

MEMORANDUM OF AGREEMENT
BETWEEN THE
TENNESSEE VALLEY AUTHORITY
AND THE
U.S. ENVIRONMENTAL PROTECTION AGENCY

THIS MEMORANDUM OF AGREEMENT (MOA) is entered into between the Tennessee Valley Authority (TVA) under authority of the Tennessee Valley Authority Act of 1933, 16 U.S.C. §§ 831-837dd (1982 & Supp. V 1987), and the United States Environmental Protection Agency (EPA) in accordance with the obligations and authority delegated to it under various federal pollution control laws.

W I T N E S S E T H:

WHEREAS the combined expertise and efforts of TVA and EPA will assist in achieving their joint goals at a lower overall cost to the United States and the public than if work were performed separately or through contracts with private organizations; and

WHEREAS TVA and EPA wish to extend the termination date of this MOA from December 14, 1989 to December 14, 1994, and to make other minor changes; and

WHEREAS TVA and EPA wish to incorporate the extended term and minor changes into the MOA and to reexecute it in its entirety thereby reaffirming their commitment to the goals and provisions of the MOA;

NOW, THEREFORE, the parties agree as follows:

1.0 PURPOSE AND SCOPE

1.1 Purpose

This MOA sets forth the basic principles and guidelines under which the parties intend to cooperate in environmental program areas including research, development, and demonstration projects; the exchange of ideas, information, and data; the utilization of laboratories, equipment, and research facilities; emergency preparedness; compliance reporting; environmental auditing; training and education; and other efforts to further the advancement of knowledge in the general area of environmental policy, regulation, compliance, research, development, and demonstration. The MOA establishes: (1) the method for development, incorporation, and administration of various subagreements; (2) reporting requirements;

(3) mechanisms for fund transfer and accountability; (4) procedures for publication and release of information; (5) procedures for modifying or terminating this MOA and/or any subagreements issued hereunder; and (6) procedures for determining rights to inventions made in the course of, or under, the research, development, or demonstration work effected through this MOA.

1.2 Scope

This MOA deals with environmental programs and does not involve other activities of EPA or TVA. The specific nature and details of work hereunder will be defined and provided for in subagreements executed in accordance with the provisions of this MOA.

2.0 SUBAGREEMENTS

2.1 Definition

The subagreements issued under this MOA will be jointly developed by TVA and EPA. The subagreements will identify the lead party, the project objective(s), approach, use of the other party's facilities or personnel, cost(s) to each party, milestones(s), approximate duration, responsibilities of the parties, appropriate patent provisions, and similar detailed information for each effort or set of efforts undertaken.

2.2 Approval

Approval of subagreements requires the mutual agreement of TVA and EPA and is subject to the availability of funds. For TVA, the Project Manager or Program Coordinator will negotiate the terms of individual subagreements and obtain TVA approvals therefor in accordance with existing TVA policy and procedure. For EPA, the appropriate EPA official will negotiate the terms of individual subagreements (including funding), and obtain EPA approvals for them in accordance with existing EPA policy and procedure. Subagreements so approved shall be subject to the terms and conditions of this MOA.

2.3 Justification

In subagreements involving disbursement of funds, a strong justification must be included in the decision memorandum to EPA's decisionmaking personnel which explains why the project is being included through this mechanism and not a contract or cooperative agreement. One or more of the following items should be explained in the justification: (1) the unique capability of the other party that places it in a preeminent position; (2) the confidential nature of the work precludes use of other sources; (3) the continuation of a previous effort performed by the other party that cannot be continued by other sources; (4) the other party has personnel who are considered the

foremost experts in fields necessary to perform the work; (5) the other party has facilities, equipment, or data which are specialized or vital to the effort and which no one else can provide; or (6) a situation exists where no other source provides the goods or services in the time allowed.

3.0 ADMINISTRATION

3.1 TVA-EPA Administration Groups

To implement this cooperative agreement at policymaking, program coordination, and project operation levels, the following will be established by the parties as appropriate: (a) An Interagency Coordination Committee, (b) Project Managers, (c) Program Coordinators, and (d) Agency Coordinators.

3.1.1 Interagency Coordination Committee

An Interagency Coordination Committee will be established to provide executive-level interaction and to function as a management board or informal board of directors in considering fiscal matters and program planning under this MOA.

This committee will be jointly chaired by the Agency Coordinators and will meet annually. Membership on the committee will be composed of representatives from mutual interest areas from each party. The committee will have the authority to establish and direct subcommittees and working groups to conduct specific activities necessary to carry out the following committee functions:

- (1) Provide a coordination mechanism for exchanging appropriate budgets and programs and multiyear plans of the two parties;
- (2) Provide effective ways for technology transfer and exchange of data, information, and program results of mutual interest; and
- (3) Arrange for cooperation and support in the conduct of programs of mutual responsibility and interest.

3.1.2 Project Managers

Project Managers will be designated for all individual projects undertaken pursuant to this MOA. The Project Managers will be responsible for the technical and managerial oversight of the projects.

3.1.3 Program Coordinators

Program Coordinators may be established to develop, coordinate, and oversee projects to be undertaken in program areas of mutual interest such as land, air, water, or waste. The Program Coordinator either

shall oversee the activities of Project Managers who are responsible for projects in selected program areas or shall act as and be the Project Manager.

3.1.4 Agency Coordinators

Each party shall have an Agency Coordinator to provide the day-to-day coordination and liaison between the parties during the implementation and performance of this MOA and to oversee the activities of their agencies' respective Project Managers and Program Coordinators. For TVA, the Manager of the Environmental Quality Staff shall be the Agency Coordinator for all activities under this MOA. For EPA, the Director of the Office of Federal Activities shall be responsible for administration of this MOA and the Regional Administrator for the EPA Region in which activities under this MOA are proposed shall be the Agency Coordinator and shall be responsible for implementing MOA activities in the region.

The Agency Coordinators shall have the following authority and responsibilities:

- (1) To serve as the principal and official points of communication between the two parties relating to management and/or policy matters for this MOA;
- (2) To ensure that subagreements prepared for approval are in accordance with the terms and conditions of this MOA;
- (3) Respecting each EPA Region, to ensure that a complete inventory list of all subagreements entered into under this MOA is accurately and currently maintained. The list should include the duration, funds transferred, contingent obligations, if any, reports, and other relevant information for each subagreement; and
- (4) To assist in the resolution of any dispute that may arise in the implementation of this MOA or any subagreement.

3.2 Program Planning and Budget Coordination

Each party desires to keep the other informed of its annual program and fiscal planning, so that the environmental activities of both including research, development, and demonstration in areas of mutual interest are coordinated in such a manner as to be complementary and to avoid unnecessary and counterproductive duplication of expenditures in terms of monetary, physical, and manpower resources. While each party is responsible for its own annual budget and program planning, the parties will consult with each other and exchange information to the extent appropriate, including preliminary drafts of budgets and program planning documents, so that each party will know what the other is planning and budgeting for in areas of mutual interest.

3.3 Stationing of Personnel

TVA and EPA agree that it may be mutually beneficial in achieving the objectives of this MOA for personnel of one party to be stationed at facilities of the other party for a period of time.

Stationed employees shall not be considered to be employees, agents, or representatives of the host party, but shall remain for all purposes employees of their regular employers, which shall continue to be responsible for the employees' salary, benefits, and other compensation, including any relocation or per diem costs, in accordance with their employer's established policies and procedures. Employees stationed at facilities of the host party shall conform to the health, safety, and security regulations of the host party.

3.4 Liability

A. TVA Facilities

- (1) In the event EPA, its employees, agents, or contractors utilize TVA facilities or equipment in the performance of work covered by a subagreement issued under this MOA, EPA will notify TVA's Program or Project Manager for the particular subagreement in advance of each visit to the TVA facility and will furnish TVA a list of all personnel who will be involved in the work.
- (2) The installation of any equipment by EPA on TVA premises is at the sole risk of EPA, and TVA makes no representation as to the condition or suitability of its facilities for the purpose(s) intended by EPA.
- (3) As between TVA and EPA, EPA assumes full responsibility for any and all liability and claims arising out of or in any way connected with the presence of its employees or agents on TVA facilities or with the actions or nonactions of its agents and employees under this MOA and any subagreement.
- (4) EPA agrees that its employees, contractors, or agents will conform to all applicable TVA hazard control and safety regulations at TVA facilities.
- (5) TVA assumes no liability to EPA, its agents, employees, or contractors, or any third person for any damages to, or theft of, property or for personal injuries, including death, which might arise out of or in any way be connected with any activity undertaken through this MOA or any related

subagreements. It is expressly understood that EPA shall have no responsibility or liability for claims arising out of the sole negligence of TVA, or TVA's employees, contractors, or agents.

- (6) The Federal Tort Claims Act (FTCA) is the exclusive remedy for tort claims against EPA and its employees. Under the FTCA, EPA is not responsible for the negligence of its independent contractors. EPA agrees that its contractors who perform work under the terms of this MOA or any related subagreements shall carry adequate liability insurance.

B. EPA Facilities

- (1) In the event TVA utilizes EPA facilities or equipment in the performance of work covered by a subagreement issued under this MOA, TVA will notify EPA's Program or Project Manager for the particular subagreement in advance of each visit to the EPA facilities and will furnish EPA a list of all personnel who will be involved in the work.
- (2) The installation of any equipment by TVA on EPA facilities is at the sole risk of TVA, and EPA makes no representation as to the condition or suitability of its premises for the purpose(s) intended by TVA.
- (3) As between EPA and TVA, TVA assumes full responsibility for any and all liability and claims arising out of or in any way connected with the presence of its employees, contractors, or agents on EPA premises or with the actions or nonactions of its employees, contractors, or agents under this MOA and any subagreement.
- (4) TVA agrees that its employees, contractors, or agents will conform to all applicable EPA hazard control and safety regulations at EPA facilities.
- (5) EPA assumes no liability to TVA, its agents, employees, or contractors, or any third person for any damages to, or theft of, property or for personal injuries, including death, which might arise out of or in any way be connected with any activity undertaken through this MOA or any related subagreements. It is expressly understood that TVA shall have no responsibility or liability for claims arising out of the sole negligence of EPA, or EPA's employees, contractors, or agents.

3.5 Third Persons

TVA and EPA expressly assent that by this MOA they make no promises to any other person; and nothing in this MOA should be construed to give

rise to a third-person claim in contract, tort, or otherwise. The parties expressly assent that no third person is an intended beneficiary of this MOA and the benefits, if any, of this MOA are merely incidental with respect to third persons.

4.0 DURATION AND CHANGES

4.1 Term of Memorandum of Agreement

The term of this MOA shall expire on December 14, 1994, except as otherwise renewed, modified, or terminated in accordance with the provisions herein. Paragraphs 3.4 and 3.5 will remain in force even when the agreement is terminated with respect to any activities conducted by the parties prior to termination.

4.2 Modifications

This MOA and any subagreement issued hereunder may be modified at any time by the mutual written agreement of TVA and EPA, obtained in accordance with paragraphs 2.2 and 3.1.4.

4.3 Termination

This MOA, or any subagreement issued hereunder, may be terminated by ninety (90) days' written notice, at any time, by either party with or without cause; provided, however, that such notice and termination shall not relieve the party funding any work under any such subagreement from its obligations to reimburse the other party for costs or expenditures incurred by the nonterminating party in accordance with an applicable subagreement prior to receipt of the termination notice. In the event of termination, the parties shall take reasonable steps to preserve the work or results of any ongoing activities.

5.0 DOCUMENTATION AND REPORTING REQUIREMENTS

5.1 Milestone Reports

Milestone reports shall be prepared for those milestones for which such a report has been specified in the subagreement. The substance, format, and due date of this report shall be delineated in the subagreement.

5.2 Final Reports

A final report shall be prepared for each subagreement (or for each distinct project within a subagreement where several projects are

included). A mutually suitable due date for final report(s) shall be specified in each subagreement. The final report shall contain all useful information acquired in the performance of the work accomplished and shall present all significant results with conclusions and recommendations derived therefrom.

6.0 PUBLICATION AND RELEASE OF INFORMATION

6.1 In General

Subject only to the conditions and restrictions set forth below, either party may publish or release information about any MOA activities. Appropriate credit shall be given to the role of each agency in such information and reports.

6.2 Confidential and Proprietary Information

In order (1) to prevent the disclosure of information requested to be kept confidential or proprietary by third parties or the parties or prohibited from disclosure by Federal law and (2) to protect possible patent and invention rights of the parties or third persons, potentially sensitive information shall be reviewed by Project or Program Managers who shall seek advice of their respective legal counsels as appropriate. The initial receiver of potentially sensitive information shall notify in writing the other party's Agency Coordinator so that inadvertent disclosure will not be made by the other party or its agents. Each party shall use its best efforts to secure and prevent the release of confidential or proprietary information consistent with its policies and procedures and Federal law; provided, however, that each party may disclose such information to the other if necessary to conduct activities under this MOA or a subagreement. In no event shall either party or their respective employees or agents be liable to the other or any third party for the disclosure of any such information.

6.3 Advance Copies

Copies of any publications prepared or contributed to by a party utilizing the results of research under a subagreement and all press releases prepared by a party regarding this MOA or any subagreement will be forwarded to the other party for review prior to public release or presentation.

6.4 Right to Dissent

In the event the parties fail to agree as to the interpretation of research results, either party may publish its data and conclusions, after due notice and forwarding of advance copies as provided in

paragraph 6.3 hereof. In such instances, the party publishing such differing viewpoints will duly credit the cooperation of the other party, but will assume full responsibility for any statements on which there is a difference of opinion.

7.0 FUNDING AND ACCOUNTABILITY

7.1 Payments Under Subagreements

Unless otherwise provided in individual subagreements, each party will fund its own projects. In the event of joint funding of a project(s), the amount and timing of funding shall be as specified in the individual subagreements. Funding for projects to be performed by one party at the expense of the other will be on a cost-reimbursable basis.

7.2 Final Accounting

In the event of jointly funded project(s), or project(s) performed by one party at the expense of the other party, the expending party shall furnish the other such accounting information for funds expended as it routinely generates or requires of others. Upon request, each party shall furnish the other interim accounting information, as it routinely generates or requires of others, for budget purposes. Charges by the performing party will be on the basis of actual direct and indirect cost.

8.0 GENERAL PROVISIONS

8.1 Environmental Review

TVA and EPA will review each subagreement to determine how any activity may affect the environment. Where preparation of any environmental impact statement or assessment is mutually agreed to be necessary, the lead party in accordance with its procedures shall prepare any required document. Any costs to be borne by the nonlead party related to environmental reviews under this paragraph shall be delineated in each interagency agreement and shall be considered expenditures for accounting purposes under provision 7.0.

8.2 Patents

It is recognized that TVA and EPA each have patent policies regarding the ownership of inventions, and the application of these policies will depend on the nature of the cooperative effort being undertaken including the source of funding and the relative importance of the effort to the statutory obligations of TVA and EPA. Accordingly, appropriate patent provisions will be included in each specific subagreement in a manner which takes into consideration each party's responsibilities.

8.3 Capital Equipment, Real Property, and Facilities

Each subagreement shall delineate, where appropriate, the responsible party, the applicable procedures and policies, and the final disposition for all capital equipment, real property, and facilities required to be purchased to carry out the interagency agreement.

8.4 Congressional Interest

No member of or delegate to Congress or Resident Commissioner, or any officer, employee, special Government employee, or agent of TVA or EPA shall be admitted to any share or part of this agreement or to any benefit that may arise therefrom unless the agreement be made with a corporation for its general benefit or a unit of Government contracting for the public's general benefit, nor shall EPA offer or give, directly or indirectly, to any officer, employee, special Government employee, or agency of TVA, any gift, gratuity, favor, entertainment, loan, or any other thing of monetary value, except as provided in 16 C.F.R. § 1300.735-12 or -34. Breach of this provision shall constitute a material breach of this agreement.

8.5 Funding

Neither TVA nor EPA is in any way obligated to expend funds in excess of those authorized or available and determined by each in its sole judgment to be sufficient to finance any undertaking.

8.6 Technical Assistance

TVA and EPA will provide advice and technical assistance as requested by the other as each determines in its sole judgment that it is in a position to provide.

8.7 Agency

Neither TVA nor EPA will be deemed the agent for the other for any purpose unless otherwise expressly agreed in writing.

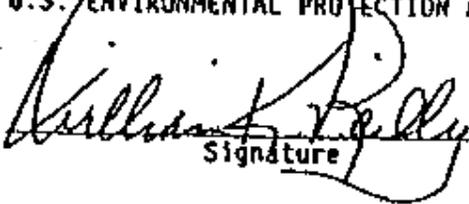
8.8 Permits

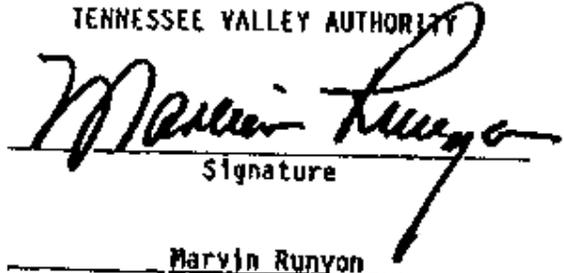
Unless otherwise specified in the subagreement, the lead party has responsibility for securing all applicable licenses, permits, or approvals.

IN WITNESS WHEREOF, the parties have hereto subscribed their names as of the day and year written below.

U.S. ENVIRONMENTAL PROTECTION AGENCY

TENNESSEE VALLEY AUTHORITY


Signature


Signature

William K. Reilly
Name

Marvin Runyon
Name

Administrator
Title

Chairman
Title

Jan 19, 1990
Date

JAN 9 1990
Date

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