UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAY - 1 2003

OFFICE OF CONGRESSIONAL AND
INTERGOVERNMENTAL RELATIONS

TRANSMITTAL MEMORANDUM

TO: J. Steven Griles, Deputy Secretary,
U.S. Department of Interior
Attention: Sue Ellen Woolridge

Les Brownlee, Under Secretary of the Army,
Acting Assistant Secretary of the Army (Civil Works)
Attention: Chip Smith

FROM: Ed Krenik
Associate Administrator

RE: Tar Creek MOU

Subject: Memorandum of Understanding for the Tar Creek Superfund Site- - Approval

Attached for your signature and approval is the Memorandum of Understanding between the Environmental Protection Agency, Department of the Interior, and Army Corps of Engineers for the Tar Creek Superfund Site in Oklahoma.

I appreciate the effort of your organizations in working with us to complete this action to assist our future endeavors to address the remaining issues at this site.

Thank you for your timely attention to this matter.

MEMORANDUM OF UNDERSTANDING
Between the
U.S. Environmental Protection Agency
the
U.S. Department of the Interior
and the
U.S. Department of the Army

I. PURPOSE

The purpose of this Memorandum of Understanding (MOU) is to facilitate cooperation among the U.S. Department of Army through the U.S. Army Corps of Engineers (USACE), the U.S. Department of the Interior (DOI), and the U.S. Environmental Protection Agency (EPA) (collectively the "Federal Agencies") in order to work toward a holistic response to the risks posed at the Tar Creek Superfund Site in Oklahoma. This MOU seeks to foster environmental improvement to ensure the protection of public health, and to encourage sustained economic stability and future environmental recovery. This MOU is being entered into for the purposes of coordinating response, reclamation, and restoration activities under the various applicable statutes. The Tribal, State, local government officials, and community members are encouraged to play an integral part in planning the short- and long-term solutions for the Tar Creek area.

II. BACKGROUND

The 40 square-mile Tar Creek Superfund Site was listed on the National Priorities List in 1983. This site encompasses the Oklahoma portion of the Tri-State Mining District of northeastern Oklahoma, southeastern Kansas, and southwestern Missouri, and also includes communities in Ottawa County outside the mining area that are also contaminated with mining waste. The towns of Picher, Cardin, Commerce, North Miami, and Quapaw are part of the Tar Creek Superfund Site. Much of the land on the Tar Creek Superfund Site is allotted Indian Land (members of the Quapaw Tribe are beneficial owners). Approximately 30,000 people live in these five cities and towns.

Lead and zinc mining have left a legacy of impaired human health and environmental deterioration. The mining and milling of lead and zinc ore left approximately 300 miles of underground tunnels, millions of tons of tailings (generally the tailings with the consistency of gravel are called chat), more than 1,320 mine shafts, and thousands of drill holes in Oklahoma's

part of the Tri-State Mining District. The mine tailings are deposited in hundreds of piles and sediment retention ponds near the residential communities and in undeveloped urban and rural areas. Some piles are as high as 200 feet and contain lead and other heavy metals.

EPA has attempted to address the human health threats to the residents by removing chat from residential yards and from high access areas. This work is ongoing. After yard remediation and extensive health education efforts funded by EPA, a 50% reduction of blood lead levels was seen; however, 12-15% of children still have blood lead levels that exceed 10 micrograms per-deciliter, the concentration level identified by the Centers for Disease Control as a level at which adverse health effects have been documented.

The loss of major employers in the Tar Creek area and the extent of the environmental problems have contributed to the weakening of the local economy. The size of the Tar Creek area and the complexity of the technical, physical, economic, and political issues that must be addressed to resolve the problems, call for the Federal Agencies to work in a coordinated fashion with the Tribes, States, local governments and community groups to develop and implement a comprehensive solution.

III. AUTHORITIES

The Federal Agencies have many authorities, but no single authority addresses the full range of issues; accordingly, the Federal Agencies have decided to work together so that their collective authorities may be brought to bear. For brevity, only the main authorities are listed below.

EPA addresses environmental contamination through a variety of programs including:

- The Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), 42 U.S.C. 9601 *et seq.*

- The Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.*

The DOI has programs to address environmental and physical hazards due to contamination. Additionally, the DOI has trust-related responsibilities to the Tribes and to individual Indians. Other potentially available DOI programs fall under the authority of the U.S. Fish and Wildlife Service, Bureau of Indian Affairs, Office of Surface Mining, and U.S. Geological Survey, and Bureau of Land Management. DOI authorities include:

- CERCLA

- Endangered Species Act of 1973, 16 U.S.C. 1531 *et seq.*

- Migratory Bird Treaty Act, 16 U.S.C. 703 *et seq.*

- Bald and Golden Eagle Protection Act, 16 U.S.C. 668 *et seq.*

- Section 26 of the Act of March 3, 1921, 41 Stat. 1225, as amended by the Act of April 17, 1937, 50 Stat. 68.

- Indian Long-Term Leasing Act, 25 U.S.C. 415 *et seq.*

- Snyder Act, 25 U.S.C. 13 *et seq.*

- Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 *et seq.*

- The Organic Act of March 3, 1879, 43 U.S.C. 31 *et seq.*

USACE provides both technical assistance and cost-shared implementation of water resource-related projects through various authorities, including:

- Planning, engineering, design, construction, and project management services on a reimbursable basis from other agencies through the Support for Other Agencies Program utilizing the Economy Act, 31 U.S.C. 1535, and 10 U.S.C. 3036(d). Future agreements are necessary for USACE to perform work under these authorities.

- Planning, design and construction of various water resource-related civil works projects with cost-sharing Tribal or non-Federal partners under several Water Resource Development Act (WRDA) authorities.

- Conducting studies to develop comprehensive watershed management plans under various authorities, including the study authority of Section 208 of the Flood Control Act of 1965, 79 Stat. 1073.

In addition to each of the Federal Agencies noted above, the signatories agree that, to the extent appropriate, other Departments and Agencies might have a potential role in economic and housing revitalization [e.g., Department of Housing and Urban Development, Department of Transportation, Department of Commerce/Economic Development Administration] and will be consulted during discussions as we formulate a holistic strategy for the Tar Creek area. Partnerships with other Federal Departments and Agencies that stress close coordination and use of a wide range of authorities may effectively link environmental protection, economic development, job training/education and community revitalization.

IV. SCOPE

The purpose of this MOU is to develop a coordinated approach to address the numerous health, safety, and environmental issues affecting the Tar Creek Superfund Site. Under this approach, the Federal Agencies, working together, will offer to coordinate with the affected Indian tribes, the State of Oklahoma, the affected local governments, and other stakeholders, as part of a

process that the Federal Agencies will use to determine the most acceptable manner for resolving the problems posed by the mining waste. This MOU does not change the requirements of any applicable statutes or their implementing regulations.

V. INTERAGENCY COMMUNICATIONS

To provide for consistent communications and to ensure that a mechanism exists to expedite decision-making and to resolve differences, each signatory to this MOU will appoint a Headquarters representative to serve as the point of contact on matters related to this MOU. In addition, each signatory agency will designate Headquarters and/or local representatives to a Federal Tar Creek Steering Committee (Steering Committee) which, once established, will work with the Tribal, State and local governments using a coordinated approach for developing and implementing solutions for the Tar Creek area. The Steering Committee will meet within one month of the effective date of this MOU and will approach the Tribes, State, and local governments within three months of the effective date of this MOU.

VI. LIMITATIONS

This MOU is not intended to either create any rights in or grant any cause of action to any person or to release or waive any claim, cause of action, demand, or defense in law or equity that any of the Signatories to this MOU may have against any person(s) or entity.

This document is not a funds obligation document. No provision of this MOU will be interpreted or construed as a commitment or requirement that any of the Federal Agencies obligate payment of funds in contravention of the Anti-Deficiency Act, 31 U.S.C. Sec 1341, or any other applicable provision of law, in any fiscal year for actions subject to this MOU. Additionally, it does not alter any enforcement authority, response or other legal obligations or other legal requirements of any party. This document does not make a determination as to who is a potentially responsible party or what their response obligations may be.

VII. AMENDMENT AND TERMINATION

This MOU will become effective on the date of the last signature below. Any signatory may propose changes to this MOU. This MOU may be modified only by written agreement of all the Federal Agencies that are part of the MOU at that time. Any of the Federal Agencies may terminate its obligations under this MOU at any time by written notice to the parties who signed on behalf of the remaining Federal Agencies. As long as at least two Federal Agencies remain under this MOU, this MOU shall continue in effect. Through an amendment to this MOU, additional Federal Agencies may join into this MOU by agreement of all the Federal Agencies who are part of the MOU.

VIII. OTHER MOUs

This MOU does not supersede previous MOUs on this topic between the signatories.

Thomas P. Dunne
Associate Assistant Administrator
Office of Solid Waste and Emergency Response
United States Environmental Protection Agency

4/25/03
Date

J. Steven Griles
Deputy Secretary
United States Department of the Interior

4/29/03
Date

R.L.Brownlee
Under Secretary of the Army
Acting Assistant Secretary of the Army (Civil Works)
United States Department of the Army

May 1, 2003
Date

Exemplar List of Tasks for Federal Agencies

(The following task list is an exemplar of the types of tasks that the Federal Agencies may consider undertaking consistent with their respective authorities. This task list is not intended to be exhaustive, nor is it meant to provide a final solution for the various problems confronting the Tar Creek area. It is assumed that these and other tasks will be discussed in a visioning type process, and as information becomes available. Signing the MOU does not bind the Federal Agencies to fund or perform any of the tasks listed below. Further discussions among the signatories of this MOU are necessary to refine specific roles and commitments.)

Department of the Interior

- Fund and participate in the Remedial Investigation and Feasibility Study (RI/FS) for the undeveloped rural and urban areas of the Tar Creek Superfund Site under EPA oversight according to the terms of the EPA's Administrative Order on Consent (AOC) for RI/FS . This AOC is presently being negotiated. This RI/FS effort may be performed in conjunction with the mining companies who are participating in the negotiations.

- Plug certain mine shafts based on prioritization from the State and only as consistent with legal obligations and after consultation with the State.

- Consistent with appropriate authority and after consultation, fence remaining chat piles to prevent unauthorized chat access.

- Develop a Geographic Information System in coordination with the State of Oklahoma to store and share data to facilitate information exchange and avoid duplication of effort.

- Collect routine water quality data and monitor flow data for Tar Creek with an emphasis on mine seeps.

- Fund, in part, United States Army Corps of Engineers (USACE) development of a hydrogeologic model of the area.

- Complete initial wildlife study.

Department of the United States Army

- Develop a hydrogeologic model of the area utilizing funds from other Agencies through the USACE Support for Others Program. Coordinate studies with on-going and planned studies by DOI.

- Under the study authority of Section 208 of the Flood Control Act of 1965, conduct the Miami, OK and Vicinity Reconnaissance Study to develop a comprehensive watershed

management plan for the Tar Creek and Spring River watersheds, providing a holistic solution to area problems that will serve as a framework for actions to be implemented by various agencies. USACE implementation could be authorized through a follow-on Feasibility Study cost-shared with a Tribal or non-Federal partner.

- Through Support for Other Agencies Program or cost-shared with a Tribal or non-Federal partner through Section 206 of the Water Resources Development Act of 1996, design and construct small project(s) that utilize engineered passive treatment systems to treat mine seeps to restore aquatic, wetland, and floodplain ecosystem habitat in small sub-watersheds.

Environmental Protection Agency

- Continue residential yard cleanup.
- Arrange broader partnership initial meeting.
- Continue negotiations with potentially responsible parties.
- Oversee potentially responsible party responses.

Draft List of Potential Projects for Partnerships with other Federal Agencies

Department of Commerce, Economic Development Agency
Assist in a "visioning process" by the State, Tribes, and locals officials and community members in their development of a Redevelopment/Reuse Plan.

Department of Transportation
Develop with the State appropriate chat use in road construction, including incentives to encourage removal of the chat.

Department of Health and Human Services
Provide for local health education programs and blood lead testing programs through the Agency for Toxic Substance Disease Registry. Conduct medical needs assessment of the area.

Department of Housing and Urban Development
Provide grants or funding to revitalize or encourage home ownership.

Department of Labor (DOL)
Identify and implement opportunities provided by the Job Training Partnership Act and other DOL administered programs to assist local Tar Creek communities in revitalizing their economic base.

Department of Agriculture (USDA)
Provide funds from the Rural Abandoned Mine Program to support restoration of the Tar Creek area. USDA's Natural Resource Conservation Service is authorized through Section 406 of the Surface Mining Control and Reclamation Act of 1977 to reclaim rural lands affected by mining.