

Liberty Finishing Company Superfund Site,
Farmingdale, Nassau County, New York:

Memorandum of Agreement
for Coordination of Natural Resource Restoration
and Settlement Funds Management
among the
New York State Department of Environmental Conservation,
National Oceanic & Atmospheric Administration,
and
United States Department of the Interior,
Acting through the
United States Fish & Wildlife Service

I. INTRODUCTION

This Memorandum of Agreement for Coordination of Natural Resource Restoration and Settlement Funds Management ("Agreement") is entered into by and between the New York State Department of Environmental Conservation (NYSDEC), the National Oceanic and Atmospheric Administration (NOAA), and the United States Fish and Wildlife Service (USFWS), acting on behalf of the United States Department of the Interior (collectively referred to as "the Trustees") in recognition of their common interests and responsibilities as Trustees of natural resources on behalf of the public to ensure the coordination and cooperation among the Trustees.

The purpose of this Agreement is to plan, implement and oversee the restoration, replacement, rehabilitation or acquisition of natural resources, which may have been injured, destroyed or lost as a result of hazardous substance releases at or from the Liberty Finishing Company Superfund Site ("Site") in Farmingdale, Nassau County, New York.

This Agreement provides the framework for the use and expenditure of \$77,500.00 in natural resource damages, together with interest accruing following receipt, which the Trustees recovered in settlement of the Trustees' joint claim for natural resource damages asserted in United States v. Coltec Industries, Inc., Civil No. 1:06-CV-03493-NGG-RML (E.D.N.Y. 2007), pursuant to a Consent Judgment entered on February 21, 2006 (hereafter, "Consent Judgment"). The funds are being held in the Department of the Interior's Natural Resource Damage Assessment and Restoration Account and NOAA's Damage Assessment and Restoration Revolving Fund (collectively, the "Accounts"), solely for use by the Trustees to plan, implement and oversee restoration projects to restore, replace, rehabilitate, and/or acquire natural resources equivalent to those injured by the release of hazardous substances at or from the Site.

This Agreement will serve as the Memorandum of Agreement required by the Consent Judgment to be entered into among the Trustees for the expenditure of the settlement funds and any accrued interest thereon.

II. PARTIES

The following officials, or their designees, are Parties to this Agreement and act on behalf of the public as Trustees for natural resources under this Agreement:

1. Commissioner of the New York State Department of Environmental Conservation,
2. The Director, Office of Response and Restoration, of the National Oceanic and Atmospheric Administration, and
3. The Regional Director, Region 5 of the United States Fish and Wildlife Service, acting on behalf of the United States Department of the Interior.

III. AUTHORITY

The Trustees enter into this Agreement in accordance with the authorities provided for each Trustee under Section 107(f) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9607(f); the National Contingency Plan (NCP), 40 C.F.R. §§ 300.600 through 300.615; and other applicable state and Federal laws.

IV. PURPOSE AND SCOPE

This Agreement is intended to guide and provide a framework for cooperation and coordination among the Trustees and to govern the Trustees' use and expenditure of jointly recovered natural resource damages to plan and implement actions appropriate to restore, replace, rehabilitate, and/or acquire the equivalent of natural resources or resource services injured, lost or destroyed as a result of releases of hazardous substances at or from the Site, consistent with their duties and responsibilities as Trustees and the terms of the Consent Judgment.

V. STATEMENT OF OBJECTIVES

The natural resource damages, which the Trustees jointly recovered for the Site, pursuant to the Consent Judgment, plus any interest accruing thereon (together "the Settlement Funds"), shall be used by the Trustees to plan, implement and oversee restoration projects to restore, replace, and/or acquire natural resources equivalent to those injured by the release of hazardous substances at or from the Site, in accordance with the Final Restoration Plan for the Site.

VI. NATURAL RESOURCE TRUSTEE COUNCIL

A. Organization. The Trustees herein establish the Liberty Industrial Finishing Trustee Council ("Council") to implement this Agreement. Within fourteen (14) days of the execution of this Agreement, each Trustee shall designate a Primary Trustee Representative to the Council, who shall be authorized to vote on behalf of that Trustee. Each Trustee shall also designate an Alternate Trustee Representative who shall be authorized to act, and vote in the absence of the Primary Trustee Representative. Each Trustee may, by written notification to all other Trustees,

change the Primary and Alternate Trustee Representative designees.

The U.S. Department of Justice, the Office of the Attorney General for the State of New York, and in-house counsel for each of the Trustees, may each appoint one attorney who may attend all meetings of, or organized by, the Council in a legal/consultative role but who shall not be a member of the Trustee Council.

B. Communications. All correspondence and communications to or between the Trustees pertaining to activities, which are subject to coordination and cooperation under this Agreement, shall be sent to the Primary Trustee Representative of each Trustee as designated.

C. Duties and Responsibilities. The Council shall coordinate all Trustee activities and matters within the scope of this Agreement. Actions to be taken or authorized by the Council in implementing this Agreement include but are not limited to:

1. Planning, contracting for, or otherwise undertaking and overseeing the implementation of the Restoration Plan; and
2. Taking such other actions as the Council determines are necessary or appropriate to implement this Agreement.

D. Decision making. All decisions by the Council implementing this Agreement shall be made by consensus. In the event that unanimous agreement cannot be reached among the members of the Council, the relevant decision will be elevated to the Authorized Officials of each Trustee agency, for resolution. If necessary, the Trustees, including through the Council, may establish further mechanisms by which disputes may be resolved. The Trustees further agree that, while recognizing the areas of expertise and authority of the Trustees, decision-making deliberations will focus on the Trustees' mutual purpose of restoring, replacing, rehabilitating, and/or acquiring the equivalent of the affected natural resources.

E. Dispute Resolution. In the event of a dispute involving any decisions under this Agreement, the Council shall initially attempt to resolve the dispute through good faith discussions directed toward obtaining unanimity among the Trustees involved in the dispute and consensus by the Council as a whole. If unanimous consent cannot be reached, the matter shall be elevated to the signatories of this Agreement 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.

F. Lead Administrative Trustee. The Trustees designate NOAA as Lead Administrative Trustee ("LAT") under this Agreement for the purpose of coordinating trustee activities towards planning and implementing restoration. The LAT shall fully coordinate its activities with and only act under the direction of the Trustee Council. Other duties of the LAT and/or the other

Trustee entities shall be arrived at by resolution of the Trustee Council.

VII. USE OF FUNDS

A. General Use. The Settlement Funds in the Accounts, including all interest accruing, may only be used by the Trustees to plan, implement and oversee the Final Restoration Plan. Such use includes payment or reimbursement of the administrative costs and expenses incurred by the Trustees to develop and implement the Final Restoration Plan, in accordance with this Agreement.

Trustee administrative costs or expenses include, but are not limited to, direct and indirect costs associated with (a) preparation or review of documents pertinent the development or implementation of the Restoration Plan; (b) administration, management, or oversight of contracts or projects; and (c) travel.

B. Procedures Relating to Use of or Access to Funds. The Council, in accordance with the decision-making process identified in Section VI, shall identify protocols, standards, procedures, budgets, or other directions as necessary to support access to or the use of Settlement Funds, or interest thereon, and to otherwise effectuate the purposes of this Agreement. Disbursement of all funds from the Accounts, including for reimbursement of administrative costs and expenses incurred by the Trustees, will be by unanimous written agreement of all Council members.

VIII. RESERVATION OF RIGHTS

Each Trustee has and reserves the right to take any action within the scope of its authority as a Trustee, including as may be necessary to pursue and/or to preserve any legal rights or remedies available to it as a Trustee. Nothing in this Agreement is intended to waive or foreclose any such rights.

IX. MODIFICATION OF AGREEMENT

- A. This Agreement may be modified by the agreement of the Trustees.
- B. Any modification of this Agreement shall be in writing, executed by the Trustees.

X. TERMINATION

A. This Agreement shall remain in effect until completion of all work required pursuant to the Restoration Plan or at such other time as the Trustees, in their sole discretion, determine appropriate.

B. In the event any Trustee withdraws from the Agreement, such withdrawal must be in writing at least thirty (30) days in advance of the withdrawal. Such withdrawing Trustee forfeits

all rights pursuant to this Agreement including, without limitation, the right to decide how Settlement Funds are to be expended and to authorize expenditures of Settlement Funds from the Accounts. Such withdrawing Trustee may recoup such administrative costs it has incurred as of the date of its withdrawal from this Agreement, as provided in and subject to the terms of Section VII.B above. In the event of such withdrawal, this Agreement remains in full force and effect for the remaining Trustees.

XI. LIMITATION

The responsibilities and commitments identified in this Agreement are wholly subject to the lawful availability of funds, including from the Accounts. Nothing in this Agreement shall be construed as obligating the United States, the State of New York, USFWS, NOAA or any other public agency, their officers, agents, or employees to expend any funds in excess of those that are legally reimbursable from the Accounts and authorized by law.

XII. THIRD PARTY CHALLENGES OR APPEALS

The rights and responsibilities contained in this Agreement represent guidance for the Trustees. This Agreement does not, and is not to be construed as, providing the basis of any third party challenges or appeals.

XIII. NONDISCRIMINATION

In performing this Agreement, the Trustees will not discriminate against any person because of race, color, religion, sex, national origin, age, physical or mental handicap, sexual orientation, marital status or political affiliation.

XIV. EXECUTION: EFFECTIVE DATE

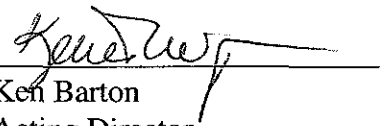
This Agreement may be executed in counterparts. A copy with all original executed signature pages affixed shall constitute an original Agreement. The date of execution shall be the date on which the last of the Trustees representatives sign the Agreement.

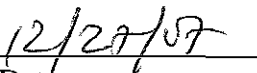
XV. ANTI-DEFICIENCY

Nothing in this Agreement shall be construed as obligating the United States or the State of New York, their officers, agents or employees, to expend any funds in excess of appropriations or other amounts authorized by law.

IN WITNESS WHEREOF, the parties hereto have signed this Memorandum of Agreement for Coordination of Natural Resource Restoration and Settlement Funds Management on the date

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION


Ken Barton
Acting Director
Office of Response and Restoration


Date

UNITED STATES DEPARTMENT OF THE INTERIOR

Thomas J. Hardy
Charles J. Lee Acting

Marvin E. Moriarty
Regional Director
U.S. Fish & Wildlife Service, Region 5

8-15-07

Date