

Superfund Memorandum of Agreement
Entered into by
Virginia Department of Environmental Quality
and U.S. Environmental Protection Agency,
Region III

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Attachment I – List of Virginia non-Federal Facility NPL Sites

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SUPERFUND MEMORANDUM OF AGREEMENT

The Commonwealth of Virginia and United States Environmental Protection Agency, Region III

I. INTRODUCTION – PURPOSE – PRINCIPLES

A. Introduction

This Superfund Memorandum of Agreement (SMOA) is entered into by the United States Environmental Protection Agency, Region III (EPA) and the Commonwealth of Virginia by the Department of Environmental Quality (DEQ) pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), as amended, and the National Oil and Hazardous Substances Pollution Contingency Plan (NCP).

The primary goals of the SMOA are to: (1) provide maximum flexibility to EPA and DEQ in planning and implementing response actions at Superfund sites; (2) ensure an EPA/DEQ partnership during response; and (3) clarify EPA and DEQ expectations. The SMOA sets forth broad understandings that may be used to develop site-specific cooperative agreements and Superfund State contracts.

B. Purpose

The SMOA will establish the nature and extent of EPA and State interaction during EPA-lead and State-lead response. The purpose of the SMOA is to delineate the respective roles and responsibilities of each Party as they relate to the conduct of the Superfund program. Specifically, the purposes of the SMOA are to:

1. Define the roles and responsibilities of the lead agency for remedial response. The SMOA will further describe the roles and responsibilities of the support agency.
2. Describe the nature of lead and support agency interaction. Site-specific interaction will be established in cooperative agreements. Such agreements should be consistent with the general nature of interaction established in this SMOA.
3. Describe the general requirement for oversight of work performed pursuant to this agreement. The requirements may be more specifically described in cooperative agreements.
4. Describe the nature of lead and support agency interaction regarding the review of key documents and decision points.
5. Ensure that response activities are conducted at sites so as to be consistent with CERCLA, the NCP and applicable State laws and regulations.

C. Principles

1. The lead agency has primary responsibility for conducting response actions at sites for which it is designated as lead. At present, EPA is the lead-agency for all non-Federal Facility NPL sites in Virginia. A listing of the current non-Federal facility NPL sites is included as Attachment I.
2. The support agency's primary role is to evaluate and comment on lead agency recommendations/documents during the remedial process as set forth in Attachment II, as well as supply the necessary support to the lead agency so that the purposes of this SMOA will be effectively achieved.
3. Close cooperation and communication between the EPA and the DEQ is necessary to avoid conflicts and duplication of effort. Both parties are responsible for keeping each other informed of all important actions pertaining to any site.
4. The parties will review this SMOA jointly at least once every five years from the date of execution. This SMOA may be modified if EPA and DEQ agree that the lead and support agency roles and responsibilities have changed, or if modifications are required to achieve the desired goals. All modifications must be mutually agreed upon, and in writing.
5. Enforcement, including vigorous Potentially Responsible Party (PRP) search activities, is an essential component of successful EPA and State response at Superfund sites.
6. Nothing in this SMOA will be construed to restrict in any way, EPA's authority to fulfill its responsibilities under CERCLA, as amended, or the NCP.
7. Nothing in this SMOA will be construed to restrict in any way, the Commonwealth's authority to fulfill its responsibilities under its State authorities.

II. **AGREEMENT**

NOW, THEREFORE, IT IS AGREED THAT:

A. **Initial Activities**

1. Lead State Agency Designation

The NCP provides "that a State Agency that acts pursuant to a cooperative agreement [with EPA under the authority of Section 104 (e) of CERCLA/SARA] is referred to as lead agency." This document identifies the lead and support Agency for each Superfund site in the Commonwealth of Virginia, and establishes the roles of EPA and DEQ.

2. Site Specific Designation of Lead/Support Agency

The EPA, through the appropriate EPA Branch Chief, and the Commonwealth of Virginia, Department of Environmental Quality, through the appropriate Office Director, will ensure that the lead and support agency designations are made as soon as possible during pre-remedial activities when it is determined that the site in question has a high potential for listing on the NPL. The agency identifying potential for site inclusion on the NPL will initiate the lead and support agency designation process.

3. Lead Agency Responsibilities

The lead agency has primary responsibility for coordinating response actions at sites for which it is designated as lead. The lead agency will designate the Remedial Project Manager (RPM). The lead agency will work in close cooperation and communication with the support agency to resolve conflict throughout the remedial process. The lead agency shall be determined in accordance with Paragraph II.A.2 for the following actions:

- a. Pre-remedial response actions, including pre-remedial preliminary assessments and pre-remedial site inspections;
- b. Remedial Response, including remedial investigation/feasibility studies, identification of potential applicable or relevant and appropriate requirements (ARARs) under Federal and State laws and other criteria, guidance and advisories to be considered (TBCs) to be incorporated into the proposed plan, ROD or other decision document, remedial design, remedial action, and operation and maintenance;
- c. Enforcement actions, including potentially responsible party (PRP) searches, notice to PRPs, information requests, PRP negotiations, administrative and judicial enforcement actions and oversight of PRP-conducted work;
- d. Compilation and maintenance of the Administrative Record for selection of a response action; and
- e. Related site support activities.

4. Support Agency Responsibilities

The support agency's primary responsibilities include evaluating and commenting on the lead agency recommendations/documents during the CERCLA remedial process, providing necessary data to the lead agency, and reviewing documents. The support agency will work

in close cooperation and communication with the lead agency to resolve conflict throughout the CERCLA remedial process. The support agency will designate a Project Manager (PM), and will also be responsible for the identification of applicable or relevant and appropriate requirements (ARARs) under Federal and State laws and other criteria, guidance and advisories to be considered for incorporation into the lead agency's decision-making.

5. RPM/PM Designation

The lead agency will designate a RPM, and the support agency will designate a PM. The agency identifying the potential for site inclusion on the NPL will initiate the RPM/PM designation process.

B. Superfund Process Activities

1. Removal Process

EPA and the State respond to a wide range of oil spills and releases (or threat of releases) of hazardous substances, pollutants or contaminants. Coordination will occur between the EPA On-Scene Coordinator (OSC) and his/her State counterpart within DEQ's appropriate regional office's program or DEQ's Site Assessment Program Manager (SAPM). If a site meets the requirements of the NCP, and a federal removal action is deemed necessary, the OSC and State counterpart will notify their respective management and continue coordination as necessary.

EPA and DEQ's Director of Remediation Programs will work in close cooperation and communication regarding long term post removal site control activities and to the extent feasible, these activities will be discussed prior to the initiation of such actions.

2. Pre-Remedial Process

- a. EPA and DEQ will work in close cooperation and communication to effectively coordinate pre-remedial activities. The EPA Region III Site Assessment Manager (SAM) and DEQ Site Assessment Program Manager (SAPM) will perform day-to-day pre-remedial activities and will continue to collaboratively develop a list of "work share" sites.
- b. EPA will provide access to copies of all final reports, e.g., PAs, SIs, and ESIs, to the DEQ SAPM and provide the opportunity to discuss options with the DEQ SAPM (including those sites EPA is considering for proposal to the NPL) for future site management and oversight before making a final decision regarding next steps associated with these milestones.

- c. If EPA determines that the preliminary HRS score is sufficient to consider NPL listing, EPA will consult with DEQ prior to proceeding with NPL listing. Such discussion will include evaluating the appropriateness of other clean-up options for the site, such as a Remediation Consent Order pursuant to the Voluntary Remediation Program Memorandum of Agreement dated March 1, 2017 and/or other options. EPA will provide relevant information to DEQ to allow it to evaluate alternative clean-up options.

3. NPL Listing

The State will be involved throughout the 30-day review and comment period on PA/SI and draft and final HRS scoring packages prior to site proposal. This procedure allows for the State to develop a preference for assuming the lead for a particular site or sites. For purposes of this process, the lead agency will be determined in accordance with the terms of Paragraph II.A.2

4. Remedial Process

EPA has primary responsibility for coordinating response actions at NPL sites. EPA will work in close cooperation and communication with DEQ to resolve conflict throughout the remedial process.

DEQ's primary responsibilities include evaluating and commenting on the recommendations/documents generated during the CERCLA remedial process, providing necessary data to the EPA RPM and reviewing documents in accordance with the timeframes established in Attachment II. EPA will fully consider the comments provided by DEQ on these recommendations/documents. DEQ will work in close cooperation and communication with the EPA to resolve conflict throughout the CERCLA remedial process. DEQ will designate a Project Manager (PM) and will also be responsible for the identification of applicable or relevant and appropriate requirements (ARARS) under federal and state laws and other criteria, guidance and advisories to be considered for incorporation into the EPA's decision making.

- a. Remedial Investigation/Feasibility Study Process

EPA and DEQ will work in close cooperation and communication to effectively coordinate Remedial Investigation/Feasibility (RI/FS) activities. The RPM will provide the PM all documents for review and comment to ensure complete characterization of the site throughout the RI/FS process. The RPM will ensure that the PM has the opportunity to provide input into the RI/FS to ensure the

appropriate remedial alternatives are evaluated in the feasibility study. Any unresolved issues may be elevated as set forth in Section G of this document.

b. ARARs/TBC Process

- i. The lead agency will identify its own ARARs and TBCs. The lead agency will give the support agency adequate information pertaining to the site and will provide the concentration of hazardous substances, pollutants or contaminants that will aid the support agency in identifying its ARARs and TBCs. The lead agency will further provide the remedial alternatives being considered.
- ii. The support agency will identify its own ARARs and TBCs on a site-specific basis. At a minimum, the lead and support agencies will discuss potential ARARs during the scoping of the RI/FS. The lead agency will request potential contaminant and location-specific ARARs from the support agency to support preliminary remedial alternative development. The support agency will communicate those requested potential ARARs to the lead agency with thirty (30) days of receipt of the written request. The lead agency will consult with the support agency during the remedial design to ensure that identified ARARs will continue to ensure protectiveness. Any unresolved issues may be elevated as set forth in Section G of this document.

c. Proposed Plan

At the conclusion of the feasibility study (FS) the lead agency will provide a draft copy of the Proposed Plan for review and comment to the support agency. The lead agency will consider the support agency's comments on the draft Proposed Plan and provide an opportunity to discuss major support agency comments. Disagreement over the draft Proposed Plan will be resolved in accordance with Section G of this document.

d. Record of Decision or Other Decision Document

The lead agency will provide the support agency a copy of the draft ROD or other decision document for review and comment prior to issuance. The lead agency will consider the support agency's comments on the draft ROD or other decision documents and provide an opportunity to discuss the support agency's comments. The lead agency will collaborate with the support agency as to the substantive content of the draft document. All documents will be consistent with CERCLA as amended, the NCP and relevant policy and guidance.

e. Superfund State Contract

i) EPA will draft the Superfund State Contract (SSC) for fund-lead Remedial Actions in consultation with DEQ as early in the Remedial Design process as possible in order to accommodate the State's budgetary process. The SSC ensures the State's involvement is consistent with CERCLA

sections 121(f) and 126, respectively, and obtains the required CERCLA section 104(a) assurances from the State.

ii) The NCP at 40 CFR 300.510(c)(1) provides that the State and EPA should consult on a plan for operation and maintenance (O&M) before the remedial design begins. The O&M plan is a document used in fund-lead actions. DEQ considers the O&M plan to be a key document in order for the State to begin planning and evaluating its future O&M commitments. EPA will provide DEQ with a copy of the draft O&M plan for review and comment as early in the process as feasible, prior to the execution of the SSC.

f. Remedial Design Process

The support agency will be given adequate opportunity for meaningful participation in technical design briefings for remedial design initiation with the lead agency. The support agency will also be afforded the opportunity to review design workplans, subsequent design submissions (e.g., 30%, 60% and 90%) and final design documents. The support agency will be afforded the opportunity to assist in reviewing future design changes which may affect the remedy.

The lead agency will provide access to plans for operation and maintenance for the support agency's review and comments. The lead and support agencies will collaborate towards consensus on the final remedial design. Disagreements may be elevated as set forth in Section G of this document.

C. Enforcement Actions

In general, the parties agree as a matter of policy that qualified Responsible Parties (RPs) should be afforded the opportunity and/or be required to undertake NPL site response actions in the first instance and that the use of public funds to undertake response actions should be secondary to securing RP commitments to conduct site cleanups.

1. Response action commitment/settlements will be set forth in enforceable documents, e.g. an administrative order, a unilateral order or consent decree.
2. Enforcement actions taken in response to noncompliance with enforcement documents will be timely and pursued to resolution in accordance with applicable State or Federal laws, applicable policies, and the terms of the particular enforcement documents.
3. The lead agency will be responsible for all Superfund communications with potentially responsible parties (PRPs), including, but not limited to PRP searches, notices to PRPs, responses to PRP information requests and PRP negotiations. No support agency

communication on Superfund issues with PRPs will take place without prior notice to the lead agency.

4. The lead agency will provide a copy of final enforcement documents to the support agency.
5. Prior to negotiations with PRPs, the lead agency, upon request, will contact the support agency to discuss goals, opening positions and strategies for moving forward.
6. The lead agency may request assistance from the support agency at any time during the enforcement/negotiation process. The support agency will provide the requested assistance to the maximum extent practicable.
7. The parties acknowledge that this Section does not establish procedures for DEQ in the exercise of its enforcement authority at non-NPL sites, and that such activities are not reviewable by EPA. However, in the event that EPA and DEQ are each pursuing an enforcement action at such a site, the cooperation and information sharing provisions of this Section shall still apply.
8. In the event of a disagreement between the Parties in regard to the application or interpretation of State law and, notwithstanding any provision of this SMOA, the State expressly reserves its access authorities and rights, and does not waive its rights to enforce and interpret State law.

D. Administrative Record

1. The lead agency will compile and maintain the administrative record upon which selection of the remedial action is based in accordance with EPA policy and procedures.
2. The lead agency will supply electronic access to the documents included in the Administrative Record to the support agency.

E. Program Coordination

EPA and DEQ intend that on-going Superfund program communication be accomplished in accordance with the following procedures:

- a. Program representatives from the lead agency and support agency will continue to meet as needed to exchange information and project status to keep the projects moving forward.
- b. EPA and DEQ will work in close cooperation and communication to effectively coordinate Superfund activities.

- c. Each party is responsible for providing to the other access to copies of all non-site specific guidance, policies, regulations and laws relevant to Superfund activities.

F. Community Relations


The EPA and DEQ will coordinate community outreach activities and will endeavor to speak from a unified position in dealing with the public.

1. A wide variety of agencies and groups, including cities, counties, affected citizens, nearby property owners, environmental groups, governmental officials and the media will, to the extent practical, be given meaningful opportunities for involvement in the decision-making process during the investigation and cleanup of a site. The lead agency, with assistance of the support agency, will be responsible for collaboration, preparation, and implementation of a community relations plan in accordance with CERCLA and the NCP.
2. Preparation of press releases and contacts with the media are the lead agency's responsibility. The lead agency's RPM/Community Involvement Coordinator will endeavor to keep the support agency informed of such releases and contacts to the greatest extent possible. Press releases will acknowledge the support agency's role whenever appropriate.
3. The lead agency will normally chair all public meetings. Where practicable, unless the RPM and PM agree otherwise, the support agency will attend and provide support as needed during public meetings.

G. Resolution of Disputes

In the event of disputes between EPA and DEQ concerning the implementation of any procedures specified in this SMOA or any site specific response action dispute, the Parties' designated RPM/PM will attempt to resolve such disputes promptly. If disputes cannot be resolved at this level, the problem will be referred to the supervisors of these persons for further EPA/State consultation. This supervisory referral and resolution process will continue, if necessary, to the level of the Director of the Virginia Department of Environmental Quality and the Regional Administrator for EPA Region III who will attempt to arbitrate the dispute. In the event of an impasse, the EPA Regional Administrator shall resolve the dispute.

For the Virginia Department of Environmental Quality

 _____ 6/2/2017

David K. Paylor
Director
Virginia Department of Environmental Quality

Date

For the Environmental Protection Agency

 _____ 5/21/2017

Cecil Rodrigues
Acting Regional Administrator
U.S. EPA Region 3

Date

Attachment I

Virginia non-Federal Facility NPL Sites

EPA -lead

Abex Corporation

Arrowhead Associates

Atlantic Wood Industries

Avtex Fibers

Buckingham County Landfill

C&R Battery Company

Chisman Creek

Culpeper Wood Preservers

First Piedmont Rock Quarry

Greenwood Chemical Company

H&H Burn Pit

Hidden Lane Landfill

Kim Stan Landfill

L.A. Clarke and Son

Peck Iron & Metal

Rentokil

Saltville Waste Disposal Ponds

Saunders Supply Co.

US Titanium

Attachment II
Coordination/Document Review

Item Reviewed	Type of Review/Oversight Activity	Turnaround Timeframe (Upon Receipt)*
1. PA Reports	Review/Comments	30 days
2. SI Reports	Review/Comments	30 days
3. Draft RI/FS workplans	Review/Comments	30 days
4. ARARs Identification	Submit for Identification	30 working days
5. Draft alternatives development and screening	Review/ Comments	30 days
6. Draft Treatability Reports (additional site characterization information and bench pilot studies)	Review/Comments	30 days
7. Final Treatability Study Reports	Review/Comments	30 days
8. Draft RI/FS Reports (including detailed analysis of alternatives)	Review/Comments	30 days
9. Final RI/FS Reports	Review/Comments	30 days
10. Draft Proposed Plan	Review/Comments	30 days
11. Draft Records of Decisions (RODs)	Review/Comments	30 days
12. Final RODs	Submit for information and file maintenance	N/A
13. Design Plans	Review/Comments	30 days
14. Treatability Studies	Review/Comments	30 days
15. Notice of intent to delete	Review/Comments	30 days
16. Draft Superfund State Contracts	Review/Comments	30 days
17. Draft Five-Year Reviews	Review/Comments	30 days

*Or other review time as agreed to by the EPA RPM and the DEQ PM