

Memorandum of Understanding Between the United States Environmental Protection Agency and the Michigan Department of Environmental Quality

This Memorandum of Understanding (MOU) is entered into between the Regional Administrator, United States Environmental Protection Agency, Region 5 (Region 5) and the Director, Michigan Department of Environmental Quality (MDEQ), in order to implement the Resource Conservation and Recovery Act (RCRA) Subtitle C Corrective Action (CA) requirements and to facilitate Brownfield redevelopment at subject facilities in Michigan.

I. Purpose

Region 5 and the MDEQ agree to mutually exercise their respective legal authorities to: (1) facilitate timely implementation of CA requirements, including, to meet the federal Government Performance Results Act (GPRA) implementation schedule, and completion of final remedy; (2) facilitate the productive redevelopment of Brownfields; and (3) meet each agency's mandate to protect public health and the environment. This MOU expresses the intentions of the parties regarding how they intend to exercise their respective authorities. It does not have any legally binding effect and does not create any legal rights or obligations, nor does it in any way alter either party's authority under state or federal law. This MOU is intended to support Michigan's use of its authorities to achieve cleanups consistent with RCRA CA requirements.

II. Parties

The following officials and their respective agencies are Parties to this MOU:

Regional Administrator, USEPA, Region 5
Director, MDEQ

III. Authority

Region 5 enters into this MOU in furtherance of its statutory and regulatory responsibilities and authority under RCRA Subtitle C CA requirements, 42 U.S.C. §6901 et seq., and other applicable federal

laws and regulations. The MDEQ enters into this MOU in furtherance of its statutory and regulatory responsibilities pursuant to the Michigan Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), Part 111, Hazardous Waste Management, and Part 201, Environmental Remediation, Michigan Compiled Laws (MCL) §§324.11101 et seq., and MCL 324.20101 et seq.; other applicable state laws and regulations including its authority as an authorized state under RCRA, 42 U.S.C. §6926

IV. Background

The State of Michigan and Region 5 are mandated to protect public health and the environment. Region 5 has authorized Michigan for the base RCRA program and CA. Region 5 and the MDEQ acknowledge the potential benefits that can be achieved by clarifying each party's intentions and expectations regarding RCRA facilities addressed under Michigan laws.

Both the MDEQ and Region 5 acknowledge their mutual respect, positive working relationship, and commitment to the successful implementation of this agreement. In particular, the MDEQ and Region 5 seek to protect human health and the environment by:

1. Supporting the use of voluntary investigations and cleanups at facilities subject to CA requirements where a voluntary approach is appropriate for achieving timely and protective cleanups.
2. Providing coordinated and consistent technical assistance and information to allow for informed decision-making by property owners, prospective purchasers, lenders, public and private developers, citizens, local units of government, and elected officials.
3. Ensuring cleanup of sites that protects public health and the environment and promoting revitalization of contaminated property for appropriate use.
4. Promoting processes by which cleanups that are carried out under non-RCRA authorized programs at facilities with CA obligations are performed in a manner which is consistent with CA objectives. The CA objectives are: (a) the requirement for facility-wide assessments in the CA context; (b) all releases of hazardous wastes or constituents into the environment from all

Solid Waste Management Units (SWMUs) and Areas of Concern (AOCs) are addressed (on and off-site); (c) remedies are protective of public health and the environment; and (d) there are meaningful opportunities for public involvement at the site. AOCs include areas contaminated by releases that are not attributable to SWMUs.

5. Facilitating the productive use of all authorities and resources in ways that are mutually complementary and not redundant.

V. CA Implementation Agreement

1. **Relevant State Authorities**

- A. Region 5 recognizes that the MDEQ has been delegated or authorized to implement most major federal environmental programs. The MDEQ's authority for implementing these programs is contained in the NREPA. These programs are implemented by several divisions within the MDEQ under various parts of the NREPA. Each part may have program-specific remediation processes and criteria. The RCRA CA program requires assessment of environmental impacts from all potential SWMUs and AOCs.

The RCRA CA program in Michigan is authorized to be implemented by the Waste Management Division (WMD) under Part 111 of the NREPA. Michigan's state superfund program is implemented by the Environmental Response Division under Part 201 of the NREPA. Michigan's various programs, laws, and regulations, such as Part 111 and Part 201, work together to achieve the CA objectives.

- B. Region 5 has reviewed and evaluated the clean-up standards and related processes for investigation and remediation under Part 201 of the NREPA and has determined that the MDEQ's use of the Part 201 clean-up standards and related processes, as used in the state's hazardous waste management program under Part 111 of the NREPA, are an acceptable way of achieving the objectives of the authorized Part 111 CA program. The WMD intends to use, as appropriate, the process and clean-up criteria specified in Part 201 for implementation of CA requirements under Part

at all state lead facilities subject to CA requirements. The WMD will continue to use the authorities under Part 111 to implement CA, including the incorporation of CA requirements into licenses. The WMD commits to identifying each SWMU and, where feasible, AOCs at a facility and ensuring it is addressed through the Part 201 investigation and remedial process. For these facilities, the WMD may rely on clean-up determinations made by other divisions of the MDEQ in its assessment of whether the owner/operator of a facility has completed the CA requirements for the facility. The WMD will actively coordinate with these other divisions and ensure that cleanups occur in a manner consistent with RCRA. The MDEQ acknowledges that any non-RCRA-authorized program used for purposes of determining whether specific SWMUs or AOCs have met the appropriate clean-up criteria must address the CA objectives and ultimately result in a cleanup, which is consistent with RCRA. This responsibility remains with the WMD.

Facilities subject to CA may also be subject to Part 201 of the NREPA for AOCs that are not SWMUs but have had a release. An AOC at such a facility is subject to the requirements of Part 201. The provisions of MCL 324.20107a of Part 201 also apply to Part 111 facilities.

The clean-up criteria specified in Part 201 of the NREPA provide for land-use based cleanups, which may entail restrictive covenants or other restrictions in order to meet the criteria specified for each land-use Category. The WMD will utilize criteria specified in Part 201 when reviewing and approving institutional controls used in lieu of restrictive covenants. The MDEQ has developed a Limited Remedy Agreement for use at sites, which are subject to these land-use restrictions. The WMD will adapt this agreement for use at CA facilities. A copy of the template for this agreement will be provided to Region 5 for comment before it is finalized.

- C. The WMD is developing a voluntary CA agreement for facilities not included in the GPRA implementation schedules or for facilities in the GPRA schedule where the required action can be implemented in under two years. This agreement will be based upon the model voluntary

agreement provided by Region 5, and the authorities found at Parts 111 and 201. The WMD agrees to consult with Region 5, in the development of the voluntary agreement and allow Region 5 an opportunity to comment on the voluntary agreement prior to completion and distribution of the document.

2. Applicability

Generally, Region 5 does not anticipate taking action pursuant to RCRA CA authorities at facilities being addressed by the MDEQ under Part 201 and 111 except where one or more of the following circumstances apply:

- A. Region 5 determines that the site may pose an imminent and substantial endangerment to public health, welfare, or the environment;
- B. The facility owner or Operator fails to properly implement a course of action required by the MDEQ;
- C. The facility is subject to an existing federal (administrative or judicial) order for cleanup;
- D. The facility is listed on, or proposed for listing on, the USEPA's National Priorities List and sites where Region 5 has submitted a Hazard Ranking Scoring package to USEPA Headquarters, unless the site is eligible for a deferral under the RCRA/Comprehensive Environmental Response, Compensation, and Liability Act deferral policy dated July 1, 1995, EPA Doc. No. 540-R-95-002g;
- E. The exercise of federal authority is necessary for Region 5 to meet its legal responsibilities.

Region 5 will consult with the MDEQ and provide the MDEQ, where practicable and appropriate, an opportunity to take appropriate action in a timely manner prior to making a determination that federal action is necessary at any state lead CA facility.

3. Coordination Between the MDEQ and Region 5

- A. Region 5 and the MDEQ have implemented a process for prioritizing CA implementation at subject facilities and determining which agency is primarily responsible for a particular site. Included in this process are steps to: rank the sites per the USEPA's National Corrective Action Prioritization System; agree on target facilities, their respective ranking, CA implementation schedule, and lead agency; identify specific CA work to be accomplished in each fiscal year's RCRA Grant Work Plan; discuss and agree upon any changes to the existing schedule and lead agency prior to either agency initiating work on a site; and keep each other apprised of progress on all CA facilities. Key to the success of this process is frequent communication between Region 5 and the MDEQ regarding CA facilities and implementation progress. As part of this process, the MDEQ may request, and Region 5 may transfer to the MDEQ, primary responsibility for overseeing CA activities at a given federal-lead facility. Region 5 and the MDEQ hereby commit to continuing implementation and improvement of this process.
- B. Frequent communication between Region 5 and the MDEQ is critical to the success of the RCRA Subtitle C CA program. Region 5 and the MDEQ commit to continuing to share information on CA facilities, implementation priorities, new program initiatives, clean-up criteria decisions, GPRA implementation, and other relevant issues. In order to achieve this level of communication, the MDEQ and Region 5 shall conduct quarterly meetings or Conference calls to discuss progress in implementing this MOU, the CA program in general, meeting GPRA commitments, and facility specific concerns.

The MDEQ commits to hosting a CA conference in Michigan to inform and educate the staff of each agency and the regulated community regarding the developments in the CA program and the consistency developed between Region 5 and the MDEQ in implementing this program. The MDEQ may periodically, as needed, host additional such conferences.

Both agencies further commit to discussing any request for change in the designated lead agency for a site before the

non-lead agency initiates any action at a facility. Region 5 and the MDEQ agree to reasonably consider and grant appropriate requests for change in the lead or priority of a facility based on requests from the regulated community for Brownfield redevelopment opportunities or changing state or federal program initiatives. For Region 5 lead CA sites, upon completion of the CA activities, and upon mutual agreement of the parties, the lead will transfer to MDEQ.

- C. An issue of increasing concern to the regulated community and to the MDEQ in Brownfields redevelopment efforts is the inability of facilities to terminate CA liability, even after CA requirements have been fully implemented at a facility. The MDEQ and Region 5 have undertaken various steps to address this uncertainty. The MDEQ and Region 5 have developed this MOU to clarify Region 5's intentions regarding those RCRA facilities addressed under Michigan's CA program, subject to the limitations set forth herein.

Region 5 agrees to include the MDEQ, WMD in its Workgroup to develop an "Exit Strategy" for RCRA CA sites. The WMD agrees to provide whatever assistance it can in developing such a strategy. Region 5 has been working with various potential purchasers of CA facilities seeking Prospective Purchaser Agreements (PPAs) similar to those provided in the Superfund program. Region 5 will continue to explore with the MDEQ the use of PPAs and other mechanisms for the RCRA program.

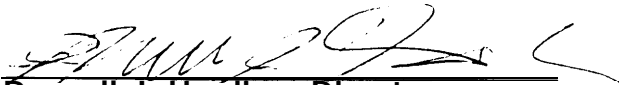
VI. Entry and Modification

This MOU has been developed by mutual cooperation and consent and hereby becomes an integral part of the working relationship between the Region 5 and the MDEQ.

Region 5 enters into this MOU based on a review of the MDEQ's clean-up criteria and processes under Part 201 of the NREPA in its current format. The MDEQ agrees to provide the Region 5 with prompt notice of significant changes to the laws, regulations and guidance, and practices that impact the Part 201 clean-up criteria and processes. The parties agree to review this MOU, if USEPA develops relevant guidance after the effective date of this MOU.

This MOU may only be modified by the mutual Written agreement of both Parties, or it may be terminated by one Party after a 45-day notice to the other Party.

For the Michigan Department of Environmental Quality



Russell J. Harding, Director
Michigan Department of Environmental Quality

11/3/00
Date

For the U.S. Environmental Protection Agency, Region 5



Francis X. Lyons, Regional Administrator
U.S. Environmental Protection Agency

11/3/00
Date