

**TRUSTEE MEMORANDUM OF AGREEMENT  
BETWEEN THE  
COMMONWEALTH OF VIRGINIA,  
DEPARTMENT OF NATURAL RESOURCES  
AND THE  
UNITED STATES DEPARTMENT OF THE INTERIOR,  
FISH AND WILDLIFE SERVICE  
FOR THE  
DUPONT-WAYNESBORO SITE, VIRGINIA**

**I. INTRODUCTION**

This Memorandum of Agreement (Agreement) by and between the Virginia Secretary of Natural Resources, on behalf of the Commonwealth of Virginia and the United States Fish and Wildlife Service, on behalf of the Department of the Interior (collectively referred to as the Trustees, Trustee Parties, or Parties) is entered into to ensure the coordination and cooperation of the Trustee Parties and other trustee interests in carrying out their collective natural resource trustee responsibilities concerning the releases of hazardous substances at and from the E.I. du Pont de Nemours and Company's former facilities in Waynesboro, Virginia, regarding hazardous waste releases from said facilities into surrounding areas including the South River, South Fork Shenandoah River, and watershed ("Site"). The Trustee Parties responsibilities include, but are not limited to, the assessment of natural resource damages and restoration (NRDAR) for: (1) Injury to, destruction of, or loss of natural resources and natural resource services (injury or injured natural resources); (2) restoration planning; (3) developing the costs of restoration, replacement, rehabilitation, and/or acquisition of equivalent (restoration or restore) of the injured natural resources; and (4) coordination of trustee concerns and activities with removal, remedial, corrective or other response actions carried out by other federal and state agencies in an effort to abate and/or minimize continuing and residual injury and to achieve or enhance restoration of injured natural resources.

The purpose of this Agreement is to provide a framework for coordination and cooperation among the Trustee Parties (Parties), and for the implementation of the activities of the Parties in furtherance of their natural resource trustee responsibilities.

**II. AUTHORITY**

The Parties enter into this Agreement in accordance with the natural resource trustee authorities provided for each trustee under Section 107(f) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), as amended, 42 U.S.C. § 9607(f), the Department of the Interior's Natural Resource Damage Assessment Regulations at 43 C.F.R. Section 11, Section 311(f) of the Clean Water Act (CWA), as amended, 33 U.S.C. § 1321(f), and other applicable federal and state law and authority including, but not limited to, the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), as amended, 40 C.F.R. Part 300. The terms used in this Agreement shall have the meaning of those that are defined in CERCLA, CWA, and in the federal regulations referred to above.

### III. PARTIES

- A. Parties. In accordance with Subpart G of the NCP, and other applicable federal and state law, the following officials or their designated representatives are Parties to this Agreement and act on behalf of the public as federal and state trustees for natural resources under this Agreement:
1. Secretary of Natural Resources, acting on behalf of the Commonwealth of Virginia; and
  2. Regional Director (Region 5), U.S. Fish and Wildlife Service, U.S. Department of the Interior, acting on behalf of the Secretary of the Interior.
- B. Other Natural Resource Trustees. Notwithstanding any other provision of this Agreement, any natural resource trustee who is not a Party to this Agreement, and who has a natural resource interest that is affected by the Site, shall not be precluded from participating in the NRDAR process or any other natural resource trustee activities under this Agreement. Such other trustees may include, but are not limited to, tribal governments, other federal agencies, or affected trustee agencies from other states, which may be added by addendum to this Agreement, as necessary and appropriate and authorized by applicable federal or state law.
- C. Reservation of Authority. Nothing in this Agreement is 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 that may have been affected by the Site

### IV. NATURAL RESOURCE DAMAGES

In recognition of the Congressional intent under CERCLA to restore natural resources injured as a result of releases of hazardous substances, the measure of recoverable natural resource damages contemplated under this Agreement may include:

- a. The costs of restoring injured natural resources,
- b. Interim lost use or diminution of value of the injured natural resources pending natural recovery or restoration of the injured natural resources,
- c. Reasonable costs of the NRDAR,
- d. Such other costs and damages as are supportable under applicable federal and state law, and
- e. Trustee oversight costs associated with planning, administering or implementing restoration projects for injured natural resources.

## V. SCOPE

This Agreement is intended to cover Natural Resources belonging to or managed by, controlled by, or appertaining to the Trustees under OPA, CWA, and the NCP, and other applicable federal and state law, which have been or may be affected by the Spill, the assessment of damages thereto and restoration thereof.

## VI. OBJECTIVES

The Trustees shall coordinate their efforts to meet their respective natural resource trustee responsibilities under CERCLA, and other applicable Federal law and State statutory and common law. The Trustees' objectives include, but are not limited to, the following:

- A. Coordinating the efforts of the Trustees in implementing the natural resource damage assessment process.
- B. Developing a plan for the restoration of natural resources and services injured, destroyed or lost due to the Spill, if necessary.
- C. Pursuing implementation or funding of the plan, and reimbursement of assessment costs, by responsible parties.
- D. Fairly allocating the efforts, costs and expenses of carrying out the objectives of this Agreement among the Trustees.
- E. Achieving settlement of all trustee natural resource damages claims, including the costs of assessment.
- F. Coordinating efforts of the Trustees in litigation, if necessary and appropriate.

## VII. TRUSTEE COUNCIL

- A. Composition. The Trustee Parties recognize the importance of coordinating their efforts in order to effectively and efficiently meet their respective natural resource trustee responsibilities under applicable federal and state law. Accordingly, the Trustee Parties hereby agree to create the Site Trustee Council (Trustee Council). Each Trustee Party, as specified under Section IV(A), shall designate one primary voting representative to the Trustee Council and one alternate representative to act in the absence of the primary voting representative.
- B. Decisionmaking. The two (2) members of the Trustee Council shall have equal authority, and all decisions under this Agreement shall be by unanimous agreement of all Trustee Council members.

C. Dispute Resolution. In the event of a dispute involving any decisions under this Agreement, the Trustee Council representatives shall initially attempt to resolve the dispute through good faith discussions directed toward obtaining consensus among the Trustee Parties involved in the dispute and consensus by the Trustee Council as a whole. If unanimous consent still cannot be reached after good faith discussions, the matter shall be elevated to the Trustee Parties for decision or further instructions. If necessary, the Trustee Parties may establish other mechanisms by which disputes may be resolved. The Trustee Parties agree that decisionmaking deliberations will focus upon the Trustees' mutual goal restoration of injured natural resources, rather than upon independent control or trusteeship over the affected natural resources.

D. Duties and Responsibilities. The Parties, through their representatives, shall:

1. Coordinate all Trustee activities and matters under this Agreement directed towards the assessment of natural resource damages and resolution of natural resource damages claims related to the Site.
2. Enter into contracts through its individual members, for the benefit of the Trustee Council, and after consultation with the Trustee Council, with consultants to provide such technical services as the Trustee Council determines are necessary and as permissible under applicable state or federal law.
3. Request and receive relevant materials and/or information from Trustee staff and/or the public.
4. Develop a Restoration Plan to restore, replace, rehabilitate, and/or acquire the equivalent of the injured natural resources, and the reduced or lost services provided by such resources, and
5. Develop and implement a strategy to have liable parties perform and/or pay for the costs of restoration and/or compensation for natural resource damages. Restoration costs may include the costs of planning, oversight and administration necessary to ensure successful restoration,
6. Obtain full reimbursement of assessment costs.
7. Undertake necessary and appropriate restoration.

#### E. LEAD ADMINISTRATIVE TRUSTEE

The Trustee Parties shall designate one of the Trustee Parties to act as Lead Administrative Trustee (LAT) under this Agreement for the purpose of directing and coordinating trustee activities towards resolution of NRD arising from the Site, and 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. Other duties of the LAT and/or the other Trustee entities shall be arrived at by resolution of the Trustee Council.

## F. FUNDS

1. **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 PRP's or others. Such funds shall be administered through the Trustee Council in accord with the terms established pursuant to this agreement.
2. **Trustee Agency Funds.** Each Trustee also agrees to coordinate the expenditure of any funds that are or may become available to a Trustee for NRDA activities, except funds for the reimbursement of damage assessment costs, with the other Trustees. The goal of this provision is to prevent duplication of efforts, ensure optimum coordination among the individual Trustees, and ensure that assessment costs are reasonable. This provision in no way limits the individual authority of each Trustee.
3. **NRDA Activities Conducted or Funded by PRP's.** The Trustee Council may enter into an agreement with the PRP's in which the PRP's agree to fund and/or conduct NRDA activities. Such agreements shall specify the terms of the activity, monetary disbursement, and PRP's participation. Any such Trustee Council/PRP's agreement shall be consistent with subsection "A" above.

## VIII. NOTIFICATION OF NEGOTIATIONS WITH POTENTIALLY RESPONSIBLE PARTIES

The Trustees and the Trustee Council members agree that they will coordinate communications with potentially responsible parties or their agents for matters related to the NRDAR for the Site. No Party will discuss these matters with the potentially responsible parties without first providing the other Parties with notice and an opportunity to participate in such discussions as appropriate. The above agreement shall not preclude a Party from having separate communications with potentially responsible parties on matters within the scope of the Agreement where circumstances warrant, provided that each Party notifies the other Parties and summarizes the substance of the communication for the other Parties.

The Parties also agree to inform one another of the name(s) of person(s) authorized to speak to the press and the public on behalf of each party regarding the Site and related operations.

## IX. CONFIDENTIALITY

The Trustees and their representatives agree that it is in the public interest that all scientific data arising out of their review of the injury to natural resources at the Site be made public. Therefore, such data shall be made public as soon as publication will not prejudice the on-going assessment. Public sharing of scientific data will be the general policy of the Trustees. However,

all parties to this Agreement recognize that all written or oral communications related to the assessment and recovery of damages for injury to natural resources may be undertaken in anticipation of litigation. Accordingly, all oral and written communications and work products will be treated as privileged attorney-client communications, attorney work products or protected by other applicable privilege (or a combination thereof), as appropriate, and will be protected from disclosure to the maximum extent possible under applicable federal or state law. The transmittal of any designated privileged documents or designated privileged communications between or among any of the Trustees or federal or state response action agencies or other federal, state or tribal trustees (and their counsel, representatives, contractors, and consultants) does not waive, or imply any waiver, of any privilege or right which the transmitting government may assert with respect to that document or communication. The Trustees further agree that whenever a request for production of such a record is received pursuant to any applicable federal or state law, the request will, to the extent permitted by applicable laws and regulations, be forwarded for response to the Trustee or Trustees to which the privilege applies or whose representatives originally generated or contributed the record requested. It is understood and agreed upon that all information required to be disclosed pursuant to the Federal Freedom of Information Act and applicable state law shall be released. Nothing contained herein shall be construed as prohibiting or restraining the Trustees or the Trustee Council from agreeing to release any record or from disclosing any record for which disclosure is required by law.

## X. GENERAL PROVISIONS

Reservation of Rights. All Trustees understand that this document is not intended to create or waive any legal rights or obligations among the Trustees or any other person or entity not a party to this Agreement. Nothing contained herein is intended or shall be construed to limit any Party's authorities under applicable law.

Limitation of Authority. The Trustee Parties and the Lead Administrative Trustee are not authorized to enter into settlements on behalf of the other Trustees and neither a Trustee Party nor the LAT represents another trustee in any litigation that may be commenced by that Party or another trustee. Nothing in this Agreement shall be construed as obligating the United States or the Commonwealth of Virginia, or any other public agency, their officers, agents, or employees, to expend any funds in excess of appropriations authorized by law or funds received by potentially responsible parties for actions related to the Site.

Third Parties. This Agreement is not intended to, nor shall it, vest rights in persons who do not represent the Trustee Parties to this Agreement or who are not Parties to this Agreement. The rights and responsibilities contained in this Agreement are subject to the availability of funding and are intended to be guidance for the respective Trustee Parties. They may not serve as the basis for any third party claims, defenses, challenges, or appeals.

Modification of Agreement. It is acknowledged that additional agreements may be executed by the Trustees and their representatives with regard to natural resource damage claims that arise and to planning for the restoration, replacement, rehabilitation, and/or acquisition of equivalent

natural resources that may be injured, destroyed or lost. Therefore, modification of this Agreement must be in writing and contingent upon approval of all Trustees that are currently Parties to the Agreement.

Termination and Withdrawal. This Agreement shall be in effect from the date of execution until termination by agreement of the Trustees. If at any time the Trustees determine that the purposes underlying this Agreement have been addressed, the Agreement will terminate upon such a finding. Either Trustee may withdraw from this Agreement upon written notice in accordance herewith. In the event either Trustee withdraws from the Agreement, such withdrawal must be in writing at least 60 days in advance of the withdrawal. In the event of such withdrawal, this Agreement remains in full force and effect for the remaining Parties.

In the event of the withdrawal of either Trustee, or at the termination of this Agreement, there shall be a full and complete accounting of all funds received, deposited, held, disbursed, managed, expended pursuant to Section VIII of this Agreement, or otherwise controlled in any joint account or individual account by the Trustees relating to the NRDAR for the Site.

Execution and Effective Date. This Agreement may be executed in counterparts. It is effective as to each Party as of the date of its signature, whether or not the remaining Parties execute the Agreement. A copy of the Agreement with the original executed signature pages affixed shall constitute the original Agreement.

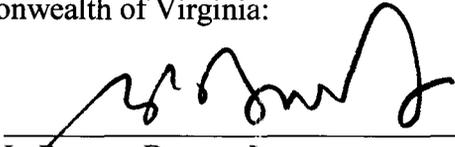
IN WITNESS WHEREOF the Parties have executed this Agreement on the dates attested to below.

The United States Department of the Interior:

By:   
Acting Marvin E. Moriarty, Regional Director,  
Region 5, U.S. Fish and Wildlife Service

Date: 2-20-08

Commonwealth of Virginia:

By:   
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L. Preston Bryant, Jr.  
Secretary of Natural Resources

Date: 4/7/08.