

In Reply Refer To:  
FWS/Region 5/ES-EC

MAR 18 2002

Ms. Mary E. Kay  
Rhode Island Department of Environmental Management  
235 Promenade Street  
Providence, Rhode Island 02908-5767

Dear Ms. Kay:

As requested in your February 18, 2002, letter to Mark Barash of our Regional Solicitor's Office, enclosed are two fully executed originals of the Memorandum of Agreement between the State of Rhode Island and Providence Plantations and the United States Fish and Wildlife Service regarding natural resource restoration for the L&RR Superfund Site.

If additional information or assistance is needed, please contact Robin Heubel, Natural Resource Damage Assessment and Restoration Coordinator, at 413-253-8630.

*Sincerely,*

Dr. Richard O. Bennett

ACTING

Dr. Mamie A. Parker  
Regional Director

Enclosures

bcc: New England Field Office (w/executed MOA)  
Northeast Regional Solicitor (Mark Barash) (w/executed MOA)  
PS-ES/S

FWS:R5:ES:RHeubel:x8630:3/13/02  
Filename:p:\rheubel\L&RR MOA.LTR

# **MEMORANDUM OF AGREEMENT**

## **BETWEEN THE**

**STATE of RHODE ISLAND and PROVIDENCE PLANTATIONS**

**and the**

**UNITED STATES FISH and WILDLIFE SERVICE**

**REGARDING NATURAL RESOURCE RESTORATION FOR THE**

**L & R R SUPERFUND SITE**

### **INTRODUCTION**

This Memorandum of Agreement ("Agreement") by and between the State of Rhode Island and Providence Plantations (hereinafter "Rhode Island"), and the United States Department of the Interior, acting through the United State Fish and Wildlife Service ("USFWS"), (collectively referred to as the "Parties"), is entered into to ensure the coordination and cooperation of the Parties in developing and implementing a restoration plan for natural resources injured at and by the L & RR Superfund Site in North Smithfield, Rhode Island ("Site"), and to ensure compliance with the requirements of a judicial consent decree signed and entered by the Court in the case of United States of America v. Landfill and Resource Recovery, Inc., et. al. Civil No. 97-078 ML (D.RI) (hereinafter "Consent Decree") resolving the natural resource damage claims of the United States and the State of Rhode Island at the Site. Activities of the Parties covered under this Agreement include restoration planning and implementation. Pursuant to said Consent Decree, \$200,000 in natural resource damages and past assessment costs, and has been deposited with the USFWS, with the natural resources damages portion thereof to be held and expended as joint federal-state funds with expenditures subject to the unanimous approval of the trustees. This Agreement serves to provide a framework for coordination and cooperation among the Parties, and for the implementation of restoration activities in furtherance of their mutual goal of using said NRD funds to restore injured natural resources.

## AUTHORITY

The Parties enter into this Agreement in accordance with the natural resource damage 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 Pollution Contingency Plan ("NCP"), as amended, 40 C.F.R. Part 300, and, to the extent appropriate and elected for use by the Party, the Natural Resource Damage Assessment Regulations, as amended, at 43 C.F.R. Part 11.

This Agreement is intended to cover, but is not limited to, natural resources as defined under the authorities cited above, and other applicable law, belonging to, managed by, controlled by, or appertaining to the Parties at or related to, or affected by the Site.

## PARTIES

. **Natural Resource Parties.** The Parties to this agreement have shared trusteeship over the natural resources of the Site pursuant to Subpart G of the NCP, 40 C.F.R §300.600, as amended, and other applicable law. The following officials or their designated representatives act on behalf of their respective Party for all activities under this Agreement:

. The Director of the Department of Environmental Management for the State of Rhode Island

. The Regional Director of the United States Fish and Wildlife Service, Region 5

## NATURAL RESOURCE TRUSTEE COUNCIL

. **Composition.** The Parties 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 Parties hereby agree to create the L & RR Natural Resource Trustee Council ("Trustee Council"). Each Party, as specified herein shall designate one primary voting representative to the Trustee Council and one alternate representative to act in the absence of the primary voting representative. In addition, the U.S. Department of Justice, and in-house counsel for each of the Trustees, may provide one delegate 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. Each Trustee may, by written notification to all other Trustees, change the designated delegate and/or alternate.

. **Decisionmaking.** The 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 voting representatives.

. **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 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 Parties for decision or further instructions. If necessary, the Parties may establish other mechanisms by which disputes may be resolved. The Parties agree that decision making deliberations will focus upon the Parties' mutual goals of restoration of injured natural resources, rather than upon independent control or trusteeship over the affected natural resources.

. **Duties and Authorities.** In accordance with applicable law, the Parties

- . Share information with and consult with each other as is determined to be appropriate and consistent with this Agreement;
- . Conduct scientific and technical studies, sampling, and other activities as contemplated by this Agreement;
- . Attempt to reach consensus on the use of funds available under the Consent Decree for achieving the purposes and objectives of this Agreement;
- . Provide for the management and disbursement of funds available under the Consent Decree. This shall include, but is not limited to, reimbursement of past assessment costs, and payment of additional assessment activities, and restoration planning and implementation including but not limited to the reasonable costs of each trustees' participation in the trustee council process, and for planning undertaking, administration, and oversight of any activities that are reasonably necessary to carry out the purposes of this Agreement;
- . Plan for, undertake or oversee restoration activities;
- . Carry out any other actions necessary to the fulfillment of the purposes and objectives of this Agreement or required under applicable law;
- . Undertake the above in accordance with and pursuant to the requirements of the Consent Decree, which, inter alia, requires that restoration monies paid into the DOI NRDAR fund shall only be spent for restoration, restoration planning, implementation oversight, and monitoring.

. **Meetings.** Any Party may, upon reasonable notice, call a meeting of the Trustee Council to be conducted either in person or by telephone conference call. Such meetings shall generally be held in conjunction with other set meetings among the Parties.

## **PURPOSES AND OBJECTIVES**

The Parties agree that the purposes and objectives of this Agreement are:

- to coordinate any activities undertaken pursuant to this Agreement with respect to restoration actions carried out by federal and state agencies;
- to develop, consider, approve and implement plans for the restoration of injured natural resources;
- to participate restoration actions under the authority of EPA or federal or state agencies in accordance with applicable law;
- to arrange for, oversee, or undertake restoration activities;
- to coordinate and/or carry out such other actions as may be necessary and appropriate to achieve the purposes and objectives of this Agreement.
- To encourage public participation and involvement in a manner consistent with applicable law and regulation

## **GENERAL PROVISIONS**

### **Reservation of Rights and Authority**

• Nothing in this Agreement is intended or shall be construed to be an admission by the Parties in any dispute or action between the Parties or between the Parties and a third party. Nothing in this Agreement is intended or shall be construed as a waiver by the Parties for any claims or defenses in any legal action, or of any other rights or remedies. This Reservation of Rights applies to comments provided by all Parties to this Agreement on any documents prepared by, or exchanged among, the Parties in connection with this Agreement.

• 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 other 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 NRDA 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.

• 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 of the Site.

. **Limitation of Authority.** Nothing in this Agreement shall be construed as obligating any of the Parties to expend any funds in excess of appropriations or other amounts authorized by law.

. **Third Parties.** This Memorandum of Agreement is not intended to, nor shall it, vest rights in persons who do not represent the Parties to this Agreement or who are not Parties to this Agreement.

. **Effective Date/ Amendment and Termination.** This Agreement shall be effective when executed by all of the Parties and may not be amended except by written agreement of all the Parties. This Agreement can be executed in one or more counterparts, each of which will be considered an original document. This Agreement shall continue in effect until the Party determines that a restoration plan or plans under this Agreement have been completed. The Parties recognize their obligations to expend unobligated funds recovered for natural resource damages in order to restore injured natural resources under their trusteeship in a manner consistent with the requirements of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), as amended, 42 U.S.C. §9601 et. seq., and for payment of administrative costs.

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

**MEMORANDUM OF AGREEMENT  
BETWEEN THE  
Rhode Island Department of Environmental Management  
United States Department of the Interior  
REGARDING NATURAL RESOURCE RESTORATION  
FOR THE  
L & RR SUPERFUND SITE**

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

BY:



Dr. Mamie Parker  
Regional Director  
United States Fish and Wildlife Service  
For the United States Department of the Interior

MAR 15 2002

Date

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BETWEEN THE  
Rhode Island Department of Environmental Management  
United States Department of the Interior  
REGARDING NATURAL RESOURCE RESTORATION  
FOR THE  
L & RR SUPERFUND SITE**

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

BY:



Jan H. Reitsma

Director

Rhode Island Department of Environmental Management

2/15/02

Date