

MEMORANDUM OF AGREEMENT
AMONG
THE UNITED STATES DEPARTMENT OF THE INTERIOR,
THE NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION,
AND
THE NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION
REGARDING
NATURAL RESOURCE DAMAGE ASSESSMENT, RESTORATION
AND OTHER NATURAL RESOURCE TRUSTEE ACTIVITIES
FOR THE
AMERICAN CYANAMID SUPERFUND SITE

LOCATED IN BRIDGEWATER TOWNSHIP, SOMERSET COUNTY, NEW JERSEY

I. INTRODUCTION AND PURPOSE

This Memorandum of Agreement (hereinafter, “Agreement”) by and among the United States, acting by and through the United States Department of the Interior (“DOI”) and the National Oceanic and Atmospheric Administration of the United States Department of Commerce (“NOAA”), and the New Jersey Department of Environmental Protection (NJDEP) (collectively referred to hereinafter as “Trustees”), is entered into in recognition of the common interests of the Trustees in the assessment and restoration of the natural resources and associated services that have been injured, destroyed, or lost as a result of releases of hazardous substances at the American Cyanamid Superfund Site located in Bridgewater Township, Somerset County, New Jersey (“the Site”).

The Trustees agree that the scope of their coordination and cooperation under this Agreement may include, to the extent deemed appropriate by the Trustees, any and all hazardous substances (together with their sources) that are considered to impact or influence either Site-related injuries to natural resources or restoration actions related to such injuries.

The activities of the Trustees covered under this Agreement include, but are not limited to: 1) the assessment of natural resource damages for injury to, destruction of, or loss of natural resources and associated services resulting from releases at the Site; 2) the planning, design, implementation, maintenance and monitoring of actions to restore, replace, or acquire the equivalent of those natural resources and services; 3) any prosecution or settlement of natural resource damage (NRD) claims associated with the Site; and, 4) public outreach and information sharing related to any of the above activities of the Trustees related to the Site.

It is the express desire of the Trustees to achieve appropriate and meaningful restoration of the environment to compensate the public as expeditiously as possible. This Agreement provides a framework for the Trustees to conduct NRD assessment activities,

manage any NRD recoveries, and ensure that appropriate and meaningful restoration is accomplished in a timely manner.

II. AUTHORITY

The Trustees enter into this Agreement in accordance with the NRD provisions under Section 107(f) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), as amended, 42 U.S.C. §9607(f), and other applicable federal and state law and authority (hereinafter “other applicable law”) including, but not limited to, the National Oil and Hazardous Substances Contingency Plan (hereinafter “NCP”), as amended, 40 C.F.R. Part 300, and, to the extent appropriate and elected for use by the Trustees, the Natural Resource Damage Assessment Regulations, as amended, at 43 C.F.R. Part 11; the New Jersey Spill Compensation and Control Act, N.J.S.A. 58:10-23.11, et seq.; and the New Jersey Water Pollution Control Act, N.J.S.A. 58:10A-1, et seq. This Agreement is intended to cover natural resources as defined under Section 101(16) of CERCLA, as amended, 42 U.S.C. §9601(16), belonging to or managed by, controlled by, or appertaining to the Trustees under CERCLA and the NCP at the Site.

III. TRUSTEESHIP

Pursuant to Section 107(f)(2)(B) of CERCLA, as amended, 42 U.S.C. §9607(f)(2)(A); Executive Order No. 12580 (January 23, 1987); and Subpart G of the NCP, 40 C.F.R. Part 300.600, the Secretaries of the United States Department of the Interior and the United States Department of Commerce have been designated as Federal natural resource trustees for purposes of CERCLA, and otherwise have statutory responsibilities related to the natural resources injured, destroyed, or lost as a result of the release of hazardous substances at the Site.

The Secretary of the Interior has designated the Regional Director, United States Fish and Wildlife Service, Region 5, to act as the Authorized Official, and has delegated to the Regional Director authority to act as natural resource trustee under CERCLA for natural resource damages and restoration activities related to the Site.

The Secretary of Commerce has delegated the Department’s natural resource trustee authority under CERCLA to the Under Secretary of Oceans and Atmosphere of NOAA.

The Commissioner of the NJDEP is the Natural Resource Trustee charged with administering and protecting the State’s natural resources, and the NJDEP Office of Natural Resource Restoration represents the Commissioner in this capacity.

IV. ROLE OF OTHER AGENCIES

As determined to be appropriate by the Trustees, the Trustees will coordinate and seek input and counsel from other Federal agencies and departments, including, but not limited

to: United States Department of Justice; United States Environmental Protection Agency; and New Jersey Office of the Attorney General.

V. ESTABLISHMENT OF TRUSTEE COUNCIL

- A. Purpose. The Trustees recognize the importance of coordinating their efforts in order to effectively and efficiently address their respective natural resource concerns and responsibilities under applicable law. Accordingly, the Trustees, as specified in Section III, hereby agree to establish the American Cyanamid Superfund Site Trustee Council (hereinafter, "Trustee Council").
- B. Composition of the Trustee Council.
1. The Trustee Council shall consist of 3 voting members. Each Trustee, as specified in Section III, shall designate one primary voting representative to the Trustee Council and one alternate representative to act in the absence of the primary voting representative.
 2. In addition, the United States Department of Justice, the New Jersey Office of the Attorney General, and in-house counsel for each of the Trustees specified in Section III, may provide one delegate to serve in a legal/consultative role, who shall not be a member of the Trustee Council, but who shall nonetheless be able to attend all meetings of, or organized by, the Trustee Council.
 3. Each Trustee may, by written notification to all other Trustees, change the designated delegate and/or alternate.
 4. Other representatives of each voting Trustee Council member may attend meetings and participate in the deliberations of the Trustee Council.
 5. Trustee Council Chairperson. A representative of the Lead Administrative Trustee (LAT), as designated in Section VII below, will serve as the initial Chairperson for Trustee Council meetings. The Trustee Council Chairperson will be selected by a Resolution of the Trustee Council and the person, and their duties, can be changed by Resolution of the Trustee Council. The Trustees may agree to reassign or rotate the position of Chairperson as they deem appropriate. The Chairperson, with the assistance of the LAT, if the Chairperson is not a representative of the LAT, will be responsible for organizing and scheduling meetings, preparing proposed agendas, identifying in the agendas any issues to be voted upon at the proposed meeting, distributing agendas to the designated primary, alternate and legal representatives at least three (3) days in advance of meeting, barring any unforeseen and unavoidable circumstances, and presiding over convened meetings.
- C. Other Trustees. Any other natural resource trustee, who is not a Party to this Agreement, not one of the Trustees specified in Section III, and not, therefore, a voting member of the Trustee Council, and who has an interest with respect to any natural resource impacted or affected by the Site or related assessment and/or restoration activities shall not be precluded from participating in the Natural Resource Damage and Restoration (NRDAR) activities or any other

natural resource activities under this agreement. Other trustees may include, but may not be limited to; tribal governments, other federal agencies, or affected trustee agencies from other states. These other trustees may be added as Parties to this Agreement by Resolution of the Trustee Council, as deemed necessary and appropriate under applicable law by the Parties to this Agreement.

- D. Advisors and Consultants. As determined to be appropriate by the voting Trustees, or as required by applicable law, the voting Trustees will coordinate with, and seek the advisory participation of, appropriate federal and state agencies and departments, private parties, and the public.
- E. Communications. No later than twenty (20) working days after the execution of this MOA by a Trustee, the Trustees will notify the other Trustees of the names, addresses, e-mail addresses, telephone and facsimile numbers of the Trustee's primary, alternate and legal representatives to the Trustee Council.
- F. Meetings. Any Party may, upon reasonable notice through the Trustee Council Chairperson or the LAT, call a meeting of the Trustee Council to be conducted either in person, by telephone call or virtually by e-mail or web based communications. Members of the Trustee Council may invite their respective staff members and/or attorneys to attend. Members of the Trustee Council may also invite representatives of public, private or non-profit entities, representatives of other agencies or members of the public to its meetings unless the Trustee Council determines, in compliance with applicable law, that the subject of the meeting is privileged or that public disclosure of the Trustee Council's deliberations would prejudice the effectiveness of the Trustee Council and the Trustees' responsibilities under applicable law.
- G. Duties, Objectives, and Authority. In accordance with applicable law, the Trustees hereby authorize the Trustee Council to carry out the following duties:
 - 1. To undertake appropriate NRDAR activities at or related to the Site.
 - 2. To carry out studies, prepare reports and collect information that the Trustee Council determines are necessary and relevant to the NRDAR.
 - 3. To share information with and consult with each other as is determined to be appropriate and consistent with this Agreement.
 - 4. To coordinate activities undertaken pursuant to this Agreement with response, remedial or corrective actions carried out by other federal and state agencies, as appropriate.
 - 5. To develop, consider and evaluate plans for the restoration of injured natural resources.
 - 6. To support the Trustees' efforts to recover damages for injuries to natural resources from potentially responsible parties (PRPs).
 - 7. To plan, arrange for, oversee, undertake and/or monitor restoration.
 - 8. To authorize individual Trustees to contract as deemed necessary to achieve these objectives.
 - 9. To coordinate and/or carry out such other action as may be necessary and

appropriate to achieve the purposes and objectives of this Agreement and to address the NRD concerns and responsibilities of the Trustees.

10. To encourage public participation and involvement in a manner consistent with applicable law and regulation.
11. To facilitate the development of joint Trustee negotiation, settlement and/or litigation positions for recommendation to authorized Trustee officials and other decision makers.
12. To establish such bylaws, statements of Trustee Council policy or position, cost accounting procedures or cost reimbursement guidelines as are needed to further the purpose of this Agreement.
13. To fairly and reasonably allocate the efforts, costs and expenses of carrying out the objectives of this Agreement among the Trustees and make the best use of the resources, knowledge and expertise of the Trustees in order to accomplish the goals of this Agreement in a cost efficient and timely manner.
14. To pursue the implementation or funding of the restoration plan, and reimbursement of assessment costs, by the PRPs.

H. Decision Making.

1. The members of the Trustee Council shall have equal authority and all decisions under this Agreement shall be by unanimous agreement of all voting members of the Trustee Council, except as specifically provided in V(H)(2) below.
2. Where a Trustee has notified the Trustee Council of its intent to limit its involvement in NRDAR activities, including any aspect of the damage assessment, restoration planning, restoration implementation, oversight and monitoring activities, or any other specific upcoming decision of the Trustee Council, pursuant to V(H)(4), the Trustee may choose to abstain from the actions or decisions, in which case the Trustee Council's actions and/or decisions shall be deemed unanimous notwithstanding the abstention.
3. The Trustee Council members will conduct extensive good faith discussions directed toward obtaining unanimous agreement. In the event unanimous agreement cannot be reached, the dispute resolution procedures in Section VI below will govern.
4. The Trustees understand and acknowledge that each Trustee's duties and interests, although overlapping, may be sufficiently different that a Trustee may wish to bound or limit its involvement in certain aspects of the NRDAR process. In recognition thereof, to avoid delaying the work of the Trustee Council as a whole, and to maximize the efficiency of Trustee NRDAR activities, a Trustee may limit its involvement in aspects of the NRDAR process, or a specific decision or decisions of the Trustee Council, by notifying the Trustee Council primary, alternate and legal representatives in writing, and in a timely manner, of those NRDAR activities or decisions for which the Trustee would like to limit or end its participation.

VI. DISPUTE RESOLUTION

In the event of a dispute involving any decisions under this Agreement, the Trustee Council shall initially attempt to resolve the dispute through good faith discussions directed toward obtaining consensus among the Trustees involved in the dispute and the consensus of the Trustee Council as a whole. The Trustees agree that deliberations will focus upon the Trustees' mutual goals of the timely and appropriate recovery of natural resource damages from the PRPs and the timely and appropriate restoration of injured natural resources, rather than upon independent control or trusteeship over the affected natural resources and proposed restoration activities. If consensus still cannot be reached after good faith discussions, the matter shall be elevated to the next management level with each Trustee's agency for decision or further instructions. If consensus still cannot be reached, the matter shall be further elevated to the named Trustees who may expressly delegate their decision-making authority to a senior supervisory level designee for decision or further instructions. If necessary, the Trustees may establish other mechanisms by which disputes may be resolved. In the event of irreconcilable disputes, the disposition of funds recovered from PRPs shall be governed by Section XVI.F.2.e. below.

VII. LEAD ADMINISTRATIVE TRUSTEE

The Parties to this Agreement hereby designate NJDEP as the LAT for NRDAR actions related to the American Cyanamid Superfund Site. The designation of the LAT may be modified by Resolution of the Trustee Council and its duties can be changed by Resolution of the Trustee Council. The Trustees agree that the LAT's responsibilities shall include directing and coordinating Trustee NRDAR activities, maintaining an administrative record for the site, and any other trustee activities as authorized by the Trustee Council. The LAT shall fully coordinate its activities with and only act under the direction of the Trustee Council. The LAT may delegate any of its duties to another Trustee with the unanimous approval of the Trustee Council.

VIII. FUNDING

- A. PRP Funding. To the extent provided by law, each Trustee agrees to cooperate in the administration of any private funding source or sources that may become available to the Trustees from the PRPs or others. Such funds shall be administered through the Trustee Council in accord with the terms established pursuant to this Agreement.
- B. Trustee Agency Funds. Each Trustee also agrees to coordinate the expenditure of any funds that are or may become available to a Trustee,

except for funds for the reimbursement of documented damage assessment costs, with the other Trustees.

IX. ACTIVITIES CONDUCTED OR PAID FOR BY PRPs

The Trustee Council may enter into an agreement with the PRPs in which the PRPs agree to fund and/or conduct NRDAR activities. Such agreements shall specify the terms of the activity, monetary disbursement, and the PRPs participation. Any such Trustee Council/PRP agreement shall be consistent with the provisions set forth in Section VIII.A above.

X. COST ACCOUNTING AND REIMBURSEMENT

The Trustees shall establish and adopt damage assessment and restoration cost accounting and reimbursement guidelines that shall insure that recovered damages are spent only on reasonable and adequately documented costs. Each Trustee shall ensure that appropriate and reasonable practices for cost documentation, cost accounting, cost reimbursement, and expenditures are followed, in accord with applicable law.

XI. JOINT PURPOSE AND OVERLAPPING AUTHORITIES

The Trustees recognize that each of them has trusteeship, through their respective natural resource trustee delegations under CERCLA and other applicable federal and state law, over natural resources affected by the release of hazardous substances at the Site, and further recognize that the scopes of some of their respective trusteeships overlap.

XII. USE OF NATURAL RESOURCE DAMAGE RECOVERIES

The Trustees agree that any NRD recoveries, with the exception of recoveries to reimburse past damage assessment costs or to fund future administrative costs for trustee activities, obtained or received by the Trustees, individually or collectively, and any interest earned thereon, shall be jointly used to restore, replace, rehabilitate and/or acquire the equivalent of the natural resources which have been injured, destroyed, or lost as a result of releases of hazardous substances at the Site.

To the extent permitted by law, the Trustees agree that all NRD recoveries, with the exception of recoveries to reimburse past damage assessment costs or to fund future administrative costs for Trustee activities, obtained or received by the Trustees, either as a result of judgment or settlement in whole or in part of NRD claims brought against PRPs for the Site, shall be deposited in DOI's NRDAR interest-bearing account to be disbursed only for the purposes described in this Agreement and in accord with the provisions of this Agreement. The Trustees shall establish additional standards and procedures governing the joint use of all natural resource damages received by the Trustees including measures to limit the amount spent on restoration planning and administrative costs.

The Trustees agree that expenditures from the account should be managed in such a way to maximize restoration benefits and minimize post-settlement restoration planning and administrative costs.

XIII. PUBLIC PARTICIPATION

The Trustees agree that, to the extent consistent with the effective negotiation, settlement and/or litigation of their claims, and in accord with this Section of this Agreement and applicable federal and state law, they will endeavor to provide the public reasonable notice of, and invite public participation in, the NRDAR activities related to the Site at appropriate times and via appropriate means.

XIV. COORDINATION AND NOTIFICATION

- A. The Trustees recognize and agree that their interests in the development and recovery of claims for natural resource damages associated with the Site are related and have agreed to coordinate the development, negotiation and, if necessary, litigation of their claims and damages that arise out of the Site. Towards that end, the Trustees agree to notify and consult with each other concerning activities, events or decisions that may affect the NRDAR process or the recovery of natural resource damages for injuries to natural resources and associated services at the Site. The Trustees intend by this Agreement to communicate with each other on, among other things, the following:
1. Plans, proposals or actions related to damage assessment and/or restoration activities.
 2. Developments in negotiations or litigation with any PRPs.
 3. Any communications any Party may have, or anticipates having, with any PRP concerning the settlement or other resolution of any Party's claim for natural resource damages at or related to the Site.
 4. The Trustees recognize, however, that there may be situations such as bankruptcies, dissolutions or ability to pay settlements that resolve the NRD liability of a PRP in an action which one or more other Trustees are not a party to. If this occurs, the Trustee(s) involved will keep the other Trustee(s) informed about the status of the matter and will share information and documents to the extent possible.
- B. The Trustees shall provide information to each other concerning such matters as promptly as practicable, but not later than within ten (10) days of the receipt of the information, with the goal of enabling other Trustees to comment on any issues they deem significant. The Trustees further agree to provide copies of any agreements or other documents reflecting settlement or disposition of claims, including quasi-public claims, involving or related to natural resource injuries arising from or related to the Site, provided such documents are not privileged. If a Trustee is found to have failed to provide any of the above, for any reason, that Trustee shall no longer be a voting member of the Trustee Council unless all remaining Trustees request in writing within ten (10) days that such Trustee remain a Party to this Agreement.

XV. CONFIDENTIALITY

As a result of the release of hazardous substances at and from the Site, the Trustees have potential claims for damages and anticipate possible litigation with the PRPs. In furtherance of their common interests, the Parties to this Agreement have been meeting and will continue to meet to discuss matters of common interest, including the possibility of litigation by the Parties against the PRPs.

The Trustees recognize that, in order to effectively and efficiently negotiate or litigate their claims, their counsel, employees, and consultants may, at each Party's discretion, exchange documents and information including draft reports, analyses, opinions, conclusions, and advice prepared in anticipation of litigation, as part of settlement negotiations, and/or subject to attorney-client privilege, attorney work product privilege, law enforcement privilege, or other forms of privilege. The Trustees therefore hereby agree as follows:

- A. Except as provided by law or otherwise provided herein, the Trustees shall treat all designated privileged documents generated, and designated privileged communications by, between or among the Trustees as privileged attorney-client communications, attorney work product, law enforcement, or protected by other applicable privileges (or a combination thereof), and shall protect such documents and communications from disclosure to the maximum extent possible under applicable Federal and State law.
- B. A "designated privileged document" is one identified and labeled as confidential on its cover page or elsewhere as subject to one or more privileges or forms of immunity. A "designated privileged communication" is one that occurs with an expectation of confidentiality and includes, but is not limited to, communications between the Trustees' attorneys or their staff, agents, representatives, experts and/or consultants in anticipation of litigation or in furtherance of settlement negotiations, in the seeking or giving of legal advice, and/or in the context of law enforcement actions and/or pre-decisional government deliberations.
- C. The transmittal of a designated privileged document to, or a designated privileged communication between or among, any of the Trustees (and their counsel, staff, agents, representatives, experts, and/or consultants) does not waive, or imply waiver, of any privilege or right that the transmitting Trustee may assert with respect to that document or communication.
- D. Prior to sharing any privileged information with, or distributing any privileged information to, any other trustees, as described in Section V.C of this Agreement, or any consultants or advisors to the Trustee Council, as described in Section V. D of this Agreement, the Parties to this Agreement will require those other trustees, advisors, or consultants, to agree to the confidentiality provisions as set forth in this Agreement.

- E. Designated privileged documents shall be held and maintained in such a manner as to insure that no intentional or unintentional disclosure is made that would compromise any asserted privilege.
- F. At the request and option of any Party, designated privileged documents shall be returned to the originating Party or destroyed, unless such destruction is prohibited by applicable federal or state law.
- G. Unless otherwise specifically provided, the Trustees shall each be entitled to assert any applicable privilege with respect to any document or communication jointly transmitted, prepared or funded by the Trustees. Each Party shall be entitled to assert an applicable privilege with respect to any document or communication transmitted, prepared, or funded solely by that Party.
- H. If a subpoena, discovery request, or other request in any form, for a privileged document, record, information, or communication that is not publicly available is received by any Party, a copy of the subpoena or request will be immediately forwarded to counsel for the Party or Trustees to which the privilege applies and to the government representative(s) who originally generated the document or communication that is the subject of the request. The Party who receives such a request shall also provide a draft of the Party's intended response to such request not less than ten (10) days prior to the date that the Party intends to issue its response. To the extent that applicable law may require a response more promptly than is consistent with the above temporal requirement, the Trustees agree to act in good faith to meet any such requirements and to provide as much advance notice as possible
- I. Only by specific written agreement among the Trustees, pursuant to a federal agency's internal Freedom of Information Act (FOIA) appeal process or pursuant to Court Order shall disclosure of a privileged document or communication be made public or disclosed to a party-opponent or non-party. Such agreement shall not be construed as a waiver of privilege or confidentiality regarding any other documents or communications. However, nothing herein in any way affects or limits the authority of any Party to waive any privilege and release any documents, information, analysis, opinion, conclusion, or advice that are subject to privileges held exclusively by that Party.
- J. Sharing Information with the Public. The Trustees agree that, to the extent consistent with the effective and efficient negotiation, settlement, and/or litigation of their claims, public dissemination of final data, studies, and plans related to injuries arising from the Site and restoration planning for the Site is in the best interests of the public and of the Trustees. Such final data, studies, and plans shall be made available to the public upon request, to the extent consistent with the foregoing confidentiality provisions. In addition, the LAT shall establish and maintain a publicly-available administrative record, which shall comply with NEPA and any other applicable federal and state law, and which shall be located in the vicinity of the Site and the community that has been impacted by the natural resource injuries and losses arising from the Site. The Administrative Record

may be an electronic product made available to the public on at least one of the Trustee's web sites, *e.g.*, the designated LAT web site.

- K. Compliance with Federal and State Law. In the event that any provision of Section XV of this Agreement conflicts with federal or state law, including, but not limited to, the Freedom of Information Act, 5 U.S.C. §552, and the New Jersey Open Public Records Act, N.J.S.A., 47:1A-1 to 13 ("OPRA"), the federal or state law will control and the Trustees will comply with the applicable law.

Notwithstanding any other provision of this Agreement, each Trustee reserves the right to provide information or any document related to the Site and the NRDAR process to the public if such Trustee determines that such information or document (1) is already lawfully in the public domain, (2) requires disclosure pursuant to the FOIA, 5 U.S.C. §552 and OPRA, N.J.S.A., 47:1A-1 to 13; or other federal or state law, or (3) should be disclosed in order to protect public health, welfare or the environment.

XVI. GENERAL PROVISIONS

A. Reservations.

1. Nothing in this Agreement is intended to be or shall be construed to be an admission by the Trustees in any dispute or action between the Trustees or between the Trustees and a third party. Nothing in this Agreement is intended or shall be construed as a waiver by the Trustees of any claims or defenses in any legal action, or of any other rights or remedies.
2. Neither execution of this Agreement nor performance of any activities pursuant to this Agreement shall constitute an admission by any Party named herein (or any government) of (nor be construed as precedent for) any legal responsibility under federal, state, or other applicable law to protect, restore, or enhance any natural resources associated with the Site over which any Party or non-party asserts trusteeship, standing, or jurisdiction. Furthermore, neither execution of this Agreement nor performance of any activities pursuant to this Agreement shall constitute an admission by any Party named herein (or any government) of (nor be construed as precedent for) any liability for damage or injury (which may be shown to have occurred by the NRDAR activities performed under this Agreement) to any natural resources associated with the Site over which any other Party or non-party asserts trusteeship, standing, or jurisdiction.
3. Nothing in this Agreement is meant to imply, or operate in a manner, that any natural resource trustee with an interest in the Site, whether a Party to this Agreement or not, is in any way abrogating or ceding any natural resource trustee responsibility or authority over natural resources of the Site.
4. Nothing in this Agreement shall be construed as a waiver of, or foreclosing the exercise of, any rights, powers, remedies, or privileges of the individual Trustees now or hereafter existing at law or in equity, by statute, or otherwise.

5. Nothing in this Agreement is intended to conflict with existing directives or policies of any Trustee. If the terms of this Agreement are found to be inconsistent with existing directives or policies of any Trustee, those portions of this MOA that are determined to be inconsistent shall be identified by the affected Trustee. Within thirty (30) days of notice of the inconsistency, the Trustees shall discuss the inconsistency and determine whether it is possible, appropriate and necessary to amend the MOA as the Trustees determine appropriate.
- B. Limitations of Authority.
1. No Party is authorized to enter into any settlement on behalf of any other Party. The Trustees recognize, however, that there may be situations such as bankruptcies, dissolutions or ability to pay settlements that resolve the NRD liability of a PRP in an action which one or more other Trustees are not a party to. If this occurs, the Trustee(s) involved will keep the other Trustee(s) informed about the status of the matter and will share information and documents to the extent possible. The Trustees agree that, consistent with the requirements of federal and state law, any NRD recoveries from such situations, except for the reimbursement of documented damage assessment costs, will be considered a joint recovery to be used in accordance with Section XII.
 2. No Trustee is authorized to represent another Trustee in any litigation that may be commenced by another Trustee.
- C. Third Parties. This Agreement is not intended to, nor shall it, vest rights in persons who do not represent the Trustees who have executed this Agreement or who are not Parties to this Agreement.
- D. Execution and Effective Date. This Agreement shall become effective when executed by all of the Trustees who are Parties to this Agreement, that is, the date on which the last signature is obtained. This Agreement can be executed in one or more counterparts, each of which will be considered an original document.
- E. Amendment.
1. This Agreement may be amended by agreement of the Trustees if it is determined that an amendment is necessary to accomplish the objectives of this Agreement, or it is necessary to modify the objectives of this Agreement, consistent with the requirements of CERCLA, any amendments thereto, or other applicable federal law or state common or statutory law.
 2. Any amendments of this Agreement shall be effective only if it is in writing and executed by all Parties to this Agreement.
- F. Termination.
1. This Agreement shall be in effect from the day of execution until the Trustee Council determines that the restoration plan or plans implemented under this Agreement have been completed, unless

terminated before that time or extended beyond that time by written agreement of all Parties to this Agreement.

2. Withdrawal from this Agreement.

- a. Any Party may terminate its participation in this Agreement upon giving thirty (30) days written notice to all other Parties or as otherwise provided herein.
- b. Withdrawal Due to Dispute. Any Party may withdraw from this Agreement, but only after efforts have been made to resolve any dispute in accordance with Section VI of this Agreement, if applicable. Such withdrawal shall only be effective upon providing the Trustee Council thirty (30) days written notice that due to an irreconcilable dispute one or more Trustees no longer will be participating in the Trustee Council.
- c. Withdrawal Due to Differing Duties and Interests. The Trustees understand and acknowledge that at some point a Trustee may determine that it is no longer necessary to participate in the Trustee Council in order to fulfill its duty and that, perhaps, continuing to participate will not further the Trustee's interests. In that event, a Trustee may withdraw from the Agreement by providing the Trustee Council thirty (30) days written notice that the Trustee no longer will be participating in the Trustee Council.
- d. The withdrawal of one or more Trustees from this Agreement, for whatever reason, shall not affect the subsequent validity of this Agreement upon the remaining Trustees.
- e. In the event that this Agreement is terminated or one or more of the Trustees withdraws, the Trustees expressly agree that they will continue to coordinate to the greatest extent practicable their activities to assess injury to and restore the natural resources affected by releases at the Site, and that they will be guided by the objectives set forth in Section XIV of this Agreement. The disposition of any unobligated sums recovered from PRPs as natural resource damages, and any interest earned thereon, except for documented and reimbursable assessment and restoration planning costs, shall be determined by further agreement of the Trustees or, if an Agreement cannot be reached, upon application by a Party to this Agreement to the appropriate United States District Court (New Jersey) for allocation of such recoveries and interest by the Court. In making a fair and reasonable allocation of these monies among the Trustees, the Trustees will request that the Court consider primarily the need to achieve, to the maximum extent practicable, the Natural Resource Objectives of this Agreement and further consider the overlapping jurisdictions of the federal and state trustees. In any event, the Trustees further expressly agree that any unobligated funds recovered from PRPs as natural resource damages, and any interest earned thereon, shall be expended solely to develop and

implement a plan to restore natural resources under their trusteeship, as mandated by Section 107(f) of CERCLA.

A Party that has withdrawn from this Agreement for any reason shall have no further obligations under this Agreement except for the obligations under Section XIV, to continue to coordinate activities to the greatest extent practicable, and Section XV, to maintain confidentiality, and to expend unobligated funds recovered for natural resource damages to develop and implement a plan to restore injured natural resources under their trusteeship, as mandated by Section 107(f) of the CERCLA.

- G. Federal NRD Regulations. It is the intention of the Federal trustees to follow the DOI's natural resource damage assessment regulations, as amended, 43 C.F.R. Part 11, in matters relating to the Site.
- H. Anti-Deficiency. Nothing in this Agreement shall be construed as obligating any of the Trustees to expend any funds in excess of appropriations or other amounts authorized by law.

**TRUSTEE MOA
for the
AMERICAN CYANAMID SUPERFUND SITE
in
Bridgewater Township, Somerset County, New Jersey**

**FOR THE NEW JERSEY
DEPARTMENT OF ENVIRONMENTAL PROTECTION:**



Rich Boornazian
Assistant Commissioner, Natural and Historic Resources
New Jersey Department of Environmental Protection



Date

**TRUSTEE MOA
for the
AMERICAN CYANAMID SUPERFUND SITE
in
Bridgewater Township, Somerset County, New Jersey**

FOR THE UNITED STATES DEPARTMENT OF THE INTERIOR:



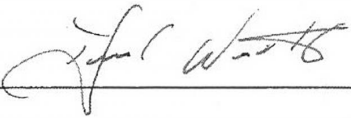
30 SEPT 2016

Acting Wendi Weber
Regional Director
U.S. Fish and Wildlife Service
U.S. Department of the Interior

Date

**TRUSTEE MOA
for the
AMERICAN CYANAMID SUPERFUND SITE
in
Bridgewater Township, Somerset County, New Jersey**

FOR THE UNITED STATES DEPARTMENT OF COMMERCE:



David Westerholm, Director
Office of Response and Restoration
National Oceanic and Atmospheric Administration
U.S. Department of Commerce

05 April 2016

Date



Patricia A. Montanio, Director
Office of Habitat Conservation
National Oceanic and Atmospheric Administration
U.S. Department of Commerce

4/11/2016

Date