MEMORANDUM OF AGREEMENT
BETWEEN THE
NEW MEXICO ENVIRONMENT DEPARTMENT
AND REGION 6 OF THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

I. Purpose

The New Mexico Environment Department (NMED) and Region 6 (Region 6) of the United States Environmental Protection Agency (EPA), enter into this Memorandum of Agreement (MOA), to support the NMED Voluntary Remediation Program (VRP) and define the roles and responsibilities of Region 6 and NMED under this MOA.

II. Eligibility for the VRP and Applicability of the MOA

A. This MOA will apply to all sites issued Conditional Certificates of Completion or Certificates of Completion (collectively referred to as a "Certificate") by the NMED, and sites that are in compliance with the terms of such Certificate or any applicable voluntary remediation agreement with the NMED pursuant to the New Mexico Voluntary Remediation Act, NMSA 1978, § 74-4G-1, et seq.(the "Act"), subject to the exclusions set forth in this Section.

Region 6 and NMED agree that this MOA will not apply to those sites proposed for or listed on the National Priorities List (NPL), or those sites where ranking packages have been submitted to EPA Headquarters proposing their inclusion on the NPL.

B. NMED will not consider sites, or portions of sites, to be eligible for participation in the VRP where:

1. The contaminants at the site constitute, with reasonable evidence, an unreasonable threat to human health or the environment or Native American cultural or religious sites, as provided in the Act;

2. An administrative or judicial, state or federal enforcement action is pending;

3. As provided in the Act, the site has a state or federal permit that addresses a contaminant described in the application, or a permit is pending (including interim status facilities);

4. A federal grant requires an enforcement action at the site or an agreement between NMED and EPA precludes the site from being addressed under the VRP;

5. The applicant has a demonstrated pattern of uncorrected noncompliance with state or federal environmental laws, including, but not limited to, having had an environmental permit revoked or permanently suspended for cause pursuant to the provisions of any state or federal law within ten years immediately preceding the date of submission of the application; or

6. The applicant has committed significant violations of a federally authorized program at the site. NMED agrees to review each application for participation in the VRP, together with supporting information, to determine if there are outstanding violations of a federally authorized program administered by the NMED, and take a timely and appropriate enforcement action prior to allowing such an applicant into the VRP. When NMED identifies such violations, it will notify Region 6 of such prior to admitting the applicant into the VRP.

C. This MOA shall not apply to:

1. A site or facility that was required to obtain a permit to address a contaminant described in the application under any state or federal environmental law but the site or facility did not obtain the required permit;

2. A site or facility that was issued a notice of violation by any federal, state or local agency regarding a contaminant at the site or facility

described in the application, and action has not been taken to remedy the alleged violations to the issuing agency's satisfaction;

3. Any environmental contamination and consequences thereof outside the scope of the voluntary remediation agreement or the Certificate, or any claim for natural resource damages;

4. Any contamination caused by or resulting from any subsequent redevelopment of the property;

5. Existing contamination caused by regulated substances not removed or disposed of in accordance with applicable standards, or not addressed prior to issuance of the Certificate;

6. Sites or facilities that fail to maintain engineering controls, land use designations and institutional controls as identified in the Certificate and/or voluntary remediation agreement; or

7. Sites listed on the EPA Region 6 Corrective Action Prioritization System (R6CAPS), attached hereto as Attachment A.

III. Background

A. Region 6 and the NMED believe the revitalization of contaminated properties, or properties perceived to be contaminated (often called "Brownfields"), will provide a significant benefit to the environment and economies of the local communities of the State of New Mexico. Region 6 has reviewed and evaluated the adequacy of the VRP based on the six baseline criteria for voluntary cleanup programs as reflected in EPA guidance. Based on such review and further discussions between Region 6 and NMED, Region 6 has determined that entry of this MOA will facilitate the cleanup of Brownfields in New Mexico. Both agencies will work in a cooperative, coordinated effort to implement this program and pledge to employ their authorities and resources in mutually

complementary, non-duplicative methods.

B. Region 6 and the NMED will encourage the voluntary investigation and cleanup of properties in New Mexico by implementing the following strategic goals:

1. Promoting appropriate investigations and cleanups at sites participating in the Voluntary Remediation Program (VRP).

2. Providing necessary information to property owners, prospective purchasers, lenders, public and private developers, citizens, municipalities, counties and elected officials to allow for informed decision-making.

3. Providing public involvement opportunities to ensure the public is informed of response actions related to the VRP, in accordance with the New Mexico Voluntary Remediation Act (NMSA 1978, § 74-4G-1, et seq.). Specifically, the VRP applicant must: (1) make the proposed voluntary remediation agreement available for public inspection at a location in reasonable proximity to the site, within ten (10) calendar days of receipt of a conditional eligibility determination from NMED; (2) notify any affected local, state, federal, tribal or pueblo governmental agency, and those parties that have requested notification, of the proposed voluntary remediation agreement and the opportunity to submit comments to NMED; (3) notify the general public by posting a notice at the site on a form provided by NMED, and by publishing a notice in a newspaper of general circulation in the state and a newspaper published in the area where the site is located; and (4) submit to NMED a copy of the public notice and affidavit of publication and a signed statement affirming the applicant has complied with these public notice provisions. The NMED shall: (1) provide a public comment period of a minimum of thirty days following publication of the newspaper notice, during which interested persons may submit

comments and request a public meeting; (2) consider public comments in deciding whether to enter into a voluntary remediation agreement; and (3) provide for appropriate public participation in the voluntary remediation work plan, including a public meeting if warranted by significant public interest.

4. Reducing or eliminating exposure to contaminated media cost-effectively, consistent with projected future uses at the sites and applicable Federal and State law.

5. Promoting response action objectives when approving mitigation measures for the sites.

6. Developing partnerships among Region 6, the NMED, other State and local governmental agencies and external stakeholders in New Mexico, including representatives from citizen and community groups and the private sector.

To accomplish these goals, Region 6 will help and support the NMED in further developing the VRP. Region 6 recognizes the VRP as instrumental in developing and implementing successful strategies to help promote voluntary investigation, cleanup, and revitalization of Brownfields properties. The NMED will assist and support efforts to promote and implement the Region 6 Superfund Brownfields Redevelopment initiatives. The NMED and Region 6 recognize each other as key partners in the ongoing success of the VRP. NMED also recognizes the role of Region 6 in reducing the uncertainty of financing, transferring and developing Brownfields sites by clarifying the likelihood of Federal involvement at such sites.

IV. Implementation

A. NMED and Region 6 will work in a coordinated effort to avoid duplication of effort at sites, and to ensure that site cleanups continue in a timely fashion. NMED will notify Region 6 when sites are being addressed under the VRP. While a site listed in the Comprehensive

Environmental Response, Compensation and Liability Information System (CERCLIS) is being addressed under the VRP, EPA will code that site in CERCLIS to reflect that site's status.

Once the necessary response actions at all involved portions of a site are complete, EPA will archive from CERCLIS those sites cleaned-up under the authority of the VRP and for which NMED has issued a Certificate. At a minimum, NMED and Region 6 will discuss the status of sites quarterly.

B. If a site which is regulated under the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6901, et seq., is otherwise eligible for participation in the VRP and is also listed on the EPA Region 6 Corrective Action Prioritization System (R6CAPS), after receiving a Certificate under the VRP, the regulated site may request that EPA reevaluate their ranking under R6CAPS. This reevaluation may result in removal from high or medium priority categories. Regulated sites are ranked on R6CAPS as a result of the size and complexity of the regulated site's operations and/or environmental issues. Regulated sites will be added periodically to the R6CAPS after consultation with the NMED. Attachment A to this document is a listing of regulated sites currently ranked on the R6CAPS for New Mexico.

C. Unless Region 6 determines that there may be an imminent and substantial endangerment to public health, welfare, or the environment, subject to Sections II, IV and VIII of this MOA, Region 6 does not plan or anticipate any Federal response action at that portion of a site being investigated or cleaned up under the VRP under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. § 9601 et seq., while that site remains in compliance with the terms of any applicable voluntary remediation agreement with NMED, or when a site investigation or cleanup has been completed in accordance with the New Mexico Voluntary Remediation Act (NMSA 1978, § 74-4G-1, et seq.) and the Voluntary Remediation Regulations (20 NMAC 6.3), and when the NMED has issued (and not

rescinded) a Certificate for the site, as defined in the aforementioned Act and Regulations.

D. A decision by Region 6 not to plan or anticipate Federal response action under CERCLA for sites implementing investigation and cleanup under the VRP will be based strictly on the information known by EPA and NMED at the time of the NMED determination concerning the site. If additional information is discovered after a site has been issued a Certificate that would indicate that the site is not suitable for the proposed use, or does not protect human health and the environment, after notifying Region 6 of the additional information regarding the site, NMED will take the lead in resolving the issue. However, if NMED is unable to resolve an issue relating to protectiveness and/or land use designation to EPA's satisfaction, this MOA will not apply.

E. In accordance with the Act, NMED may rescind a Certificate or a covenant not to sue if it determines that:

1. Based on reasonable evidence, contamination addressed in the voluntary remediation agreement still poses, following remediation, an unreasonable threat to human health or the environment, or that a clean up performance standard has not been met;

2. The voluntary remediation agreement was performed in a manner that fails to comply substantially with the terms and conditions of the agreement or voluntary remediation work plan;

3. Any monitoring requirements, engineering controls, remediation systems, post-closure care, or affirmation of future non-residential land use upon which the final remedy is dependent are not being implemented satisfactorily;

4. The voluntary remediation agreement is a result of fraud; or

5. Contamination was present at the site at the time the voluntary remediation agreement was signed or the voluntary remediation work plan was approved, but NMED was not properly informed of the type, extent, or magnitude of the contaminants.

F. NMED will continue to demonstrate that its VRP has adequate resources to ensure that voluntary response actions are conducted in an appropriate and timely manner, and that meaningful outreach efforts are available to the public. NMED shall continue to make available to current and prospective owners, lenders, and the public, both technical assistance and streamlined procedures.

G. Region 6 will continue to work with NMED to address and encourage appropriate cleanup, development and reuse of properties in New Mexico. Region 6 and the NMED, where appropriate, will provide technical assistance to local and State governmental agencies in order to facilitate the revitalization of contaminated or potentially contaminated properties in New Mexico. After consultation with the NMED, Region 6 may provide resources to local and State governmental agencies in order to support Brownfields initiatives in New Mexico.

V. Protectiveness

The VRP shall ensure that voluntary response actions protect human health and the environment. Upon the assessment of a site, the NMED should determine, consistent with applicable Federal and State law, whether the contamination at the site may pose a threat or potential threat to human health or welfare, or the environment, and the extent of potential exposure by human and ecological receptors to contaminated media. For purposes of the VRP, the NMED shall determine whether contaminant concentrations are protective for each medium, consistent with projected future uses at the site, and shall ensure that clean up levels meet standards set forth in any State or Federal Applicable or Relevant and Appropriate Requirements (ARARs).

Cleanup of contaminated media shall be conducted consistent with applicable Federal and State law. Cleanup measures may include one or more of the following: (1) treatment of contaminated media to acceptable exposure levels; (2) containment of contaminated media to acceptable exposure levels; (3) transport to off-site treatment and/or disposal; or (4) restricted access to and/or use of the site through institutional controls.

VI. Reporting

A. NMED will provide EPA with information regarding sites in the VRP that are covered by this MOA. On a quarterly basis the NMED will report to Region 6 the following:

1. Number, names and types of sites participating in the VRP and the status of response actions at those sites;

2. Number, names and types of sites applying for or entering the VRP the previous quarter; and

3. Sites that received Certificates from the NMED for full or partial completions in the previous quarter.

VII. Modification

Region 6 and NMED shall keep the other informed of any relevant proposed modifications to its statutory or regulatory authority, forms, procedures, or priorities. This MOA shall be revised upon mutual agreement and as necessary by the adoption of such modifications. If New Mexico modifies the Voluntary Remediation Act or implementing regulations, and no mutual agreement can be reached regarding modification of this MOA, this MOA shall terminate within 60 days of the effective date of the modifications to the Voluntary Remediation Act or implementing regulations. Region 6 and NMED staff will review the MOA annually. If either Region 6 or NMED have concerns regarding implementation of the MOA, they will notify the other party of those concerns. In the event a mutual agreement can not be reached to resolve the issue,

following 60 days written notice, either party can terminate this MOA. A modification must be in writing and signed by the signatories or their designees to become effective.

VIII. Reservation of rights

A. Nothing in this Agreement modifies RCRA's statutory requirements or New Mexico's responsibility to fully implement RCRA's requirements as an authorized State.

B. Subject to the reservations set forth in Sections II, IV and VIII of this MOA, at sites being investigated or cleaned up under the VRP, Region 6 and NMED will suspend further investigation or response action under CERCLA. However, Region 6 may resume or initiate response action or enforcement action at such sites if:

1. The VRP applicant fails or refuses to complete the necessary cleanup in a timely manner, and NMED is unable to ensure timely completion of response actions at the site;

2. The EPA determines that the site may present an imminent and substantial endangerment to public health, welfare or the environment; or

3. An emergency situation arises that would require Federal intervention.

C. Region 6 and NMED expressly reserve the right to take any action, including any enforcement action, to address any contamination not covered by the voluntary remediation agreement, including any release of a contaminant that occurs after issuance of the Certificate, or any release of a contaminant not covered by the voluntary remediation agreement.

D. Region 6 and NMED reserve any and all rights or authority that they respectively have, including, but not limited to, legal, equitable, or administrative rights. This specifically includes Region 6's and NMED's authority to conduct, direct, oversee, and/or require environmental response in connection with any

facility or site which participates in the VRP.

E. If, following the issuance of the Certificate by the NMED, conditions at the site, including those previously unknown to NMED and Region 6, indicate that the response action undertaken pursuant to the VRP does not protect human health and the environment, Region 6 reserves the right to take necessary response action to protect human health and the environment.

F. Notwithstanding any other provision of this MOA, nothing herein affects or limits NMED's authority or ability to take any enforcement action authorized by law.

G. Notwithstanding any other provision of this MOA or of NMSA 1978 § 74-4G-1, et seq., nothing herein affects or limits Region 6's authority or ability to take any enforcement action authorized by federal law, including for violations that caused or contributed to the release which is the subject of the VRP agreement.

H. This MOA is intended to benefit EPA and New Mexico by strengthening the existing partnership and clarifying roles and responsibilities with respect to the sites described in this MOA. This MOA does not expand or limit the rights of any party.

This MOA has been developed by mutual cooperation and consent.

For the New Mexico Environment Department

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Peter Maggiore, Secretary Date
New Mexico Environment Department

For the U.S. Environmental Protection Agency

_____ _____

Gregg A. Cooke, Regional Administrator Date
U.S. Environmental Protection Agency, Region 6

ATTACHMENT A

CA rank	NAME	NUMBER	LOCATION	CITY	STATE
HI	AGRICULTURAL PRODUCE COMPANY, INC.	NMD007397995	HIGHWAY 85 & STATE ROAD 228	MESQUITE	NM
HI	GIANT REFINERY	NMD000333211		GALLUP	NM
HI	NASA - JSC WHITE SANDS	NM8800019434	30 MILES NORTHEAST OF LAS CRUCES	LAS CRUCES	NM
HI	NAVAJO REFINING COMPANY	NMD048918817		ARTESIA	NM
HI	SPARTON TECHNOLOGY, INC	NMD083212332	9621 COORS ROAD, NW	ALBUQUERQUE	NM
HI	US AIR FORCE CANNON AFB	NM7572124454		CLOVIS	NM
HI	US AIR FORCE HOLLOMAN AFB	NM6572124422		HOLLOMAN	NM
HI	US ARMY FORT WINGATE DEPOT ACTIVITY	NM6213820974		GALLUP	NM
HI	US ARMY WHITE SANDS MISSILE RANGE	NM2750211235		WHITE SANDS	NM
HI	US DOE LOS ALAMOS SCIENTIFIC LAB	NM0890010515	BIKINI STREET RECEIVING BUILDING SM-3	LOS ALAMOS	NM
HI	US DOE SANDIA NATIONAL LABORATORIES	NM5890110518	KIRTLAND AFB	ALBUQUERQUE	NM
HI	USAF KIRTLAND AFB	NM9570024423		ALBUQUERQUE	NM
ME	BLOOMFIELD REFINING COMPANY	NMD089416416		BLOOMFIELD	NM
ME	CLIMAX CHEMICAL COMPANY	NMD990753931		MONUMENT	NM
ME	G.E. APPARATUS SERVICE SHOP	NMD047140256	4420 MCLEOD ROAD, NE	ALBUQUERQUE	NM
ME	NEW MEXICO STATE UNIVERSITY	NMD075088252	P.O. BOX 30001/ I-10 & I-25	LAS CRUCES	NM
ME	PNM PERSON GENERATING STATION	NMT360010342	BROADWAY	ALBUQUERQUE	NM
ME	SIGNETICS CORPORATION (PHILIPS SEMICON	NMD000709782	9201 PAN AMERICAN FREEWAY, N.E.	ALBUQUERQUE	NM
LO	BROTHER'S PLATING	NMD035677244	6817 4TH N.W.	ALBUQUERQUE	NM
LO	EAGLE PICHER INDUSTRIES INC.	NMD001829506	P.O.BOX L	SOCORRO	NM
LO	GULTON INDUSTRIES, DATA SYSTEMS DIVISIO	NMD035686823	6600 GULTON CT.	ALBUQUERQUE	NM
LO	LAGUNA INDUSTRIES, INC.	NMD130109226	1 MESITA INDUSTRIAL PARKWAY	LAGUNA	NM
LO	RINCHEM COMPANY, INC.	NMD002208627	6133 EDITH BLVD	ALBUQUERQUE	NM
LO	SAFETY KLEEN	NMD980698849	4200-1 HAWKINS ROAD	FARMINGTON	NM
LO	SAFETY KLEEN CORPORATION	NMD000804294	2720 GIRARD N.E.	ALBUQUERQUE	NM
LO	VETERANS ADMINISTRATION MEDICAL CENTE	NM0750311508	2100 RIDGECREST DRIVE, S.E.	ALBUQUERQUE	NM

APPROVAL OF OSWER AND OECA

In accordance with the Proposed Final Draft Guidance for Developing Superfund Memoranda of Agreement Concerning State Voluntary Programs, dated November 26, 1997, the U.S. Environmental Protection Agency Office of Solid Waste and Emergency Response (OSWER) and Office of Enforcement and Compliance Assurance (OECA) approve the Memorandum of Agreement between Region 6 of the U.S. Environmental Protection Agency and the New Mexico Environment Department concerning the New Mexico Voluntary Remediation Program.

Date: 12/2/99

Timothy Fields, Jr.
Assistant Administrator
Office of Solid Waste and Emergency Response

Date: 11/20/99

Steven A. Herman
Assistant Administrator
Office of Enforcement and Compliance Assurance