

**MEMORANDUM OF AGREEMENT
BETWEEN THE
IOWA DEPARTMENT OF NATURAL RESOURCES
AND REGION 7 OF THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

I. Purpose

- A. The Iowa Department of Natural Resources (IDNR) and Region 7 of the United States Environmental Protection Agency (Region 7), enter into this Memorandum of Agreement (MOA), for the purposes of: (1) defining the roles and responsibilities of Region 7 and IDNR with respect to sites addressed under the Iowa Land Recycling Program (LRP); (2) recognizing the LRP for grant funding eligibility purposes under § 128(a) of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601, et seq., as amended by the *Small Business Liability Relief and Brownfields Revitalization Act* (CERCLA); and (3) facilitating the cleanup of brownfields in Iowa.
- B. This MOA is conditioned on the regulatory changes for 567 Iowa Administrative Code Chapter 137 proposed on April 14, 2004 under Iowa administrative rulemaking procedures becoming finally promulgated and codified in substantially the same form as proposed.
- C. Region 7 has reviewed and evaluated the LRP and has determined that the LRP includes each of the four elements of a state response program as described in CERCLA § 128(a)(2). IDNR agrees to maintain all of these elements for the LRP. Generally, the four elements are:
1. Timely survey and inventory of brownfield properties in Iowa;
 2. Oversight and enforcement authorities or other mechanisms and resources adequate to ensure that a response action will protect human health and the environment and be conducted in accordance with applicable Federal and State law, and that if the person conducting the response activities fails to complete the necessary response activities, including the operation and maintenance or long-term monitoring, the necessary response activities will be completed;
 3. Mechanisms and resources to provide meaningful opportunities for public participation; and
 4. Mechanisms for approval of every cleanup plan and a requirement for verification and certification or other similar documentation that the response is complete.
- D. Region 7 has determined that the IDNR maintains a public record of sites addressed by the LRP as described in CERCLA § 128(b)(1)(C).

- E. Based upon such review and further discussions, IDNR and Region 7 have determined that entry of this MOA will facilitate the cleanup of brownfields in Iowa. This MOA has been developed by mutual cooperation and consent.

II. Applicability of the MOA

- A. Subject to Sections II.B., II.C., II.D., and III, this MOA will apply to sites that:
1. are in compliance with the Iowa Land Recycling Program and Environmental Remediation Standards Act, Chapter 455H, Iowa Code Supplement (Iowa Act) and 567 Iowa Administrative Code Chapter 137 (Iowa Regulations), and with the terms of any applicable cooperative agreement with IDNR pursuant to IDNR's LRP, except as set forth herein; or
 2. have been issued a No Further Action Certificate pursuant to §137.11(2) Iowa Administrative Code by IDNR, after the effective date of this MOA, and in accordance with the Iowa Act and Iowa Regulations.
- B. For purposes of this MOA, the Iowa Regulations include the regulatory changes for 567 Iowa Administrative Code Chapter 137, as proposed on April 14, 2004, under Iowa administrative rulemaking procedures, and as may be finally promulgated and codified in substantially the same form as proposed.
- C. In accordance with the Iowa Act and Iowa Regulations, sites not eligible for participation in the LRP include the following:
1. hazardous waste management units as defined in 40 C.F.R. §260.10. (HWMU) regulated under federal hazardous waste regulations unless enrollment is expressly permitted by Region 7 (if the HWMU is located within a larger site, then only that portion of the site inside the HWMU boundary is ineligible);
 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. sites with petroleum releases from underground storage tank systems subject to regulation under Chapter 567 Iowa Administrative Code Chapter 135;

5. 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 LRP; and
 6. sites that constitute an animal feeding operation as defined by Iowa Code section 455B.161.
- D. Notwithstanding a site's eligibility to participate in the LRP, Region 7 and IDNR agree that this MOA shall not apply to any site where a hazardous ranking package has been submitted to EPA Headquarters, after consultation with the IDNR, proposing its inclusion on the National Priorities List.

III. Implementation

- A. IDNR and Region 7 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. IDNR will notify Region 7 when sites are being addressed under the LRP. If a site listed in the Comprehensive Environmental Response, Compensation and Liability Information System (CERCLIS) is being addressed under the LRP, Region 7 will code that site in CERCLIS to reflect that site's status. Once all remediation activities at the site are complete, Region 7 will archive ~~from~~ CERCLIS those sites remediated under the authority of the LRP and for which the IDNR has issued a No Further Action Certificate. At a minimum, IDNR and Region 7 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 the protection of public health and the environment and (2) maintains and updates a public record, as required by 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 LRP.
- C. Generally, Region 7 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 (1) that site remains in compliance with the LRP and the terms of any agreement with IDNR or (2) when a site investigation or remediation has been completed in accordance with the LRP and IDNR has issued a No Further Action Certificate for the site, unless:

1. the LRP participant fails or refuses to complete the necessary remediation, and IDNR is unable to ensure completion of response actions at the site;
 2. Region 7 determines that the site may present an imminent and substantial endangerment to human health and the environment; or
 3. following issuance of the No Further Action Certificate by the IDNR, Region 7 or IDNR determine that conditions at the site (including those previously unknown to IDNR and Region 7, and 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. IDNR will maintain and make available to the public a record of sites addressed under the LRP as described in CERCLA § 128(b)(1)(C).
- E. If a LRP participant does not complete the remedial action approved by the IDNR, IDNR shall ensure that necessary response activities are (1) taken to protect human health and the environment and (2) completed in a timely manner.
- F. The IDNR will continue to demonstrate, through the reporting requirement of Section V of this MOA, that the LRP 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.
- G. The IDNR will conduct periodic audits and inspections of voluntary response actions.
- H. IDNR and Region 7 agree that nothing herein shall in any way be construed to affect, limit, or otherwise impact EPA's authority under CERCLA or any other Federal law. Similarly, nothing in this MOA shall limit or restrict IDNR's authority or ability to take appropriate action at any property with releases of hazardous substances, hazardous wastes and/or hazardous constituents.
- I. This MOA does not in any way grant or otherwise create any rights, obligations, responsibilities, expectations, or benefits for any party, and does not in any way alter either IDNR's or EPA's authority under State or Federal law.

IV. Protectiveness

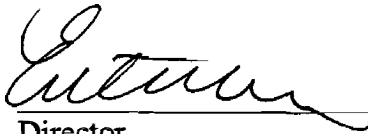
- A. The LRP shall ensure that voluntary remedial actions protect human health and the environment and comply with applicable Federal and State law. Upon the assessment of a site, the IDNR shall determine, consistent with applicable Federal and State law, whether the contamination at the site may pose a threat or potential threat to public health, safety and welfare and the environment, and the extent of potential exposure by human and ecological receptors to contaminated media. For purposes of the LRP, the IDNR shall determine whether cleanup levels meet standards set forth in the Iowa Act and Iowa Regulations and are consistent with reasonably anticipated reuse and/or development plans.
- B. When necessary to ensure the protectiveness of a remedy, IDNR will require land use restrictions, such as environmental easements, deed notices or other contractual obligations affecting the property, to be filed in the Recorder of Deeds of the County where the site is located, and with any statewide registry, where the LRP participant uses such restrictions as institutional controls.
- C. In addition to complying with the public record requirements described in CERCLA § 128(b)(1)(C), IDNR will provide or make available to Region 7 information regarding participants in the LRP that are addressed under this MOA. On a quarterly basis the IDNR will report or make available to Region 7 the following:
 1. number, names and types of sites participating in the LRP and the status of response actions at those sites;
 2. number, names and types of sites applying for or entering the LRP the previous three months;
 3. names of sites that received No Further Action Certificates from the IDNR for full or partial remediations in the previous three months.

V. Modification

Region 7 and IDNR shall keep the other informed of any relevant proposed modifications to its statutory or regulatory authority, forms, or procedures; including but not limited to any differences between the regulatory changes for 567 Iowa Administrative Code Chapter 137 proposed on April 14, 2004, under Iowa administrative rulemaking procedures, and the finally promulgated and codified rule. This MOA shall be revised upon mutual agreement and as necessary by the adoption of such modifications. If the Iowa Act or Iowa Regulation 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 Iowa Act or Iowa Regulations. Region 7 and IDNR will review the MOA annually. If either Region 7 or IDNR 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.


For the Iowa Department of Natural Resources:



Director
Iowa Department of Natural Resources

6/17/04
Date

For the U.S. Environmental Protection Agency, Region 7:



Regional Administrator
U.S. Environmental Protection Agency, Region 7

6/17/04
Date