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Nebraska Department of Environmental Quality

**MEMORANDUM OF AGREEMENT
BETWEEN THE
NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY
AND REGION 7 OF THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

I. Purpose

A. The Nebraska Department of Environmental Quality (NDEQ) on behalf of the state of Nebraska (State) and Region 7 of the United States Environmental Protection Agency ("EPA" or "Region 7") (collectively "the Agencies") enter into this Memorandum of Agreement ("MOA" or "Agreement") to: (1) facilitate NDEQ's implementation of Nebraska's Voluntary Cleanup Program (VCP) under the authority of the Nebraska Remedial Action Plan Monitoring Act (Act), Neb. Rev. Stat. § 81-15,181 to 81-15,188; and implementing guidance documents issued by the NDEQ; (2) recognize the VCP for grant funding eligibility purposes pursuant to § 128(a) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, (CERCLA), 42 U.S.C. § 9601 *et seq.*; and (3) express how the Agencies generally intend to exercise their authorities under CERCLA and the Act in the State at sites addressed by the VCP.

B. Region 7 has reviewed and evaluated the VCP and has determined that the VCP includes each of the four elements of a state response program as described in CERCLA § 128(a)(2). NDEQ agrees to maintain all of these elements for the VCP. Generally, the four elements are:

1. Timely survey and inventory of brownfield sites in Nebraska;
2. Oversight and enforcement authorities or other mechanisms and resources adequate to ensure that a response action will protect human health and the environment and be conducted in accordance with applicable federal and state law, and that if the person conducting the response activities fails to complete the necessary response activities, including the operation and maintenance or long-term monitoring, the necessary response activities will be completed;
3. Mechanisms and resources to provide meaningful opportunities for public participation; and
4. Mechanisms for approval of every cleanup plan and a requirement for verification and certification or other similar documentation that the response is complete.

C. Region 7 has determined that the NDEQ maintains a public record of sites as described in CERCLA § 128(b)(1)(C). NDEQ agrees to maintain, update at least annually, and make available to the public a record of sites as required by CERCLA Section 128(b)(1)(C).



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D. Based upon such review described in Paragraph B above and further discussions, NDEQ and Region 7 have determined that entry of this MOA will facilitate the cleanup of sites addressed by the VCP in Nebraska. This MOA has been developed by mutual cooperation and consent.

II. Applicability of the MOA

A. Subject to Paragraph B of this Section and Section III, this MOA applies only to remediation of sites conducted (1) pursuant to the Act in effect as of the date of this Agreement; and (2) in compliance with the VCP and the terms of any agreement with NDEQ.

B. The VCP, pursuant to the Act, is applicable to any property in Nebraska. Notwithstanding a site's eligibility to participate in the VCP, Region 7 and NDEQ agree that this MOA shall not apply to:

1. sites that have been proposed in the *Federal Register* to be placed on the National Priorities List (NPL), unless EPA determines that no further federal action will be taken;

2. sites that have been placed on the NPL (however, such sites may become eligible if they are subsequently removed from the NPL and are not otherwise ineligible);

3. sites that are the subject of planned or ongoing federal or state enforcement actions concerning the contamination at the site or facility, or portion of the site or facility, that the applicant has proposed to address under the VCP, except where the action is limited to cost recovery only under CERCLA § 107(a);

4. sites where EPA conducts or has conducted a preliminary assessment or site inspection and, after consultation with NDEQ, determines or has determined that the site obtains a preliminary score sufficient for possible listing on the NPL; unless EPA determines that no further federal action will be taken;

5. sites at which Region 7 is conducting a removal action; and

6. sites that are subject to corrective action under a permit or order under the Resource Conservation Recovery Act, 42 U.S.C. § 6901 *et seq.*

III. Implementation

A. Region 7 and NDEQ intend to work in a coordinated manner to avoid, to the maximum extent possible, duplication of effort at sites, and to ensure that the remediation of sites continues in a timely fashion. NDEQ agrees to notify Region 7 in writing when sites are being addressed under the VCP and when sites in the Comprehensive Environmental Response, Compensation, and Liability Information

System (CERCLIS) are being addressed under the VCP. If a site listed in CERCLIS is being addressed under the VCP and is not excluded under Paragraph II.B. of this MOA, Region 7 generally intends to include information in CERCLIS to reflect that site's status. Once NDEQ determines that all remediation activities at the site are complete, Region 7 generally intends to archive from CERCLIS those sites remediated under the VCP and for which the NDEQ has approved the No Further Action Letter pursuant to Neb. Rev. Stat. § 81-15,186. At a minimum, Region 7 and NDEQ intend to discuss the status of sites annually, or more frequently as necessary.

B. CERCLA § 128(b) provides limitations regarding federal enforcement actions at "eligible response sites," as defined in CERCLA § 101(41), that are being addressed in compliance with a state program that (1) specifically governs response actions for the protection of public health and the environment, and (2) maintains and updates at least annually a public record pursuant to CERCLA § 128(b)(1)(C). These limitations operate as a matter of law and are subject to the exceptions listed in CERCLA § 128(b). Thus, to the extent CERCLA § 128(b) applies and subject to the exceptions therein, EPA does not plan or anticipate taking an administrative or judicial enforcement action under CERCLA § 106(a) or § 107(a) against a person regarding the specific release that is addressed by that person at an eligible response site in compliance with the VCP.

C. Generally, Region 7 does not plan or anticipate taking removal or remedial action under CERCLA, 42 U.S.C. § 9601 *et seq.* at a site which is addressed by this MOA and is not an "eligible response site," while (1) that site remains in compliance with the VCP and the terms of any agreement with NDEQ, or (2) when a site investigation or remediation has been completed in accordance with the VCP and NDEQ has issued a No Further Action Letter for the site. Circumstances under which EPA may take action under its authorities include but are not limited to:

1. The VCP participant fails or refuses to complete the necessary response action including but not limited to operation and maintenance or long-term monitoring, in a timely manner, and NDEQ is unable to ensure completion of response actions at the site;

2. Region 7 determines that the site may present an imminent and substantial endangerment to human health or the environment; or

3. Following issuance of the No Further Action Letter by NDEQ, Region 7 or NDEQ determines that conditions at the site (including but not limited to those previously unknown to NDEQ and Region 7, and those which result from a failure to maintain land use restrictions, institutional and/or engineering controls) indicate that the site is no longer protective of human health and the environment or suitable for the authorized or current use.

D. If a VCP participant does not complete the necessary response activities including but not limited to operation and maintenance or long-term monitoring approved

by the NDEQ, NDEQ shall ensure that necessary response activities, if such activities are authorized by State statutes administered by the NDEQ, are (1) taken to protect human health and the environment, and (2) completed in a timely manner.

E. The NDEQ will continue to demonstrate, through the reporting commitment of Section IV.C. of this MOA, that the VCP has adequate resources to ensure that voluntary response actions are conducted in an appropriate and timely manner, and that meaningful outreach efforts are made to the public.

F. The NDEQ will conduct periodic audits and inspections of voluntary response actions.

IV. Protectiveness

A. NDEQ will ensure that voluntary response activities conducted pursuant to the VCP protect human health and the environment and conform to all federal and State environmental standards and substantive requirements.

B. When necessary to ensure the protectiveness of a remedy where the VCP participant uses controls such as environmental easements, deed notices or other restrictive covenants affecting the site, NDEQ agrees that these controls shall be filed in the Register of Deeds of the county where the site is located, and with any State-wide registry.

C. In addition to complying with the public record requirements described in CERCLA § 128(b)(1)(C), NDEQ will provide or make available to Region 7 information regarding participants in the VCP that are addressed under this MOA. On an annual basis the NDEQ will report or make available to Region 7 the following:

1. Number, names, and types of sites participating in the VCP and the status of response actions at those sites;

2. Number, names, and types of sites applying for or entering the VCP in the previous three months; and

3. Names of sites that received No Further Action Letters from the NDEQ for full or partial remediation in the previous three months.

V. Modification

A. Region 7 and NDEQ plan to keep the other party informed of any relevant proposed modifications to its statutory or regulatory authority, forms, or procedures. This MOA shall be revised upon mutual agreement and as necessary by the adoption of such modifications. If the Act or its implementation is modified and no mutual agreement can be reached regarding modification of this MOA, this MOA shall terminate within 60 days of the effective date of the modifications to the Act. Region 7 and NDEQ

will review the MOA annually. If either Region 7 or NDEQ have concerns regarding implementation of the MOA, they will notify the other party of those concerns. In the event a mutual agreement cannot be reached to resolve the issue, following 60 days written notice, either party can terminate this MOA. A modification must be in writing and signed by the signatories or their designees to become effective.

VI. Reservations of Rights and Limitations

A. EPA and NDEQ reserve any and all rights or authority they respectively have including but not limited to legal, equitable, or administrative rights. This specifically includes EPA and NDEQ's authority to conduct, direct, oversee, and/or require environmental response in connection with any facility or site participating in the VCP, as well as cost recovery related thereto. Notwithstanding any other provision of this MOA to the contrary, nothing herein affects or limits EPA or NDEQ's authority or ability to take any enforcement action authorized by law. This MOA does not have any legally binding effect; does not in any way grant or otherwise create any rights, obligations, responsibilities, expectations, or benefits for any party; and does not in any way alter either EPA or NDEQ's authority under State or federal law.

B. Entry into this MOA makes NDEQ eligible for grant funding under CERCLA § 128(a)(1)(A)(ii). However, this MOA does not obligate federal funds. Any EPA funding decisions will be based on agency funding priorities specified in EPA's guidelines for the CERCLA 128 Brownfields State and Tribal Response Program grants. In addition, all activities EPA may undertake in furtherance of this MOA are subject to the availability of appropriated funds.

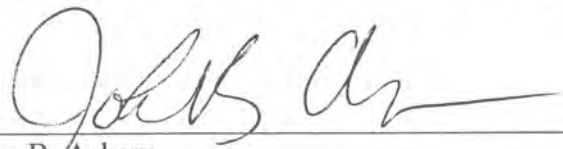
For the Nebraska Department of Environmental Quality:



Michael Linder, Director
Nebraska Department of Environmental Quality

Nov 9 2006
Date

For the U.S. Environmental Protection Agency, Region 7:



John B. Askew
Regional Administrator
U.S. Environmental Protection Agency, Region 7

Nov 22 2006
Date