Memorandum of Agreement

The Oklahoma Department of Environmental Quality (ODEQ) and Region 6 of the U. S. Environmental Protection Agency (EPA), enter into this Memorandum of Agreement (MOA), for the purposes of supporting the ODEQ Voluntary Cleanup Program (VCP) and defining the roles and responsibilities of EPA and ODEQ with respect to activities conducted under the authority of the ODEQ VCP.

This MOA has been developed by mutual cooperation and consent.

Mark Coleman 4-20-99

Mark Coleman, Executive Director ***Date***
Oklahoma Department of
Environmental Quality

Gregg A. Cooke 4-20-99

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

MEMORANDUM OF AGREEMENT
BETWEEN THE
OKLAHOMA DEPARTMENT OF ENVIRONMENTAL QUALITY
AND REGION 6 OF THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

I. Purpose

The Oklahoma Department of Environmental Quality (DEQ) and Region 6 of the United States Environmental Protection Agency (Region 6), enter into this Memorandum of Agreement (MOA), to support the DEQ Voluntary Cleanup Program (VCP) and define the roles and responsibilities of Region 6 and DEQ under this MOA.

II. Applicability of the MOA

A. This MOA will apply to all sites issued Certificates of Completion or Certificates of No Action Necessary (collectively referred to as a "Certificate") by the DEQ, and sites that are in compliance with the terms of an MOA and any applicable consent order with the DEQ pursuant to the Oklahoma Brownfields Voluntary Redevelopment Act, 27A O.S. Supp. 1997, § 2-15, et seq.

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

B. Region 6 and DEQ further agree that sites, or portions of sites, regulated under the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6901, are generally eligible for consideration under the VCP. However, Region 6 and DEQ also agree that a site will not be eligible for participation in the VCP where the applicant:

1. Is responsible for taking corrective action on the site under an EPA order or agreement;

2. Is not in substantial compliance with a final agency order or court order secured by any State or Federal agency relating to the generation, storage, transportation, treatment, recycling or disposal of regulated substances; or

3. Has a demonstrated pattern of uncorrected noncompliance.

C. This MOA shall not apply to:

1. Any environmental contamination and consequences thereof that the applicant caused outside the scope of the consent order or the Certificate, or any claim for natural resource damages;

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

3. 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;

4. Any person responsible for contamination who has not participated in the voluntary cleanup; or

5. Sites or facilities that fail to maintain land use designations and institutional controls as identified in the Certificate and/or consent order(s).

III. Background

A. Region 6 and the DEQ 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 Oklahoma. Region 6 and the DEQ seek to simplify the revitalization of industrial and commercial properties by addressing the existing regulatory impediments to the financing, transfer and appropriate use of these properties. 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 DEQ will encourage the voluntary investigation and cleanup of properties in Oklahoma by implementing the following strategic goals:

1. Promoting appropriate investigations and cleanups by groups or individuals participating in the Voluntary Cleanup Program (VCP).

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 activities to ensure the public is informed of response actions related to the VCP, in accordance with the Oklahoma Environmental Permitting Act (27A O.S. Supp. 1997 § 2-14) and procedural rules (OAC § 252:2-15). Required actions include: (1) initial notice to landowner; (2) public notice in a newspaper local to the site when the VCP applicant files an application with the DEQ; (3) another public notice in a newspaper local to the site when the DEQ has issued a draft remediation plan or a draft no action determination, providing an opportunity for public comment and to request a public meeting; (4) a formal public meeting conducted by DEQ if requested, and (5) DEQ's written response to public comments prior to final agency action. All documents submitted to the DEQ by the VCP applicant must also be placed for public review in the county in which the real property is located and be available for inspection and copying. At the conclusion of the VCP process, the VCP applicant must file the Certificate of Completion or Certificate of No Action Necessary in the office of the county clerk where the property is located.

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 DEQ, other State and local governmental agencies and external stakeholders in Oklahoma, including representatives from citizen and community groups and the private sector.

To accomplish these goals, Region 6 will help and support the DEQ in further developing the VCP. Region 6 recognizes the VCP as instrumental in developing and implementing successful strategies to help promote voluntary investigation, cleanup, and revitalization of Brownfields

properties. The DEQ will assist and support efforts to promote and implement the Region 6 Superfund Brownfields Redevelopment initiatives. The DEQ and Region 6 recognize each other as key partners in the ongoing success of the VCP. DEQ also recognizes the role of Region 6 in addressing the uncertainty of financing, transferring and developing Brownfields sites by defining the risks of Federal liability.

IV. Implementation

A. DEQ 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. DEQ will notify Region 6 when sites are being addressed under the VCP. While a site listed in the Comprehensive Environmental Response, Compensation and Liability Information System (CERCLIS) is being addressed under the VCP, 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 VCP and for which DEQ has issued a Certificate. At a minimum, DEQ and Region 6 will discuss the status of sites quarterly.

B. If a RCRA facility which is otherwise eligible for participation in the VCP is also listed on the EPA Region 6 Corrective Action Prioritization System (R6CAPS) as a medium or high priority facility, the facility will not be excluded from consideration for federal action, consistent with a state authorized program. Attachment A to this document is a listing of high and medium priority facilities currently ranked on the R6CAPS. Facilities are ranked as high or medium priority on R6CAPS as a result of the size and complexity of the facility's operations and/or environmental issues. Facilities will be added periodically to the R6CAPS after consultation with the DEQ. High and medium priority RCRA facilities that receive a Certificate of Completion under the VCP, may request that EPA reevaluate their ranking under R6CAPS. This reevaluation may result in removal from high or medium priority categories.

A VCP cleanup at a RCRA Treatment, Storage, or Disposal (TSD) facility does not obviate the requirement that a

TSD facility obtain a RCRA permit and that, where appropriate, the permit address corrective action.

C. 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 VCP under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. § 9601 et seq., or corrective action under the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq., while that site remains in compliance with the terms of an MOA and any applicable consent order with DEQ, or when a site investigation or cleanup has been completed in accordance with the Oklahoma Brownfields Voluntary Redevelopment Act (27A O.S. Supp. 1997 § 2-15-101 through § 2-15-110) and the Brownfields Rules (OAC 252:220, et seq.) and when the DEQ has issued a Certificate for the site, as defined in the aforementioned Act and Rules, unless Region 6 determines that there may be an imminent and substantial endangerment to public health, welfare, or the environment.

D. A decision by Region 6 not to plan or anticipate Federal response action under CERCLA or corrective action under Sections 3004(u), 3004(v), and 3008(h) of RCRA, 42 U.S.C. §§§ 6924(u), 6924(v), and 6928(h), for sites implementing investigation and cleanup under the VCP will be based strictly on the information known by EPA and DEQ at the time of the DEQ 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, DEQ will take the lead in resolving the issue. However, if DEQ is unable to resolve an issue relating to protectiveness and/or land use designation to EPA's satisfaction, this MOA will not apply.

E. DEQ will continue to demonstrate that its VCP 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. DEQ shall continue to make available to current and prospective owners, lenders,

and the public, both technical assistance and streamlined procedures.

F. Region 6 will continue to work with DEQ to address and encourage appropriate development and reuse of properties in Oklahoma. Region 6 and the DEQ, 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 Oklahoma. After consultation with the DEQ, Region 6 may provide resources to local and State governmental agencies in order to support Brownfields initiatives in Oklahoma.

V. Protectiveness

The VCP shall ensure that voluntary response actions protect human health and the environment. Upon the assessment of a site, the DEQ 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 VCP, the DEQ 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).

Remediation of contaminated media shall be conducted consistent with applicable Federal and State law. Remediation 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. DEQ will provide EPA with information regarding participants in the VCP that are eligible for assurances under this MOA. On a quarterly basis the DEQ will report to Region 6 the following:

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

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

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

B. In addition, DEQ will report on all voluntary cleanup sites that are regulated by RCRA, in accordance with the RCRA MOA, Oklahoma/EPA Joint Permitting Agreement, and 40 CFR § 271.21, in order to facilitate RCRA oversight and yearly review responsibilities and supply information needs to update the Resource Conservation and Recovery Information System (RCRIS), as necessary.

VII. Modification

Region 6 and DEQ 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 Oklahoma modifies the Oklahoma Brownfields Voluntary Redevelopment 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 Oklahoma Brownfields Voluntary Redevelopment Act or implementing regulations. Region 6 and DEQ staff will review the MOA annually. If either Region 6 or DEQ 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. This MOA is designed to complement the RCRA corrective action program. Nothing in this Agreement modifies RCRA's statutory requirements or Oklahoma'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 remediated under the VCP, Region 6 and DEQ will suspend further remedial investigation or response action under

CERCLA and not plan or anticipate action under Sections 3004(u), 3004(v), and 3008(h) of RCRA, 42 U.S.C. §§§ 6924(u), 6924(v), and 6928(h). However, Region 6 may resume or initiate response action or corrective action at such sites if:

1. The VCP applicant fails or refuses to complete the necessary cleanup, and DEQ is unable to ensure completion of response actions at the site;

2. The EPA determines that the site may pose a threat to human health or the environment, or that the site may present an imminent and substantial endangerment to human health and the environment; or

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

C. Region 6 and DEQ 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 DEQ's authority to conduct, direct, oversee, and/or require environmental response in connection with any facility or site which participates in the VCP.

D. If, following the issuance of the Certificate by the DEQ, conditions at the site, including those previously unknown to DEQ and Region 6, indicate that the response action undertaken pursuant to the VCP 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.

E. Notwithstanding any other provision of this MOA, nothing herein affects or limits Region 6's or DEQ's authority or ability to take any enforcement action authorized by law.

This MOA has been developed by mutual cooperation and consent.

For the Oklahoma Department of Environmental Quality

Mark S. Coleman

Mark S. Coleman, Executive Director
Oklahoma Department of Environmental Quality

4-20-99
Date

For the U.S. Environmental Protection Agency

Gregg A. Cooke

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

4-20-99
Date

ATTACHMENT A

Rank	NAME	NUMBER	LOCATION	CITY	ST	ZIP
HI	ALPHA OIL	OKD045349982	U.S. HWY 81	DUNCAN	OK	73533
HI	US AIR FORCE TINKER AFB	OK1571724391		MIDWEST CITY	OK	73145
HI	UNION PACIFIC (CHAMPLIN PETROLEUM COMPANY)	OKD007234586	2529 EAST WILLOW STREET	ENID	OK	73701
HI	CONOCO, INC. - PONCA CITY	OKD007233836	11000 SOUTH PINE STREET	PONCA CITY	OK	74601
HI	US AIR FORCE ALTUS AFB	OK9571824045	HIGHWAY 162	ALTUS	OK	73521
HI	HUFFMAN WOOD PRESERVING, INC.	OKD053128492	HIGHWAY 70	BROKEN BOW	OK	74728
HI	SUN REFINING & MARKETING	OKD058078775	1700 UNION AVENUE	TULSA	OK	74102
HI	US ARMY FORT SILL MILITARY RESERVATION	OK4213720846		FORT SILL	OK	73503
HI	ZINC CORP OF AMERICA	OKD000829440	VIRGINIA AVENUE & 8TH STREET	BARTLESVILLE	OK	74005
HI	SINCLAIR OIL CORPORATION	OKD990750960	902 W. 25TH ST.	TULSA	OK	74107
HI	US AIR FORCE PLANT #3 MCDONELL DOUGLAS	OK9570000001		INDIAN MERIDIAN	OK	74115
HI	ALLIED MATERIALS CORP.	OKD007192719	ALLIED ROAD	STROUD	OK	74079
HI	SHEFFIELD STEEL CORP. (FORMERLY ARMCO, INC.)	OKD007219181	P.O. BOX 218	SAND SPRINGS	OK	74063
HI	AMERICAN AIRLINES, INC.	OKD001624564	3800 NORTH MINGO ROAD	TULSA	OK	74151
HI	US AIR FORCE VANCE AFB	OK4571524095		ENID	OK	73705
HI	TOTAL PETROLEUM CORPORATION	OKD057705972	P.O. BOX 188, HIGHWAY 142	ARDMORE	OK	73401
HI	KERR MCGEE (WYNNEWOOD) REFINING	OKD000396549	906 SOUTH POWELL	WYNNEWOOD	OK	73098
HI	CAVENHAM FOREST INDUSTRIES	OKD010327948	WEST RED WOOD AVE	SALLISAW	OK	74955
HI	US ARMY MCALESTER ARMY AMMUNITION PLANT	OK6213822798		MCALESTER	OK	74501
HI	OKLAHOMA REFINING COMPANY	OKD091598870		CYRIL	OK	
HI	MADEWELL AND MADEWELL, INC.	OKD032963530	CHOCTAW ROAD & N.E. 93RD	JONES	OK	73049
HI	MIXON BROTHERS WOOD PRESERVING	OKD007336258	N. 15TH STREET	IDABEL	OK	74745
HI	AT&T TECHNOLOGIES, INC.	OKD007189111	7725 WEST RENO AVENUE	OKLAHOMA CITY	OK	73125
HI	US DOJ FEDERAL CORRECTIONAL INSTITUTION	OK9151909117	WEST US HWY 66	EL RENO	OK	73036
ME	OKMULGEE REFINERY	OKD004998225		OKMULGEE	OK	74447
ME	EAGLE-PICHER INDUSTRIES	OKD007158454	ROUTE 69A	QUAPAW	OK	74363
ME	PHILLIPS RESEARCH CENTER	OKD000803601	PAWHUSKA RD. & U.S. HWY 60 W	BARTLESVILLE	OK	74004
ME	PERMA-FIX TREATMENT SVCS INC	OKD000402396	2700 SOUTH 25TH WEST AVE	TULSA	OK	74119
ME	THOMASON LUMBER AND TIMBER	OKD007335524		BROKEN BOW	OK	74728
ME	US POLLUTION LONE MOUNTAIN	OKD065438376		WAYNOKA	OK	73860
ME	MOORE BUSINESS FORMS INC.	OKD074274333	3100 NORTH HUSBAND	STILLWATER	OK	74075
ME	ATOCHEM, NORTH AMERICA, INC.	OKD987072006	MID-AMERICA INDUSTRIAL PARK	PRYOR	OK	
ME	ZAPATA INDUSTRIES	OKD990751059		MUSKOGEE	OK	