MEMORANDUM OF AGREEMENT/KDHE AND USEPA REGION VIII

SUPERFUND MEMORANDUM OF AGREEMENT
BETWEEN THE
KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT
AND THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION VII
VOLUNTARY CLEANUP AND PROPERTY REDEVELOPMENT PROGRAM
AND
STATE COOPERATIVE PROGRAM

I. PURPOSE

The Kansas Department of Health and Environment (KDHE) and Region VII of the United States Environmental Protection Agency (Region VII), enter into this Superfund Memorandum of Agreement (MOA) for the purposes of acknowledging the adequacy of the Kansas Voluntary Cleanup and Property Redevelopment Program (VCPRP) and the Kansas State Cooperative Program (SCP), defining the roles and responsibilities of Region VII and KDHE, and clarifying the division of responsibilities with respect to sites addressed under the authority of the VCPRP and SCP.

II. BACKGROUND

Region VII and KDHE agree that the revitalization of contaminated properties, or properties perceived to be contaminated, (often called “Brownfields”) will provide a significant benefit to the environment and economies of the local communities of the state of Kansas. To the extent possible, Region VII and KDHE seek to simplify the revitalization of industrial and commercial properties by addressing the existing regulatory impediments to the cleanup, financing, transfer, and appropriate use of these properties.

Both agencies will work in a cooperative and coordinated effort to ensure that successful implementation of this effort is accomplished and pledge to employ their authorities and resources in a complimentary and non-duplicative manner.

III. SELECTION OF SITES

A. VCPRP sites included under this MOA must meet the eligibility requirements under K.S.A. §§ 65-34, 161 through 174 of the Kansas Voluntary Cleanup and Property Redevelopment Act. Region VII and KDHE agree to exclude from this MOA the following categories of VCPRP sites:

1. Sites that are listed on, or are proposed for listing, on the National Priorities List (NPL);

2. Sites where a site investigation has been completed by Region VII or KDHE pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §§ 9601, et seq., (CERCLA) and it has been determined by Region VII that the site should be scored using the Hazard Ranking System Package for potential listing on the National Priorities List (NPL).

3. Sites with facilities that are RCRA-permitted facilities or facilities which have had, have, or should have interim status under the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, et seq. (RCRA); and

4. Sites which are subject to existing state or federal orders or agreements for cleanup, or sites that warrant enforcement action by Region VII or KDHE pursuant to RCRA or CERCLA or pursuant to Kansas laws.

B. SCP sites included under this MOA must meet the eligibility requirements of the Kansas State Cooperative Program as implemented by KDHE pursuant to K.S.A. §§ 65-3452 through 3455. Region VII and KDHE agree to exclude from this MOA the following categories of SCP sites:

1. All SCP sites not listed in Attachment A to this MOA;

2. Sites that are listed on, or are proposed for listing, on the NPL, and sites where Region VII has submitted a HRS ranking package to HQ; unless such sites are listed on Attachment A to this MOA;

3. Sites with facilities that are permitted facilities or facilities which have had, have, or should have interim status under the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, et seq. (RCRA); and

4. Sites which are subject to existing federal orders or agreements for cleanup, or sites that warrant enforcement action by Region VII or KDHE pursuant to RCRA or CERCLA or pursuant to Kansas laws.

Region VII and KDHE may annually, or at such other times as needed, update the Attachment A list by mutual, written agreement. Updates may add or delete SCP sites. Added sites may include, but are not limited to, VCPRP sites that after enrollment have become ineligible for the VCPRP in accordance with K.S.A. §§ 65-34, 161 through 174 or pursuant to Section III,A,2 of this MOA. Deleted Attachment A sites shall include any site that Region VII notifies KDHE has failed to meet any one or more of the conditions set forth below in Section V.B. of this MOA, or meets any one or more of the conditions set forth below in Section VIII.A. of this MOA.

IV. PROGRAM GOALS

A. Region VII and KDHE seek to protect human health and the environment by encouraging the voluntary and/or cooperative investigation and cleanup of properties in Kansas by implementing the following strategic goals:

1. Promoting appropriate investigations and cleanups by groups or individuals participating in the VCPRP or the SCP;

2. Developing partnerships between Region VII, KDHE, other state and local government agencies, interest groups, citizen and community groups, and the private sector;

3. Providing available environmental and regulatory information to property owners, prospective purchasers, lenders, public and private developers, citizens, municipalities, counties, and elected officials to allow for informed decision-making;

4. Providing meaningful public involvement activities to ensure that the public is informed of and involved in planning for response actions related to the VCPRP and the SCP. For the VCPRP, these public involvement activities are described in K.S.A. § 65-34,168 (e), and regulations in K.A.R. 28-72-12; and for SCP sites under KDHE's agency policy #BER RS-002, Public Information Program;

5. Promoting cost-effective investigation and cleanup activities of contaminated media which protect human health and the environment and are consistent with projected future uses at the sites and applicable Federal and State law and local land use regulations; and

6. Promoting long-term reliability of cleanup measures for the sites.

B. To accomplish these goals, Region VII will support KDHE in further developing and expanding the use of the VCPRP and SCP. Region VII recognizes the VCPRP and SCP as instrumental in developing and implementing successful strategies to help promote voluntary investigation, cleanup and revitalization of properties. KDHE will continue to support efforts to promote and implement the Region VII Brownfields initiatives. KDHE and Region VII recognize each other as key partners in the ongoing success of the VCPRP and SCP.

V. IMPLEMENTATION

A. KDHE and Region VII will work in a coordinated effort to avoid duplication of effort at sites, and to ensure that site cleanups progress in a timely fashion. KDHE will report to Region VII the status of the VCPRP and SCP as described in Section VII of this MOA.

B. KDHE intends under this MOA that investigations and cleanups of properties are performed under either the VCPRP or the SCP. The SCP is an enforcement based cleanup program for sites that do not meet the eligibility criteria of the VCPRP. KDHE and Region VII agree that for SCP sites the following conditions apply:

1. The KDHE has responsibility, with minimal Region VII involvement, to provide for a timely and CERCLA-protective cleanup and to support the public's right of participation in the decision-making process. Region VII will work with KDHE to determine the appropriate level of oversight that Region VII should exercise at each site covered by this MOA;

2. The quality of the response actions conducted for sites in the SCP will be substantially similar to a responses required under CERCLA. The KDHE should generally select a remedy which provides a level of protectiveness comparable to relevant and appropriate federal requirements for the site; and

3. Any cleanups conducted by private parties under the SCP shall be conducted under enforceable agreements between those parties and KDHE pursuant to K.S.A. §§ 65-3452 through 3455.

C. Region VII personnel have visited KDHE's office to review and evaluate the adequacy of KDHE's VCPRP and SCP programs based on EPA HQ's Six Baseline Criteria for Voluntary Cleanup Programs as described in the November 14, 1996 Memorandum, Interim Approach to Regional Relations with State Voluntary Cleanup Programs. Based on such review and further discussions between Region VII and KDHE, Region VII has determined that both the VCPRP and SCP are adequate. Specifically, the VCPRP and SCP:

1. Provide opportunities for meaningful community involvement;

2. Ensure that voluntary response actions are protective of human health and the environment;

3. Have adequate resources to ensure that voluntary response actions are conducted in an appropriate and timely manner, and that both technical assistance and streamlined procedures, where appropriate, are available from KDHE;

4. Provide mechanisms for the written approval of the response action plans and a certification or similar documentation indicating that the response actions are complete;

5. Provide adequate oversight to ensure that voluntary response actions are conducted in a manner to assure protection of human health and the environment, as described above; and

6. Show capability, through enforcement or other authorities, of ensuring completion of response actions if the party(ies) conducting the response action fail(s) or refuse(s) to complete the necessary response actions, including operation and maintenance or long-term monitoring activities.

D. Region VII and KDHE will provide technical assistance to local and state government agencies in order to facilitate the revitalization of contaminated or potentially contaminated properties in Kansas.

E. When a site has been cleaned up according to the practices and procedures of the VCPRP, KDHE may issue a written No Further Action determination pursuant to K.S.A. 65-34,169. When a site has been cleaned up according to the practices and procedures of the SCP, KDHE may reclassify the site as resolved on KDHE's Identified Sites List.

VI. PROTECTIVENESS

KDHE, through the VCPRP or the SCP shall ensure that voluntary response actions are protective of public health, welfare, and the environment. KDHE, through the VCPRP or SCP, shall determine whether mitigation of exposure of human and ecological receptors to contaminated media is warranted, consistent with applicable Federal and State law. Cleanup standards that are protective of human health and the environment will be determined by KDHE, for sites in the VCPRP or SCP, consistent with the current and projected future uses of the site.

Mitigation of exposure to contaminated media shall be conducted cost-effectively, consistent with the current and projected future uses at the site, and consistent with applicable Federal and State law. Long-term reliability shall also be a goal when selecting response actions.

VII. REPORTING

On a quarterly basis, KDHE will report to Region VII the following:

1. Number and names of sites participating in the VCPRP and SCP and the status of those sites;

2. Number and names of sites entering the VCPRP and SCP;

3. Sites having received a KDHE written no further action determination or reclassified as resolved on KDHE's Identified Sites List; and

4. Notifications of VCPRP and SCP non-completions, defaults, or terminations from the VCPRP and SCP programs, including any voluntary or responsible party who has demonstrated a pattern of uncorrected noncompliance.

5. Any substantive changes in either the VCPRP or SCP law, regulations, or policies, including but not limited to changes in cleanup standards, eligibility criteria, or public involvement.

VIII. ROLES

A. Region VII does not anticipate taking federal removal or remedial action at sites being addressed under the VCPRP or SCP which are covered by this MOA unless:

1. Region VII determines that the site may present an imminent and substantial endangerment to public health, welfare, or the environment; or

2. An emergency situation arises requiring federal action; or

3. The VCPRP or SCP applicant fails or refuses to comply with the approved cleanup plan in a timely manner, unless KDHE takes the lead and resolves the issue in a timely manner to ensure protectiveness at the site; or

4. After cleanup has been implemented or completed, the site or facility fails to maintain engineering controls, land use designation and institutional controls as identified in KDHE's Voluntary Cleanup Plan, or no further action determination in the VCPRP, or in the KDHE State Cooperative Program Corrective Action Decision document, unless KDHE takes the lead and resolves the issue in a timely manner to ensure protectiveness at the site.

B. When a site has been cleaned up according to the practices and procedures of the VCP and/or SCP and KDHE has issued a No Further Action Letter under the VCPRP or

reclassified the site as resolved under the SCP, Region VII does not anticipate taking federal removal or remedial action at the site except as stated in Section VIII. A.

C. Notwithstanding any other provision of this MOA, nothing herein affects or limits Region VII's or KDHE's authority or ability to undertake any enforcement action authorized by law. Region VII and KDHE retain any and all rights or authorities that they respectively have, including, but not limited to legal, equitable, or administrative rights. This specifically includes Region VII's and KDHE's authority to conduct, direct, oversee, and/or require environmental response actions in connection with any facility or site which participates in the VCPRP or SCP.

D. If, following the issuance of the No Further Action determination by KDHE, or reclassification to resolve a site from KDHE's Identified Sites List, conditions at a site including those previously unknown to KDHE or Region VII indicate that the response action undertaken pursuant to the VCPRP or SCP does not protect human health and the environment, Region VII and KDHE retain the right to take the response action necessary to protect public health, welfare, and the environment.

E. This MOA does not expand or limit the rights of any party.

IX. TERM

Region VII enters into this agreement based upon a review of Kansas' currently existing policies, guides, laws and regulations. Region VII or KDHE upon notice and consultation with the other party may amend this MOA or may terminate its participation in this MOA in the event that either party determines this to be appropriate based upon changes to the Kansas program or its implementation.

This MOA is effective upon signature by the parties below, and will remain effective until KDHE or Region VII terminates the MOA by providing written notice of such termination to the other party. Termination shall be effective 30 days after receipt of such notice by the other party. The MOA may be modified by mutual consent of the parties.

WHEREFORE, Region VII and KDHE agree and consent to this MOA:

For the Kansas Department of Health and the Environment:

Date: 2-13-01

For the Environmental Protection Agency, Region VII:

Date: 3/2/01