US Army Corps of Engineers

MEMORANDUM OF UNDERSTANDING BETWEEN THE U.S. ENVIRONMENTAL PROTECTION AGENCY AND THE U.S. ARMY CORPS OF ENGINEERS

I. PURPOSE

The purpose of this Memorandum of Understanding (MOU) is to facilitate cooperation between the U.S. Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (USACE) in support of community-based brownfields efforts involving identification, remediating, restoring and sustainable reuse brownfields and related.

II. BACKGROUND

A. Brownfields are real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminate. Brownfields may be properties contaminated by a controlled substance, a petroleum or petroleum product and may even be a mine-scarred land. Brownfields can adversely affect human health, affect the ecological value of the environment, and stifle community vitality and limit advances. Once thriving areas of economic activity, these lie deteriorated and abandoned, prevented by the stigma of contamination and often socio-economic barriers from being redeveloped.

B. Many industries that have since deteriorated into brownfields were located on or near waterways. Consequently, the USACE mission (i.e., water resources, environmental stewardship, security and economic health of the nation) is important to communities seeking to overcome their brownfield challenges. The USACE is involved in many water-related

activities to include operation and maintenance of navigation channels and harbors, flood control, and ecosystem restoration, as well as a myriad of environmental support to brownfields on a reimbursable basis. Since 1996, the USACE has participated in the Federal Interagency Working Group on Brownfields, a forum led by EPA for Federal agencies to share information, give focus to and collaborate on Brownfields activities. The Working Group provides Federal agencies the opportunity to work together in a more integrated and effective manner through the coordination of agency efforts and resources.

C. Federal brownfields efforts continue to progress. President George W. Bush signed into law the Small Business Liability Relief and Brownfields Revitalization Act on January 11, 2002. This law, an amendment to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, (CERCLA), was an important step in the development and funding of federal, state, tribal, and local brownfield activities. With the passage of that law, the Brownfield National Partnership reconvened to renew the Brownfields Federal Partnership Action Agenda. Through the Action Agenda, over twenty Federal agencies made commitments to work together and assist communities assess, cleanup, and redevelop brownfields.

D. Through the Office of Brownfields Cleanup and Redevelopment, the U.S. Environmental Protection Agency has a leadership role in the assessment, cleanup and revitalization of brownfields. The EPA's Brownfields Program is built on 4 pillars: protecting the environment; promoting partnership; strengthening the marketplace; and sustaining reuse. Through the USACE, the Army has a leadership role in the development, management, protection and restoration of the Nations water and related resources. USACE activities in support of communities and the Army are accomplished within the context of the USACE Environmental Operating Principles.

E. Enhanced coordination and cooperation between the EPA and USACE will help facilitate brownfield cleanup and redevelopment activity throughout the Nation, to include areas with blighted waterways, port communities, related lands, and rural, and tribal areas impacted by mine scarred lands identified as brownfields.

III. SCOPE

A. EPA and USACE share a commitment to helping communities solve brownfields challenges through protection of the environment; partnerships; helping to strengthen the marketplace; and encouraging sustainable reuse, and, subject to the availability of appropriated funds, agree to:

(1) Jointly develop brownfield strategies that will define ways for coordinating their activities in support of communities, with particular focus on areas with blighted waterways, port communities, related lands, and rural, and

tribal areas impacted by mine scarred lands identified as brownfields.

(2) Support communities solve brownfields challenges in a manner that meets human needs, while also protecting priority species, natural biological communities, and their habitats.

(3) Jointly develop and disseminate information about their programs and authorities that support identify, cleanup, restore and sustainably redevelop brownfields and related resources for the purpose of protecting public health, fostering economic sustainability and community vitality.

(4) Jointly identify and implement actions that will link the USACE environmental restoration activities and the EPAs brownfield efforts with economic development and revitalization. Subject to applicable program requirements, including policies relating to competition for financial assistance and the appropriate role of Federal agencies in fund raising, these actions may include:

- Supporting State, tribal and local governments efforts to-integrate brownfield assessment and cleanup with water resource development planning and implementation;
- Jointly develop and support research addressing brownfields as they relate to water resource development and stewardship and remediation tools.

B. To further the partnership between USACE and EPA, USACE may provide technical assistance to communities and organizations that have received Brownfields grants from EPA. Where the USACE Civil Works mission encompasses Brownfields issues that concern both USACE and EPA, it is anticipated that USACE collaborate with EPA in order to leverage its efforts. To the extent authorized by law and consistent with the policies of both agencies, the USACE may engage in reimbursable work, undertaken for EPA, on a community's behalf. USACE support might include inherently governmental functions related to the planning, development of sustainable designs, comprehensive management plans; brownfield assessments; eco-system restoration studies and recommended collaboration and development of expanded projects to enhance revitalization initiatives of waterways, mine scarred lands and watershed ecosystems; flood control and water supply; protection of and redevelopment of degraded wetlands; related real estate services, including appraisal, management; and technical transfer of new technologies that concern eco-system restoration and remediation.

IV. INTERAGENCY COMMUNICATIONS

To ensure consistent and effective communication between the EPA and USACE, each Party will appoint a Headquarters Agency Representative to serve as its central point of contact on

matters relating to this MOU.

V. QUALIFICATIONS AND LIMITATIONS

A. This MOU is neither a fiscal nor a funds obligation document. Nothing in this MOU, in and of itself, obligates the EPA or the USACE to expend appropriations or to enter into any contract, assistance agreement, interagency agreement, or other financial obligations. Any endeavor involving reimbursement or contribution of funds between the Parties to this MOU will be handled in accordance with applicable laws, regulations, and procedures, and will be subject to separate, subsidiary agreements that shall be concluded in writing by representatives of both Agencies.

B. This MOU does not create any right or benefit, substantive or procedural, enforceable by law or equity against the USACE or EPA, their officers or employees, or any other person. This MOU does not direct or apply to any person outside the EPA and the USACE.

VI. AUTHORITIES

A. The authorities governing this MOU are as follows:

(1) Section 104(k)(5)(A)(ii) and (k)(6)of the Comprehensive Environment Response, Compensation and Liability Act of 1980 (CERCLA), as amended (in the Small Business Liability Relief and Brownfields Revitalization Act).

(2) Section 102(2)(F) and (G) of the National Environmental Policy Act of 1969 (NEPA), as amended (42 USC 4332(2)(F) and (G))

(3) Section 105(a)(4) and Section 115 of CERCLA read together with Executive Order 12580 (Superfund Implementation), Executive Order 12898 (Environmental Justice).

B. USACE possesses the authority to support Brownfields pilot sites by virtue of relevant Sections found without the Water Resources Development Act (WRDA) of 1986, 1996, 1990 and 2000 as well as Section 216 of the Flood Control Act of 1970. USACE may engage in reimbursable work under the Economy in Government Act (31 U.S.C. 1535); the Intergovernmental Cooperation Act (31 U.S.C. 6505); and the Chiefs Economy Act (10 U.S.C. 3036(d)).

VII. MODIFICATION, AMENDMENT AND TERMINATION

A. This MOU may be modified or amended at any time by mutual agreement of both parties in writing, and may be terminated by either Party upon sixty (60) days prior written

notice.

B. This MOU in no way restricts the parties from participating with other public or private agencies, organizations, and individuals. All parties recognize the importance of continuing cooperation and participation with non-governmental organizations and institutions in programs of mutual interest.

C. The Army and the EPA intend to conduct the activities contemplated in this agreement in accordance with existing authorities. If any provisions of this MOU are determined to be inconsistent with existing laws or regulations or directives governing the signatories, then the provisions of this MOU not affected by a finding of inconsistency shall remain in full force and effect.

VIII. EFFECTIVE DATE

This MOU becomes effective when signed by both signatory Parties and remains in effect until modified or terminated. Its provisions will be reviewed annually and amended or supplemented as may be agreed upon mutually.

U.S. Environmental Protection Agency

Marianne Lamont Horinko
Assistant Administrator
Office of Solid Waste and Emergency Response

DATE: 10/20/03

U.S. Army Corps of Engineers

Robert B. Flowers
Lieutenant General, U.S. Army
Commanding

DATE: 10/24/03