MEMORANDUM OF AGREEMENT
BETWEEN THE
TEXAS NATURAL RESOURCE CONSERVATION COMMISSION
AND THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION 6

I. Purpose

The Texas Natural Resource Conservation Commission (TNRCC) and Region 6 of the United States Environmental Protection Agency (EPA), enter into this Memorandum of Agreement (MOA), for the purposes of supporting the TNRCC Voluntary Cleanup Program (VCP) and defining the roles and responsibilities of EPA and TNRCC with respect to activities conducted under the authority of the TNRCC VCP.

II. Eligibility for VCP

TNRCC and EPA agree that sites where ranking packages have been submitted to EPA Headquarters proposing their inclusion on the National Priorities List (NPL), or sites listed on the NPL, are ineligible for the TNRCC VCP.

TNRCC and EPA further agree that sites, or portions of sites, regulated under the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6901, are generally eligible for consideration under the TNRCC VCP. However, hazardous waste facilities which are currently operating under a RCRA permit, have been issued a RCRA § 3008(h) Order or are currently operating under interim status permit authority are ineligible for participation in the TNRCC VCP.

This MOA will apply to all sites given VCP Certificates of Completion by TNRCC on or after September 1, 1995, the effective date of the VCP.

III. Background

EPA and the TNRCC believe the revitalization of contaminated properties, or properties perceived to be contaminated (often called "Brownfields"), will provide a significant benefit to the environment and economies of the local communities of the State of Texas. To the extent possible, EPA and the TNRCC seek to simplify the revitalization of industrial and commercial properties by addressing the existing regulatory impediments to the financing, transfer and appropriate use of these properties. Both agencies will work in a cooperative and coordinated effort to ensure that successful implementation of this endeavor is accomplished and pledge to employ their authorities and their resources in mutually complementary, non-duplicative methods.

EPA and the TNRCC seek to protect human health and the environment by encouraging the voluntary investigation and cleanup of properties in Texas by implementing the following strategic goals:

1. Promoting appropriate investigations and cleanups by groups/individuals participating in the VCP.

2. Developing partnerships between EPA, the TNRCC, other State and local governmental agencies and external stakeholders in Texas, including representatives from citizen/community groups and the private sector.

3. Providing necessary information to property owners, prospective purchasers, lenders, public and private developers, citizens, municipalities, counties and elected officials to allow for informed decision-making.

4. Providing public involvement activities to ensure the affected public is informed of response actions related to the VCP. Activities conducted by VCP applicants to inform the affected public may include notices in local newspapers, block advertisements, letters to individual households and businesses or other personal contacts regarding the contamination. The TNRCC will make available for inspection and copying all reports on its position regarding voluntary cleanup sites. The TNRCC will respond to all public inquiries and comments regarding voluntary cleanup activities in a timely manner.

5. Promoting mitigation of exposure to contaminated media cost-effectively, consistent with projected future uses at the sites and applicable federal and state law.

6. Promoting response action objectives when approving mitigation measures for the sites.

To accomplish these goals, EPA will help and support the TNRCC in further developing and expanding the use of the VCP. EPA recognizes the VCP as instrumental in developing and implementing successful strategies to help promote voluntary investigation, cleanup and revitalization of Brownfields properties. The TNRCC will assist and support efforts to promote and implement the EPA Brownfields initiatives. The TNRCC and EPA recognize each other as key partners in the ongoing success of the VCP. TNRCC also recognizes the role of EPA in addressing the uncertainty of financing, transferring and developing Brownfields sites by quantifying the risks of federal liability.

IV. Implementation

TNRCC and EPA should work in a coordinated effort to ensure there is no duplication of effort at the sites, and that site cleanups continue in a timely fashion. TNRCC will notify EPA when sites are being addressed under the VCP. While a RCRA site is being addressed under the VCP, TNRCC will code that site in the Resource Conservation Recovery Information System (RCRIS) to reflect that site's status. While a Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) site is being addressed under the VCP, EPA will code that site in Comprehensive Environmental Response Compensation Liability Information System (CERCLIS) to reflect that site's status.

In the unlikely event that a RCRA facility which is being considered for the VCP is also listed on the EPA Region 6 Corrective Action Prioritization System (R6CAPS) as a medium or high priority facility, the facility will not be excluded from consideration for federal investigation or remedial action. Attachment A to this document is a listing of high and medium priority facilities currently ranked on the R6CAPS. Facilities are ranked as high or medium priority on R6CAPS as a result of the size and complexity of the facility's operations and/or environmental issues. Facilities will be added periodically to the R6CAPS after consultation with the TNRCC. Consideration for adding facilities to R6CAPS will be based upon the size and complexity of the facility's operations and/or environmental issues. High and medium priority RCRA facilities that complete response actions at a facility or portions of a facility and receive a certificate of completion under the VCP, may request that they be reevaluated under R6CAPS. This reevaluation may result in removal from high or medium priority categories.

Once any necessary response action at all involved portions of a site is complete, EPA will archive from CERCLIS those sites remediated under the authority of the VCP and for which TNRCC has issued a Certificate of Completion. At a minimum, TNRCC and EPA should discuss the status of sites monthly.

While a site with an ongoing investigation or remediation remains in compliance with the terms of a VCP agreement, or when a site investigation or remediation has been completed according to the practices and procedures of the VCP and the TNRCC has issued a Certificate of Completion for the site upon a review and approval of the Response Action Completion Report or other final report, or the TNRCC has issued a Certificate of Completion for part of the site, EPA will not

plan or anticipate any federal action under CERCLA, 42 U.S.C. § 9601, et seq., or RCRA, 42 U.S.C. § 6901 et seq., for that part of the site, unless it is determined that the site poses a threat to human health or the environment, an imminent and substantial endangerment or emergency situation, and as a result, Federal response actions are warranted.

In addition, in accordance with Section IV of this MOA, EPA and TNRCC will suspend further action or take no action at sites being investigated or remediated under the VCP. EPA may resume or initiate response actions at such sites only if: (a) the VCP applicant fails or refuses to complete the necessary cleanup, and TNRCC is unable to ensure completion of response [illegible] at those sites; or (b) an emergency situation arises that would require Federal intervention.

In all cases, the EPA decision not to take federal response action for sites implementing investigation and cleanup under the VCP will be based strictly on the information known by EPA and TNRCC at the time of the TNRCC determination concerning the site.

If, following the issuance of the Certificate of Completion by the TNRCC, conditions at the site, previously unknown to TNRCC and EPA, indicate that the response action undertaken pursuant to the VCP is not protective of human health and the environment, TNRCC and EPA reserve the right to take necessary response action to protect human health and the environment.

TNRCC will continue to demonstrate that its VCP has adequate resources to ensure that voluntary response actions are conducted in an appropriate and timely manner, and that meaningful outreach efforts are available to affected interest-holders. TNRCC shall continue to make available to current and prospective owners, lenders, and affected interest-holders, both technical assistance and streamlined procedures to ensure adequate involvement through notification and expeditious voluntary response actions.

EPA will continue to work with TNRCC to remove any concerns about federal activity under CERCLA and RCRA so as to encourage the financing, transfer, and appropriate development and reuse of properties in Texas. EPA and TNRCC will provide technical assistance to local and state governmental agencies in order to facilitate the revitalization of contaminated or potentially contaminated properties in Texas.

EPA may provide, in its sole discretion, and after consultation with the TNRCC, resources to local and state governmental agencies in order to support Brownfields initiatives in Texas.

V. Protectiveness

The VCP shall ensure that voluntary response actions are protective of human health and the environment. Upon the assessment of a site, the VCP should determine whether the site poses a threat to human health and the environment, and whether mitigation of the potential exposure of human and ecological receptors to contaminated media is warranted, consistent with applicable Federal and State law. Protective contaminant concentrations in a media will be determined by the VCP, consistent with projected future uses at the site.

Mitigation of exposure to contaminated media shall be conducted cost-effectively, consistent with projected future uses at the site, and consistent with applicable Federal and State law. Mitigation measures may include one or more of the following: (1) Treatment of contaminated media to acceptable exposure levels; (2) Containment of contaminated media to acceptable exposure levels; (3) Transport to off-site treatment; or (4) Restricted access to and/or use of the site through institutional controls.

VI. Reporting

On a monthly basis the TNRCC will report to EPA on the following:

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

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

3. Sites having received Certificates of Completion from the TNRCC of full or partial completions in the previous month; and

4. Notifications of any VCP non-completions or defaults.

VII. Modification

EPA and TNRCC may modify this MOA from time to time to simplify and/or define the procedures contained herein. EPA and TNRCC shall keep the other informed of any relevant proposed modifications to its statutory or regulatory authority, forms, procedures, or priorities. This MOA shall be revised, as necessary, by the adoption of such modifications. The MOA should be reviewed on an annual basis by EPA and TNRCC staff to determine if revisions, are necessary. A modification must be in writing and signed by the signatories or their designees to become effective.

VIII. Reservations of rights

EPA and TNRCC reserve any and all rights or authority that they respectively have, including but not limited to, legal, equitable, or administrative rights. This specifically includes EPA and TNRCC's authority to conduct, direct, oversee, and/or require environmental response in connection with any facility or site which participates in the VCP. Notwithstanding any other provision of this MOA, nothing herein affects or limits EPA or TNRCC's authority or ability to take any enforcement action authorized by law.

This MOA has been developed by mutual cooperation and consent.

For the Texas Natural Resource Conservation Commission

Barry R. McBee, Chairman
Texas Natural Resource Conservation Commission

5/1/96
Date

For the Environmental Protection Agency

Jane N. Saginaw, Regional Administrator
U.S. Environmental Protection Agency

5/1/96
Date