

Memorandum of Understanding Between the United States Environmental Protection Agency and the Indiana Department of Environmental Management

This Memorandum of Understanding (MOU) is entered into between the Regional Administrator, United States Environmental Protection Agency (EPA), Region 5 (Region 5), and the Commissioner, Indiana Department of Environmental Management (IDEM), in order to implement the Resource Conservation and Recovery Act (RCRA) Subtitle C Corrective Action (CA) requirements, and to facilitate Brownfield redevelopment at subject facilities in Indiana.

I. Purpose

Region 5 and the IDEM agree to mutually exercise their respective legal authorities to: (1) facilitate timely implementation of CA requirements, and to meet the federal Government Performance Results Act (GPRA) implementation schedule; (2) facilitate the productive redevelopment of brownfields and other contaminated properties; and (3) meet each agency's mandate to protect human health and the environment. This MOU expresses the intentions of the Parties regarding how they intend to exercise their respective authorities. It does not have any legally binding effect, does not create any legal rights or obligations, and does not in any way alter either Party's authority under state or federal law. This MOU is intended to support Indiana's use of the Environmental Management Act (EMA), Indiana Code (IC) Title 13 authorities as amended, to achieve cleanups consistent with RCRA CA requirements.

II. Parties

The Regional Administrator of EPA, Region 5, and the Commissioner of IDEM are Parties to this MOU.

III. Authority

Region 5 enters into this MOU in furtherance of its statutory and regulatory responsibilities and authority under the RCRA Subtitle C CA requirements, 42 U.S.C. § 6901 *et seq.*, and other applicable federal laws and regulations. The IDEM enters into this MOU in furtherance of its statutory and regulatory responsibilities pursuant to IC 13, the EMA; Indiana Administrative Code (IAC) 329 IAC 3.1, the Hazardous Waste Management Permit Program and Related Hazardous Waste Management Requirements; and other applicable Indiana laws and regulations, including its authority as an authorized state under RCRA, 42 U.S.C. § 6926.

IV. Background

A. Mandate and Authorization

The State of Indiana and Region 5 are mandated to protect human health and the environment. EPA has authorized Indiana for the base RCRA program and CA. Region 5 and the IDEM acknowledge the potential benefits that can be achieved by clarifying the Parties' intentions and expectations regarding RCRA facilities addressed under Indiana law.

B. Goals

Both the IDEM and Region 5 acknowledge their mutual respect, positive working relationship, and commitment to the successful implementation of this agreement. In particular, the IDEM and Region 5 seek to increase the level of protection of human health and the environment by:

1. Supporting the use of Indiana's Voluntary Remediation Program (VRP) at facilities subject to CA requirements where a voluntary approach is appropriate for achieving timely and protective cleanups;
2. Providing coordinated and consistent technical assistance and information to allow for informed decision making by property owners, prospective purchasers, lenders, public and private developers, citizens, local units of government, and elected officials;
3. Ensuring cleanup of sites that protects human health and the environment, and promoting revitalization of contaminated property for appropriate use;
4. Facilitating the productive use of all authorities and resources in ways that are mutually complementary and not redundant; and
5. Promoting processes by which cleanups that are carried out under non-RCRA authorized programs, including the State Cleanup Program under IC 13-25-4 and IC 13-24, at facilities with CA obligations are performed in a manner which is consistent with CA objectives. The CA objectives are:
 - a. requiring the owner/operator to conduct facility-wide assessments in the CA context;
 - b. ensuring that all releases of hazardous wastes or hazardous constituents into the environment from all Solid

Waste Management Units (SWMUs) and Areas of Concern (AOCs) are addressed (on and off-site);

- c. implementation of remedies that are protective of human health and the environment; and
- d. ensuring that there are meaningful opportunities for public involvement at the site.

V. CA Implementation Agreement

A. Relevant State Authorities

1. Region 5 recognizes that the IDEM has been delegated or authorized to implement most major federal environmental programs. The IDEM's authority for implementing these programs is contained in the EMA. These programs are implemented by several offices within the IDEM under various parts of the EMA. Each part may have program-specific remediation processes and criteria.
2. The RCRA CA program in Indiana is authorized to be implemented by the Remediation Services Branch of the Office of Land Quality (OLQ) under IC 13-22 (Hazardous Waste Management), and by the Permits Branch of the OLQ under IC 13-22 and 329 IAC.3.1. Indiana's State Cleanup Program is implemented by the Remediation Services Branch of the OLQ under IC 13-24 (Petroleum), IC 13-25-4 (Hazardous Substances Response Trust Fund) and 329 IAC 7-1 (Indiana Scoring Model). Indiana's Voluntary Remediation Program is implemented by the Remediation Services Branch of the OLQ under IC 13-25-5. IDEM's various programs, laws, and regulations work together to achieve appropriate environmental remediation objectives.
3. Region 5 has reviewed and evaluated Indiana's Risk Integrated System of Closure (RISC) and Voluntary Remediation Program (VRP), and determined that IDEM's use of the RISC cleanup standards and related processes or EPA's Risk Assessment Guidance for Superfund (RAGS), as used in VRP under IC 13-25, is an acceptable way of achieving the objectives of the authorized CA program.

Region 5's evaluation of IDEM's VRP and the RISC Program is consistent with the EPA Guidance "Interim Approaches to Regional Relations with State Voluntary Cleanup Programs", November 14, 1996.

- a. Region 5 has determined that these cleanups will result in timely and appropriate response actions that protect human health and the environment, offer adequate opportunity for meaningful public involvement, and ensure adequate oversight and the availability of technical assistance;
 - b. Region 5 has determined that the cleanup program under VRP uses written mechanisms to approve work plans as well as to indicate completion of the approved response action; and
 - c. Region 5 has determined that the Remediation Services Branch of OLQ has adequate enforcement resources and authority to ensure completion of response actions if the volunteering party fails or refuses to complete the required actions.
4. Based on the assessment of the Programs' capabilities and authorities, as listed above (V. A. 3. a. through c.), Region 5 has determined that the use of RISC standards and process requirements, or RAGS for nondefault risk assessment guidance, under the VRP at RCRA facilities will result in cleanups that meet the CA objectives.
5. As an alternative to using the authorized CA program, IDEM intends to use, as appropriate, the VRP process, RAGS and/or RISC cleanup criteria for implementation of CA requirements at facilities subject to RCRA Subtitle C Corrective Action. To utilize this MOU, the owner/operator of a RCRA treatment, storage or disposal facility (TSD), shall identify each SWMU and AOC at the facility and ensure that all environmental impacts are addressed, both on-site and off-site, through the VRP investigation and remedial process. For these facilities, IDEM may rely on cleanup determinations made by different sections and branches within IDEM in its assessment of whether the owner/operator of a facility has completed the CA requirements for the facility. OLQ will actively coordinate within these different sections and branches, and ensure that cleanups at RCRA TSDs occur in a manner consistent with RCRA.
6. The RISC and RAGS cleanup criteria specified in the State Cleanup Program and VRP provide for land use based cleanups which may entail restrictive covenants or other restrictions in order to meet the criteria specified for each land use category.

IDEM will utilize criteria specified in the RISC Technical Guidance when reviewing and approving institutional controls.

7. For RCRA facilities undergoing CA under the State Cleanup Program or the VRP, IDEM intends to use, as appropriate, Indiana authority other than the RCRA-authorized authority. The IDEM acknowledges that any non-RCRA-authorized program used for purposes of determining whether specific SWMUs have met the appropriate cleanup criteria must address the CA objectives and ultimately result in a cleanup which is consistent with RCRA. This responsibility remains with IDEM.

B. Applicability

1. Generally, Region 5 does not anticipate taking action pursuant to RCRA CA Authorities at facilities being addressed by the IDEM under Indiana authorities pursuant to IC 13-24 and IC 13-25, except where one or more of the following circumstances apply:
 - a. Region 5 determines that the site may pose an imminent and substantial endangerment to public health, welfare, or the environment;
 - b. The facility owner or operator fails to properly implement a course of action required by IDEM;
 - c. The facility is subject to an existing federal (administrative or judicial) order for cleanup; or, prior to acceptance of the facility by Indiana's VRP, Region 5 begins preparation of an enforcement or response action at the facility, pursuant to CERCLA or RCRA;
 - d. The facility is listed on, or proposed for listing on EPA's National Priorities List (NPL); and sites where Region 5 has submitted a Hazard Ranking Scoring package to EPA Headquarters, unless the site is eligible for a deferral under the RCRA/CERCLA deferral policy dated July 1, 1995, EPA Doc. No. 540-R-95-002g; or
 - e. The exercise of federal authority is necessary for Region 5 to meet its legal responsibilities.
2. Region 5 will consult with the IDEM and provide the IDEM, where practicable and appropriate, an opportunity to take appropriate action within a timely manner, prior to making a

determination that federal action is necessary at any state-lead CA facility.

3. Generally, the IDEM does not anticipate taking action pursuant to Indiana authorities IC 13-22-13, IC 13-24 and/or IC 13-25, at facilities being addressed by Region 5 under federal RCRA CA Authorities except where one or more of the following circumstances apply:
 - a. IDEM determines that the site may pose an imminent and substantial endangerment to public health, welfare, or the environment;
 - b. The facility owner or operator fails to properly implement a course of action required by Region 5;
 - c. The facility is subject to an existing state (administrative or judicial) order for cleanup;
 - d. The exposure assumptions used in the approved risk assessment for whatever reason are no longer valid, or new information reveals unacceptable levels of hazardous constituents which pose a threat to human health or the environment; or
 - e. The exercise of state authority is necessary for IDEM to meet its legal responsibilities.
4. IDEM will consult with the U. S. EPA and provide Region 5, where practicable and appropriate, an opportunity to take appropriate action within a timely manner, prior to making a determination that state action is necessary at any federal-lead CA facility.

C. Coordination Between IDEM and Region 5

1. Region 5 and the IDEM have implemented a process for prioritizing CA implementation at subject facilities and determining which agency is primarily responsible for a particular site. Included in this process are steps to: rank the sites per the USEPA's National Corrective Action Prioritization System; agree on target facilities, their respective ranking, CA implementation schedule, and lead agency; identify specific CA work to be accomplished in each fiscal year's RCRA Performance Partnership Agreement; discuss and agree upon

any changes to the existing schedule and lead agency prior to either agency initiating work on a site; and keep each other apprised of progress on all CA facilities. Key to the success of this process is frequent communication between Region 5 and IDEM regarding CA facilities and implementation progress. As part of this process, the IDEM may request, and Region 5 may transfer to the IDEM, primary responsibility for overseeing CA activities at a given federal-lead facility. Region 5 and the IDEM hereby commit to continuing implementation and improvement of this process.

2. Frequent communication between Region 5 and the IDEM is critical to the success of the RCRA Subtitle C CA program. Region 5 and the IDEM commit to continuing to share information on CA facilities, implementation priorities, new program initiatives, cleanup criteria decisions, GPRA implementation, and other relevant issues.
3. Both agencies further commit to discussing any request for change in the designated lead agency for a site before the other agency initiates any action at a facility. Region 5 and the IDEM agree to reasonably consider and grant appropriate requests for change in the lead or priority of a facility based on requests from the regulated community for Brownfield redevelopment opportunities or changing state or federal program initiatives.
4. In order to achieve this level of communication, the IDEM and Region 5 shall conduct quarterly meetings or conference calls to discuss progress in implementing this MOU, the CA program in general, meeting GPRA commitments, and facility-specific concerns.
5. An issue of increasing concern to the regulated community and to the IDEM in Brownfield's redevelopment efforts is the inability of facilities to terminate CA liability, even after CA requirements have been fully implemented at a facility. IDEM and Region 5 have undertaken various steps to address this uncertainty. IDEM and Region 5 have developed this MOU to clarify their respective intentions regarding RCRA facilities in Indiana, subject to the limitations set forth herein.
6. EPA and IDEM will continue to work together to develop appropriate exit strategies for RCRA corrective action sites.

VI. Entry and Modification

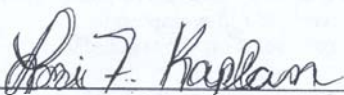
IDEM and Region 5 first entered into this MOU on December 17, 2001. The original MOU has been updated to provide for changes that have occurred since entering into the original MOU. In modifying the original MOU, IDEM and Region 5 agree to accept to the extent possible, each other's RCRA Corrective Action Completion Determinations as provided herein.

This MOU has been developed by mutual cooperation and consent, and hereby becomes an integral part of the working relationship between Region 5 and the IDEM.

Region 5 enters into this MOU based on a review of IDEM's VRP and RISC Program in its current format. IDEM agrees to provide EPA with prompt notice of changes to the Indiana laws, regulations and guidance, and practices that impact both the VRP and the RISC Program.

This MOU may only be modified by the mutual written agreement of both Parties, or it may be terminated by one Party after a 45-day notice to the other Party.


For the Indiana Department of Environmental Management

 _____ 8/23/04

Lori F. Kaplan, Commissioner
Indiana Department of Environmental Management

Date

For the U.S. Environmental Protection Agency, Region 5

 _____ 9/3/04

Bharat Mathur, Acting Regional Administrator
U.S. Environmental Protection Agency

Date