

**PARTICIPATING STATE ATTACHMENT TO THE
FEDERAL FACILITIES COMPLIANCE AGREEMENT BETWEEN THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
AND THE UNITED STATES AIR FORCE**

I. PRELIMINARY STATEMENT

The State Attachment is entered into between the Missouri Department of Natural Resources (MDNR) and the Air Combat Command (ACC) as an attachment to a Federal Facilities Compliance Agreement (FFCA) entered into between the United States Environmental Protection Agency (EPA) and the United States Air Force (USAF). The FFCA establishes the USAF's responsibilities and commitments in addressing applicable portions of the Toxic Substances Control Act (TSCA) and the polychlorinated biphenyl (PCB) regulations at 40 CFR Part 761, et seq., and applicable portions of Executive Order 12088.

The Missouri State Attachment is limited to Whiteman Air Force Base located in Johnson County, Missouri. Whiteman Air Force Base has one hundred fifty (150) launch facilities and fifteen (15) control centers. Under the terms of the Strategic Arms Reduction Treaty (START), the USAF initiated a program to dismantle Minuteman II missiles at Whiteman Air Force Base by imploding the missile silo headworks, demolishing the support building, pushing the debris into the silo, and capping the silo. The first silo at the Whiteman Air Force Base was destroyed on December 8, 1993. During the initial stages of the dismantlement, PCB materials were discovered at levels above the 50 ppm regulatory limits set by TSCA. In addition, asbestos was discovered in the protective coating of the USTs. Dismantlement was suspended at Whiteman Air

Force Base in April 1994 pending completion of an investigation to determine if the materials pose a threat to the environment.

On June 28, 1995, EPA issued to the USAF a letter of enforcement discretion allowing the USAF to implode up to fifteen (15) silos near Whiteman Air Force Base between June 28, 1995 and September 30, 1995. The EPA's June 28, 1995 letter required prior coordination with the MDNR, continued best efforts toward completing the State Attachment, and soil, water, and air sampling to characterize the environmental impacts during and after the silo implosions.

The USAF resumed progress towards dismantlement of silos at Whiteman Air Force Base in July 1995 with the first implosion under the EPA's June 28, 1995 letter taking place in late August, 1995. On the effective date of the federal Compliance Agreement, dismantlement activities will continue at Whiteman Air Force Base under the terms and conditions of that Agreement. The purpose of the State Attachment is to incorporate, supplement, and clarify the state requirements to the FFCA.

The MDNR and ACC enter into the State Attachment without trial or hearing in resolution of all of the issues addressed herein. All provisions, conditions, terms, obligations, schedules for achieving compliance and requirements for reporting progress are integrated into the State Attachment and its appendices.

II. INCORPORATION BY REFERENCE

The parties to the State Attachment expressly incorporate by reference all provisions in the FFCA except as set out below:

A. Applicable State Laws and Regulations

ACC shall comply with applicable Missouri environmental laws and regulations in addition to the applicable laws and regulations referenced in the FFCA, including, to the extent applicable, the following:

1. The Missouri Air Conservation Law as set out at Chapter 643, RSMo, and 10 CSR 10-6, especially with respect to asbestos and fugitive dust;
2. The Missouri Clean Water Law as set out at Chapter 644, RSMo, and 10 CSR 20-7, especially with respect to the point of compliance and NPDES issues;
3. The Missouri Solid Waste Management Law as set out in Section 260.200 through 260.281, RSMo, and 10 CSR 80, especially with respect to deed restrictions and landfill requirements;
4. The Missouri Hazardous Waste Management Law as set at 10 CSR 260.350 through 260.575, RSMo, and 10 CSR 25, especially with respect to groundwater monitoring and remedial activities;
5. The Missouri Safe Drinking Water Law as set out at 640.100 through 640.140, RSMo, and 10 CSR 60, especially with respect to drinking water standards;
6. The Missouri Underground Storage Tank Law and Missouri Leaking Underground Storage Law, as set out at Chapters 260 and 319, RSMo, and 10 CSR 20-10.

B. Leaking Underground Storage Tanks

ACC will monitor for PCB, TPH, and BTEX at every site which has/had a leaking underground storage tank. The specifics for monitoring leaking underground storage tanks will be included by ACC in its Groundwater Monitoring Plan (GWP).

C. Groundwater Monitoring Requirements

ACC will submit to the MDNR a GWP for selected Minuteman II silos within eighteen (18) months after the State Attachment is fully executed. Until ACC submits the GWP to the MDNR, ACC will work with the MDNR to develop appropriate interim groundwater monitoring requirements. The GWP shall be guided by 40 CFR Subpart F requirements. The MDNR has additional "site specific" requirements for Minuteman II missile silo groundwater monitoring listed below:

1. The current federal Maximum Contaminant Level (MCL) is 0.5 ppb. If PCBs are detected at or above 0.5 ppb in the groundwater at the Minuteman II sites, the site will require groundwater monitoring by ACC. Under the Missouri Safe Drinking Water Law, the current MCL is 0.5 ppb. If the Missouri MCL changes while the State Attachment is in effect, the MDNR shall notify ACC and the new Missouri MCL will supplant the 0.5 ppb standard to the extent it is applicable to ACC.
2. The minimum remedial activity will be groundwater monitoring. If the PCB contamination has migrated to the perimeter fence or beyond, additional corrective action may be initiated, and may include pump and treat, additional monitoring, and/or other methods by ACC.
3. ACC's Groundwater Monitoring Plan shall include:
 - a. Sites with PCBs

As of the date the State Attachment is fully signed, sites at which PCBs have ever been detected in the groundwater at or greater than

0.5 ppb will be monitored annually by ACC until an appropriate remedy is agreed to and implemented by the parties.

b. Representative Sites

Sites with groundwater containing less than 0.5 ppb PCB will be monitored annually by ACC for 5 years. The parties will then reevaluate the need for further monitoring based on the data. Representative sites shall include:

- i. Sites with potable water wells within one quarter mile hydraulically downgradient of any missile silo.
- ii. One site per local geological setting. It is the expectation of the parties that there will be no more than 10 local geological settings. If it is discovered that there are significantly more than ten, the parties will negotiate what number will be monitored.
- iii. Sites with leaking underground storage tanks.

4. Groundwater monitoring well(s) at Minuteman II sites that have ever had leaking underground storage tanks will be screened by ACC to profile the soil/water interface. Some Minuteman II sites may also require nested (shallow, intermediate, deep) groundwater monitoring wells for better interpretation of the underlying hydrogeology.

D. Recovery of Expenses

ACC shall reimburse the MDNR for the costs it incurs in providing support services pursuant to the terms of the State Attachment. The specific terms and conditions for reimbursement of such costs will be established in a separate agreement to be negotiated between the MDNR and ACC. If, for whatever reason, such agreement is not reached or, if after agreement is reached, ACC is unable to reimburse the MDNR for the cost of support services due to the unavailability of appropriated funds, the State of

Missouri, through the MDNR, reserves the right to withdraw from the State Attachment and, in such case, reserves its right to address the subject matter of this agreement using whatever legal means it may have available to it.

E. Property Transfer

ACC will exercise its best efforts to ensure that no property containing imploded missile sites covered by this State Attachment is transferred except as provided below.

1. No transfer will occur except in compliance with section 120(h) of CERCLA, 42 U.S.C. 9620(h).

2. The parties recognize the need for certain restrictions on property containing the sites in order to protect health and the environment. Therefore, ACC will exercise its best efforts to ensure that documents transferring ownership and title of the property contain provisions restricting future actions on the property as follows:

a. Future property owners will be restricted from the installation of water wells on property comprising the site; and

b. Future property owners will be restricted from engaging in activities which will cause physical penetration and ground disturbance below a depth of three (3) feet beneath the surface of the site, unless such activities are approved in advance by MDNR on a case-by-case basis. Prohibited activities include, but are not limited to, soil excavation, trenching, installation of building foundations, footings, pilings or supports, if such activities will extend to a depth of more than three (3) feet beneath the surface of the site.

3. If, prior to ACC's completion of all requirements set out in this Attachment, including groundwater monitoring, the United States proposes to transfer property containing imploded missile sites covered by this State Attachment, ACC shall notify MDNR in writing at least sixty (60) days prior to transfer. This notice shall include copies of the restrictive language proposed to be used in the transfer documents, as provided in 2.a and b above, as well as any other restrictions the United States intends to place on property use to the extent such restrictions are designed to reduce any potential risk to human health or the environment due to the presence of PCBs at the site. During the notice period MDNR may provide comments to ACC proposing additional restrictive language, as well as other language for inclusion in the transfer documents which MDNR believes necessary to protect human health and the environment from risks resulting from the presence of PCBs at the site. After receipt of MDNR's comments, ACC will either agree to exercise its best efforts to ensure the language proposed by MDNR is incorporated into the property transfer documents for the site, or will notify MDNR of which proposed provisions will not be incorporated, and of the reasons why such incorporation was not accomplished. If MDNR is not satisfied with the reasons for ACC's determination not to incorporate proposed language, it may invoke dispute resolution. The United States will not transfer ownership of sites which are subject to such dispute until the dispute resolution process is concluded. ACC will exercise its best efforts to ensure additional restrictions deemed to be necessary, as determined through the dispute resolution process, are included in the documents transferring the sites covered by the

dispute. If after conclusion of the dispute resolution process MDNR is still dissatisfied with the restrictions, it may seek to impose additional restrictions using whatever legal means it may have available to it.

4. ACC will ensure no property containing an imploded missile site is transferred until the first annual monitoring has been completed at the sites included in the ACC Groundwater Monitoring Plan provided for in II.C.3 above. Upon completion of the first annual monitoring, ACC may transfer sites which are not either:

a. Sites with PCBs detected in the groundwater at concentrations of 0.5 ppb or greater as provided in II.C.3.a above, or

b. Representative sites, as provided in II.C.3.b above.

F. Dispute Resolution

The MDNR and ACC shall use their best efforts and act in good faith to resolve disputes arising under the State Attachment informally and expeditiously. Each dispute will be resolved at the lowest possible level of authority. During the pendency of any dispute, ACC agrees that it shall continue to implement those portions of the State Attachment which are not in dispute and which can be reasonably implemented pending final resolution of the issue(s) in dispute.

If the MDNR determines that all or part of those portions of work affected by the dispute should stop during the pendency of the dispute and notifies ACC in writing, ACC shall discontinue implementing those portions of the work. The MDNR and ACC agree that procedures contained in this section are the sole procedures for resolving disputes

arising under the State Attachment. If any party fails to follow any of the requirements contained in this section, that party has waived its right to further consideration of the disputed issue. All timelines for dispute resolution may be extended by mutual written consent of the parties.

If the MDNR or ACC disagrees with the decision or action of the other party taken pursuant to the State Attachment, within ten (10) working days of the decision or action the POC of the objecting party shall notify the POC of the other party. If the parties cannot resolve the dispute informally, the parties may pursue the matter formally by placing objections in writing. ACC's written objections shall be directed to the Director of MDNR's Hazardous Waste Program. The MDNR's written objections shall be directed to the Chief Environmental Programs, HQ ACC/CEV. This written notice shall be mailed within ten (10) working days after conclusion of the informal dispute resolution process. The written objection shall identify specific points of the dispute, any basis for a position, and a proposed resolution.

The MDNR and ACC shall have fifteen (15) working days from receipt of the written objections to attempt to resolve the dispute through formal negotiations. The MDNR and ACC agree to confer in person or by telephone to resolve the dispute as long as any request for a conference will not extend the formal negotiation period. The MDNR or ACC shall provide a written decision to the objecting party within twenty (20) working days of receipt of the written objections.

If the written decision does not resolve the issue to the satisfaction of the objecting party, the objecting party may, within five (5) working days of receipt of the decision, make a written request for a conference between the Director, MDNR, and the Deputy Assistant Secretary of the Air Force (Environment and Occupational Health), SAF/MIQ. The request for a conference shall enumerate the specific points of the dispute, the basis for the position, and the proposed resolution. No later than fifteen (15) working days after receipt of the request for a conference, the Director of MDNR and SAF/MIQ will issue a joint written decision resolving the dispute. If the Director of MDNR and SAF/MIQ are unable to arrive at a joint written decision, they will issue a joint written notice to this effect which summarizes the issue(s) which remain and the dispute will be resolved as follows:

1. If issues remaining in dispute involve matters over which the EPA has regulatory authority pursuant to the Toxic Substances Control Act (TSCA), the objecting party may submit those issues in writing for resolution to the Director, Federal Facilities Enforcement Office, HQ EPA. The issue(s) must be submitted for resolution not later than five (5) working days after the notice is issued that SAF/MIQ and the Director of MDNR have been unable to resolve all issues in dispute. The written submission will enumerate the specific issues in dispute, the basis for each party's position, and their proposed resolution. At the time of submission, either party may request a conference with the Director, Federal Facilities Enforcement Office to discuss the issues in dispute. Such conference must occur within fourteen (14) working days of

submission of the dispute. No later than twenty (20) working days after receiving the submission, the Director, Federal Facilities Enforcement Office will issue a written decision on the issues in dispute which will be binding on the parties.

2. For disputed issues which are outside the scope of EPA's regulatory authority pursuant to TSCA, the MDNR reserves the right to address the issues using whatever legal authorities it may have available to it.

III. INTENT TO BE BOUND

The State Attachment shall apply to and be binding upon the MDNR and ACC, and all officers, directors, agents, trustees, servants, employees, successors or assigns of the named parties as well as upon all persons, firms, and other legally cognizable entities in active concert or participation with the named parties.

IV. EFFECT OF AGREEMENT; EFFECTIVE DATE

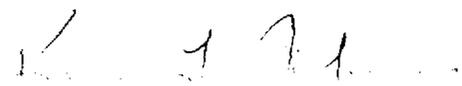
The MDNR, in consideration of the complete and timely performance by ACC of the obligations agreed to in this Attachment, hereby waives its rights to seek judicial imposition of damages, civil penalties, or criminal penalties against the USAF for past use, disposal, handling or alleged violations set out in the federal Compliance Agreement.

The State Attachment is final and effective on the date signed by the parties. Upon the effective date of the Missouri State Attachment, the Attachment shall supplant those enforcement actions which could have been taken by the MDNR against ACC for past use, management or disposal of the PCB and asbestos materials which are the subject of the State Attachment. By mutual consent, ACC and the MDNR are allowed to amend the

State Attachment to incorporate new provisions based on groundwater monitoring results or changes in Missouri law.

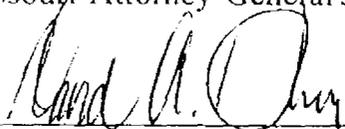
The MDNR reserves the right to take future administrative, civil, or criminal action against the USAF for future violations relating to the USAF's use, management or disposal of PCBs or asbestos.

V. SIGNATURES



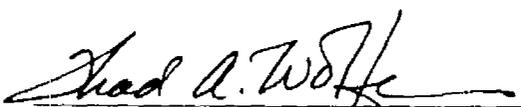
KARA L. JOHNSON
Assistant Attorney General
Missouri Attorney General's Office

Date



DAVID SHORR, Director
Missouri Department of Natural Resources

12-22-95
Date



THAD A. WOLFE
Lieutenant General, USAF
Vice Commander
Air Combat Command

5 December 1995
Date