BROWNFIELDS MEMORANDUM OF AGREEMENT
BETWEEN THE
WISCONSIN DEPARTMENT OF NATURAL RESOURCES
AND THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION V
CONCERNING BROWNFIELDS PROPERTIES
AND VOLUNTARY CLEAN UPS

I. Background.

The Wisconsin Department of Natural Resources (WDNR) and the United States Environmental Protection Agency (EPA), Region V, believe that our agencies play a critical role in Wisconsin's land use policies. In particular, both agencies agree that the cleanup and redevelopment of Brownfields properties - contaminated properties that have development potential or interest, but which are not significant environmental or public health priorities - are critical to ensuring proper land use. By focusing a share of our resources on these properties, both Region V and WDNR hope to minimize the development of green space and promote the cleanup and redevelopment of Brownfield properties. Our agencies' overall goal of this Brownfields initiative is to protect public health and the environment of those communities, as well as providing the opportunity for an economic benefit to those communities.

II. Purpose.

To achieve these goals, WDNR and Region V believe that it is necessary to clarify the roles and responsibilities of our respective agencies in implementing a Brownfields initiative in Wisconsin, so as not to duplicate our resources or authorities.

III. Program Adequacy.

Region V and WDNR have agreed to a set of "Brownfields operating principles," which both agencies believe will facilitate achieving our goal of Brownfields redevelopment. These operating principles, listed in section IV, are designed to maximize our respective program resources by clearly designating the WDNR as the lead agency for voluntary cleanups, which includes cleanups of Brownfields sites. Region V enters into this SMOA due to Region V's belief in the adequacy of WDNR's remediation programs, particularly due to:

- EPA's long-term, positive working relationship with the WDNR remediation programs and the recognition of its further efforts to integrate its remediation programs into one administrative unit, so as to eliminate duplicative efforts and maximize resources.

- WDNR's continued advancement of its technical, policy and legal capabilities since the inception of the Hazardous Substance Discharge Law (i.e., Spill law) in 1978 and the Environmental Repair Law in 1984.

- WDNR's comprehensive procedural and environmental standards that apply across the state's environmental programs (e.g., Superfund, LUST, Spills, Environmental Repair, Hazardous and Solid Waste). In particular, the comprehensive NR 700 rule series on environmental response actions is one of the first state rules in the nation to include numeric soil cleanup standards, as well as procedures for taking a site from site discovery through close out. In addition, the state's Groundwater Law, ch. 160, Stats., establishes numeric groundwater standards, which broadly apply to groundwater contamination problems throughout the state.

- WDNR, with permission and oversight by Region V, has implemented the Superfund site assessment program, with little or no contractor assistance for the last 5 years. This program has developed the technical expertise in the area of site assessments: phase I assessments, phase II assessments, and no-further-action-planned reports.

- Wisconsin has a new Brownfields law, entitled the Land Recycling law, which includes a number of legal and programmatic initiatives to address the state's Brownfields problems. This law includes provisions covering municipal grants, lender liability, municipal cost recovery, superior liens, municipal liability exemption and a purchaser liability exemption available upon completion of a cleanup.

- Together the above allows for response actions that are protective of human health and the environment and provides adequate opportunities for public involvement and ensures appropriate oversight and technical assistance.

IV. Operating Principles.

Region V and WDNR agree that unless exceptional circumstances exist - that is, the site poses an imminent threat to public health or the environment or in an emergency situation - Region V will not plan and does not anticipate any federal action under the Superfund law in the following situations:

- When an environmental assessment, a site investigation or both are conducted in accordance with WDNR guidance and the NR 700 rule series, and the WDNR issues a no action letter.

- When an investigation is conducted in accordance with WDNR guidance and the NR 700 rule series, and the WDNR issues an off-site source letter.

- When a property in Wisconsin has been investigated and remediated in accordance with the NR 700 rule series.

- When a property has been investigated and cleaned up in accordance with the NR 700 rule series and has received a certificate of completion (per s. 144.765, Stats.).

These operating principles do not apply to sites which have been listed on the National Priorities List or sites subject to an order or other enforcement action under Superfund law or sites imminently threatening public health or the environment.

In all cases, the Region V decision will be based strictly on the information available at the time of the WDNR determination.

V. Implementation

Region V and WDNR agree that this SMOA shall serve as EPA's written public statement that it will not initiate federal action, unless exceptional circumstances exist, at properties that have been or are being: (1) responded to in accordance with the NR 700 rule series; and/or (2) designated by EPA as a No Further Action Planned (NFRAP) site and removed from CERCLIS. Further, it is not Region V's intention to enter into site-specific agreements with prospective purchasers at these types of properties; the SMOA between Region V and the WDNR will suffice as the necessary written public statement.

Region V and WDNR agree to follow the "Guidance on Agreements with Prospective Purchasers of Contaminated Property" (May 24, 1995, OSWER Directive #9835.9) to determine whether or not site-specific, written agreements will be entered into with prospective purchasers for properties listed or proposed for listing on the National Priorities List, or properties where EPA has undertaken, is undertaking, or plans to conduct a response action.

Region V will continue to work with the WDNR to remove any concerns about federal activity under Superfund to encourage the financing, transfer and appropriate redevelopment and use of Brownfields properties. At the request of the WDNR, Region V will provide technical assistance and, at its discretion, financial support to local and state governmental agencies to support Brownfields initiatives in Wisconsin.

V. Reporting.

On an annual basis, the WDNR will report to Region V the following information:

- Number of properties in the Land Recycling program.
- Number of properties entering the program the previous year.
- Number of properties receiving approvals from the WDNR, classified by type of approval.

VI. Signatures.

This SMOA has been developed by mutual cooperation and consent, and hereby becomes an integral part of EPA's and WDNR's working relationship.

For the Wisconsin Department of Natural Resources

Signed by Secretary George Meyer on October 17, 1995.

George E. Meyer, Secretary — Date

For the U.S. Environmental Protection Agency

Signed by Regional Administrator Valdas Adamkus on October 27, 1995.

Valdas V. Adamkus, Regional Administrator — Date
U.S. EPA, Region V