

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
CORRECTIVE MEASURES IMPLEMENTATION AGREEMENT
FOR
CORRECTIVE ACTION COMPLETE WITH CONTROLS

UNDER THE
RESOURCE CONSERVATION AND RECOVERY ACT
AS AMENDED BY THE HAZARDOUS AND SOLID WASTE
AMENDMENTS OF 1984

Facility: Rosedale Landscape Depot
Maryland Department of Transportation, State Highway Administration

ID Number: MDD981041601

Address: 8355 Pulaski Highway, Rosedale, MD 21237

I. PURPOSE

This Corrective Measures Implementation Agreement (Agreement) is issued by the United States Environmental Protection Agency (EPA) under the authority of the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976 (RCRA) and the Hazardous and Solid Waste Amendments of 1984 (HSWA), 42 U.S.C. § 6901 et seq., and EPA regulations at 40 C.F.R. Parts 260-271 and Part 124, to the Maryland Department of Transportation, State Highway Administration (SHA).

This Agreement addresses the Rosedale Landscape Depot facility in Rosedale and documents SHA's commitment to implement EPA's final remedy in order to provide long term protection of human health and the environment at the Rosedale Landscape Depot facility. Consistent with EPA's February 2003 document, *Final Guidance on Completion of Corrective Action Activities at RCRA Facilities* (reference 68 FR 8757), EPA has made a "Corrective Action Complete with Controls" determination for the Rosedale Landscape Depot. The guidance recommends that EPA make this determination where the full set of corrective measures has been implemented and all that remains is performance of required operation and maintenance and monitoring actions and/or maintenance of institutional controls. The final remedy of the Rosedale site meets these objectives and is protective of human health and the environment. With this determination, EPA recognizes the significant progress made at the facility and the resulting reduction in risk. EPA's final remedy and SHA's responsibilities are described below.

II. FINAL REMEDY

A. SHA must perform annual inspections of the cap and surrounding area to verify its

- integrity, with at least 180 days and no more than 365 days elapsing between inspections;
- B. SHA must submit a certified annual inspection report to EPA and Maryland Department of the Environment (MDE) documenting observations from the inspection;
 - C. SHA must file a notice with the recorder of deeds for Baltimore County, Maryland that will inform prospective buyers about the residual contamination present below the cap, which notice shall not be released or modified without EPA and MDE approval;
 - D. SHA must notify EPA and MDE of SHA's intent to transfer, lease or modify the property's current use as a storage area at least thirty (30) calendar days prior to the change.

III. REMEDY IMPLEMENTATION

- A. Inspection: SHA must annually inspect the multi-layer cap and the surrounding area to verify the cap remains in good condition and to identify the size and location of any cracks, holes or deteriorated areas. The inspection must be completed by August 30 of each year. SHA shall assure that at least 180 days and no more than 365 days elapse between inspections that are performed to satisfy this annual inspection requirement.
- B. Inspection Report: Within sixty (60) calendar days of the effective date of this Agreement, SHA must submit a proposed format for the annual Inspection Report for EPA and MDE approval. Within thirty (30) calendar days of the date of the inspection, SHA must submit the Inspection Report in an Agency-approved format. The Inspection Report must document the results of the inspection and describe any completed or proposed corrective action activities implemented to maintain the cap's integrity. In addition, SHA must provide EPA with any information on anticipated changes from its current use as a storage area or in ownership. SHA shall sign the Inspection Report as specified in 40 C.F.R. 270.11(b) and certify the report as specified in 40 C.F.R. 270.11(d).
- C. Deed Notice: Within ninety (90) calendar days of the effective date of this Agreement, SHA will record a deed notice with the Recorder of Deeds for Baltimore County, Maryland that will serve to notify all persons about the residual contamination present below the cap at the Rosedale facility. The deed notice must state that it shall not be modified, released or revoked unless changed by a valid instrument executed by EPA, MDE, and SHA and recorded among the Land Records of Baltimore County. SHA shall assure that a copy of the completed notice is received by EPA and MDE within thirty (30) calendar days of the filing date.
- D. Property Transfer/Change of Use: SHA shall assure that EPA and MDE receive notice of SHA's intent to transfer, lease or modify the property's current use as a

storage area at least thirty (30) calendar days prior to the change.

- E. If, at any time, SHA, EPA or MDE identify conditions at the site that warrant corrective action to maintain the integrity of the cap, SHA will submit a proposal to EPA and MDE for approval within thirty (30) calendar days to address the issue.
- F. SHA will implement all Agency-approved maintenance activities as soon as practicable, in accordance with an approved schedule.

IV. RESERVATION OF RIGHTS

- A. EPA reserves all of its statutory and regulatory powers, authorities, rights, and remedies, both legal and equitable, which may pertain to the Facility's activities. This Agreement shall not be construed as a covenant not to sue, release, waiver, or limitation of any rights, remedies, powers, and/or authorities, civil or criminal, which EPA has under RCRA, CERCLA, or any other statutory, regulatory, or common law authority of the United States.
- B. EPA reserves the right to disapprove work performed by the Facility pursuant to this Agreement and to request or direct that Facility perform additional tasks.
- C. EPA reserves the right to require or to perform any portion of the work consented to herein or any additional site characterization, feasibility study, and remedial work as it deems necessary to protect human health and/or the environment. EPA may exercise its authority under CERCLA to undertake response actions at any time. EPA reserves its right to seek reimbursement from the Facility for costs incurred by the United States. Notwithstanding compliance with the terms of this Agreement, the Facility is not released from liability, if any, for the costs of any response actions taken or authorized by EPA.
- D. If EPA determines that activities undertaken pursuant to this Agreement have caused or may cause a release of hazardous waste, hazardous constituent(s), or a threat to human health and/or the environment, or that the Facility is not capable of undertaking the work agreed upon, EPA may order the Facility to stop further implementation of activities undertaken pursuant to this Agreement for such period of time as EPA determines may be needed to abate any such release or threat and/or to undertake any action which EPA determines is necessary to abate such release or threat.
- E. EPA and the Facility acknowledge and agree that EPA's approval of any Statements of Work (SOWs) or any workplan submitted pursuant to this Agreement does not constitute a warranty or representation that the SOWs or workplans will achieve the required cleanup or performance standards. Compliance by the Facility with the terms of this Agreement shall not relieve it of its obligations to comply with RCRA or any other applicable local, state, or federal laws and regulations.

- F. Notwithstanding any other provision herein, no action or decision by EPA pursuant to this Agreement, including without limitation, decisions of the Regional Administrator, the Director of the Waste and Chemicals Management Division, or any authorized representative of EPA, shall constitute final agency action giving rise to any right of judicial review prior to EPA's initiation of an enforcement action, including an action for penalties or an action to compel the Facility's compliance with RCRA.
- G. Notwithstanding any other terms or conditions in this Agreement, EPA may decide to issue a Corrective Action Permit or Order to the Facility at any time.
- H. Indemnification: The Facility agrees to indemnify and save and hold harmless the United States government, its agencies, departments, agents, and employees, from any and all claims or causes of action arising from or on account of acts or omissions of the Facility or its officers, employees, agents, independent contractors, receivers, trustees, and assigns in carrying out activities required by this Agreement. This indemnification shall not be construed in any way as affecting or limiting the rights or obligations of the Facility or the United States under their various contracts. The Facility shall not be responsible for indemnifying the EPA for claims or causes of action solely from or on account of acts or omissions of EPA.

V. OTHER APPLICABLE LAWS

All actions shall be undertaken in accordance with the requirements of all applicable local, state, and federal laws and regulations. The Facility shall obtain or require its authorized representatives to obtain all permits and approvals necessary under such laws and regulations.

VI. NOTICE OF NON-LIABILITY OF EPA

EPA shall not be deemed a party to any contract involving the Facility and relating to activities at the Facility and shall not be liable for any claim or cause of action arising from or on account of any act, or the omission of the Facility, its officers, employees, contractors, receivers, trustees, agents or assigns, in carrying out the activities required by this Agreement.

VII. EFFECTIVE DATE

The effective date of this Agreement is the date on which a copy of this Agreement that has been signed by both EPA and SHA is received by SHA.

VIII. SIGNATURES

DATE: _____

BY: _____

MARIA PARISI VICKERS
DEPUTY DIRECTOR
WASTE & CHEMICALS MANAGEMENT DIVISION
UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION III

DATE: _____

BY: _____

DOUGLAS R. ROSE
DEPUTY ADMINISTRATOR/
CHIEF ENGINEER FOR OPERATIONS
MARYLAND STATE HIGHWAY ADMINISTRATION