



DEFERRAL AGREEMENT Broad Brook Mill Site

This is a Deferral Agreement (“Agreement”) between the U.S. Environmental Protection Agency (“EPA”) and the State of Connecticut Department of Environmental Protection (“DEP” or the “State”) (hereinafter EPA and DEP are collectively referred to as the “Parties”) regarding response actions which shall be taken in response to the release or threat of release of hazardous substances at the Broad Brook Mill Site (the “Site”), formerly known as the Millbrook Condominiums Site, located in East Windsor, Connecticut. This Agreement adheres to the “Guidance on Deferral of NPL Listing Determinations While States Oversee Response Actions,” OSWER Directive 9375.6-11 (May 3, 1995) (“Deferral Guidance”).

I. Background

EPA has determined that there has been a release or threat of release of hazardous substances at or from the Site. A Hazard Ranking System (“HRS”) package was developed, and the Site was proposed to the Superfund National Priorities List (“NPL”) (65 Fed. Reg. 75215 (December 1, 2000)) pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (“CERCLA”), 42 U.S.C. §§ 9601 *et seq.* Prior to the proposed listing of the Site, DEP was the lead agency. On March 26, 1996, the Commissioner of DEP issued Order No. SRD-069 to twelve (12) Respondents ordering them to investigate and remediate the Site. On September 30, 1996, the Commissioner of DEP entered into a consent order with Respondent United Technologies Corporation, Hamilton Standard Division (now also known as, and hereinafter referred to as, “Hamilton Sundstrand Corp.”) whereby Hamilton Sundstrand Corp. conducted an investigation which characterized the extent and degree of soil, surface water and ground water pollution on and emanating from the Site. DEP and Hamilton Sundstrand Corp. shared the results of that investigation with the Town of East Windsor, the owners of the Site, and other interested parties at public meetings. On September 3, 1998 and on April 4, 1999, the Commissioner of DEP entered into Consent Orders Nos. SRD-104 and SRD-104 Modified with Aluminum Company of America, John Bartus and James R. Testa d/b/a Broad Brook Center Associates, and Hamilton Sundstrand Corp. (the “Participating Respondents”), wherein the Participating Respondents agreed to fund DEP’s purchase of twenty-one (21) residential condominium units and these units’ mill building and associated common property located on the Site. Agreement, however, could not be reached between DEP and the owners of the Site on the purchase of the twenty-one (21) units and these units’ mill building and associated common property. On September 23, 1999, the Commissioner of DEP revoked Order No. SRD-069. Accordingly, with a letter of support from the Governor of Connecticut, EPA proposed the Site for listing to the NPL. Following the proposed listing of the Site, DEP and Hamilton Sundstrand Corp. have agreed to provide for the Site’s long-term cleanup in a manner that is acceptable to the owners of the Site, the community, and EPA. EPA, DEP, Hamilton Sundstrand Corp., and the owners of the Site contemplate that the ownership interests of the twenty-one (21) condominium units and these units’ mill building and associated common property will be transferred to allow for the relocation of the mill building residents in order to facilitate the cleanup of the Site as part of the deferral process.

II. Purpose

The purposes of this Agreement are: to outline a mechanism to ensure a prompt CERCLA-protective cleanup of the Site; to define the level of DEP and EPA involvement necessary to ensure adequate remediation of the Site; and to defer the process of finalizing the listing of the Site on the NPL in favor of a cleanup under the authority of the State's statutory, regulatory and administrative provisions. In accordance with this Agreement, EPA intends to defer further consideration of the Site for listing on the NPL while DEP requires Hamilton Sundstrand Corp. to conduct response actions funded by Hamilton Sundstrand Corp. and DEP. Once the necessary response actions at the Site are successfully completed, EPA will have no further interest in finalizing the listing for the Site, unless EPA receives new information of a release or potential release that poses a significant threat to human health or the environment which is not adequately addressed under State authority. In addition, when DEP certifies that the response actions are completed to the satisfaction of EPA, and provided that this Agreement has not been terminated as provided in Section VII. below, EPA will withdraw the proposed NPL listing of the Site.

III. State Authority and Capacity to Ensure a CERCLA-Protective Cleanup

The State has adequate state authority under the Title 22a of the Connecticut General Statutes and the Connecticut Remediation Standard Regulations (Sections 22a-133k-1 through 22a-133k-3 of the Regulations of Connecticut State Agencies) to ensure that response actions at the Site are carried out and that these actions are protective of human health and the environment. The State confirms through this Agreement that it has sufficient capabilities, resources, and expertise to ensure that a CERCLA-protective cleanup will be conducted, and to coordinate with EPA, other interested agencies, and the public on the various phases of such cleanup.¹ It is expected that the Connecticut Remediation Standard Regulations are CERCLA-protective at this Site. On or about the date of entry of this Agreement, the State has issued or will issue an enforceable Consent Order (Consent Order No. SRD-154) (hereinafter "Consent Order" or "enforceable Consent Order," attached to this Agreement as Appendix A), whereby Hamilton Sundstrand Corp. will perform, among other things, the remedial action at the Site.

IV. Site Eligibility

A. *State Interest*—The State has requested that the process of finalizing the NPL listing of the Site be deferred while the long-term remedial action is addressed under the authority of the State's statutory, regulatory and administrative provisions.

¹The criteria which define a "CERCLA-protective cleanup," as used in this Agreement, and in accordance with the Deferral Guidance, are set forth in Section V.A.4. below.

B. CERCLIS Listing and NPL Caliber—The Site is included in the CERCLIS inventory (CERCLIS ID No. CT0002055887) and has been assessed and scored for listing on the NPL. After an HRS package was developed, on December 1, 2000, the Site was proposed to be added to the NPL.

C. Viable and Cooperative PRPs—As discussed in Section III. above, Hamilton Sundstrand Corp. has entered into an enforceable Consent Order with the State to perform the remedial action (including providing for operation and maintenance) at the Site. In addition, Hamilton Sundstrand Corp. has agreed to reimburse EPA for past response costs and all future response costs related to this Site (CERCLA Section 122(h)(1) Agreement for Recovery of Past and Future Response Costs, U.S. EPA Region 1 Docket No. CERCLA-01-2003-0014, attached to this Agreement as Appendix B).

D. Timing—While a site-specific HRS package was developed and the Site has been proposed for listing on the NPL, the listing process should nonetheless be halted because the State has provided a compelling argument for a cleanup under the authority of the State's statutory, regulatory and administrative provisions. The State has provided adequate assurance that the threats to public health and the environment at the Site will be addressed sooner than, and at least as quickly as, EPA would expect to respond. Moreover, the performance of the remedial action under State authority will ensure the timely and effective relocation of residents from the twenty-one (21) condominiums located on the Site. Because the Parties contemplate the transfer of the Site properties as part of the deferral process, this Agreement shall become effective upon the transfer of all interests in the Site, including ownership interests of the twenty-one condominium units and these units' mill building and associated common property.

E. Community Acceptance—The State and EPA have taken appropriate steps to inform the affected community and other affected parties of this deferral. The State and EPA have explained to the community and other parties any differences between a response action under this Agreement and a response conducted under the CERCLA and the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"), 40 C.F.R. Part 300. In addition, the State and EPA have documented their interactions with the community and have determined that sufficient community acceptance exists to support this decision to defer the Site's NPL listing.

V. Terms and Conditions

A. Roles and Responsibilities of the Lead Agency—The State is the lead agency to provide for a timely and CERCLA-protective cleanup and to support the public's right of participation in the decision-making process. As the lead agency, DEP has the following responsibilities:

1. DEP shall enforce Consent Order No. SRD-154, which requires Hamilton Sundstrand Corp. to prepare a summary of the Site investigation (as described in Section I. above), evaluate the options for remediating all releases at the Site in accordance with the Connecticut Remediation Standard Regulations and applicable or relevant and appropriate Federal and State requirements, and propose a preferred remedial action plan for the Site. Consent Order No. SRD-154 also requires Hamilton Sundstrand Corp. to implement, operate, monitor and maintain the remedy approved by DEP.

2. DEP shall require Hamilton Sundstrand Corp. to submit a copy of all documents and notifications required by Consent Order No. SRD-154 simultaneously to EPA.

3. DEP shall provide EPA with an opportunity for review and comment on all documents required by Consent Order No. SRD-154 prior to the approval of such documents.

4. DEP shall utilize its own statutory and regulatory authorities to set standards for the remedial action at the Site. The Parties agree to work cooperatively to obtain a response action that will be substantially similar to a response required under CERCLA. More specifically, the response action will meet the following criteria which define a CERCLA-protective cleanup:

a. The response action will be considered CERCLA-protective if it is protective of human health and the environment, as generally defined by a 10^{-4} to 10^{-6} risk range for carcinogens, a hazard index of 1 or less for non-carcinogens, and ecological risk requirements as defined by RSCA § 22a-133k-2(i), and will be reliable over the long term.

b. To be considered CERCLA-protective, the remedy selected must comply with all applicable Federal and State requirements and provide a level of protectiveness comparable to relevant and appropriate Federal requirements for the Site.

EPA will provide assistance to DEP in identifying applicable or relevant and appropriate Federal requirements, including interpreting CERCLA requirements, as described in Section V.B.1. below. DEP retains the responsibility and discretion to identify and comply with applicable or relevant and appropriate State requirements, including those that are more stringent than Federal requirements.

5. DEP shall ensure community participation in a manner comparable to the public involvement required under CERCLA. DEP shall ensure that the following actions are undertaken:

a. DEP shall ensure that the affected community, EPA and other interested parties will be provided adequate notice of the proposed remedial action plan.

b. DEP shall ensure that the proposed remedial action plan will be described and presented for comment at a public hearing.

c. DEP shall make available all documents in support of the proposed remedial action plan at DEP's offices and at a location near the Site.

d. DEP shall give the public an opportunity to provide comments on the proposed remedial action plan within at least thirty (30) calendar days of the public notice of the availability of the administrative record.

e. DEP shall consider, and prepare a response to, significant comments received on the proposed remedial action plan within sixty (60) days after the close of the public comment period.

6. DEP shall ensure that the approved remedial action plan is performed by Hamilton Sundstrand Corp. in accordance with the schedule and conditions set forth in the Consent Order (attached to this Agreement as Appendix A).

7. DEP has the responsibility for communications with Hamilton Sundstrand Corp. concerning its performance under the Consent Order.

8. DEP shall ensure that, every five years following the initiation of the remedial action work, if the remedial action results in hazardous substances, pollutants, or contaminants remaining at the Site above levels that allow for unlimited use and unrestricted exposure, Hamilton Sundstrand Corp. prepare a report on whether the remedy is protective of human health and the environment. The report shall examine the following three questions:

- a. Is the remedy functioning as intended by the decision documents?
- b. Are the exposure assumptions, toxicity data, cleanup levels, and remedial action objectives used at the time of the remedy selection still valid?
- c. Has any other information come to light that could call into question the protectiveness of the remedy?

The sole purpose of the report is to evaluate the implementation and performance of the remedy in order to determine if the remedy is or will be protective of human health and the environment; the evaluation of newly available remedial technologies for possible implementation is not required. If the remedy is determined to be not protective, DEP shall ensure that Hamilton Sundstrand Corp. implement steps to make the remedy protective of human health and the

environment.

9. Once DEP considers the remedial action to be complete, DEP shall certify to EPA and the affected community that the remedial action, performed by Hamilton Sundstrand Corp. pursuant to Consent Order No. SRD-154, has been successfully completed and has achieved the intended cleanup levels. As part of the certification, DEP shall submit to EPA response action completion documentation substantially similar to that described in the January 2000 OSWER Directive “Close Out Procedures for National Priorities List Sites” (OSWER Directive 9320.2-09A-P).

B. Roles and Responsibilities of the Support Agency—EPA is the support agency for the remedial action at the Site. As the support agency, EPA has the following responsibilities:

1. EPA has provided DEP and Hamilton Sundstrand Corp. with a list of all applicable or relevant and appropriate Federal requirements and other criteria, advisories, or guidance to be considered.
2. EPA shall attend all public meetings and provide comments on documents required to be submitted under the Consent Order pursuant to Section V.E.
3. EPA may request, and shall receive, from DEP copies of other reports, data or documentation, as it deems appropriate, under this deferral.
4. Upon receiving certification from the State that the remedial action, performed by Hamilton Sundstrand Corp. pursuant to Consent Order No. SRD-154, has been successfully completed and has achieved the intended cleanup levels, and upon determining that the cleanup is CERCLA-protective, EPA shall withdraw the proposed NPL listing of the Site in accordance with NPL deletion criteria described in the January 2000 OSWER Directive “Close Out Procedures for National Priorities List Sites” (OSWER Directive 9320.2-09A-P). A site may be deleted from the NPL when no further response is appropriate, i.e., when all removals and remedial actions are completed. Operation and Maintenance (“O&M”) is not defined as a response by the NCP; therefore, a site in O&M can be deleted.
5. Based upon reports provided by Hamilton Sundstrand Corp. or DEP, if a sufficient showing has been made, EPA shall make a determination that no hazardous substances, pollutants, or contaminants remain on site above levels that allow for unlimited use and unrestricted exposure.

C. Points of Contact—Whenever, under the terms of this Agreement, written notice is required to be given or a report or other document is required to be sent or submitted by one Party to the other, it shall be directed to the Project Coordinators at the addresses specified

below, unless those individuals or their successors give notice of a change to the other Party in writing.

EPA Project Coordinator: Anni Loughlin
Remedial Project Manager
Office of Site Remediation and Restoration
U.S. Environmental Protection Agency
1 Congress Street, Suite 1100 (HBT)
Boston, MA 02114-2023

DEP Project Coordinator: Maurice Hamel
CT DEP
Waste Management Bureau
Remediation Section
79 Elm Street
Hartford, CT 06106-5127

D. Documentation—DEP will report to EPA at least annually on whether the Terms and Conditions in this Agreement are being met, including the status of the process and any anticipated delays in meeting the schedule. DEP will report to EPA at least semi-annually on any difficulties it is having meeting the Terms and Conditions of this Agreement.

E. Coordination/Review Processes—

1. If EPA chooses to comment on any document required to be submitted by Hamilton Sundstrand Corp. under the Consent Order, EPA shall submit comments to DEP within fifteen (15) working days of receipt of the document unless another period is agreed to by the Parties.

2. DEP shall, within fifteen (15) working days of receipt of EPA's comments, provide in writing to EPA a rationale whenever EPA's comments are not included in the comments provided to Hamilton Sundstrand Corp. EPA's review comments submitted to DEP shall include disclaimer language that specifies that EPA's review and comment on documents does not constitute EPA concurrence on any and all points contained in the document and EPA concurrence is not a prerequisite to DEP approval of any or all documents submitted pursuant to the Consent Order.

F. Natural Resource Trustees—By a letter dated August 31, 2001, DEP notified the U.S. Department of Commerce's National Oceanic and Atmospheric Administration and the U.S. Department of Interior (hereinafter collectively referred to as the "Trustees"), as Federal trustees for natural resources of discharges or releases that are injuring or may injure natural resources

related to the Site, of the proposed deferral. On or about the date of entry of this Agreement, the Trustees, the State, United Technologies Corporation, Hamilton Sundstrand Corp., and the Aluminum Company of America (now also known as ALCOA) entered into a Tolling Agreement for Broad Brook Mill Site, East Windsor, Connecticut, in order to toll any statute of limitations with respect to actions for natural resource damages.

VI. Effect of Agreement

EPA recognizes that, on or about the date of entry of this Agreement, DEP has issued or will issue an enforceable Consent Order to remediate the Site with the consent of Hamilton Sundstrand Corp. who may be liable, under CERCLA, for the costs of the response actions taken and to be taken at the Site. This Agreement is intended to benefit only DEP and EPA. It extends no benefits or rights to any party, including potentially responsible parties, not a signatory to this Agreement.

Notwithstanding any provision of this Agreement, EPA and the State retain all authority and reserve all rights to take any and all response actions authorized by law.

The State shall not seek reimbursement from the Hazardous Substance Superfund, established by 26 U.S.C. § 9607, for expenses incurred under this Agreement, nor shall the State seek credit for any state cost-share requirement for any remedial action under 40 C.F.R. §§ 35.6285 & 300.510 for any response costs associated with this Site.

VII. Modification and Termination

This Agreement may be modified at any time upon agreement of the Parties. Minor modifications, such as a delay to the schedule for performance which is not protracted, may be adjusted by the joint authority of the Project Coordinators without a formal agreement. Changes that significantly alter the Terms and Conditions of this Agreement shall necessitate an agreement in writing by the signatories of this Agreement or their successors.

If, at anytime during the performance of or upon completion of the response action, EPA determines that the response is not CERCLA-protective as defined in Section V.A.4. above, is unreasonably delayed, or does not adequately address the affected community's concerns, EPA may terminate this Agreement, after thirty (30) days written notice to the State. EPA agrees to meet with the State to discuss termination within this thirty-day period with the goal of avoiding termination if possible. EPA may also terminate this Agreement if, after the State has used Best Efforts to enforce the Consent Order, Hamilton Sundstrand Corp. fails to comply with the terms of the Consent Order. "Best Efforts" shall mean all necessary actions, including appropriate legal action, taken by the State to enforce the Consent Order. In addition, EPA may terminate this Agreement and implement an emergency or time-critical response action without thirty (30)

days notice to the State if such actions are determined necessary. The State may choose at any time, after thirty (30) days written notice to EPA, to terminate this Agreement for any reason.

If, prior to the withdrawal of the proposed NPL listing of the Site, the response action is determined by EPA not to be CERCLA-protective upon termination of this Agreement, then EPA will consider taking any necessary response actions pursuant to CERCLA, including compelling PRPs to perform response actions, and continuing the Federal rule-making process for finalizing listing of the Site on the NPL. EPA and the State will coordinate efforts to notify the community and PRPs of the termination of this Agreement. At EPA's request, the State will provide all information in its possession regarding the Site to EPA.

This Agreement will terminate upon EPA's determination that no hazardous substances, pollutants, or contaminants remain on site above levels that allow for unlimited use and unrestricted exposure.

In addition, EPA and the State may terminate this Agreement upon mutual consent.

VIII. Effective Date

If any or all interests in the Site, including the ownership interests of the twenty-one condominium units and these units' mill building and associated common property, fail to be transferred by September 1, 2004, then this Agreement is voidable at the sole discretion of any Party and the terms of this Agreement may not be used as evidence in any litigation concerning any of the Parties. Should the transfer of all interests in the Site be completed subsequent to the date referenced herein, the right of any Party to void this Agreement shall expire upon the completion of such transfer.

Following the undersigned signatures of EPA and State representatives on this Agreement, the effective date of this Agreement is the date of transfer of all interests in the Site, including the ownership interests of the twenty-one condominium units and these units' mill building and associated common property. DEP shall ensure that Hamilton Sundstrand Corp. provide it and EPA with copies of the deeds evidencing the transfer of all interests in the Site.

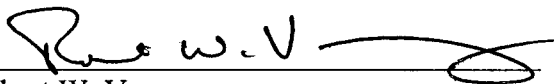
IX. Signatories

Each undersigned representative of the U.S. Environmental Protection Agency and the State of Connecticut Department of Environmental Protection certifies that he or she is authorized to enter into the terms and conditions of this Deferral Agreement and to execute and bind legally such Party to this document.

THE UNDERSIGNED PARTY enters into this Deferral Agreement regarding the Broad Brook Mill Site.

FOR THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

Date: 12-8-03

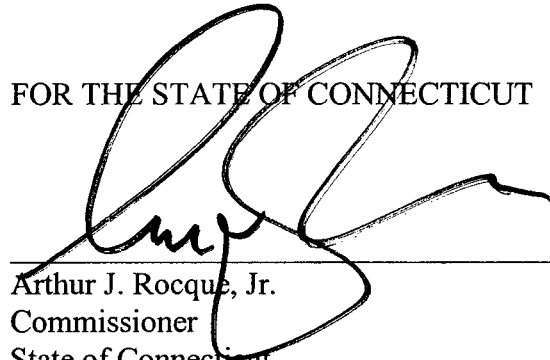


Robert W. Varney
Regional Administrator
EPA Region 1—EPA New England
U.S. Environmental Protection Agency
1 Congress Street, Suite 1100 (RAA)
Boston, MA 02114

THE UNDERSIGNED PARTY enters into this Deferral Agreement regarding the Broad Brook Mill Site.

FOR THE STATE OF CONNECTICUT

Date: December 3, 2003



Arthur J. Rocque, Jr.
Commissioner
State of Connecticut
Department of Environmental Protection
79 Elm Street
Hartford, CT 06106

Appendix A

Appendix B