



STATE OF IDAHO  
DEPARTMENT OF  
ENVIRONMENTAL QUALITY

1410 North Hilton • Boise, Idaho 83706 • (208) 373-0502

C.L. "Butch" Otter, Governor  
Curt Fransen, Director

May 22, 2014

Mr. Jeffrey Jones  
Moscow Urban Renewal Agency  
206 East Third Street  
Moscow, Idaho 83843

Re: Voluntary Cleanup Program Voluntary Remediation Agreement, Sixth and Jackson Property,  
Moscow, Idaho.

Dear Mr. Jones:

Attached with this letter is a copy of the fully executed Voluntary Remediation Agreement ("Agreement") that guides your participation in the IDEQ Voluntary Cleanup Program (VCP) for the Sixth and Jackson property. This letter also acknowledges receipt, as indicated in Section XIX of the Agreement, of the initial increment of \$2500 to cover the Department's oversight costs incurred during the cleanup.

We look forward to working with you to successfully complete the cleanup of the property. The next steps to be completed include closing any remaining data gaps with additional site assessment in support of the development of a Voluntary Remediation Workplan suitable for public review and comment. If you have any questions or comments regarding these next steps in the VCP please feel free to contact me at (208) 373-0246.

Sincerely,

*Bruce Wicherski*

Bruce Wicherski, P.G.  
Voluntary Cleanup Program Manager  
Waste Management and Remediation Division

BW:tg final vra letter moscow.doc

cc: Eric Traynor, DEQ  
Michael Camin, DEQ - Lewiston  
Susan Hamlin, Deputy Attorney General  
Steve Gill, DEQ - Coeur d' Alene  
Michael McCurdy, DEQ  
COF

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DEPT. OF ENVIRONMENTAL QUALITY  
WASTE PROGRAM

IDAHO DEPARTMENT OF ENVIRONMENTAL QUALITY

In the matter of: ) VOLUNTARY REMEDIATION AGREEMENT  
)  
Moscow URA Sixth and Jackson )  
property ) Idaho Code § 39-7205  
)

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I. INTRODUCTION

1. This Voluntary Remediation Agreement (Agreement) is entered into voluntarily by the Idaho Department of Environmental Quality (Department) and the applicant, Moscow Urban Renewal Agency (Moscow URA) for the purpose of remediating the "Sixth and Jackson" property located at 217 West Sixth Street, Moscow, Idaho 83843 (Site). The Department and Moscow URA are collectively referred to as "the Parties." Moscow URA is voluntarily conducting this cleanup.

II. AUTHORITY

2. This Agreement is entered into by the Parties pursuant to the Idaho Land Remediation Act, Idaho Code §§ 39-7201 through 39-7211, and the Idaho Land Remediation Rules, IDAPA 58.01.18.
3. The Department has determined that the application submitted by Moscow URA is complete and that Moscow URA is eligible to participate in the voluntary remediation program established under Idaho Code § 39-7201 *et seq.*

III. PARTIES BOUND

4. This Agreement shall apply to and be binding upon Moscow URA, its successors and assigns, and upon the Department, its successors and assigns. The signatories to this Agreement certify that they are fully authorized to execute and legally bind the Parties they represent.
5. Moscow URA shall provide a copy of this Agreement to any subsequent owners or successors of the Site before Moscow URA transfers Site ownership. Moscow URA shall provide a copy of this Agreement to all contractors, sub-contractors, laboratories and consultants Moscow URA retains to conduct work performed under this Agreement, within fourteen (14) days after the effective date of this Agreement or within fourteen (14) days of the date of retaining their services, whichever date is later.

#### IV. DEFINITIONS

6. "Site" shall be used in the manner as defined by Idaho Code § 39-7203(10) and IDAPA 58.01.18.010.12 and shall refer to the property identified in Paragraph 1 of this Agreement.
7. All terms contained in this Agreement shall be used in the same manner as defined by Idaho Code § 39-7203 and IDAPA 58.01.18.010.

#### V. PURPOSE

8. This Agreement sets forth the terms and conditions of Moscow URA's participation in the Department's voluntary remediation program, including the Department's evaluation of Moscow URA's Voluntary Remediation Work Plan (Work Plan) to be proposed by Moscow URA for the remediation of contaminants at and for the Site.
9. The activities of the Department and Moscow URA pursuant to the voluntary remediation program shall be consistent with this Agreement, all applicable laws and regulations, and any appropriate guidance documents.

#### VI. SUBMISSION OF PROPOSED WORK PLAN

10. The Department shall not evaluate a Work Plan until the Voluntary Remediation Agreement is signed by Moscow URA and the Director. As soon as possible, but no later than sixty (60) days of the effective date of this Agreement Moscow URA shall submit a Proposed Work Plan to the Department. The Proposed Work Plan to be submitted by Moscow URA shall contain the elements specified by IDAPA 58.01.18.022.02 and shall be submitted with sufficient information supporting the proposed Work Plan as specified by IDAPA 58.01.18.022.03.

#### VII. REVIEW AND EVALUATION OF PROPOSED WORK PLAN

11. The Department shall review and evaluate the Site, the affected area surrounding the Site and the proposed Work Plan in accordance with Idaho Code § 39-7206(1).
12. The Department may, at any time during the evaluation of the proposed Work Plan, request the submission of additional or corrected information and a revision of the proposed Work Plan by Moscow URA, pursuant to Idaho Code § 39-7206(2). Moscow URA may either comply with the request or withdraw the proposed Work Plan and terminate this Agreement.

## VIII. PUBLIC REVIEW OF PROPOSED WORK PLAN

13. As soon as possible, but no later than thirty (30) days of receiving the final revised proposed Work Plan, the Department shall initiate the public notification and comment requirements of Idaho Code § 39-7206(3). No later than fifteen (15) days after the close of the public comment period, the Department may, in accordance with Idaho Code § 39-7206(4) and IDAPA 58.01.18.022.04.a, schedule a public hearing.

## IX. PROPOSED WORK PLAN APPROVAL, APPROVAL WITH MODIFICATION OR REJECTION

14. Within thirty (30) days of the close of the public comment period or the public hearing, whichever is later, the Department shall, based on its review and evaluation and consideration of any written public comments and testimony, notify Moscow URA, in writing, that the proposed Work Plan is approved, approved with modifications, or rejected. Department notification that the proposed Work Plan is rejected shall specify the reasons for rejection, provide Moscow URA thirty (30) days to amend and resubmit the proposed Work Plan, and notify Moscow URA of its rights to appeal the rejection pursuant to Idaho Code § 39-7206.
15. Within thirty (30) days of receiving notification that the proposed Work Plan has been approved with modifications, Moscow URA shall notify the Department, in writing, that the modifications are accepted or rejected. If Moscow URA accepts the modifications, the proposed Work Plan shall be deemed approved by the Department as modified. If Moscow URA rejects the modifications, and the Parties are unable to negotiate acceptable modifications, the proposed Work Plan shall be deemed rejected by the Department.
16. Upon rejection of the proposed Work Plan by the Department, Moscow URA may:
  - a. Amend and resubmit the proposed Work Plan;
  - b. Withdraw the proposed Work Plan and terminate this Agreement; or
  - c. Appeal the Department's rejection pursuant to Idaho Code § 39-7206 and the Idaho Administrative Procedure Act, chapter 52, title 67, Idaho Code.

## X. EFFECT OF APPROVED WORK PLAN

17. An approved Work Plan shall be deemed incorporated into, and is enforceable as part of, this Agreement.

## XI. IMPLEMENTATION OF WORK PLAN

18. Moscow URA shall fully implement the approved Work Plan in accordance with the approved Work Plan, the terms and conditions of this Agreement, the Idaho Land Remediation Rules, and the Idaho Land Remediation Act, and any applicable zoning authorities or other local, state, or federal law.
19. The Work Plan submitted by Moscow URA must achieve health-based and environmental remediation standards according to IDAPA 58.01.18.023.
20. The Department shall assist Moscow URA in the timely issuance of Department permits or approvals required to initiate and complete a Work Plan.
21. Moscow URA shall submit quarterly progress reports to the Department with respect to actions and activities undertaken pursuant to this Agreement. The progress reports shall, at a minimum:
  - a. Describe the actions which have been taken to comply with this Agreement during the prior quarter;
  - b. Describe all work planned for the next quarter with schedules relating such work to the overall project schedules; and
  - c. Describe all problems encountered and any anticipated problems, any actual or anticipated delays and any solutions developed and implemented to address any actual or anticipated problem or delay.

## XII. WORK PLAN COMPLETION REPORT

22. When Moscow URA believes the objectives of the Work Plan have been achieved and successfully implemented for the Site, Moscow URA shall submit to the Department a Voluntary Remediation Work Plan Completion Report (Work Plan Completion Report) together with a request that the Department issue a Certificate of Completion for the Site. The Work Plan Completion Report shall contain information sufficient for the Department to determine whether Moscow URA achieved the Work Plan objectives and successfully implemented the Work Plan.
23. The Department shall as soon as possible, but not later than thirty (30) days after the receipt of Moscow URA's Work Plan Completion Report and request for a Certificate of Completion, notify Moscow URA, in writing, whether or not the Work Plan has been successfully implemented.
24. If the Department notifies Moscow URA that the Work Plan has not been successfully implemented, Moscow URA shall implement the Work Plan to the satisfaction of the Department and resubmit the Work Plan Completion Report.

### XIII. CERTIFICATE OF COMPLETION

25. If the Work Plan Completion Report demonstrates that Moscow URA has successfully implemented the Work Plan, the Department shall certify such facts by issuing a Certificate of Completion to Moscow URA as provided in Idaho Code § 39-7207(1) and IDAPA 58.01.18.024.04d. Moscow URA shall record the Certificate of Completion with the deed for the Site on which the remediation took place. The Department may condition the Certificate of Completion upon continued monitoring, recordation or maintenance of institutional or engineering controls, or other continuing actions by Moscow URA

### XIV. COVENANT NOT TO SUE

26. Moscow URA may, within thirty (30) days of receiving the Certificate of Completion from the Department, request the negotiation and provision of a Covenant Not to Sue for the Site, as described in Idaho Code § 39-7207. Negotiation and provision of the Covenant Not to Sue shall occur within thirty (30) days of Moscow URA's request unless extended upon written notice and reasonable cause by either Party. Such Covenant Not to Sue shall extend to any current or future owner or operator of the Site who did not cause, aggravate, or contribute to the release or threatened release.
27. Any Covenant Not to Sue shall not apply to claims for a condition or the extent of a condition that:
- a. Was present on the site involved in an approved and implemented Work Plan; and
  - b. Was not known to the Department at the time the Department issued the Certificate of Completion.
28. During Moscow URA's implementation of the approved Work Plan, the Department shall not, as provided by Idaho Code § 39-7207(7) and IDAPA 58.01.18.025, bring an action, including an administrative or judicial action, against Moscow URA for any liability for remediation relating to the release or threatened release of any hazardous substance or petroleum that is the subject of the Work Plan.

### XV. RESCISSION OF AGREEMENT OR THE COVENANT NOT TO SUE

29. In accordance with Idaho Code § 39-7208 and IDAPA 58.01.18.025.02, the Department may rescind the Agreement or the Covenant Not to Sue at any time if Moscow URA fails to substantially comply with the terms and conditions of the Agreement, the terms and conditions of the Covenant Not to Sue; or if a hazardous substance or petroleum release at the site becomes an imminent and substantial threat to human health or the environment.

The Department agrees to meet with Moscow URA before rescinding the Agreement or Covenant Not to Sue under this provision to discuss the basis of the Department's determination and whether the Department's concerns may be addressed absent termination of the Agreement or Covenant Not to Sue.

#### XVI. MODIFICATION OF AGREEMENT OR WORK PLAN

30. No modification of this Agreement or the Work Plan shall be effective except upon mutual agreement of the Parties and in writing. Modification of the Work Plan may be subject to public notice and comment in accordance with IDAPA 58.01.18.022.05.
31. The Parties recognize that modification of this Agreement or the Work Plan may become necessary based on unanticipated site conditions. In such event, the Party that determines that additional work or other modification of the Agreement or Work Plan is necessary shall provide written notice of such determination to the other Party. The other Party shall respond to such notice in writing within ten (10) days of receipt or such other time as may be agreed to by the Parties. If the Parties agree on the modification to the Agreement or Work Plan, the modification shall be in writing and the Agreement or Work Plan shall be deemed amended subject to public notice and comment if required by IDAPA 58.01.18.022.05.

#### XVII. SAMPLING AND DATA/DOCUMENT AVAILABILITY

32. Moscow URA shall, upon request, make the results of all sampling, including raw data, and/or tests or other data generated by Moscow URA or on Moscow URA's behalf regarding the Site, available to the Department. The Department shall, upon request, make available to Moscow URA the results of any sampling and/or tests or other data similarly generated by the Department.

#### XVIII. ACCESS

33. Moscow URA shall provide authorized representatives of the Department access to the Site and other areas where work is to be performed at all reasonable times. Such access shall be related solely to the work being performed under the Work Plan and may include, but not be limited to: inspecting records, operating logs and contracts related to the Site; reviewing the progress of Moscow URA in carrying out the terms of this Agreement; conducting such tests, inspections and sampling as the Department may deem necessary; using a camera, sound recording or other documentary type equipment for field activities; and verifying the data submitted to the Department by Moscow URA hereunder.
34. Moscow URA shall permit the Department's authorized representatives to inspect and copy all site records, including files, photographs, non-privileged documents and other writings, including all sampling and monitoring data, which reasonably

pertain to the work being performed under the Work Plan and over which Moscow URA exercises control.

35. All persons with access to the Site pursuant to this Agreement shall comply with approved health and safety plans.
36. Nothing herein shall be construed as restricting the inspection or access authority of the Department under any law or regulation.

#### XIX. OVERSIGHT COSTS

37. Moscow URA shall pay reasonable oversight costs incurred by the Department in connection with Moscow URA's application and participation in the voluntary remediation program.
38. The Department shall provide a quarterly accounting to Moscow URA of actual oversight costs incurred by the Department.
39. Costs incurred by the Department for oversight of voluntary remediation actions will be reimbursed in the following manner:
  - a. Moscow URA shall deposit two thousand five hundred dollars (\$2,500) with the Department.
  - b. The Department estimates the oversight of Moscow URA's voluntary remediation activities with a rate of fifty dollars (\$50.00) per hour. If additional funding is required for costs incurred in excess of the initial two thousand five hundred dollars (\$2,500) deposit, the Department will notify Moscow URA in advance and Moscow URA shall then deposit a successive deposit(s) in the amount of two thousand five hundred dollars (\$2,500).
  - c. The unused portion of any deposit(s) will be returned to Moscow URA within sixty (60) days of the date the Department issues a Certificate of Completion.
  - d. As set out in IDAPA 58.01.18.021.04, the Department's oversight costs shall include the Department's costs incurred after approval of Moscow URA's application, including, but not limited to, the review, processing, and negotiation of the Agreement; the review, processing, and approval of the Work Plan; conducting public hearings and dissemination of public notices; oversight of work performed in accordance with the Work Plan; issuance of any Certificates of Completion; issuance of any Covenants Not to Sue; issuance of any other assurances to third parties; and administrative expenses associated with cost recovery activities.



- e. Oversight deposits to be submitted to the Department should be sent to:

Fiscal Office  
Idaho Department of Environmental Quality  
1410 N. Hilton  
Boise, ID 83706

#### XX. DESIGNATED PROJECT COORDINATOR/NOTICE

40. On or before the effective date of this Agreement, each Party shall designate its own Project Coordinator. Each Project Coordinator shall be responsible for overseeing the implementation of this Agreement. To the maximum extent possible, all communications between Moscow URA and the Department shall be directed to the Project Coordinators in both written and electronic format, with copies to such other persons as the Department and Moscow URA may designate. Communications shall include, but are not limited to, all documents, reports, approvals, disapprovals, and other correspondence submitted under this Agreement.

The Parties have designated the following persons as Project Coordinators:

- a. Documents to be submitted to the Department should be sent to:

Bruce Wicherski, Voluntary Cleanup Program Manager  
Idaho Department of Environmental Quality  
1410 N. Hilton  
Boise, ID 83706  
Telephone: (208) 373-0246  
Email: bruce.wicherski@deq.idaho.gov

- b. Documents to be submitted to Moscow URA should be sent to:

Jeffrey B. Jones  
Moscow URA  
206 East Third Street  
Moscow, Idaho 83843  
Telephone: (208) 883-7007

#### XXI. DISPUTE RESOLUTION

41. If Moscow URA objects to any Department notice or disapproval, addendum oversight, accounting or decision made pursuant to this Agreement, Moscow URA may notify the Department's Project Coordinator, in writing, of its objections within fourteen (14) days after receipt of the decision. The Department and Moscow URA then have an additional fourteen (14) days to reach agreement.

If no agreement is reached after fourteen (14) days (or such other period of time to which all Parties mutually agree) the Department shall notify Moscow URA in writing of the Department's decision on the matter. Moscow URA may request a determination by the Director of the Department. The Director's determination is the Department's final decision on the matter. Nothing in this Section precludes the Parties from agreeing to use other forms of alternative dispute resolution.

## XXII. RESERVATION OF RIGHTS

42. The Department and Moscow URA reserve all rights and defenses they may have pursuant to any available legal authority unless expressly waived herein.
43. Nothing herein is intended to release, discharge, or in any way affect any claims, causes of action or demands in law or equity which the Parties may have against any person, firm, partnership or corporation, not a Party to this Agreement, for any liability it may have arising out of, or relating in any way to, the generation, storage, treatment, handling, transportation, release or disposal of any materials, hazardous substances, hazardous waste, petroleum contaminants, or pollutants at, to or from the Site. The Parties to this Agreement expressly reserve all rights, claims, demands and causes of action they have against any and all other persons and entities who are not Parties to this Agreement, and as to each other for matters not covered hereby.
44. Moscow URA reserves the right to seek contribution, indemnity, or any other available remedy against any person, other than the Department, found to be responsible or liable for contributions, indemnity, or otherwise for any amounts which have been or will be expended by Moscow URA in connection with this Site.

## XXIII. QUALITY ASSURANCE

45. Moscow URA shall provide the Department Project Coordinator with a Quality Assurance Project Plan (QAPP) for review and Department approval, consistent with the March 2012 DEQ Quality Management Plan, prior to the initiation of all sampling and analysis pursuant to this Agreement.

## XXIV. FORCE MAJEURE

46. Moscow URA shall cause all work or required reporting to be performed within the time limits set forth herein, unless performance is delayed by events which constitute a force majeure. For purposes of this Agreement, a force majeure is an event the Parties agree arises from circumstances beyond the reasonable control of Moscow URA which delays performance of any obligations required by this Agreement. Increases of costs shall not be considered an event of force majeure.

47. Moscow URA shall notify the Department by telephone call within three (3) calendar days and by written notice no later than seven (7) calendar days after any event which Moscow URA contends is a force majeure.

Such notification shall describe the anticipated length of the delay, the cause or causes of the delay, the measures taken or to be taken by Moscow URA to minimize the delay, and the timetable by which these measures will be implemented. Moscow URA shall have the burden of demonstrating that the event is a force majeure.

The decision of whether an event is a force majeure shall be made by the Department. The Department shall notify Moscow URA of its decision by telephone call to Moscow URA within two (2) calendar days after receiving Moscow URA's written notice. The Department shall confirm its decision by written notice to Moscow URA within seven (7) days of informing Moscow URA of the Department's decision by telephone.

48. If a delay is attributable to a force majeure, the time period for performance under this Agreement shall be extended, in writing, by the amount of time that is attributable to the event constituting the force majeure.

#### XXV. COMPLIANCE WITH APPLICABLE LAWS

49. All work undertaken by Moscow URA pursuant to this Agreement shall be performed in compliance with all applicable federal, state and local laws, ordinances and regulations.

#### XXVI. ENFORCEABILITY

50. This Agreement constitutes an enforceable contract between the Parties subject to the Department's right to rescind this Agreement as provided by Idaho Code § 39-7208 and IDAPA 58.01.18.021.05 and Moscow URA's right to terminate this Agreement as provided by Idaho Code § 39-7206(2)(b) and IDAPA 58.01.18.021.06.

XXVII. EFFECTIVE DATE

51. The effective date of this Agreement shall be the date on which this Agreement is signed by the Director of the Department.

DATED this 21<sup>st</sup> day of May, 2014.

By:   
Curt A. Fransen, Director  
Idaho Department of Environmental Quality

DATED this 14<sup>th</sup> day of May, 2014.

By:   
Moscow URA, Authorized Agent

  
(Jeffrey B. Jones/Executive Director)