



# Memorandum of Agreement

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

*This MOA has been developed by mutual cooperation and consent on this 21<sup>st</sup> day of December, 2000.*

A handwritten signature in cursive script, reading "Gregg A. Cooke", is written over a horizontal line.

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

A handwritten signature in cursive script, reading "Richard A. Weiss", is written over a horizontal line.

*Richard A. Weiss, Interim Director  
Arkansas Department of  
Environmental Quality*

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

I. Purpose

The Arkansas Department of Environmental Quality (ADEQ) and Region 6 (Region 6) of the United States Environmental Protection Agency (EPA), enter into this Memorandum of Agreement (MOA), to support the ADEQ Brownfields Program (the "Brownfields Program") and define the roles and responsibilities of Region 6 and ADEQ under this MOA.

II. Applicability of the MOA

A. This MOA will apply to all abandoned sites issued Certificates of Completion (referred to as a "Certificate") by the ADEQ after the date of this MOA, and sites that are in compliance with the terms of an MOA entered between a prospective purchaser and the ADEQ pursuant to the Arkansas Brownfields Law (the "Arkansas Brownfields Law"), A.C.A. §§ 8-7-1101, *et seq.*, and implementing Arkansas Pollution Control and Ecology Commission Regulation No. 29 (the "Arkansas Brownfields regulations"), subject to the exclusions set forth in sections II, IV and VIII of this MOA.

Region 6 and the ADEQ agree that, subject to the exclusions set forth in the Arkansas Brownfields regulations, portions of sites regulated under the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6901, may be eligible for consideration under the Brownfields Program.

B. In accordance with the Arkansas Brownfields regulations, ADEQ will not consider the following sites, or portions of sites, to be eligible for participation in the Brownfields Program:

1. 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.
2. Sites required to have a hazardous waste management (RCRA) permit;
3. Sites required to operate under Interim Status authority pursuant to APC&E Regulation No. 23 (Hazardous Waste Management);
4. Sites subject to a Federal order under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. § 9601

et seq., or RCRA §§ 3008(a), 3008(h), 3013, or 7003;

5. Sites at which the applicant is a current owner or operator, or is a responsible party under A.C.A. §8-7-1104(a)(2); or
  6. Where an applicant has a demonstrated pattern of uncorrected noncompliance.
- C. This MOA shall not apply to:
1. A site or facility that was issued a notice of violation by any Federal agency 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;
  2. Any environmental contamination and consequences thereof that the applicant caused outside the scope of the Memorandum of Agreement between the ADEQ and the Brownfields Program participant (the "ADEQ MOA") or a Certificate;
  3. Any claim for natural resource damages;
  4. Any contamination caused or resulting from any subsequent redevelopment of the property;
  5. Sites at which new information is obtained regarding existing contamination which was, through fraud, withheld during negotiations of the ADEQ MOA;
  6. Existing contamination caused by regulated substances not removed or disposed of in accordance with applicable cleanup standards established pursuant to an ADEQ MOA, or not addressed prior to issuance of the Certificate; or
  7. Sites or facilities that fail to maintain engineering controls, land use designations, and institutional controls as identified in the ADEQ MOA or Certificate.

### III. Background

- A. Region 6 and the ADEQ believe the clean up and 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 Arkansas. Region 6 has

reviewed and evaluated the Arkansas Brownfields Program, has considered the baseline criteria from EPA guidance, and has determined that the Arkansas Brownfields Program is adequate. Based on such review and further discussions between Region 6 and the ADEQ, Region 6 has determined that entry of this MOA will facilitate the clean up of Brownfields in Arkansas. Region 6 and the ADEQ seek to promote the clean up and revitalization of industrial and commercial properties by identifying regulatory barriers to the finance, clean up, 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 ADEQ will encourage the voluntary investigation and clean up of abandoned properties in Arkansas by implementing the following strategic goals:
1. Promoting appropriate investigations and cleanups by persons at sites participating in the Brownfields Program.
  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 Brownfields Program, in accordance with the Arkansas Brownfields Law and Arkansas Brownfields regulations. Required actions include: (1) public notice in a newspaper local to the site when an ADEQ MOA is executed; (2) selection of a remedial action, embodied in a Property Development Decision Document, approved by the ADEQ after 30 day public comment period; (3) response to public comment by participant as approved by the ADEQ; (4) an opportunity for informal public meeting conducted by the ADEQ if requested; and (5) an opportunity for a formal public meeting conducted by the ADEQ, if requested. The Brownfields Program participant must file a notice of the ADEQ MOA with the clerk of the circuit court in the county where the property is located. Notice of any subsequent amendments to the ADEQ MOA will also be filed with the clerk of the circuit court of the county in which the property is located. The clerk of the circuit court will docket and record the notices so that they appear in the purchaser's chain of title.
  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 ADEQ, other State and local governmental agencies, and external stakeholders in Arkansas, including representatives from citizen and community groups and the private sector.

To accomplish these goals, Region 6 will help and support the ADEQ in further developing the Brownfields Program. Region 6 recognizes the Brownfields Program as instrumental in developing and implementing successful strategies to help promote the voluntary investigation, cleanup, and revitalization of abandoned or underutilized Brownfields properties in Arkansas. The ADEQ will assist and support efforts to promote and implement the Region 6 Superfund Brownfields Redevelopment initiatives. The ADEQ and Region 6 recognize each other as key partners in the ongoing success of the Brownfields Program.

#### IV. Implementation

- A. The ADEQ 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. The ADEQ will notify Region 6 when sites are being addressed under the Brownfields Program. While a site listed in the Comprehensive Environmental Response, Compensation and Liability Information System (CERCLIS) is being addressed under the Brownfields Program, Region 6 will code that site in CERCLIS to reflect that site's status.

Region 6 anticipates archiving from CERCLIS those sites cleaned-up under the authority of the Brownfields Program and for which the ADEQ has issued a Certificate. At a minimum, the ADEQ and Region 6 will discuss the status of sites quarterly.

- B. If a site which is regulated under RCRA, 42 U.S.C. § 6901 et seq., is otherwise eligible for participation in the Brownfields Program and is also listed on the EPA Region 6 Corrective Action Prioritization System (R6CAPS), after receiving a Certificate under the Brownfields Program, the regulated site may request that ADEQ reevaluate their ranking under R6CAPS. This reevaluation may result in removal from high or medium priority categories.
- 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 taking removal or remedial action under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. § 9601 et seq.: (1) at that portion of a site being investigated or cleaned up under the Brownfields Program, while that site

remains in compliance with the terms of an ADEQ MOA; or (2) when a site investigation or cleanup has been completed in accordance with the Arkansas Brownfields Law, A.C.A §§ 8-7-1101 et seq. and the Arkansas Brownfields regulations, and when the ADEQ has issued (and not rescinded) a Certificate for the site. In the event Region 6 determines that there may be an imminent and substantial endangerment to public health, welfare, or the environment at a site being investigated or cleaned up under the Brownfields Program, to the extent practicable, Region 6 will consult with ADEQ of that determination prior to initiating response action or enforcement action at such site. This commitment to consult with ADEQ, whenever practicable, in no way limits Region 6's authority to conduct, direct, oversee, and/or require environmental response action or to take appropriate enforcement action in connection with a site in the Brownfields Program.

- D. If additional information is discovered by EPA or ADEQ 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 or the environment, after notifying Region 6 of the additional information regarding the site, the ADEQ will take the lead in resolving the issue. However, if the ADEQ is unable to resolve an issue relating to protectiveness and/or land use designation to EPA's satisfaction, this MOA will not apply.
- E. Region 6 and the ADEQ agree that the ADEQ will review each application for participation in the Brownfields Program, together with supporting information, to determine if there are outstanding violations of a federally authorized program administered by ADEQ and take timely and appropriate enforcement action against any responsible parties in accordance with the Arkansas Brownfields Law.
- F. The ADEQ commits to take appropriate action to enforce requirements of the ADEQ MOA if it determines that:
  - 1. The ADEQ MOA is entered or the Certificate is issued as a result of fraud or failure to disclose information about environmental conditions in connection with the site;
  - 2. Any monitoring requirements, engineering controls, remediation systems, post-closure care, or restriction on land use upon which the final remedy is dependent are not being implemented satisfactorily; or
  - 3. The Brownfields Program participant's performance failed to comply substantially with the terms and conditions of the ADEQ MOA.
- G. The ADEQ will continue to demonstrate that its Brownfields Program 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. The ADEQ shall continue to make available to prospective owners, lenders, and the public, both technical assistance and streamlined procedures.

H. Region 6 will continue to work with the ADEQ to address and encourage appropriate clean up, development, and reuse of abandoned properties in Arkansas. Region 6 and the ADEQ, where appropriate, will provide technical assistance to communities and local and State governmental agencies in order to facilitate the clean up and revitalization of contaminated or potentially contaminated abandoned properties in Arkansas. After notifying the ADEQ, Region 6 may provide resources to local and State governmental agencies in order to support Brownfields initiatives in Arkansas.

## V. Protectiveness

The Brownfields Program shall ensure that voluntary response actions protect human health and the environment. Upon the assessment of a site, the ADEQ should determine, consistent with applicable Federal and State law, whether the contamination at the site may pose a threat or potential threat to public health, welfare, or the environment, and the extent of potential exposure by human and ecological receptors to contaminated media. For purposes of the Brownfields Program, the ADEQ 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. The ADEQ will provide EPA with information regarding participants in the Brownfields Program that are covered by this MOA. On a quarterly basis the ADEQ will report to Region 6 the following:

1. Number, names, and types of sites participating in the Brownfields Program and the status of response actions at those sites;
2. Number, names, and types of sites applying for or entering the Brownfields Program the previous quarter;

3. Sites that received Certificates from the ADEQ for completions in the previous quarter.
- B. This MOA shall not modify any reporting requirements for any existing MOA, grant program, or cooperative agreement between Region 6 and ADEQ.

#### VII. Modification

Region 6 and the ADEQ 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 Arkansas modifies the Arkansas Brownfields Law or Arkansas Brownfields 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 Arkansas Brownfields Law or Arkansas Brownfields regulations.

Region 6 and ADEQ staff will review the MOA annually. If either Region 6 or the ADEQ 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. Subject to the reservations set forth in Sections II, IV and VIII of this MOA, at sites being investigated or cleaned up under the Brownfields Program, Region 6 and the ADEQ intend to suspend further remedial investigation or response action under CERCLA. However, Region 6 may resume or initiate response action or enforcement action at such sites if:
1. The Brownfields Program participant fails or refuses to complete the necessary cleanup, and ADEQ is unable to ensure timely completion of response actions at the site; or
  2. After consulting with ADEQ, whenever practicable, 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.
- B. Region 6 expressly reserves any and all rights or authority that it may have to take action at any site or against any person, including, but not limited to, legal, equitable, or administrative rights. This specifically includes Region 6's authority



to conduct, direct, oversee, and/or require environmental response action or to take appropriate enforcement action in connection with any site notwithstanding the site's status in the Brownfields Program. As previously noted, when practicable, Region 6 will attempt to consult with ADEQ prior to initiating response action or enforcement action at a site. This commitment to consult with ADEQ, whenever practicable, in no way limits Region 6's authority to conduct, direct, oversee, and/or require environmental response action or to take appropriate enforcement action in connection with a site in the Brownfields Program.

- C. This MOA is intended to benefit Region 6 and Arkansas 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 Arkansas Department of Environmental Quality

  
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Richard A. Weiss, Interim Director  
Arkansas Department of Environmental Quality

12-21-00  
Date

For the U.S. Environmental Protection Agency

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

12/21/00  
Date