
**SUPERFUND MEMORANDUM OF AGREEMENT
BETWEEN
THE VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY
AND
THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION III**

I. PURPOSE

- A. The Virginia Department of Environmental Quality (“VADEQ”) and the United States Environmental Protection Agency, Region III (“Region III”) enter into this Memorandum of Agreement (“Agreement”) to define and clarify the roles and responsibilities of Region III and VADEQ with respect to contaminated sites addressed by voluntary remediation activities under Virginia’s Voluntary Remediation Program (“VRP”) conducted under the authority of VA Code §10.1-1429.1, and to promote the cleanup and re-utilization of contaminated properties. For purposes of this MOA, the term “remediation” is defined as it appears in the Virginia Waste Management Board promulgated final regulations concerning the VRP at 9 VAC 20-160-10 et seq (“Regulations”), Definitions “...actions taken to cleanup, mitigate, correct, abate, minimize, eliminate, control and contain or prevent a release of a contaminant into the environment in order to protect human health and the environment, including actions to investigate, study or assess any actual or suspected release.”
- B. Region III and VADEQ believe that the cleanup and revitalization of existing contaminated or potentially contaminated properties including Brownfields sites (“Brownfields”) will provide a significant benefit to both the environment and the economy of impacted local communities.
- C. To the extent possible, Region III and VADEQ seek to facilitate the cleanup and productive reuse of industrial and commercial properties by preventing and eliminating unnecessary impediments to the remediation, financing, transfer and appropriate use of these properties, and thereby helping to minimize the development of green space or pristine open space; maximize the utilization of existing infrastructure, and prevent the creation of newly contaminated properties.

II. BACKGROUND

- A. Region III and VADEQ enter into this agreement to protect the public health and the environment of those communities impacted by the release or threatened release of hazardous substances at eligible sites (see Section III below), including

Brownfields, as well as to provide the opportunity for an economic benefit to those communities. Both agencies recognize that a key factor to meeting these goals is to exercise their authorities and use their resources to assure appropriate site response actions that are mutually complementary and not duplicative.

- B. On May 5, 1997, the Virginia Waste Management Board promulgated final regulations concerning the VRP at 9 VAC 20-160-10 et seq ("Regulations") which became effective on June 26, 1997. The Regulations enable parties who voluntarily initiate remediation of a site under the VRP to obtain VADEQ oversight and, upon completion, to obtain a Certification of Satisfactory Completion of Remediation ("Certification"). Pursuant to VA Code §10.1-1429.1 this Certification constitutes immunity from a State enforcement action.
- C. In September 1999, Region III reviewed documents of sites that had gone through VADEQ's VRP to determine if the VRP was adequate. Based on this document review, Region III has found VADEQ's VRP adequate.
- D. Region III recognizes that Virginia, through the implementation of its VRP, has been a leader in developing and implementing successful strategies to help promote the investigation and cleanup of contaminated or potentially contaminated properties.
- E. Therefore, Region III and VADEQ seek to protect human health and the environment by encouraging the investigation and cleanup of contaminated or potentially contaminated properties in Virginia under the authority of the Regulations, by implementing the following strategic goals:

Encouraging potentially responsible parties to investigate and clean up sites with releases or threatened releases of hazardous substances;

- 2. Promoting appropriate investigations and cleanups by parties, including prospective purchasers and developers, in the VRP program;
- 3. Developing partnerships between Region III, VADEQ, other state and local governmental agencies, and key stakeholders in Virginia including representatives from citizen/community groups and the private sector to assure appropriate site cleanup and reuse, and
- 4. Providing necessary information to key stakeholders in Virginia to allow for informed decision-making by property owners, prospective purchasers, lenders, public and private developers, citizens, municipalities, counties and elected officials.

- F. In order to accomplish these goals, Region III intends to assist and support VADEQ in further developing and expanding the appropriate use of private party-initiated VRP cleanups. Similarly, VADEQ intends to assist and support efforts to promote and implement Region III's Brownfields initiatives. VADEQ recognizes Region III as a key partner in the ongoing success of state cleanup programs including the VRP, and recognizes Region III's role in support of the investigation, clean up, finance, transfer and development of Brownfields.

III INELIGIBLE SITES

Notwithstanding a site's eligibility to participate in the VRP, this MOA does not apply to the following:

- A. Sites at which Region III is conducting a removal action;
- B. Sites that have been listed or proposed for listing on the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") National Priorities List ("NPL");
- C. Sites that have a Hazard Ranking Package which has been submitted to EPA Headquarters, unless EPA, after consultation with VADEQ, agrees that a site can be covered by this MOA and the site meets the eligibility requirements of the VRP;
- D. Sites that are the subject of a Federal judicial or administrative order or other enforcement action under CERCLA, and
- E. Sites that are subject to corrective action via a State or Federal permit or order under the Resource Conservation and Recovery Act, 42 U.S.C. 6901, et seq.

IV. IMPLEMENTATION

- A. VADEQ and Region III will work in a coordinated effort to ensure that sites are being addressed under the VRP, while also avoiding duplication of effort at sites. While a site listed in the Comprehensive Environmental Response, Compensation and Liability Information System ("CERCLIS") is being addressed under the VRP, Region III will ensure that CERCLIS reflects that site's status. Region III anticipates archiving from CERCLIS those sites that have been cleaned up under the authority of the VRP and for which VADEQ has issued a Certificate. At a minimum, VADEQ and Region III will discuss the status of sites quarterly.
- B. Although nothing in this MOA constitutes a release from liability under applicable Federal law, generally unless Region III determines that there may be

an imminent and substantial endangerment to public health, welfare, or the environment, Region III does not plan or anticipate taking removal or remedial action under CERCLA, 42 U.S.C. § 9601 et seq at a site covered by this MOA where: 1) the site, or the portion of the site, being investigated or cleaned up under the VRP remains in compliance with the terms of a VADEQ MOA; or 2) investigation or cleanup has been completed at the site, or the portion of the site, in accordance with the Virginia Voluntary Remediation Regulations and VADEQ has issued (and not rescinded) a Certification for the site. In the event Region III 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 VRP, to the extent practicable, Region III will consult with VADEQ prior to initiating response action or enforcement action at such site. This commitment to consult with VADEQ in no way limits Region III'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 VRP.

- C. If additional information is discovered by EPA or VADEQ after a site has been issued a Certification that would indicate that the site is not suitable for the proposed use or does not protect human health or the environment, VADEQ will notify Region III of the additional information regarding the site and take the lead in resolving the issue. However, if VADEQ is unable to resolve an issue relating to protectiveness and/or land use designation to EPA's satisfaction, this MOA will not apply.

V. REPORTING

VADEQ will report the following to Region III on an annual basis:

- A. The names and number of sites being addressed under the VRP, and
- B. Those sites that have received a Certification.

VI BASIS

- A. This Agreement has been developed by mutual cooperation and consent between Region III and VADEQ. This Agreement is not an authorization or assurance of funding for VADEQ's program by EPA.
- B. EPA enters into this Agreement under the authority of CERCLA. VADEQ enters into this Agreement under the authority of Sections 10.1-1402, 1404 and 1405 of the Virginia Code.
- C. Nothing in this Agreement shall restrict or limit EPA's authority or ability to take

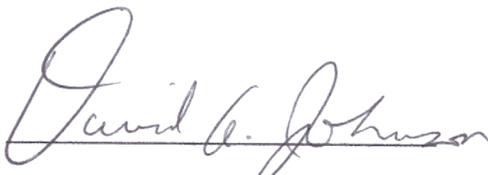
any environmental response action authorized by law.

- D. Nothing in this Agreement shall limit or restrict VADEQ's authority or ability to take appropriate action at any site with releases of hazardous substances.
- E. This MOA is solely between EPA and VADEQ for the exclusive benefit of the working relationship between EPA and VADEQ, and is not intended to be enforceable by any party in any administrative or judicial forum. Nothing herein is intended to create any rights, obligations, responsibilities, expectations or benefits for any third parties.

VII. MODIFICATION

Region III enters into this Agreement based upon a review of Virginia's currently existing laws, regulations, guidance documents and practices. Virginia agrees to provide Region III with prompt notice of changes to such laws, regulations, guidance documents and practices. This MOA may only be modified by mutual written agreement of the parties hereto, or it may be terminated by either party after providing thirty (30) day written notice to the other party.

For the Virginia Department of Environmental Quality:



David A. Johnson, Director

January 9, 2002

For the Environmental Protection Agency, Region III



Donald S. Welsh, Regional Administrator

1/11/02