

*Routing + File Copy*



State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Carroll D. Besadny  
Secretary

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TELEPHONE 608-275-3266  
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August 25, 1992

FILE REF: 4440

Mr. Doug Ballotti  
U.S. E.P.A., Region 5  
HSRW-6J  
77 W. Jackson Blvd  
Chicago, IL 60604

Subject: EPA/State Pilot Program for the Ripon FF/NN landfill

Dear Doug:

I have enclosed a copy of the EPA/State Pilot Program for your review. As we discussed on the phone, the Ripon FF/NN landfill PRP Group has asked that WDNR and EPA use the pilot for that site. I think the pilot would allow WDNR to handle the site efficiently. This is especially true since the site won't be listed on the NPL until after the election due to President Bush's moratorium on listing additional sites to the NPL.

The attached copy of the pilot contains WDNR recommended changes when compared to the original pilot developed by the EPA workgroup. The primary difference between this edited version and the original is that EPA opportunity for comment has been removed. In the generic agreement, EPA has the opportunity to provide comments to the state on all draft document submittals. EPA would be given 30 days to comment and then the comments would be sent back to the state with the caveat in Appendix C. I have removed opportunity for EPA to comment on draft submittals and Appendix C.

My reasoning for this stems from the fact that our current arrangement on state lead sites is no different than the generic version of the pilot calls for. Our current agreement allows EPA to comment on state lead sites. I see no advantage to WDNR for entering into this pilot unless the opportunity for EPA to comment are removed and the state is given complete authority to achieve a CERCLA like remedy using Wisconsin law.

There are a couple of other items I would like to draw your attention to. First, WDNR will need a letter from our Attorney General which states that Wisconsin law will result in a CERCLA like remedy. We will hold off obtaining this letter until a decision is made on entering into the agreement.



Second, I have left the dates of various submittal deadlines until the RI/FS workplan is submitted. These dates would be placed into the pilot once the workplan has been submitted.

Third, a copy of the signed agreement between WDNR and Ripon FF/NN landfill PRP Group would be attached as an addenda to this pilot. This is something I can easily add later once EPA has decided whether it will enter into this agreement.

Fourth, the agreement calls for an EPA contact person (p. 5). Any suggestions as to who this may be? I will need someone to solicit federal ARARs from also.

I would like EPA to agree to the changes I have proposed. I think the pilot is a very workable program which should lead to more program efficiency since review efforts will not be duplicated.

I have discussed this pilot with Mark Giesfeldt. He has given me the ok to enter into this agreement with Region V. Mark agrees with your recommendation of a few weeks ago, that WDNR and Region V enter into this pilot as a nonformal agreement between our agencies. Mark recommends that the agreement have Noted:, signature blocks for him and Jim Mayka.

Talk this over with Jim and let me know if he, or yourself, have any concerns. Please talk with Jim as soon as you are able. The Ripon contract became effective on 8/14/92 and the Site Evaluation Report is due on 9/14/92. I want to tell the PRP Group whether WDNR and Region V have an agreement in my SER review letter.

On a separate issue for the Ripon site, I would like to pursue a qualitative risk assessment such as will be done for the Sauk County landfill site. Marilou Martin is the EPA project manager for that site. Can you suggest someone from Region V that I can work with on that issue? I have a series of correspondence between myself and Marilou detailing the qualitative assessment. I would like to create a similar paper trail for Ripon. Please talk with Jim Mayka, or Sue and Mary Pat as to how I can handle this.

My phone number is 608-275-3310 and my mailing address is in the letterhead. Contact me if you have any questions. Thanks for your help.

Sincerely,



Stephen M. Ales  
District Hydrogeologist

Attach: EPA/State Pilot Agreement

cc: Jane Lemcke - SW/3 (without attachment)

c:\sauk\pilot.ltr

**EPA/STATE PILOT AGREEMENT  
MODEL**

The State of Wisconsin and the United States Environmental Protection Agency, Region (5) hereby enter into the following Agreement for the Ripon FF/NN Landfill, Ripon, WI.

**I. INTRODUCTION - PURPOSE**

**A. INTRODUCTION**

This agreement is entered into by the United States Environmental Protection Agency, Region V (EPA), and the State of Wisconsin pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund), as amended, the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) and Section 144.442, Wisconsin Statutes,. Region V and the State of Wisconsin agree to comply with all the provisions specified in this Agreement.

**B. PURPOSE**

This Agreement delineates the respective roles and responsibilities of each Party as they relate to the conduct of the EPA/State Pilot Project at Ripon FF/NN landfill. A description of the Pilot Project is attached (see Appendix A.) To the extent a Superfund Memorandum of Agreement (SMOA) between Region V and Wisconsin Department of Natural Resources (WDNR), is being drafted, this Agreement supersedes the SMOA for the designated sites.

**II. AGREEMENT**

**NOW, THEREFORE, IT IS AGREED THAT:**

**A. Lead Agency Designation**

**1. When the State is the lead agency:**

The WDNR is the lead State agency for response activities at Ripon FF/NN landfill pursuant to section 300.515(e)(2) of the NCP. The State of Wisconsin cleanup program is implemented under Section 144.442, Wisconsin Statutes.

**B. Lead Responsibilities**

**1. When either the EPA or the State is the lead agency:**

a. For sites in the pre-remedy selection stage, the lead agency has the option of selecting and implementing the remedy without support agency concurrence. Alternatively, the lead agency has the option of seeking support agency concurrence on the remedy, but the support agency may decline to concur. Unless the Assistant Administrator of

the Office of Solid Waste and Emergency Response (AA/OSWER) or Regional Administrator (RA) concurs in writing, EPA shall not be deemed to have approved the State remedy. Section 300.515(e)(2) of the NCP allows States to select the remedy without EPA concurrence where the site has been designated as a non-Fund-financed State-lead enforcement site (i.e., the State is proceeding under State authority and without Superfund monies at that site).

- b. The lead agency is not a PRP at the Pilot Site, Ripon FF/NN landfill.
- c. An enforceable order or two-party agreement (Attachment #1) between the lead Agency and a PRP is in place at the site. The agreement [requires PRPs] to:
  - i. complete the current stage of the project (RI/FS, RD/RA for a source control operable unit);
  - ii. complete its activities in accordance with an enforceable schedule (see Section G);
  - iii. be subject to lead agency approval of major deliverables, such as the work plans, the RI, and the FS. The agreement provides some mechanism for the lead's ability to revise, or require PRPs to modify, deliverables in accord with the lead's comments; and
  - iv. demonstrate resource availability (e.g., financial viability) to complete the requirements of the agreement.
- d. The two-party agreement provides for the lead's recourse for PRP non-compliance (i.e. stipulated penalties).
- e. Lead and support agencies reserve all rights provided them by relevant State law, the NCP and CERCLA, including the right of States to seek the enhancement of remedies selected by EPA at EPA-lead sites. However, certain authorities, protections, exemptions and waivers afforded by CERCLA (e.g., waiver of permits or federal ARARs) are not available for cleanups conducted under State law (i.e., State-lead Pilot sites).
- f. Enforcement actions taken in response to noncompliance with executed enforceable agreements/orders between the lead agency and PRPs will be timely and pursued to resolution in accordance with applicable State and Federal laws, applicable policies and guidelines.

- g. The lead agency has primary responsibility for communications with PRPs regarding the site. To the extent practicable, support agency communication with PRPs, regarding responsibilities at the site, will not take place without prior notice to the lead agency.
- h. The lead agency agrees to conduct 5-year review(s) as appropriate to determine whether:
  - i. the remedy will function.
  - ii. standards and information have changed.
  - iii. the remedy is still protective.

2. When the State is the lead agency:

- a. The State of Wisconsin commits to:
  - i. achieve a remedy that would result in a CERCLA-quality cleanup (as discussed in Subpart H of the NCP and 55 FR 8793).

[States may choose to select remedies that comply with stricter cleanup standards i.e., "substantial compliance with" or "not inconsistent with the NCP") instead of a remedy that would result in a CERCLA-quality cleanup. If a "CERCLA-quality cleanup" is achieved, it is generally expected that no further response action will be necessary, and that the site will be considered for deletion from the NPL.

- ii. provide for meaningful public participation (as defined in Subpart H).
- iii. compile an administrative record for the selection of the remedy (as defined in Subpart I).

In Appendix B, the State presents its demonstration that the State has the technical and administrative ability to perform a CERCLA-quality cleanup, as specified in Section B.2.a. above.

- b. The Attorney General (or equivalent) of the State of Wisconsin has certified in a letter that the agreement is enforceable under State law and that State authority is sufficient to produce a CERCLA-quality cleanup. The certification letter includes citations to statutory and regulatory authority and any relevant case law upholding such authority. Attachment (#2) of this Agreement is a copy of the letter from the State Attorney General (or equivalent) certifying such authority.

- c. In the Record of Decision or equivalent document, the State as lead agency agrees to demonstrate, in writing, how the remedy it has chosen results in a CERCLA-quality cleanup where State actions were not expressly consistent with the NCP. [Actions consistent with the NCP will result in a CERCLA-quality cleanup and as such this demonstration will not be necessary]. The demonstration or some alternative to a risk assessment as a means for demonstrating that the protectiveness component of a CERCLA-quality cleanup has been achieved.

In the case where a ROD or equivalent document has not been completed by the end of the Pilot period (two years from initiation of the Pilot), the State agrees to demonstrate, to the extent feasible, how the State process and requirements would result in a CERCLA-quality cleanup.

- d. EPA can take over as lead agency or increase its level of involvement if:
  - i. lead and support agencies mutually agree.
  - ii. the conditions for lead designation are not achieved or maintained during the pilot including meeting dates scheduled in the Pilot Site Agreement (also see Sections E. Selecting Pilot Sites and F. Lead and Support Roles for the Pilot).
  - iii. the remedy selected by State is not protective of human health and the environment.
  - vi. State actions pose or may pose in imminent and substantial endangerment to public health or the environment.
- e. If there is a cooperative agreement for the site, the State agrees not to expend money from the cooperative agreement, once this Pilot Agreement is signed or in the future, if the State is designated as lead for a Pilot site.

**C. Support Agency Responsibilities.** When either EPA or the State is the support agency.

- 1. The support agency will be kept informed of activities at the site (quarterly progress reports and an oral presentation to support agency staff at least once annually) and receive copies of major deliverables and the proposed remedy, as specified in Section E.3. below.
- 2. Support agency concurrence is not required for remedy selection or implementation and may not be implied.

**D. Points of Contact**

1. The points of contact for this site are project managers at the Wisconsin Department of Natural Resources and U.S. Environmental Protection Agency. The project managers are:

Stephen M. Ales  
WDNR, Southern District Headquarters  
3911 Fish Hatchery Road  
Fitchburg, WI 53711

?????? ??????  
U.S. EPA, Region V  
HSRW-6J  
77 West Jackson Blvd.  
Chicago, IL 60604

**E. Planning/Coordination/Review Processes**

1. ARARs/TBCs Process -

The lead agency will solicit ARARs from the support agency for each pilot site in accordance with the schedule in Section G. Generally, the support agency must identify and submit ARARs to the lead agency within 30 working days of a written request for these ARARs unless otherwise mutually agreed to by the lead and support agencies. If disagreements arise over ARARs, the procedures in Section E.6., below, are to be followed.

2. Administrative Record -

The lead agency is responsible for compiling and maintaining the Administrative Record file pursuant to Subpart I of the NCP. It is the responsibility of the lead agency to see that a copy of each relevant document is sent to the appropriate location for maintenance of the Administrative Record file. The Administrative Record file should contain all materials necessary to support lead agency decisions.

3. Deliverables and Record of Decision -

The lead agency must provide the support agency the following documents (or State equivalent)

for RI/FS:

- a. work plan
- b. RI
- c. alternatives array
- d. FS report (including identification of ARARs) and remedial plan proposal

e. ROD and ROD amendments

for RD/RA:

a: RD/RA documents

The lead agency shall provide the final version of the above documents to the support agency upon completion.

4. Concurrence on Lead Agency RODs -

Support agency concurrence on lead agency RODs is not required. However, the lead agency may request support agency concurrence. ROD signature or other written approval by the designated support agency official (AA/OSWER or RA where EPA is the support agency) is required to confer ROD concurrence.

5. Deletion from the NPL -

At the State-lead Pilot sites, after completion of appropriate remedial action under the State's non-Fund-financed State-lead, the State will prepare and submit to EPA a close-out report and deletion package for EPA review and approval. The lead agrees to comply with relevant portions of the completion/deletion guidance (Directive #s 9320.2-3A and 9320.2-3B).

6. Management Review Process -

In the event of disagreements between EPA and the State concerning the Pilot Project, the State RPM and the EPA contact will attempt to resolve such disagreements promptly. If disagreements cannot be resolved at this level, the problem will be referred to the supervisors of these persons for further consultation. This supervisory referral and resolution process will continue, if necessary, to the level of Regional Administrator and the Secretary of WDNR. If agreement still cannot be reached, the lead agency makes the final decision on deliverables and the remedy.

**F. Pilot Evaluation**

1. The period of the Pilot will be two years, ending July 31, 1993. There will be an interim evaluation after one year, an interim report after 18 months and a final evaluation at the end of the two years. The lead and support agencies will cooperate in providing information for the evaluation.
2. Progress updates. For purposes of tracking the progress of the Pilot, the lead agency will provide EPA Region V with quarterly updates, an annual oral presentation on progress at the sites (status, schedules and deliverables), and summaries of events expected to occur in next quarter.



G. Schedule

1. EPA Region V and the State of Wisconsin agree to the following schedule: (select milestones appropriate for the site).

<u>MILESTONES</u>	<u>ACTION</u>	<u>DATE</u>
[For RI/FS] ARAR/TBC Determinations		
Final RI/FS Project Plans		
Final Endangerment Assessment		
Proposed Plan		
Final ROD		
[For RD/RA] RD Workplan		
RA Workplan		
Extended RA (O&M) Plan		
Final RA Inspection Reports		
Final Construction Package		
Close-out & Deletion Package		
Notice of Intent to Delete		

Reports

2. Generally, EPA assumes that the lead will not change for the site after completion of the Pilot unless lead is redesignated for reasons specified in Section B.2.b. Therefore, the Region and State agree to develop another schedule for remedial activities remaining at the site not covered by the above agreement or order described in Section II.B.1.c.

APPENDIX A

EPA/STATE PILOT  
SITE PROJECT<sup>1</sup>

A. INTRODUCTION

The following outlines the State/EPA Remedy Selection Pilot Project recommended by the EPA/State Superfund Policy Forum. Details about how the State or Region may carry out Agreement provisions may be negotiated and specified in the Agreement. The model Agreement defines the baseline of the Pilot.

B. BACKGROUND

1. State/EPA Senior Policy Forum

- (a) In November 1989, the State/EPA Superfund Policy Forum was established. The objective of the Policy Forum was to develop and implement a strategy for maximizing the timely and effective cleanup of hazardous waste sites by enhancing and fully utilizing the capabilities of States and minimizing the duplication of effort between EPA and the States.
- (b) The Forum adopted a recommendation that a pilot project be conducted whereby States may select and implement remedies at specified sites without EPA approval.

2. The Forum recommended that:

- (a) EPA and a State designate a NPL site(s) in a State as a non-Fund-financed State-lead enforcement site pursuant to § 300.515(e)(2) of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The State would select the remedy under State law without EPA concurrence. EPA would not provide site-specific Fund money, such as cooperative agreement assistance, for State-lead Pilot sites.
- (b) EPA approval of deliverables would not be required; EPA may review deliverables in its role as a support agency.
- (c) At EPA-lead pilot sites, the State would adopt a support role similar to the EPA support role at State-lead pilot sites.

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<sup>1</sup> / Lead agency and support agency roles are limited to those agreed upon by the participating State and EPA. It can be argued that all responsibilities associated with lead and support agency roles as specified in the NCP are not necessarily applicable to sites designated as Pilot non-Fund-financed State-lead enforcement sites. Cleanup at such sites is proceeding under State law, not CERCLA, thus specific provisions described in the NCP, specifically Subparts E and F, regarding the roles and responsibilities of lead and support agencies are not applicable. Subparts E and F of the NCP describes the roles and responsibilities of lead and support agencies at Fund-financed sites.

- (d) EPA's major role would be to review pilot sites for deletion from the NPL after cleanup is completed. EPA would also periodically review the continued appropriateness of the State-lead designation at the site.

3. Implementation of the Pilot

- (a) A workgroup of representatives from EPA Headquarters and certain EPA Regions and States was established to implement the Pilot recommendation. (Appendix D)
- (b) This outline was developed based on the December 17, 1990, and February 20, 1991, Pilot Workgroup meetings and other additional input from the workgroup and other Regional and State representatives.

C. PURPOSE OF PILOT

- 1. To systematically evaluate States' capability to select remedies under State law without EPA concurrence and to undertake cleanups with minimal EPA oversight.
- 2. To help determine whether hazardous waste cleanup at NPL sites can be conducted by capable States without EPA oversight and approval. Additionally, to provide information that could be used to enhance the State role.
- 3. To provide a vehicle for "trying out" (defining) reduced EPA oversight. Reducing oversight aids in economizing resources. Oversight may be reduced by EPA identifying specific activities for oversight.

To measure the effect of reduced EPA oversight (and reduced duplication of effort) on the quality of the remedy, the timeliness of the process and the resources available for other activities.

To utilize the EPA and State resources to the fullest extent practical by identifying and minimizing oversight roles that may lead to duplication of effort.

- 4. To improve interaction between States and Regions.

D. SCOPE OF PILOT

- 1. Remedy selection is the primary focus of the pilot because (a) remedy selection is a major area of potential dispute between EPA and the States and (b) EPA and State review efforts may be especially duplicative throughout the process of developing a remedial plan. As a result, the preferred candidate sites will be

those sites in the Feasibility Study/Remedy Selection stage at some point during the Pilot.<sup>2</sup>

2. At State-lead pilot sites, the State selects the remedy using State authority and sources of funding other than the Superfund. At State-lead pilot sites, EPA may review the ROD and deliverables, however, EPA concurrence is not required for State remedy implementation. EPA's major involvement is the decision whether the State should continue as the lead agency throughout the process and whether to delete the site from the NPL from cleanup is completed.
3. For sites designated as non-Fund-financed State-lead enforcement, EPA will not provide site-specific cooperative agreement funding for response and enforcement actions while the site is designated as a non-Fund-financed State-lead enforcement site.
4. EPA, in the support agency role, will be kept informed of activities at the site (i.e., quarterly progress reports and an oral presentation to Region V staff at least once annually) and receive final copies of major deliverables and the proposed remedy.
5. In order to be designated lead for pilot sites, States will commit to (1) and demonstrate an ability to achieve a remedy that would result in a CERCLA-quality cleanup (as discussed in Subpart H of the NCP and 55 FR 8793); (2) provide for meaningful public participation (as defined in Subpart H); and (3) compile an administrative record for the selection of the remedy (as defined in Subpart I.)  
  
States can decide to apply a stricter standard than a CERCLA-quality cleanup for following CERCLA or the NCP (such as "substantial compliance with" or "not inconsistent with the NCP") but this is not required for pilot participation. If a "CERCLA-quality cleanup" is achieved, it is generally expected that no further response action will be necessary, and that the site will be considered for deletion from the NPL. This standard would also provide the State cleanup process with flexibility.
6. States and EPA retain all rights provided by relevant State law, the NCP or CERCLA including States' right to seek enhanced remedies at EPA-lead sites. However, certain authorities, protections, exemptions and waivers afforded by CERCLA (e.g., waiver of permits or federal ARARs) are not available for cleanups conducted under State law (i.e., State-lead Pilot sites.)
7. EPA can take over as lead agency or increase its level of involvement if: (1) lead and support agencies mutually agree; (2) the conditions for lead designation are not achieved or maintained during the pilot, including meeting dates scheduled in the Pilot Site Agreement (also see Sections E. Selecting Pilot Sites and F. Lead and Support Roles for the Pilot); (3) the remedy

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<sup>2/</sup> When, for State-lead sites, the terms Remedial investigation (RI), Feasibility Study (FS), Record of Decision (ROD), Remedial Design (RD) and Remedial Action (RA) are used, State equivalents are intended.

selected by State is not protective of human health and the environment; or (4) State actions pose or may pose an imminent and substantial endangerment to public health or the environment.

8. Details about how the State and Region may implement the provisions of the Pilot as specified in the Agreement may be negotiated between the State and Region. For example, the Agreement specifies that the lead agency will submit deliverables to the support agency. Whether the support agency reviews and comments on the lead agency's deliverables may be negotiated between the lead and support agencies<sup>3</sup>. The support agency may agree to file the deliverables for informational purposes only, or to concur with the ROD, if requested. However the details are negotiated, the lead agency role at the State Pilot site and the lead agency role at the EPA Pilot site must be the same. Similarly, the support agency role must be the same at both the EPA and State Pilot sites. Such details shall be specified in the Agreement.
9. Period of pilot will be two years. There will be an interim evaluation after one year. An interim report after 18 months and a final evaluation at end of the two years. See Section H. Evaluation Goals for Pilot Sites.

#### E. SELECTING PILOT SITES

1. Individual States will propose to the Regions sites that the States believes meet the criteria for inclusion in the Pilot.
2. Criteria for State-lead sites in Pilot:
  - (a) The pilot site must be on or be proposed for inclusion on the NPL by the date of the initiation of the pilot.
  - (b) In the Record of Decision or equivalent document, the State as lead agency agrees to demonstrate, in writing, how the remedy it has chosen results in a CERCLA-quality cleanup where State actions were not expressly consistent with the NCP. [Actions consistent with the NCP will result in a CERCLA-quality cleanup and as such this demonstration must address the need for a risk assessment or some alternative to a risk assessment as a means for demonstrating that the protectiveness component of a CERCLA-quality cleanup has been achieved.]
  - (c) An enforceable two-party agreement between the State and a PRP (or PRPs) or an order issued under State authority, must be in place at the site, or can be expected to be in place by the time the pilot project begins. Since the primary focus of the pilot is State remedy selection, sites at which remedy selection is likely to occur during the term of the pilot are the preferred candidates for the pilot. These sites would

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<sup>3/</sup> As stated in II.B.2.c. of the Agreement and F.2.5 of this document, EPA may take back lead or increase its level of involvement at the State-lead Pilot site.

likely already be subject to an enforceable agreement or order prior to initiation of the pilot. The agreement or order must either contain [the PRP's agreement to:] or [require the PRPs to:]

- i. complete the current stage of the project (RI/FS, RD or RA). The PRP's agreement to complete future phases (e.g., an agreement covering the entire remedial process) does not affect eligibility.
- ii. complete its activities in accordance with an enforceable schedule (see Section G).
- iii. be subject to State approval of major deliverables, such as the work plans, the RI, and the FS.

At pre-remedy selection sites, the enforceable agreement must make clear that the State selects the remedy and provide some mechanism for the State's ability to revise, or require PRPs to modify, deliverables in accord with State comments.

- iv. demonstrate resource availability (e.g., financial viability) to complete the requirements of the agreement. (The agreement may be written to specify State funding of PRP oversight).
- (d) The agreement must provide for State recourse for PRP non-compliance (e.g., statutory or stipulated penalties, some form of financial assurances).
- (e) The State Attorney General (or equivalent official) must certify in a letter that the agreement or order is enforceable under State law and that State authority is sufficient to produce a CERCLA-quality cleanup. The certification letter must include citations to statutory and regulatory authority and any relevant case law upholding such authority.
- (f) The State must commit to:
- i. maintaining an administrative record for the selection of the remedy (as defined in Subpart I of the NCP).
  - ii. be capable of implementing a CERCLA-quality cleanup (as defined in Subpart H of the NCP).
  - iii. comply with the provisions of Subpart H of the NCP to satisfy the public participation component of a CERCLA-quality cleanup.
  - iv. not request lead agency cooperative agreement funding for the site once the pilot agreement is in place or to use cooperative agreement money at the site once the site is designated as a non-Fund-financed State-lead enforcement site.

- (g) There must not have been substantial past federal expenditures at the site that EPA may have difficulty recovering if the site is designated as a non-Fund-financed State-lead enforcement site.
- (h) The State desires to be in the Pilot.
- (i) The State must prepare and submit the close-out report and deletion package to EPA for consideration. The State agrees to comply with relevant portions of the completion/deletion guidance for deleting sites from the NPL (OSWER Directive #s 9320.2-3A and 9320.2-3B).
- (j) States agree to conduct 5-year review(s), as appropriate, to determine if (1) the remedy will function; (2) standards and information has changed; (3) the remedy is still protective.

F. LEAD/SUPPORT ROLES FOR PILOT SITES

1. The lead agency shall submit reports to the support agency. The lead agency must provide the support agency the following documents (or State equivalent) for review for RI/FS:
  - a. work plan
  - b. RI
  - c. alternatives array
  - d. FS report (including identification of ARARs) and remedial plan proposal
  - e. ROD and ROD amendments

for RD/DA:

- a. RD/RA documents

The lead agency shall provide the final version of the above documents to the support agency upon completion.

2. Support agency must identify and submit ARARs to the lead agency within 30 working days of a written request for these ARARs unless otherwise mutually agreed to by the lead and support agencies.
3. The lead agency is responsible for remedy selection pursuant to §§ 300.515(e)(2)(i) and (e)(2)(ii) of the NCP. The lead agency has the option of seeking support agency concurrence on the remedy, but support agency can decline to concur. Unless the AA/OSWER or RA concurs in writing, EPA shall not be deemed to have approved the State remedy.
4. Progress updates. For purposes of monitoring the progress of the Pilot, the lead and support agencies will provide EPA Headquarters

with quarterly updates, an oral presentation to Region V staff at least once annually (status, schedules and deliverables), and a summary of events expected to occur in next quarter at each Pilot site. Each agency shall report on the activities to its role as described in the Pilot Agreement.

**G. SCHEDULE**

1. Pilot Regions and States must agree on a schedule for activities to be conducted during the Pilot. The Pilot schedule could include the following applicable milestones, as appropriate:

<u>MILESTONES</u>	<u>ACTION</u>	<u>DATE</u>
For RI/FS		
ARAR/TBC Determinations	(e.g., review/comment; review/approve; FYI/file)	
Final RI/FS Project Plans Assessment		
Final Endangerment Assessment		
Proposed Plan		
Final ROD		
FOR RD/RA		
RD Workplan		
RA Workplan		
Extended RA (O&M) Plan		
Final RA Inspection Reports		
Final Construction Package		
Close-out & Deletion Package		
Notice of Intent to Delete		



## Reports

2. Generally, EPA assumes that the lead will not change for the site after the completion of the Pilot unless lead is redesignated for reasons specified in Section D.8. Pilot Regions and States must agree to develop another schedule for remedial activities remaining at the site (if the Pilot activities cover only RI/FS/ROD.)

## H. EVALUATION GOALS OF PILOT SITES

1. The evaluation of the Pilot sites will provide an overall analysis of lead and support performance, including:
  - (a) quality of oversight of RP activities pursuant to an enforcement agreement or order.
  - (b) quality of selected remedy and deliverables, using CERCLA-quality cleanup as the minimum evaluation standard.
  - (c) analysis of resources expended by State and EPA on pilot site.
  - (d) analysis of time required to complete each phase of the pilot.
  - (e) ability to meet project schedules.
  - (f) EPA/State interaction and the need to revise current practices/policies/regulations as appropriate.
  - (g) analysis of future resource implications of following the pilot model.
  - (h) State use of its own authority to require PRPs to carry out remedial actions at the site, as described in the Pilot Agreement, to negotiate enforceable agreements with PRPs and to enforce orders or agreements.
2. The lead and support agencies should agree to cooperate in providing information for the evaluation.

c:\ripon\pilot.sma

**Attachment #2**

[To be completed by the State and attached to the Agreement signed by the State and Region.]



Carroll D. Besadny  
Secretary

State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Southern District Headquarters  
3911 Fish Hatchery Road  
Fitchburg, Wisconsin 53711  
TELEPHONE 608-275-3266  
TELEFAX 608-275-3338

February 20, 1992

FILE REF: 4440

Mr. Ray Roder  
c/o Whyte & Hirschboeck  
P.O. Box 2996  
Madison, WI 53701

Dear Mr. Roder:

Enclosed with this letter is a copy of the EPA/State Pilot Agreement that we discussed this morning during the meeting on the Ripon FF/NN landfill. As I stated in the meeting, to my knowledge no site in EPA Region 5 has yet entered into this agreement with EPA. As I also stated during the meeting, WDNR is interested in pursuing using this pilot for the Ripon site.

Should you have any questions regarding the Pilot, please feel free to contact me. My phone number is 608-275-3310.

Sincerely,

Stephen M. Ales  
District Hydrogeologist

cc: Patty Hanz - LC/5

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# *EPA/STATE PILOT AGREEMENT MODEL*

The (STATE) and the Environmental Protection Agency, Region (#) hereby enter into the following Agreement for the EPA/State Pilot Project, (SITE NAME), in (SITE LOCATION).

## I. INTRODUCTION - PURPOSE

### A. INTRODUCTION

This agreement is entered into by the United States Environmental Protection Agency, Region V (EPA), and the State of Wisconsin pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund), as amended, the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) and (CITE STATE AUTHORITIES). Region \_\_\_ and the State of \_\_\_\_\_ agree to comply with all the provisions specified in this Agreement.

### B. PURPOSE

This Agreement delineates the respective roles and responsibilities of each Party as they relate to the conduct of the EPA/State Pilot Project at (SITE NAME). A description of the Pilot Project is attached (see Appendix A.) To the extent a Superfund Memorandum of Agreement (SMOA) between \_\_\_\_\_ and \_\_\_\_\_ is in affect, this Agreement supersedes the SMOA for the designated sites.

## II. AGREEMENT

NOW, THEREFORE, IT IS AGREED THAT:

### A. Lead Agency Designation

#### 1. When the State is the lead agency:

The \_\_\_\_\_ is the lead State agency for response activities at (SITE NAME) pursuant to section 300.515(e)(2) of the NCP. The State of \_\_\_\_\_ cleanup program is implemented under (CITE STATE STATUTES).

#### 2. When EPA is the lead agency:

The Environmental Protection Agency is the lead agency for response activities at (SITE NAME) pursuant to the NCP.

**B. Lead Responsibilities**

**1. When either the EPA or the State is the lead agency:**

- a. For sites in the pre-remedy selection stage, the lead agency has the option of selecting and implementing the remedy without support agency concurrence. Alternatively, the lead agency has the option of seeking support agency concurrence on the remedy, but the support agency may decline to concur. Unless the Assistant Administrator of the Office of Solid Waste and Emergency Response (AA/OSWER) or Regional Administrator (RA) concurs in writing, EPA shall not be deemed to have approved the State remedy. Section 300.515(e)(2) of the NCP allows States to select the remedy without EPA concurrence where the site has been designated as a non-Fund-financed State-lead enforcement site (i.e., the State is proceeding under State authority and without Superfund monies at that site).
- b. The lead agency is not a PRP at the Pilot Site, (SITE NAME).
- c. An enforceable order or two-party [agreement] [order] (Attachment #) between the lead Agency and a PRP is in place at the site. The agreement [requires PRPs] to:
  - i. complete the current stage of the project (RI/FS, RD/RA);
  - ii. complete its activities in accordance with an enforceable schedule (see Section G);
  - iii. be subject to lead agency approval of major deliverables, such as the work plans, the RI, and the FS. The agreement provides some mechanism for the lead's ability to revise, or require PRPs to modify, deliverables in accord with the lead's comments; and
  - iv. demonstrate resource availability (e.g., financial viability) to complete the requirements of the agreement.
- d. The two-party agreement provides for the lead's recourse for PRP non-compliance stipulated penalties.
- e. Lead and support agencies reserve all rights provided them by relevant State law, the NCP and CERCLA, including the right of States to seek the enhancement of remedies selected by EPA at EPA-lead sites. However, certain authorities, protections, exemptions and waivers afforded by CERCLA (e.g., waiver of permits or federal ARARs) are not available for cleanups conducted under State law (i.e., State-lead Pilot sites).

- f. Enforcement actions taken in response to noncompliance with executed enforceable agreements/orders between the lead agency and PRPs will be timely and pursued to resolution in accordance with applicable State and Federal laws, applicable policies and guidelines.
- g. The lead agency has primary responsibility for communications with PRPs regarding the site. To the extent practicable, support agency communication with PRPs, regarding responsibilities at the site, will not take place without prior notice to the lead agency.
- h. The lead agency agrees to conduct 5-year review(s) as appropriate to determine whether:
  - i. the remedy will function.
  - ii. standards and information have changed.
  - iii. the remedy is still protective.

2. When the State is the lead agency:

- a. The State of (STATE NAME) commits to:

- i. achieve a remedy that would result in a CERCLA-quality cleanup (as discussed in Subpart H of the NCP and 55 FR 8793).

[States may choose to select remedies that comply with stricter cleanup standards i.e., "substantial compliance with" or "not inconsistent with the NCP") instead of a remedy that would result in a CERCLA-quality cleanup. If a "CERCLA-quality cleanup" is achieved, it is generally expected that no further response action will be necessary, and that the site will be considered for deletion from the NPL.

- ii. provide for meaningful public participation (as defined in Subpart H).
- iii. compile an administrative record for the selection of the remedy (as defined in Subpart I).

In Appendix B, the State presents its demonstration that the State has the technical and administrative ability to perform a CERCLA-quality cleanup, as specified in Section B.2.a. above.

- b. The Attorney General (or equivalent) of the State of (STATE NAME) has certified in a letter that the agreement is enforceable under State law and that State authority is sufficient to produce a CERCLA-quality cleanup. The certification letter includes citations to statutory and

regulatory authority and any relevant case law upholding such authority. Attachment (#) of this Agreement is a copy of the letter from the State Attorney General (or equivalent) certifying such authority.

- c. In the Record of Decision or equivalent document, the State as lead agency agrees to demonstrate, in writing, how the remedy it has chosen results in a CERCLA-quality cleanup where State actions were not expressly consistent with the NCP. [Actions consistent with the NCP will result in a CERCLA-quality cleanup and as such this demonstration will not be necessary]. The demonstration or some alternative to a risk assessment as a means for demonstrating that the protectiveness component of a CERCLA-quality cleanup has been achieved.

In the case where a ROD or equivalent document has not been completed by the end of the Pilot period (two years from initiation of the Pilot), the State agrees to demonstrate, to the extent feasible, how the State process and requirements would result in a CERCLA-quality cleanup.

- d. EPA can take over as lead agency or increase its level of involvement if:
  - i. lead and support agencies mutually agree.
  - ii. the conditions for lead designation are not achieved or maintained during the pilot including meeting dates scheduled in the Pilot Site Agreement (also see Sections E. Selecting Pilot Sites and F. Lead and Support Roles for the Pilot).
  - iii. the remedy selected by State is not protective of human health and the environment.
  - vi. State actions pose or may pose in imminent and substantial endangerment to public health or the environment.
- e. If there is a cooperative agreement for the site, the State agrees not to expend money from the cooperative agreement, once this Pilot Agreement is signed or in the future, if the State is designated as lead for a Pilot site.

3. When EPA is the lead agency:

- a. EPA commits to follow its own policies and procedures for the Agency's activities at Pilot site, (SITE NAME), as specified in CERCLA, the NCP and EPA guidance documents.

C. **Support Agency Responsibilities.** When either EPA or the State is the support agency.

1. The support agency will be kept informed of activities at the site (quarterly progress reports) and receive copies of (and have the opportunity to provide comments on) major deliverables and the proposed remedy, as specified in Section E.3. below.
2. Support agency concurrence is not required for remedy selection or implementation and may not be implied.

D. **Points of Contact**

E. **Planning/Coordination/Review Processes**

1. **ARARs/TBCs Process -**

The lead agency will solicit ARARs from the support agency for each pilot site in accordance with the schedule in Section G. Generally, the support agency must identify and submit ARARs to the lead agency within 30 working days of a written request for these ARARs unless otherwise mutually agreed to by the lead and support agencies. If disagreements arise over ARARs, the procedures in Section E.6., below, are to be followed.

2. **Administrative Record -**

The lead agency is responsible for compiling and maintaining the Administrative Record file pursuant to Subpart I of the NCP. It is the responsibility of the lead agency to see that a copy of each relevant document is sent to the appropriate location for maintenance of the Administrative Record file. The Administrative Record file should contain all materials necessary to support lead agency decisions.

3. **Deliverables and Record of Decision -**

The lead agency shall submit draft reports to the support agency. If the support agency chooses to comment, comments shall be submitted to the lead agency within 30 working days of receipt of the deliverable (unless another period is agreed to by the lead and support agencies).

The lead agency must provide the support agency the following documents (or State equivalent)

for RI/FS:

- a. draft work plan
- b. draft RI
- c. draft alternatives array



- d. draft FS report (including identification of ARARs) and remedial plan proposal
- e. draft ROD and ROD amendments

for RD/RA:

- a: draft RD/RA documents

The lead agency shall also provide the final version of the above documents to the support agency upon completion.

The lead agency shall respond to the support agency's written comments in writing. When EPA is the support agency, EPA review comments submitted to the State shall include disclaimer language as specified in Appendix C. The disclaimer language specifies that EPA review and comment on lead (State) agency documents do not constitute EPA concurrence on any or all points contained in document.

The State may choose to include similar disclaimer language in its review comments to EPA when the State is the support agency.

4. Concurrence on Lead Agency RODs -

Support agency concurrence on lead agency RODs is not required. However, the lead agency may request support agency concurrence. ROD signature or other written approval by the designated support agency official (AA/OSWER or RA where EPA is the support agency) is required to confer ROD concurrence.

5. Deletion from the NPL -

At the State-lead Pilot sites, after completion of appropriate remedial action under the State's non-Fund-financed State-lead, the State will prepare and submit to EPA a close-out report and deletion package for EPA review and approval. The lead agrees to comply with relevant portions of the completion/deletion guidance (Directive #s 9320.2-3A and 9320.2-3B).

6. Management Review Process -

In the event of disagreements between EPA and the State concerning the Pilot Project, the State RPM and EPA RPM will attempt to resolve such disagreements promptly. If disagreements cannot be resolved at this level, the problem will be referred to the supervisors of these persons for further consultation. This supervisory referral and resolution process will continue, if necessary, to the level of Regional Administrator and the (TITLE OF EQUIVALENT STATE REPRESENTATIVE). If agreement still cannot be reached, the lead agency makes the final decision on deliverables and the remedy.

**F. Pilot Evaluation**

1. The period of the Pilot will be two years, ending July 31, 1993. There will be an interim evaluation after one year, an interim report after 18 months and a final evaluation at the end of the two years. The lead and support agencies will cooperate in providing information for the evaluation.
2. Progress updates. For purposes of tracking the progress of the Pilot, the lead agency will provide EPA Headquarters with quarterly updates on progress at the sites (status, schedules and deliverables) and summaries of events expected to occur in next quarter.

**G. Schedule**

1. EPA Region \_\_\_\_\_ and the State of \_\_\_\_\_ agree to the following schedule: (select milestones appropriate for the site).

MILESTONES

ACTION

DATE

[For RI/FS]

ARAR/TBC Determinations

Draft RI/FS Workplan

Final RI/FS Workplan

Draft RI/FS Project Plans

Final RI/FS Project Plans

Draft Endangerment  
Assessment

Final Endangerment  
Assessment

Proposed Plan

Draft ROD

Final ROD

[For RD/RA]  
RD Workplan

RA Workplan

Extended RA (O&M)  
Plan

Pre-Final and Final  
RA Inspection Reports

Final Construction  
Package

Close-out & Deletion  
Package

Notice of Intent to  
Delete

Planning & Management

Reports

2. Generally, EPA assumes that the lead will not change for the site after completion of the Pilot unless lead is redesignated for reasons specified in Section B.2.b. Therefore, the Region and State agree to develop another schedule for remedial activities remaining at the site not covered by the above agreement or order described in Section II.B.1.c.

APPENDIX A

EPA/STATE PILOT  
SITE PROJECT<sup>1</sup>

A. INTRODUCTION

The following outlines the State/EPA Remedy Selection Pilot Project recommended by the EPA/State Superfund Policy Forum. The Pilot Agreement, signed by the Pilot State and Region, must contain all the provisions contained within the model Pilot Agreement (attached). Details about how the State or Region may carry out Agreement provisions may be negotiated and specified in the Agreement. The model Agreement defines the baseline of the Pilot. The purpose of the model is to provide a common baseline among Pilot sites.

B. BACKGROUND

1. State/EPA Senior Policy Forum

- (a) In November 1989, the State/EPA Superfund Policy Forum was established. The objective of the Policy Forum was to develop and implement a strategy for maximizing the timely and effective cleanup of hazardous waste sites by enhancing and fully utilizing the capabilities of States and minimizing the duplication of effort between EPA and the States.
- (b) The Forum adopted a recommendation that a pilot project be conducted whereby States may select and implement remedies at specified sites without EPA approval.

2. The Forum recommended that:

- (a) EPA and a State designate a NPL site(s) in a State as a non-Fund-financed State-lead enforcement site pursuant to § 300.515(e)(2) of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The State would select the remedy under State law without EPA concurrence. EPA would not provide site-specific Fund money, such as cooperative agreement assistance, for State-lead Pilot sites.

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<sup>1</sup> / Lead agency and support agency roles are limited to those agreed upon by the participating State and EPA. It can be argued that all responsibilities associated with lead and support agency roles as specified in the NCP are not necessarily applicable to sites designated as Pilot non-Fund-financed State-lead enforcement sites. Cleanup at such sites is proceeding under State law, not CERCLA, thus specific provisions described in the NCP, specifically Subparts E and F, regarding the roles and responsibilities of lead and support agencies are not applicable. Subparts E and F of the NCP describes the roles and responsibilities of lead and support agencies at Fund-financed sites.

- (b) EPA approval of deliverables would not be required; EPA may review deliverables in its role as a support agency.
- (c) At EPA-lead pilot sites, the State would adopt a support role similar to the EPA support role at State-lead pilot sites.
- (d) EPA's major role would be to review pilot sites for deletion from the NPL after cleanup is completed. EPA would also periodically review the continued appropriateness of the State-lead designation at the site.

3. Implementation of the Pilot

- (a) A workgroup of representatives from EPA Headquarters and certain EPA Regions and States was established to implement the Pilot recommendation. (Appendix D)
- (b) This outline was developed based on the December 17, 1990, and February 20, 1991, Pilot Workgroup meetings and other additional input from the workgroup and other Regional and State representatives.

C. PURPOSE OF PILOT

- 1. To systematically evaluate States' capability to select remedies under State law without EPA concurrence and to undertake cleanups with minimal EPA oversight.
- 2. To help determine whether hazardous waste cleanup at NPL sites can be conducted by capable States without EPA oversight and approval. Additionally, to provide information that could be used to enhance the State role.
- 3. To provide a vehicle for "trying out" (defining) reduced EPA oversight. Reducing oversight aids in economizing resources. Oversight may be reduced by EPA identifying specific activities for oversight.

To measure the effect of reduced EPA oversight (and reduced duplication of effort) on the quality of the remedy, the timeliness of the process and the resources available for other activities.

To utilize the EPA and State resources to the fullest extent practical by identifying and minimizing oversight roles that may lead to duplication of effort.

- 4. To improve interaction between States and Regions.

D. SCOPE OF PILOT

- 1. Remedy selection is the primary focus of the pilot because (a) remedy selection is a major area of potential dispute between EPA and the States and (b) EPA and State review efforts may be especially duplicative throughout the process of developing a

remedial plan. As a result, the preferred candidate sites will be those sites in the Feasibility Study/Remedy Selection stage at some point during the Pilot.<sup>2</sup>

2. At State-lead pilot sites, the State selects the remedy using State authority and sources of funding other than the Superfund with limited oversight from EPA. At State-lead pilot sites, EPA may review the ROD and deliverables, however, EPA concurrence is not required for State remedy implementation. EPA's major involvement is the decision whether the State should continue as the lead agency throughout the process and whether to delete the site from the NPL from cleanup is completed.
3. For sites designated as non-Fund-financed State-lead enforcement, EPA will not provide site-specific cooperative agreement funding for response and enforcement actions while the site is designated as a non-Fund-financed State-lead enforcement site.
4. EPA, in the support agency role, will be kept informed of activities at the site (i.e., quarterly progress reports) and receive copies of (and have the opportunity to provide timely comments on) major deliverables and the proposed remedy.
5. The State support role at EPA-lead pilot sites will be comparable to the EPA role at State-lead pilot sites, namely that the support agency (State) would be kept informed of the progress at the site (i.e., quarterly progress reports) and would receive (and have an opportunity to provide timely comments on) major deliverables and the proposed remedy. States, as a support agency, will have the opportunity to receive site-specific cooperative agreements. Essentially, for both EPA and States, support agencies role would be the minimum described in 40 CFR 300.515. Lead and support agency roles are discussed in greater detail in Section F. Lead and Support Agency Roles.
6. In order to be designated lead for pilot sites, States will commit to (1) and demonstrate an ability to achieve a remedy that would result in a CERCLA-quality cleanup (as discussed in Subpart H of the NCP and 55 FR 8793); (2) provide for meaningful public participation (as defined in Subpart H); and (3) compile an administrative record for the selection of the remedy (as defined in Subpart I.)

States can decide to apply a stricter standard than a CERCLA-quality cleanup for following CERCLA or the NCP (such as "substantial compliance with" or "not inconsistent with the NCP") but this is not required for pilot participation. If a "CERCLA-quality cleanup" is achieved, it is generally expected that no further response action will be necessary, and that the site will be considered for deletion from the NPL. This standard would also provide the State cleanup process with flexibility.

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<sup>2/</sup> When, for State-lead sites, the terms Remedial investigation (RI), Feasibility Study (FS), Record of Decision (ROD), Remedial Design (RD) and Remedial Action (RA) are used, State equivalents are intended.

7. States and EPA retain all rights provided by relevant State law, the NCP or CERCLA including States' right to seek enhanced remedies at EPA-lead sites. However, certain authorities, protections, exemptions and waivers afforded by CERCLA (e.g., waiver of permits or federal ARARs) are not available for cleanups conducted under State law (i.e., State-lead Pilot sites.)
8. EPA can take over as lead agency or increase its level of involvement if: (1) lead and support agencies mutually agree; (2) the conditions for lead designation are not achieved or maintained during the pilot, including meeting dates scheduled in the Pilot Site Agreement (also see Sections E. Selecting Pilot Sites and F. Lead and Support Roles for the Pilot); (3) the remedy selected by State is not protective of human health and the environment; or (4) State actions pose or may pose an imminent and substantial endangerment to public health or the environment.
9. Details about how the State and Region may implement the provisions of the Pilot as specified in the Agreement may be negotiated between the State and Region. For example, the Agreement specifies that the lead agency will submit deliverables to the support agency. Whether the support agency reviews and comments on the lead agency's deliverables may be negotiated between the lead and support agencies<sup>3</sup>. The support agency may agree to file the deliverables for informational purposes only, to submit comments or to concur with the ROD, if requested. However, the details are negotiated, the lead agency role at the State Pilot site and the lead agency role at the EPA Pilot site must be the same. Similarly, the support agency role must be the same at both the EPA and State Pilot sites. Such details shall be specified in the Agreement.
10. Period of pilot will be two years. There will be an interim evaluation after one year. An interim report after 18 months and a final evaluation at end of the two years. See Section H. Evaluation Goals for Pilot Sites.

#### E. SELECTING PILOT SITES

1. EPA-lead and State-leads will be in the same States, to the extent practicable, in equal ratio to each other. To the extent practicable, the minimum number of pilot sites will be 20 (i.e., 10 State-lead and 10 EPA-lead.)
2. Individual States will propose to the Regions sites that the States believes meet the criteria for inclusion in the Pilot.

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<sup>3</sup>/ As stated in II.B.2.c. of the Agreement and F.2.5 of this document, EPA may take back lead or increase its level of involvement at the State-lead Pilot site.

3. Criteria for State-lead sites in Pilot:

- (a) The pilot site must be on or be proposed for inclusion on the NPL by the date of the initiation of the pilot.
- (b) In the Record of Decision or equivalent document, the State as lead agency agrees to demonstrate, in writing, how the remedy it has chosen results in a CERCLA-quality cleanup where State actions were not expressly consistent with the NCP. [Actions consistent with the NCP will result in a CERCLA-quality cleanup and as such this demonstration must address the need for a risk assessment or some alternative to a risk assessment as a means for demonstrating that the protectiveness component of a CERCLA-quality cleanup has been achieved.
- (c) An enforceable two-party agreement between the State and a PRP (or PRPs) or an order issued under State authority, must be in place at the site, or can be expected to be in place by the time the pilot project begins. Since the primary focus of the pilot is State remedy selection, sites at which remedy selection is likely to occur during the term of the pilot are the preferred candidates for the pilot. These sites would likely already be subject to an enforceable agreement or order prior to initiation of the pilot. The agreement or order must either contain [the PRP's agreement to:] or [require the PRPs to:]
  - i. complete the current stage of the project (RI/FS, RD or RA). The PRP's agreement to complete future phases (e.g., an agreement covering the entire remedial process) does not affect eligibility.
  - ii. complete its activities in accordance with an enforceable schedule (see Section G).
  - iii. be subject to State approval of major deliverables, such as the work plans, the RI, and the FS.

At pre-remedy selection sites, the enforceable agreement must make clear that the State selects the remedy and provide some mechanism for the State's ability to revise, or require PRPs to modify, deliverables in accord with State comments.
  - iv. demonstrate resource availability (e.g., financial viability) to complete the requirements of the agreement. (The agreement may be written to specify State funding of PRP oversight).
- (d) The agreement must provide for State recourse for PRP non-compliance (e.g., statutory or stipulated penalties, some form of financial assurances).



- (e) The State Attorney General (or equivalent official) must certify in a letter that the agreement or order is enforceable under State law and that State authority is sufficient to produce a CERCLA-quality cleanup. The certification letter must include citations to statutory and regulatory authority and any relevant case law upholding such authority.
  - (f) The State must commit to:
    - i. maintaining an administrative record for the selection of the remedy (as defined in Subpart I of the NCP).
    - ii. be capable of implementing a CERCLA-quality cleanup (as defined in Subpart H of the NCP).
    - iii. comply with the provisions of Subpart H of the NCP to satisfy the public participation component of a CERCLA-quality cleanup.
    - iv. not request lead agency cooperative agreement funding for the site once the pilot agreement is in place or to use cooperative agreement money at the site once the site is designated as a non-Fund-financed State-lead enforcement site.
  - (g) There must not have been substantial past federal expenditures at the site that EPA may have difficulty recovering if the site is designated as a non-Fund-financed State-lead enforcement site.
  - (h) The State desires to be in the Pilot.
  - (i) The State must prepare and submit the close-out report and deletion package to EPA for consideration. The State agrees to comply with relevant portions of the completion/deletion guidance for deleting sites from the NPL (OSWER Directive #s 9320.2-3A and 9320.2-3B).
  - (j) States agree to conduct 5-year review(s), as appropriate, to determine if (1) the remedy will function; (2) standards and information has changed; (3) the remedy is still protective.
4. If a State's proposed sites meet the above criteria, specific selection of sites could be based on the following factors:
- (a) Distribution: Pilot sites, if possible, should not be concentrated in one State or in one Region.
  - (b) Site complexity: large number of PRPs, operable units or political issues.
  - (c) National precedent: pilot sites should not include sites that will likely establish a significant national precedent requiring substantial federal involvement.

- (d) Level of relevant State experience at NPL and non-NPL sites or, where specific experience is lacking, quality of plans for enforcing/overseeing agreements and selecting remedies.
  - (e) Lead changes: participation in pilot should not generally require lead change or envision future lead change after termination of the Pilot.
  - (f) The State is not a PRP at the site.
5. Criteria for EPA-lead pilot sites:
- (a) State agrees that the site should be an EPA-lead pilot site.
  - (b) EPA-lead pilot sites should be of comparable complexity as State-lead pilot sites, e.g., number of PRPs, site size/classification.
  - (c) The federal government is not a PRP at the site.
  - (d) Generally, EPA should retain lead at the site after the pilot has been completed.

**F. LEAD/SUPPORT ROLES FOR PILOT SITES**

1. The lead agency shall submit draft reports to the support agency for review. The support agency may, if it chooses, submit comments to the lead agency within 30 working days of receipt of reports, unless another time schedule is agreed to by the lead and support agencies. The lead agency must provide the support agency the following documents (or State equivalent) for review for RI/FS:
- a. draft work plan
  - b. draft
  - c. draft alternatives array
  - d. draft FS report (including identification of ARARs) and remedial plan proposal
  - e. draft ROD and ROD amendments

for RD/DA:

- a. draft RD/RA documents

The lead agency shall also provide the final version of the above documents to the support agency upon completion.

2. The lead agency shall respond to support agency comments as follows:
- (a) written comments will be responded to in writing.

- (b) when EPA is the support agency, EPA comments submitted to the State shall include disclaimer language as specified in Appendix C. (Each submission of EPA comments to the lead agency for the site must include the disclaimer language.) The disclaimer language specifies that EPA review and comment on lead (State) agency documents does not constitute EPA concurrence on any or all points contained in document.

States may choose to include similar disclaimer language in their review comments to EPA when the State is the support agency.

- i. The Plan will rapidly escalate issues to specified senior managers.
  - ii. In general, the lead agency makes final decisions on deliverables and the remedy unless the criteria for EPA taking back the lead as specified in Section D.8. are met.
3. Support agency must identify and submit ARARs to the lead agency within 30 working days of a written request for these ARARs unless otherwise mutually agreed to by the lead and support agencies.
  4. The lead agency is responsible for remedy selection pursuant to §§ 300.515(e)(2)(i) and (e)(2)(ii) of the NCP. The lead agency has the option of seeking support agency concurrence on the remedy, but support agency can decline to concur. Unless the AA/OSWER or RA concurs in writing, EPA shall not be deemed to have approved the State remedy.
  5. Progress updates. For purposes of monitoring the progress of the Pilot, the lead and support agencies will provide EPA Headquarters with quarterly updates (status, schedules and deliverables) and a summary of events expected to occur in next quarter at each Pilot site. Each agency shall report on the activities to its role as described in the Pilot Agreement.

#### G. SCHEDULE

1. Pilot Regions and States must agree on a schedule for activities to be conducted during the Pilot. The Pilot schedule could include the following applicable milestones, as appropriate:

#### MILESTONES

#### ACTION

#### DATE

For RI/FS

ARAR/TBC  
Determinations

(e.g., review/comment;  
review/approve;  
FYI/file)

Draft RI/FS Workplan

Final RI/FS Workplan

Draft RI/FS Project Plans

Final RI/FS Project Plans

Draft Endangerment  
Assessment

Final Endangerment  
Assessment

Proposed Plan

Draft ROD

Final ROD

FOR RD/RA

RD Workplan

RA Workplan

Extended RA (O&M)  
Plan

Pre-Final and Final  
RA Inspection Reports

Final Construction  
Package

Close-out & Deletion  
Package

Notice of Intent to  
Delete

Planning & Management  
Reports

2. Generally, EPA assumes that the lead will not change for the site after the completion of the Pilot unless lead is redesignated for reasons specified in Section D.8. Pilot Regions and States must agree to develop another schedule for remedial activities remaining at the site (if the Pilot activities cover only RI/FS/ROD.)

H. EVALUATION GOALS OF PILOT SITES

1. The evaluation of the Pilot sites will provide an overall analysis of lead and support performance, including:
  - (a) quality of oversight of RP activities pursuant to an enforcement agreement or order.
  - (b) quality of selected remedy and deliverables, using CERCLA-quality cleanup as the minimum evaluation standard.
  - (c) analysis of resources expended by State and EPA on pilot site.
  - (d) analysis of time required to complete each phase of the pilot.
  - (e) ability to meet project schedules.
  - (f) EPA/State interaction and the need to revise current practices/policies/regulations as appropriate.
  - (g) analysis of future resource implications of following the pilot model.
  - (h) State use of its own authority to require PRPs to carry out remedial actions at the site, as described in the Pilot Agreement, to negotiate enforceable agreements with PRPs and to enforce orders or agreements.
2. The lead and support agencies should agree to cooperate in providing information for the evaluation.
3. Headquarters will take the lead for evaluations, with the participation of selected Regions and States. Criteria for evaluation should be broad instead of detailed criteria. The process before the Pilot, at the beginning of the Pilot, and at the end of the Pilot, should be documented.

APPENDIX B

[To be completed by the State and attached to the Agreement signed by the State and Region.]

APPENDIX C

Model Language for Documents Transmitting  
EPA Comments to States at Non-Fund-Financed  
State-Lead Enforcement Sites

The following language will be added to any comments EPA gives regarding activities at Non-Fund-financed State-lead Pilot sites:

As the Remedial Project manager for the Site, I have reviewed the [RI/FS, draft ROD/RD workplan, etc.] and have the comments set forth below. These comments do not, however, constitute EPA concurrence on any or all points contained in the document. The Agency has not reviewed the document in the depth necessary to make such a judgment. Because this site has been designated as a "non-Fund-financed State-lead enforcement site," EPA concurrence is not a prerequisite to a State's selecting a remedy (under State law), and EPA's concurrence has neither been requested by the State nor offered by EPA. As the National Contingency Plan regulations note, "[u]nless EPA's Assistant Administrator for Solid Waste and Emergency Response or Regional Administrator concurs in writing with a State-prepared ROD, EPA shall not be deemed to have approved the State's decision" (40 CFR 300.515(e)(20(ii)); in this case, neither the Assistant Administrator for OSWER nor the Regional Administrator has so concurred.

APPENDIX D

PILOT WORKGROUP MEMBERS

EPA Headquarters Representatives

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States via mailings by ASTSWMO and NAAG