

MEMORANDUM OF UNDERSTANDING
BETWEEN
U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION 5
AND
MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY
FOR THE
MCLOUTH STEEL CORPORATION FACILITY
CITIES OF TRENTON AND RIVERVIEW, MICHIGAN

I. PURPOSE

This Memorandum of Understanding (MOU) is entered into by the U. S. Environmental Protection Agency, Region 5 (EPA), and the Michigan Department of Environmental Quality (DEQ) (collectively, the "Parties") consistent with Title 40 of the Code of Federal Regulations (CFR), § 300.505. It specifies the plans and expectations of the DEQ and the EPA in connection with the approximately 273-acre, former McLouth Steel Products Corporation (McLouth) facility. The DEQ is addressing the northern approximately 76-acre section of the McLouth facility under its federally-authorized state Resource Conservation and Recovery Act of 1976, as amended (RCRA), corrective action program. The EPA is addressing the adjacent approximately 197-acre southern section of the former McLouth facility under the Comprehensive Environmental Response, Compensation and Liability Act, 1980 PL 96-150 (CERCLA), Title 42 of the United States Code (U.S.C.) § 9601 *et seq.* This MOU recognizes the need and provides the Parties a process for coordinating actions at the McLouth facility under the state RCRA and the federal CERCLA programs. This MOU is a voluntary agreement that expresses the good-faith intentions of the Parties, is not intended to be legally binding, does not create any contractual obligations, and is not enforceable by any party.

The northern section to be addressed under the state RCRA program is identified in Attachment A and since 2000 has been owned by the Riverview-Trenton Railroad Company (RTRR). For purposes of this MOU, the northern section will be referred to as the "RTRR Facility." The southern section of the former McLouth facility, for purposes of this MOU, will be referred to as the "Southern Section" and is also identified in Attachment A.

This MOU is intended to delineate the roles of the EPA and the DEQ in addressing the contaminants and hazardous substances at the RTRR Facility. It is also intended to ensure that the corrective actions undertaken at the RTRR Facility are substantially similar to response actions that otherwise would be taken under CERCLA and the National Contingency Plan (NCP), meaning that the corrective actions at the RTRR Facility will achieve the same performance standards for protection of human health and the environment. This MOU is also intended to provide a mechanism to coordinate public outreach efforts by the DEQ and the EPA

in connection with the RTRR Facility and the adjacent Southern Section. Under this MOU, the DEQ will retain the lead for the RTRR Facility for the purposes of compelling and overseeing corrective actions to be financed and undertaken by RTRR under Michigan law.

Among other things, this MOU establishes operating procedures for general coordination and communication between the Parties regarding the roles and responsibilities of the EPA and the DEQ with respect to the RTRR Facility and the Southern Section. The DEQ and RTRR will enter a Corrective Action Consent Order (CACO) under the authority of Part 111, Hazardous Waste Management, of Michigan's Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), Michigan Compiled Laws (MCL) 324.11101 *et seq.* The EPA, the DEQ, the U.S. Department of Justice, Crown Enterprises, Inc., and MSC Land Company, LLC, are entering into a Settlement Agreement that will govern the obligations of MSC Land Company to take response actions within approximately 183 acres (Property) of the approximately 197-acre Southern Section of the facility under CERCLA as well as under other specified environmental laws.

The actions outlined in the MOU are consistent with the EPA's *Memo Regarding Coordination between RCRA Corrective Action Closure and CERCLA Site Activities*, September 1996, and *Interim Guidance in Response to the OIG Audit "Superfund Sites Deferred to RCRA,"* OSWER 9200.1-31P, December 1999 (collectively, "the Guidance"). It has long been the EPA's policy to not include on the National Priorities List (NPL) facilities that may be eligible for inclusion if such facilities are subject to RCRA corrective action. Here, the RTRR Facility is subject to RCRA corrective action and Part 201, Environmental Remediation, of the NREPA. RTRR has the financial ability and is willing to execute a CACO in connection with the RTRR Facility. Once corrective action at the RTRR Facility pursuant to the terms of the CACO, and any subsequent CACOs, is successfully completed, the Parties expect that conditions at the RTRR Facility will no longer warrant the EPA and the DEQ proposing the RTRR Facility for inclusion on the NPL. New information of a release or potential threat of release that poses a threat to human health or the environment; information that the corrective actions to be completed pursuant to this MOU are not CERCLA-protective; or information that the work required under the CACO and if needed, one or more subsequent CACOs, was not completed satisfactorily, may cause the Parties to reconsider whether to propose the RTRR Facility to the NPL. On September 13, 2018, the EPA and the DEQ proposed the Southern Section for inclusion on the NPL.

II. BACKGROUND

The former McLouth facility is located roughly 15 miles south of Detroit along the western bank of the Trenton Channel of the Detroit River. The facility consisted of approximately 276 acres and operated as a steel production facility from approximately 1950 until early 1996 after McLouth had filed for bankruptcy in September 1995. In August 1996 the McLouth bankruptcy estate sold the former McLouth facility to Hamlin Holdings, Inc., which at that time transferred title to DSC, Ltd. (DSC). DSC tried without success to restart full-scale steel operations.

On December 17, 1999, the DEQ and DSC entered the *Comprehensive Corrective Action and Remedial Consent Order for Trenton and Gibraltar Facilities* (Consent Order). The Consent Order provided for corrective actions, including actions within the RTRR Facility, to address

numerous waste management units (WMUs) and areas of concern (AOCs). DSC completed some but not all work required under the Consent Order. In 2000 DSC sold the northern 76 acres of the facility to an RTRR affiliate. Title was later transferred from an affiliate to RTRR in 2000. RTRR has held title to the RTRR Facility since 2000.

On March 18, 2011, the DEQ sent a letter to the EPA in which it requested that the EPA transfer responsibility for the Southern Section from its RCRA program to its CERCLA or Superfund Program. (See Attachment B). Shortly thereafter, the EPA did so. (See Attachment C). Under its Superfund multi-site Site Assessment Cooperative Agreement, the DEQ evaluated the entire 273-acre McLouth facility, including both the Southern Section and the RTRR Facility, for listing on the NPL. The Southern Section and the RTRR Facility, combined, scored for NPL listing. The Southern Section and RTRR Facility were also evaluated separately for NPL listing; both areas scored for NPL listing independently.

III. IMPLEMENTATION

A. **State Program** - The DEQ was authorized on October 30, 1986 (51 *Federal Register* 36804), to implement a hazardous waste management program in Michigan in lieu of the federal RCRA, 42 U.S.C. § 6972. 40 C.F.R. §§272.1150-1151. Michigan's hazardous waste authorities are set forth in Part 111 of the NREPA, MCL 324.11101 *et seq.* In November 2000 the EPA and the DEQ entered into a Memorandum of Understanding agreeing that the DEQ could use Michigan's Part 201 of the NREPA (MCL 324.20101 *et seq.*) cleanup criteria and processes to implement RCRA corrective action, so long as they were not less stringent than RCRA.

The DEQ has sufficient capabilities, resources, expertise, and authorities to ensure that corrective action is completed under one or more CACOs that will require cleanup to the levels set forth in Michigan's Part 111 and Part 201 and their respective rules. The DEQ will coordinate with the EPA, other interested agencies, and the public on implementation of the CACO(s). If response actions encounter PCB-contaminated materials, remediation wastes will be removed and disposed of in compliance with and pursuant to a TSCA approval as provided in 40 CFR § 761.61, as required by the Toxic Substance Control Act, 15 U.S.C. § 2601 *et seq.*

B. **RTRR Facility Eligibility** - The DEQ is willing to oversee corrective actions under state law at the RTRR Facility. The DEQ agrees to provide oversight of and enforce RTRR's commencement and completion of corrective actions related to the RTRR Facility in a timely manner. The Parties agree that execution of the CACO between the DEQ and RTRR is likely to result in corrective actions at the RTRR Facility beginning at least as soon and perhaps even sooner than would response actions under CERCLA, even if the Parties had sought to list the RTRR Facility on the NPL in the fall of 2018.

C. **DEQ Proposal for Implementing and Overseeing Corrective Actions** - The Parties will hold a public meeting. The purpose of the public meeting will be to inform the affected community and discuss plans for response actions at the Southern Section and corrective actions at the RTRR Facility, and to explain to the community the similarities and differences between corrective actions conducted under state law pursuant to the terms of a CACO and response actions conducted under CERCLA. The explanation will include a description of how the DEQ and the EPA apply criteria and establish action levels for the RTRR Facility and the Southern

Section. The Parties will also discuss the public's role in the RCRA and CERCLA processes. The Parties will document all interactions with the community. Any community requests regarding public participation will be addressed as part of the forthcoming Community Involvement Plan (See Section V, Community Participation). The EPA, as the lead agency for the Southern Section, will notify the federal and state trustees of its plans for any response action activities at the Southern Section consistent with its obligations under 42 U.S.C., § 9604(b)(2), and 42 U.S.C., § 9621(j), so that the trustees may fulfill their responsibilities under 40 CFR, § 300.600 *et seq.* The DEQ will notify natural resource trustees of the existence and terms of the CACO.

D. Cleanup Levels - The DEQ will pursue response actions at the RTRR Facility that meet or exceed the definition of a CERCLA-protective cleanup.¹ A CERCLA-protective cleanup at the RTRR Facility should be protective of human health and the environment as defined generally by a 10^{-4} to 10^{-6} cancer risk range and a hazard index of 1 or less. Michigan law requires use of a 10^{-5} risk range for evaluating cancer risk (See MCL 324.20120a(4)), and a hazard quotient of 1 for non-cancer risks, which is within the range of the general definition of a "CERCLA-protective cleanup" that will be protective of human health and the environment as set forth in Directive 9375-6-11.

Corrective actions will also ensure that there are no significant adverse impacts to ecological receptors. The corrective actions will also address sources of contamination to the extent feasible and cost-effective. In selecting corrective actions, the DEQ will give preference to solutions that will be reliable over the long term. In addition, the DEQ will ensure that any corrective actions approved by the DEQ in connection with the RTRR Facility will comply with all applicable or relevant and appropriate federal requirements², and any more stringent applicable or relevant and appropriate state requirements to the maximum extent practicable under the DEQ's authorities. Soils, sediments, subsurface intrusion, surface water, and groundwater have been or will be investigated and contaminants will be subject to Michigan's Part 201 cleanup criteria or the RCRA if more stringent than Part 201. PCB remediation wastes, if any, will be removed and disposed in compliance with and pursuant to a TSCA approval as provided in 40 CFR § 761.61, as required by the Toxic Substance Control Act, 15 U.S.C. § 2601 *et seq.*

IV. PROCEDURAL REQUIREMENTS

A. Roles and Responsibilities - The Parties will share information regarding the corrective actions and response actions taking place within the RTRR Facility and the Southern Section, and the Parties will coordinate the federal and state community participation actions, as appropriate and practical. The DEQ has primary responsibility to ensure that RTRR conducts a timely CERCLA-protective cleanup under state authority and to support the public's right to participate in the decision-making process. The EPA's role under this MOU will generally be

¹ The term CERCLA-protective cleanup is defined in OSWER Directive 9375 - 6-11, *Guidance on Deferral of NPL Listing Determinations While States Oversee Response Actions* (May 3, 1995).

² The phrase "applicable or relevant and appropriate federal requirements" shall be defined by reference to Section 121 of CERCLA, 42 U.S.C. § 9621, the National Contingency Plan (*see* 40 C.F.R. § 300.5 definitions of applicable requirements" and "relevant and appropriate requirements"), and applicable EPA Guidance.

limited to review of DEQ reports submitted under this MOU, participation in annual meetings with the DEQ (See Sections IV.C., and D., below), and coordinating with DEQ community participation related to the RTRR Facility and the Southern Section, as appropriate and practical.

However, the EPA may request data, work plans, or other documentation related to investigations and any corrective actions at the RTRR Facility, as it deems appropriate, or request the DEQ to provide certain draft documents for EPA review as they are prepared by the DEQ. In a similar manner, the DEQ may request data, work plans, or other documentation related to investigations and any response activities at the Southern Section, as it deems appropriate, or request the EPA to provide certain draft documents for DEQ review as they are prepared by the EPA. This MOU is not a fund-obligation document and does not authorize any transfer of funds relating to either the Southern Section or the RTRR Facility to the state, affected tribes, or the community.

If the state, community members, or an affected tribal government requests that the EPA reconsider whether to propose the RTRR Facility to the NPL, or requests the EPA's intervention in corrective actions, the EPA agrees to meet with the DEQ to discuss the concerns, review the corrective actions in light of this MOU and the EPA's Deferral Guidance, and evaluate whether it is necessary to propose the RTRR Facility to the NPL.

The following are the contacts for the agencies (any changes may be made by notice):

<p style="text-align: center;"><u>DEQ Management</u></p> <p>Jack Schinderle, Director Waste Management and Radiological Protection Division Michigan Department of Environmental Quality Constitution Hall 525 West Allegan Street P.O. Box 30241 Lansing, MI 48909-7741 517-284-6551 schinderlej@michigan.gov</p>	<p style="text-align: center;"><u>EPA Management</u></p> <p>Douglas Ballotti, Acting Director Superfund Division U.S. Environmental Protection Agency SI-6J 77 West Jackson Boulevard Chicago, IL 60604 312-886-9773 Ballotti.douglas@epa.gov</p>
<p style="text-align: center;"><u>DEQ Project Manager</u></p> <p>Richard Conforti Waste Management and Radiological Protection Division, DEQ Constitution Hall 525 West Allegan Street P.O. Box 30241 Lansing, MI 48909-7741 517-284-6558 confortir@michigan.gov</p>	<p style="text-align: center;"><u>EPA Technical</u></p> <p>Nabil Fayoumi Superfund Division U.S. Environmental Protection Agency SR-6J 77 West Jackson Boulevard Chicago, IL 60604 312- 886-6840 fayoumi.nabil@epa.gov</p>

<u>DEQ Legal</u>	<u>EPA Legal</u>
Polly Synk Environment, Natural Resources, and Agriculture Division Michigan Department of Attorney General G. Mennen Williams Building 525 West Ottawa Street P.O. Box 30755 Lansing, MI 48909 517-373-7540 synkp@michigan.gov	Steven Kaiser Office of Regional Counsel U.S. Environmental Protection Agency C-14J 77 West Jackson Boulevard Chicago, IL 60604 312- 353-3804 kaiser.steven@epa.gov

B. Documentation Submissions to the Parties - The Parties will make available to each other upon request all data, reports, and other documentation associated with the corrective actions at the RTRR Facility and the response actions at the Southern Section to the full extent permitted under state and/or federal law. Assertions of business confidentiality or other privileges or claims by RTRR, Crown Enterprises, Inc., or MSC Land Company, LLC, will not prevent the Parties from sharing data, reports, and other documents with the other Party, subject to the requirements of state and federal law. The EPA agrees to notify the DEQ, and the DEQ agrees to notify the EPA, if the information was claimed as confidential business information by the submitter. The EPA agrees not to disclose, copy, reproduce, or otherwise make available in any form whatsoever to any other person, firm, corporation, partnership, association, or other entity information designated as proprietary or confidential information without consent of the DEQ, except as such information may be subject to disclosure under the Freedom of Information Act (5 U.S.C. 552) and the EPA's regulations at 40 C.F.R. § 2.201-2.311 , or as otherwise authorized by law.

C. Reporting - The DEQ and the EPA will provide written reports to each other at least annually on how they are meeting the conditions of this Agreement; how activities at the RTRR Facility and Southern Section may impact each other; and how to communicate future plans at the sites with the public. These reports will be due on March 31 of each year until the EPA and the DEQ agree that reporting is no longer required. CERCLA requires the EPA to consult with Michigan regarding CERCLA actions at NPL sites. The EPA will inform the DEQ regularly on federal work being performed under CERCLA on the Southern Section consistent with this requirement.

D. Annual Review – The Parties agree to meet within 60 days of submitting the annual reports (See Section IV.C.), and these meetings will continue for as long as the Parties continue to exchange reports. The purpose of the meeting will be to discuss the Parties' progress at the RTRR Facility and the Southern Section and include a review of the following: reports submitted by the Parties, RTRR's compliance with performance schedules, RTRR's and the DEQ's attainment of milestones, the EPA's attainment of milestones, data assurance and quality control issues, and the extent of participation by the affected community.

V. COMMUNITY PARTICIPATION

The Parties will ensure public involvement that maintains the principles of public involvement embodied in the NCP. Efforts to involve the public during the remedy selection and completion phases will be substantially similar to the procedures required by the NCP. The Parties will ensure the following actions are undertaken as required by the NCP:

A. The RTRR Facility files will be maintained by the DEQ, Waste Management and Radiological Protection Division (WMRPD), Hazardous Waste Section, at the DEQ central office located in Lansing, Michigan. Final deliverables required by the CACO will be made available to the public via a site-specific Web page. The DEQ will evaluate the need for additional RTRR Facility file locations based on feedback and requests made by the community.

B. RTRR Facility- and Southern Section-related documents will be made available online for a period of time appropriate to inform the public of plans and progress at the RTRR Facility and the Southern Section. Community groups expressing an interest in the RTRR Facility and/or the Southern Section will be included in discussions to determine the best and most efficient ways to provide information to the groups. This information will become a part of the Community Involvement Plan (CIP).

C. Through the CIP, or other agreement with the DEQ and/or the EPA, the affected community will be able to get help to interpret the results of the groundwater investigation, surface water management assessment, and investigations of WMUs. If funds are necessary to assist the community, the DEQ will seek such funding from RTRR if no state funding is available.

D. Prior to any determination(s) as to whether further corrective actions are or are not necessary at the RTRR Facility including, but not limited to, WMUs, AOCs, and areas of interest, the DEQ will provide the public with notice and an opportunity to comment on the proposed determination(s).

E. This MOU does not create any right or benefit, substantive or procedural, enforceable by law or equity, by persons who are not party to this MOU, against the DEQ or the EPA, their officers or employees, or any other person. This MOU does not apply to any person outside of the DEQ and the EPA.

VI. COMPLETION OF STATE CORRECTIVE ACTION

Certification and Confirmation - Once RTRR has completed all corrective actions required under the CACO(s), the DEQ will review the final report(s). If the DEQ concludes that the corrective actions at the RTRR Facility are complete, the DEQ will certify to the EPA and the affected community that RTRR has successfully completed the corrective actions and achieved the intended cleanup levels. As part of the certification, the DEQ will submit for EPA review, documentation of the DEQ's determination of the completion of corrective action and achievement of intended cleanup levels.

Upon receiving the DEQ's certification and documentation of completion of corrective action and achievement of intended cleanup levels, the EPA may either: (1) confirm in writing that the

response has been completed; or (2) within 30 days of receipt of the certification and completion documentation, initiate a completion inquiry to review the certification and documentation, and determine whether to confirm the certification by the DEQ for the RTRR Facility.

If the EPA initiates a completion inquiry, the EPA may do one of the following: (1) request additional information from the DEQ; or (2) identify a deficiency in the DEQ's certification and documentation. If the EPA requests additional information from the DEQ, the Parties will agree on a time frame within which: (1) the DEQ will provide the additional information; and (2) the EPA will complete its review, and either confirm response action completion or identify a CERCLA-protective deficiency in the DEQ's certification and documentation. If the EPA identifies a CERCLA-protective deficiency, the EPA will consult with the DEQ to address the identified deficiency(ies), and agree to a time frame for completion of the review of the DEQ's certification and documentation of response action completion. If the EPA does not meet an actual or agreed-upon deadline in this section, the DEQ may elevate a decision on a pending action to the Division Director of Region 5's Superfund Program.

Upon completion of response actions and achievement of intended cleanup levels, and subsequent confirmation by the EPA and the DEQ, the RTRR Facility and the Southern Section will be archived in the Superfund Enterprise Management System (SEMS), the DEQ Waste Data System, and RCRAInfo. Government Performance and Results Act (GPRA) goals will include CA500, Corrective Measures Implementation Plan Approved; CA550RC, Remedy Constructed; CA725YE, Current Human Exposures Under Control; CA750YE, Groundwater Releases Controlled Migration Under Control; CA800YE, Ready for Anticipated Use; and CA900CR, CA Performance Standards Attained Controls Required.

VII. AGREEMENT TERMINATION AND MODIFICATION

This MOU is to take effect as set forth in Section IX. and remain in effect for a period of five (5) years. This MOU may be extended or modified, at any time through the mutual written consent of the Parties. Additionally, the EPA or the DEQ may terminate this MOU at any time after providing 30 days' notice to the other Party. The notice shall include the basis for such termination as provided in this paragraph. This MOU may be terminated if the response action: (1) is not achieving CERCLA-protective cleanup standards; (2) is unreasonably delayed; (3) is inconsistent with this MOU; or (4) does not adequately address the concerns of the affected community. The MOU may also be terminated for other reasons, such as the state's inability to enforce compliance by RTRR or its successors, or the absence of sufficient funding to enforce compliance with state law requirements or to complete the response actions. During any 30-day notice period required by this paragraph, the EPA and the DEQ agree to meet to discuss the decision to terminate this MOU. The EPA may also terminate this MOU without prior notice to the DEQ and implement emergency or time-critical response action if the EPA determines that such action is necessary.

If this MOU is terminated for reasons other than the completion of corrective action, the RTRR Facility will be evaluated by the EPA according to the procedures in the NCP. The EPA will consider taking any response actions necessary to protect human health and the environment including, but not limited to, initiating a response action or the rulemaking process to formally list the RTRR Facility on the NPL. At the EPA's request, the DEQ will provide to the EPA all

information in its possession regarding the RTRR Facility to the extent permitted by state law. The Parties will coordinate efforts to notify the community of the termination of this MOU.

If there are any conflicting provisions between the Guidance and this MOU, the language of this MOU prevails. Furthermore, this MOU may be modified at any time upon agreement of the Parties. Notwithstanding any provision of this MOU, the EPA and the DEQ retain their respective authorities and reserve all rights to take all response actions authorized by law.


VIII. RESERVATION OF RIGHTS

Nothing in this MOU shall limit the power and authority of the United States, the EPA, or the State of Michigan to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the RTRR Facility.

IX. EFFECTIVE DATE

The effective date of this MOU shall be the date upon which the MOU has been signed by both the EPA and the DEQ.

X. AGREEMENT APPROVALS



Cathy Stepp, Regional Administrator
U.S. Environmental Protection Agency
Region 5

10-30-18
Date

Memorandum of Understanding: former McLouth Steel Corporation Facility, Cities of Trenton and Riverview, Michigan

C. Heidi Grether

C. Heidi Grether, Director
Michigan Department of Environmental Quality

10.24.18

Date

ATTACHMENTS

- (A) RTRR Facility and Southern Section Map
- (B) Letter from the DEQ to the EPA (March 18, 2011)
- (C) Memorandum Referring the Property to CERCLA, EPA (May 11, 2011)
- (D) EPA Letter Regarding NPL Listing (August 2, 2018)
- (E) Corrective Action Consent Order
- (F) Settlement Agreement

Memorandum of Understanding: former McLouth Steel Corporation Facility, Cities of Trenton and Riverview, Michigan