

Injunctive relief and civil penalties of up to \$10,000 per day of violation are available in the event a corrective action order issued under this statute is violated. § 260.245.1, RSMo. Administrative penalties of up to \$10,000 per day are also available if an order is violated, although they may not be imposed for minor violations, and MDNR is subject to the same requirement for first trying to resolve the violation through conference, conciliation and persuasion. § 260.412, RSMo.

Missouri law also includes the Hazardous Substance Emergency provisions, which provides additional authority for Missouri to carry out a corrective action program as stringent as § 6928(h). See §§ 260.500-.550, RSMo and the accompanying regulations at 10 CSR 24-1.010 through 3.010. These statutes and regulations give MDNR the authority to order any person having control over a hazardous substance involved in a hazardous substance emergency to clean up the hazardous substance and take any actions necessary to address and prevent the recurrence of a hazardous substance emergency. § 260.510(2) and (5), RSMo. If a responsible party refuses to act or can not be found within a reasonable time, MDNR may perform the corrective action and recover response costs from the responsible party, as well as collect punitive damages if the failure to act is willful. A "hazardous substance emergency" is broadly defined and includes a release of any hazardous waste reportable under the MHWML. A "person having control over a hazardous substance" is likewise broadly defined and was recently interpreted to include facility owners, even where an owner does not directly own the hazardous substance released or through a lease agreement has relinquished possession and control of the property. See Coastal Mart, Inc. v. Missouri Dept. of Natural Resources, 933 S.W.2d 947 (Mo. App. 1996).

Based upon the foregoing statutes and regulations, it is our opinion that Missouri has adequate authority to order and enforce corrective action orders which are at least as stringent as the provisions contained in § 6928(h).

C. 42 U.S.C. § 6973.

Section § 6973(a) is RCRA's imminent hazard provision which gives EPA the authority to order any past or present generator, transporter or TSD facility owner or operator who has contributed or is contributing to the disposal of any solid or hazardous waste which may present an imminent and substantial endangerment to human health or the environment to take any action necessary to address the situation. If a party subject to an order under § 6973 fails or refuses to comply with the order, it may be fined up to \$5,000 per day of noncompliance. § 6973(b). If an imminent and substantial endangerment is determined, EPA must notify the appropriate local agency and requirement notice to be promptly posted at the site. § 6973(c). Finally, if EPA settles any claim or proposes to covenant not to sue under this statute, notice and opportunity for a public meeting and comment must be afforded to the public. § 6973(d).

Missouri's broad statutory authority under § 260.375(29), RSMo, the imminent hazard provisions at § 260.420 and the hazardous substance emergency response provisions at § 260.500

have been discussed above. These provisions provide broad statutory authority to order any hazardous waste generator, transporter, owner or operator of a TSD facility or any other person controlling a hazardous waste or hazardous substance to take whatever action necessary to address an imminent hazard. Civil penalties of up to \$10,000 are available under the latter two statutes, as well as injunctive relief. MDNR and the Commission also have broad authority under other provisions of §§ 260.370 and 260.375, RSMo to fulfill the notice and public hearing requirements of the federal statute in the event of a settlement or decision to forebear from suit.

Based upon the foregoing, we conclude that Missouri has adequate authority to carry out a corrective action program, including imminent hazard provisions, which is as stringent as the federal provisions at § 6973.

D. 42 U.S.C. § 6934.

Section § 6934(a) provides that when the presence of a hazardous waste at a facility which has been or is a TSD facility or when the release of such waste may present a substantial hazard to human health and the environment, EPA may order the owner or operator of the facility to conduct such monitoring, testing, and reporting as may be reasonable to determine the nature and extent of the hazard. If the facility is no longer in operation and the current owner could not be reasonably expected to have knowledge of the presence of the hazardous waste at the facility, EPA may order the most recent previous owner or operator of the facility who could be reasonably expected to have knowledge to perform the investigation. § 6934(b). If there is no past or present owner or operator able to conduct the investigation to the satisfaction of EPA, then EPA may conduct the investigation or authorize a state or local authority to do so, with response costs to be paid by the owner or operator. § 6934(d). Refusal to comply with an order under this statute may result in civil penalties of up to \$5,000 per day of noncompliance. § 6934(e)


In addition to the broad grants of statutory authority to MDNR discussed above, MDNR is also given the duty to not only collect and maintain, or require any person to collect and maintain, hazardous waste records, but also to install, calibrate and maintain any monitoring equipments or methods, or require any person to do the same, and make reports consistent with the purposes of the MHWML. § 260.375(7), RSMo. In Missouri's TSD permit regulations at 10 CSR 25-7 264(2)(F)4 B, a facility owner/operator, with limited exception, is required to conduct surface water monitoring program. The monitoring program includes sampling, analysis and reporting requirements designed to protect human health and the environment. MDNR has broad authority to require "additional monitoring to protect human health and the environment" 10 CSR 25-7 264(2)(F) 5

Based upon the foregoing, we conclude that Missouri has adequate authority to carry out a corrective action program, including monitoring, analysis and testing, which are at least as stringent as the federal provisions at § 6973

If you have any further questions or concerns regarding this matter, please do not hesitate to contact me .

Sincerely,

JEREMIAH W.(JAY) NIXON
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Melissa Manda, MDNR General Counsel
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HAZARDOUS WASTE PROGRAM
MISSOURI DEPARTMENT OF
NATURAL RESOURCES

ATTACHMENT II

MEMORANDUM OF UNDERSTANDING FOR EXPEDITED CORRECTIVE ACTION BETWEEN THE MISSOURI DEPARTMENT OF NATURAL RESOURCES AND THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY - REGION VII

I. Purpose

The Missouri Department of Natural Resources (DNR) and Region VII of the Environmental Protection Agency (EPA) enter into this Memorandum of Understanding (MOU) for the purpose of setting out the framework for implementation of an Expedited Corrective Action Program in Missouri. This MOU includes acknowledgment of the roles and expectations of each agency with respect to the activities conducted thereunder.

II. Eligibility

The Missouri Department of Natural Resources (DNR) and EPA Region VII agree that hazardous waste Treatment, Storage, and Disposal (TSD) facilities in Missouri which require further corrective action, as based on the findings of a final RCRA Facility Assessment (RFA) or similar evaluation, and which are not subject to issuance or reissuance of a Missouri Hazardous Waste Management Facility Permit (i.e., order candidates only) are eligible for entry into DNR's Expedited Corrective Action Program. This MOU applies to all hazardous waste TSD facilities eligible for DNR's Expedited Corrective Action Program on or after the effective date of this MOU.

III. Acknowledgments and Expectations

The Missouri Department of Natural Resources (DNR) and EPA Region VII believe that timely investigation and remediation of contaminant releases at hazardous waste TSD facilities will be of significant benefit to the protection of human health and the environment in Missouri. DNR and EPA Region VII agree to the following process to allow eligible hazardous waste TSD facilities to conduct corrective action to expediently achieve the foregoing protections. DNR and EPA Region VII will work cooperatively towards successful development and implementation of DNR's Expedited Corrective Action Program and to ensure wise use of agency resources.

DNR and EPA Region VII recognize that, if properly performed by a facility, expedited corrective action can be an effective substitute for corrective action

performed pursuant to other formal regulatory mechanisms. EPA Region VII will provide, as necessary, technical guidance and support relative to implementation of this program.

DNR and EPA Region VII agree that expedited corrective action, properly performed, may be instrumental in assisting and supporting hazardous waste TSD facilities to move quickly through the corrective action process.

DNR and EPA Region VII agree that the following elements are an integral part of DNR's Expedited Corrective Action Program and are necessary to be protective of human health and the environment; responsive to concerns of the public, regulated community and EPA; and otherwise meet the substantive corrective action requirements which would be applicable pursuant to a hazardous waste permit or corrective action order:

- a. Agreements with facilities to conduct expedited corrective action, while intended to assist facilities in meeting applicable corrective action requirements, will not contain terms or conditions which eliminate, reduce, or otherwise impair DNR's or EPA's existing authority to require corrective action under applicable statutory and regulatory mechanisms. This will apply regardless of whether such agreements are prematurely terminated, or the obligations thereunder are successfully discharged. In addition, expedited corrective action agreements will not contain covenants not to sue.
- b. All expedited response actions, including stabilization and interim measures activities, will be protective of human health, welfare and the environment. These actions must comply with all applicable federal, state and local laws, regulations and ordinances.
- c. DNR will ensure that facility response actions are conducted in an appropriate and timely manner, and that both technical/legal assistance and procedural guidance are available to support and facilitate expedited corrective action activities at eligible hazardous waste TSD facilities.
- d. Technical oversight, including field observation, split-sampling, and inspection of final remedies, for approved investigation and remediation activities will be provided by DNR. The level of DNR oversight will vary depending upon facility-specific circumstances and conditions. Region VII's Regional Policy on Differential Corrective Action Oversight and Corrective Action Oversight Guidance (OSWER Directive 9902.7) will be utilized in determining the appropriate level of DNR oversight on specific projects.
- e. DNR will provide opportunities for meaningful public and community involvement, at a minimum, at the time of final remedy selection. If the interim

measures selected for a facility are likely to be a substantial component of the final remedy, DNR will consider earlier public comment. The facility-specific level of public/community involvement will vary and DNR's efforts to facilitate such involvement will be tailored to the risks posed by the site and the level of public interest in the site activities.

- f. DNR will review and provide written comments and/or approval of expedited corrective action work plans and reports submitted by facilities participating in the Expedited Corrective Action Program. Such information will be provided to EPA Region VII upon its request. Upon successful completion of all approved expedited corrective action activities, DNR will issue a Certification of Completion to the facility acknowledging completion of such activities in accordance with the approved work plan(s).
- g. Following issuance of a Certification of Completion to a facility, DNR will provide copies of all approved expedited corrective action work plans/reports and related correspondence to EPA, to the extent that EPA has not already received copies of same. DNR's recommendation concerning the need, or lack thereof, for further corrective action at the facility will accompany the supporting documents and noted correspondence. EPA will review DNR's recommendation and administrative record for the facility and, based on all relevant information and data, EPA will respond to specific requests for review of DNR's corrective action recommendations in accordance with the Facility Management Plan which is negotiated between DNR and EPA Region VII.

IV. Implementation

The Missouri Department of Natural Resources (DNR) and EPA Region VII will work cooperatively to ensure that there is minimal duplication of effort at facilities undergoing expedited corrective action and to ensure that investigation, monitoring, and remediation are conducted in an appropriate and timely manner.

DNR will notify EPA Region VII in writing when sites are being addressed under DNR's Expedited Corrective Action Program and will, at a minimum, report to EPA Region VII on a semi-annual basis, pursuant to Section VI. of this MOU, the status of activities for facilities performing expedited corrective action. EPA and DNR agree that the primary target of the Expedited Corrective Action Program is medium to lower priority facilities that are not subject to permitting. Use of formal corrective action instruments such as administrative or judicial orders will be considered, as appropriate, at higher priority facilities. DNR will notify EPA if any high priority facilities are requesting participation in the Expedited Corrective Action Program.

DNR will provide technical assistance, guidance, and procedures to facilities and perform technical review and approval of deliverables to ensure consistency with applicable corrective action requirements.

DNR will communicate with and provide technical assistance/guidance to local and state governmental agencies as necessary relative to revitalization and redevelopment of hazardous waste TSD facilities performing expedited corrective action.

When a hazardous waste TSD facility is performing expedited corrective action pursuant to an agreement with DNR, EPA Region VII will not plan or pursue any federal action under RCRA at the facility unless:

- a. DNR is unable to ensure completion of expedited corrective action due to failure of the facility to perform in accordance with the agreement with DNR, and DNR does not take its own enforcement action to address the situation in a timely manner;
- b. EPA Region VII determines that federal action is needed to protect public health, welfare, or the environment, including emergency situations;
- c. DNR specifically requests EPA Region VII to take action;
- d. Site conditions, unknown to DNR at the time of expedited corrective action approval, are discovered and such conditions indicate, as determined by DNR or EPA Region VII, that the approved action is not protective of human health or the environment (and DNR does not take its own action to address the situation in a timely manner); or
- e. The cleanup of a site is no longer protective of human health or the environment, as determined by DNR or EPA Region VII, because of a change or proposed change in the use of the site (and DNR does not take its own action to address the situation in a timely manner).

EPA Region VII will coordinate with DNR and facilities regarding federal requirements under RCRA to provide facilities an informed basis to enter into agreements with DNR to perform expedited corrective action. This coordination may involve discussions with EPA's CERCLA program to determine whether any future cleanups under CERCLA are likely, given available information for a facility. When a hazardous waste TSD facility has successfully completed expedited corrective action pursuant to an agreement with DNR, as recognized by DNR's issuance of a Certification of Completion to the facility, DNR and EPA Region VII will consider all activities conducted thereunder in any subsequent determinations related to satisfaction of corrective action requirements and/or release from interim

status. DNR and EPA Region VII agree that the record created by a facility-specific ECAP, performed pursuant to an agreement with DNR, may be utilized to support a release from interim status to the extent that the record supports a finding that no further corrective action is necessary.

The nature and scope of facility-specific expedited corrective action will be based strictly on information available at the time that an agreement is reached between an eligible hazardous waste TSD facility and DNR. If, following issuance of a Certification of Completion to a facility, EPA Region VII or DNR become aware of previously unknown conditions or information that indicates that the facility's expedited corrective action activities are not protective of human health and the environment, DNR and EPA Region VII reserve their respective rights pursuant to applicable state and federal laws/regulations to take any response actions or require additional corrective action as necessary to protect human health and the environment.

DNR will ensure that it has adequate enforcement or other authority to direct completion of corrective action at facilities where such action is not properly completed pursuant to an expedited corrective action agreement.

V. Protectiveness

The Missouri Department of Natural Resources (DNR) will ensure that expedited corrective action activities are protective of human health and the environment. The DNR will, through oversight of such activities, determine whether releases of hazardous waste and/or hazardous constituents to the environment at facilities pose a threat to human health and the environment, and whether mitigation of the actual or potential exposure of human and ecological receptors to such releases is warranted, consistent with applicable federal and state laws/regulations. Facility-specific contaminant concentrations in environmental media which are protective of human health and the environment will be determined by DNR in consultation with other appropriate state and federal agencies.

Remediation of contaminated environmental media shall be consistent with applicable EPA corrective action guidance, DNR's corrective action policies and procedures, and applicable federal and state laws/regulations. Final corrective action remedies shall be based on facility-specific conditions and will consider reasonable projections of future land use(s) at the facility. Performance standards considered in final remedy selection/approval will include: 1) protection of human health and the environment; 2) attainment of media clean-up standards set by DNR; 3) controlling the source(s) of releases so as to reduce or eliminate, to the extent practicable, further releases that may pose a threat to human health or the environment; 4) compliance with applicable standards in the management of wastes; and 5) other remediation decision factors including long-term reliability and

effectiveness; reduction in contaminant toxicity, mobility, and/or volume of wastes; short-term effectiveness; implementability; cost; and community acceptance.

As necessary, DNR will require facilities performing expedited corrective action to establish appropriate institutional and/or engineering controls to ensure protection of human health and the environment. These controls may include, but are not limited to: deed notices and restrictions, site access controls and monitoring, land use/zoning restrictions and prohibitions, contractual obligation requirements associated with property transfers and proposed land use changes, and public/governmental agency notification requirements. A Certification of Completion for approved expedited corrective action activities will not be issued to a facility by DNR until adequate documentation is provided concerning the establishment of any required institutional and/or engineering controls. DNR and EPA recognize that it may be appropriate to embody long-term institutional and/or engineering controls within an administrative or judicial order, that will allow for direct enforcement of any violations of the conditions under which the final remedy is or was implemented.

VI. Reporting

The Missouri Department of Natural Resources (DNR) will report to EPA Region VII, as part of the State/EPA Performance Partnership Agreement semi-annual report, the following information for each facility performing expedited corrective action:

- a. The facility name and the status of expedited corrective action activities;
- b. The number and names of any new facilities entering DNR's Expedited Corrective Action Program during the preceding six months;
- c. The number and names of any facilities receiving a Certification of Completion for expedited corrective action activities during the preceding six months;
- d. Notification of termination of any expedited corrective action agreements for any reason during the preceding six months; and
- e. Copies of any final Letters of Agreement and Certificates of Completion executed during the preceding six months.

VII. Modification

The Missouri Department of Natural Resources (DNR) and EPA Region VII may periodically modify this MOU to simplify, clarify, and/or revise the specifications contained herein. DNR and EPA Region VII shall keep each other informed of any

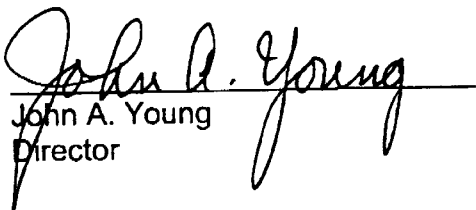
proposed or actual amendments to applicable state or federal statutory/regulatory authority, directives, guidance, and legal/regulatory interpretations as may impact this MOU. This MOU will be periodically reviewed by DNR and EPA Region VII to determine if revisions are necessary. Any revision of this MOU must be mutually agreed to in writing by DNR and EPA Region VII, and the revised MOU must be signed by the signatories or their designees to be effective. DNR and EPA Region VII may unilaterally terminate this MOU at any time. Any notice of termination must be in writing and shall be effective no sooner than 30 calendar days from the date the termination notice is received.

VIII. Reservation of Rights

The Missouri Department of Natural Resources (DNR) and EPA Region VII reserve any and all rights and authority that they respectively have, including but not limited to: legal, equitable or administrative rights and authority. This specifically includes DNR's and EPA's authority to conduct, direct, oversee, and/or require environmental response in connection with any facility which participates in DNR's Expedited Corrective Action Program. Notwithstanding any other provision of this MOU, nothing herein affects or limits DNR's or EPA's authority or ability to take any enforcement action authorized by law.

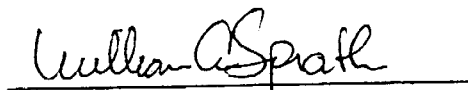
This Memorandum of Understanding has been developed by mutual cooperation and consent.

For the Missouri Department of Natural Resources,
Division of Environmental Quality:


John A. Young
Director

2/24/01
Date

For the Environmental Protection Agency - Region VII,
Air, RCRA and Toxics Division:


William A. Spratlin
Director

1/24/01
Date