

**Memorandum of Agreement  
Modification  
Between the  
United States Environmental Protection Agency Region 5  
and the Ohio Environmental Protection Agency**

This Memorandum of Agreement Modification is entered into by and between the Director of Environmental Protection on behalf of the Ohio Environmental Protection Agency (Ohio EPA), and the Regional Administrator of the United States Environmental Protection Agency (U.S. EPA), Region 5 (collectively, the Parties).

Whereas, on November 8, 2007, the Parties entered into a Memorandum of Agreement (MOA) to implement U.S. EPA's One Cleanup Program initiative and to promote the cleanup and redevelopment of contaminated or potentially contaminated properties (brownfields) in Ohio; and

Whereas, Section I.B.2 of the MOA excluded from eligibility sites or facilities that are:

- g) subject to Petroleum Underground Storage Tank or Hazardous Substance Storage Tank System assessment, removal or remediation under ORC Chapter 3737 and rules adopted thereunder.

Whereas, on June 30, 2011 (H.B. 153) and June 5, 2012 (S.B. 294), the Ohio General Assembly enacted and the Governor signed legislation which, *inter alia*, amended ORC Chapters 3737 and 3746 to provide exceptions to the Voluntary Action Program (VAP) exclusion of properties subject to Petroleum Underground Storage Tank System assessment, removal or remediation for:

- Class C releases, as defined in ORC § 3737.87(T) (i.e., a release of petroleum occurring or identified from an underground storage tank system for which the responsible person for the release is determined not to be a viable person capable of undertaking or completing the corrective actions required for the release); and
- Releases (other than Class C releases) that are subject to the corrective action rules adopted by the Fire Marshal, provided (the volunteer is not a responsible person as defined in ORC §§ 3737.87 and) that both of the following apply:
  - The voluntary action also addresses hazardous substances or petroleum that are not subject to the corrective action rules adopted by the Fire Marshal; and

Memorandum of Agreement Modification

- The Fire Marshal has not issued an administrative order concerning the release or referred the release to the Attorney General for enforcement; and

Whereas, the Director of Ohio EPA amended OAC 3745-300-02 (effective April 23, 2012) to incorporate the exception to the VAP exclusion of properties subject to Petroleum Underground Storage Tank System assessment, removal or remediation for Class C releases; and

Whereas, the Director of Ohio EPA amended OAC 3745-300-02 (effective August 1, 2014) to incorporate the exception to the VAP exclusion of properties subject to Petroleum Underground Storage Tank Systems assessment, removal or remediation, for releases (other than class C releases) as described above; and

Whereas, the Parties desire to maintain consistency between the VAP and the MOA where appropriate; and

Whereas, Section V of the MOA provides that the MOA may be modified only by the mutual written agreement of Ohio EPA and U.S. EPA, Region 5.

Now therefore, the Parties agree that, consistent with amended ORC Chapters 3737 and 3746 and amended OAC 3745-300-02, Section I.B.2.g of the MOA, entitled "Applicability," shall be modified to state as follows:

- (g) subject to Hazardous Substance Storage Tank System assessment, removal or remediation under RCRA Subtitle I, 42 USC § 6991 et seq, and rules adopted thereunder, or subject to Petroleum Underground Storage Tank System assessment, removal or remediation under ORC Chapter 3737 and rules adopted thereunder, provided, however, that this exclusion shall not preclude the applicability of this MOA to properties with either of the following:
  - Class C releases, as defined in ORC § 3737.87(T) (i.e., a release of petroleum occurring or identified from an underground storage tank system for which the responsible person for the release is determined not to be a viable person capable of undertaking or completing the corrective actions required for the release); and
  - Releases (other than Class C releases) that are subject to the corrective action rules adopted by the Fire Marshal, provided (the volunteer is not a responsible person as defined in ORC §§ 3737.87 and) that both of the following apply:

Memorandum of Agreement Modification

- The voluntary action also addresses hazardous substances or petroleum that are not subject to the corrective action rules adopted by the Fire Marshal; and
- The Fire Marshal has not issued an administrative order concerning the release or referred the release to the Attorney General for enforcement.

Further, the Parties agree that the following sentence shall be added at the end of Section I.B.2 of the MOA:

However, sites or facilities that would normally be excluded from participation in the MOA track of the VAP because they are subject to:

- Petroleum or Hazardous Substance Underground Storage Tank System requirements; or
- TSCA requirements

are not wholly disqualified from participation in the MOA Track of the VAP if portions of the site or facility are otherwise eligible for the VAP under OAC 3745-300-02. These sites or facilities that are subject to these other federal and/or state environmental regulatory requirements may begin the MOA track process with these requirements unfulfilled, but do not obtain the benefits of Section I.B.3 of the MOA unless and until they also satisfy any applicable federal and/or state requirements that fall under the above-listed exclusions.

Further, the Parties agree that the first bullet point of Section II.A of the MOA shall be amended to include a reference to RCRA Subtitle I (Regulation of Underground Storage Tanks), 42 U.S.C. § 6991, et seq., and that a new additional bullet point shall be added to Section II.B of the MOA to include a reference to ORC Chapter 3737 (as a source of definitions).

Further, the Parties agree that Section III.C. of the MOA shall be amended to include the following as subparagraph 3):

3) For sites subject to RCRA Subtitle I Leaking Underground Storage Tank (LUST) Corrective Action for petroleum, Ohio EPA will ensure that the following corrective action objectives are met:

- a) require the owner or operator, or other party acting on their behalf, to conduct property-wide investigations; and

Memorandum of Agreement Modification

b) ensure that all releases of petroleum products into the environment from underground storage tanks are addressed (on-site and off-site).

Further, the Parties agree that the second sentence of Section IV.A.1. b) of the MOA shall be deleted, and the first sentence of Section IV.A.1. b) of the MOA shall be modified to read as follows:

- In particular, Ohio EPA's Division of Environmental Response and Revitalization is responsible for implementing the state's portion of the federal CERCLA program, and for implementing brownfields initiatives, state response initiatives, the RCRA Subtitle C Corrective Action program, and the MOA Track of the VAP. Further, Ohio's Department of Commerce Bureau of Underground Storage Tank Regulations is responsible for implementing the state's petroleum UST program, which allows for certain releases to be addressed in the VAP. The Division of Environmental Response and Revitalization is authorized to oversee certain petroleum underground storage tank cleanups, as described herein, and to determine whether a cleanup satisfies regulatory standards.

Finally, the Parties agree that Section IV.A.3.a) of the MOA shall be amended to add the following sentence:

USEPA Region 5 has further determined that certain petroleum underground storage tank cleanups, as described herein, conducted pursuant to the MOA Track VAP will meet the requirements of the RCRA Subtitle I Corrective Action program.

With the exception of the foregoing modifications to the MOA, the MOA terms and conditions shall remain unchanged and in full force and effect.

This MOA Modification shall be effective upon signature by the Director of Ohio EPA and the Regional Administrator of U.S. EPA, Region 5.

For the State of Ohio:



Craig W. Butler, Director  
Ohio Environmental Protection Agency

1/25/17  
Date

Memorandum of Agreement Modification

For the Environmental Protection Agency

*Robert A. Kaplan*

Robert A. Kaplan, Acting Regional Administrator  
U.S. EPA, Region 5

2.23.17  
Date