SUPERFUND MEMORANDUM OF AGREEMENT
BETWEEN THE
RHODE ISLAND DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
AND THE
U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION I

I. PURPOSE OF AGREEMENT

The purpose of this Superfund Memorandum of Agreement ("SMOA") is to define the roles and responsibilities of the U.S. Environmental Protection Agency ("EPA"), Region I and the Rhode Island Department of Environmental Management ("RIDEM") with respect to hazardous waste site remediation conducted under the authority of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA") and Rhode Island General Laws, Chapters 42-35, 23-19.1, 23-19.14, 42-17.1-2, 46-12, 46-13.1 and the Rules and Regulations for the Investigation and Remediation of Hazardous Material Releases, as amended in August 1996, (the "Remediation Regulations"). This SMOA defines those roles and responsibilities with respect to the sites set forth on Exhibit A attached hereto.

II. BACKGROUND TO AGREEMENT

EPA Region I and RIDEM believe that the revitalization of abandoned, idled, or under-used industrial or commercial facilities where expansion or redevelopment is complicated by real or perceived contamination (commonly known as "Brownfields") will provide a significant benefit both to the environment and to local communities. As part of its Brownfields Action Agenda, EPA has committed to working with states to define appropriate federal and state roles with respect to hazardous waste site cleanup. EPA Region I's and Rhode Island's overall goals are to encourage the reuse of Brownfields, and to protect public health and the environment of communities in which such properties are located by expediting cleanup of the properties, and to provide the opportunity for economic benefit to those communities.

By entering into this agreement, EPA Region I and RIDEM seek to expedite the assessment and cleanup of contaminated property and to facilitate the return of such property to productive use. EPA Region I believes that state programs, such as the program set forth in the Remediation Regulations, will reduce the need for federal involvement at many hazardous waste sites. Both agencies recognize that to meet this goal EPA Region I and RIDEM should:

- exercise their authorities and use their resources as efficiently as possible;
- promote appropriate investigations and cleanups by parties voluntarily participating in hazardous waste site cleanups pursuant to the Remediation Regulations; and
- develop partnerships between EPA Region I, the State of Rhode Island, other state and local governmental agencies, and key external stakeholders in the State, including representatives from citizen and community groups and the private sector.

OPTIONAL FORM 99 (7-90)
FAX TRANSMITTAL # of pages ▶ 7
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III. SCOPE OF AGREEMENT

Contaminated or potentially contaminated sites are eligible to be covered by this agreement if those sites are listed on the CERCLA Information System ("CERCLIS") and:

A. Are not listed or have not been proposed for listing on the CERCLA National Priorities List ("NPL");

B. Have not been referred for evaluation pursuant to the CERCLA Hazard Ranking System ("HRS");

C. Are not sites at which EPA Region I has initiated remedial action or at which a private party is required to conduct cleanup pursuant to a Unilateral Administrative Order issued pursuant to Section 106 of CERCLA or pursuant to a consent decree under Section 122 of CERCLA;

D. Are not federal facilities governed by Section 120 of CERCLA; or

E. Are not sites which contain facilities which are permitted facilities or interim status facilities as defined by Section 3005 the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq. ("RCRA") and are not facilities undergoing corrective action pursuant to Sections 3004(u), 3004(v) and 3008 of RCRA.

The eligible sites that are covered by this agreement are listed on the "List of Covered Sites" attached as Exhibit A to this agreement. This list has been developed through discussions between EPA Region I and RIDEM and is based on information provided by RIDEM to EPA Region I.

IV. STATE CERTIFICATIONS

RIDEM certifies that its Remediation Regulations meet the following criteria:

A. the Remediation Regulations provide meaningful community involvement in remedial decisionmaking. The Remediation Regulations require public notification and participation in the remediation process as follows:

1. Notice prior to commencement of site investigation field activities;

2. Notice upon completion of the site investigation;

3. Notice and comment for a remediation proposal which includes on-site waste encapsulation or treatment;

4. Notice and comment on all Settlement Agreements.

B. the Remediation Regulations ensure that response actions are protective of human health and the environment by meeting the following standards:

1. The remedial objective for each carcinogenic substance does not exceed a 1×10^{-6} excess lifetime cancer risk level and the cumulative excess lifetime cancer risk posed by the contaminated site does not exceed 1×10^{-5};

2. The remedial objective for each non-carcinogenic substance does not exceed a hazard index of 1 and the cumulative hazard index posed by the contaminated site does not exceed 1 for any target organ;

3. The remedial objective will not significantly contribute to adverse effects to any environmentally sensitive areas at or in the vicinity of the contaminated site;

4. The remedial objective will be protective of the natural resources of the State of Rhode Island, including, but not limited to, ground water.

C. that RIDEM has adequate resources to ensure that the voluntary response actions performed to remediate the sites listed on Exhibit A are performed in an appropriate and timely manner and that technical assistance and streamlined procedures are available, where appropriate, from RIDEM.

D. the Remediation Regulations provide a mechanism for written approval of private parties' Remedial Action Work Plans (the "Order of Approval" for complex remedies or the "Remedial Approval Letter" for simple remedies) and provide a mechanism for written certification to private parties engaged in voluntary cleanup activities pursuant to the Remediation Regulations that response actions have been satisfactorily completed (the "Letter of Compliance"). With respect to the sites listed on Exhibit A, RIDEM agrees to provide copies of all Orders of Approval and Remedial Approval Letters, together with a schedule for the remediation and copies of all Letters of Compliance to EPA Region I in a timely manner.

E. that RIDEM will provide adequate oversight of voluntary parties conducting cleanups at sites listed on Exhibit A to ensure that the response actions are conducted in accordance with the approved response action plans, are conducted in a timely manner, and are protective of human health and the environment.

F. that RIDEM will exercise adequate enforcement authority or expend adequate funds to ensure completion of response actions (either by the state or the volunteering parties) if the volunteering parties conducting the response action fails or refuses to complete the necessary response actions, including operation and maintenance or long-term monitoring, in a timely manner.

V. EPA REGION I's COMMITMENTS AND RESERVATION OF RIGHTS

A. Although this SMOA does not constitute a release from liability under CERCLA, EPA Region I does not anticipate taking removal or remedial actions at the sites listed on Exhibit A unless EPA Region I, after consultation with RIDEM, determines that:

1. The party undertaking the voluntary cleanup pursuant to the Remediation Regulations fails or refuses to complete the necessary cleanup in a competent or timely manner, and the state is unable to or refuses to ensure completion of response actions; or

2. The site presents an imminent and substantial danger to human health or welfare or the environment and federal action is warranted.

B. Upon the receipt of RIDEM's Order of Approval, Remedial Approval Letter, or Interim Letter of Compliance for a site listed on Exhibit A, EPA Region I will indicate on CERCLIS that the site is the subject of voluntary remediation pursuant to the Remediation Regulations and that EPA Region I plans no federal response action pursuant to Section 104(a) of CERCLA nor any enforcement action pursuant to Sections 106(a), 107(a) or 122 of CERCLA, except under the limited circumstances set forth in Paragraph A. above. Upon the request of RIDEM, EPA Region I will issue Comfort Letters to property owners of such sites in accordance with EPA Region I's Comfort Letter Guidance (April 16, 1996) and EPA's Policy on the Issuance of Comfort/Status Letters (November 8, 1996). Upon the receipt of RIDEM's Letter of Compliance, EPA Region I will archive the site from the list of active CERCLIS sites and provide formal notification of this action to the property owner in accordance with EPA Region I's Comfort Letter Guidance and EPA's Policy on the Issuance of Comfort/Status Letters.

C. If, in the judgment of EPA Region I, the remediation being performed at a site listed on Exhibit A pursuant to the Remediation Regulations does not meet the requirements of this SMOA, EPA Region I, after consultation with RIDEM, may send a notification letter to the voluntary party performing the cleanup outlining the deficiencies in the remediation and providing the voluntary party(ies) with an opportunity to correct the deficiencies within sixty (60) days of receipt of EPA Region I's notification letter. If the voluntary party does not cure those deficiencies within sixty (60) days to the satisfaction of EPA Region I and RIDEM, EPA Region I will notify the voluntary party(ies) that the site will be deleted from the List of Covered Sites and will be subject to federal response or enforcement action pursuant to CERCLA.

VI. CONSULTATIONS BETWEEN THE STATE AND EPA REGION I

A. The Project Officers for EPA Region I and RIDEM will meet, no less than four times every calendar year to discuss the following matters related to this SMOA:

1. The progress of each site set forth on Exhibit A, including any sites which EPA Region I wishes to delete from the List of Covered Sites because the voluntary party performing the cleanup has not completed the remediation in a timely fashion or otherwise according to the requirements of the Remediation Regulations or the requirements of this SMOA (see Paragraph VII.B. below).

2. New sites being cleaned up by a voluntary party pursuant to the Remediation Regulations which are eligible for coverage under the terms of this SMOA.

3. Sites for which RIDEM has issued Letters of Compliance as set forth in Section IV.D. of this SMOA, which are eligible for archiving in CERCLIS as described in Paragraph V.B. above.

4. Any proposed legislation or regulations which would alter the state voluntary cleanup program such that the program would no longer meet the requirements of this SMOA.

5. Any reductions in resources for the oversight or enforcement of the state voluntary cleanup program which would render RIDEM unable to properly oversee or enforce the requirements of the state voluntary cleanup program.

6. Any other matters of concern to EPA Region I or RIDEM.

At each meeting, RIDEM will provide EPA Region I with a report of enforcement actions undertaken against parties voluntarily cleaning up sites pursuant to the Remediation Regulations since the last consultation held pursuant to this section. Either EPA Region I or RIDEM may request additional meetings for the purpose of discussing matters related to this SMOA.

B. If, pursuant to the quarterly meetings between EPA Region I and RIDEM, EPA Region I and RIDEM agree to add new sites to or to delete sites from the List of Covered Sites, EPA Region I and RIDEM will execute an amendment to this SMOA to document the change(s) in the List of Covered Sites. If, during the quarterly meetings, EPA Region I and RIDEM agree to include sites not listed on CERCLIS on the List of Covered Sites (as such list may from time to time be amended) such agreed-upon sites may be included on the List of Covered Sites. Consistent with EPA's Pre-CERCLIS Screening Guidance (OSWER Directive # 9200.4-05), EPA Region I agrees not to list any site on CERCLIS without prior consultation with RIDEM. Amendments will be approved by EPA Region I's Chief of the Office of Site Remediation and Restoration, Technical and Support Branch and RIDEM's Chief of the Division of Site Remediation.

VII. TERMINATION OF THE SMOA

A. EPA Region I may terminate this agreement if:

1. Legislation or regulations enacted in the State of Rhode Island alter the state voluntary cleanup program such that it does not meet the requirements set forth in this SMOA; or

2. In the judgment of EPA Region I, RIDEM no longer has resources sufficient to oversee and enforce the state voluntary cleanup with respect to the sites set forth on Exhibit A hereto; or

3. In the judgment of EPA Region I, the remediation undertaken pursuant to the Remediation Regulations does not, on a consistent basis, meet the requirements of this SMOA or the approved Remedial Action Work Plans.

4. CERCLA is amended in such a way as to render this agreement unnecessary or null and void.

B. This SMOA shall, in any event, terminate in five (5) years from the effective date hereof, unless EPA Region I and RIDEM agree to extend the term of this SMOA. In the event that EPA Region I and RIDEM agree to extend the term hereof, both parties shall execute an amendment to this agreement extending this agreement for the agreed upon term.

VIII. PROJECT OFFICERS

EPA Region I hereby designates:

Darla Till
U.S. EPA Region I
Office of Site Remediation and Restoration
J.F.K. Federal Building (Mail Code HBS)
Boston, MA 02203-2211

to be the Project Officer for EPA Region I.

RIDEM hereby designates:

Timothy Regan
Division of Site Remediation
Office of Waste Management
Rhode Island Department of Environmental Management
235 Promenade Street
Providence, RI 02908-5767

to be the Project Officer for RIDEM.

EPA Region I and RIDEM agree to notify each other in writing of any changes in the designated Project Officers. All correspondence, notifications and other communications required by or regarding this SMOA shall be directed to the Project Officer designated by each agency.

IX. OTHER AUTHORITIES

This agreement shall apply only to EPA Region I's response and enforcement authorities under CERCLA, and shall not limit the authority of EPA Region I to undertake response or enforcement actions pursuant to any other environmental statute or regulation. Furthermore, this agreement shall apply to EPA Region I, and shall in no way limit the authority of other federal agencies to take response or enforcement actions pursuant to other federal statutes or regulations.

X. EFFECTIVE DATE

This agreement shall become effective on the date signed by the Director of the Office of Site Remediation and Restoration, U.S. EPA, Region I.

Timothy R.E. Keeney, Commissioner
Rhode Island Department of Environmental Management

2/14/97
Date

Linda M. Murphy, Director
Office of Site Remediation and Restoration
U.S. EPA, Region I

2/12/97
Date

EXHIBIT A - LIST OF COVERED SITES

CERCLIS SITES COVERED BY THE SUPERFUND MEMORANDUM OF AGREEMENT

CERCLIS Site Name	Location	Brownfields[1]	Pilot Area[2]	Comfort Letter[3]	RIDEM Status
C.J. Wheldon Trucking Co.	Cranston				LOC Issued
Lynch W J Paint & Varnish Co.	East Providence				LOC Issued
Abate & Ursillo Plating (Former)	Johnston	YES			LOC Issued
Hedison Mfg Co.	Lincoln	Draft	YES		Monitoring
H & A Kaufman Realty Co. (Lot 62)	Lincoln		YES	YES	LOC Issued
Lincoln Dimensional Tube	Lincoln	YES	YES	YES	LOC Issued
Majestic Motors	Lincoln		YES		Monitoring
Long Wharf Area	Newport	YES		Draft	RD Ongoing
X-Ray Products, Inc.	North Kingstown				RD Ongoing
Branch River Ind. Park	North Smithfield	YES	YES		RA Ongoing
Tidewater Coal Gassification Plant	Pawtucket				SI Ongoing
Gorham/Textron Disposal Area	Providence				SI Ongoing
Pine Hill Road Dump	Richmond				LOC Issued
New England Container Co.	Smithfield			YES	Monitoring
Speidel Co./Gorham Co.	Smithfield			YES	Monitoring
Photek Inc. Property	South Kingstown				SI Ongoing
Cory's Lane Disposal Area	Tiverton				SI Ongoing
Mays, Marshall & Meier Co.	Warwick				RD Ongoing

Notes:

1 - site owner has negotiated a Brownfields Settlement Agreement with RIDEM
2 - site is located within one of the five Brownfields Pilot Project Municipalities
3 - site owner has received an EPA Comfort Letter
SI - Site Inspection under RIDEM regulations
RD - Remedial Design under RIDEM regulations
RA - Remedial Action under RIDEM regulations
LOC - Letter of Compliance under RIDEM regulations
Monitoring - Monitoring under RIDEM regulation