
**VOLUNTARY CLEANUP PROGRAM MEMORANDUM OF AGREEMENT
BETWEEN**

**THE VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY
AND**

THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION III

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I. PURPOSE

- A. The Virginia Department of Environmental Quality ("VADEQ") and the United States Environmental Protection Agency, Region III ("Region III") enter into this Memorandum of Agreement ("MOA," or "Agreement")¹ to define and clarify the roles and responsibilities of Region III and VADEQ with respect to contaminated sites addressed by voluntary remediation activities under Virginia's Voluntary Remediation Program ("VRP") conducted under the authority of VA Code §10.1-11232, and to promote the cleanup and re-utilization of contaminated properties. For purposes of this MOA, the term "remediation" is defined as it appears in the Virginia Waste Management Board promulgated final regulations concerning the VRP at 9 VAC 20-160-10 et seq ("Regulations"), Definitions "...actions taken to cleanup, mitigate, correct, abate, minimize, eliminate, control and contain or prevent a release of a contaminant into the environment in order to protect human health and the environment, including actions to investigate, study or assess any actual or suspected release."
- B. Region III and VADEQ believe that the cleanup and revitalization of existing contaminated or potentially contaminated properties including Brownfields sites ("Brownfields"), which include petroleum contaminated sites, will provide a significant benefit to both the environment and the economy of impacted local communities.
- C. To the extent possible, Region III and VADEQ seek to facilitate the cleanup and productive reuse of industrial and commercial properties by preventing and eliminating unnecessary impediments to the remediation, financing, transfer and appropriate use of these properties, and thereby helping to minimize the development of green space or pristine open space; maximize the utilization of existing infrastructure, and prevent the creation of newly contaminated properties.

¹ This MOA was originally executed on January 11, 2002 pursuant to Section 128(a) of CERCLA, 42 U.S.C. §9628(a). The purpose of this modification is to recognize VADEQ's Remediation Consent Order program and update and clarify text where appropriate.

II. BACKGROUND

- A. Region III and VADEQ enter into this agreement to protect the public health and the environment of those communities impacted by the release or threatened release of hazardous substances at eligible sites (see Section III below), including Brownfields, as well as to provide the opportunity for an economic benefit to those communities. Both agencies recognize that a key factor to meeting these goals is to exercise their authorities and use their resources to assure appropriate site response actions that are mutually complementary and not duplicative.
- B. On May 5, 1997, the Virginia Waste Management Board promulgated final regulations concerning the VRP at 9 V AC 20-160-10 et. seq ("Regulations") which became effective on June 26, 1997. The Regulations enable parties who voluntarily initiate remediation of a site under the VRP to obtain VADEQ oversight and, upon completion, to obtain a Certification of Satisfactory Completion of Remediation ("Certification"). Pursuant to VA Code §10.1-1232 this Certification constitutes immunity from a Commonwealth enforcement action.
- C. On January 11, 2002, President Bush signed the Small Business Liability Relief and Brownfields Revitalization Act (Pub.L.No. 107-118, 115 stat. 2356, "the Brownfields Law"). The Brownfields Law amended the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund) by providing funds to assess and clean-up brownfields; clarified CERCLA liability protections; and provided funds to enhance Commonwealth and tribal response programs.
- D. In 2002 the Virginia Legislative adopted the Brownfield Restoration and Land Renewal Act (Title 10.1, Chapter 12.1) which incorporated the existing VRP statutes under the Brownfield Program. Additionally, the Virginia Legislature established via VA Code § 10.1-1231, Brownfield restoration and land renewal policy and programs:

It shall be the policy of the Commonwealth to encourage remediation and restoration of brownfields by removing barriers and providing incentives and assistance whenever possible. The Department of Environmental Quality and the Economic Development Partnership and other appropriate agencies shall establish policies and programs to implement these policies, including a Voluntary Remediation Program, the Brownfields Restoration and Redevelopment Fund, and other measures as may be appropriate.

E. EPA will focus efforts under the Brownfields Program and the funding provided to continue to establish and enhance the four primary elements of the CERCLA 128(a) State and Tribal Program. The goals of these elements will be accomplished through the Commonwealth of Virginia's Voluntary Remediation Program (VRP) and/or equivalent programs.

1. *The timely survey and inventory of brownfield sites in the Commonwealth of Virginia*

EPA's goal in funding activities under this element is to enable the Commonwealth to establish or enhance a system or process that will provide a reasonable estimate of the number, location and general characteristics of brownfield sites in the state.

2. *Virginia oversight and enforcement authorities*

EPA's goal in funding activities under this element is to assist the Commonwealth in ensuring that a Commonwealth-certified cleanup action is protective of human health and the environment and be conducted in accordance with applicable laws.

3. *Virginia resources to provide meaningful opportunities for public participation*

EPA's goal in funding activities under this element is to assist the Commonwealth in facilitating public access to documents and information that is being used to make cleanup decisions, and provide the public with prior notice and meaningful opportunities to provide input to cleanup plans and site activities, including activities for prioritizing brownfield sites for action.

4. *Commonwealth mechanism for approval of a cleanup and verification and certification that a cleanup is complete*

EPA's goal in funding activities under this element is to support the Commonwealth's efforts to approve cleanup plans and verify that cleanup actions are complete, including providing Commonwealth certification of cleanup completion activities or similar documentation.

F. In September 1999, Region III reviewed documents for sites that had previously gone through VADEQ's VRP to evaluate the effectiveness of the VRP actions and Region III's review found VADEQ's VRP to be effective in ensuring completion of appropriate cleanup actions.

G. Region III recognizes Virginia, through the implementation of its VRP, as a leader in the development and implementation of successful strategies for promoting the investigation and cleanup of contaminated or potentially contaminated properties.

- H. In collaboration, Region III and VADEQ seek to protect human health and the environment by encouraging the investigation and cleanup of contaminated or potentially contaminated properties in Virginia under the authority of the Regulations, by implementing the following strategic goals:
1. Encouraging potentially responsible parties to investigate and clean-up sites where releases or threatened releases of hazardous substances exist;
 2. Promoting appropriate investigations and cleanups by parties, including prospective purchasers and developers, through the VRP program;
 3. Developing partnerships among Region III, VADEQ, other state and local governmental agencies, and key stakeholders in Virginia, including representatives from citizen/community groups and the private sector, to assure performance of appropriate site cleanup and reuse activities, and
 4. Providing necessary information to key stakeholders in Virginia to allow for informed decision-making by property owners, prospective purchasers, lenders, public and private developers, citizens, municipalities, counties and elected officials.
 5. In its continuing efforts to optimize the VRP, VADEQ has implemented the Remediation Consent Order program (“RCO”) under the authority of the Virginia Waste Management Act, specifically, Va. Code §§ 10.1-1402(19) – (21), 10.1-1404(B)(3), 10.1-1186(2), and 10.1-1455(F) (collectively; “VWMA”). VADEQ intends to utilize the RCO in the circumstances where it deems the RCO to be the appropriate program for enhancing the enforceability of voluntary cleanups and furthering the MOA. Sites enrolled in the RCO will be subject to the MOA provisions. Region III has performed a review of the RCO and agrees that it is an acceptable enforcement option under the MOA.
- I. In order to accomplish these goals, Region III intends to assist VADEQ in further developing and expanding the appropriate use of public and private party-initiated VRP and RCO cleanups. Similarly, VADEQ intends to support efforts to promote and implement Region III's Brownfields initiatives. VADEQ recognizes Region III as a key partner in the ongoing success of state cleanup programs including the VRP, and recognizes the Region's role in support of the investigation, clean up, finance, transfer and development of Brownfields properties.

III. INELIGIBLE SITES

This MOA does not apply to sites excluded from the VRP, including the following:

- A. Sites at which Region III is conducting a removal action;
- B. Sites that have been listed or proposed for listing on the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") National Priorities List ("NPL");
- C. Sites that have a Hazard Ranking Package which has been submitted to EPA Headquarters, unless EPA, after consultation with VADEQ, agrees that a site can be covered by the MOA and the site meets the eligibility requirements of the VRP; and
- D. Sites that are the subject of a Federal judicial or administrative order or other enforcement action under CERCLA;

Notwithstanding a site and property owner's eligibility to participate in the VRP and/or RCO, this MOA does not apply to sites that are subject to corrective action, a Commonwealth or Federal permit or order, including, but not limited to, a 7003 order, under the Resource Conservation and Recovery Act, 42 U.S.C. 6901, et seq.

IV. IMPLEMENTATION

- A. VADEQ and Region III will coordinate efforts to ensure that sites are being addressed under the VRP and/or RCO, and avoid duplication of effort at sites. While a site listed in the Superfund Enterprise Management System ("SEMS") is being addressed under the VRP and/or RCO program, Region III will ensure that SEMS reflects the status of site activities. Region III anticipates archiving from SEMS those sites that have been cleaned up under the authority of the VRP and/or RCO and for which VADEQ has issued a Certification. At a minimum, VADEQ and Region III will discuss the status of such sites on a quarterly basis.
- B. Although nothing in the MOA constitutes a release from liability under applicable Federal law, generally unless Region III determines that there may be an imminent and substantial endangerment to public health, welfare, or the environment, Region III does not plan or anticipate taking removal or remedial action under CERCLA, 42 U.S.C. § 9601 et seq at a site covered by this MOA where: 1) the site, or the portion of the site, being investigated or cleaned up under the VRP and/or RCO remains in compliance with the terms of a VADEQ

MOA; or 2) investigation or cleanup has been completed at the site, or portion of the site, in accordance with the Virginia Voluntary Remediation Regulations, and/or VWMA, and VADEQ has issued (and not rescinded) a Certification for the site. In the event Region III determines that there may be an imminent and substantial endangerment to public health, welfare, or the environment at a site being investigated or cleaned up under the VRP and/or RCO, to the extent practicable, Region III will consult with VADEQ prior to initiating response, or enforcement action at such site. This commitment to consult with VADEQ in no way limits Region III's authority to conduct, direct, oversee, and/or require environmental response action or to take appropriate enforcement action in connection with a site in the VRP and/or RCO.

- C. If additional information is discovered by EPA or VADEQ after a site has been issued a Certification that would indicate that the site is not suitable for the proposed use or does not protect human health or the environment, VADEQ will notify Region III of this additional information and take the lead in resolving related issues. However, if VADEQ is unable to resolve any issue relating to protectiveness and/or land use designation at such site to EPA's satisfaction, this MOA will not apply to the site in such instance.

- D. Region III and VADEQ will confer and attempt to reach consensus on how to manage, on a case-by-case basis, those sites which are (a) within the scope of sites that are addressed by this MOA, but (b) not "eligible response site(s)" as defined in Section 101(41) of CERCLA, 42 U.S.C. § 9601(41), and, therefore, not subject to the enforcement bar of Section 128(b) of CERCLA, 42 U.S.C. § 9628(b).

V. REPORTING

VADEQ will report the following information to Region III on an annual basis:

- A. The names and number of sites being addressed under the VRP and/or RCO, and
- B. The names and numbers of such sites that have received a Certification.

VI. PUBLIC RECORDS

VADEQ shall maintain a Public Record as provided by Section 128(b)(1)(C) of CERCLA, 42 U.S.C. §9628(b)(1)(C).

VII. BASIS

- A. The Agreement has been developed by the mutual cooperation and consent of Region III and VADEQ, and is not an authorization or assurance of funding from EPA for any VADEQ programs.
- B. EPA enters into the Agreement under the authority of CERCLA. VADEQ enters into the Agreement under the authority of Sections 10.1-1402, 1404 and 1405 of the Virginia Code.
- C. Nothing in the Agreement shall restrict or limit EPA's authority or ability to take any environmental response action authorized by law.
- D. Nothing in the Agreement shall limit or restrict VADEQ's authority or ability to take appropriate action at any site with releases of hazardous substances.
- E. The MOA is solely between EPA and VADEQ for the exclusive benefit of the working relationship between EPA and VADEQ, and is not intended to be enforceable by any party in any administrative or judicial forum. Nothing herein is intended to create any rights, obligations, responsibilities, expectations or benefits for any third parties.

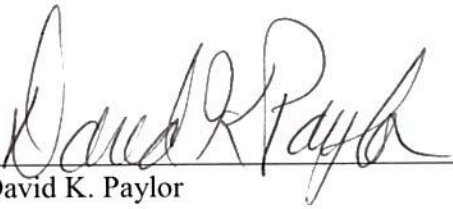
VIII. MODIFICATION

Region III enters into the Agreement based upon a review of Virginia's currently existing laws, regulations, guidance documents and practices. Virginia agrees to provide Region III with prompt notice of changes to such laws, regulations, guidance documents and practices. The MOA may only be modified by mutual written agreement of the parties hereto, or it may be terminated by either party after providing thirty (30) day written notice to the other party.

IX. EFFECTIVE DATE

This modification to the MOA, made pursuant to Section 128 of CERCLA, 42 U.S.C. §9628, shall become effective upon the last date of signature set forth below.

For the Virginia Department of Environmental Quality:



David K. Paylor
Director
Virginia Department of Environmental Quality

2/23/2017
Date



Cecil Rodrigues
Acting Regional Administrator
U.S. Environmental Protection Agency Region III

3/1/2017
Date