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
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
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
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
This MOA has been developed by mutual cooperation and consent.

For the Arkansas Department of Environmental Quality

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

[Signature]
12-21-08
Date

For the U.S. Environmental Protection Agency

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

[Signature]
12/24/08
Date