

**FIRST MODIFICATION  
OF THE  
MEMORANDUM OF UNDERSTANDING  
AMONG**

**the State of Michigan,  
acting through the Department of Environmental Quality,  
the Department of Natural Resources and the Attorney General;  
the United States Department of the Interior,  
acting through the Fish and Wildlife Service;  
and  
the United States Department of Commerce,  
acting through the National Oceanic and Atmospheric Administration**

**REGARDING NATURAL RESOURCE DAMAGE ASSESSMENT  
AND RESTORATION FOR THE**

**ALLIED PAPER, INC./PORTAGE CREEK/  
KALAMAZOO RIVER SUPERFUND SITE**

**FIRST MODIFICATION**  
**MEMORANDUM OF UNDERSTANDING**

This First Modification of the Memorandum of Understanding (First Modification) regarding the Natural Resource Damage Assessment and Restoration for the Allied Paper, Inc./Portage Creek/Kalamazoo River Superfund Site is made effective upon the latest date of execution by and between the State of Michigan (State) acting through its co-trustees for natural resources, namely the Director of the Michigan Department of Environmental Quality (MDEQ), the Director of the Michigan Department of Natural Resources (MDNR), and its Attorney General (MAG), respectively; the United States Department of the Interior (DOI), acting through its representative, the Fish and Wildlife Service (Service), and the United States Department of Commerce (DOC), acting through its representative, the National Oceanic and Atmospheric Administration (NOAA); all of whom are collectively referred to as the "Parties". This First Modification may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument. By execution of this First Modification the Parties agree to be bound by all of the terms and conditions herein.

**RECITALS**

The Parties acknowledge the accuracy of the following facts and circumstances surrounding the making of this First Modification:

1. Effective October 10, 2003, the State of Michigan (State) acting through its then trustee and co-trustee for natural resources, namely the Director of the MDEQ and the MAG, respectively; the DOI, acting through its representative, the Service; and the DOC, acting through its representative, NOAA, all of whom are collectively referred to as Trustees, entered into a Memorandum of Understanding (MOU) to ensure the coordination and cooperation of the Trustees in the initiation of assessment activities to determine the existence and extent of injuries to natural resources resulting from releases of hazardous substances in the Allied Paper, Inc./Portage Creek/Kalamazoo River

Superfund Site (Site) and the application of any natural resource damages recovered toward the restoration, rehabilitation, replacement, and/or acquisition of equivalent natural resources.

2. Section II.B (Other Natural Resource Trustees) of the MOU provides that the MOU may be modified pursuant to Section X (Modification of Agreement) to include any other natural resource trustee designated pursuant to 40 C.F.R. Part 300 – Subpart G.

3. On September 29, 2004, pursuant to Section 311 of the Federal Water Pollution Control Act and Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), Governor Jennifer Granholm designated the Directors of the MDNR, the MDEQ, and the MAG to serve as co-trustees of the State's natural resources.

#### TERMS OF MODIFICATION

Accordingly, in consideration of the recitals set forth above, the Parties hereby agree that the MDNR shall be a member of the Trustee Council with full rights and responsibilities as set forth in the MOU. Except as provided in the First Modification, all other terms, agreements and conditions of the MOU shall continue in full force and effect.

IN WITNESS WHEREOF the Trustees, through their authorized representatives, have executed this Modification.

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Director, Michigan Department of Environmental Quality

  
\_\_\_\_\_  
Steven E. Chester

Date: 11-23-04

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Director, Michigan Department of Natural Resources

A handwritten signature in black ink, appearing to read "Rebecca A. Humphries", is written over a horizontal line.

Rebecca A. Humphries

Date: 11/19/04

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Attorney General, State of Michigan



Michael A. Cox

Date: 11/20/04

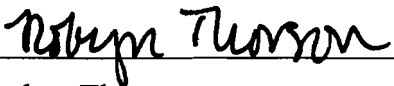
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Regional Director, Region 3, U.S. Fish and Wildlife Service

  
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Robyn Thorson

Date: NOV - 3 2004

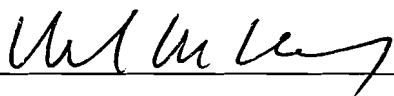
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Director, Office of Response and Restoration, National Ocean Service,  
National Oceanic and Atmospheric Administration

  
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David M. Kennedy  
Date: 2/14/05

NOS Agreement Code: MOA-2003-161 (Amend. #001)/6943