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MISSOURI
CORRECTIVE ACTION PLAN
October 1, 2000

By and Between
THE MISSOURI DEPARTMENT OF NATURAL RESOURCES
Jefferson City, Missouri

and

REGION VII
OF THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Kansas City, Kansas

Table of Contents

- I. Purpose and Scope**
- II. Roles and Responsibilities**
- III. Permit Procedures**
- IV. Order Procedures**
- V. Expedited Corrective Action Procedures**
- VI. Review of Corrective Action Deliverables**
- VII. Compliance with Permits and Orders**
- VIII. Training**
- IX. Use of Contractors**
- X. Resources**
- XI. Modification and Termination**

Attachment I - Missouri Corrective Action Authority Statement

Attachment II - Memorandum of Understanding for Expedited Corrective Action

Attachment III - Letter of Agreement for Expedited Corrective Action

Missouri Corrective Action Plan October 1, 2000

I. Purpose and Scope

The Missouri Corrective Action Plan (MOCAP) will ensure the continued, orderly transition of the corrective action program from the federal to state level. During the interim authorization period for Missouri's corrective action program, which became effective on April 25, 1994, the state and U.S. Environmental Protection Agency, Region VII (EPA) operated within the framework of the Missouri Interim Authorization Plan for Corrective Action dated June 29, 1993. The MOCAP supersedes the referenced interim plan, but does not supersede other Memorandums of Agreement (MOAs) between the state and EPA unless specifically stated herein. This plan specifically addresses procedures for coordination of corrective action permits, orders, expedited actions and the deliverables associated therewith.

The MOCAP describes the roles of EPA and the state relative to corrective action project lead, support and oversight. It defines expectations concerning training, contractor usage and program resources. This plan generally describes procedures for issuing the corrective action portion of permits, state corrective action orders, review of corrective action deliverables and coordination of corrective action activities with the state's groundwater-related evaluations (e.g., Comprehensive Groundwater Monitoring Evaluations (CMEs) and Operation and Maintenance (O&M) Inspections) at hazardous waste facilities. This plan also outlines the framework under which the state will consider and provide oversight for expedited corrective action activities pursuant to letters of agreement with facilities.

II. Roles and Responsibilities

During development of the state's overall corrective action program capabilities, the state and EPA have cooperated by work sharing on the development, issuance and implementation of work required by corrective action permits and orders. Under the MOCAP, the roles and responsibilities of the state and EPA will differ somewhat for permits, orders and expedited corrective action. The Facility Management Plan (FMP), which is negotiated between the state and EPA, has been and will continue to be the instrument for defining the lead responsibility for permits, orders and expedited actions. The FMP will be revised periodically to reflect changes in the lead agency for corrective action and the status of corrective action projects. Corrective action activities will be coordinated with the state's preparation of CMEs, O&M Inspections, Annual Groundwater Monitoring Report reviews and other corrective action-related activities to ensure consistent application of appropriate technical guidance and compliance with applicable regulatory requirements.

Entry of corrective action data into the Resource Conservation and Recovery Information System (RCRIS)/Resource Conservation and Recovery Act Information (RCRA Info) database is a shared responsibility between the Hazardous Waste Program (HWP) and EPA. The HWP is responsible for all RCRIS/RCRA Info corrective action data entry on state- and joint-lead corrective action projects, as designated in the FMP, conducted pursuant to permits, orders and letters of agreement. EPA remains responsible for RCRIS/RCRA Info corrective action data entry on EPA-lead projects, as designated in the FMP, conducted pursuant to permits, orders or other agreements.

III. Permit Procedures

The corrective action portion of new or reissued permits for hazardous waste management (RCRA) facilities will be issued under state authority. The Missouri Department of Natural Resources' (DNR) HWP will be the lead agency in developing these permits, reviewing the corrective action deliverables submitted thereunder and coordinating all such reviews with appropriate personnel and agencies. The HWP will utilize a combination of general, standard and site-specific permit language in developing corrective action-related permit conditions.

New facilities may periodically be added to the RCRA TSD universe. The HWP will prepare, or cause such facilities to prepare, a RCRA Facility Assessment (RFA) as part of the permitting process. As necessary, the HWP's goals for RFA preparation will be incorporated into the FMP. The HWP will coordinate all activities necessary to complete each RFA. If requested by the HWP, EPA will act in a technical support role and will review and comment on RFA-related work products (e.g., site inspection and information requests, work plans, sampling plans, draft and final RFA reports) prepared by the HWP within 30 days of receipt. When EPA is serving in a technical support role for RFA preparation at the HWP's request, the HWP's Project Officer (PO) will respond to all of EPA's comments and will either accept the comments, modify the comments so as to be mutually acceptable to the HWP and EPA, or notify EPA if there is continuing disagreement.

EPA's RCRA Facility Assessment Guidance, October 1986, OSWER Directive 9502.00-5 and other appropriate guidance will be used to guide preparation of each RFA. Upon completion of each RFA, the HWP will transmit a copy of the final RFA to EPA and the facility or, in the case of a facility-prepared RFA, the HWP will ensure that a copy of the final RFA is transmitted to EPA by the facility. In either case, the HWP will prepare and transmit to EPA a final RFA approval form, which specifies the HWP's recommended corrective action management strategy for that facility.

In preparing the corrective action portion of permits, the HWP will review all pertinent information including the RFA report, permit application, facility files and correspondence. A schedule for submittal of corrective action deliverables will be established in each permit as necessary. This schedule will be based on the general nature and scope of actual/potential releases at each facility, the corresponding environmental priority and the nature and scope of previous corrective action activities, if any, already completed. The need for stabilization using interim measures will be considered. All Solid Waste Management Units (SWMUs) and Areas of Concern (AOCs) requiring further corrective action will be specified in each permit.

The HWP is responsible for drafting corrective action permit language, issuing the draft permit, facilitating public participation related to the draft permit, responding to public comments and issuing the final permit. The FMP will specify when an existing EPA permit or order is scheduled to be replaced by a state permit. The HWP is responsible for coordinating all permit-related activities with EPA to ensure that appropriate site-specific requirements from previously-issued EPA permits and orders are covered by and integrated into the replacement permit. The HWP's PO will be responsible for coordinating these tasks both internally (i.e., with other sections/programs) and externally (i.e., with EPA).

EPA retains authority for the Hazardous and Solid Waste Amendments (HSWA) regulations which the state has not yet adopted via rulemaking. EPA will continue to issue HSWA permits covering these regulatory requirements until such time as the regulations are adopted by the state. Regulations/requirements that have been adopted by the state but not yet authorized by EPA will be incorporated into the state portion of each permit and will be enforced, as appropriate, under state law. The HWP PO will be responsible for drafting and coordinating preparation of each HSWA permit covering the noted requirements. Permits previously issued by EPA, which contain corrective action provisions, will continue to be under EPA's legal authority until terminated by EPA and reissued by the state. The decision to terminate any federal corrective action permit, other than by expiration, will be specified in the FMP.

If requested by the HWP, EPA will act in a permit development support role on state-issued permits. EPA will receive permit applications and other submittals from facilities and will be provided with an opportunity to offer comments to the HWP on the permit applications, other submittals, draft Notices of Deficiency and HWP-prepared draft/final permits before they are sent out. EPA reserves the right pursuant to 40 CFR § 271.19 to review and comment on all state-lead permit applications and draft permits. EPA also reserves the right to take any necessary enforcement action related to state-issued permits pursuant to applicable federal laws and regulations.

If requested by the HWP, EPA will serve in a technical support role for corrective action performed under state-issued permits, providing review and comment on deliverables under such permits, as appropriate. When EPA is serving in a technical support role for a state-issued permit at the HWP's request, the HWP's PO will respond to all of EPA's comments and will either accept the comments, modify the comments so as to be mutually acceptable to the HWP and EPA, or notify EPA if there is continuing disagreement.

Primary technical oversight for EPA-issued permits falls into two categories. Primary technical oversight for permits, the corrective action (HSPA) portion of which was developed by EPA, will reside with EPA unless the FMP specifically redefines that responsibility. Primary technical oversight for those permits, the corrective action (HSPA) portion of which was developed by the HWP on behalf of EPA, will reside with the HWP unless otherwise defined in the FMP. When primary technical oversight is provided by the HWP, the HWP will prepare and provide to EPA draft approval, disapproval and/or permit modification documents for EPA's review, approval, modification and/or signature. If EPA believes that significant revision of the HWP's draft documents is necessary, EPA will consult with the HWP before making such revisions. Corrective action technical review and comment correspondence will be sent directly from the HWP to the facility after EPA has had an opportunity to review and comment on the HWP's draft correspondence. If no comments are received from EPA within 30 days of receipt of the HWP's draft correspondence, the HWP may finalize such correspondence and transmit it directly to the facility. If comments are received from EPA, the HWP's PO will respond to all of EPA's comments and will either accept the comments, modify the comments so as to be mutually acceptable to the HWP and EPA, or notify EPA if there is continuing disagreement.

IV. Order Procedures

Corrective action orders may be issued in Missouri under either state or federal authority. The HWP and EPA will coordinate during the FMP process and/or by conference on the choice of state or federal authority for the issuance of corrective action orders. The EPA and the HWP will attempt to specify which facilities are targeted for corrective action orders in the FMP. During FMP development, EPA and the HWP will discuss the level of coordination that is anticipated for issuance and implementation of such orders and develop mutually acceptable time lines for order development and issuance. The lead agency/order authority identified in the FMP will determine whether EPA or the HWP will coordinate the development and issuance of specific orders.

A completed RFA or information that meets the substantive requirements of an RFA shall be available at the time a final decision is made that a facility will be issued a corrective action order. Except where a release is discovered that requires an emergency response, the RFA or equivalent information shall be

available at least 30 days prior to transmitting a draft order to a facility, in the case of an order on consent, or the final order, in the case of a signed unilateral order. The RFA or equivalent information will be part of the corrective action administrative record, will be used to support issuance of the order and will be made available to the public (minus any confidential business information or enforcement sensitive portions).

The HWP will be the lead agency in developing state orders, reviewing the corrective action deliverables submitted thereunder and coordinating all such reviews with appropriate personnel and agencies. The HWP will form a team to develop and implement each state corrective action order. The team will review information and data on the technical aspects of the order and make arrangements for internal legal and technical assistance during order development. As appropriate, EPA will provide guidance and assistance to the HWP during the order development process and each agency's files will be made available to the other agency to assist in order development. EPA may provide guidance to the HWP regarding order content and format. The HWP will consider such guidance within the context of applicable state laws and regulations.

In the case of orders on consent, a transmittal letter to the facility, sent certified mail, will accompany the draft order (with a copy to EPA) stating that the facility has a specified number of calendar days (typically 30) from receipt of the draft order to enter into negotiations on the order. The transmittal letter may also specify that the negotiation process be completed within a specified number of calendar days of order receipt and/or that order time frame extension requests will be considered on a case-by-case basis. If a facility fails to respond within the specified order negotiation notification time frame, the department may, at its discretion, finalize the draft order on consent as a unilateral order. In the case of final unilateral orders, the order transmittal letter will reference the facility's right of appeal pursuant to the state's Hazardous Waste Management Law and Regulations.

Draft state corrective action orders on consent, unilateral final orders and order attachments will be provided to EPA by the HWP for review at the time they are transmitted to the facility. EPA may, at its discretion, review and comment on the HWP's draft state orders on consent and order attachments. Following any substantive revisions to draft orders on consent resulting from the negotiation process, a copy of the revised order and any order attachments will be provided to EPA for further review and comment. EPA may again, at its discretion, review and comment on the revised order on consent and order attachments. If any order-related comments are received from EPA, the HWP will respond to all of EPA's comments and will either accept the comments, modify the comments so as to be mutually acceptable to the HWP and EPA, or notify EPA if there is

continuing disagreement. Any necessary changes to draft orders on consent will be handled during the order negotiation process.

The Missouri Department of Natural Resources (DNR) and EPA expect that most state corrective action final orders will be consensual; however, the HWP reserves the right to issue orders unilaterally, if warranted. All state corrective action final orders whether consensual or unilateral are subject to appeal pursuant to Missouri's Hazardous Waste Management Law and Regulations, with certain exceptions (i.e., a party consenting to an order may not appeal that order; however, third parties are not precluded from appealing an order on consent). Once a final order on consent has been developed, Missouri's AGO will transmit a copy of the final order to the facility for signature, requesting that the signed original final order be returned for agency signature. Once signed by all parties, the HWP will provide copies of the signed order to the facility and EPA.

The HWP will coordinate any necessary state order-related meetings and teleconferences with the facility, EPA and other stakeholders. The HWP and EPA will treat order-related meetings and teleconferences as a high priority. Once a state corrective action order is issued, the HWP PO will act as the primary lead on review, comment, coordination and tracking of order deliverables, including RCRIS/RCRA Info data entry for all state-lead corrective action order activities. The HWP will also have the lead in field oversight of corrective action activities, including any necessary coordination with the DNR's Division of Geology and Land Survey (DGLS), the DNR's Environmental Services Program (ESP), Missouri Department of Health (MDOH) and other agencies, as appropriate.

If requested by the HWP and/or as resources allow, EPA will serve in a technical support role for corrective action performed under state-issued orders, providing review/comment on facility deliverables and/or agency comment letters to the facility, as appropriate. The HWP PO will notify EPA of any schedule requirements, modifications or specific issues for resolution to ensure adequate and timely reviews of such deliverables and/or comment letters. When EPA is serving in a support role at the HWP's request, the HWP's PO will respond to all of EPA's comments and will either accept the comments, modify the comments so as to be mutually acceptable to the HWP and EPA, or notify EPA if there is continuing disagreement.

Corrective action orders previously or hereafter issued by EPA will remain under EPA authority until terminated by EPA as completed and/or incorporated into a state corrective action permit or order. Primary technical oversight for EPA orders falls into two categories. Primary technical oversight for EPA orders will reside with EPA unless the FMP specifically redirects that responsibility to the HWP. When primary technical oversight is provided by the HWP, the HWP will

prepare, and provide to EPA, draft approval, disapproval and/or order amendment documents for EPA's review, approval, modification and/or signature. If EPA believes that significant revision of the HWP's draft documents is necessary, EPA will consult with the HWP before making such revisions. Corrective action technical review and comment correspondence will be sent directly from the HWP to the facility after EPA has had an opportunity to review and comment on the HWP's draft correspondence. If no comments are received from EPA within 30 days of receipt of the HWP's draft correspondence, the HWP may finalize such correspondence and transmit it directly to the facility. If comments are received from EPA, the HWP's PO will respond to all of EPA's comments and will either accept the comments, modify the comments so as to be mutually acceptable to the HWP and EPA, or notify EPA if there is continuing disagreement.

EPA and DNR reserve their respective rights to issue orders as may be necessary to respond to findings of endangerment to public health or the environment. EPA retains the authority to issue corrective action orders under federal authority, but will consult with and notify the HWP prior to the issuance of any federal corrective action orders in Missouri. EPA recognizes that the state possesses state authority to issue state corrective action orders; however, the issuance of such orders is pursuant to state laws and regulations and does not preclude EPA's issuance of corrective action orders under federal authority, including Section 3008(h) of RCRA, which is not part of the state's authorized program. Reservation of rights language, which does not preclude EPA's right to require further corrective action will be included in state corrective action orders. EPA also reserves the right to issue orders as part of facility- or company-specific enforcement actions.

V. Expedited Corrective Action Procedures

EPA recognizes that the state possesses authority to issue state corrective action Letters of Agreement (LOAs) and/or other corrective action agreements; however, the issuance of such LOAs or other agreements does not preclude EPA's issuance of corrective action orders under federal authority. Statutory language supporting implementation of expedited corrective action is found in § 260.375(14), RSMo, which states that the Missouri Department of Natural Resources (DNR) shall "Encourage voluntary cooperation by persons or affected groups to achieve the purposes of Sections 260.350 to 260.430." Expedited corrective action activities will be undertaken in accordance with the Memorandum of Understanding (MOU) between DNR and EPA, which is included as Attachment II.

The HWP expects that all expedited corrective action activities will be designed to meet the substantive corrective action requirements of RCRA including providing opportunities for meaningful public involvement. Accelerated site

investigation and final remedy selection using the HWP's Expedited Corrective Action Program is expected to occur primarily through a reduction in administrative burden rather than a reduction in technical/regulatory oversight. DNR expects technical review/evaluation and regulatory oversight for expedited corrective action projects to be comparable to that associated with traditional permits and orders. Expedited corrective action investigations and deliverables will be subject to ongoing, comprehensive agency review, oversight and approval. The level of site investigation required of facilities and any required final remedies will be protective of human health and the environment. The HWP will be the lead agency in developing LOAs or other corrective action agreements, reviewing the corrective action deliverables submitted thereunder and coordinating all such reviews with appropriate personnel and agencies. The "model" LOA included as Attachment III will be used in development of facility-specific LOAs. Reservation of rights language, which does not preclude EPA's right to require further corrective action, will be included in state corrective action LOAs and other corrective action agreements. The HWP will be responsible for drafting expedited corrective action LOAs, negotiating the LOA, transmitting the final LOA to the facility and providing primary oversight for all corrective action activities performed thereunder. The HWP PO will be responsible for coordinating these tasks both within and outside of the agency.

The LOAs will be structured such that either party may terminate the agreement at any time. If a LOA is terminated by either the facility or the state, corrective action may proceed under other mechanisms, such as a state or federal corrective action order. Satisfactory completion of expedited corrective action specified in a LOA will result in DNR issuing a Certification of Completion to the facility. The Certification of Completion may include a determination of "no further corrective action" by DNR, but will not automatically trigger termination of a facility's interim status. Site investigation, monitoring and remediation performed pursuant to LOAs will be carefully considered by EPA and the HWP in any final determinations regarding the need, or lack thereof, for further corrective action. All information and data generated pursuant to LOAs will also be considered by EPA and the HWP in the evaluation and formulation of decisions regarding termination of interim status.

If requested by the HWP and/or as resources allow, EPA will serve in a technical support role for corrective action performed under state-issued LOAs, providing review/comment on facility deliverables and/or agency comment letters to the facility, as appropriate. When EPA is acting in a technical support role, the HWP PO will ensure that EPA receives a copy of all expedited corrective action deliverables and related correspondence. In addition, when EPA is serving in a technical support role at the HWP's request, the HWP's PO will respond to all of EPA's comments and will either accept the comments, modify the comments so as to be mutually acceptable to the HWP and EPA, or notify EPA if there is continuing disagreement.