

**MEMORANDUM OF AGREEMENT
BETWEEN THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION 4 AND THE
FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION**

I. INTRODUCTION

A. General

This Memorandum of Agreement (MOA) is entered into by the U.S. Environmental Protection Agency (EPA) Region 4 and the Florida Department of Environmental Protection (FDEP) [hereafter “the Agencies”]. The Agencies intend this MOA to provide a framework to facilitate the coordinated cleanup of certain sites in the state of Florida that are contaminated with polychlorinated biphenyls (PCBs). This MOA is not intended to be, nor does it operate as, a delegation of the EPA's authority pertaining to PCBs under Section 6(e) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2605(e), to the state of Florida or to the FDEP. The TSCA Section 6(e) PCB program is not delegable to states. However, federal PCB regulations found at 40 CFR Part 761, and more specifically 40 CFR § 761.77, authorize federal TSCA PCB Coordinated Approvals under certain conditions based on existing federal or state permits, or enforcement or decision documents. A TSCA PCB Coordinated Approval provides a mechanism for federal and state environmental officials to better coordinate PCB activities and maximize limited resources. In conjunction with this MOA, FDEP has developed Guidance for Coordinated Approval of Polychlorinated Biphenyl (PCB) Sites to provide technical guidance for cleanup of certain sites containing PCB remediation waste and examples of PCB Coordinated Approval Requests and FDEP Remedial Action Plan (RAP) Approval Order template.

B. Content of Agreement

This MOA refers to both the statutory and regulatory frameworks and the technical provisions involved in coordinated reviews of PCB remediation sites by the Agencies. The general intent of the MOA and its content are discussed in Section I. Section II provides the purpose and scope of the MOA. Background information regarding applicable statutory and regulatory authority is discussed in Section III. Section IV covers the program goals. Section V covers the TSCA Coordinated Review Implementation Process. Section VI addresses site screening determination and the review and Coordinated Approval process. Section VII outlines the entry and modifications of this agreement, and points of contact.

C. Reservation of Rights

This MOA is a voluntary agreement that expresses the good-faith intentions of the Agencies, is not intended to be legally binding, does not create any contractual obligations, and is not enforceable by either Agency or any other person.

This MOA 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 the EPA or the FDEP, their

officers or employees, or any other person. This MOA does not apply to any person outside of the EPA and the FDEP.

EPA Region 4 retains its authority to exercise its enforcement authorities under federal law and to take any and all actions to require the cleanup of PCB-contaminated sites in Florida, including the review of any proposed cleanup proposals or issuance of Approvals, pursuant to the authority of Section 6(e) of TSCA and 40 C.F.R. Part 761. Nothing in this MOA modifies federal or state statutory requirements or regulations promulgated thereunder.

II. PURPOSE AND SCOPE

A. Objective

The Agencies intend to mutually exercise their respective legal authorities to:

1. facilitate timely implementation of PCB cleanup and disposal requirements under TSCA; and
2. meet each Agency's mandate to protect human health and the environment.

B. Intent of MOA

This MOA is intended to promote efficient and timely PCB cleanups that comply with federal and state cleanup requirements. Pursuant to TSCA Section 6(e) and 40 CFR § 761.77(c), the EPA is authorized to issue TSCA PCB Coordinated Approvals based on existing state permits or enforcement and decision documents which exercise control over PCB wastes. Section VI of this MOA sets out planned procedures under which the Agencies may provide for the expedited Coordinated Approvals for persons seeking to clean up PCB contamination at certain sites in the state of Florida. Section VI also provides suggested roles the Agencies expect to exercise when carrying out the terms of this MOA. As noted in Section I, this MOA does not delegate the EPA's authority under TSCA Section 6(e) to the state of Florida or to the FDEP.

C. Applicability

Although 40 CFR § 761.77 does not restrict the types of remediation sites for which Coordinated Approvals may be issued, the EPA Region 4 has determined that the proposed expedited review and approval process established in this MOA are not expected to be appropriate for certain environmentally diverse remediation sites, or for remediation sites involving multiple complex issues identified in Section VI. These remediation sites, which are referred to as Type A sites, typically require more time and effort to evaluate and consider than is provided for under the coordinated review process set forth in this MOA. A person seeking to clean up such Type A remediation sites may still apply to the EPA Region 4 for a Coordinated Approval under 40 CFR § 761.77, but the request will not be subject to the suggested review process set forth in this MOA. There are other type sites outlined in the MOA such as: Type B PCB remediation sites that generally are not subject to cleanup under TSCA Section 6(e) and are only subject to FDEP review and approval and Type C PCB remediation sites with PCB contamination that does not fall into either the Type A or Type B site classification.

This MOA primarily addresses the cleanup and disposal of PCBs at Type C sites. Classification of Type A, Type B, and Type C sites is addressed in Section VI.A of this MOA. This MOA does not absolve any person managing the PCB cleanup at any type of site from their legal responsibilities or obligations pursuant to applicable federal and state environmental laws and regulations.

III. **BASIS OF MOA**

A. *Cooperation*

The Agencies have a history of working cooperatively to ensure that contaminated properties and environmental media are appropriately cleaned up to protect human health and the environment. Since the TSCA PCB program cannot be delegated to states, the Agencies have decided to enter into this MOA to facilitate use of the TSCA PCB Coordinated Approval provision in 40 CFR § 761.77. The Agencies acknowledge the potential benefits that can be achieved by working closely together to ensure timely cleanup of properties contaminated with PCBs.

B. *Agency Statutory and Regulatory Authority concerning PCBs*

1. EPA Region 4

The EPA Region 4 enters into this MOA in furtherance of its statutory and regulatory authorities under TSCA, 15 U.S.C. § 2601 et seq., including TSCA Section 6(e), as it relates to the cleanup of PCB contamination.

2. FDEP

FDEP enters into this MOA in furtherance of its statutory and regulatory authorities pursuant to:

- Chapter 376, Florida Statutes;
- Chapter 403, Florida Statutes; and
- The respective Florida Administrative Codes (F.A.C.), including Chapters 62-730, 62-777, and 62-780.

IV. **PROGRAM GOALS**

The Agencies acknowledge their mutual respect, positive working relationship, and commitment to the successful implementation of this MOA. In particular, the Agencies seek to increase the number and timeliness of cleanups of properties contaminated with PCBs to help ensure the protection of human health and the environment. The Agencies intend to accomplish this by:

- a. Cooperating to help promote the cleanup and disposal of PCB contamination at remediation sites subject to TSCA Section 6(e) in accordance with applicable federal and state laws;
- b. Supporting the use of FDEP's Chapter 62-780, F.A.C. process (as noted below) at properties where this approach is appropriate for achieving timely and protective cleanups;
- c. Offering, when requested, coordinated and consistent technical assistance and information that can help promote informed decision making by property owners, prospective purchasers, lenders, public and private developers, citizens, local units of government, and elected officials;
- d. Planning for timely cleanup of remediation sites to protect human health and the environment and promote revitalization of contaminated property for appropriate use, when possible;
- e. Facilitating the effective use of available authorities and resources and selecting the optimum programmatic tools to increase the pace, efficiency, and quality of cleanups;
- f. Promoting processes by which cleanups that are carried out under state authority are performed in a manner that is consistent with federal objectives and comply with requirements for the site or media of concern.

V. TSCA COORDINATED REVIEW IMPLEMENTATION

A. Program Adequacy and Relevant State Authorities

1. Background

The EPA Region 4 recognizes that at remediation sites with PCB contamination that are subject to Florida laws and regulations FDEP has helped ensure successful cleanups. In particular, FDEP's Division of Waste Management works with the EPA Region 4 TSCA PCB program on relevant PCB remediation issues. FDEP's various programs, laws, and regulations, including Chapters 62-730, 62-777 and 62-780, F.A.C., work together to achieve objectives identified in Sections II and IV of this MOA.

2. Recognition of FDEP processes and standards

- a. Chapters 62-730, 62-777 and 62-780, F.A.C., establish criteria for land use-based cleanups and PCB cleanup standard-setting processes, including a risk-based process for establishing residual soil contaminant levels or performance standards for each exposure and migration pathway of concern.

- b. Chapters 62-730, 62-777 and 62-780, F.A.C., include additional cleanup criteria applicable to particular land use categories, which may entail restrictive covenants, deed restrictions, placement on FDEP's GIS (Geographical Informational Systems) Registry of Closed Remediation sites (Institutional Control Registry), a combination of those institutional controls, or other restrictions. FDEP utilizes criteria specified in Chapters 62-777 and 62-780, F.A.C., when reviewing and approving institutional controls.
- c. Chapters 62-730 and 62-780, F.A.C., sets forth processes for determining when no further cleanup action (i.e., closure) is necessary at sites contaminated with PCBs and/or other contaminants. Chapter 62-777, F.A.C., sets specific cleanup target levels per media per contaminant.
- d. FDEP expects to issue a RAP Approval Order, which is an enforceable document under state law, to clean up PCB contamination for sites subject to this MOA. Upon completion of all site cleanup activities specified in the State issued RAP Approval Order, including placement of institutional controls, FDEP generally issues a Site Rehabilitation Completion Order (SRCO).
- e. The EPA Region 4 has reviewed and evaluated FDEP authorities, including Chapters 62-730, 62-777 and 62-780, F.A.C.; FDEP rules, including public record and participation requirements, and guidance; and FDEP capabilities, which are collectively referred to as the state cleanup program, and has determined that this program is no less stringent than applicable TSCA PCB cleanup and disposal requirements in 40 CFR Part 761, and that cleanups conducted in accordance with the state cleanup program that are subject to this MOA are expected to meet the objectives and requirements in Section II and TSCA Section 6(e).

B. Future EPA Action

Generally, by entering into this MOA, the EPA Region 4 anticipates the need for additional clean up actions under TSCA Section 6(e) and the federal PCB regulations by means of a TSCA PCB Coordinated Approval. Type C remediation sites subject to this MOA, will be limited to where one or more of the following circumstances may apply:

1. FDEP requests that the EPA Region 4 provide assistance at a remediation site;
2. The EPA Region 4 determines that PCB contamination has or will migrate across the state line; or determines that contamination has migrated or is likely to migrate onto property subject to the jurisdiction, custody, or control of a department, agency, or instrumentality of the United States and may impact the authorized purposes of the federal property;

3. The EPA Region 4 determines that the PCB contamination subject to TSCA Section 6(e) poses an unreasonable risk of injury to health or the environment, after any cleanup has been conducted; or
4. If certain requirements pertaining to post-cleanup, such as institutional controls, engineering controls, land use restrictions or other condition(s) placed on a property are determined to be no longer protective of health or the environment and the owner/ operator fails to take necessary corrective actions and FDEP is unable to respond in a timely manner to address the changed condition(s) at the site.

C. Coordination Between the EPA Region 4 and FDEP

1. The Agencies expect to continue implementation and improvement of the coordinated process described in Section VI of this MOA.
2. The Agencies expect to engage in frequent communication to share information on PCB remediation sites or facilities, new Agency initiatives relevant to the PCB program, changes to regulations, statutes, rules, policies, or guidance relevant to PCB remediation sites, and other relevant matters.
3. Frequent communication may include conducting annual meetings. The purpose of the meetings, including those conducted via teleconference, will be to discuss PCB remediation sites, progress in implementing this MOA, and FDEP's state cleanup program. The Agencies also expect to engage in regular conversations about PCB remediation sites or facilities in Florida, including those that are subject to this MOA, outside of the annual meetings.
4. FDEP and the EPA Region 4 expect to provide each other with information on the status of Type A, B, or C sites. Notification by FDEP of Type C sites is covered in Section VI.B.2. In addition to participating in the annual meeting discussed in Section V.C.3, EPA Region 4 and FDEP expect to maintain and update a master list of PCB sites in Florida. Either Agency may request information about individual remediation sites any time during the year.

VI. SITE SCREENING DETERMINATION AND COORDINATED REVIEW AND APPROVAL PROCESS

A. Site Screening Determination

The Agencies recognize that it is important that the type of remediation site involved be identified as early in the site investigation process as possible to ensure proper implementation of applicable state and/or federal procedures and requirements. In order to determine what remediation sites could be addressed under this MOA, three types of remediation sites have been identified below. Type A and B sites are not eligible to be cleaned up under a Coordinated

Approval pursuant to this MOA; only Type C sites are eligible for a Coordinated Approval under this MOA.

The screening criteria do not establish any rights, obligations, or limitations beyond those established in TSCA or its implementing regulations, and do not otherwise supersede or substitute for TSCA or its implementing regulations.

1. Type A (EPA and Florida proceed separately under their respective authorities):

Type A PCB remediation sites are not subject to this MOA but are subject to FDEP and the EPA Region 4 review and approval outside of this MOA. While FDEP and the EPA Region 4 may work in a coordinated effort to address these remediation sites, the sites are not subject to this MOA. Type A sites are typically remediation sites that are environmentally diverse or include multiple complex issues such as those described below. For Type A sites, the owner of the property and/or person managing the PCB cleanup may be subject to FDEP and/or the EPA Region 4 approval outside of this MOA.

Type A sites include remediation sites where there is:

- widespread PCB sediment contamination beyond that which is merely incidental to soil contamination;
- PCB contamination in sewers or sewage treatment systems;
- PCB contamination in private or public drinking water sources or distribution systems;
- the person managing the PCB cleanup has not met FDEP's procedures or standards; or
- any site or facility which is under the authority of an existing federal (administrative or judicial) order requiring cleanup of the site.

2. Type B (Florida-only sites): Type B PCB remediation sites generally are not subject to cleanup under TSCA Section 6(e) and are only subject to FDEP review and approval because:

- a) they do not contain TSCA-regulated PCB remediation waste, as defined in 40 CFR § 761.3; or
- b) they contain PCB waste that meets the criteria set forth in 40 CFR § 761.50(b)(3)(i), which sites are presumed not to present an unreasonable risk of injury to health or the environment under TSCA Section 6(e) and 40 CFR § 761.50(b)(3)(i)(A), except as provided below.

Type B sites do not include remediation sites described in (b) above where the EPA Region 4 and FDEP decide that an unreasonable risk of injury to health or the environment exists. The EPA Region 4 and FDEP may direct the site owner or operator to clean up the site under TSCA Section 6(e) and 40 CFR § 761.50(b)(3)(i)(A) and Florida Chapters 62-730 and 62-780, F.A.C., respectively. In cases where the EPA Region 4 and FDEP both expect to direct the owner or

operator of the site to clean up the site, the EPA Region 4 and FDEP may decide that the site may be addressed using the Coordinated Approval process in this MOA (see Type C below).

If a site meets the criteria in (b) above and the EPA Region 4 or FDEP makes a unilateral finding that an unreasonable risk of injury to health or the environment exists and directs the site owner or operator to clean up the site, the site will not be subject to the Coordinated Approval process under this MOA and instead would be subject to the approval of whichever Agency has made the unilateral finding outside of the procedures set forth in this MOA.

3. **Type C (Coordinated Approval process):** Type C PCB remediation sites are subject to this MOA. Type C sites are sites with PCB contamination that do not fall into either the Type A or Type B site classification. Sites that meet the criteria for a Type C site may utilize the FDEP-EPA Region 4 Coordinated Approval process below. Type C sites can include sites where there is sediment contamination as long as that contamination is merely incidental to soil contamination.

Type C sites include remediation sites where:

- the site is determined by the Agencies not to be a Type A or Type B site;
- the site contains TSCA-regulated PCB remediation waste, as defined in 40 CFR § 761.3; and/or
- each Agency finds that an unreasonable risk of injury to health or the environment exists and decide that the site needs to be cleaned up under TSCA Section 6(e) and 40 CFR § 761.50(b)(3)(i)(A) and Florida Chapters 62-730 and 62-780, F.A.C., respectively.

B. FDEP-EPA Region 4 Coordinated Approval Process

The coordinated review and approval process set out below is solely for the purpose of evaluating TSCA PCB Coordinated Approval requests under this MOA for sites identified as Type C sites.

1. FDEP expects to advise any person seeking approval from FDEP on response activities to address PCB contamination at Type C sites subject to this MOA under Chapters 62-730 and 62-780, F.A.C. to formally request a Coordinated Approval from the EPA Region 4.
2. FDEP expects to advise the person to submit a RAP to FDEP for a State issued RAP Approval Order. If FDEP determines that the RAP is complete and satisfies applicable FDEP rules, processes and criteria for a State issued order, FDEP expects to transmit to the EPA Region 4 the following information: (a) a description of the site and extent of contamination; (b) remediation targets and proposed cleanup activities, including any disposal activities; (c) verification that the necessary documents are complete; (d) identification of significant site-specific issues; and (e) the RAP Approval Order, and if applicable any public comments received.

3. Upon completion of the actions set forth in paragraph 2 above, FDEP expects to notify the person seeking a Coordinated Approval from the EPA to submit by certified mail to the EPA its request for a Coordinated Approval, as set forth in 40 CFR § 761.77.
4. After receipt and review of the complete package from FDEP, which includes the information in paragraph 2 above, and the Coordinated Approval request, the EPA Region 4 plans to follow the procedures set forth in 40 CFR § 761.77 by issuing a response letter to the person seeking the Coordinated Approval and FDEP setting forth its decision to grant or deny a TSCA PCB Coordinated Approval or need for further information. If the EPA Region 4 grants a TSCA PCB Coordinated Approval, its approval letter may include any additional conditions the EPA Region 4 determines are necessary to prevent unreasonable risk of injury to health or the environment, pursuant to 40 CFR § 761.77(a)(1)(ii)(B).
5. EPA Region 4 may determine that it needs additional information or time for review, and in that event, it expects to complete its review as expeditiously as possible.
6. The EPA Region 4 plans to work towards finalizing and issuing any Coordinated Approvals it intends to issue as soon as practicable after FDEP issues its RAP Approval Order.
7. In situations where the EPA Region 4 is considering denying a request or including additional conditions, it expects to consult with FDEP prior to finalizing its determination.
8. EPA Region 4 may determine, as appropriate, to include in the Coordinated Approval as conditions all requirements, conditions and limitations of FDEP's RAP Approval Order.
9. FDEP expects to monitor the site's compliance with the approved PCB remediation measures, including institutional controls, and to notify the EPA Region 4 if FDEP determines or discovers changes relating to the PCB waste characterization (e.g. location and extent of PCB contamination) and/or the site owner or operator proposes change in the cleanup remedy and/or there has been changes in facility ownership or operation.

VII. ENTRY AND MODIFICATION

A. Entry

This MOA has been developed by mutual cooperation and consent and is an integral part of the working relationship between the EPA Region 4 and FDEP. The EPA Region 4 enters into this MOA based upon review of FDEP authorities, processes, rules, guidance, and capabilities applicable to PCB remediation sites. FDEP plans to notify the EPA Region 4 if there are any changes to state statutes, rules, regulations, or guidance that impact this MOA. The EPA Region 4 expects to notify FDEP if there are any changes to federal statutes, rules, regulations or guidance that impact this MOA.

B. Points of Contact

Points of contact for the coordination, support, and implementation of this MOA are as follows:

For EPA Region 4 Contact: PCB Coordinator
Address: 61 Forsyth Street S.W.
Atlanta, GA 30303

For FDEP Contact: Leah J. Smith
Title: Environmental Consultant
Address: 2600 North Blair Stone Road
Tallahassee, FL 32399

C. Effective Date, Duration, Modification, and Termination

The effective date of this MOA is the date it is signed by EPA Region 4. The MOA remains in effect for a period of five years and may be extended or modified at any time through the mutual written consent of the Agencies. Additionally, either Agency may terminate its participation in this MOA at any time by providing written notice to the other Agency, at least 45 days in advance of the desired termination date.

U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION 4

MARY WALKER
Digitally signed by MARY WALKER
Date: 2020.07.29 16:01:13 -04'00'

7/29/2020

Mary S. Walker
Regional Administrator
61 Forsyth Street S.W.
Atlanta, Georgia 30303

Date

Approved as to form by the Florida Department of Environmental Protection, Office of General Counsel. Dawn Cinquino Digitally signed by Dawn Cinquino
Date: 2020.08.04 11:35:27 -04'00'

IN WITNESS WHEREOF, the Florida Department of Environmental Protection has executed this instrument, this _____ day of _____, 2020.

FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION

John Truitt Digitally signed by John Truitt
Date: 2020.08.13 08:03:21 -04'00'
John Truitt
Deputy Secretary
Florida Department of Environmental Protection
3900 Commonwealth Blvd
Tallahassee, Florida 32399

08/13/2020
Date

Signed, sealed and delivered in the presence of:

Witness: _____

Date: _____

Print Name: _____

Witness: _____

Date: _____

Print Name: _____

STATE OF _____)

COUNTY OF _____)

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this _____ day of _____, 2020 by _____ as representative for the Florida Department of Environmental Protection.

Personally Known _____ OR Produced Identification _____.

Type of Identification Produced _____.

Signature of Notary Public

Print Name of Notary Public

Commission No. _____

Commission Expires: _____