

**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION 10
AND
THE WASHINGTON DEPARTMENT OF ECOLOGY**

I. PURPOSE

The purpose of this Memorandum of Understanding (MOU) is to establish a formal cooperative relationship between the Washington Department of Ecology (Ecology) and the United States Environmental Protection Agency, Region 10 (EPA) (collectively, the Parties) in an area of mutual interest. Implementation of this MOU intends to allow for the undertaking of post-removal site controls and other activities at the Former Kaiser Smelter Site (Site) following the EPA-led removal actions in 2020. The removal actions, post-removal site controls, and other activities are intended to protect human health and the environment from hazardous substances, pollutants, or contaminants present at the Site.

II. BACKGROUND

The Site is located at 2111 East Hawthorne, Tax Parcels 36165.9016, 36096.9063, and 36033.0111, Mead, Spokane County, Washington. The Site includes one parcel where a former aluminum smelter was operated, and two parcels used for stormwater conveyance from the former smelter parcel. The Site consists of several industrial buildings in a state of severe disrepair, above-ground storage tanks, and other industrial equipment. Contaminants of concern at the Site include polychlorinated biphenyls (PCBs), polyaromatic hydrocarbons (PAHs), and asbestos, among others. These contaminants are released to the environment due to exposure and erosion from wind and precipitation. Contaminants are transported from the buildings on the Site to stormwater collection drains which then transmit the contaminants through an underground aqueduct to a sedimentation pond on an adjacent parcel. Stormwater from the sedimentation pond drains through another aqueduct to Deadman Creek via an outfall on the third parcel. Deadman Creek flows to the Little Spokane River which is a tributary of the Spokane River (Figure 1). The release and threat of release of these hazardous substances into the environment led to EPA's decision to conduct removal actions and require a removal action be taken by the PRP at the sedimentation pond parcel at the Site.

Removal actions are authorized by two separate memoranda. On June 1, 2020, EPA issued an Action Memorandum documenting and approving the decision to take certain fund-lead response actions at the Site. Those actions include:

- Removal and disposal of building siding, which is a source of PCBs and asbestos to surface water through the Site's stormwater management system;
- Removal and disposal of friable asbestos used as insulation on pipes located inside and outside the industrial buildings;
- Removal and disposal of waste piles containing PAHs, carcinogenic PAHs, and asbestos located within the facility; and

- Removal and disposal of solidified coal tar pitch located within the secondary containment system of an above-ground storage tank farm.

The second Action Memorandum, issued by EPA on July 2, 2020, documents and approves the following PRP-lead response actions at the Site:

- Actions necessary to mitigate release of contaminated stormwater and sediments from the sedimentation pond;
- Repair of the sedimentation pond to function as part of the stormwater management system or alternatively construction of a new stormwater management system.

The Action Memoranda further state: “EPA has initiated discussions for a Memorandum of Understanding (MOU) with Ecology to delineate actions EPA will take under CERCLA removal authority and what roles Ecology will have under MTCA authority in conducting or overseeing longer-term cleanup of soil and management of any ongoing stormwater treatment that may be needed.”

This MOU is the Memorandum of Understanding referenced in the EPA Action Memorandum.

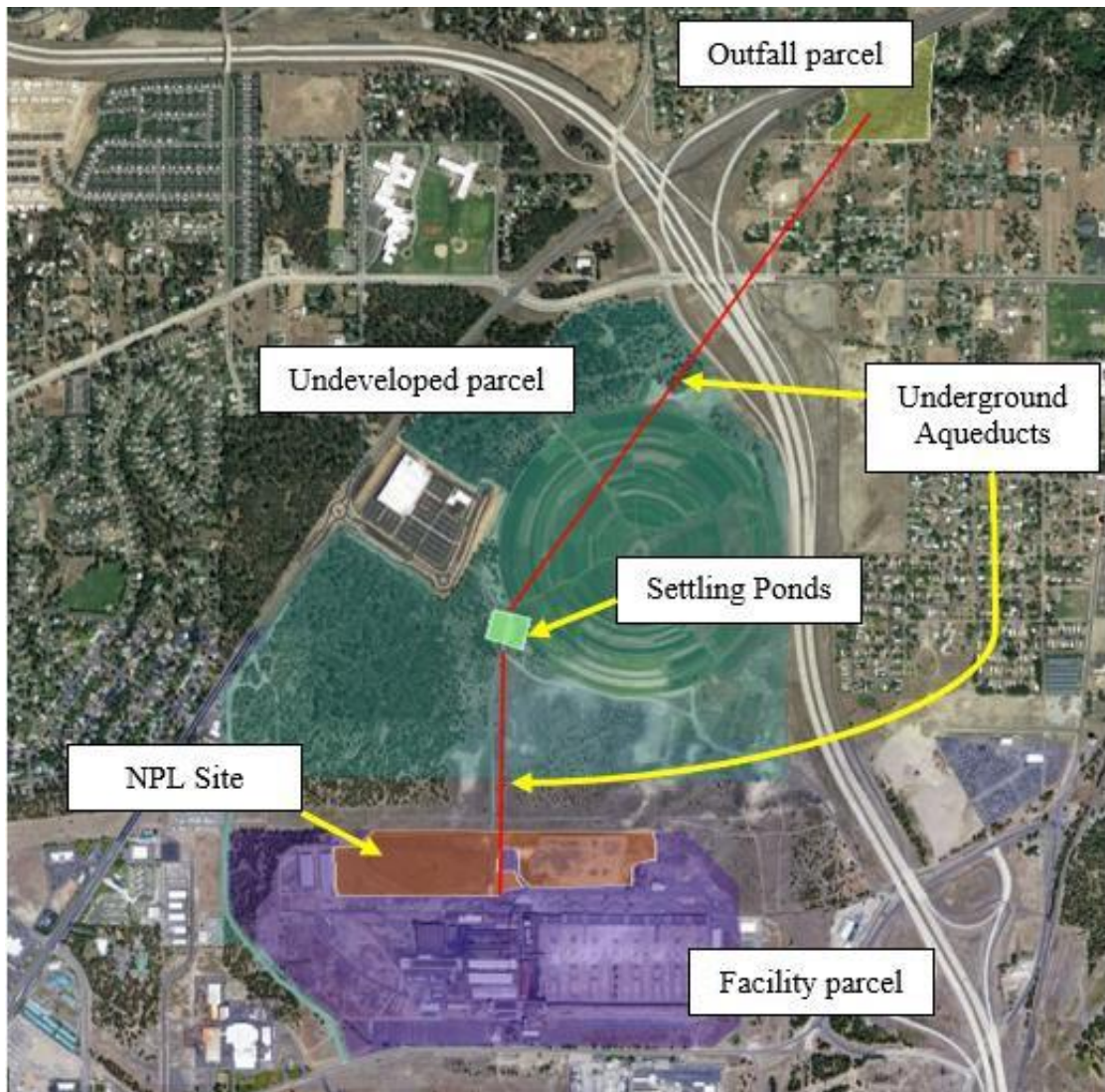


Figure 1: Overview of site features

III. AUTHORITIES

EPA enters into this MOU pursuant to Section 104 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), which authorizes EPA to undertake, consistent with the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), response actions to address releases and threats of releases of hazardous substances, pollutants, or contaminants into the environment. Pursuant to Section 300.415(l) of the NCP, 40 C.F.R. § 300.415(l), such response actions can include cooperation with the State for the provision for post-removal site controls. Such post-removal site controls include actions necessary to ensure the effectiveness and integrity of the removal action.

IV. ROLES AND RESPONSIBILITIES

Ecology intends to contribute to the support of this MOU by, as applicable, addressing necessary post-removal site controls and other activities at the Site. Post-removal site controls include oversight of the former smelter parcel owner's compliance with NPDES permit requirements including the owner's operation and maintenance of the stormwater management system. Ecology further intends to contribute to the support of this MOU by, as applicable, addressing oversight of any future actions necessary to address soil or groundwater contamination on the Site through its Toxic Cleanup Program.

EPA intends to support this MOU by sharing information and coordinating with Ecology regarding the removal work timeline, completion, technical specifications of the removal actions taken pursuant to the Action Memoranda, and known post-removal conditions at the Site. EPA's work and oversight of removal actions can be considered complete, for purposes of this MOU, when EPA notifies Ecology that field operations at the Site are complete. EPA intends to continue sharing information in the form of project completion reports and other such documents for several months following completion of field operations.

V. LIMITATIONS

A. 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.

B. Nothing in this MOU alters the statutory, regulatory or other authority of responsibilities of EPA. This MOU does not supersede existing agreements or restrict any future agreements between Ecology and EPA.

C. All commitments made in this MOU are subject to the availability of appropriated funds. Nothing in this MOU, in and of itself, obligates Ecology or EPA to expend appropriations or to enter into any contract, assistance agreement, interagency agreement, or incur other financial obligations that would be inconsistent with the Parties' budget priorities. Ecology waives any claim for compensation for services rendered to EPA in connection with any activities it carries out in furtherance of this MOU. This MOU does not exempt Ecology from EPA policies governing competition for assistance agreements. Any transaction involving reimbursement or contribution of funds between the parties to this MOU will be handled in accordance with applicable laws, regulations, and procedures under separate written agreements.

D. 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 agreement, against Ecology or EPA, their officers or employees, or any other person. This MOU does not direct or apply to any person outside of Ecology and EPA.

VI. POINTS OF CONTACT

The following individuals are designated points of contact for the MOU:

United States Environmental Protection Agency, Region 10:

Wally Moon
Chief, Spill Prevention and Removal Section
Superfund and Emergency Management Division
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The Washington Department of Ecology:

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ERO Regional Director
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VII. MODIFICATION/DURATION/TERMINATION

This MOU is to take effect upon the signature of both of the Parties and remain in effect for a period of 5 years. This MOU may be extended or modified, at any time through the mutual written consent of the Parties. Additionally, a party may terminate its participation in this MOU at any time by providing written notice to the other party at least 90 days in advance of the desired termination date. Written notice becomes effective upon its receipt.

VIII. APPROVAL

**CALVIN
TERADA**

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CALVIN TERADA
Date: 2020.11.23
14:40:26 -08'00'

11/23/2020

Calvin J. Terada
Director
Superfund and Emergency Management Division
EPA Region 10

Date



Brook Beeler
ERO Regional Director
Washington Department of Ecology

11/25/2020

Date