

Bureau of Environmental Remediation  
Curtis State Office Building  
1000 SW Jackson St., Suite 410  
Topeka, KS 66612-1367



Phone: 785.296.6380  
Fax: 785.296.7030  
grichards@kdheks.gov  
www.kdheks.gov

Robert Moser, MD, Secretary

Department of Health & Environment

Sam Brownback, Governor

April 20, 2011

Mr. Pat Urban  
Bendena Ag, Inc.  
202 Railroad Street  
Bendena, Kansas 66008

UNSCANNED  
MAY 20 2011

**RE: Voluntary Agreement, Bendena Ag, Inc., Bendena, Doniphan County, Kansas**

Dear Mr. Urban:

Enclosed for your records is a copy of the Voluntary Agreement 11VCP0005 executed pursuant to the Voluntary Cleanup and Property Redevelopment Program (VCPRP) for the above referenced property. The Secretary of the Kansas Department of Health and Environment (KDHE) signed the agreement on April 18, 2011.

Please note that I have been assigned as Project Manager to provide KDHE oversight for the Bendena Ag, Inc. property. I have reviewed the information submitted with the application and examined KDHE documents on file that pertain to this property. Based on this review, it appears additional investigation will be necessary to characterize potential source areas on the property and identify any possible contamination. Please use the Voluntary Cleanup Investigation Scope of Work that has already been provided to you, for assistance in preparing the work plan.

At this time, Bendena Ag, Inc. should contract with a qualified environmental consultant to prepare a work plan to carry out the Voluntary Cleanup Investigation and submit it to KDHE for review and approval by July 20, 2011. If you or your consultant has any questions about this process, please contact me by telephone at 785-296-6380 or via email at [grichards@kdheks.gov](mailto:grichards@kdheks.gov). As always, KDHE appreciates the participation of Bendena Ag, Inc. in the VCPRP.

Sincerely,

Gary Richards  
Environmental Scientist II  
Voluntary Cleanup Unit  
Bureau of Environmental Remediation

Enclosure

C: Rick Bean (w/ encl) > Bryan Bain > Gary Richards > file Bendena Ag (C4-022-72673)  
Teresa Hattan (w/ encl), KDHE

**STATE OF KANSAS**  
**DEPARTMENT OF HEALTH AND ENVIRONMENT**  
**VOLUNTARY AGREEMENT**

**Bendena Ag, Inc.**

**202 Railroad Street, Bendena, Doniphan County, KS 66008**

**SW ¼, SE ¼, Section 33, Township 3 South, Range 20 East**

**11VCP0005**

---

**I.** This Voluntary Agreement is entered into by Bendena Ag, Inc.(Applicant) and the Kansas Department of Health and Environment ("Department") pursuant to The Voluntary Cleanup and Property Redevelopment Act; Kansas Statutes Annotated Chapter 65-34,161, et seq. The terms of this Voluntary Agreement are not negotiable.

**II.** In entering into this Voluntary Agreement, the mutual objectives of the Department and the Applicant are to insure that the public health, welfare and the environment at or near the Property are protected from any release or threat of release of contaminants. The Applicant explicitly denies any and all legal liability pertaining to the Property or derived there from under any federal or state statute, regulation(s) or ordinance(s) or common law.

**III.** The Department and Applicant mutually **AGREE** to the following:

**A.** The Applicant shall conduct a Voluntary Cleanup Investigation ("VCI"), that meets the objectives of the Department's Scope of Work. The Department may determine that information from existing investigations may satisfy such objectives, therefore, further investigation may not be required by the Department.

**B.** If the Department determines that further investigation is necessary the Applicant shall:

1. submit a draft VCI Work Plan including an implementation schedule for the review of the Department within ninety (90) days from the date of this Voluntary Agreement. The Department will review the work plan and either provide written comments for revision or written approval.

2. upon approval of the Department, implement the approved VCI Work Plan.

3. document the results of the investigation in a VCI Report. The report shall be submitted to the Department for review. The Department will review the report and either provide written comments for revision or written approval.

**C.** The Applicant shall provide Property access to the Department, its' employees and contractors throughout the period of this Agreement for the purposes of oversight, including split

**D.** sampling, and verification.

**D.** The Department shall make a determination as to any further required actions based on the results of the VCI Report. If no further action is determined by the Department, the Department will issue a "No Further Action Determination".

- E. If remediation or monitoring is determined necessary by the Department, the Applicant shall be requested by the Department to:
1. submit to the Department for review and approval a Voluntary Cleanup Remediation Proposal (VCRP) including an implementation schedule for review by the Department within ninety (90) days from the determination and notification to the Applicant that remediation and/or monitoring is necessary. The VCRP shall be developed by the Applicant based on a Scope of Work provided by the Department.
  2. if the Department approves the VCRP, a Voluntary Cleanup Plan shall be submitted by the Applicant. The Voluntary Cleanup Plan will conform to the Department's Scope of Work.
- F. If the Department accepts the Voluntary Cleanup Plan, the Department shall publish a notice of the Department's determination.
- G. The Department will review the Voluntary Cleanup Plan and public comments, if any, to determine written revisions or written approval of the plan.
- H. Following the public comment period and approval of the Voluntary Cleanup Plan, the Applicant will implement the plan within six (6) months and complete the plan within twenty-four (24) months, not including long term operation, maintenance, and monitoring of the system beyond the twenty-four (24) months if required.
- I. Upon receipt of written assurance that the Voluntary Cleanup Plan has been completed by the Applicant, the Department and Applicant will conduct verification monitoring to confirm that the Property has been addressed as described in the Voluntary Cleanup Plan.
- J. Applicant shall notify the Department at least seven (7) days before conducting any well drilling, installation of equipment, or sampling. At the request of either party, the party collecting samples shall provide or allow the other party or its authorized representatives to take split samples of all samples collected pursuant to this Voluntary Agreement.
- IV. The Department may request the Applicant to perform additional tasks not mentioned in, but consistent with the scope and intent of this Voluntary Agreement to protect public health and the environment.
- V. By entering into this Voluntary Agreement, Applicant does not admit any liability with respect to the Property, and nothing in this Voluntary Agreement shall be construed as an admission as to any issue of law or fact related to the Property.
- VI. The Applicant shall, pursuant to the provisions of the Act, reimburse the Department for response and oversight costs. In the event that such costs are not paid by the Applicant, the Department will not continue work under this Agreement until reimbursement has occurred.
- VII. The Department agrees that the activities being undertaken by the Applicant for this Property constitute the only response actions which the Department is undertaking or is causing to be undertaken for the Property. However this shall not preclude the Department from undertaking or causing to be undertaken any response actions that may be necessary to study conditions at or near the Property which present actual or potential threats to the public health or welfare or the environment.

VIII. Neither the State of Kansas, the Department, the Applicant, nor any agent thereof shall be liable for any injuries or damage to persons or property from acts or omissions of the others, their employees, contractors, agents, receivers, trustees, successors or assigns in carrying out activities required of the parties to this Voluntary Agreement. Neither the State of Kansas, nor any agency thereof shall be considered a party to any contract entered into by the Applicant in carrying out activities pursuant to this Voluntary Agreement.

IX. This Voluntary Agreement shall be effective as of the date signed by the Secretary of the Kansas Department of Health and Environment.

X. The provisions of this Voluntary Agreement shall be deemed satisfied thirty (30) days after completion of the requirements of Article III and the payment or refund of response and oversight costs incurred by the Department in accordance with Article VI. The Department shall use its best efforts to issue to the Applicant a certification that the responsibilities under this Voluntary Agreement have been completed and successfully discharged within thirty (30) days. Such certification shall be in the form of a No Further Action Determination.

XI. The Applicant may terminate this Agreement prior to its completion provided that, from a human health and environmental perspective, the Property is in no worse condition at the time of termination than when the Applicant initiated activities under this Agreement.

XII. The terms and provisions of this Agreement shall be construed pursuant to the laws of the State of Kansas.

*IN WITNESS WHEREOF, the Department and the Applicant have executed this Voluntary Agreement through their duly authorized representatives on the respective dates written hereunder.*

Patrick W. Urban

By: (signature)

Patrick W. Urban

Printed Name

Co/ Owner

Title

Bendena Ag, Inc.

Organization

1-3-11

Date

Robert Moser

Robert Moser, M.D., Secretary  
Kansas Department of Health  
and Environment

4/18/2011

Date