Memorandum of Understanding
between
the Illinois Environmental Protection Agency
and
the United States Environmental Protection Agency Region 5
on
the Illinois Site Remediation Program,
the Illinois Tiered Approach to Corrective Action Objectives,
and
the Environmental Remediation Programs
administered by
the Region 5 Waste, Pesticides, and Toxics Division
under
the Resource Conservation and Recovery Act (RCRA)
and
the Toxic Substances Control Act (TSCA)

I. Introduction

The Illinois Environmental Protection Agency ("Illinois EPA") and the United States Environmental Protection Agency, Region 5 ("Region 5") entered a Memorandum of Agreement ("MOA") under the Resource Conversation and Recovery Act ("RCRA") Subtitle C, effective January 31, 1986. Illinois EPA and Region 5 have periodically modified that MOA to reflect authorization changes. Among other things, the RCRA MOA established operating procedures for general RCRA program coordination and communication under Subtitle C between Illinois EPA and Region 5. Illinois EPA and Region 5 do not have a general operating MOA under Subtitle I, but have maintained a continuous working relationship under successive co-operative agreements since 1987.

On April 6, 1995 the Illinois EPA and Region 5 entered Superfund Memorandum of Agreement, Addendum No.1. That agreement specifies how the Illinois EPA Pre-Notice Site Cleanup Program, precursor of the Site Remediation Program referenced in this MOU, intersects with administration of the Superfund program by Region 5 and Illinois EPA.

Effective December 21,1995, the Environmental Protection Act of the State of Illinois was amended to add Title XVII: Site Remediation Program (415 Illinois Compiled Statutes 5/58 - 58.12). Title XVII was amended effective June 30, 1996. The Illinois EPA and Region 5 have agreed to establish this Memorandum of Understanding ("MOU") for the following purposes:

(1) to encourage voluntary environmental cleanup, which is protective of human health and the environment, at contaminated locations in Illinois;

(2) to establish how the State of Illinois Site Remediation Program intersects with RCRA and the Toxic Substances Control Act ("TSCA"), as administered by the Waste, Pesticides, and Toxics Division of Region 5; and

(3) to recognize the Illinois EPA's use of the Tiered Approach to Corrective Action Objectives (35 Ill. Adm. Code 742) for sites subject to RCRA or the TSCA[1].

This MOU is not intended to alter any other existing agreements between Region 5 and Illinois EPA, including the Memorandum of Agreement authorizing administration of the State's RCRA Subtitle C program.

II. Background

The Illinois EPA and Region 5 recognize that revitalization of contaminated property provides a significant benefit to both the environment and the economy. This is especially true for "brownfields". The term "brownfields" refers to properties which are abandoned, idled, or under-used industrial and commercial facilities where expansion or redevelopment is complicated by real or perceived environmental contamination. Some of the contaminated properties in Illinois, including some brownfields, are subject to environmental cleanup requirements which are established by Federal laws (e.g., closure, post-closure, and corrective action under RCRA; PCB Cleanup Policy under TSCA; the National Oil and Hazardous Substances Pollution Contingency Plan under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA")).

Both Illinois EPA and Region 5 are mandated to protect human health and the environment and both play a critical role in Illinois in the cleanup and redevelopment of brownfields. Each Agency acknowledges the potential benefits that can be achieved by clarifying the liabilities associated with brownfields as a result of environmental cleanup requirements in both State and Federal laws. Both agencies recognize each other as key partners in addressing the perceived uncertainties in the financing, transfer and development of brownfields. Both agencies seek to facilitate the productive use of their authorities and resources in ways that are mutually complementary and are not redundant. Both Region 5 and Illinois EPA acknowledge their mutual respect, positive working relationship and commitment to the successful implementation of the MOU. In particular, both agencies seek to protect human health and the environment by:

(1) Promoting appropriate voluntary investigations and cleanups of brownfields in Illinois.

(2) Developing partnerships between Region 5, Illinois EPA, other Federal, State, local governmental agencies and other stakeholders, including representatives from the private sector and citizen/community groups, for the cleanup and redevelopment of brownfields.

(3) Providing information and technical assistance to the key stakeholders to allow for informed decision making by property owners, prospective purchasers, lenders, public and private developers, citizens, municipalities, counties and elected officials.

[1]Facilities which perform PCB cleanups under this MOU must, at this time, be limited to TACO Tier 1 cleanup due to regulatory limitations under the preemption provisions of Section 18 of TSCA and the applicable PCB disposal rules and polices (e.g. U.S. EPA's Spill Cleanup Policy, 40 CFR 761 Subpart G). Upon adoption of the pending amendments to TSCA PCB rules, Region V EPA anticipates modifying this MOU to include PCB cleanups under Tiers 2 and 3 of TACO.

(4) Ensuring remediation of sites that protects human health and the environment and promoting revitalization of contaminated property for an appropriate use.

(5) Promoting processes by which corrective action activities and consistent cleanup objectives are carried out.

III. Illinois EPA Administration of Title XVII

Illinois EPA's administrative responsibilities under Title XVII are divided into several subject matters, two of which directly pertain to the purposes of this MOU. First, Illinois EPA is directed to administer a program that provides standards and procedures for remediation activities for sites voluntarily entering the Site Remediation Program. (See Sections 58.6,58.7,58.8,and 58.10). These standards and procedures are set forth in 35 Ill. Adm. Code 740. Second, Illinois EPA is directed to establish, through the Illinois Pollution Control Board, risk-based remediation objectives. (See Section 58.5). These standards are incorporated in 35 Ill. Adm. Code 742.

A. Site Remediation Program (35 Ill. Adm. Code 740)

Under Title XVII, any "remediation applicant"[2] who proceeds under the Title may choose to have the Illinois EPA review and approve any of the remediation objectives for any or all of the "regulated substances of concern"[3] by submitting plans and reports to Illinois EPA. Illinois EPA then carries out its review in conformance with Title XVII and its rules. Illinois EPA may approve, disapprove, or approve with conditions, a plan or report. Under Title XVII, Illinois EPA administers the Site Remediation Program using 35 Ill. Adm. Code 740. Part 740, in turn, requires remediation objectives to be established in accordance with 35 Ill. Adm. Code 742. Part 740 allows sites to enter the Site Remediation Program to the extent allowed by federal law, federal authorization, or by other federal approval, such as through this MOU.

In the case of Illinois EPA approving, or approving with conditions, a plan or report, Illinois EPA prepares a document known as a "No Further Remediation Letter." Within 45 days of a remediation applicant's receipt of such a letter, the remediation applicant must submit the letter to the Office of the Recorder or the Registrar of Titles of the County in which the site is located. When the letter is accepted and recorded in accordance with Illinois law so that it forms a permanent part of the chain of title for the site, the letter becomes effective. The remediation applicant then submits a copy of the letter, as recorded, to the Illinois EPA.

The Illinois EPA's issuance of the No Further Remediation Letter signifies a release from further responsibilities under the State of Illinois Environmental Protection Act in performing the

[2]"Remediation Applicant" means any person seeking to perform or performing investigative or remedial activities under Title XVII, including the owner or operator of the site or persons authorized by law or consent to act on behalf of or in lieu of the owner or operator of the site.

[3]"Regulated substance of concern" means any contaminant that is expected to be present at the site based upon past and current land uses and associated releases that are known to the "Remediation Applicant" based upon reasonable inquiry.

approved remedial action and shall be considered prima facie evidence that the site does not constitute a threat to human health and the environment and does not require further remediation under that act, so long as the site is maintained and utilized in accordance with the terms and conditions of the No Further Remediation Letter.

B. Tiered Approach to Corrective Action Objectives ("TACO") (35 Ill. Adm. Code 742)

TACO establishes a comprehensive tiered approach to the development of remediation objectives at sites evaluating cleanup needs in Illinois. This approach sets forth five independent methodologies for use, singly or in combination, in developing methodologies. The centerpiece of TACO is a set of Tier 1 baseline objectives for residential and commercial uses that were drawn directly from the technical concepts and principles established by USEPA's final "Soil Screening Guidance: User's Guide", EPA/540/R-96/018,PB96-963505 (April 1996)). TACO is used by the Illinois EPA in developing remediation objectives for remediation activities under the following programs:

(1) Leaking Underground Storage Tanks (35 Ill. Adm. Code 731 and 732);

(2) Site Remediation Program (35 Ill. Adm Code 740); and

(3) RCRA Part B Permits and Closure Plans (35 Ill. m. Code 724 and 725).

IV. Eligibility for Site Remediation Program Under 35 Ill. Adm. Code 740

This agreement approves the use of 35 Ill. Adm. Code 740 with regards to contaminated properties in Illinois subject to RCRA or TSCA except for the following:

(1) facilities which are required to have RCRA permits[4] issued by either (i) Illinois EPA, (ii) U.S. EPA, or (iii) both agencies;

(2) sites at which investigation or remedial action has been required by a Federal court order or an order issued by the U.S. EPA. Such orders include orders or consent agreement and consent orders issued under:

- Section 3008(a), 3008(h), 3013, 7003, or 9003(h) of RCRA;
- Section 16 of TSCA; and
- Sections 106,107,120, and 122 of CERCLA;

(3) units, and associated releases from such units, at which treatment, storage, or disposal of hazardous waste has occurred after November 19, 1980, and whose owners and operators

[4]RCRA Subtitle C permits for the treatment, storage or disposal of hazardous waste shall require corrective action for all releases of hazardous waste or constituents from any solid waste management unit at the permitted facility, regardless of the time at which waste was placed in the unit. Illinois EPA is authorized by U.S. EPA to issue, administer, and enforce such permits. U.S. EPA may also enforce such permits.

are required to (and have not yet) plan, conduct and certify closure and, if necessary, post-closure monitoring and maintenance pursuant to Subtitle C of RCRA;

(4) properties which are the subject of an order or a consent agreement and consent order proposed to be issued by Region 5 under section 3008(a), 3008(h), 3013, 7003, or 9003(h) of RCRA; or section 16 of TSCA;

(5) properties approved by, or seeking the approval of, U.S. EPA under TSCA (40 CFR Part 761, Subpart D) for the disposal or commercial storage or polychlorinated biphenyls (PCBs);

(6) sites listed in the CERCLA National Priorities List (40 CFR Part 300, Appendix B); and

(7) sites subject to 35 Ill. Adm. Code 807, 810-817, or 830-832 that have not satisfied all development, operation, and closure requirements (including postclosure) applicable under 35 Ill. Adm. Code 807, 810-817, or 830-832.

V. Principles

A. Although nothing in this MOU constitutes a release from liability under applicable Federal law, generally Region 5 does not anticipate taking any federal environmental cleanup action under RCRA or TSCA at a site, or portion thereof where the Illinois EPA has approved a remediation as having met the requirements of 35 Ill. Adm. Code 742 through:

(1) a "No Further Remediation" letter issued pursuant to 35 Ill. Adm. Code 731, 732 or 740;

(2) a Part B permit issued pursuant to 35 Ill. Adm. Code 724; or

(3) a closure certification approval issued pursuant to 35 Ill. Adm. Code 724 or 725.

This principle shall not apply if Region 5 determines that there may be an imminent and substantial endangerment to public health, welfare or the environment at a site, or portion thereof, where Illinois EPA has approved a remediation as having met the requirements of 35 Ill. Adm. Code 742. This principle shall not apply if the letter, permit or approval ceases to be in effect. If, following the issuance of the No Further Remediation Letter, permit or approval by Illinois EPA, conditions at the site previously unknown to Illinois EPA and/or Region 5 indicate that the response action undertaken is not protective of human health and the environment, Illinois EPA and Region 5 reserve the right to take necessary response action to protect human health and the environment.

B. Pursuant to this MOU, Region 5 approves the use of 35 Ill. Adm Code 740 for sites subject to RCRA or TSCA only at eligible sites. In this light, Region 5 acknowledges the use of 35 Ill. Adm. Code 740, in conjunction with the applicable requirements of 35 Ill. Adm. Code 731 or 732, for remediation of sites subject to RCRA Subtitle I, as long as the remediation meets the requirements of 35 Ill. Adm. Code 742.

VI. Reporting

Upon request, Illinois EPA will provide to Region 5 the following:

(1) The name and location of sites with regard to which remediation applicants are seeking Illinois EPA review and approval pursuant to 35 Ill. Adm. Code 740; and

(2) The Illinois EPA review status of applications, and the status of remediation applicants' compliance with plans or reports approved, disapproved, or approved with conditions, by Illinois EPA pursuant to 35 Ill. Adm. Code 740.

To the extent practicable, for those sites identified by the Illinois EPA pursuant to VI,(1), Region 5 will provide notice to Illinois EPA in an enforcement confidential manner when U.S. EPA is proposing to issue an environmental cleanup order under Section 3008(a), 3008(h), 3013, 7003, or 9003(h) of RCRA; or Section 16 of TSCA.

VII. Reservation of Rights

Notwithstanding any provision in this MOU, Region 5 and Illinois EPA reserve any and all rights or authority that they respectively have and nothing in any provision of this MOU limits or affects the authority or ability of either Agency to take any action authorized by law.

This MOU will be reviewed on an annual basis by Region 5 and Illinois EPA. In addition, at the request of either Agency, this MOU may be reevaluated and modified as appropriate.

VIII. Signatures

This MOU has been developed by mutual cooperation and consent, and hereby becomes an integral part of Illinois EPA's and Region 5's working relationship. The effective date of this MOU is July 1, 1997.

For the Illinois Environmental Protection Agency

Mary A. Gade — 6/23/97

Director
Illinois Environmental Protection Agency

Date

For the U.S. Environmental Protection Agency

David A. Ullrich — June 13, 1997

Acting Regional Administrator
U.S. Environmental Protection Agency, Region 5

Date