

MEMORANDUM OF AGREEMENT

**REGARDING IMPLEMENTATION OF A HSCA LOAN PROGRAM
UNDER 7 DEL. C., CHAPTER 91**

BETWEEN

**THE DEPARTMENT OF NATURAL RESOURCES AND
ENVIRONMENTAL CONTROL**

AND

THE DELAWARE DEVELOPMENT OFFICE

RE: Interagency agreement between the Department of Natural Resources and Environmental Control ("DNREC") and the Delaware Development Office ("DDO") to implement a Loan Program pursuant to 7 Del. C., Chapter 91, Section 9113 (c)(6) of the Hazardous Substance Cleanup Act, a copy of which is attached and is made part of this MEMORANDUM OF AGREEMENT.

WHEREAS, The Delaware Department of Natural Resources and Environmental Control (hereinafter referred to as DNREC) created by the Delaware General Assembly, has been charged with the responsibility and authority of addressing hazardous substance release facilities in Delaware (hereinafter referred to as facilities) which may pose a threat or imminent threat to public health, welfare or the environment, and for remediating such facilities through the prompt containment and removal of hazardous substances, and for providing a fund for the cleanup of such facilities; and

WHEREAS, a Hazardous Substance Cleanup Fund (hereinafter referred to as the Fund) has been established under 7 Del. C., Chapter 91, Section 9113, and may be used, but is not limited to, providing low interest loans to nonprofit organizations and small businesses who are potentially responsible parties and who have entered into a consent decree with DNREC; and

WHEREAS, because the General Assembly found that potentially responsible parties are often unable to find financing for needed investigative and remedial activities in the private financing market, pursuant to 7 Del. C., Chapter 91, Section 9113, the Fund was created for the purpose of providing loans for investigative and remedial activities at facilities which may pose a threat or imminent threat to public health, welfare or the environment; and

THEREFORE, be it RESOLVED, the Secretary of the DNREC and the Director of the DDO do hereby agree that:

The parties enter into this agreement with full cognizance that funds will be available for loans made on or before December 31, 2001, with full repayment not to extend beyond December 31, 2008.

Disbursements shall be made from the HSCA Fund directly to

vendors/contractors on behalf of the loan recipient with the prior approval of the DNREC.

Administrative costs incurred specifically for the HSCA Loan Program ("Loan Program") will also be disbursed from the HSCA Fund based upon monthly invoices submitted to the Secretary of DNREC or his appointed designee and subject to the terms and conditions of this MOA. It is the intent of the parties to this MOA to minimize the costs associated with the development, implementation and administration of this loan program.

IN ADDITION, it is understood that funds shall be used only for costs incurred relating to the administration of the HSCA Fund and will not be applied to any other programs. Allowable costs shall include, but not be limited to administrative costs including planning, legal, and eligible loan costs.

This MOA will take effect upon approval by the Secretary of the DNREC and the Director of the DDO, and may be modified from time to time as they may agree and shall remain in effect until rescinded by mutual agreement of the parties.

FINALLY, all parties agree that the following items are the conditions for eligibility under the HSCA Loan Program:

- (1) Loans will be made to the potentially responsible party(s) of a facility where hazardous substances have been found which may pose a threat or imminent threat to public health, welfare and/or the environment, and which requires additional investigative or remedial activities.
- (2) Loans will be made only to those potentially responsible parties who have entered into a consent decree with DNREC.
- (3) Loans shall be made only to potentially responsible parties who qualify as a Small Business under criteria established by the Small Business Administration as follows:
 - Can be for non-profit and small business enterprises
 - Must be small (500 or fewer employees)
 - Net worth must not exceed \$6 million
 - Average annual net income after taxes must not exceed \$2 million (12 months prior to application)
- (4) A committee with a representative of the DNREC and the DDO will approve loan criteria developed by the DDO to be used in determining the eligibility of borrowers.

General Conditions: Listed below are general guidelines related to the administration of the Loan Program.

- (a) Loan proceeds for any individual site may not exceed \$250,000 or 90% of the total amount required to complete the project for which the loan is made,

whichever is smaller.

(b) The loans shall required interest payments at a simple interest rate which is 2% above the Federal discount rate in effect at the time the loan application is made with the DNREC and for a term not to exceed 7 years.

(c) All loan applications shall be made on or before June 20, 2001, accompanied by a non-refundable application fee of \$250 which shall be deposited into the Hazardous Substance Cleanup Fund immediately upon receipt. No loans shall be made after December 31, 2001.

(d) The selection of an attorney and other costs associated with loan closure will be the responsibility of the applicant.

Roles and Responsibilities of Participating Agencies: A detailed listing of each agency's responsibilities is included in Attachment "B" which is hereby made a part of this MOA.

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MEMORANDUM OF AGREEMENT

ATTACHMENT "B"

Roles and Responsibilities of the DNREC and the DDO

Delaware Development Office:

Department of Natural Resources & Environmental Control:

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| <ol style="list-style-type: none">1. The DNREC will be responsible for ensuring that all projects executed with loan proceeds will be completed in accordance with all State and Federal regulations.2. The DNREC will review all bids submitted to ensure that all items needed to ensure full compliance with regulations are included.3. The DNREC will provide monthly activity reports on the progression and completion of projects financed with loan proceeds.4. The DNREC will provide quarterly reports itemizing administrative expenses.5. The DNREC will accept preliminary submittal of bids and loan applications and after review to ensure compliance will submit them to the DDO for financial review.6. The DNREC will be responsible for disseminating information on the program to the public.7. The DNREC will be responsible for maintenance and retention of physical loan files and any records related thereto. | <ol style="list-style-type: none">1. The DDO will review all loan applications to determine the eligibility of borrowers based upon the criteria established by the DDO and approved by the DNREC.2. The DDO will service all loans to ensure full repayment.3. The DDO will provide quarterly reports on loan processing and repayment to the DNREC.4. The DDO will be responsible for the development of loan documents. <p>DATE:</p> <p>BY: Christophe A. G. Tulou, Secretary
Department of Natural Resources
and Environmental Control</p> <p style="text-align: center;">ATTEST</p> <p>DATE:</p> <p>BY: Robert W. Coy, Director
Delaware Development Office</p> |
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