

JUL 01 1992

6/12/92

**MEMORANDUM OF AGREEMENT
BETWEEN THE NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION
AND ENERGY
AND THE NEW JERSEY PINELANDS COMMISSION**

WHEREAS, the New Jersey Department of Environmental Protection and Energy (DEPE) is responsible for the conservation and preservation of the natural resources of the State, the promotion of environmental protection, the restoration of the environment and the prevention of pollution, pursuant to the provisions of N.J.S.A. 13:1D-9 et seq., 13:1E et seq., 58:10-23.11 et seq., and 58:10A et seq., and other applicable statutes; and

WHEREAS, DEPE is further responsible for the oversight, implementation and enforcement of certain National Priorities List (NPL) site cleanups in cooperation with the United States Environmental Protection Agency, pursuant to the Superfund Response and Liability Act (CERCLA), as amended, 42 U.S.C.A. 9601 et seq., as well as cleanup of contaminated sites pursuant to the Solid Waste Management Act, Environmental Cleanup Responsibility Act, Resource Conservation Recovery Act, the Spill Compensation and Control Act and the Water Pollution Control Act and the Underground Storage of Hazardous Substances Act;

WHEREAS, the New Jersey Pinelands Commission (the Commission) is responsible for the protection and management of the Pinelands Area, as defined by N.J.S.A. 13:18A-11, pursuant to the provisions of the Pinelands Protection Act (the Pinelands Act), N.J.S.A. 13:18A-1 et seq.; and

WHEREAS, the Commission's approval is required for development activities in the Pinelands Area, pursuant to N.J.S.A. 13:18A-1 et seq. and N.J.A.C. 7:50-1.1 et seq.; and

WHEREAS, pursuant to N.J.A.C. 7:50-2.11, activities typically associated with remediation actions are defined as development and N.J.S.A. 13:18A-10(c) provides that no application for development within the Pinelands area may be approved by any State agency unless such approval conforms to the provisions of the Pinelands Comprehensive Management Plan.

WHEREAS, application to the Pinelands Commission and action on the proposed development by the Pinelands Commission is required by the provisions of the Pinelands Comprehensive Management Plan (CMP) (N.J.A.C. 7:50-1 et seq.).

WHEREAS, some contaminated sites are located in the Pinelands area, and various activities potentially requiring development will have to be undertaken at such sites, including but not limited to Pre-remedial Activity, Interim Response Action (IRAs), Remedial Investigation/Feasibility Studies (RI/FS), Remedial Designs, Remedial Action, Construction and long-term site Operation, Maintenance and Monitoring; and

WHEREAS, the Commission may enter into an intergovernmental memorandum of agreement (MOA) with a agency authorizing such agency to carry out specified development activities in the Pinelands Area without securing individual development approval from the Commission, pursuant to N.J.A.C. 7:50-4.52(c); and

WHEREAS, the DEPE and the Commission wish to ensure that action undertaken at contaminated sites where the Environmental Protection Agency is acting as the lead agency will be in compliance with the programs and regulations administered by the DEPE and the Commission; and

WHEREAS, DEPE may enter into an MOA with the Commission for the performance of its duties, pursuant to N.J.S.A. 13:1D-9 et seq.; and

WHEREAS, DEPE and the Commission intend to establish a mechanism to expedite all present and future cleanups of contaminated sites in the Pinelands Area (as defined in N.J.S.A. 13:18A-11(a)) conducted either by DEPE (DEPE Pinelands Sites) or by a private party (PP) pursuant to oversight by the DEPE (PP Pinelands Sites).

NOW THEREFORE, IT IS HEREBY AGREED:

1. DEPE shall conduct, or oversee to ensure compliance with, all activities associated with Pre-Remedial Activity, IRAs, RI/FSS, Operation, Maintenance and Monitoring at all DEPE and PP Pinelands Sites in accordance with the management programs and minimum standards set forth in subchapters 5 and 6 of the CMP N.J.A.C. 7:50-5.1 et seq. and 7:50-6.1 et seq., (with special reference to N.J.A.C. 7:50-6.1 et seq. (Wetlands) and N.J.A.C. 7:50-6.81 (Water Quality)) except in cases where it has been determined by the Pinelands Commission that a standard may be waived through the issuance of a Waiver of Strict Compliance.
2. The DEPE and the Commission agree that comments of both agencies regarding the remediation of sites where the Environmental Protection agency is acting as the lead agency will be submitted in a coordinated fashion.

3. The Commission shall not require DEPE or PPs performing cleanup activities pursuant to DEPE oversight at any DEPE or PP Pinelands site to submit applications for Commission approval for those activities conducted for the purpose of implementing pre-remedial activities, IRA's, RI/FS and Remedial Design. However, DEPE shall transmit to the Commission a draft copy of all major reports (examples of which are listed in attachment A) within five (5) days of their receipt by DEPE. Upon written notification by the Commission to DEPE of any inconsistencies between the planned activities at any DEPE or PP Pinelands Site and the regulations set forth in N.J.A.C. 7:50-1 et seq. DEPE will have such Reports modified until the Commission deems the project consistent with the Commission's regulations, or the Commission is satisfied that the proposed activities are necessary to ensure an expeditious interim cleanup of the site. If written comments are not received from the Commission within fifteen (15) days (unless a different time period is mutually agreed to by DEPE and the Commission) of delivery of the Report to the Commission, DEPE will assume that the Commission concurs with the Report. DEPE will copy the Commission on all approvals issued for a DEPE or PRP Pinelands Site. For the purpose of conducting IRA Activities, DEPE shall also notify the Commission at least seven days in advance of on-site activities being initiated associated with an IRA at any DEPE or PP Pinelands Site.
4. With respect to emergency response and immediate environmental concern actions (e.g., spills of hazardous substances) taken at any DEPE or a PRP Pinelands Site, the Commission shall not require the submission of plans or applications for Commission approval. However, DEPE or the PP shall notify the Commission by telephone within 48 hours of initiating the emergency response or immediate environmental concern actions at such sites. If any emergency response or immediate environmental concern action requires longer than 30 days to complete, DEPE shall follow the procedures in 3 above.
5. DEPE shall afford the Commissions the opportunity to review and comment on the various remedial alternatives being considered by DEPE, including DEPE's proposed plan, by sending the Commission a draft of the proposed plan. The Commission's written comments shall be received by DEPE within 30 days of the Commission's receipt of the Proposed Plan. The alternative selected by DEPE shall be consistent with N.J.A.C. 7:50-1 et seq. If no comments are received from the Commission within this time period, DEPE will assume that the Commission has concurred with the proposed plan. If the DEPE disagrees with a determination of inconsistency by the Commission, it may submit a formal application pursuant to item 6 below.

- 6a. The DEPE shall notify the Commission before any development activities associated with long-term interim (greater than 30 days duration) or final remediation of contamination at any DEPE or PP site within the Pinelands Area. Submission of the Remedial Design and Construction documents by DEPE along with the completed Pinelands application form shall serve as an application to the Commission.
 - b. For minor development and major development by a non-public entity in a municipality with the land use ordinances that have been certified by the Commission pursuant to N.J.A.C. 7:50-3 et seq. said submission in 6a above shall constitute a completed application pursuant to the provisions of the CMP.
 - c. For major development where DEPE or another public agency is the applicant, DEPE shall ensure that the notices required by N.J.A.C. 7:50-4.53(c) and (d) are provided. For major development in municipalities that do not have land use ordinances certified by the Commission and where the applicant is not a public agency, DEPE shall ensure that the notice required by N.J.A.C. 7:50-4.14(b) or (c) is provided. Submission of proof of completion of said notices along with submission of the information required by (a) above shall constitute a complete application pursuant to the provisions of the CMP.
7. Within 30 days of the receipt of a complete application pursuant to 6 above, the Commission staff shall take one of the following actions:
 - a. Where DEPE or another public agency is the applicant, a Report on an Application for Public Development shall be issued pursuant to N.J.A.C, 7:50-4.54. The report shall indicate whether the application is consistent with the requirements of the CMP. The Commission will act on the application at its next regularly scheduled public meeting after the period to request recommendations has expired and no such request has been received.
 - b. Where a non-public entity is the applicant, a Certificate of Filing or Certificate of Compliance pursuant to N.J.A.C. 7:50-4.34, 7:50-4.15 or 7:50-4.82(b) shall be issued. The Certificate of Filing or Compliance shall identify any inconsistencies between the application and the requirements of the CMP.
 - 8a. In accordance with N.J.A.C. 7:50-4.51 et seq. for development where a public agency is the applicant, the Commission shall review the application and all information which has

been submitted to determine whether the proposed activity should be approved or approved with conditions. DEPE will not approve or authorize the commencement of the remedial activities until the application has been approved by the Pinelands Commission. The DEPE will incorporate any conditions imposed by the Pinelands Commission into any formal action it takes on the remedial activity.

- 8b. For development where a private party is the applicant, the Commission shall review the application and all information which has been submitted to determine whether the proposed activity is consistent with the CMP. DEPE will not approve or authorize the commencement of any remedial activities that are not consistent with the requirements of the CMP as set forth in the Certificate of Filing or Certificate of Compliance issued by the Pinelands Commission pursuant to 7(b) above.
9. The Commission's review of all plans and proposed activities associated with the remediation of all DEPE and PP Pinelands Sites will be limited to an assessment of compliance with the standards specified in the Pinelands Comprehensive Management Plan (N.J.A.C. 7:50-1.1 et seq.). The Commission specifically disclaims any responsibility for the technical feasibility of any proposed remediation.
10. DEPE shall forward to the Commission case reports once a year on all major DEPE and PP Pinelands Sites. These reports shall be in the form of DEPE's Site Status Report. DEPE's Site Status Reports will include any major sites newly identified in the Pinelands Area. The two agencies shall meet to discuss the Status report, as well as any newly identified sites, if requested by either agency.
11. The Commission and DEPE designate the Assistant Director for Development Review and Intergovernmental Coordination and Enforcement on behalf of the Commission, and the Director of the Division of Responsible Party Site Remediation on behalf of DEPE, to coordinate activities related to this MOA. Such individuals shall meet periodically (at least two times a year) to discuss issues related to this MOA. They may also appoint staff member(s) from their respective organizations to conduct routine activities necessary to carry out the provision of this MOA.
12. In the event that one or both agencies proposes to amend relevant adopted regulation or policies, i.e., those which may have any effect on activities associated with the Pinelands Site, they shall consult with the other to determine how the amendments will affect the administration of this MOA, and shall attempt to resolve any deficiencies before taking action. It is understood that the Commission

and the DePE may propose revisions to the terms and procedures of this MOA from time to time. This agreement may be modified by mutual consent at any time.

- 13. The MOA shall take effect upon the signing of both parties, subject to the Governor's review of the Commission's minutes for a period of 10 business days; and may be terminated by either party upon 60 days written notice.

6/29/92
Date

By: Lance R. Miller
Lance R. Miller, Assistant
Commissioner
Site Remediation Programs

7/22/92
Date

By: Terrence D. Moore
Terrence D. Moore
Executive Director
Pinelands Commission

6/29/92
Date

By: [Signature]
Deputy Attorney General

ATTACHMENT A

MAJOR DELIVERABLES: PINELANDS COMMISSION/NJDEPE MOA

The following list shall constitute "Major Deliverables" for the purposes of the NJDEPE/Pinelands Commission MOA:

RI/FS: Site specific RFP, Draft FS-QAPP, Draft RI and FS Report (each phase) and subsequent final versions of the above documents. Proposed Plan, Record of Decision (ROD).

Remedial Design: Site specific RFP, draft FS-QAPP, draft Field Sampling and Testing Reports, 35% Design, 65% Design, 95% Design, 100% Design, permit applications, and any subsequent final versions of the above documents.

Remedial Action: Construction Operations Plan, and as Build Plans and Specifications.

Operation and Maintenance:

O & M Plan.

Other:

- o Correspondence Relating to NPL Deletion.
- o Correspondence Relating to O & M Termination.

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