

**Guide for Coordination of Federal  
Removal Actions With  
State Remedial Activities**

**Association of State and Territorial Solid Waste  
Management Officials  
444 North Capitol Street, N.W., Suite 315  
Washington, D.C. 20001**

**November 2001**

# **Guide for Coordination of Federal Removal Actions with State Remedial Activities**

November 2001

## **A. Introduction**

Strengthening coordination between State and federal cleanup programs and developing mutual acceptance of cleanup decisions is a goal of the Senior Cleanup Council, which was jointly formed by States and EPA. The ASTSWMO Removal Action Focus Group developed this guide, which may be used by State Cleanup Managers and EPA Removal Managers to facilitate coordination of EPA time critical removal actions with long-term State remedial responsibilities and project transition from federal to State agencies. In certain instances the guide may also be helpful for transition from federal emergency response to State remedial activities. With communication and coordination it is possible to achieve federal removal objectives, and provide for an orderly transition to State longer term remedial response activities. In this document, removal refers to federal removal activities conducted under authority of the NCP. Remedial activities refer to State cleanup activities conducted under State authorities.

The guide identifies and describes preparedness planning issues which should be addressed by EPA Removal Managers and State Remedial Managers in advance of, during and subsequent to time critical hazardous substance responses in order to achieve mutual acceptance of cleanup decisions and smoother transitions between time critical removal and long term remedial activities. The guide identifies elements to be addressed, depending upon State and Region needs. Addressing elements in the guide may serve as a basis for a two party agreement to facilitate a working relationship for removal-remedial coordination. It is noted that depending upon the situation, the removal-remedial handoff may occur in either direction. The elements of guide for removal and remedial coordination may be implemented by the State and EPA Region in whatever manner is effective, consistent and efficient including the use of site-specific agreements, State/Region program wide agreements, or by developing informal coordination procedures. Since time is often of the essence, several example agreements are included as attachments. The guide was developed with the input of several EPA Regional Removal Managers and Headquarters staff. ASTSWMO and EPA agreed during the development of this guide that communication and coordination were important to ensure successful transition of a project from removal to long-term remedial action in a manner considerate of long-term hazardous response and cleanup requirements.

Finally, readers should view this document as a collected summary of State experience in handling site transitions from removal action to remediation, and not consider it as ASTSWMO policy or position on the process. The intent of this document is to share the experiences and successes of our State program managers with this process, so that the readers can select some of these practical solutions in addressing similar situations.

## **B. EPA Statement of Objectives and Responsibilities**

EPA's Removal Program is responsible, under federal law, for evaluating releases and threats of releases of hazardous substances and conducting removal response activities for sites that present an imminent or substantial danger to the public or the environment. In performing response actions, EPA must follow the requirements of the National Contingency Plan, including the consideration of State applicable and relevant, or appropriate requirements (ARARs) when appropriate for a specific action as described in Section K. To the extent practicable, removals should contribute to the efficient performance of any long-term remedial action with respect to the release.

## **C. State Statement of Objectives and Responsibilities**

States may have statutory authority and responsibilities for the containment, cleanup, and safe disposal of hazardous substance contamination when it threatens public health or the environment. States may have removal and response authorities under State statutes and long-term remedial responsibility for sites which are not included on the National Priorities List (NPL), or may, under agreement with EPA, be responsible for addressing NPL sites within their State's boundaries. States are responsible for identifying ARARs to EPA in a timely manner.

## **D. Notification**

Removal Actions are conducted either under federal Comprehensive Environmental Response Compensation and Liability Act (CERCLA) or under State authority. Section 300.525 of the NCP requires consultation with the States, and Section 300.320(b)(3)(iv) requires notification of an action. The Environmental Protection Agency's Regional Office should provide notification to the State point of contact identified in Section P (below) for any removal actions they are conducting or overseeing within the State. Natural Resource Trustees should also be notified when appropriate. This notification should occur as early as possible in the planning process for a removal action and may be simultaneous with the commencement of activities for a removal action. State authority removal type activities are not routinely coordinated with the EPA Regional Office, however if the EPA Regional Office identifies specific types of State removal activities that EPA has an interest in, then the State should share data on these cases.

## **E. Communication With PRP**

It is critical that the State and EPA work to ensure that any Potentially Responsible Parties (PRPs) understand the intent of a removal action and that additional work may be required if the removal action does not attain State cleanup requirements. Typically, a removal action is an interim measure within the context of an overall final site remediation. If the removal action is not intended to attain State and federal cleanup standards, the PRP should be informed that additional work may be required. The intent of the removal action may impact a PRP's future liability for work remaining to be conducted. The PRPs should be informed that the removal is either:

1. An interim measure intended to stabilize the site or to mitigate conditions which present a hazard to human health or the environment and that additional remedial actions are necessary at the site.
2. An action that is intended to meet both federal and State remediation requirements for all affected media (a final remedial measure), and no additional remedial actions are anticipated for the site.

The State and EPA should coordinate to ensure PRPs understand all cleanup standards and urge them to address both State and federal requirements to the extent practicable and when a single action may be more efficient (e.g., incremental soil removal). A clear statement of the “remedial intent” for the removal action will also help avoid confusion between regulatory agencies when future site evaluations are made identifying the need for additional remedial work. The “remedial intent” of the removal action should be forwarded to State and local contact persons. The State can use this opportunity to inform the PRP of State cleanup criteria. When a PRP is identified, this document can be provided or may be discovered during routine file review by the PRP.

#### **F. Site Access**

In an emergency response situation, site access coordination should not be an issue if the property owner grants access. In other situations, site access issues can be coordinated between removal and remedial programs. As with most types of site access, voluntary entry is the most desired and easiest to accomplish. In situations where access is not voluntarily granted, efforts should be coordinated to gain site access and facilitate data gathering for EPA and the State.

#### **G. Encourage Integrated Removal-Remedial Assessments**

When appropriate, integrating removal and remedial assessments should be conducted to provide savings in time and resources to reach the long-term management objectives for the site. Further, the differences in removal and remedial site data objectives of each program present inherent challenges to successful integrated assessments. Some of the program differences that require reconciliation during an integrated assessment include: QA/QC efforts, post removal verification samples, horizontal and vertical extent of the release, hydrogeologic site data, and community relation issues.

Fortunately, planning and coordination between State and EPA Removal and Remedial Managers are key elements in determining when an integrated assessment is appropriate, and also the key to reconciling the differences in each program’s site data objectives. With proper planning and coordination in the site discovery stage, an integrated site evaluation process can satisfy the data requirements of the removal and remedial programs and gather the type of site information that will assist local, State and federal agencies in developing long term site remedial and reuse options.

When these differences in State and federal program objectives are addressed with early planning, coordination and cooperation, the outcome is savings in time and resources. When the program differences are not addressed in the early stages, the outcome can be more costly in time and resources.

Therefore, prior to initiating an integrated assessment, State and Federal removal and remedial managers should identify and commit to the planning, coordination and agreements needed to make the process effective. In addition to the process, managers should consider the site selected for an integrated assessment to be one in which an integrated assessment will expedite an early remedy and/or site reuse.

The results of the integrated assessment should serve as a basis for consultation between EPA Removal and Site Assessment Managers, and State Remedial Managers to determine what steps need to be taken and by whom.

## **H. Community Expectations and Understandings**

The public may not be able to distinguish between State and federal lead agencies and activities at a site. Community involvement activities must be coordinated. State awareness of removal actions being planned and conducted by EPA will help them respond to inquiries by public stakeholders. Determine whether there will be a single point of contact or if community involvement responsibilities for removal and remedial activities will be shared. The point of contact for each agency should be identified to the public. Community involvement activities include responding to inquiries, holding meetings and issuing press releases, responding to public inquiries, and maintaining local information repositories.

Messages about the objectives, expected outcomes, and limitations of each agency's activities must be accurately communicated and consistent. Each agency needs to know what the other agency will be communicating in advance. Agencies should be informed of any technical assistance or environmental justice grants that have or may be awarded.

## **I. Liability Assurances**

There is a broad array of tools (e.g., comfort letters, prospective purchaser agreements and various State mechanisms) that seek to encourage the cleanup and reuse of contaminated properties by providing assurance relative to environmental liability. The State and EPA should keep each other informed of the use of these tools to ensure that prospective purchasers will have a clear understanding of all cleanup requirements that may apply to the property.

## **J. Brownfields Coordination**

Contaminated properties, which meet removal criteria, may have redevelopment potential and may need to coordinate Brownfield and Removal Action activities.

Coordination of these activities will provide a smooth transition from a federal removal program action to a Brownfield redevelopment that place the property into a useful environmental condition. The ultimate goals are to: (1) eliminate the threat to human health and the environment, and (2) take steps to assist public or private parties in putting land back into productive use. In some instances a removal action may provide significant incentive for Brownfield redevelopment projects to move forward. Typically additional remediation is conducted following State cleanup criteria.

#### **K. Role of State Cleanup Criteria For Removal Decision-Making**

The NCP provides for States to identify and provide any potential State ARARs in a timely manner to ensure that they are considered during the removal process. While CERCLA does not require that time critical removal actions meet State ARARs, it is in the best interest of both parties that State cleanup criteria be achieved if it may result in site closure or facilitate cost effective, efficient, or more timely cleanup completions. It is critical that both agencies take care to ensure that the responsible parties understand that if State cleanup criteria are not attained during the removal, then additional work to meet these requirements may need to be performed. State site cleanup requirements will vary, and depending upon circumstances, Health Departments and natural resource trustees should be consulted as they may also have a role in establishing cleanup requirements.

#### **L. Milestone Briefings**

The goal of having milestone briefings is to keep all of the agencies and parties informed about the status of the project and to allow for adjusting the project activities based on information developed after the project has started. If time is spent before the project begins identifying what significant project milestones are and what information needs to be presented in the briefings, then the amount of time spent on milestone briefings will be reduced. The format and frequency of the briefings (meeting, conference call, memorandum, site visit, e-mail, etc) should also be determined and may vary depending on the type of milestone and the scope of the project. Meeting minutes should be taken and distributed. Pollution Reports (POLREPS) should be prepared and shared between agencies and other interested parties.

#### **M. Transition Plan**

The transition plan should describe how and when control of the project should transfer to a different agency (federal to State). Establishing the criteria for transitioning the project and developing a schedule for the transition before the project begins will help reduce project down time and mobilization/demobilization costs. The transition plan will also document what the goals are for the different phases of the project.

#### **N. Removal Completion**

The transfer of site information is a key requirement for demonstrating site contamination issues have been addressed or to facilitate an effective removal – remedial

transition. Written documentation (e.g., letter, POLREP, Final Action Report) should be sent to the State when the removal action is completed. Supporting documents should be attached as applicable. The documentation should address or include the following as applicable:

- whether removal criteria were met,
- confirmation sampling,
- notification of the parties and the public that the removal phase is completed,
- documentation of removal activities,
- responsibility for long term operation and maintenance, and post removal site control
- any land use assumptions made when determining removal criteria,
- need for institutional controls,
- summary of any technical information and where all background documents are located.

#### **O. PRP Search and Cost Recovery**

State and federal resources may be coordinated to obtain and share information collected from PRP searches and reduce the duplication of effort. When PRPs are identified, the State and EPA may work cooperatively on a cost recovery agreement and the allocation of State and federal funds.

#### **P. Identify State and EPA Contacts.**

At a minimum, one main contact person should be identified from each agency, who should serve as the primary point of contact for the project. The primary points of contact are responsible for identifying and informing any other project specific contacts. Other required contacts may be those with responsibility for technical, administrative, or legal issues. Contact information will include names, phone and fax numbers, and e-mail and mailing addresses of identified individuals.

#### **Q. Conflict Resolution**

Conflict resolution should be simple and easy to implement. The recommended progression is to have any disagreements resolved at the next supervisory level up. This should be detailed using job titles rather than staff names.

#### **R. Limitations**

Nothing in any agreement should limit either party's legal authority to investigate and/or conduct appropriate response actions under State or federal law.

**Attachments:**

1. Example of a Site Specific Agreement– Alaska and Region 10
2. Example of Site Specific Agreement – Illinois and Region 5
3. Example of Site Specific Agreement – Michigan and Region 5
4. Example of Site Specific Agreement (Amendment #1) – Michigan and Region 5
5. Example of Program Agreement - New Jersey and Region 2
6. Example of a Project Planning Meeting Agenda Template – Utah and Region 8



MEMORANDUM OF UNDERSTANDING  
BETWEEN  
U.S. ENVIRONMENTAL PROTECTION AGENCY (EPA)  
AND  
ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION (DEC)  
REGARDING ROLES AND RESPONSIBILITIES FOR THE ASSESSMENT,  
REMOVAL AND REMEDIATION OF THE RIVER TERRACE RV PARK

The EPA and DEC ("agencies") concur that Resource Conservation and Recovery Act (RCRA) hazardous wastes and other contamination at the River Terrace RV Park, Soldotna, Alaska, presents an imminent and substantial threat to the Kenai River. The agencies also concur that immediate soil removal and disposal actions in addition to longer term remediation actions must be taken to protect the river from further contamination. Both agencies have respective statutory authority and responsibilities for the containment, cleanup and safe disposal of hazardous waste contamination when it threatens public health or the environment.

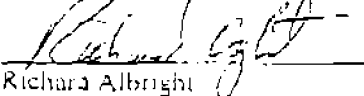
To avoid duplication of efforts in managing the cleanup of contamination at the River Terrace RV Park the agencies will consult with each other on all removal, disposal and remediation tasks to ensure compliance with all applicable federal and state laws. The agencies agree to share copies of correspondence and technical documents and to consider each other's comments on such documents. The agencies also agree to divide the following duties to provide for the most efficient and cost effective use of state and federal expertise and authorities:

1. DEC will complete the current groundwater assessment work, including groundwater and soil sampling on the River Terrace RV Park and state highway right-of-way.
2. DEC will complete a fate and transport and risk analysis to identify alternative clean up levels and will make a risk management decision that is protective of human health and the environment, consistent with state law.
3. EPA will manage the immediate removal action to excavate and dispose or treat the most highly contaminated soils, consistent with federal law including RCRA.
4. DEC will manage the long term soil and groundwater remedial or monitoring actions, consistent with state law and the alternative cleanup level determined under task 2.


The agencies may work with the Responsible Party (RP) to conduct any of the above tasks if the RP submits an acceptable task action plan that complies with applicable state and federal laws and does not delay the immediate removal action during the 1997 field season.

Access on the site will be necessary to complete the above tasks. The agencies may utilize the most effective state or federal authorities to ensure access to the site is provided and avoid any delay in completing the above tasks.

Nothing in this understanding shall limit either party's legal authority to investigate and or conduct appropriate response actions under state or federal law.

  
Richard Albright  
U.S. Environmental Protection Agency

8/4/97  
Date

  
Lynn J. Tomich Kent  
Alaska Department of Environmental Conservation

8/2/97  
Date

AGREEMENT IN PRINCIPLE  
TEXACO-INDIAN REFINING SITE  
LAWRENCEVILLE, ILLINOIS

AUGUST 1998

INTRODUCTION AND PURPOSE

This agreement in principle establishes the respective roles of the United States Environmental Protection Agency (U.S. EPA), Region 5 and the Illinois Environmental Protection Agency (IEPA) at the Texaco-Indian Refining site in Lawrenceville, Lawrence County, Illinois (Site). U.S.EPA and Illinois EPA intend to negotiate a more detailed agreement in the form of a site-specific SMOA at a later date.

ROLES AND RESPONSIBILITIES OF REMEDIAL PROJECT MANAGERS

U.S. EPA and IEPA will divide technical responsibilities for the Site, but will coordinate closely to ensure efficient progress in the remedial investigation/feasibility study (RI/FS) process. U.S. EPA and IEPA will both designate a Remedial Project Manager (RPM) to be responsible for managing their respective portions of the Site. Agreements with the PRPs will require that all documents and correspondence are submitted to both RPMs. U.S. EPA and IEPA will also share copies of all documents and correspondence that they send to the PRPs. The need for and timing of any joint reviews of PRP submittals will be determined by the RPMs on a case-by-case basis.

Responsibilities for the Site will be divided along two surface features, the B&O railroad line and State Highway 1 and by environmental media, with one exception. IEPA will take the lead on the areas south of the railroad line and will also take the lead on the tank farms west of Highway 1. U.S. EPA will take the lead on the areas north of the railroad line and the landfarm property including tank farm F west of Highway 1; therefore the two discontinuous properties owned by Indian Refining (Indian Acres and the Land Farm property) will thereby be addressed by U.S.EPA. The logistics of using the Land Farm property as a potential treatment and/or disposal area for wastes from the Indian Acres property will also be facilitated by U.S.EPA. However, if the Land Farm property is reconstructed for proper use, the facility will be available for land farming opportunities for the entire site. U.S. EPA will seek IEPA concurrence on landfarm reconstruction as it generally does in the course of remedy selection. U.S. EPA and Illinois EPA will take a joint lead role on groundwater remediation at the Site. Each will have a primary role over the areas where they have a lead role in the soil remediation. However, groundwater remedial actions will be coordinated jointly to ensure a cohesive overall effectiveness. Neither U.S. EPA nor IEPA will use their groundwater lead role to modify the other's soil

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remediation goals on portions of the Site under the other Agency's lead. Effective coordination between Agencies is essential on groundwater issues especially in the event that early actions are used to prevent the expansion of potentially extensive plumes.

As activities begin at the site, removal authorities will be used to expedite the cleanup. To implement remedies under removal and remedial authorities, both agencies will share access to the plant wastewater treatment facilities to enable collection and treatment of contaminated wastewater and groundwater, as appropriate. To the extent practicable, pipelines leading to the wastewater treatment facilities will be maintained as long as their future use is foreseeable.

### ENFORCEMENT LEAD

This Site has been designated as a Federal enforcement lead for the RI/FS. U.S. EPA will coordinate closely with IEPA to provide for the timely resolution of all issues and to expedite the RI/FS process. IEPA will be a signatory to the RI/FS AOC. Notice letters will be mailed to the PRPs to start negotiations upon signature of this agreement. U.S. EPA recognizes that IEPA has initiated and settled actions against the PRPs and agrees that IEPA will maintain the enforcement lead with regard to those actions. Such prior actions will be resolved by the provisions of the RI/FS AOC.

### COMMUNITY INVOLVEMENT

U.S. EPA and IEPA will conduct community involvement activities jointly to ensure issues are communicated consistently. U.S. EPA and IEPA will plan all activities together to provide that appropriate staff are available and key community members are informed.

### SIGNATORIES

\_\_\_\_\_  
William E. Muno, Director  
Superfund Division  
United States Environmental  
Protection Agency, Region 5

\_\_\_\_\_  
Date

\_\_\_\_\_  
William C. Child, Chief  
Bureau of Land  
Illinois Environmental  
Protection Agency

\_\_\_\_\_  
Date

STATE OF MICHIGAN  
DEPARTMENT OF ATTORNEY GENERAL



300 S. WASHINGTON SQ. SUITE 570  
LANSING, MICHIGAN 48913

Michigan Department  
of Attorney General

JENNIFER MULHERN GRANHOLM  
ATTORNEY GENERAL

March 14, 2001

Nancy Lake Martin  
BASF Corporation  
3000 Continental Drive - North  
Mount Olive, NJ 07828-1234

Re: BASF Riverview Site  
(U.S. v BASF Wyandotte Corporation)

Dear Ms. Martin:

Enclosed is a copy of the signed Memorandum of Agreement between U.S. EPA and MDEQ concerning the BASF Riverview Site.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Kathleen L. Cavanaugh".

Kathleen L. Cavanaugh  
Assistant Attorney General  
Natural Resources and  
Environmental Quality Division  
(517) 335-1488

KLC:pjb

cc: Beth Vens ✓  
Nan Loemon

5 - NR files BASF Riverview 1999-038T (Michigan)

<b>RECEIVED ERD S.E. MICH.</b>	
MAR 16 2001	
<b>FILE</b>	_____
<b>COUNTY</b>	_____

**MEMORANDUM OF AGREEMENT  
BASF (FEDERAL MARINE TERMINALS) SITE  
RIVERVIEW, MICHIGAN**

**INTRODUCTION AND PURPOSE**

This Memorandum of Agreement ("MOA") is meant to clarify mutual expectations and commitments of the United States Environmental Protection Agency ("U.S. EPA") and the Michigan Department of Environmental Quality ("MDEQ") with respect to the upland portion of the BASF (a.k.a. Federal Marine Terminals) Facility ("Upland Facility"). On September 30, 1980, the United States Department of Justice (U.S. DOJ), on behalf of the U.S. EPA, filed a Complaint against the BASF Wyandotte Corporation seeking injunctive relief pursuant to the Refuse Act, 33 U.S.C. Section 407 and Section 7003 of the Resource Conservation and Recovery Act, 42 U.S.C. Section 6973, to abate an imminent and substantial endangerment to health and the environment caused by the disposal and discharges of hazardous substances into the ground, groundwater, and navigable waters from the Site (United States et al. v BASF Wyandotte Corp. et al., Civ No 80-73699, (E.D. Mich.)).

The Attorney General for the State of Michigan, on behalf of the Water Resources Commission and the Director of the Michigan Department of Natural Resources ("MDNR"), filed a Complaint in Intervention on or about April 1, 1981, incorporating by reference the United States' Complaint and asserting pendent state claims. Pursuant to Executive Orders No. 1995-16 and 1995-18, all powers and duties of the Water Resources Commission have been transferred to the MDEQ, and all powers and duties of the Director of the MDNR, as they pertain to this case, have been transferred to the MDEQ.

On July 18, 1984, a Consent Decree was executed by all parties and entered by the Court in an attempt to resolve the violations set forth in the Complaint and Complaint in Intervention. The 1984 Consent Decree required BASF to undertake certain remedial actions at the Site in order to control conditions at the Site that could endanger health, welfare, or the environment and to take measures to prevent the contamination of water located on, under, and around the Site by industrial waste located on the Site.

The MDEQ and the U.S. EPA have determined that the remedial action program implemented by BASF pursuant to the 1984 Consent Decree did not achieve the mutual intent and purpose of the parties to control conditions at the Site that could endanger health, welfare, or the environment and to prevent the contamination of water located on, under, and around the Site by industrial wastes located on the Site. The U.S. EPA and the MDEQ agree that further investigation and remedial work are required to address current and potential risks to human health and the environment.

The 1984 Consent Decree defines the "Site" as follows: "The property which is the subject of this Consent Decree (hereinafter "the Site") is described in Appendix A. It is located between Bridge Road and Biddle Avenue in Riverview, Michigan and the Trenton Channel of the Detroit River. It is approximately 30 acres in size and is bordered on the north by Firestone Steel Products property and on the south by the City of Riverview boat dock property." Appendix A is a legal description of the Site.

For purposes of this MOA, the Upland Facility shall be defined as the Site and any area, place, or property where a hazardous substance released at the Site has come to be located in concentrations which exceed the requirements of Section 20120a(1)(a) or (17) of Part 201, Environmental Remediation, of Michigan's Natural Resources and Environmental Protection Act, 1994 PA 451, as amended ("NREPA"), excluding any sediments in the Treated Channel of the Detroit River or any other surface water body. For further purposes of defining the Upland Facility, sediments shall not include any soils, wastes, debris, rip-rap, and other materials located above the Detroit River low water datum level, which is defined as the sloping surface of the Detroit River when Lake St. Clair is at an elevation of 571.5 feet above sea level and Lake Erie is at an elevation of 568.6 feet above sea level (Reference: National Oceanic and Atmospheric Administration, National Ocean Service, Detroit River Soundings, 9th Edition, March 9, 1985).

#### ROLES AND RESPONSIBILITIES RELATING TO CONTAMINATION AT THE UPLAND FACILITY

The U.S. EPA and the MDEQ are concerned with on-going releases and possible threats of releases from the Upland Facility, and the possible exposure risks associated with the current environmental conditions at the Upland Facility. Both the U.S. EPA and the MDEQ have an interest in requiring that additional response activities be conducted by BASF to promptly address these risks. The MDEQ is currently working with BASF to abate and prevent the on-going release of groundwater containing hazardous substances in excess of the MDEQ's Groundwater Surface Water Interface ("GSI") criteria from the Upland Facility through submission, approval, and implementation of an Interim Response Activity ("IRA") Design Work Plan. The MDEQ has also initiated actions to assure that BASF adequately evaluates and addresses all other relevant exposure pathways associated with the Upland Facility in a manner which protects the public health and welfare and the environment. This will be accomplished through the development, submission, approval, and implementation of an Interim Response Activity Plan ("IRAP") consistent with the requirements of Part 201 of the NREPA ("Part 201"). The U.S. EPA believes that, at this time, the MDEQ should continue its efforts to address risks associated with the Upland Facility.

It is therefore agreed that the MDEQ will enter into negotiations with BASF and, within nine months from January 31, 2001, secure a judicial consent judgment consisting of an agreement under Part 201. The judicial consent judgment shall include a detailed scope of work and schedules and shall require BASF to: (1) implement the IRA to address the on-going releases and threats of releases of hazardous substances in excess of GSI criteria and (2) develop and implement, after public comment and upon MDEQ approval, the IRAP to address contamination at the Upland Facility. This work, to be performed by BASF, will follow Michigan's Part 201 process for investigation, alternative evaluation, and decision-making. In recognition of the MDEQ's current level of activity at the Upland Facility and in order to eliminate duplication of effort, the Upland Facility will be designated as a state-enforcement lead. The MDEQ will give the U.S. EPA an opportunity to comment on planned response activities by providing the

U.S. EPA with a copy of the draft IRA Work Plan and the draft IRAP and schedules for accomplishing response activities at least 21 calendar days prior to releasing the documents for public comment or MDEQ's approval, whichever comes first.

If the MDEQ is unable to secure a judicial consent judgment with BASF to perform an appropriate scope of work within the nine-month time frame, the U.S. EPA will take appropriate enforcement action pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. Section 9601 *et seq.*, the National Contingency Plan, and other applicable federal authorities.

### RESERVATION OF RIGHTS

The U.S. EPA recognizes that the MDEQ has implemented Part 201, and the MDEQ has the ability to select and implement cleanups that are protective of human health and the environment. Nonetheless, the U.S. EPA reserves its authority to commence appropriate federal enforcement actions, including, without limitation, enforcement actions against BASF if: (1) the approved IRA Design Work Plan or IRAP, and associated schedules, or the actions BASF takes under agreement with the MDEQ are in any way insufficient to address the risks to human health and the environment presented by releases of hazardous substances from the Site or (2) the BASF fails to comply with its obligations under the judicial consent judgment related to the Upland Facility.

Notwithstanding any provision of this MOA, the MDEQ, the Attorney General of the State of Michigan, and the U.S. EPA shall each retain all of their respective information-gathering, inspection, access, and enforcement authorities, rights, and defenses under Part 201, the CERCLA, and any other applicable statute or regulation. The MDEQ and the U.S. EPA acknowledge and agree that this MOA does not constitute a warranty or representation of any kind by the MDEQ or the U.S. EPA that the response activities performed by BASF as described by the Scope of Work, IRA Design Work Plan, or IRAP will result in the achievement of the remedial criteria established by law. This MOA does not create any rights or benefits for any party not a signatory to this MOA and does not limit or affect the rights of the State of Michigan or the United States against any third parties. This written MOA constitutes the entire agreement between the parties, and no other consideration has been promised.

### MODIFICATION

This MOA may only be modified by the written agreement of the U.S. EPA and the MDEQ.

### EXECUTION AND EFFECTIVE DATE

The parties hereto have executed this MOA in two (2) copies, each of which shall be deemed an original. The effective date of the MOA shall be the later of the two signatory dates.

SIGNATORIES

For the Michigan Department of Environmental Quality

  
\_\_\_\_\_  
Chief, Environmental Response Division

  
\_\_\_\_\_  
Date 2/22/01

For the U.S. Environmental Protection Agency, Region 5

  
\_\_\_\_\_  
Director, Superfund Division

\_\_\_\_\_  
Date 3/26/01



AMENDMENT #1  
SUPERFUND STATE CONTRACT FOR REMOVAL ACTIVITIES  
AT VELSICOL/PINE RIVER SITE, BETWEEN THE STATE OF MICHIGAN AND THE  
U.S. ENVIRONMENTAL PROTECTION AGENCY

1. GENERAL AUTHORITY

This Contract is entered into pursuant to §§104(a)(1) and (d) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), 42 U.S.C. 9601 et seq., as amended; the National Oil and Hazardous Substances Pollution Contingency Plan, 55 F.R. 8666 et seq. (40 CFR Part 300, March 8, 1990, hereinafter referred to as the "NCP"); other applicable Federal regulations including 40 CFR Part 35, Subpart O, and 40 CFR Part 31, applicable State laws, and Paragraph 26 of the document "Superfund State Contract for Removal Activities at Velsicol/Pine River Site, Between the State of Michigan and the U.S. Environmental Protection Agency" (The Removal Action SSC) signed on September 14, 1998 and October 12, 1998..

2. PURPOSE OF THIS SUPERFUND STATE CONTRACT (SSC) AMENDMENT

1. This contract amendment is an agreement between the United States Environmental Protection Agency (EPA) and the Michigan Department of Environmental Quality ("MDEQ"). The Governor has designated the MDEQ to interact with EPA on behalf of the State of Michigan (the "State"), concerning response actions, in order to conduct removal action at the Velsicol/Pine River Site (the "Site"), CERCLIS ID number MID000722439.
2. This Contract amendment is necessary to address costs not anticipated in the Removal Action SSC signed on September 14, 1998 and October 12, 1998 and Action Memorandum, signed June 8, 1998.
3. Attached hereto and incorporated herein as Appendix A is the purpose for increased costs, as incorporated within the Action Memorandum Addendum, signed October 8, 1999 and the Action Memorandum dated August 16, 1999. The Proposed Action section of the Action Memorandum is the Scope of Work for this Removal Action SSC Addendum.
4. Attached hereto and incorporated herein as Appendix B are cost estimates, as included in the Final Pollution Report, dated October 26, 1999.
5. Attached hereto and incorporated herein as Appendix C is the Removal Action SSC for Removal Activities, signed on September 14, 1998 and October 12, 1998.

3. DURATION OF THIS CONTRACT

This paragraph remains unchanged from the Removal Action SSC (Appendix C).

#### 4. DESIGNATION OF PRIMARY CONTACTS AND THEIR RESPONSIBILITIES

A. EPA has designated:

Stephanie Ball  
U.S. EPA, SR-6J  
77 W. Jackson Blvd  
Chicago, IL 60604  
(312) 353-2315

to serve as Remedial Project Manager (RPM) for this Contract. The designated RPM may be changed by letter to the State signatories, and incorporated by reference herein without amending this Contract.

B. The State has designated:

Brian von Gunten  
MDEQ  
Environmental Response Division  
Knapps Centre  
P.O. Box 30426  
Lansing, MI 48909-7926  
(517) 373-6808

to serve as the State Project Manager (SPM) for this Contract. The designated SPM may be changed by letter to the Federal (EPA) signatories, and incorporated by reference herein without amending this Contract.

C. The RPM and the SPM may make project changes that do not substantially alter the scope of the response actions at the Site or the cost of the removal action.

D. Any disagreements between the RPM and SPM shall be resolved through their chains of command and/or signatories to this Contract, as specified under the Issue Resolution section, below.

#### 5. NEGATION OF AGENCY RELATIONSHIP

This paragraph remains unchanged from the Removal Action SSC (Appendix C).

#### 6. SITE DESCRIPTION

A description of the Site including its location, background of events, physical characteristics (i.e., Site geology and proximity to drinking water supplies), the nature of the release (contaminant type and affected media), past response actions at the Site by EPA, the State, or others, and the response action at the Site contemplated in the Record of Decision(s) (ROD) is included in Appendix A and Appendix C.

7. SITE ACCESS

This paragraph remains unchanged from the Removal Action SSC (Appendix C).

8. THIRD PARTY

This paragraph remains unchanged from the Removal Action SSC (Appendix C).

9. SITE-SPECIFIC STATEMENT OF WORK (SOW)

A site-specific Statement of Work (SOW), indicating the tasks to be performed for this response action, including estimated costs, is included in the Proposed Actions section of Appendix A. Minor adjustments to this work may be made by the authority of the RPM or SPM without a formal amendment. Work changes that increase the project costs, or which significantly alter the scope of work, thereby affecting the State's ability to meet the conditions set out in this Contract, including cost-share requirements, shall necessitate an amendment to this Contract (see Amendability section, below).

10. PROJECT SCHEDULE

A general description of the project schedule/milestones by calendar year includes a project summary of deliverables, as specified in the SOW, included in Appendix C. Additional schedules are estimated in Appendix A. Minor adjustments to this schedule may be made by the authority of the RPM or SPM without a formal amendment. Schedule changes that significantly increase the project costs, or alter the scope of work, thereby affecting the State's ability to meet the conditions set out in this Contract, including cost-share requirements, shall necessitate an amendment to this Contract (see Amendability section, below).

11. STATE REVIEW

This paragraph remains unchanged from the Removal Action SSC (Appendix C).

12. TECHNICAL AND PROGRESS REPORTS

This paragraph remains unchanged from the Removal Action SSC (Appendix C).

13. RECORDS ACCESS

This paragraph remains unchanged from the Removal Action SSC (Appendix C).

14. RECORDS RETENTION

This paragraph remains unchanged from the Removal Action SSC (Appendix C).

15. STATEMENT OF INTENTION TO FOLLOW EPA POLICY AND GUIDANCE

This paragraph remains unchanged from the Removal Action SSC (Appendix C).

16. LIST OF SITE-SPECIFIC AGREEMENTS

The following list includes all site-specific agreements (CAs, SSCs, and administrative orders) associated with and/or in effect for the Site:

### Type of Agreement

Multi-Site CA for PRP Oversight  
(MSCA #V995258-01)

Multi-Site CA for Enforcement Support  
(MSCA #V995260-01)

Multi-Site CA for Remedial Action  
(MSCA #V995261-01)

Superfund State Contract for Removal Activities at Velsicol / Pine River Site.  
Between the State of Michigan and the U.S. Environmental Protection Agency,  
signed September 14, 1998 and October 12, 1998

Superfund State Contract for Remedial Activities at Velsicol / Pine River Site.  
Between the State of Michigan and the U.S. Environmental Protection Agency,  
signed March 23, 1999 and April 20, 1999.

### 17. CERCLA ASSURANCE and COST SHARE CONDITIONS

The State will pay 10% of the removal action costs at the site. The State assures its cost-share obligation for actual removal action costs at the Site, which shall be settled at reconciliation [see Reconciliation Provision section, below].

#### A. Cost Estimate

The revised total estimated cost of the removal action (excluding EPA's indirect costs) is \$7,153,651. This estimate is based on the Final Pollution Report, dated October 26, 1999 (Appendix D). The State's cost share of the removal action under this SSC (as amended) would thus be \$715,365. As \$599,655 has already been paid, the remaining State's cost would thus be \$115,710.

Based on the Action Memorandum Addendum, signed October 8, 1999 (Appendix A), the project ceiling has been raised to \$8,460,730, which includes contingencies for change orders which may or may not be invoked, and construction management services. If the project ceiling is reached, an additional State cost of \$130,708 would be required.

#### B. Payment Terms

i. The State shall submit to EPA, within 60 days of the signature date of this SSC amendment, a payment of \$115,710 for removal action costs cited above. Consistent with the reconciliation provision section below, final payment will be made within 60 days of State's receipt of an invoice or request letter from EPA.

ii. Costs incurred by the Support Agency (State) to off-set the cost-share requirements must be verified and documented in a Cooperative Agreement (CA) and identified in this Contract. An in-kind match is a prohibited form of payment in an SSC. Payment terms may only be adjusted through an amendment to this Contract, as specified in the Amendability section, below.

iii. At the appropriate times during the contract, EPA will submit an invoice or request letter to the state for each of the cost share payments. The original invoice or letter shall be sent to the address specified below, with a copy to the state project manager at the address identified in Section 4.

Michigan Department of Environmental Quality  
Environmental Response Division  
Administration Section  
Attn : Kathy Crawley  
P.O. Box 30426  
Lansing, MI 48909-7926

iv. All State payments shall be made payable to EPA Hazardous Substance Superfund and sent to the Regional Financial Management Office as specified below:

United States Environmental Protection Agency  
Region 5  
Attention: Program Accounting & Analysis Section  
P.O. Box 70753  
77 W. Jackson  
Chicago, IL 60673

18. NOTIFICATION OF TRANSFERS OF CERCLA WASTE

This paragraph remains unchanged from the Removal Action SSC (Appendix C).

19. CERCLA ASSURANCE: REAL PROPERTY AQUISITION

This paragraph remains unchanged from the Removal Action SSC (Appendix C).

20. PREFINAL INSPECTION

This paragraph remains unchanged from the Removal Action SSC (Appendix C).

21. JOINT INSPECTION OF THE REMEDY

This paragraph remains unchanged from the Removal Action SSC (Appendix C).

22. RESPONSIBLE PARTY ACTIVITIES

This paragraph remains unchanged from the Removal Action SSC (Appendix C).

23. ENFORCEMENT

This paragraph remains unchanged from the Removal Action SSC (Appendix C).

24. DISPUTE RESOLUTION

This paragraph remains unchanged from the Removal Action SSC (Appendix C).

25. SANCTIONS FOR FAILURE TO COMPLY WITH TERMS OF THIS SSC

This paragraph remains unchanged from the Removal Action SSC (Appendix C).

26. AMENDABILITY

This paragraph remains unchanged from the Removal Action SSC (Appendix C).

27. TERMINATION OF THIS CONTRACT

This paragraph remains unchanged from the Removal Action SSC (Appendix C).

28. RECONCILIATION PROVISION

Reconciliation of project costs shall begin upon EPA's receipt of final invoices from all response contractors. A reconciliation document shall be provided to the State by EPA to facilitate financial settlement of State cost share.

This Contract shall remain in effect until the financial settlement of project costs and final reconciliation of response costs (including change orders, claims, overpayments, reimbursements, etc.) have been completed, and the 90/10 cost share requirement has been satisfied. In the event that the payment terms above do not cover the cost of the removal action, EPA will bill the State for the additional State cost share. Any overpayment by the State shall be returned by EPA, within 60 days of final reconciliation of response costs. EPA will not use overpayments by the State to satisfy obligations at another site. Final reconciliation of all removal action costs, by EPA, shall follow the acceptance of the remedy by both EPA and the State and is not contingent upon deletion of the Site from the NPL.

29. CONCLUSION OF THE SSC

The SSC is concluded when:

A. RA response activities at the Site have been satisfactorily completed and payments have been made, as specified under the Cost Share Conditions section of this Contract;

B. The Financial Management Officer (FMO) has a final accounting of all project costs, including change orders and contractor claims, pursuant to Reconciliation Provision above; and

C. All State cost-share payments have been submitted to EPA (see 40 CFR 35.6805(i)(5)).

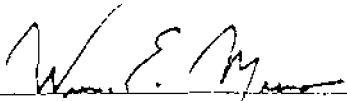
D. Final reconciliation has been provided to the State.

39. APPENDICES AND AMENDMENTS

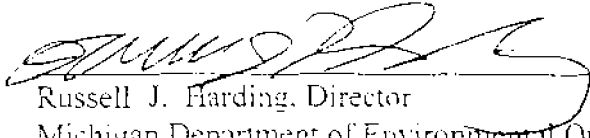
- 1) Appendix A - Action Memorandum
- 2) Attachment B - Final Pollution Report
- 3) Attachment C - Removal Action SSC

In witness whereof, the parties hereto have executed this Contract in two (2) copies, each of which shall be deemed an original.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

  
\_\_\_\_\_  
Date 1/7/00  
William E. Muno, Director  
Superfund Division

STATE OF MICHIGAN

  
\_\_\_\_\_  
Date 2/17/00  
Russell J. Harding, Director  
Michigan Department of Environmental Quality



MEMORANDUM OF UNDERSTANDING  
REGARDING NOTIFICATIONS AND EMERGENCY REMOVAL REFERRAL  
FOR  
OIL DISCHARGES AND HAZARDOUS SUBSTANCE RELEASES  
BETWEEN  
NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION  
DISCHARGE RESPONSE ELEMENT  
AND THE  
U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION II  
EMERGENCY AND REMEDIAL RESPONSE DIVISION

GUIDELINES ON WHEN TO NOTIFY THE U.S. ENVIRONMENTAL PROTECTION  
AGENCY

REGION II. RESPONSE & PREVENTION BRANCH  
OF AND ENVIRONMENTAL INCIDENT

(HOTLINE NO: 732-548-8730)  
(NRC TOLL-FREE 800-424-8802)

1. Releases involving a threat to human health.
2. Releases involving a moderate to high threat to waterfowl, fish, shellfish, muskrat, and other aquatic or amphibious animals.
3. Releases threatening recreational beaches during the bathing season or otherwise affecting bathing.
4. Releases generating unusual public interest or press coverage because of the hazards involved (especially evacuations).
5. Releases which threaten drinking water supply wells or surface drinking waer.
6. Incidents requiring a cleanup contractor to remove significant amounts of contaminants (including where a private party hires the contractor).
7. Accidents involving container or bulk transport of hazardous materials which disrupt traffic for a significant amount of time.
8. Incidents where publice safety is threatened due to a fire at a facility using/storing chemicals in significant quantities.
9. Releases which threaten, or impact other states.
10. Other incidents which can reasonably be classified as mediaum or major in seriousness (i.e., evacuation required).

PURPOSE: The purpose of this Memorandum of Understanding (MOU) between the New Jersey Department of Environmental Protection (NJDEP), Discharge Response Element and the U.S. Environmental Protection Agency (EPA), Region II, Emergency and Remedial Response Division (ERRD) is to provide guidelines on criteria and to establish the procedures and type of emergency removals for both hazardous substance releases and oil discharges that NJDEP will refer to REPP for emergency removal consideration. This does not preclude either Agency from requesting assistance from one another for any emergency response incident. In addition, this MOU will serve to document the notification required and the procedures for handling Oil Spill Liability Trust Funds claim reimbursement for NJDEP oil discharge cleanups.

BACKGROUND: The criteria for EPA to undertake a removal action for a release or threat of a release of a hazardous substance under the Comprehensive Environmental Response, Compensation and Liability Act as amended in 1986, is specified under the National Contingency Plan (NCP), Section 330.415 (Attachment I). This criteria lists the situations which allow the Federal On-Scene Coordinator to take appropriate action. For oil discharges, Section 311 of the Clean Water Acts, as amended by the Oil Pollution Act of 1990, grants authority for the Federal OSC to take appropriate actions for oil discharges. The NCP, Section 300.305 describes the situations that allows the Federal OSC to take such actions.

#### SITUATIONS FOR NJDEP REFERRAL TO ERRD FOR REMOVAL ACTION CONSIDERATION:

1. Emergency situations which meet the NCP criteria indicated above for oil discharges and hazardous substance releases where Federal funding and presence is warranted.
2. Discovery of abandoned trailers/warehouses/facilities containing hazardous substances.
3. Other Federally initiated events, (DEA, FBI, ATF) such as drug labs and bomb labs where NJDEP is notified or called upon to perform a clean-up.
4. Actual major (10,000 gallons or greater) to medium (1,000-10,000 gallons) oil discharges to surface waters. Attachment II contains the type of information REPP needs from NJDEP for these situations.
5. Hazardous substances found at sites which appear to have the potential for recycling/reuse. EPA has capability of dealing with this option, NJDEP does not have the capability of using recycling as a disposal option.
6. The incident is referred during the actual emergency phase.

## SITUATIONS NOT TO BE REFERRED TO ERRD FOR FEDERAL REMOVAL ACTION CONSIDERATION:

1. Incidents involving road closure.
2. Oil discharges to the ground, which do not threaten surface waters.
3. Minor (less than 1000 gallons) oil discharges to surface waters that NJDEP will use its Spill Fund and seek reimbursement from OPA Trust Fund, see notification procedure below required prior to NJDEP initiating clean-up.
4. Post emergency situations where NJDEP has mitigated the emergency, that is, stabilized the situation to the point of eliminating the threat.
5. Small emergency situations, that are estimated to cost \$25,000 or less to mitigate.

## PROCEDURES FOR NJDEP REFERRAL/NOTIFICATION:

1. NJDEP will continue to provide ERRD with weekly access, via telephonic transmission, to the NJDEP Emergency Response Notification data base.
2. NJDEP will notify ERRD at 732-548-8730\* of oil spills greater than 1000 gallons to navigable inland surface waters of the State of New Jersey.
3. NJDEP Regional supervisor may verbally request ERRD assistance through the below indicated ERRD supervisors. After the EPA OSC has conducted a preliminary assessment and determined removal eligibility, an ERRD supervisor will verbally notify NJDEP Regional supervisor of EPA's intended action.

	Business Hours (732-321-6656)	Afterhours (732-548-8730)*
Oil Discharges:	Douglas Kodama James Daloia Bruce Sprague	James Daloia Bruce Sprague
Hazardous Substances:	James Daloia Bruce Sprague	James Daloia Bruce Sprague

\* Denoted EPA, Region II 24 Hour Emergency Hotline Number

4. FAX informal request from NJDEP, that is hand annotated copy of NJDEP incident notification sheet, to the Chief, Response and Prevention Branch at FAX No. 732-321-4425. For business hour referrals that day and afterhour referrals the next business day.
5. Formal request from NJDEP will follow thereafter to the Director, Emergency and Remedial Response Division.
6. NJDEP will notify ERRD of intent to file for Oil Spill Liability Trust Funds reimbursement to U.S. Coast Guard National Pollution Funds Center. NJDEP Response Duty Officer will notify the ERRD Standby Duty Officer (732-548-8730) that NJDEP will be initiating a removal action utilizing their spill fund for an oil discharge to surface waters and provide ERRD with the information contained in Attachment II prior to initiating the action. NJDEP will fax, Chief, Response and Prevention Branch a completed FOSC Notification Form to document this situation. For business hour situations that day and afterhour situations the next business day.
7. For potential filing OPA Trust Fund reimbursement claims regarding NJDEP oversight costs for responsible party oil spill clean-ups, NJDEP will provide to REPP the Monthly Notification of NJDEP Emergency Responses report.

This document represents a statement of our mutual intent to cooperate in the area of mitigating oil discharges to surface waters and hazardous substance release to the environment using State or Federal Funding.

\_\_\_\_\_  
 Robert Van Fossen, Assistant Director  
 Discharge Response Element

\_\_\_\_\_  
 Date

\_\_\_\_\_  
 Bruce Sprague, Chief  
 Response and Prevention Branch

\_\_\_\_\_  
 Date

## PROJECT PLANNING MEETINGS

**PURPOSE:** In an effort to enhance and improve communication and coordination between Utah DERR and EPA the attached master agenda for project-specific planning meetings has been developed. This agenda identifies the major elements that should be considered during the planning stages of a major Superfund project. These meetings will provide a forum for Utah and EPA Region 8 representatives to discuss issues that are pertinent to project planning for individual projects, and ensure that both parties clearly understand their roles and expectations with respect to the various topics that will be covered in the meetings. It is expected that engaging in these discussions will improve communication between the agencies and minimize delays in accomplishing the goals for the projects.

**MEETING FORMAT:** Project managers and support personnel will engage in discussions regarding the agenda topics prior to the actual meeting and will present options during the meeting with a discussion of advantages and disadvantages of the various options. The presentation should include a brief written summary each agenda item. A preferred course of action will also be presented. It is expected that the discussions in these meetings will center on broad concepts and will not include exhaustive detail.

**PARTICIPANTS:** Attendees at the meetings will typically include project managers for the State and EPA, community relations representatives, enforcement personnel, specialized technical support staff and appropriate managers from each organization. It is expected that meetings will be held near the beginning of a project before a preferred course of action is implemented, when a decision document is initiated, and at the beginning of remedy design. Additional meetings may be necessary during the course of a project if major modifications of the plan become necessary or unanticipated controversies arise.

# PROJECT PLANNING MEETING AGENDA

REVISED 2/3/97

**OVERALL GOALS:** Identify the short term and long term goals for the project. Issues to consider may include: short term stabilization needs, access control, future land use (residential, commercial, industrial, etc.), groundwater, ARAR's, cleanup standards, etc.

**OVERALL STRATEGY:** Present the strategy that is preferred by the team. Discuss the advantages and disadvantages of the various approaches that are available (traditional process, removal, combination, State program). The strategy should be revisited periodically and revised as appropriate.

**ACTIVITIES:** Discuss in general terms the technical activities that will be necessary in order to accomplish the goals. Investigation, contracting, design, construction, etc.

**ENFORCEMENT:** Discuss the enforcement strategy for the site: UAO, AOC, etc.

**COMMUNITY INVOLVEMENT:** Discuss community issues that will be important to ensuring success for the project. Include a discussion of Brownfields and TAG opportunities.

**ROLES AND RESPONSIBILITIES:** Identify who will be responsible for the various tasks and reach a common understanding of the expectations and responsibilities of each member of the team. Identify who will be accountable for what, to whom, and how often.

**SCHEDULE:** Review a general project schedule that integrates all major aspects of the project.

**COMMUNICATION:** Review points of contact and lines of communication for the project.

**OBSTACLES:** Anticipate and discuss potential obstacles, controversies and unresolved issues that may effect the project.