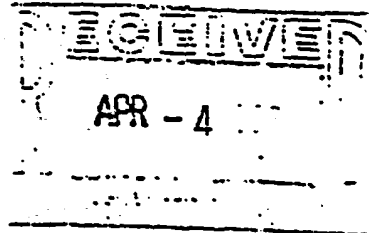


ADMINISTRATIVE
RECORD



040013



Duane Woodard
Attorney General
Charles E. Howe
Chief Deputy Attorney General
Richard H. Forman
Solicitor General

The State of Colorado

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL

CERCLA LITIGATION SECTION
ONE CIVIC CENTER PLAZA
1560 Broadway, Suite 250
Denver, Colorado 80202
PH: (303) 866-4343 & 866-4344

April 2, 1986

371914

SF FILE NUMBER

1003

Thomas A. Speicher
Regional Counsel
United States Environmental
Protection Agency
Region VIII
One Denver Place
999 - 18th Street, Suite 1300
Denver, CO 80202-2413

Re: Memorandum of Agreement for the Lincoln Park and Uravan
CERCLA Sites

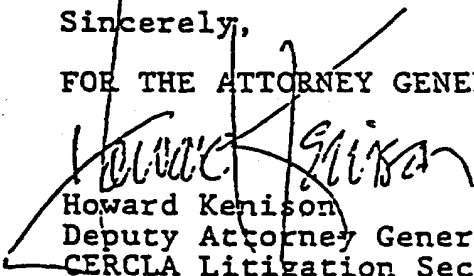
Dear Mr. Speicher:

Enclosed please find a copy of the Memorandum of Agree-
ment for the Lincoln Park and Uravan CERCLA sites fully
executed by the State of Colorado.

The attorneys and legal assistants in my section look
forward to working with the Environmental Protection Agency
on all of the Agreements - Eagle, Uravan, and Cotter. In
that regard, please advise me and Mr. Looby of the Health
Department of the appropriate contact points in your office,
both technical and legal, for our respective staffs.

Sincerely,

FOR THE ATTORNEY GENERAL


Howard Kenison
Deputy Attorney General
CERCLA Litigation Section

HK/rw

enclosure

pc: Robert Duprey
Thomas Looby

MEMORANDUM OF AGREEMENT

This Memorandum of Agreement ("Agreement") is entered into between the United States Environmental Protection Agency ("EPA") and the State of Colorado (the "State"). This Agreement establishes the roles and responsibilities of EPA and the State (the "Parties") with regard to the Lincoln Park Site, a National Priorities List ("NPL") site under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), and the Uravan site, a proposed NPL site under CERCLA.

BACKGROUND

On December 9, 1983, the State filed seven lawsuits seeking recovery for damages to natural resources within the State pursuant to Section 107 of CERCLA. This Agreement concerns two of those cases presently pending before the United States District Court for the District of Colorado:

- A. Colorado v. Cotter Corporation, et al., Civil Action No. 83-C-2389 (Lincoln Park); and
- B. Colorado v. Union Carbide Corporation, Civil Action No. 83-C-2384 (Uravan Uranium Mill).

The Colorado Attorney General filed these lawsuits pursuant to Executive Order No. D 0038 83 on behalf of the People of the State of Colorado. The State filed amended complaints in these lawsuits on April 8, 1985, seeking inter alia, recovery of response costs incurred or to be incurred by the State and monetary damages for injuries to natural resources within the State caused by the releases of hazardous wastes and substances into the environment.

EPA listed the Lincoln Park site on the NPL on September 21, 1984. 49 Fed. Reg. 37,070 (1984). The Uravan site was proposed for inclusion on the NPL in the October 15, 1984, NPL update. 49 Fed. Reg. 40,320 (1984). EPA presently is conducting a remedial investigation at the Lincoln Park site in a manner not inconsistent with the requirements of the National Contingency Plan, 40 C.F.R. Part 300 (the "NCP").

SCOPE

This Agreement is limited to the Lincoln Park NPL site and the Uravan proposed NPL site (the "Sites"), and is not intended to address any other hazardous waste sites within the State.

DEFINITIONS

All terms within the Agreement have the meaning set out in CERCLA or the NCP unless otherwise specified. For purposes of this Agreement, all references to the NCP are to the NCP in effect on the date of any activity undertaken pursuant to this Agreement.

PURPOSE

The purposes of this Agreement are to:

- A. Clarify the EPA/State relationship with respect to enforcement activities at the Sites;
- B. Establish procedures for coordination and communication between the Parties;
- C. Assure that any response actions at the Sites are not inconsistent with the NCP;
- D. Assure that NCP processes for determining the appropriate remedy at the Sites are followed;
- E. Provide a mechanism for review of technical documents associated with the development and implementation of appropriate response actions at these Sites;
- F. Establish procedures pursuant to CERCLA for close cooperation and consultation between the Parties in planning and carrying out activities at these Sites in order to make optimal use of the Parties' resources and to avoid possible conflicts and duplication of effort;
- G. Provide technical assistance to the State;
- H. Achieve remedies at these sites which are not inconsistent with the NCP;
- I. Provide for the exchange of technical information, reports, studies, or other pertinent materials regarding the Sites between the Parties; and
- J. Establish a process for discussion and resolution of policy and technical issues that may arise between EPA and the State regarding the Sites.

BASIS OF AGREEMENT

EPA has the authority under CERCLA to respond to releases or threatened releases of hazardous substances, pollutants or contaminants. By this Agreement, EPA is not relinquishing its authority or responsibility over the Sites to the State, nor is the State by this Agreement relinquishing any authority under State law or CERCLA which the State may have with respect to the Sites.

EPA and the State, in recognition of ongoing and planned response actions at the Sites, and with the mutual goal of protection of the public health, welfare and the environment, desire to enter into this Agreement to delineate their roles and responsibilities with respect to the Sites.

AGREEMENT

NOW, THEREFORE, IT IS AGREED THAT:

1. Lead Agency

The State is acting as lead agency at the Sites. EPA recognizes that the State will perform the functions for lead agencies specified in the NCP at these Sites.

2. Selection of Remedy

The State shall develop and select a remedy for each of the Sites in a manner not inconsistent with the NCP and in accordance with the requirements of CERCLA. The State agrees to consult with EPA in the development and selection of the remedy.

3. Development of Response

The State shall comply with the requirements of CERCLA in the development and implementation of response actions or remedies at the Sites, including, but not limited to, the following:

- A. Preparation of a remedial investigation/feasibility study ("RI/FS") not inconsistent with the NCP to determine the nature and extent of the threat presented by releases or threatened releases and to evaluate alternative remedies. The State agrees to consult with EPA on the RI/FS.
- B. Preparation of an endangerment assessment not inconsistent with the NCP to determine the magnitude and probability of actual or potential harm to public health, welfare or the environment by the threatened or actual release of hazardous substances, pollutants or contaminants. The State agrees to consult with EPA on the endangerment assessment.
- C. Development and implementation of a community relations plan not inconsistent with the NCP. The State agrees to consult with EPA on community relations activities.
- D. Preparation of a record of decision document not inconsistent with the NCP for any remedial action proposed for the Sites. The record of decision shall document the State's decision-making process and demonstrate that the requirements of CERCLA have been met, and that the State has acted in a manner not inconsistent with the NCP. The State agrees to consult with EPA on the record of decision document.

4. Consultation and Review

The State shall consult with EPA in the preparation of any studies, reports, plans, documents or recommendations called for by this Agreement. EPA shall provide technical support, to the extent practicable, to the State

for the development of these documents. The State agrees to submit to EPA for review plans, reports, studies, or recommendations developed pursuant to this Agreement with as much lead time as possible. EPA agrees to consult with the State during EPA's review of such documents. Following consultation with the State, EPA agrees to provide its comments to the State as expeditiously as possible. EPA may at its own discretion release such comments to the public.

5. Implementation of Remedy

For each of the Sites, the State shall pursue and ensure implementation of a remedy that is not inconsistent with the NCP, and that is at least as protective of public health, welfare and the environment as a cost-effective remedy (as the term is defined in the NCP). The State agrees to evaluate and pursue remedies that meet or exceed the requirements of applicable and relevant or appropriate Federal, State and local environmental requirements. The State shall consult with EPA regarding any response measures proposed by the State.

The State and EPA shall collect and maintain all documentation necessary to support actions taken under this Agreement, including all documentation necessary for cost recovery actions, and shall make such documentation available to each other except where disclosure is prohibited by law, or it is necessary to protect a privilege in any litigation.

6. Exchange of Information

Except where the disclosure is prohibited by law, or where necessary to protect a privilege in any ongoing or potential litigation, the Parties agree, upon request, to exchange all data, analyses, summaries, reports, studies, documents, or other pertinent information, materials or evaluations ("records") received or prepared by the Parties or their contractors with regard to the Sites. The Parties shall inform each other of the availability of such records and exchange such records as expeditiously as possible.

In the event that records are exchanged which are privileged or exempt from mandatory disclosure under applicable Federal or State law, the Parties agree that such records are being exchanged under a discretionary release to further: 1) the purposes of this Agreement; 2) the decision making processes called for under this Agreement; and 3) the common interest of the Parties in the protection of the public health, welfare and environment at these Sites. The Parties will take all steps necessary to ensure that such information is kept confidential, and will return all such records to the originating party upon the conclusion of actual or prospective enforcement actions related to the Sites. Both Parties agree to protect each other's claims for confidentiality and exemptions to public release requirements of such information to the maximum extent practicable, particularly with regard to records related to potential or ongoing enforcement actions. By entering into this Agreement, neither party intends to waive any privileges or claims for exemptions from record release requirements which it may assert against third parties.

The State and EPA will consult prior to the release of any records generated by the other Party to a third party, and will not release such records without the other Party's consent, except as required by law.

The State agrees to provide EPA with copies of all public documents filed with the federal District Court for the District of Colorado in the aforementioned litigation regarding these Sites, as soon as practicable after filing.

7. Periodic Review

Representatives of the Parties will meet periodically at the request of either Party, but at least every other month, to review activities undertaken pursuant to this Agreement. The representatives will coordinate the involvement of the Parties in the implementation of this Agreement, subject to approval of each of the Parties. Views of the representatives will not constitute obligations of the Parties unless approved in writing by each of the Parties or their designees. The meetings are intended to:

- A. Promote an exchange of information concerning the Sites between the Parties, and establish procedures for exchanging information;
- B. Promote consultation between the Parties concerning the development and formulation of appropriate response actions pertaining to releases of hazardous substances or pollutants and contaminants at the Sites;
- C. Exchange information on the status of efforts of the State to implement and pursue appropriate response actions which are not inconsistent with the NCP;
- D. Provide guidance to the State on current, pertinent EPA guidance, regulations, and applicable and relevant laws;
- E. Provide guidance on any issues relating to appropriate quality assurance and quality control procedures, sampling methodologies, analytical techniques, monitoring well construction, or other technical matters pertaining to the conduct of the RI/FS and/or endangerment assessment;
- F. Provide technical assistance or refer subjects for consideration to technical experts and review such experts' recommendations;
- G. Provide a forum for discussion of plans and studies developed under this Agreement, for comment on the status and efficacy of this Agreement, and for discussion of issues arising out of this Agreement;
- I. Provide for coordination with other local, State, and federal agencies as necessary; and
- J. Provide updates on the status of litigation regarding the Sites.

Additionally, upon request of either Party, the Parties agree to discuss and attempt to resolve technical and policy matters which may arise regarding

response actions at the Sites. Such discussions may be part of, or in addition to, the bi-monthly meetings discussed in this section.

8. Settlement and Negotiations

The State and EPA shall consult regarding the terms of any proposed settlements regarding the Sites. To the maximum extent practicable, the State shall provide EPA with an opportunity to review settlement documents proposed for or generated as a result of any settlement meetings. Any discussions between EPA and the State regarding a proposed settlement of these cases shall be privileged and confidential.

9. Modification of Agreement

In the event of any change in the law or regulations upon which the terms and conditions of this Agreement are based, or any other circumstance necessitating a modification to this Agreement, any Party may request an appropriate modification of this Agreement, and if approved by both parties, the Parties may make such written modifications as are appropriate.

10. Liability

Nothing contained in this Agreement shall be construed to create, either expressly or by implication, the relationship of agency between EPA and the State. Any standards, procedures or protocols prescribed in this Agreement to be followed by the State during the performance of its obligations under this Agreement are for assurance of the quality of the final product of the actions contemplated by the Agreement, and do not constitute a right to control the actions of the State. EPA (including its employees and contractors) is not authorized to represent or act on behalf of the State in any matter relating to the subject matter of the Agreement, and the State (including its employees and contractors) is not authorized to represent or act on behalf of EPA in any matter related to the subject matter of this Agreement. Neither EPA nor the State shall be liable for the contracts, acts, errors or omissions of the agents, employees or contractors of the other party entered into, committed or performed with respect to or in the performance of this Agreement.

This Agreement shall not in any way release any persons or entities from liability with respect to the Sites, nor affect recovery of costs against such persons or entities.

11. Reservation of Rights

This Agreement does not constitute a waiver of EPA's right to take any actions against any persons under Sections 104, 106 or 107 of CERCLA or any other statutory provision or common law, or to intervene or participate as an amicus curiae in the State's litigation regarding these Sites. EPA reserves the right to take any civil or administrative actions necessary under CERCLA or

other statutory provisions to recover response costs which it has incurred or will incur at the Sites.

Any removal activities conducted pursuant to the NCP shall not be restricted by the terms of this Agreement. EPA reserves the right to conduct appropriate removal actions at the Sites, and to pursue available civil, criminal and administrative remedies against responsible parties for such removal actions. EPA agrees to consult with the State prior to conducting such removal actions.

Nothing in this Agreement shall prevent EPA or the State from discharging its respective duty to protect public health, welfare or the environment.

12. Deletion from NPL

Notwithstanding this Agreement, EPA retains its rights and responsibilities under CERCLA, the NCP, and applicable guidance to determine whether deletion of the Sites from the NPL is appropriate upon completion of response activity at the Sites, and to delete or retain the Sites on the NPL.

13. Duration of Agreement

The Parties agree to adhere to the terms of this Agreement so long as it remains in effect. This Agreement will terminate upon implementation of final remedies at the Sites which are not inconsistent with the NCP or upon withdrawal of either Party from this Agreement. Either party may withdraw from this Agreement if the other fails to comply with the terms of this Agreement, or for other cause, by giving written notice to the other Party.

14. Funding

The Parties acknowledge that the State is not now requesting EPA to provide to the State any monies from the Hazardous Substance Response Fund established by section 221 of CERCLA to support the State's activities hereunder, and the State is currently funding such activities. Nothing in this Agreement shall be construed to limit or foreclose the State's ability to request, or EPA's ability or authority to provide, pursuant to Section 104(d) of CERCLA, or refuse to provide, such monies in the future for any or all of the Sites. Notwithstanding this Agreement, EPA may refuse to reimburse the State for response costs incurred by the State with respect to the Sites. This Agreement does not constitute preauthorization under Sections 111 or 112 of CERCLA.

15. Effective Date

This Agreement shall become effective upon execution by both Parties.

Executed by the parties:

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

3/26/86
Date

BY: *J. Welles*
John G. Welles, Regional Administrator
EPA Region VIII

April 2, 1986
Date

STATE OF COLORADO
BY: *Robert C. Parnell*
for Thomas M. Vernon, M.D.
Executive Director
Colorado Department of Health

Date

BY: *Duane Woodard*
Duane Woodard, Attorney General
State of Colorado