

**MEMORANDUM OF UNDERSTANDING
AMONG THE
GEORGIA DEPARTMENT OF NATURAL RESOURCES,
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION,
AND
UNITED STATES DEPARTMENT OF THE INTERIOR
FOR THE
LCP NATIONAL PRIORITIES LIST SITE
BRUNSWICK, GA**

I. INTRODUCTION

This Memorandum of Understanding ("MOU") is entered into by and among the Georgia Department of Natural Resources ("DNR"), the National Oceanic and Atmospheric Administration of the United States Department of Commerce ("NOAA"), and the Department of the Interior through the United States Fish and Wildlife Service ("FWS"), hereinafter referenced collectively as "the Trustees." The purpose of this MOU is to facilitate the coordination and cooperation of the Trustees in the assessment of damages for injuries to natural resources resulting from releases of hazardous substances at or from the LCP National Priorities List Site ("the Site") in Brunswick, Glynn County, Georgia, and in the application of any natural resource damages recovered toward the restoration, rehabilitation, replacement and/or acquisition of equivalent natural resources and reimbursement of reasonable assessment costs.

II. THE SITE AND NATURAL RESOURCES SUBJECT OF THIS MOU

This MOU is applicable to the natural resources located at, or affected by releases of hazardous substances from, the Site as designated in the Federal Register notice including the Site on the National Priorities List (*proposed* 10/25/95, 60 Fed. Reg. 30510; *final* 6/17/96, 61 Fed. Reg. 30510). The scope of natural resources subject to this MOU thus may include, but may not be limited to: the area encompassing the actual facilities which manufactured, discharged, spilled, leaked, or otherwise released hazardous substances; the 500 or more acres of saltmarsh habitat surrounding the facilities and any disposal structures or areas; drainage canals, creeks or other conveyances that may have received and/or carried hazardous substances away from the facilities or the marsh or the Site, including but not limited to Purvis Creek, the Turtle River and its tributaries, Brunswick Harbor and St Simons estuary; and groundwater that may have received and/or carried hazardous substances away from the facilities including, but not limited to, groundwater underlying the facilities, the marsh and upland areas of the site, and any disposal areas or structures. Natural resources subject to this MOU include all natural resources as defined by the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") which belong to, are managed by, held in trust by, appertain to, or are otherwise controlled by the Trustees. Impacts to natural resources that may be the subject of this MOU include injury to, destruction of, or loss of natural resources, thus including impairment of services provided by those resources, resulting from releases of or threatened releases of hazardous substances at or from the Site.

III. PARTIES

The following officials, or their designees, are Parties to this MOU, and are responsible for implementing the trusteeship duties of their agencies for the LCP Site:

- A. The Commissioner of the Georgia Department of Natural Resources;
- B. The Deputy General Counsel of the National Oceanic and Atmospheric Administration;
- C. The Regional Director of the U.S. Fish and Wildlife Service, Southeast Region.

The Parties affirm that it is their belief that no other entity has been legally designated to act as a natural resource Trustee for the Site pursuant to the authorities cited in Section IV. Should other Trustees exist or subsequently be designated with authority over the natural resources which are the subject of this MOU, the Parties will invite those Trustees to become additional parties to this MOU.

IV. AUTHORITIES

The Trustees enter into this MOU pursuant to the authorities granted by: the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9601 *et seq.*; the Federal Water Pollution Control Act, 33 U.S.C. 1251 *et seq.*; Executive Order 12580; the National Oil and Hazardous Substances Contingency Plan, 40 C.F.R. Part 300; the Natural Resource Damage Assessment Regulations, 43 C.F.R. Part 11; the Georgia Water Quality Control Act, O.C.G.A. Section 12-5-20 *et seq.*; the Hazardous Waste Management Act, O.C.G.A. Section 12-8-60 *et seq.*; the Hazardous Site Response Act, O.C.G.A. Section 12-8-90 *et seq.*; and other applicable Federal and State laws.

V. PURPOSE

The purpose of this MOU is to ensure that the Trustees: (i) coordinate the assessment of damages for injuries to natural resources affected by the release or threatened release of hazardous substances at or from the Site; (ii) avoid the duplication of assessment or restoration costs; (iii) coordinate the development of a plan for the restoration, rehabilitation, replacement, or acquisition of the equivalent of the injured natural resources; and (iv) recover damages to implement said plan. The intent of this MOU is to provide a framework for coordination and cooperation to achieve the aforesaid purposes.

Damages for natural resources injured, destroyed or lost that are recovered pursuant to joint assessment activities implemented under this MOU shall be used solely to restore, rehabilitate, replace, or acquire the equivalent of those resources (hereinafter collectively referred to as "restoration"), and to reimburse the Trustees' reasonable costs of assessing damages. The objective of restoration is to restore injured resources to baseline, that is, the condition that they would have been in at the time of the assessment but for the releases of hazardous substances, and/or to compensate the public for resource services lost before restoration is achieved. All

restoration projects shall be implemented in the State of Georgia, and if possible in the Turtle River watershed, unless the natural resource injuries can only be appropriately restored by implementing projects in other locations, preferably in coastal Georgia, in the judgment of the Trustees.

VI. ORGANIZATION

A. Trustee Council, Work Groups and Advisory Bodies

The Trustees recognize the importance of coordinating their efforts to effectively and efficiently meet their respective natural resource trustee responsibilities under applicable Federal and State law. Accordingly, there is herein created a Trustee Council ("the Council") to implement this MOU. Each Trustee respectively designates the following primary representatives to the Council, to act on behalf of their agencies and the Parties to this MOU, and with the authority to vote on matters which shall come before the Council:

For DNR: Bill Mundy
Manager
Corrective Action Program
Hazardous Waste Management Branch
Environmental Protection Division
Floyd Towers East, Suite 1154
2 Martin Luther King, Jr. Blvd.
Atlanta, GA 30334
404-657-8616
Fax 404-651-9425

For NOAA: Lisa DiPinto, Ph.D.
Injury Assessment Coordinator
Damage Assessment Center
1305 East West Highway
Silver Spring, MD 20910
301-713-3038, ext. 187
Fax 301-713-4387

For FWS: Keith Hastie
Environmental Contaminants Specialist
247 South Milledge Avenue
Athens, GA 30605
706-613-9493, ext. 27
Fax 706-613-6059

Each Trustee shall also designate an alternate representative to the Council and shall notify the other Trustees of the alternate's name, address, telephone and facsimile numbers within thirty (30) days after the Effective Date of this MOU, as defined in Article XVI of this MOU. When acting as its agency's Council representative, designated alternates shall have the same voting

rights and decision making authority as the primary Council representative. The Council may create subcommittees or working groups, from among themselves or other agency representatives, to accomplish particular objectives when they are deemed necessary to effect the purposes of this MOU, and such bodies shall be fully subject to the terms of this MOU. The Trustees may also appoint new primary representatives to the Council to implement distinct phases of the MOU, such as restoration implementation. The Council may consult with or seek the advice of other entities as deemed appropriate in fulfilling its responsibilities under this MOU. All Council decisions shall be made by unanimous consent.

The Trustees further designate the following as their agencies' legal representatives for purposes of implementing this MOU:

For DNR: Timothy Ritzka
Assistant Attorney General
40 Capitol Square, SW
Atlanta, GA 30334
404/657-3976
Fax 404/651-6341
Tim.Ritzka@law.state.ga.us

For NOAA: Kim Kendall
Office of the General Counsel
15th Floor, Room 15531
1315 East-West Highway
Silver Spring, MD 20910-3282
301/713-4286
Fax 301/713-1229
Kim.Kendall@noaa.gov

For FWS: Harriet Deal
DOI, Office of the Regional Solicitor
75 Spring Street, Room 304
Atlanta, GA 30303
404-331-3379, ext. 231
Fax 404-730-2682

John Walden, the attorney for the Commissioner of DNR, will assist in all State actions. The Council legal representatives may also seek advisory participation from the United States Department of Justice, the Attorney General of the State of Georgia, or other legal advisors, if it is deemed appropriate to achieve the purposes of this MOU.

The participation of legal representatives in Trustee Council deliberations shall not waive any privileges applicable to such deliberations or their related products, nor be interpreted as an indication that the work being done by the Council is necessarily primarily in anticipation of litigation. Natural resource damage assessment requires routine and varied legal interpretation of statutes, regulations and other legal authorities, and legal

skills for the implementation of certain assessment actions. The costs of legal representatives in carrying out these assessment activities represent valid assessment costs.

B. Lead Administrative Trustee

The National Oceanic and Atmospheric Administration shall serve as the Lead Administrative Trustee in implementing this MOU. NOAA shall fully coordinate its activities with, and act under the direction of the Council. NOAA may, with the approval of the Council, delegate administrative tasks to other Council members over the course of implementing this MOU.

VII. DUTIES AND RESPONSIBILITIES

A. Trustee Council

On behalf of the Trustees, the Council shall coordinate and authorize all Trustee activities and matters under this MOU in accordance with the decision making requirements contained in Section VIII. The Council may take whatever actions that it determines are necessary to implement this MOU, in accordance with applicable laws, regulations and policies. The Council may take the following actions, among others, to fulfill the Trustees' natural resource damage assessment and restoration responsibilities for the Site:

1. Plan, approve, conduct, fund and/or oversee scientific and technical studies, sampling and other actions related to the assessment of natural resource damages. The Council may arrange for contracts or agreements with one or more professional consultants, technical or otherwise, that the Council determines are necessary and best qualified to provide services to the Council. The Council shall undertake the specific actions of identifying those natural resources and/or services which have been, are, or which may be, injured, destroyed or lost as a result of releases of hazardous substances at or from the Site, and designing a strategy of reliable and valid assessment methodologies to determine the nature and extent of such injuries. Further, the Council shall undertake the specific action of determining whether the assessment strategy may be implemented in a cooperative manner with, or funded by, one or more of the potentially responsible parties ("PRPs") for the Site.
2. Coordinate Trustee natural resource damage assessment and restoration activities and communications with EPA, State and Federal remedial project managers, response personnel, and contractors for the Site.
3. Develop and implement, and/or oversee the development and implementation of a plan for the restoration of natural resources and/or services that have been injured, destroyed or lost.
4. Seek restoration and/or compensation from PRPs for the damages assessed by the Trustees, including without limitation the reasonable costs of assessment.

5. Supervise, manage and obligate any money paid to the Trustees by or on behalf of PRPs for the purpose of assessing injury to natural resources and/or restoring the injured resources or resource services.

The Council shall adopt a regular meeting or teleconferencing schedule to ensure the timely completion of these and other activities. Any member of the Council may, upon reasonable notice through the Lead Administrative Trustee, call a meeting to be conducted either in person or by telephone call.

B. Lead Administrative Trustee

The duties of the Lead Administrative Trustee shall include, but are not necessarily limited to: coordination and monitoring of the progress of the natural resource damage assessment process; scheduling of meetings of the Trustee Council, and timely notification of all Trustees of such meetings; preparing agendas for meetings, and recording the deliberations and/or decisions at meetings; acting as the initial point of contact for facilitating joint communications between the Trustees and external entities; establishing and maintaining records and relevant documents; and such other administrative duties as directed by the Council.

C. Joint and Separate Trustee Studies

From the Effective Date of this MOU, the Trustee Council shall approve all proposals and work plans for studies and analyses to be conducted or funded in furtherance of the purposes of this MOU, before such work is initiated. In cooperating with each other regarding selecting, designing and approving studies, and in electing a Trustee agency to lead in the implementation or oversight of a study, appropriate consideration will be given to the special expertise and/or management interests that a particular Trustee has regarding certain resources.

The Trustee Council shall also determine which studies conducted by individual trustee agencies prior to the Effective Date of this MOU to adopt, and incorporate such previous studies into the assessment strategy as appropriate, upon receipt and review of work plans and results regarding such studies. The costs of such adopted studies represent reasonable assessment costs and shall be included in any damages recovery jointly pursued. No studies shall be conducted separately by individual Trustees after the Effective Date of this MOU, unless the study concerns a natural resource injury that is not included in the assessment strategy adopted by the Council and the sponsoring Trustee intends to pursue damages or restoration for that injury separately from the actions to pursue damages or restoration under this MOU.

D. Communications and Agreements with Potentially Responsible Parties

The Trustees commit themselves to coordinating any communications with the PRPs for the Site on matters related to natural resource damage assessment, natural resource damages, and claims for those damages. No Trustee will discuss these matters with the PRPs without first providing the other Trustees notice of and an opportunity to participate in such discussions, unless it concerns purely administrative matters such as checking availability for meetings. If

non-coordinated communications with the PRPs occur, for instance if a PRP contacts a single Trustee and the communication cannot be deferred until all Trustee representatives may participate, the contacted Trustee representative will promptly disseminate the content of the communication to the other Trustee representatives. Furthermore, each Trustee agrees that prior to filing any claim for natural resource damages or settling any claim or potential claim with any of the PRPs, each Trustee will provide the other Trustees with notice of its intent to file such claim and/or settle at least ninety (90) days in advance of such action.

VIII. DECISION MAKING

All decisions implementing this MOU shall require unanimous approval of the members of the Trustee Council. Required or otherwise critical decisions fulfilling their Trustee responsibilities, such as identification of injured resources, development of assessment strategies, agreements with PRPs, and development of restoration alternatives and plans, shall be documented by the Trustee Council in resolutions or memoranda for the Administrative Record for the Site. In the event that unanimous agreement cannot be reached, the matter in dispute will be elevated to the following parties within the Trustee Council representatives' chains of command, prior to elevating the unresolved dispute to the signatories to this MOU:

For DNR: Jennifer Kaduck
Chief
Hazardous Waste Management Branch
Environmental Protection Division
Floyd Towers East, Suite 1154
205 Butler Street, S.E.
Atlanta, GA 30334
404-656-7802
Fax 404-651-9425

For NOAA: William Conner
Chief
Damage Assessment Center
1305 East West Highway
Silver Spring, MD 20910
301-713-3038, ext. 190
Fax 301-713-4387

For FWS: Cynthia Dohner
Assistant Regional Director, Ecological Services
U.S. Fish & Wildlife Service
Southeast Region
1875 Century Blvd.
Atlanta, GA 30345

Additional mechanisms for dispute resolution may be established if necessary. Decision making deliberations shall focus upon the Trustees' mutual purpose of assessing damages for injuries to natural resources and their services, and of restoring, rehabilitating, replacing and/or acquiring the equivalent of the injured natural resources and services.

IX. FUNDS

The Trustees agree to cooperate in good faith to attempt to establish and maintain, to the extent consistent with applicable Federal and State law and policy, a joint trust account(s) or joint court registry account(s) for purposes of receiving, depositing, holding, disbursing, and expending all funds received from potentially responsible parties, including any interest earned or payable upon such sums, in which two or more Trustees have an interest, such as funds received for purposes of planning, implementing and monitoring restoration projects, unless all Trustees agree that such joint funds require different treatment in order to fulfill restoration objectives. The Trustees may seek to directly receive into their separate accounts payments which represent reimbursement of their past costs of conducting the damage assessment. The Trustees agree that they will use all joint damages recovered exclusively for restoration activities consistent with Trustee approved Restoration Plans produced and adopted under this or a subsequent MOU.

The Trustee Council, in accordance with their decision-making process in Section VIII, shall establish standards and procedures for the management, disbursement and accounting of the jointly held natural resource damages received by the Trustees.

X. PUBLIC ACCESS TO INFORMATION

The Trustees support an open government policy of providing access to scientific data or technical information created or obtained by the Trustees during the process of determining appropriate restoration or compensation measures to make the environment and the public whole for injuries and losses suffered as a result of hazardous substance releases. The Trustees will compile and maintain a publicly-available Administrative Record that documents and supports their natural resource injury and restoration determinations for the Site. Further, the Trustees commit to providing the public with appropriate and meaningful opportunities to participate in the restoration decision making process, including at a minimum seeking comment on a Draft Restoration Plan for the Site, as required by CERCLA, the National Environmental Policy Act, 42 U.S.C. 4321 *et seq.*, and various State laws.

The Trustees hereby agree that any information in the possession of the Trustees shall be kept confidential if it is covered by an applicable privilege and it is not otherwise included in the Administrative Record to document and support assessment decisions, provided, however, that all such information may be subject to disclosure pursuant to Federal and State rules of evidence and discovery. It is further understood and agreed that information subject to public disclosure upon request and pursuant to the Freedom of Information Act or the Georgia Open Records Act shall be released. However, the Parties acknowledge and agree that all Federal documents produced in fulfillment of obligations under this MOU that are protected from

release under Federal law will be protected from release by State agencies. All Trustees agree to notify other Trustees in writing of each official request for information no more than the earlier of five (5) days from the date of receipt of such request or two days prior to the statutory deadline for release of requested information.

XI. RESERVATION OF RIGHTS

Except for the agreements between the Trustees included in this MOU, this document is not intended to create any further legal rights or obligations between the Trustees or their respective representatives, or between any Trustee and any other persons not party to this MOU. Nothing in this MOU is to imply that any signatory agency is in any way abrogating or ceding any responsibilities or authority inherent in its control or trusteeship over natural resources.

XII. MODIFICATION OF AGREEMENT

This MOU may be modified only in writing signed by all the Trustees. Additional or more detailed agreements may be helpful to the Trustees with regard to planning or implementing restoration, and for expenditure of any joint damages recovered, among other things. These agreements may be executed as amendments or modifications to this MOU, or may be developed as separate agreements subject to the same procedural and substantive requirements contained herein.

XIII. TERMINATION

This MOU shall be in effect from the Effective Date of this MOU, as defined in Section XVI for a term of not more than fifty years, or until such time that the Trustees unanimously determine that the purposes underlying the MOU have been fulfilled. Otherwise, this MOU may only be terminated by written agreement of all the Trustees. Any Trustee may withdraw from this MOU by giving the other Trustees written notice at least thirty (30) days in advance of the withdrawal. In the event of such withdrawal, this MOU shall remain in full force and effect for the remaining Parties.

In the event of the withdrawal of a Trustee, or at the termination of this MOU, each Trustee shall cooperate with the others in preparing a full and complete accounting of the status of all projects under the control or direction of each Trustee, and of all funds received, deposited, held, disbursed or expended pursuant to this MOU, except for funds already received to reimburse the withdrawing Trustee's past assessment costs.

XIV. LIMITATION

Nothing in this MOU shall be construed as obligating the United States, the State of Georgia, or any other public agency, their officers, agents or employees, to expend any funds in excess of appropriations authorized by law.

XV. THIRD PARTY CHALLENGES OR APPEALS

The rights and responsibilities contained in this MOU are subject to the availability of funding and are intended to be guidance for the respective Trustees. This MOU shall not be the basis of any claims, rights, causes of action, challenges, or appeals by any person not a party to this MOU.

XVI. EXECUTION AND EFFECTIVE DATE

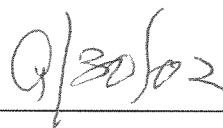
This MOU may be executed in counterparts. A copy with all executed signature pages affixed shall constitute an original of the MOU, and will be maintained by the LAT in the Administrative Record for the Site. This MOU shall be effective upon the date of signature of the last Trustee to sign this MOU ("Effective Date").

LCP NATIONAL PRIORITIES LIST SITE TRUSTEE MOU
SIGNATURE PAGE FOR THE NATIONAL OCEANIC AND ATMOSPHERIC
ADMINISTRATION




Craig R. O'Connor
Deputy General Counsel

dated

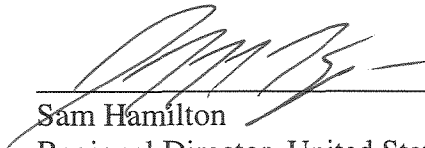


LCP NATIONAL PRIORITIES LIST SITE TRUSTEE MOU
SIGNATURE PAGE FOR THE GEORGIA DEPARTMENT OF NATURAL
RESOURCES

 dated September 19, 2002

Lonice Barrett, Commissioner
Georgia Department of Natural Resources

LCP NATIONAL PRIORITIES LIST SITE TRUSTEE MOU
SIGNATURE PAGE FOR THE DEPARTMENT OF THE INTERIOR, THROUGH THE
UNITED STATES FISH AND WILDLIFE SERVICE

 dated 11/29/02
for Sam Hamilton
Regional Director, United States Fish and Wildlife Service, Southeast Region