MEMORANDUM OF AGREEMENT
BETWEEN
THE PUERTO RICO DEPARTMENT OF NATURAL AND ENVIRONMENTAL RESOURCES
and
THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
UNDERGROUND STORAGE TANKS PROGRAM
and
LEAKING UNDERGROUND STORAGE TANKS PROGRAM

I. BACKGROUND

In 1984, Congress modified the Resource Conservation and Recovery Act, which was an amendment to the Solid Waste Disposal Act (SWDA), to require EPA to develop a comprehensive regulatory program for underground storage tank ("UST") systems storing petroleum or certain hazardous substances to protect the environment and human health from UST releases. EPA promulgated the UST regulations in 1988 (40 CFR Part 280). These regulations set minimum standards for new tanks and required owners and operators of existing tanks to upgrade, replace, or close them. Among other obligations, owners and operators were required to monitor their UST systems for releases using release detection, and maintain financial responsibility for petroleum USTs to ensure that they are financially able to pay for any releases that occur. In 1988, EPA also promulgated regulations for state program approval (40 CFR Part 281). In 2005, the Energy Policy Act further amended Subtitle I of SWDA. The Energy Policy Act requires states that receive Subtitle I funding from EPA to meet certain requirements. Consequently, between 2006 and 2007, EPA published grant guidelines for states regarding operator training, inspections, delivery prohibition, secondary containment, financial responsibility for manufacturers and installers, public record and state compliance reports on government UST systems. In 2015 EPA published Revisions to the UST regulations in the *Federal Register*. These revisions strengthen the 1988 federal underground storage tank (UST) regulations by increasing the emphasis on properly operating and maintaining UST equipment, among other things. The revisions will help prevent and detect UST releases, which are a leading source of groundwater contamination. The revisions also amended the regulations for state program approval in 40 CFR Part 281. This was the first major revision to the federal UST regulations since 1988.

EPA granted the Commonwealth of Puerto Rico State Program Approval ("SPA") effective March 31, 1998. However statutory changes made by the Energy Policy Act necessitate that all states which want to receive LUST Trust funds update their UST regulations and re-apply for SPA. A revision of the approved state programs is also being required by EPA pursuant to 40 CFR Part 281 so that state programs reflect the revised federal UST regulations.

1. Although technically Puerto Rico is a Commonwealth, the UST and LUST programs in Puerto Rico are administered as though it were a state.

II. AUTHORITIES AND PURPOSE

This Memorandum of Agreement (hereinafter "Agreement") establishes policies, responsibilities, and procedures pursuant to 40 CFR Part 281 for implementation of the Commonwealth of Puerto Rico's revised Underground Storage Tank Program (hereinafter "State Program" or "Commonwealth Program") being approved under Section 9004 of the Solid Waste Disposal Act as amended by various statutes , including most notably the Resource Conservation and Recovery Act (hereinafter such statutory authorities shall collectively be referred to as "RCRA" or "the Act") , 42 U.S.C. §6901 et seq.), This Agreement further sets forth the manner in which Puerto Rico and EPA will coordinate in the Commonwealth's administration of the Commonwealth's Program.

This Agreement is entered into by the Secretary of the Puerto Rico Department of Natural and Environmental Resources (DNER, aka Departmento de Recursos Naturales Y Ambientales (DRNA) (hereinafter "the State" or "the Commonwealth)[1] and the Regional Administrator, EPA Region 2 (hereinafter "Regional Administrator" or "EPA"). Nothing in this Agreement shall be construed to contravene any provision of 40 CFR Parts 280 and 281.

The parties expect to review the Agreement jointly from time to time, possibly as often as once a year. This Agreement may be modified upon the initiative of either party in order to ensure consistency with Commonwealth program modifications or for other reasons. Any revisions or modifications must be in writing and must be signed by a senior official for the Commonwealth and by the Regional Administrator or assignee.

This Agreement with any subsequent modifications will remain in effect until such time as State Program Approval is withdrawn by EPA or responsibility for the UST program is voluntarily transferred to EPA according to the criteria and procedures established in 40 CFR Part 281.60 and 281.61. This Agreement shall apply to any successor agency to the Puerto Rico Department of Natural and Environmental Resources.

III. POLICY

Each of the parties to this Agreement is responsible for ensuring that its obligations under Subtitle I of RCRA are met. Upon final approval by EPA in 1998, the Commonwealth assumed primary responsibility for implementing the Subtitle I Underground Storage Tank Program within its boundaries. EPA retains its responsibility to ensure full and faithful execution of the requirements of Subtitle I of RCRA, including direct implementation in the event the Commonwealth is unwilling or unable to act. The Secretary of DNER and the Regional Administrator agree to maintain a high level of cooperation and coordination between their respective staffs in a partnership to assure successful and effective administration of the Commonwealth program. In particular, the Commonwealth and EPA acknowledge that the Energy Policy Act of 2005 added additional requirements for the Commonwealth's receiving funding from EPA.

EPA will review the Commonwealth's program in order to evaluate its implementation by the Commonwealth, to assist the Commonwealth in implementing its program; to allow EPA to report to the President, the Congress, and the public on the achievements of the underground storage tank program; and to encourage the Commonwealth and EPA to agree on desirable technical support and targets for joint efforts to prevent and mitigate environmental problems associated with improper management of underground storage tanks. EPA oversight will be accomplished through written reporting requirements, compliance and enforcement overview, annual review of the Commonwealth's program, and compilation and review of other relevant information.

IV. COMMONWEALTH PROGRAM REVIEW

The Regional Administrator or assignee (such term to include EPA employees working on issues related to the UST and LUST programs) will assess the Commonwealth's administration and enforcement of its underground storage tank program on a continuing basis for consistency with Subtitle I requirements, with this Agreement, and with all applicable Federal requirements and policies, and for adequacy of enforcement. This assessment will be accomplished by EPA review of information submitted by the Commonwealth in accordance with this Agreement and an annual review of Commonwealth program activities. The Regional Administrator or assignees may also consider, as part of this regular assessment, written comments about the Commonwealth's program administration and enforcement that are received from regulated persons, the public, and Federal, Commonwealth, and local agencies. Copies of any such comments received by the Regional Administrator or assignees will normally be forwarded to the Commonwealth upon receipt by the EPA.

To ensure effective Commonwealth program review, the Commonwealth agrees to allow EPA access to all files and other information requested by the Regional Administrator or assignees and deemed necessary for reviewing Commonwealth program administration and enforcement.

Review of Commonwealth files may be scheduled as needed. Commonwealth program review meetings or calls between the Commonwealth and the Regional Administrator or assignees will be scheduled at reasonable intervals, not less than annually, to review specific operating procedures and schedules, to resolve problems and to discuss mutual program concerns. These meetings/calls will be scheduled at least 14 days in advance unless agreed to differently. A tentative agenda for the discussion will be prepared by EPA.

IV. INFORMATION SHARING

A. General

As the respective information needs of the Commonwealth and EPA evolve, changes to this section of the Agreement may be appropriate. During reviews of this agreement, the Commonwealth and Regional Administrator or assignees will carefully examine the following information sharing provisions for any necessary revisions.

B. EPA

1. EPA will keep the Commonwealth informed of the content and meaning of Federal statutes, regulations, guidelines, standards, policy decisions, directives, training opportunities, and any other factors that affect the Commonwealth program. EPA will also provide general technical guidance to the Commonwealth. EPA will share with the Commonwealth any national reports developed by EPA from the data submitted through Commonwealth's reporting requirements.

2. EPA will make available to the Commonwealth other relevant information, as requested, that the Commonwealth needs to implement its approved program.

C. Commonwealth

1. The Commonwealth agrees to inform the Region of any proposed or adopted program changes (in advance wherever possible) that would affect the Commonwealth's ability to implement the approved program. Commonwealth program changes of concern include modification of the Commonwealth's legal authorities (for example, statutes, regulations, and judicial or legislative actions affecting those authorities), modifications of memoranda of agreement or understanding with other agencies, and modifications of resource levels (for example, available or budgeted personnel and funds). The Commonwealth recognizes that Commonwealth program revisions must be made in accordance with the provisions of 40 CFR Part 281.

2. The Commonwealth will provide compliance monitoring and enforcement information to the Regional Administrator or assignee. The Commonwealth agrees to provide EPA, at its request, with copies of enforcement documents, reports or data resulting from any compliance inspection and/or subsequent enforcement actions.

D. National Data

EPA maintains certain national data on underground storage tanks. The data are used to report to the President, the Congress, and the public on the achievements of the underground storage tank program and to support EPA's regulatory development efforts. Whenever EPA determines that it needs to obtain certain information, EPA will first seek to obtain this information from the Commonwealth. The Commonwealth agrees to provide the Regional Administrator or assignee with this information if readily available and as resources allow. If the Commonwealth is unable to provide the underground storage tank information or if it is necessary to supplement the Commonwealth information, EPA may perform information collection including site visits after notifying the Commonwealth. EPA will share with the Commonwealth any national reports developed by EPA as a result of such information collection.

E. Confidentiality

The Commonwealth will make available to EPA upon request any information obtained or used in the administration of the Commonwealth program without restriction. If the UST owner/operator has submitted the information to the Commonwealth under a claim of business confidentiality, the Commonwealth will clearly identify that claim of confidentiality to EPA in writing when providing the information. EPA will handle the information in accordance with 40 CFR Part 22 and will not disclose, copy, reproduce or otherwise make available to anyone any information obtained from the Commonwealth that is subject to a claim of confidentiality without the UST owner's/operator's consent, unless otherwise required or allowed by law. If information is submitted to EPA under a claim of confidentiality, EPA may share such information with the Commonwealth to the extent allowed under the provisions of 40 CFR Part 2, including 40 C.F.R. § 2.305(h)(3).

V. COMPLIANCE MONITORING AND ENFORCEMENT

A. EPA

Nothing in this agreement shall restrict EPA's right to inspect or gather information from any federally regulated underground storage tank facility or bring enforcement action against any person believed to be in violation of the approved Commonwealth underground storage tank program. Before conducting an inspection of USTs at a facility, the Regional Administrator or assignee will normally give the Commonwealth at least 7 days' notice of EPA's intent to inspect. The Regional Administrator or assignee and Commonwealth may agree on a longer period of time in order to allow the Commonwealth the opportunity to conduct the inspection. If the Commonwealth performs a compliance inspection and submits a report and relevant data thereto within the time agreed upon by EPA and DNER, no EPA inspection will normally be performed, unless the Regional Administrator or assignee deems the Commonwealth report and data to be inadequate. In case of an imminent hazard to human health or the environment, the Regional Administrator or assignee may shorten or waive the notice period.

The Regional Administrator or assignee may take enforcement action against any person determined to be in violation of Subtitle I of RCRA in accordance with section 9006. EPA also retains its right to issue orders and bring actions under Sections 7003 or 9003(h) of of RCRA and any other applicable Federal statute. With regard to Federal enforcement, it is EPA's policy not to take such action where the Commonwealth has taken timely and appropriate enforcement action. Before issuing a complaint or compliance order under Section 9006, EPA will give notice to the Commonwealth.

B. Commonwealth

The Commonwealth agrees to maintain a staffing level, including adequate technical support and legal personnel, capable of implementing an effective UST program and to conduct program development activities designed to improve the Commonwealth's program for monitoring the compliance by owners and operators of federally regulated UST facilities with applicable Commonwealth program requirements. DNER will maintain a separate account dedicated to

allocate revenues from permits, penalties and other fees for the administration of the UST and LUST Programs. The Commonwealth specifically agrees to assign a complement of attorneys from the DNER to assist in the timely and effective administration of the regulatory enforcement process. As part of the Commonwealth's enforcement program, the Commonwealth will conduct compliance inspections and use other mechanisms to assess compliance with UST regulations, compliance schedules, and all other Commonwealth program requirements. The Commonwealth agrees to develop an appropriate enforcement response against all persons in violation of UST regulations (including notification requirements), compliance schedules, and all other Commonwealth program requirements, including violations detected by Commonwealth compliance inspections and record reviews. The Commonwealth will maintain procedures for receiving and ensuring proper consideration of information about violations submitted by the public, and the Commonwealth will provide for public participation in its enforcement process through one of the options set out in 40 CFR 281.42. The Commonwealth agrees to retain all UST compliance and enforcement records for at least 3 years unless there is an enforcement action planned or pending. In that case, all records will be retained until two years after such action is resolved.

The DNER (or any successor agency) will:

a. Ensure that UST inspectors are adequately trained so that each is able to identify and document violations of the Commonwealth's UST regulations during on-site inspections and review of documents.

b. Conduct inspections of each federally regulated UST system at least once every three years by the anniversary of the previous three-year inspection.

c. Enforce violations of UST Regulations.

d. Meet applicable requirements as specified in EPA grant guidelines on the Energy Policy Act of 2005 such as those regarding secondary containment, operator training, public record and delivery prohibition. (http://www2.epa.gov/ust/energy-policy-act-2005-and-underground-storage-tanks-usts#grant)

e. The Commonwealth will use its best efforts to ensure that:

(1) All releases from UST systems are promptly assessed and further releases are stopped;

(2) Actions are taken to identify, contain and mitigate any immediate health and safety threats that are posed by a release (such activities include investigation and initiation of free product removal, if present);

(3) All releases from UST systems are investigated to determine if there are impacts on soil and groundwater, and any nearby surface waters. The extent of soil and groundwater contamination must be delineated when a potential threat to human health and the environment, including vapor intrusion into structures, exists.

(4) All releases from UST systems are cleaned up through soil and groundwater remediation and any other steps are taken, as necessary to protect human health and the environment;

(5) Adequate information is made available to the Commonwealth to demonstrate that corrective actions are taken in accordance with the requirements of paragraphs (1) through (4) of this section. This information must be submitted in a timely manner that demonstrates the corrective action's technical adequacy to protect human health and the environment.

f. In accordance with §280.67, the Commonwealth must notify the affected public of all confirmed releases requiring a plan for soil and groundwater remediation, and upon request provide or make available information to inform the interested public of the nature of the release and the corrective measures planned or taken.

VI. BENEFICIARIES OF THIS AGREEMENT/ SIGNATURES

The terms set forth in this Agreement are intended solely for the purpose of memorializing the parties' understanding of their respective roles and commitments in the administration of the Commonwealth of Puerto Rico's Underground Storage Tank Program. They are not intended, and are not to be relied upon, to create any rights, substantive or procedural, enforceable at law or in equity, by any other party against the Commonwealth, EPA, and their officials or employees. The parties reserve the right to modify this agreement in accordance with its terms without public notice. This Agreement does not replace existing laws or regulations and does not apply to any person other than the Commonwealth or EPA and their agents.

This MOA becomes effective upon execution of the signatures below.

_____ _____

Peter Lopez
Regional Administrator
U.S. Environmental Protection Agency
Region 2

Date

OCT 09 2018

Tania Vazquez Rivera, Esq.
Secretary
Puerto Rico Department of Natural and Environmental Resources

Date