

**MEMORANDUM OF AGREEMENT
BETWEEN THE
FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION
AND THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4**

I. PURPOSES

- A. The Florida Department of Environmental Protection ("FDEP") and Region 4 of the United States Environmental Protection Agency ("Region 4") (collectively "the Agencies"), enter into this Memorandum of Agreement ("MOA") to:
1. Define the roles and responsibilities of Region 4 and FDEP to facilitate FDEP's implementation of the Florida Brownfield Redevelopment Act ("Act"), Sections 376.77 - 376.85, Florida Statutes ("F.S."), and the Brownfield Cleanup Criteria Rule, Chapter 62-785, Florida Administrative Code ("F.A.C."), more commonly known as the Brownfield Redevelopment Program ("BP");
 2. Recognize the BP for grant funding eligibility purposes pursuant to § 128(a) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. §§ 9601, et seq., ("CERCLA");
 3. Express how the Agencies generally intend to exercise their respective authorities at Brownfield sites which, for the purposes of this MOA, are defined as sites that have executed a Brownfield Site Rehabilitation Agreement ("BSRA"), as defined in the Act;
 4. Promote the Federal "One Cleanup Program" initiative by working together to achieve cleanups that protect human health and the environment by making greater use of available State and Federal authorities; sharing science and technological approaches; and selecting the optimum programmatic tools to increase the pace, effectiveness, efficiency, and quality of cleanups;
 5. Facilitate the cleanup and beneficial reuse of Brownfield sites in Florida by maximizing the use of existing infrastructures, thereby conserving and minimizing development of green spaces and pristine open areas;
 6. Provide opportunities for the Agencies to exercise their authorities under CERCLA and Chapters 376 and 403, F.S., and use their resources to ensure appropriate Brownfield site rehabilitation tasks, as defined in the Act, are mutually complementary and are not duplicative; and
 7. Provide coordinated and consistent technical assistance and information to promote informed decision-making by property owners, prospective purchasers, lenders, public and private developers, citizens, local units of government, and elected officials.
- B. The Agencies believe the revitalization of existing contaminated or potentially contaminated Brownfield sites will provide significant benefits to the environment, public health, and the economies of affected local communities.

- C. This MOA supersedes the Superfund MOA between Region 4 and FDEP dated December 2, 1999. This MOA does not replace or amend the Resource Conservation and Recovery Act ("RCRA") MOA for Florida's authorized RCRA program.
- D. This MOA does not in any way grant or otherwise create any rights, obligations, responsibilities, expectations, or benefits for any party, and does not in any way alter either Agency's authority under State or Federal law.

II. APPLICABILITY OF THE MOA

- A. This MOA applies to those Brownfield sites:
 - 1. Eligible to participate in FDEP's Brownfields Redevelopment Program, and
 - 2. Identified or described under Section 376.82(1)(a) F.S., and which:
 - i. have received a Site Rehabilitation Completion Order ("SRCO") or a "No Further Action" Order from FDEP; or
 - ii. are implementing a BSRA in accordance with the Act.
- B. Notwithstanding a Brownfield site's eligibility to participate in the BP, the Agencies agree that this MOA shall not apply to:
 - 1. Any site where a hazardous ranking package has been submitted to EPA Headquarters, after consultation with FDEP, proposing its inclusion on the National Priorities List;
 - 2. A site that is subject to a formal enforcement action or was issued a notice of violation by any federal or state agency regarding contamination at a site described in an executed BSRA, and action has not been taken to remedy the alleged violations to the issuing agency's satisfaction;
 - 3. Sites that have been proposed in the Federal Register to be placed on the National Priorities List (however, sites that are proposed to be placed on the National Priorities List, but which are determined not to be appropriate for listing, will become eligible if not otherwise ineligible); or
 - 4. Sites that have been placed on the National Priorities List (however, such sites become eligible if they are subsequently removed from the National Priorities List and are not otherwise ineligible).

III. CERCLA FINDINGS AND AGREEMENT

- A. Region 4 has reviewed and evaluated the BP and has determined that the BP, as implemented under this MOA, includes each of the four elements of a state response program as described in CERCLA § 128(a)(2) and that it maintains a public record as described in CERCLA § 128(b)(1)(C).
- B. Maintenance of CERCLA § 128(a)(2) Elements and Public Record:

FDEP agrees to maintain all four elements of a state response program as described in CERCLA § 128(a)(2). FDEP also agrees to maintain and to make available to the public, a record of sites addressed under the BP, as described in CERCLA § 128(b)(1)(C). Generally, the four elements are:

1. Timely survey and inventory of Brownfield sites in the State;
2. Oversight and enforcement authorities or other mechanisms, and resources, that are adequate to ensure that a response action (site rehabilitation) will protect human health and the environment; and be conducted in accordance with applicable Federal and State law, and that if the person conducting the response action fails to complete the necessary response activities, including operation and maintenance or long-term monitoring activities, ensure that the necessary response actions are completed;
3. Mechanisms and resources to provide meaningful opportunities for public participation, as described in CERCLA § 128(a)(2)(C); and
4. Mechanisms for approval of every cleanup plan and a requirement for verification by and certification or other similar documentation from FDEP that the response action is complete.

IV. CERCLA IMPLEMENTATION

- A. The Agencies will work in a coordinated manner to avoid to the maximum extent possible duplication of effort at sites, and to ensure that site remediation continues in a timely fashion. FDEP will notify Region 4 when sites are being addressed under the BP pursuant to an executed BSRA. If a site listed in the Comprehensive Environmental Response, Compensation, and Liability Information System ("CERCLIS") is being addressed under the BP, Region 4 plans to code that site in CERCLIS to reflect that site's status. Once Region 4 agrees that all response actions at the site are complete, Region 4 plans to archive those sites remediated under the BP and for which FDEP has issued a SRCO. At a minimum, the Agencies will discuss the status of sites annually.
- B. CERCLA § 128(b) provides limitations regarding certain federal enforcement actions at "eligible response sites", as defined in CERCLA § 101(41), that are being addressed in compliance with a state program, where
 1. There is a release or threatened release of a hazardous substance, pollutant, or contaminant and a person is conducting or has completed a response action regarding the specific release that is addressed by the response action that is in compliance with the State program that specifically governs response actions for the protection of public health and the environment; and
 2. FDEP maintains, updates, and makes available to the public a record of sites pursuant to CERCLA § 128(b)(1)(C).

These limitations operate as a matter of law and are subject to the exceptions listed in CERCLA § 128(b)(1)(B).

Thus, subject to the exceptions listed in CERCLA §128(b), Region 4 does not plan on or anticipate taking an administrative or judicial enforcement action under CERCLA §§ 106(a) or 107(a) against a person that is addressing a "specific release" at an eligible response site in compliance with the BP.

- C. Generally, Region 4 does not plan on or anticipate taking removal or remedial action under CERCLA, 42 U.S.C. § 9601, et seq., at a site addressed by this MOA that is not an "eligible response site" as defined in CERCLA § 101(41) while that site remains in compliance with the BP, an executed BSRA, and the terms of any agreement with FDEP, or when a site investigation or a site remediation has been completed in accordance with the BP and the FDEP has issued a SRCO for the site, unless:
1. The person responsible for brownfield site rehabilitation ("PRFBSR") fails or refuses to complete the necessary site rehabilitation in a timely manner, including operation and maintenance or long-term monitoring, and FDEP is unable to ensure completion of the site rehabilitation at the site;
 2. Region 4 determines that the site may present an imminent and substantial endangerment to human health and the environment; or
 3. Following issuance of the SRCO by the FDEP, Region 4 or FDEP determine that conditions at the site (including those previously unknown to FDEP and Region 4, or those which result from a failure to maintain land use restrictions, institutional and/or engineering controls) indicate that the site is no longer protective of human health and the environment or suitable for the authorized or current use.
- D. If a PRFBSR does not complete or refuses to complete the site rehabilitation in accordance with the BSRA, including any required operation and maintenance or long term monitoring activities, FDEP shall ensure that necessary response actions are taken to protect human health and the environment and are completed in a timely manner. Furthermore, FDEP will prioritize the site in its normal course and take all necessary actions at the site as appropriate, considering the risk posed by the site, funds available to FDEP, and other factors. Notwithstanding the terms of this Paragraph, Region 4 reserves its right to initiate a response action as specified in Paragraph IV.C. above.
- E. FDEP will continue to demonstrate, through the reporting requirement of Paragraph VII. of this MOA, that the BP has adequate resources to ensure that site rehabilitation are conducted in an appropriate and timely manner, and that meaningful outreach efforts are made to the public.

V. SITES REGULATED UNDER RCRA

- A. Region 4's relationship with FDEP regarding RCRA facilities eligible for the BP will be conducted in accordance with the RCRA MOA, under 40 C.F.R. § 271.8, and other provisions governing the authorized program under RCRA Subtitle C.
- B. Region 4 recognizes that FDEP can determine whether to take State action at RCRA facilities under its State law and consistent with the provisions governing the State's authorized program.

- C. Region 4 also recognizes that those RCRA sites which participate in the BP may qualify for the economic and regulatory benefits specific to the Act.

VI. PROTECTIVENESS

- A. Pursuant to the Act, the BP shall ensure that site rehabilitation protects human health and the environment. Upon the assessment of a site, the FDEP should determine, consistent with applicable Federal and State law, whether, and to what extent, the contamination at the site might pose a threat or potential threat to public health, safety, and welfare or the environment. For purposes of the BP, the FDEP shall determine whether cleanup target levels are achieved as set forth in Chapters 62-777 and 62-785, F.A.C., and Chapter 62-730, F.A.C., as amended, if applicable, and are consistent with reasonably anticipated reuse and/or development plans. Further, the PRFBSR shall comply with Federal law as applicable.
- B. FDEP will require use restrictions to be filed (recorded) in the Official Records of the County in Florida where the site is located and where the PRFBSR uses such restrictions as institutional controls.
- C. FDEP will ensure that any filed use restrictions (institutional controls) are tracked in its Institutional Controls Registry in accordance with established BP procedures. The Institutional Controls Registry is available at www.depmap1.dep.state.fl.us/website/icr.

VII. REPORTING

In addition to complying with the public record reporting requirements described in CERCLA § 128(b)(1)(C), FDEP will provide or make available to Region 4 information regarding participants in the BP that are addressed under this MOA. On an annual basis the FDEP will report or make available to Region 4 the following:

1. The number, names, and types of sites that have executed a BSRA and the status of site rehabilitation at those sites;
2. Sites that received SRCOs from the FDEP in the previous calendar year; and
3. Other reporting requirements contained in the CERCLA § 128(a) State Response Program funding agreement between FDEP and Region 4.

VIII. MODIFICATION

- A. The Agencies shall keep each other informed of any relevant proposed modifications to its statutory or regulatory authority, forms, or procedures. This MOA shall be revised upon mutual agreement and as necessary by the adoption of such modifications. If the Act or implementing Florida Legislation is modified to the extent that amendments to this MOA are necessary, and no mutual agreement can be reached regarding modification of this MOA, this MOA shall terminate within sixty (60) days of the effective date of the modifications to the Act or Florida Legislation. The Agencies will review the MOA annually. If either Region 4 or FDEP have concerns regarding implementation of the MOA, they will notify the other party of those concerns. In the event a mutual agreement cannot be reached to resolve the issue, following sixty (60) days written notice, either party can terminate this MOA. A modification must be in writing and signed by the signatories or their designees to become effective.

B. This MOA has been developed by mutual cooperation and consent of both Agencies.

IX. RESERVATION OF RIGHTS

Nothing in this MOA affects or limits the authority or ability of FDEP or Region 4 to undertake any action authorized by law. FDEP and Region 4 retain any and all rights and authorities that they have, including but not limited to legal, equitable, or administrative rights, and specifically including the authority to conduct, direct, oversee, and/or require environmental response actions in connection with any entity or site that participates in the BP.

For Florida Department of Environmental Protection



Allan Bedwell, Deputy Secretary
Regulatory Programs
Florida Department of Environmental Protection

11-1-05
Date

Approved as to form and legality:



Lisa M. Duchene
FDEP Brownfields Program Attorney

10-20-05
Date



Augusta P. Roman
FDEP RCRA Program Attorney

10-21-05
Date

For the U.S. Environmental Protection Agency, Region 4



J. I. Palmer, Jr.
Regional Administrator
U.S. Environmental Protection Agency, Region 4

NOV 28 2005
Date