



Memorandum of Agreement

The Louisiana Department of Environmental Quality (LDEQ) and Region 6 of the U.S. Environmental Protection Agency (EPA), enter into this Memorandum of Agreement (MOA), for the purposes of supporting the Louisiana Voluntary Remediation Program and defining the roles and responsibilities of Region 6 and LDEQ under this MOA.

This MOA has been developed by mutual cooperation and consent on this 13 day of October, 2004.

*Richard E. Greene, Regional Administrator
U.S. Environmental Protection Agency*

*Mike D. McDaniel, Ph.D, Secretary
Louisiana Department of
Environmental Quality*

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

I. Purpose

- A. The Louisiana Department of Environmental Quality (LDEQ) and Region 6 of the United States Environmental Protection Agency (Region 6), enter into this Memorandum of Agreement (MOA), for the purposes of: (1) defining the roles and responsibilities of Region 6 and LDEQ with respect to sites addressed under the LDEQ Voluntary Remediation Program (VRP) and (2) recognizing the VRP for grant funding eligibility purposes pursuant to § 128(a) of the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. §§ 9601, et seq., (CERCLA). LDEQ and Region 6 recognize that this is a unique agreement which reflects both the federal statutory changes enacted on January 11, 2002 and the MOA principles negotiated in good faith between LDEQ and Region 6 prior to that date.
- B. Region 6 has reviewed and evaluated the VRP and has determined that the VRP includes each of the elements of a state response program listed in CERCLA § 128(a) and that LDEQ makes available to the public a record of sites addressed by the VRP as described in CERCLA § 128(b)(1)(C). LDEQ agrees to maintain all of these elements for the VRP and to maintain and update the public record.
- C. Based on such review and further discussions between Region 6 and LDEQ, Region 6 has determined that entry of this MOA will facilitate the cleanup of brownfields in Louisiana.

II. Applicability of the MOA

- A. Subject to Sections II.C., II.D., and III, this MOA will apply to sites that:
1. have been issued Certificates of Completion by LDEQ after the effective date of this MOA; or
 2. are in compliance with the Louisiana Voluntary Investigation and Remedial Action Act (the "Act") La. R.S. 30:2285, et seq., and implementing regulations (the "Louisiana Regulations") LAC 33: Part VI, Chapter 9, and with the terms of any applicable cooperative agreement with LDEQ pursuant to LDEQ's VRP, except as set forth herein.
- B. Region 6 and LDEQ agree that some sites, or portions of sites, regulated under the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6901, et seq., may

be eligible for participation under the VRP, except as set forth in LAC 33:Part VI, Chapter 9. However, participation in the VRP does not relieve any VRP participant or any other person of any RCRA responsibilities or requirements, including any requirement related to Solid Waste Management Units (SWMUs)¹ discovered subsequent to the issuance of a Certificate of Completion. This MOA is designed to complement the RCRA corrective action program, therefore, nothing in this MOA modifies RCRA's statutory requirements (or regulations promulgated thereunder) or LDEQ's responsibility to fully implement RCRA's requirements as an authorized State.

C. In accordance with LAC 33:Part VI, § 905, the following sites are not eligible for participation in the VRP:

1. permitted hazardous waste management units (HWMU) regulated under LAC 33:Part V or federal hazardous waste regulations (if the HWMU is located within a larger site, then only that portion of the site inside the HWMU boundary is ineligible)²;
2. sites that have been proposed in the *Federal Register* to be placed on the National Priorities List (however, sites that are proposed to be placed on the National Priorities List, but which are determined not to be appropriate for listing, will become eligible if not otherwise ineligible);
3. sites that have been placed on the National Priorities List (however, such sites become eligible if they are subsequently removed from the National Priorities List and are not otherwise ineligible);
4. trust-fund-eligible underground storage tank systems, as defined in and regulated by LAC 33:Part XI; or
5. sites that have pending, unresolved federal environmental enforcement actions (not including simple cost recovery actions) that are related to the

¹ For purposes of this MOA, a "solid waste management unit" is defined in *Advance Notice of Proposed Rulemaking: Corrective Action for Releases From Solid Waste Management Units and Hazardous Waste Management Facilities*, 61 Fed. R. 19442-43 (May 1, 1996).

² For purposes of this MOA, a "hazardous waste management unit" is defined in 40 C.F.R. § 260.10.

proposed voluntary remediation.³

- D. Notwithstanding a site's eligibility to participate in the VRP, Region 6 and LDEQ agree that this MOA shall not apply to:
1. any site where a hazardous ranking package has been submitted to EPA Headquarters, after consultation with the state, proposing its inclusion on the National Priorities List; and
 2. for purposes of Section III.B. only, to:
 - a. sites or facilities that were issued a notice of violation by EPA or LDEQ regarding a contaminant at the site or facility, and action has not been taken to remedy the alleged violations to the issuing agency's satisfaction; and
 - b. any RCRA facility that is listed on the Region 6 Corrective Action Prioritization System (R6CAPS) as a high priority facility.

III. Implementation

- A. LDEQ and Region 6 will work in a coordinated manner to avoid to the maximum extent possible duplication of effort at sites, and to ensure that site remediation continues in a timely fashion. LDEQ will notify Region 6 when sites are being addressed under the VRP. If a site listed in the Comprehensive Environmental Response, Compensation and Liability Information System (CERCLIS) is being addressed under the VRP, Region 6 will code that site in CERCLIS to reflect that site's status. Once all remediation activities at the site are complete, Region 6 will archive from CERCLIS those sites remediated under the authority of the VRP and for which LDEQ has issued a Certificate of Completion. At a minimum, LDEQ and Region 6 will discuss the status of sites quarterly.
- B. CERCLA § 128(b) provides limitations regarding federal enforcement actions at "eligible response sites", as defined in CERCLA § 101(41), that are being addressed in compliance with a state program that (1) specifically governs response actions for

³ For purposes of this MOA only, Region 6 and LDEQ agree that "sites that have pending, unresolved federal enforcement actions (not including simple cost recovery actions) that are related to the proposed voluntary remediation" pursuant to Section II.C. means sites that are the subject of planned or unresolved federal enforcement actions, not including actions for cost recovery only under CERCLA § 107(a), concerning the contamination at the site or facility, or portion of the site or facility, that the applicant has proposed to address under the VRP.

the protection of public health and the environment and (2) maintains and updates a public record, pursuant to CERCLA § 128(b)(1)(C). These limitations operate as a matter of law. Thus, subject to CERCLA § 128(b), EPA does not plan or anticipate taking an administrative or judicial enforcement action under CERCLA §§ 106(a) or 107(a) against a person regarding a specific release at an "eligible response site" that is being addressed by that person in compliance with the VRP.

- C. Generally, Region 6 does not plan or anticipate taking removal or remedial action under CERCLA, 42 U.S.C. § 9601, et seq., at a site which is addressed by this MOA and is not an "eligible response site", as defined in CERCLA § 101(41), while that site remains in compliance with La. R.S. 30:2285 et seq., LAC 33:Part VI, Chapter 9 and the terms of any agreement with LDEQ, or when a site investigation or remediation has been completed in accordance with LDEQ's VRP and when LDEQ has issued a Certificate of Completion for the site, unless:
1. The VRP participant fails or refuses to complete the necessary remediation, and LDEQ is unable to ensure completion of response actions at the site;
 2. Region 6 determines that the site may present an imminent and substantial endangerment to human health and the environment; or
 3. Following issuance of the Certificate of Completion by LDEQ, Region 6 or LDEQ determine that conditions at the site (including those previously unknown to LDEQ and Region 6, or those which result from a failure to maintain land use restrictions, institutional and/or engineering controls) indicate that the site is no longer protective of human health and the environment or suitable for the authorized or current use.
- D. A VRP remediation at a RCRA Treatment, Storage, or Disposal (TSD) facility does not obviate the requirement that a TSD facility obtain a RCRA permit and that, as necessary, the permit include corrective action requirements. While a site listed in the RCRAInfo database is being addressed under the VRP, LDEQ will code that site in RCRAInfo to reflect that site's status.
- E. Generally, Region 6 does not plan or anticipate requiring corrective action under RCRA §§ 3004(u), 3004(v), or 3008(h) at a facility, or that portion of a facility, addressed by this MOA while that site remains in compliance with La. R.S. 30:2285 et seq., LAC 33:Part VI, Chapter 9 and the terms of any agreement with LDEQ, or when a site investigation or remediation has been completed in accordance with LDEQ's VRP and when LDEQ has issued a Certificate of Completion for the site, unless:
1. The VRP participant fails or refuses to complete the necessary remediation,

and LDEQ is unable to ensure completion of response actions at the site;

2. Region 6 determines that the site may present an imminent and substantial endangerment to human health and the environment; or
 3. Following issuance of the Certificate of Completion by LDEQ, Region 6 or LDEQ determine that conditions at the site (including those previously unknown to LDEQ and Region 6, or those which result from a failure to maintain land use restrictions, institutional and/or engineering controls) indicate that the site is no longer protective of human health and the environment.
- F. If a VRP participant does not complete the remedial action approved by LDEQ, LDEQ shall ensure that the necessary response action is taken to protect human health and the environment. Furthermore, LDEQ will prioritize the site in its normal course and take all necessary remedial actions at the site as appropriate, considering the risk posed by the site, funds available to LDEQ and other factors.
- G. LDEQ will continue to demonstrate, through the reporting requirement of Section V of this MOA, that the VRP has adequate resources to ensure that voluntary response actions are conducted in an appropriate and timely manner, and that meaningful outreach efforts are made to the public.
- H. Region 6 and LDEQ will continue to work to facilitate the cleanup and reuse of properties in Louisiana. Region 6 and LDEQ, 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 Louisiana. After notifying LDEQ, Region 6 may provide resources to local and State governmental agencies in order to support Brownfields initiatives in Louisiana.
- I. LDEQ will conduct audits and inspections as set forth in its Standard Operating Procedures attached hereto as Attachment "A".

IV. Protectiveness

- A. Pursuant to LAC 33:Part VI, § 909, the LDEQ shall ensure that voluntary remedial actions conducted under the VRP are protective of human health and the environment. Upon the assessment of a site, LDEQ shall determine, consistent with applicable Federal and State law, whether the contamination at the site may pose a threat or potential threat to public health, safety and welfare and the environment, and the extent of potential threat to public health, safety and welfare and the environment. For purposes of the VRP, LDEQ shall determine whether cleanup levels meet standards set forth in LDEQ's Risk Evaluation/Corrective Action Program (RECAP)

LAC 33:Part I, Chapter 13. Further, LDEQ shall ensure that the VRP participant shall comply with Federal law as applicable.

- B. LDEQ will require use restrictions to be filed in the Official Conveyance Records of the parish where the site is located where the VRP participant uses such restrictions as institutional controls.
- C. For RCRA TSD facilities regulated under RCRA, that are eligible for participation in the VRP, LDEQ will ensure that investigations and cleanups will work to achieve the objectives of RCRA corrective action, including the following:
 - 1. result in remedies that are protective of human health and the environment;
 - 2. require facility-wide assessments to determine the full nature and extent of releases;
 - 3. address all releases (both on-site and off-site) of hazardous wastes or constituents to all media for all SWMUs; and
 - 4. provide meaningful opportunities for public involvement throughout the cleanup process.

V. Reporting

- A. In addition to complying with the public record requirements described in CERCLA § 128(b)(1)(C), LDEQ will provide or make available to Region 6 information regarding participants in the VRP that are addressed under this MOA. On a semi-annual basis LDEQ will report or make available 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 six months;
 - 3. Sites that received Certificates of Completion from LDEQ for full or partial remediation in the previous six months;

VI. Modification

Region 6 and LDEQ shall keep the other informed of any relevant proposed modifications to its statutory or regulatory authority, forms, or procedures. This MOA shall be revised upon mutual agreement and as necessary by the adoption of such modifications. If the Act or implementing

Louisiana Regulations are modified 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 Act or Louisiana Regulations. Region 6 and LDEQ will review the MOA annually. If either Region 6 or LDEQ have concerns regarding implementation of the MOA, they will notify the other party of those concerns. In the event a mutual agreement cannot 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.


This MOA has been developed by mutual cooperation and consent.

For Louisiana Department of Environmental Quality

Mike D. McDaniel, Ph.D, Secretary
Louisiana Department of Environmental Quality

Date

For the U.S. Environmental Protection Agency , Region 6



Richard E. Greene, Regional Administrator
U.S. Environmental Protection Agency, Region 6

10-12-04
Date