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SUPERFUND MEMORANDUM OF AGREEMENT BETWEEN THE DELAWARE DEPARTMENT OF NATURAL RESOURCES & ENVIRONMENTAL CONTROL AND THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION III CONCERNING DELAWARE'S VOLUNTARY CLEANUP PROGRAM

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I. PURPOSE

A. The Delaware Department of Natural Resources and Environmental Control ("DNREC") and the United States Environmental Protection Agency, Region III ("Region III") enter into this Memorandum of Agreement ("Agreement") to define the roles and responsibilities of Region III and the DNREC with respect to activities related to Delaware's Voluntary Cleanup Program conducted under the authority of the Delaware Hazardous Substance Cleanup Act ("HSCA"), Title 7, Chapter 91 of the Delaware Code (7 Del. C. 91) and to promote the cleanup and re-utilization of contaminated properties.

B. Region III and DNREC believe the revitalization of existing contaminated, or potentially contaminated, properties, including "Brownfields", will provide a significant benefit to both the environment and the economy of impacted local communities.

C. To the extent possible, Region III and DNREC seek to facilitate the productive reuse of industrial and commercial properties by preventing and eliminating unnecessary impediments to the investigation, cleanup, financing, transfer and appropriate redevelopment and re-use of these properties, and thereby helping to minimize the development of green space or pristine open space, to maximize the utilization of existing infrastructure, and to prevent the creation of newly contaminated properties.

II. BACKGROUND

A. Region III and DNREC enter into this initiative to protect the public health and the environment of those communities impacted by the release of hazardous substances at sites, including Brownfields, as well as to provide the opportunity for a benefit to those communities. Both agencies recognize that a key factor to meet these goals is to exercise their authorities and use their resources to assure appropriate site response actions in ways that are mutually complementary and are not duplicated.

B. Since July 1990, DNREC has been addressing sites with releases of hazardous substances under the Delaware Hazardous Substance Cleanup Act ("HSCA"), 7 Del. C. 91. HSCA gives DNREC the authority to require potentially responsible parties to investigate and remediate sites with releases of hazardous substances. In July 1995, DNREC began implementation of the Voluntary Cleanup Program through the HSCA amendments which enable

parties who initiate required cleanup of a site to obtain DNREC oversight and a Certificate of Completion of Remedy or a no further action letter under HSCA.

C. Region III recognizes that Delaware, through the implementation of HSCA, has been a leader in developing and implementing successful strategies to help promote the investigation and cleanup of potentially contaminated properties.

D. Therefore, Region III and DNREC seek to protect human health and the environment by encouraging the investigation and cleanup of properties in Delaware under the authority of HSCA, by implementing the following strategic goals:

1. Encouraging or requiring, as appropriate, the investigation and clean up of sites with releases of hazardous substances under the HSCA program.

2. Promoting appropriate investigations and cleanups by parties, including prospective purchasers and developers, in the HSCA-amended programs;

3. Developing partnerships among Region III, DNREC, other state and local governmental agencies, and other key stakeholders in Delaware, including representatives from citizen, community groups and the private sector; and

4. Providing necessary information to the key stakeholders in Delaware to allow for informed decision-making by property owners, prospective purchasers, lenders, public and private developers, citizens, communities, municipalities, counties and elected officials.

E. In order to accomplish these goals, Region III intends to assist and support DNREC in further developing and expanding the appropriate use of private-party initiated HSCA cleanups. Similarly, DNREC intends to assist and support efforts to promote and implement Region III's "Brownfields" initiatives. DNREC recognizes Region III as a key partner in the ongoing success of state cleanup programs, including HSCA, and the role of Region III in addressing the uncertainty of investigating, remediating, financing, transferring and redeveloping "Brownfields" sites.

III. PRINCIPLES

A. Presumption of Delaware Lead:

1. DNREC generally will take the lead and will address sites as appropriate under the HSCA program. If EPA designates a site as "High Risk", DNREC may also take the lead unless EPA concludes that a federal response is warranted. EPA's No Federal Interest determination for EPA-Designated High Risk sites is contingent upon adherence to the additional requirements listed in IIIA-2, IIIA-3 and V-E below.

2. DNREC agrees to submit additional reporting to EPA; as defined in Section IV,

below, Reporting for EPA-Designated High Risk Sites.

3. DNREC shall certify to Region III when the intended cleanup levels for a site have been achieved pursuant to the terms of a Consent Order, Agreement or Enforcement Order.

B. No Federal Interest Determination by EPA:

1. When a site in Delaware has been investigated or remediated in accordance with the practices and procedures of HSCA, and (a) DNREC has issued a "no action" determination for the site upon review and approval of an investigation report or a response action plan, or (b) DNREC has issued a "Certificate of Completion of Remedy" for the site under HSCA, then Region III will consider said site of "no federal interest" under the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA"). Although nothing in this MOA constitutes a release from liability under applicable Federal Law, generally EPA does not intend to take removal or remedial action at sites involved in the HSCA program unless EPA determines, after consultation with DNREC, that there is or may be an imminent and substantial endangerment to public health, welfare or the environment that is not being adequately addressed under the State program.

2. This No Federal Interest determination by Region III takes effect as of the time of Delaware's action under IIIB-1. (a) or (b) above, and does not require any site-specific review by EPA.

3. This No Federal Interest determination by Region III does not apply to a site which:

a) has been listed or proposed for listing on the CERCLA National Priorities List ("NPL");
b) is the subject of a federal order or other enforcement action under CERCLA;
c) EPA determines may pose an imminent and substantial endangerment to public health, welfare or the environment or an emergency situation; or
d) is subject to a corrective action permit or order under the Resource Conservation and Recovery Act, 42 U.S.C. 6901, et seq.

C. Cooperation Between Region III and DNREC: Region III will continue to work with DNREC to remove any concerns about federal activity under CERCLA so as to encourage the investigation, cleanup, financing, transfer and appropriate re-development and use of industrial and commercial property. In addition, apart from this Agreement, Region III will continue to provide assistance to local and state governmental agencies in order to facilitate the revitalization of contaminated or potentially contaminated properties in Delaware. DNREC and EPA will work together to discourage the creation of new contaminated sites in Delaware.

IV. REPORTING

A. On an annual basis, DNREC will report to Region III on the following:

1. The identification of sites being addressed under all categories of the HSCA program;

2. The identification of sites having received Certificates of Completion of Remedy by DNREC

3. The identification of sites with full or partial completion in the previous year; and,

4. The identification of sites for which DNREC has issued no action determinations.

B. On a semi-annual basis for DNREC-lead, EPA-Designated High Risk sites, DNREC will provide a description of the work accomplished at these sites during the reporting period, delays or other problems, if any, planned corrective measures and where appropriate, a list of the specific site events completed or scheduled.

C. Where mutually agreed upon, any reporting requirements set forth in Section A or B above may be substituted through electronic access by EPA to the state site status database in lieu of paper reports.

V. BASIS

A. This Agreement has been developed by mutual cooperation and consent between Region III and DNREC. This Agreement is not an authorization for or assurance of funding for DNREC's program by EPA.

B. EPA enters into this Agreement under the authority of CERCLA and under EPA general delegation 1-11. DNREC enters into this Agreement under the authority of 29 Del. C. Section 8003 (5).

C. Nothing in this Agreement relates to or affects any authorities available to either agency except for those explicitly stated.

D. DNREC certifies that the HSCA program meets EPA's baseline criteria for voluntary cleanup programs specifically;

1. Provides opportunities for meaningful community involvement.

2. Ensures that voluntary response actions are protective of human health and the environment.

3. Has adequate resources to ensure that voluntary response actions are conducted in an appropriate and timely manner, and that both technical assistance and streamlined

procedures, where appropriate, are available from DNREC.

4. Provides mechanisms for the written approval of response action plans and a certification or similar documentation indicating that the response actions are complete.

5. Provides adequate oversight to ensure that voluntary response actions are conducted in such a manner to assure protection of human health and the environment, as described above .

6. Shows the capability, through enforcement or other authorities, of ensuring completion of response actions if the volunteering parties conducting the response actions fail or refuse to complete the necessary response actions, including operation and maintenance or long term monitoring activities.

E. EPA Region III program personnel have visited DNREC's office to review relevant site files for program compliance to the Six Baseline Criteria for Voluntary Cleanup Programs as proposed by EPA Headquarters. Based on the file review, discussions with EPA's ORC and DNREC, it is EPA Region III's opinion that DNREC has or is capable of meeting the Six Baseline Criteria.

F. Region III enters into this Agreement based upon a review of Delaware's currently existing laws, regulations, guidance documents and practices. Delaware agrees to provide Region III with prompt notice of changes to such laws, regulations and guidance, and practices. EPA, upon notice to and consultation with DNREC, may amend this Agreement or its participation in this Agreement in the event it determines it is appropriate based on such changes to Delaware's program.

For the Delaware Department of Natural Resources and Environmental Control:

Nicholas A. Di Pasquale, Director
Division of Air and Waste Management

8/4/97
Date

For the Environmental Protection Agency, Region III

Thomas C. Voltaggio, Acting
Deputy Regional Administrator

8/1/97
Date