an agreement between the United States Environmental Protection agency (EPA) and the Michigan Department of Environmental quality (“MDEQ”). The Governor has designated the MDEQ to interact with EPA on behalf of the state of Michigan (the “State”), concerning response actions in order to conduct removal action at the Velsicol/Pine river site 9the “Site”), CERCLIS ID number MID000722439.
2. This Contract amendment is necessary to address costs not anticipated in the Removal Action SSC signed on September 14, 1998 and October 12, 1998 and Action Memorandum, signed June 8, 1998.
3. Attached hereto an incorporated herein as Appendix A is the purpose for increased costs, as incorporated within the Action Memorandum Addendum, signed October 8, 1999 and the Action memorandum dated August 16, 1999. The Proposed action section of the Action Memorandum is the Scope of Work for this Removal Action SSC Addendum.
4. Attached here to and incorporated herein as Appendix B are cost estimates, as included in the Final Pollution Report, dated October 26, 1999.
5. Attached hereto and incorporated herein as Appendix C is the removal Action SSC for Removal Activities, signed on September 14, 1998 and October 12, 1998.

3. DURATION OF THIS CONTRACT

This paragraph remains unchanged from the Removal Action SSC (Appendix C).

4. DESIGNATION OF PRIMARY CONTACTS AND THEIR RESPONSIBILITIES

- A. EPA has designated:

Stephanie Ball  
U.S. EPA, SR-6J  
77 W. Jackson Blvd.  
Chicago, IL 60604  
(312) 353-2315

to serve as Remedial Project Manager (RPM) for this Contract. The designated RPM may be changed by letter to the State signatories and incorporated by reference herein without amending this Contract.

B. The State has designated:

Brian von Gunten  
MDEQ  
Environmental Response Division  
Knapps Centre  
P.O. Box 30426  
Lansing, MI 48909-7926  
(517) 373-6808

to serve as the State Project Manager (SPM) for this Contract. The designated SPM may be changed by letter to the Federal (EPA) signatories, and incorporated by reference herein without amending this Contract.

C. The RPM and the SPM may make project changes that do not substantially alter the scope of the response actions at the Site or the cost of the removal action.

D. Any disagreements between the RPM and SPM shall be resolved through their chains of command and/or signatories to this Contract as specified under the Issue Resolution section below.

5. NEGATION OF AGENCY RELATIONSHIP

This paragraph remains unchanged from the Removal Action SSC (Appendix C).

6. SITE DESCRIPTION

A description of the Site including its location, background of events, physical characteristics (i.e., site geology and proximity to drinking water supplies), the nature of the release (contaminant type and affected media), past response actions at the site by EPA, the State, or others, and the response action at the Site contemplated in the Record of Decision(s) (ROD) is included in Appendix A and Appendix C.

7. SITE ACCESS

This paragraph remains unchanged from the Removal action SSC (Appendix C).

8. THIRD PARTY

This paragraph remains unchanged from the Removal Action SSC (Appendix C).

9. SITE-SPECIFIC STATEMENT OF WORK (SOW)

A site-specific Statement of Work (SOW) indicating the tasks to be performed for this response action, including estimated costs, is included in the Proposed Actions section of Appendix A. Minor adjustments to this work may be made by the authority of the RPM or SPM without a formal amendment. Work changes that increase the project costs, or which significantly alter the scope of work thereby affecting the State's ability to meet the conditions set out in this Contract, including cost-share requirements, shall necessitate an amendment to this Contract (see Amendability section, below).

10. PROJECT SCHEDULE

A general description of the project schedule/milestones by calendar year includes a project summary of deliverables, as specified in the SOW, included in Appendix C. Additional schedules are estimated in Appendix A. Minor adjustments to this schedule may be made by the authority of the RPM or SPM without a formal amendment. Schedule changes that significantly increase the project costs, or alter the scope of work, thereby affecting the State's ability to meet the conditions set out in this Contract, including cost-share requirements, shall necessitate an amendment to this Contract (see Amendability section below).

11. STATE REVIEW

This paragraph remains unchanged from the Removal Action SSC (Appendix C).

12. TECHNICAL AND PROGRESS REPORTS

This paragraph remains unchanged from the Removal Action SSC (Appendix C).

13. RECORDS ACCESS

This paragraph remains unchanged from the Removal Action SSC (Appendix C).

14. RECORDS RETENTION

This paragraph remains unchanged from the Removal Action SSC (Appendix C).

15. STATEMENT OF INTENTION TO FOLLOW EPA POLICY AND GUIDANCE

This paragraph remains unchanged from the Removal Action SSC (Appendix C).

16. LIST OF SITE-SPECIFIC AGREEMENTS

The following list includes all site-specific agreements (CAs, SSCs, and administrative orders) associated with and/or in effect for the Site:

**Type of Agreement**

Multi-Site CA for PRP Oversight  
(MSCA #V995258-01)

Multi-Site CA for Enforcement Support

(MSCA #V995260-01)

Multi-Site CA for Remedial Action  
(MSCA #V995261-01)

Superfund State Contract for Removal Activities at Velsicol/Pine Rivers Site, Between the State of Michigan and the U.S. Environmental Protection Agency, signed September 15, 1998 and October 12, 1998.

Superfund State Contract for Remedial Activities at Velsicol/Pine River Site, Between the State of Michigan and the U.S. Environmental Protection Agency, signed March 23, 1999 and April 20, 1999.

17. CERCLA ASSURANCE and COST SHARE CONDITIONS

The state will pay 10% of the removal action costs at the site. The state assures its cost-share obligation for actual removal action costs at the Site, which shall be settled at reconciliation [see Reconciliation Provision section, below].

A. Cost Estimate

The revised total estimated cost of the removal action (excluding EPA's indirect costs) is \$7,153,651. This estimate is based on the Final Pollution Report, dated October 26, 1999 (Appendix D). The State's cost share of the removal action under this SSC (as amended) would thus be \$715,365. As \$599,655 has already been paid, the remaining State's cost would thus be \$115,710.

Based on the Action Memorandum Addendum, signed October 8, 1999 (Appendix A), the project ceiling has been raised to \$8,460,730, which includes contingencies for change orders which may or may not be invoked, and construction management services. If the project ceiling is reached, an additional State cost of \$130,708 would be required.

B. Payment Terms

i. The State shall submit to EPA, within 60 days of the signature date of this SSC amendment, a payment of \$115,710 for removal action costs cited above. Consistent with the reconciliation provision section below, final payment will be made within 60 days of State's receipt of an invoice or request letter from EPA.

ii. Costs incurred by the Support Agency (State) to off-set the cost-share requirements must be verified and documented in a Cooperative Agreement (CA) and identified in the Contract. An in-kind match is a prohibited form of payment in an SSC. Payment terms may only be adjusted through an amendment to this Contract, as specified in the Amendability section, below.

iii. At the appropriate times during the contract, EPA will submit an invoice or request letter to the state for each of the cost share payments. The original invoice or letter shall

be sent to the address specified below, with a copy to the state project manager at the address identified in Section 4.

Michigan Department of Environmental Quality  
Environmental Response Division  
Administration Section  
Attn: Kathy Crawley  
P.O. Box 30426  
Lansing, MI 48909-7926

iv. All State payments shall be made payable to EPA Hazardous Substance Superfund and sent to the Regional Financial Management Office as specified below:

United States Environmental Protection Agency  
Region 5  
Attention: Program Accounting & Analysis Section  
P.O. Box 70753  
77 W. Jackson  
Chicago, IL 60673

18. NOTIFICATION OF TRANSFERS OF CERCLA WASTE

This paragraph remains unchanged from the Removal Action SSC (Appendix C).

19. CERCLA ASSURANCE: REAL PROPERTY ACQUISITION:

This paragraph remains unchanged from the Removal Action SSC (Appendix C).

20. PREFINAL INSPECTION

This paragraph remains unchanged from the Removal Action SSC (Appendix C).

21. JOINT INSPECTION OF THE REMEDY

This paragraph remains unchanged from the Removal Action SSC (Appendix C).

22. RESPONSIBLE PARTY ACTIVITIES

This paragraph remains unchanged from the Removal Action SSC (Appendix C).

23. ENFORCEMENT

This paragraph remains unchanged from the Removal Action SSC (Appendix C).

24. DISPUTE RESOLUTION

This paragraph remains unchanged from the Removal Action SSC (Appendix C).

25. SANCTIONS FOR FAILURE TO COMPLY WITH TERMS OF THIS SSC.

This paragraph remains unchanged from the Removal Action SSC (Appendix C).

26. AMENDABILITY

This paragraph remains unchanged from the Removal Action SSC (Appendix C).

27. TERMINATION OF THIS CONTRACT

This paragraph remains unchanged from the Removal Action SSC (Appendix C).

28. RECONCILIATION PROVISION

Reconciliation of project costs shall begin upon EPA's receipt of final invoices from all response contractors. A reconciliation document shall be provided to the State by EPA to facilitate financial settlement of State cost share.

This Contract shall remain in effect until the financial settlement of project costs and final reconciliation of response costs (including change orders, claims, overpayments, reimbursements, etc.) have been completed, and the 90/10 cost share requirement has been satisfied. In the event that the payment terms above do not cover the cost of the removal action. EPA will bill the State for the additional State cost share. Any overpayment by the State shall be returned by EPA, within 60 days of final reconciliation of response costs. EPA will not use overpayments by the State to satisfy obligations at another site. Final reconciliation of all removal action costs, by EPA, shall follow the acceptance of the remedy by both EPA and the State and is not contingent upon deletion of the Site from the NPL.

29. CONCLUSION OF THE SSC

The SSC is concluded when:

- A. RA response activities at the Site have been satisfactorily completed and payments have been made, as specified under the Cost Share Conditions section of this Contract;
- B. The Financial Management Officer (FMO) has a final accounting of all project costs, including change orders and contractor claims, pursuant to Reconciliation Provision above; and
- C. All State cost-share payments have been submitted to EPA (see 40 CFR 35.6805(i)(5)).
- D. Final reconciliation has been provided to the State.

30. APPENDICES AND AMENDMENTS

- 1) Appendix A - Action Memorandum
- 2) attachment B - Final Pollution Report
- 3) Attachment C - Removal Action SSC

In witness whereof, the parties hereto have executed this Contract in two (2) copies, each of which shall be deemed an original.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

\_\_\_\_\_ Date \_\_\_\_\_  
William E. Muno, Director  
Superfund Division

STATE OF MICHIGAN

\_\_\_\_\_ Date \_\_\_\_\_  
Russell J. Harding, Director  
Michigan Department of Environmental Quality

## ATTACHMENT H

MEMORANDUM OF UNDERSTANDING  
BETWEEN  
U.S. ENVIRONMENTAL PROTECTION AGENCY (EPA)  
AND  
ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION (DEC)  
REGARDING ROLES AND RESPONSIBILITIES FOR THE ASSESSMENT  
REMOVAL AND REMEDIATION OF THE RIVER TERRACE RV PARK

The EPA and DEC (“agencies”) concur that Resource Conservation and Recovery Act (RCRA) hazardous wastes and other contamination at the river Terrace RV Park, Soldotna, Alaska, presents an imminent and substantial threat to the Kenai River. The agencies also concur that immediate soil removal and disposal actions in addition to longer term remediation actions must be taken to protect the river from further contamination. Both agencies have respective statutory authority and responsibilities for the containment cleanup and safe disposal of hazardous waste contamination when it threatens public health or the environment.

To avoid duplication of efforts in managing the cleanup of contamination at the River Terrace RV Park the agencies will consult with each other on all removal, disposal and remediation tasks to ensure compliance with all applicable federal and state laws. The agencies agree to share copies of correspondence and technical documents and to consider each other’s comments on such documents. The agencies also agree to divide the following duties to provide for the most efficient and cost effective use of state and federal expertise and authorities.

1. DEC will complete the current groundwater assessment work including groundwater and soil sampling on the river Terrace RV Park and state highway right-of-way.
2. DEC will complete a sale and transport and risk analysis to identify alternative cleanup levels and will make a risk management decision that is protective of human health and the environment consistent with state law.
3. EPA will manage the immediate removal action to excavate and dispose or treat the most highly contaminated soils consistent with federal law including RCRA.
4. DEC will manage the long term soil and groundwater remedial or monitoring actions, consistent with state law and the alternative cleanup level determined under task 2.

The agencies may work with the Responsible Party (RP) to conduct any of the above tasks if the RP submits an acceptable task action plan that complies with applicable state and federal laws and does not delay the immediate removal action during the 1997 field season.

Access on the site will be necessary to complete the above tasks. The agencies may utilize the cost effective state or federal authorities to ensure access to the site is provided and avoid any delay in completing the above tasks.

Nothing in this understanding shall limit either party’s legal authority to investigate and or conduct appropriate response actions under state or federal law.

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Richard Albright            Date            Lynn J. Tomich Kent            Date  
U.S. Environmental Protection Agency    AK Department of Environmental Conservation

ATTACHMENT I

MEMORANDUM OF UNDERSTANDING

REGARDING NOTIFICATIONS AND EMERGENCY REMOVAL REFERRAL

FOR

OIL DISCHARGES AND HAZARDOUS SUBSTANCE RELEASES

BETWEEN

NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION  
DISCHARGE RESPONSE ELEMENT

AND THE

U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION II  
EMERGENCY AND REMEDIAL RESPONSE DIVISION

GUIDELINES ON WHEN TO NOTIFY THE U.S. ENVIRONMENTAL  
PROTECTION AGENCY

REGION II, RESPONSE AND PREVENTION BRANCH

OF AND ENVIRONMENTAL INCIDENT

(HOTLINE NO.: 732-548-8730)  
(NRC TOLL-FREE 800-424-8802)

1. Release involving a threat to human health.
2. Releases involving a moderate to high threat to waterfowl, fish, shellfish, muskrat, and other aquatic or amphibious animals.
3. Releases threatening recreational beaches during the bathing season or otherwise affecting bathing.
4. Releases generating unusual public interest or press coverage because of the hazards involved (especially evacuations).
5. Releases which threaten drinking water supply wells or surface drinking water.
6. Incidents requiring a cleanup contractor to remove significant amounts of contaminants (including where a private party hires the contractor).
7. Accidents involving container or bulk transport of hazardous materials which disrupt traffic for a significant amount of time.
8. Incidents where public safety is threatened due to a fire at a facility using/storing chemicals in significant quantities.
9. Releases which threaten, or impact other states.
10. Other incidents which can reasonably be classified as medium or major in seriousness (i.e., evacuation required).

**PURPOSE:** The purpose of this Memorandum of Understanding (MOU) between the New Jersey Department of Environmental Protection (NJDEP), Discharge Response Element and the U.S. Environmental Protection Agency (EPA), Region II, Emergency and Remedial Response Division (ERRD) is to provide guidelines on criteria and to establish the procedures and type of emergency removals for both hazardous substance releases and oil discharges that NJDEP will refer to REPP for emergency removal consideration. This does not preclude either Agency from requesting assistance from one another for any emergency response incident. In addition, this MOU will serve to document the notification required and the procedures for handling Oil Spill Liability Trust Funds claim reimbursement for NJDEP oil discharge cleanups.

**BACKGROUND:** The criteria for EPA to undertake a removal action for a release or threat of a release of a hazardous substance under the Comprehensive Environmental Response, Compensation and Liability Act as amended in 1986, is specified under the National Contingency Plan (NCP), Section 330.415 (Attachment I). This criteria lists the situations which allow the Federal On-Scene Coordinator to take appropriate action. For oil discharges, Section 311 of the Clean Water Acts, as amended by the Oil Pollution Action of 1990, grants authority for the Federal OSC to take appropriate actions for oil discharges. The NCP, Section 300.305 describes the situations that allows the Federal OSC to take such actions.

#### **SITUATIONS FOR NJDEP REFERRAL TO ERRD FOR REMOVAL ACTION CONSIDERATION:**

1. Emergency situations which meet the NCP criteria indicated above for oil discharges and hazardous substance releases where Federal funding and presence is warranted.
2. Discovery of abandoned trailers/warehouses/facilities containing hazardous substances.
3. Other Federally initiated events, (DEA, FBI, ATF) such as drug labs and bomb labs where NJDEP is notified or called upon to perform a clean-up.
4. Actual major (10,000 gallons or greater) to medium (1,000-10,000 gallons) oil discharges to surface waters. Attachment II contains the type of information REPP needs from NJDEP for these situations.
5. Hazardous substances found at sites which appear to have the potential for recycling/reuse. EPA has capability of dealing with this option. NJDEP does not have the capability of using recycling as a disposal option.
6. The incident is referred during the actual emergency phase.

#### **SITUATIONS NOT TO BE REFERRED TO ERRD FOR FEDERAL REMOVAL ACTION CONSIDERATION:**

1. Incidents involving road closure.
2. Oil discharges to the ground, which do not threaten surface waters.
3. Minor (less than 1000 gallons) oil discharges to surface waters that NJDEP will use its Spill Fund and seek reimbursement from OPA Trust Fund, see notification procedure below required prior to NJDEP initiating clean-up.
4. Post emergency situations where NJDEP has mitigated the emergency, that is, stabilized the situation to the point of eliminating the threat.
5. Small emergency situations, that are estimated to cost \$25,000 or less to mitigate.

**PROCEDURES FOR NJDEP REFERRAL/NOTIFICATION:**

1. NJDEP will continue to provide ERRD with weekly access, via telephone transmission to the NJDEP Emergency Response Notification data base.
2. NJDEP will notify ERRD at 732-548-8730\* of oil spills greater than 1000 gallons to navigable inland surface waters of the State of New Jersey.
3. NJDEP Regional supervisor may verbally request ERRD assistance through the below indicated ERRD supervisors. After the EPA OSC has conducted a preliminary assessment and determined removal eligibility, an ERRD supervisor will verbally notify NJDEP Regional supervisor of EPA's intended action.

	Business Hours (732-321-6656)	After hours (732-548-8730)*
Oil Discharges:	Douglas Kodama James Daloia Bruce Sprague	James Daloia Bruce Sprague
Hazardous Substances:	James Daloia Bruce Sprague	James Daloia Bruce Sprague

\*Denoted EPA, Region II-24 Hour Emergency Hotline Number

4. FAX informal request from NJDEP, that is hand annotated copy of NJDEP incident notification sheet, to the Chief, Response and Prevention Branch at FAX No. 732-321-4425. For business hour referrals that day and after-hour referrals the next business day.

5. Formal request from NJDEP will follow thereafter to the Director, Emergency and Remedial Response Division.
6. NJDEP will notify EERD of intent to file for Oil Spill Liability Trust Funds reimbursement to U.S. Coast Guard National Pollution Funds Center. NJDEP Response Duty Officer will notify the ERRD Standby Duty Officer (732-548-8730) that NJDEP will be initiating a removal action utilizing their spill fund for an oil discharge to surface waters and provide ERRD with the information contained in Attachment II prior to initiating the action. NJDEP will fax, Chief, Response and Prevention Branch a completed FOSC Notification Form to document this situation. For business hour situations that day and after-hour situations the next business day.
7. For potential filing OPA Trust Fund reimbursement claims regarding NJDEP oversight costs for responsible party oil spill clean-ups, NJDEP will provide to REPP the Monthly Notification of NJDEP Emergency Responses report.

This document represents a statement of our mutual intent to cooperate in the area of mitigating oil discharges to surface waters and hazardous substance release to the environment using State or Federal Funding.

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Robert Van Fossen, Assistant Director  
Discharge Response Element

Date

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Bruce Sprague, Chief  
Response and Prevention Branch

Date

## ATTACHMENT J

### **PROJECT PLANNING MEETINGS**

**PURPOSE:** In an effort to enhance and improve communication and coordination between Utah DERR and EPA the attached master agenda for project-specific planning meetings has been developed. This agenda identifies the major elements that should be considered during the planning stages of a major Superfund project. These meetings will provide a forum for Utah and EPA Region 8 representatives to discuss issues that are pertinent to project planning for individual projects, and ensure that both parties clearly understand their roles and expectations with respect to the various topics that will be covered in the meetings. It is expected that engaging in these discussions will improve communication between the agencies and minimize delays in accomplishing the goals for the projects.

**MEETING FORMAT:** Project managers and support personnel will engage in discussions regarding the agenda topics prior to the actual meeting and will present options during the meeting with a discussion of advantages and disadvantages of the various options. The presentation should include a brief written summary each agenda item. A preferred course of action will also be presented. It is expected that the discussions in these meetings will center on broad concepts and will not include exhaustive detail.

**PARTICIPANTS:** Attendees at the meetings will typically include project managers for the State and EPA, community relations representatives, enforcement personnel, specialized technical support staff and appropriate managers from each organization. It is expected that meetings will be held near the beginning of a project before a preferred course of action is implemented, when a decision document is initiated, and at the beginning of remedy design. Additional meetings may be necessary during the course of a project if major modifications of the plan become necessary or unanticipated controversies arise.

# PROJECT PLANNING MEETING AGENDA

REVISED 2/3/97

**OVERALL GOALS:** Identify the short term and long term goals for the project. Issues to consider may include; short term stabilization needs, access control, future land use (residential, commercial, industrial, etc.), groundwater, ARARs, cleanup standards, etc.

**OVERALL STRATEGY:** Present the strategy that is preferred by the team. Discuss the advantages and disadvantages of the various approaches that are available (traditional process, removal, combination, State program). The strategy should be revisited periodically and revised as appropriate.

**ACTIVITIES:** Discuss in general terms the technical activities that will be necessary in order to accomplish the goals. Investigation, contracting, design, construction, etc.

**ENFORCEMENT:** Discuss the enforcement strategy for the site; UAO, AOC, etc.

**COMMUNITY INVOLVEMENT:** Discuss community issues that will be important to ensuring success for the project. Include a discussion of Brownfields and TAG opportunities.

**ROLES AND RESPONSIBILITIES:** Identify who will be responsible for the various tasks and reach a common understanding of the expectations and responsibilities of each member of the team. Identify who will be accountable for what, to whom, and how often.

**SCHEDULE:** Review a general project schedule that integrates all major aspects of the project.

**COMMUNICATION:** Review points of contact and lines of communication for the project.

**OBSTACLES:** Anticipate and discuss potential obstacles, controversies and unresolved issues that may effect the project.