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SUPERFUND MEMORANDUM OF AGREEMENT
BETWEEN THE
MARYLAND DEPARTMENT OF THE ENVIRONMENT
AND THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION III

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I. PURPOSE

A. The Maryland Department of the Environment (MDE) and the United States Environmental Protection Agency, Region III (Region III) enter into this Memorandum of Agreement (Agreement) to define the roles and responsibilities of Region III and the MDE with respect to activities conducted under the authority of "Title 7, Subtitle 2 - Controlled Hazardous Substances and House Bill 409 and Senate Bill 340, as signed into law by Governor Parris N. Glendening("Subtitle 5 - Voluntary Cleanup Program") of the Environment Article, Annotated Code of Maryland (1996), and to promote the re-utilization of contaminated properties.

B. Region III and MDE believe that the revitalization of existing contaminated, or potentially contaminated, properties (often referred to as "Brownfields") will provide a significant benefit to both the environment and the economy of impacted local communities.

C. To the extent possible, Region III and MDE seek to facilitate the productive reuse of industrial and commercial properties by preventing and eliminating unnecessary impediments to the financing, transfer and appropriate use of these properties, and thereby help to minimize the development of green space or pristine open space, and to prevent the creation of newly contaminated properties.

II. BACKGROUND

A. Region III and MDE enter into this Agreement to protect the public health and the environment of those communities impacted by underutilized sites where there has been release of hazardous substances, as well as providing the opportunity for an economic benefit to those communities. Both agencies recognize that a key factor in meeting these goals is to exercise their authorities and use their resources to assure appropriate site response actions in ways that are mutually complementary and are not duplicative.

B. MDE addresses sites with releases of hazardous substances pursuant to Title 7 of the Environment Article. Under Title 7, Subtitle 2, MDE has the authority to require owners and other responsible parties to investigate and remediate sites at which releases of hazardous substances occurred or may occur. Under Title 7, Subtitle 5, MDE also has the authority to implement a Voluntary Cleanup Program designed to encourage the voluntary redevelopment of underutilized sites by responsible parties and prospective purchasers to set forth the clean up actions required and to provide a no further requirement letter pursuant to Section 7-506 (B) (3) of the Environmental Article (hereinafter "no further requirements letter") if no cleanup is required or a certificate of completion pursuant to Section 7-511 of the Environmental Article (hereinafter "Certificate of Completion") if a clean up that is protective of public health and the environment is achieved, both of which include liability limitations.

C. Region III recognizes that Maryland, through the Environment Article and the Voluntary Cleanup Program, has developed and implemented successful strategies to help promote the investigation and cleanup of under-utilized properties.

D. This Agreement applies to numerous Maryland sites but does not apply to that limited number of Maryland sites which are in one or more of the following categories:

1) has been listed on the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) National Priorities List (NPL);

2) is the subject of a federal order or other enforcement action under CERCLA;

3) EPA determines may pose an imminent and substantial endangerment or an emergency situation;

4) goes through site investigation and scores above 28.5 using the CERCLA Hazard Ranking System "pre-score" method (NPL-caliber site);

5) is the subject of the EPA/Maryland 'deferral' program; set forth in a 1993 agreement between MDE and EPA Region III which allows for Maryland to oversee the cleanup of contaminated sites that might otherwise be listed on the federal CERCLA NPL and/or

6) is subject (or is a portion of a site subject) to corrective action under the Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq.

E. Therefore, this Agreement between Region III and the

MDE seeks to protect human health and the environment by encouraging the investigation and cleanup of "non-NPL caliber" sites and properties in Maryland under the authority of Title 7 of the Environment Article, by implementing the following strategic goals:

1. Requiring responsible parties to investigate and clean up sites where releases of hazardous substances occurred or may occur;

2. promoting appropriate investigations and cleanups by parties initiating and/or participating in cleanups;

3. developing partnerships between Region III, MDE, other state and local governmental agencies, and key external stakeholders in Maryland, including representatives from citizen/community groups and the private sector; and

4. providing necessary information to the key stakeholders in Maryland to allow for informed decision-making by property owners, prospective purchasers, lenders, public and private developers, citizens, municipalities, counties and elected officials.

F. In order to accomplish these goals, Region III intends to assist and support the MDE in further developing and expanding the appropriate use of private-party initiated cleanups. Similarly, MDE intends to assist and support efforts to promote and implement Region III's "Brownfields" initiatives. The MDE recognizes Region III as a key partner in the ongoing success of the State Superfund Program and the role of Region III in addressing the uncertainty of financing, transferring and redeveloping underutilized previously developed sites by quantifying the risks of federal liability.

III. PRINCIPLES

No Federal Interest Commitment by EPA:

1. While both MDE and Region III are required to reserve their rights to require additional cleanup of a site if a release or threat of release may present an imminent and substantial endangerment to public health or welfare or the environment or future activities at a site result in contamination by hazardous substances, Region III agrees to consider that a site is of no federal interest under the Comprehensive Environmental Response Compensation and Liability Act (CERCLA) when a site in Maryland to which this Agreement applies, has been investigated or remediated in accordance with the practices and procedures of the

Environment Article, and if the site is the subject of a no further requirements letter or Certificate of Completion which signifies the appropriate cleanup of a site in order to ready it for redevelopment, unless:

a) EPA determines conditions at the site may present an imminent and substantial endangerment to public health or welfare or the environment or an emergency situation;

b) previously undiscovered contamination or new contamination is found at the site after the issuance of a no further requirements letter or approval of the response action plan formulated under Section 7-508;

c) material new information regarding site conditions is made available subsequent to the approval of the response action plan or

d) the no further requirements letter or Certificate of Completion was obtained through fraud or material misrepresentation.

2. This commitment by Region III takes effect as of the time of Maryland's action under (1) above, and does not require any site-specific review by EPA.

3. This Agreement will apply to MDE determinations regarding applicable sites that take place after the effective date of this Agreement.

IV. REPORTING

A. Annually, MDE will report the following to Region III:

1. number and identification of sites being addressed under all categories of MDE's State Superfund Program;

2. identification of sites subject to a Certificate of Completion designed to encourage redevelopment of underutilized sites under MDE's program; and

3. identification of sites at which MDE has stated it has no further requirements in the previous year.

B. MDE will provide Region III with access to all documents related to sites covered by this Agreement upon request.

V. BASIS

A. This Agreement has been developed by mutual cooperation and consent between Region III and MDE. This Agreement is not an authorization or funding of MDE's program by EPA.

B. EPA enters into this Agreement under the authority of CERCLA and under EPA general delegation 1-11. MDE enters into this agreement under the authority of Title 7, Subtitles 2 and 5, Environment Article, Annotated Code of Maryland (1996).

C. Nothing in this Agreement shall restrict or limit EPA's ability under Federal law to collect data and information or to require the production of information from private parties concerning any site at which hazardous substances may be present.

D. Nothing in this Agreement shall limit or restrict MDE's authority or ability to take appropriate action at any site where there is a release or threat of release of hazardous substances.

E. Region III enters into this Agreement based upon a review of Maryland's currently existing laws, regulations, guidance documents and practices. Maryland agrees to provide Region III with prompt notice of changes to such laws, regulations and guidance, and practices. EPA may amend this Agreement or its participation in this Agreement in the event it determines it is appropriate based on such changes to Maryland's program.

For the Maryland Department of the Environment:

RW Collins 2-25-97

Richard W. Collins Date
Director, Waste Management Administration

For the Environmental Protection Agency Region III:

2-25-97

Thomas C. Voltaggio Date
Director, Hazardous Waste Management Division