

## MEMORANDUM of UNDERSTANDING

*Between the United States Environmental Protection Agency and the American Hospital Association*

- 1.0 **INTRODUCTION.** This Memorandum of Understanding ("MOU") is made between the United States Environmental Protection Agency ("U.S. EPA") Office of Prevention, Pesticides and Toxics ("OPPT"), U.S. EPA Region 5 and the American Hospital Association ("AHA"). Throughout this MOU, any reference to "U.S. EPA" shall include both OPPT and Region 5 and any reference to "AHA" shall refer to AHA and its Personal Membership Groups ("PMGs"). U.S. EPA and AHA are referred to herein as "the Parties" to this MOU.
  - 1.1 The Parties intend by this MOU to establish a mutually beneficial public/private partnership.
  - 1.2 This MOU will address the basic relationship, roles and responsibilities of the Parties but leaves for later agreement the more precise terms that will constitute the substance of the partnership.
- 2.0 **PURPOSE.** The AHA consists primarily of health care provider organizations across the United States. The Parties enter into this MOU for the primary purpose of transferring to AHA institutional members, PMG personal members and other health care professionals technical information on Pollution Prevention ("P2") opportunities that exist with respect to waste generated by the health care industry. The Parties' believe that this information transfer will provide the health care industry with enhanced tools for minimizing the production of persistent, bioaccumulative and toxic ("PBT") pollutants and reducing the volumes of waste generated. Such reductions are beneficial to the environment and will reduce the waste disposal costs incurred by the health care industry. The Parties to this MOU hereby affirm the Congressional goals and principles set forth in the Pollution Prevention Act ("PPA"), 42 U.S.C. §§ 13101 through 13109, particularly the goal of reducing the generation of pollution at its source, preferentially to the recycling, treatment and/or disposal of such waste.
- 3.0 **AUTHORITY.** Section 6604(b)(5) of the PPA, 42 U.S.C. § 13103(b)(5), directs U.S. EPA, among other things, to facilitate the adoption of source reduction techniques by businesses, including the distribution of source reduction information to businesses.

**4.0 ROLES AND RESPONSIBILITIES OF THE PARTIES.** The Parties intend to undertake the following activities pursuant to this MOU:

1. *Virtual Elimination of Mercury Waste.* The Parties intend to work together to develop a Mercury Waste Virtual Elimination Plan that will set forth a strategy for achieving the goal of virtually eliminating mercury-containing waste from the health care industry waste stream by the year 2005.
2. *Total Waste Volume Reduction.* The Parties intend to work together to develop a Model Waste Volume Reduction Plan that will assist in reducing the total volume of all wastes (including both regulated and non-regulated waste) generated by the health care industry, with an initial goal of achieving a thirty-three percent (33%) reduction in all hospitals by 2005 and an overall goal of achieving a fifty percent (50%) reduction by 2010.
3. *Seminars.* The Parties intend to co-sponsor a series of Health Care Industry Waste Management Seminars ("Seminars") to be held at various locations across the United States. The Seminars will be the primary vehicle by which technical information on P2 opportunities will be transferred to the health care professionals, and will focus upon transferring technical information related to decreasing health care industry waste volume, minimizing the production of PBT pollutants, improving waste stream segregation, reducing waste management costs and ensuring regulatory compliance for regulated waste streams.
4. *Software Distribution.* In order to facilitate the successful completion of the Seminars and the virtual elimination of mercury-containing waste, U.S. EPA intends to provide for distribution at the various Seminars up to 300 copies of the software program entitled "Mercury In Medical Facilities" that has been developed by Purdue University with assistance from the Region 5 Software Development Unit ("SDU"). Purdue University maintains a copyright on this software program, but, insofar as the software was developed with Federal Government assistance, the software may be freely copied and disseminated. The Parties will mutually decide how the up to 300 total software copies will be distributed among the various Seminars.

5. *Industry P2 Information.* AHA intends to develop baseline information on the P2 activities of the health care industry and to monitor P2 progress over time. To obtain this information, AHA will develop, with review and comment by U.S. EPA, an information questionnaire to be distributed to health care professionals by AHA at various times in the future. The first distribution will be used to determine the baseline P2 information and subsequent distributions will be used to monitor industry P2 progress. AHA will gather all responses to the questionnaires. Insofar as U.S. EPA will not be sponsoring the distribution of the questionnaire, the distribution of the questionnaire is not subject to the requirements of the Paperwork Reduction Act ("PRA"), 44 U.S.C. §§ 3501 through 3520.
6. *Review of Industry P2 Information.* Throughout the duration of this MOU, the Parties intend to work together to review and compile the information obtained from the baseline and progress questionnaires (Item #5). U.S. EPA agrees that, unless required by law, the identity of any survey participant need not be revealed by AHA to U.S. EPA. From this information, the Parties will be able to disseminate more effectively P2 information and to monitor the success of the Mercury Waste Virtual Elimination Plan (Item #1) and the Model Waste Volume Reduction Plan (Item #2).
7. *Chemical Waste Minimization.* The Parties intend to work together to develop, for various kinds of chemical waste, a Model Chemical Waste Minimization Plan ("Model Plan"). The first Model Plan will pertain to mercury-containing waste ("Model Plan For Mercury"). The Model Plan For Mercury is presently being developed by the State of Illinois with assistance from U.S. EPA. When that plan is completed, U.S. EPA, with comments from AHA, will make such modifications to the Model Plan For Mercury as are necessary to reflect current knowledge, best management practices and any other circumstances experienced by the health care industry. Other chemical wastes will be addressed by future Model Plans. AHA intends to disseminate each Model Plan to as wide an audience in the health care industry as is reasonably possible. Both AHA and U.S. EPA intend to make each Model Plan available to the public on their respective Internet home pages. Each such Internet presentation shall properly reflect the relative contributions of the Parties and any third party (such as the

State of Illinois with respect to the Model Plan For Mercury) to the development of the particular Model Plan.

8. *Ethylene Oxide and PBT Pollutant Information.* The Parties intend to work together to investigate P2 opportunities with respect to ethylene oxide and PBT pollutants.
  9. *Industry Input on U.S. EPA Guidance.* To the extent feasible and practical, U.S. EPA will solicit comments by AHA and the AHA Environmental Leadership Council (as established pursuant to this MOU) on U.S. EPA's policies and technical guidance specifically affecting the health care industry's waste streams. AHA's comments will be limited to the practicality and feasibility of the matters set forth in the policies and technical guidance. Such input shall not be sought with respect to any adjudication or any rulemaking that is subject to the notice-and-comment requirements set forth in the Administrative Procedure Act ("APA") at 5 U.S.C. § 553(b).
  10. *AHA Environmental Leadership Council.* AHA will develop an AHA Environmental Leadership Council ("the Council") that will be responsible for making recommendations to the AHA on educational and outreach activities, recommending content experts to participate in programs and/or the development of products such as the Model Plans, monitoring progress toward established environmental goals, selecting the award recipients for national recognition programs, and assisting in the publication of an annual report documenting the hospital industry's progress toward P2.
  11. *Awards/Recognition.* The Parties intend to work together to determine national "success stories" of the implementation of P2 activities toward health care industry waste generation. Successful P2 activities shall be recognized by awards or other recognition by U.S. EPA, AHA and/or the Parties acting jointly.
- 4.1 The Parties understand that other organizations and/or coalitions who promote environmentally responsible practices have a vested interest in the goals described in this MOU. Furthermore, the Parties recognize that these stakeholders play an important role in the partnership to advance P2 in the health care industry. In recognition of this fact, the Parties will allow for the

participation of stakeholders in the manner set forth in Attachment #1 to this MOU.

5.0 **FUNDING.** The Parties shall attempt to secure reasonable funding to allow for the successful completion of the activities described herein. Both Parties, however, expressly acknowledge that the activities under this MOU shall be subject to the availability of appropriated funds and personnel of each Party, or the approval of other sources of funding. Nothing in this MOU or elsewhere shall be construed as establishing a contract (or other legally binding commitment) obligating U.S. EPA or AHA to provide money, goods or services of any kind to any legal entity.

6.0 **AGREEMENTS.** In order to foster the successful completion of this MOU, the Parties agree to the following terms and conditions:

1. Each Party pledges in good faith to go forward with this MOU and to further the goals and purposes of this MOU, subject to the terms and conditions of this MOU. The Parties shall attempt to resolve disputes through good faith discussions.
2. Either Party may unilaterally withdraw at any time from this MOU by transmitting a signed writing to that effect to the other Party. This MOU and the public/private partnership created thereby shall be considered terminated sixty (60) days from the date the non-withdrawing Party actually receives the notice of withdrawal from the withdrawing Party.
3. By mutual agreement, which may be either formal or informal, the Parties may modify the list of intended activities set forth in Paragraph 4.0 above and/or determine the practical manner by which the goals, purposes and activities of this MOU will be accomplished. However, any modification to any other written part of this MOU must be made in writing and signed by both Parties or their designees.
4. Nothing in this MOU shall be construed to authorize or permit any violation of any Federal, State or local law imposed upon the Parties, including, but not limited to, the PRA, APA, or the Anti-Deficiency Act, 31 U.S.C. § 1342.

5. Nothing in this MOU shall be construed to authorize or permit any violation of any Federal, State or local law, including, but not limited to, any environmental law administered and/or enforced by U.S. EPA, by any person, including, but not limited to, any health care provider organization.
6. AHA agrees that it does not expect, nor will it ever seek to compel from U.S. EPA in any judicial forum, the payment of money, services or other thing of value from U.S. EPA based upon the terms of this MOU. The foregoing provision does not in any way affect any legal rights accruing to AHA by virtue of any other law, contract and/or assistance agreement.
7. AHA understands and acknowledges that, as an institution of the Federal Government, U.S. EPA has a duty to refrain from providing any commercial entity an exclusive privilege without receiving payment therefor and, as a consequence, that U.S. EPA's relationship with AHA in no way affects, alters or otherwise constrains U.S. EPA's right to provide similar (or identical) services to, or establish similar (or identical) relationships with, any other entity.
8. AHA understands that U.S. EPA's participation in this MOU does not constitute an endorsement, express or implied of (a) any policy advocated by AHA, the Council or any stakeholder; or (b) any good or service offered or sold by AHA, the Council or any stakeholder.
9. Insofar as U.S. EPA's participation in this MOU consists of rendering technical assistance to accomplish the goals of the MOU, U.S. EPA expressly reserves the right to abstain from expressing a position, either formal or informal, on any matter of law, policy or science related in any way to the subject matter of this MOU, including, but not limited to, any matter of law, policy or science related to any PBT pollutant. Nothing in this MOU shall constitute any commitment by U.S. EPA to investigate or re-investigate any position, either formal or informal on any matter of law, policy or science.
10. AHA shall maintain full right, title and interest in any intellectual property right, including a copyright, in any work product developed solely by AHA under this MOU. Intellectual property developed by AHA with financial assistance from U.S. EPA shall be subject to the

conditions set forth in U.S. EPA's applicable assistance regulations (e.g., 40 C.F.R. § 30.36). Any intellectual property developed collaboratively by the Parties will also be governed by the Federal Copyright Statute at Title 17 of the United States Code or by the Federal Patent Statute at Title 35 of the United States Code.

11. Information on source reduction received by U.S. EPA pursuant to this MOU shall be made available to the public pursuant to Section 6606(b) of the PPA, 42 U.S.C. § 13105(b).

7.0 **PRIMARY CONTACTS.** The Parties intend that the work under this MOU shall be carried out in the most efficient manner possible. To that end, the Parties intend to designate individuals that will serve as primary contacts between the Parties. The Parties intend that, to the maximum extent possible and unless otherwise approved by the other Party, all significant communications between the Parties shall be made through the primary contacts. The designated primary contacts for the Parties are listed in Attachment #2 to this MOU.

[MOU continues on next page]

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8.0 **TERMINATION.** Unless extended by a written agreement executed by both Parties, this MOU shall terminate exactly five (5) years from the date upon which this MOU becomes fully executed by all signatories listed below.

The Parties, on this 24th day of June, 1998, hereby agree to the foregoing MOU, which shall be effective immediately upon full execution by the signatories listed below.

For the United States Environmental Protection Agency:

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Dr. William H. Sanders, III, Director  
Office of Pollution Prevention and Toxics  
Office of Prevention, Pesticides and Toxics

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David A. Ullrich  
Acting Regional Administrator  
U.S. EPA, Region 5

For the American Hospital Association:

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Jonathan T. Lord, M.D.  
Chief Operating Officer  
American Hospital Association



## ROLES OF THE PARTIES AND THE STAKEHOLDERS

In addition to those roles expressly stated in the body of the MOU, this attachment sets forth the respective roles of the Parties and the stakeholders as they relate to fulfilling the goals of the MOU.

The term "stakeholders" refers to organizations representing both public and private sectors who have a vested interest in the outcome of the efforts and goals described in the MOU. Stakeholders would include, but not necessarily be limited to, the Health Care Without Harm Coalition, the Healthcare Resource Conservation Coalition, allied state and metropolitan healthcare associations, state, local and governmental environmental agencies and other health care organizations.

As set forth below, the Parties and the stakeholders will have representation on the AHA Environmental Leadership Council established by Paragraph 4.0(10) of the MOU. In creating and facilitating the activities of the Council, AHA will develop a process by which the Council will conduct its activities. That process will provide each Party and stakeholder with each of the following: (1) full opportunity to participate in Council discussions on matters coming before the Council; (2) full opportunity to voice opinions, ideas and/or suggestions on the matters coming before the Council; (3) the right to recommend matters for consideration by the Council; and (4) the opportunity to propose modifications to the process by which the Council operates. The AHA will also endeavor to provide the Parties and stakeholders with (1) the information needed to foster open and honest discussions of matters coming before the Council; and (2) an explanation of how the participants' input was, or was not, utilized by AHA.

### Role of the AHA:

- [1] The AHA shall be responsible for managing AHA's human and financial resources necessary to achieve the goals of the MOU.
- [2] The AHA will develop the AHA Environmental Leadership Council established pursuant to the MOU.
- [3] The AHA shall manage and implement the initiatives identified in this MOU in partnership with U.S. EPA and the stakeholders. These initiatives shall include the development of educational and outreach activities, the creation of products such as the Model Plans, the

formation of national recognition programs, the collection and dissemination of information documenting the hospital industry's progress toward P2.

- [4] The AHA shall provide an open forum to address environmental issues and seek advice and counsel from U.S. EPA and the stakeholders.

Role of the U.S. EPA:

- [1] The U.S. EPA shall serve in an advisory and consultative capacity.
- [2] The U.S. EPA shall provide technical assistance on issues relative to the MOU.
- [3] The U.S. EPA shall have representation on the AHA Environmental Leadership Council established pursuant to this MOU. As a member of the Council, U.S. EPA shall have the opportunity to be directly engaged in the activities of Council.
- [4] Subject to the conditions of the MOU (including, but not limited to, the conditions set forth at Section 5.0 and Section 6.0, Item 6), U.S. EPA shall provide financial assistance to support the goals of the MOU.

Role of the Stakeholders:

- [1] The stakeholders shall serve in an advisory and consultative capacity.
- [2] The stakeholders shall recommend technical expertise on issues relative to the MOU.
- [3] The stakeholders shall have representation on the AHA Environmental Leadership Council established pursuant to this MOU. As a member of the Council, the stakeholders shall have the opportunity to be directly engaged in the activities of Council.

**LIST OF DESIGNATED PRIMARY CONTACTS**

For the AHA:

Katherine Svedman  
Executive Director  
American Society for Healthcare  
Environmental Services  
American Hospital Association  
One North Franklin  
Chicago, Illinois 60606  
Phone: (312) 422-3860  
FAX: (312) 422-4571  
E-Mail: ksvedma1@aha.org

For Media Issues:

Alicia Mitchell  
Media Relations Office  
American Hospital Association  
325 Seventh Street, N.W.  
Washington, D.C. 20004  
Phone: (202) 626-2339  
FAX: (202) 626-2345  
E-mail: amitchel1@aha.org

For the U.S. EPA:

Chen Wen  
Hospitals for a Healthy Environment National Coordination Team  
Pollution Prevention Division  
Office of Pollution Prevention and Toxics  
USEPA - MC7409  
401 M St. S.W.  
Washington, D.C. 20460  
PH: (202) 260-4109  
FX: (202) 260-0178  
email: wen.chen@epa.gov

