

**SETTLEMENT FUNDS MANAGEMENT AGREEMENT
AMONG THE
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY,
TEXAS PARKS AND WILDLIFE DEPARTMENT,
TEXAS GENERAL LAND OFFICE,
AND
UNITED STATES DEPARTMENT OF THE INTERIOR**

I. INTRODUCTION

This Settlement Funds Management Agreement (the Agreement) by and between the Texas Commission on Environmental Quality (TCEQ), the Texas Parks and Wildlife Department (TPWD), the Texas General Land Office (TGLO), and the United States Fish and Wildlife Service (USFWS) on behalf of the United States Department of the Interior (DOI) (collectively referred to as “the Trustees”) is entered into by the Trustees in recognition of their common interests and responsibilities as trustees of natural resources on the public’s behalf and to ensure the coordination and cooperation of the Trustees in applying funds recovered for natural resource damages in the case of *In re Tronox Incorporated, et al.*, United States Bankruptcy Court, Southern District of New York, Case Number 09-10156 (ALG), and pursuant to the Consent Decree and Environmental Settlement Agreement approved by the Bankruptcy Court on January 26, 2011. Tronox, LLC (formerly Kerr-McGee Chemical Company) is a responsible party for releases of hazardous substances at or from the Tronox, LLC facility in Texarkana, Texas (Facility).

The funds recovered as a result of the above-referenced Consent Decree and Environmental Settlement Agreement for natural resource damages with respect to the Facility consist of a total of \$21,292,395.06 of which \$13,956,295.46 is the subject of this Agreement. The remainder of the \$21,292,395.06 is subject to a State Settlement Funds Management Agreement. The \$13,956,295.46, including any interest accruing thereon and any other subsequent funds (together “Settlement Funds”), will be applied by the Trustees towards past and future costs associated with the natural resource damage assessment, restoration, replacement, rehabilitation, and/or acquisition of the equivalent of the natural resources or resource services which were injured, destroyed, or lost as a result of releases of hazardous substances from the Facility.

II. PARTIES

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

1. The Executive Director of the TCEQ,
2. The Executive Director of the TPWD,
3. The Commissioner of the TGLO, and

4. The Regional Director, Region 2 of the USFWS, acting on behalf of the DOI.

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, consistent with their duties and responsibilities as trustees, in the use 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, destroyed, or lost as a result of releases of hazardous substances at or from the Facility.

V. STATEMENT OF OBJECTIVES

The Trustees agree that the Settlement Funds shall be used for the benefit of natural resources or resource services injured, destroyed, or lost as a result of releases of hazardous substances at or from the Facility, as well as for Trustee costs defined in Section VII.B below. Such benefit will accrue as the result of actions to restore, replace, rehabilitate, and/or acquire the equivalent of natural resources or resource services injured, destroyed, or lost as a result of releases of hazardous substances at or from the Facility. In accomplishing this shared objective, the Trustees will coordinate with one another to:

- A. Develop and implement one or more restoration plans for natural resources and resource services injured, destroyed, or lost as a result of releases of hazardous substances at or from the Facility (Restoration Plan) in an expeditious and efficient manner;
- B. Provide an appropriate opportunity for public review of the draft Restoration Plan and for consideration of public comments received on the draft Restoration Plan before it is adopted by the Trustees;
- C. Consistent with the terms of this Agreement, provide for expenditures of the Settlement Funds as necessary or appropriate to develop or implement the Restoration Plan; and
- D. Minimize Trustee costs associated with development of the Restoration Plan and implementation of the projects selected thereunder.

VI. NATURAL RESOURCES TRUSTEE RESTORATION COUNCIL

A. **Organization.** The Trustees hereby establish the Tronox Natural Resources Trustee Restoration Council (Council) to implement this Agreement. The Council is comprised of one representative of each Trustee. The Council will create a Technical Work Group and may create additional subcommittees if they are deemed necessary to achieve the purposes of this Agreement.

B. **Designation of Council Members.** Each Trustee respectively designates the following person as its representative on the Council, who will act as that Trustee's designated representative to implement this Agreement:

1. For TCEQ: Richard Seiler
Texas Commission on Environmental Quality
Natural Resource Trustee Program, MC 133
P.O. Box 13087
Austin, Texas 78711-3087
Phone: (512) 239-2523
Fax: (512) 239-4814
Email: richard.seiler@tceq.texas.gov
2. For TPWD: Don Pitts
Texas Parks and Wildlife Department
Inland Fisheries Division
Environmental Assessment, Response and Restoration Program
4200 Smith School Road
Austin, Texas 78744
Phone: (512) 389-8754
Fax: (512) 389-8160
Email: don.pitts@tpwd.texas.gov
3. For TGLO: Angela Sunley
Texas General Land Office
Coastal Resiliency and Recovery
P.O. Box 12873
Austin, Texas 78711-2873
Phone: (512) 463-9309
Fax: (512) 475-0680
Email: angela.sunley@glo.texas.gov
4. For USFWS: Chip Wood
U.S. Fish & Wildlife Service
17629 El Camino Real #211
Houston, TX 77058
Phone: (361) 331-8547
Fax: (281) 488-5882
Email: chip_wood@fws.gov

C. **Alternate Representatives.** To ensure continuity in the Council's work, each Council member shall designate an alternate representative to the Council and shall notify each of the other Trustees' designated representatives of the alternate's name, address, email address, telephone and facsimile numbers within fourteen (14) days of the execution of this Agreement.

D. **Changing Representatives.** A Trustee may change its designated or alternate Council representative by providing written notice to each of the other Trustees' designates to the Council. In the event a Trustee's designated representative can no longer serve in that capacity, that Trustee must designate a new Council representative within fourteen (14) days from the date the need presents itself.

E. **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 members of the Council, all members of the Technical Work Group formed by the Council, and members of any other subcommittees formed by the Council.

F. **Duties and Responsibilities.** The Council shall coordinate all Trustee activities and matters within the scope of this Agreement. Approval for any action will be coordinated with the appropriate level of management pursuant to each Trustee's agency policy. Actions to be taken or authorized by the Council in implementing this Agreement, include, but are not limited to:

1. Creating a Technical Work Group. Within fourteen (14) days of the execution of this Agreement the Council shall create a Technical Work Group to assist in the development and implementation of the Restoration Plan for the restoration, replacement, rehabilitation, and/or acquisition of the equivalent of natural resources or resource services injured, destroyed, or lost as a result of the identified releases of hazardous substances at or from the Facility. The Council is responsible for overseeing and directing the Technical Work Group in the development and implementation of the Restoration Plan. To ensure effective communication and coordination within the Technical Work Group, the Council will be responsible for the following actions:
 - a. Identifying Technical Work Group Representatives. Each Council member shall provide the name and contact information (address, email address, telephone and facsimile numbers) of its representative(s) on the Technical Work Group to the Council.
 - b. Changing Technical Work Group Representatives. A Council member may change its Technical Work Group Representative(s) by providing written notice to each of the other Council members. In the event a Council's Technical Work Group Representative changes, that Council member must provide the name and contact

information of a replacement to the Council within fourteen (14) days from the date the need presents itself.

- c. Ensuring Effective Technical Work Group Communications. All correspondence and communications to or between the Trustees pertaining to Technical Work Group activities which are subject to coordination and cooperation under all sections of this Agreement shall be sent to all members of both the Council and the Technical Work Group.
2. Coordinating Trustee decision-making, planning and project contracting and implementation, and ensuring that such actions are conducted in accordance with applicable laws, administrative procedures, agency policies and procedures, and/or other legal requirements (e.g., state/federal permitting requirements);
3. Making decisions and taking such actions as are necessary to manage, administer, and/or oversee projects being developed or implemented with Settlement Funds and expending the Settlement Funds as appropriate;
4. Designating a Lead Administrative Trustee (LAT). The TCEQ has been designated the LAT for the Council. The duties for the LAT include, but are not limited to:
 - a. Scheduling conference calls and meetings of the Council and Technical Work Group, preparing agendas for those conference calls and meetings, and recording actions taken at those conference calls and meetings;
 - b. Acting as the central contact for the Council and Technical Work Group;
 - c. Maintaining records and documents received or generated by the Council or the Technical Work Group;
 - d. Preparing, issuing, or arranging for public notices or reports as determined to be necessary by the Council;
 - e. Maintaining records of Settlement Funds expenditures and receipts related to this Agreement; and
 - f. Undertaking other duties as agreed upon by the Council, which do not give the LAT decision-making rights beyond those normally held by each Trustee.
5. Establishing protocols, standards, procedures, budgets, or other directions as necessary to support access to or the use of Settlement Funds from the Tronox NRDAR Account described in Section VII below;

6. Contracting with such entities, as the Council members, in their collective discretion, determines necessary to implement this Agreement; and
7. Taking other such actions as the Council determines are necessary or appropriate to implement this Agreement, including actions necessary to fulfill responsibilities of the Trustees under applicable state or federal laws.

G. **Decision-making.** All decisions by the Council implementing this Agreement shall be made by consensus and, where appropriate (e.g., disbursements or expenditures of Settlement Funds), shall be documented in writing. In the event that unanimous agreement cannot be reached among the members of the Council, the matter in dispute will be elevated to the Authorized Officials for resolution. If necessary, the Trustees may establish further mechanisms by which disputes may be resolved. The Trustees further agree that, while recognizing the areas of expertise and authority of each Trustee, decision-making deliberations will focus on the Trustees' mutual purpose of restoring, replacing, rehabilitating, and/or acquiring the equivalent of the affected natural resources or resource services. Trustee costs associated with dispute resolution will not be reimbursable from the Settlement Funds.

VII. SETTLEMENT FUNDS

A. **Tronox NRDAR Account.** The Trustees agree that the Settlement Funds shall be placed and maintained, pending use, in the DOI Natural Resource Damage Assessment and Restoration (NRDAR) Fund and shall constitute the Tronox NRDAR Account. The Settlement Funds represent co-mingled federal and state funds that have been deposited by the Trustees into the Tronox NRDAR Account. The Tronox NRDAR Account will serve as a repository for these Settlement Funds pending joint decisions, in accordance with the decision-making process identified in Section VI.G, regarding the use of these Settlement Funds by the Trustees.

B. **Use of Settlement Funds.** The Trustees recognize that the Settlement Funds in the Tronox NRDAR Account may be used by the Trustees only to plan and implement appropriate actions to restore, replace, rehabilitate, and/or acquire the equivalent of any natural resources or resource services injured, destroyed, or lost as a result of the releases of hazardous substances at or from the Facility, as well as Trustee costs.

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

The Trustees agree to allocate \$300,000 of the Settlement Funds in the Tronox NRDAR Account for Trustee costs, unless otherwise agreed to in writing by the Council. If the Council agrees that Trustee costs may exceed \$300,000, then only interest accrued on the Settlement Funds shall be used to fund such additional Trustee costs unless otherwise subsequently agreed to in writing by the Council. Any unexpended

Trustee costs may also be used for implementation of the Restoration Plan as determined appropriate and subsequently agreed to in writing by the Council.

Under this Agreement, the Trustees may work with the DOI NRDAR Fund Manager and/or his/her designee, in identifying appropriate investments to earn a higher rate of return for unexpended Settlement Funds until their use is necessary. Appropriate investment activities will be determined through the consensus decision-making process set forth in Section VI.G and will be by unanimous written agreement of all Council members. Interest earned on any investment of Settlement Funds from the Tronox NRDAR Account will be made available for use by the Trustees for Trustee costs and to compensate the public for injuries to natural resources and resource services consistent with this Agreement.

C. Procedures Relating to Use or Access to Settlement Funds.

Disbursements of Settlement Funds from the Tronox NRDAR Account will be by unanimous written agreement of all Council members. The Council, in accordance with the decision-making process identified in Section VI.G, shall identify protocols, standards, procedures, budgets, or other directions as necessary to support access to or use of the Settlement Funds in the Tronox NRDAR Account to effectuate the purposes of this Agreement, including coordination of processing requests for withdrawal of Settlement Funds from the Tronox NRDAR Account.

VIII. RESERVATION OF RIGHTS

Each Trustee has and reserves the right to take actions necessary to pursue and/or to preserve any legal remedies available to that Trustee, and nothing in this Agreement is intended to waive or foreclose any such right. Except as to matters in or relating to this Agreement, the Trustees agree that this Agreement may not be used by one Trustee against another for any reason. The Trustees further agree that declaratory relief and injunctive relief are to be the exclusive remedies requested by any Trustee from the court for any claim of breach of this Agreement and that neither monetary damages nor attorneys' fees shall be available as a remedy against any Trustee in any such proceeding.

Each Trustee reserves the right to intervene or otherwise to participate in any legal proceeding regarding the Facility or concerning the contentions of a third party with respect to the scope of the other Trustees' trusteeship, and each Trustee waives any objection to such intervention or participation by such other Trustee.

IX. MODIFICATION OF AGREEMENT

This Agreement may be amended by the agreement of all of the Trustees. Any modification of this Agreement shall be in writing, executed by the Trustees.

X. TERMINATION

A. This Agreement shall continue in effect until completion of all work required pursuant to the Restoration Plan or until there are no remaining Settlement Funds or at such other time as the Trustees decide, in accordance with the decision-making process identified in Section VI.G, to terminate the Agreement in writing.

B. In the event any Trustee withdraws from the Agreement prior to automatic termination under Paragraph A of this section, such withdrawal must be submitted in writing to all other Council members 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 influence how Settlement Funds are to be expended and to authorize expenditures of Settlement Funds. Any withdrawing Trustee shall promptly advise the DOI NRDAR Fund Manager of the withdrawal, authorizing the remaining Trustees to manage the Tronox NRDAR Account without the participation of the withdrawing Trustee. Such withdrawing Trustee may recoup those Trustee costs, defined in Section VII.B, it has incurred as of the date of its withdrawal from this Agreement. In the event of such withdrawal, this Agreement remains in full force and effect for the remaining Trustees.

XI. LIMITATION

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

XII. THIRD PARTY CHALLENGES OR APPEALS

The rights and responsibilities contained in this Agreement are subject to the availability of funding and are intended to be guidance for the respective Trustees. This Agreement does not confer any rights on third parties, is not a waiver of any sovereign immunity of any Trustee, and is not to be construed as providing the basis of any third party challenges or appeals.

XIII. NONDISCRIMINATION

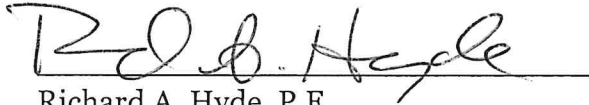
In performing this Agreement, the Trustees will not discriminate against any person because of race, color, religion, sex, national origin, age, physical or mental handicap, sexual orientation, marital status, or political affiliation.

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 of the final Trustee's signature.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

The Trustee Authorized Officials have signed this Settlement Funds Management Agreement on the date appearing under their signatures.

A handwritten signature in black ink, appearing to read "R.A. Hyde", written over a horizontal line.

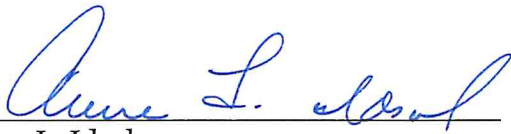
Richard A. Hyde, P.E.
Executive Director
Texas Commission on Environmental Quality

Date 9/6/16



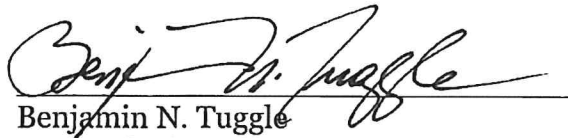
Carter Smith
Executive Director
Texas Parks and Wildlife Department

Date 31 August 2016



Anne L. Idsal
Deputy Land Commissioner & Chief Clerk
Texas General Land Office

Date 8/19/14



Benjamin N. Tuggle
Regional Director
U.S. Fish and Wildlife Service
Department of the Interior

Date 12/22/2016