

**MEMORANDUM OF UNDERSTANDING
AMONG THE
LEECH LAKE BAND OF OJIBWE
MINNESOTA POLLUTION CONTROL AGENCY
MINNESOTA DEPARTMENT OF NATURAL RESOURCES
UNITED STATES DEPARTMENT OF AGRICULTURE, FOREST SERVICE
UNITED STATES DEPARTMENT OF THE INTERIOR
AND
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGARDING NATURAL RESOURCE DAMAGE ASSESSMENT IN THE
ST. REGIS PAPER COMPANY SUPERFUND SITE ENVIRONMENT**

This Memorandum of Understanding (MOU) is among the following Parties: Leech Lake Band of Ojibwe (Leech Lake Band); Minnesota Pollution Control Agency (MPCA); Minnesota Department of Natural Resources; U.S. Department of Agriculture (USDA), Forest Service; U.S. Department of the Interior acting through its bureaus, the U.S. Fish and Wildlife Service and the Bureau of Indian Affairs (hereinafter collectively "the Trustees"); and the U.S. Environmental Protection Agency (EPA).

I. RECITALS

A. Parties

1. EPA

EPA is the principal federal agency responsible for implementation of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, 42 U.S.C. § 9601-9675. EPA's responsibilities include assuring that appropriate remediation occurs and coordinating its activities with those of natural resource trustees. EPA is not a natural resource trustee, and therefore is not authorized to expend funds to assess, restore, rehabilitate, replace, or acquire the equivalent of natural resource losses.

2. Trustees

The Trustees are natural resource trustees under applicable Federal, State and Tribal law, and enter into this MOU in furtherance of their responsibilities to evaluate and, if appropriate, assert claims for injury to, destruction of, loss of, or loss of use of natural resources, including, but not limited to, the restoration, rehabilitation, replacement, or acquisition of equivalent natural resources and the recovery for lost use and non-use values of injured natural resources. 40 C.F.R. 300.600 *et seq.*

The Tribal Trustee for the St. Regis Paper Company Superfund Site is the Leech Lake

Band of Ojibwe, a sovereign Indian Tribe whose government is recognized by the United States. The Leech Lake Band is participating in this MOU because the Site, described more fully below, is located within the exterior boundaries of the Leech Lake Reservation (Reservation), and releases of hazardous substances or discharges of oil in or from the Site Environment, as defined below, may have caused injury to natural resources under the Leech Lake Band's Trusteeship. In an April 29, 1994 memorandum to the heads of federal executive departments and agencies, President Clinton reiterated the "unique legal relationship" the United States has with Tribal governments under the Constitution, treaties, statutes, and court decisions, and emphasized that the departments and agencies shall consult to the greatest extent practicable and to the extent permitted by law with Tribal governments prior to taking actions that affect federally recognized Tribal governments, assess the impacts of federal activities on Tribal trust resources, remove procedural impediments to work directly and effectively with Tribal governments on activities that affect trust property and/or governmental rights of Tribes, and address specific or unique needs of Tribes. 59 FR 22951; *See also* Exec. Order No. 13,084, 63 FR 27,655 (1998). The Leech Lake Band of Ojibwe welcome this opportunity to work with the EPA and with the other Trustees to protect the health of those who reside or conduct business on the Reservation and the quality of the Reservation Environment.

The Minnesota Pollution Control Agency and the Minnesota Department of Natural Resources are participating in this MOU because the Site, described more fully below, is located within the State of Minnesota, and releases of hazardous substances or discharges of oil in or from the Site Environment, as defined below, may have caused injury to natural resources under their Trusteeship.

The U.S. Department of the Interior, acting through its bureaus, the U.S. Fish and Wildlife Service and the Bureau of Indian Affairs, is participating in this MOU because releases of hazardous substances or discharges of oil in or from the Site Environment, as defined below, may have caused injury to natural resources under its Trusteeship.

The United States Department of Agriculture, Forest Service is participating in this MOU because the Site, described more fully below, is located partly within the Chippewa National Forest, and releases of hazardous substances or discharges of oil in or from the Site Environment, as defined below, may have caused injury to natural resources under its Trusteeship.

B. Geographic Scope

This MOU is intended to address natural resources lost or injured by discharges or releases of oil or hazardous substances on or from the St. Regis Paper Co. Superfund Site ("the Site") and, in the case of EPA, coordinate responsibilities with respect to such natural resources. The Site is located in the city of Cass Lake, on the Leech Lake Indian Reservation, partly within and partly adjacent to the Chippewa National Forest, in the State

of Minnesota. It is bounded on the north by the Burlington Northern and Soo Line Railroads, and to the west by Minnesota Highway 371. Surface water drains from the Site into Pike Bay, Cass Lake and the channel between the two, which in turn drain into the Mississippi River. For purposes of this MOU, the "Site Environment" includes all areas in which hazardous substances or oil released or discharged on or from the Site have come to be located.

C. Purpose

1. The Trustees intend to carry out natural resource trustee activities pertaining to natural resources under their Trusteeship as provided for by CERCLA, the Clean Water Act (CWA), 33 U.S.C. §§ 1251-1387, the National Contingency Plan (NCP), 40 C.F.R. Part 300, and the Oil Pollution Act of 1990 (OPA), 33 U.S.C. §§ 2701-2761, as well as other applicable Federal, State, and Tribal laws. Each Trustee acknowledges its natural resource trustee responsibility to protect, restore and enhance natural resources within its jurisdiction or control. Thus, each Trustee agrees that all funds paid to a Trustee by any Potentially Responsible Party ("PRP") as part of any settlement or other action (less reimbursement of assessment costs) will be used by the Trustee in a manner consistent with the requirements of CERCLA, the CWA, and the OPA and related regulations regarding activities intended to restore, rehabilitate, replace, or acquire the equivalent natural resources and services lost, injured, or destroyed as a result of releases or discharges on or from the Site. Furthermore, it is the intent of all Trustees to ensure that such actions be conducted with the benefit of public participation. Each Trustee agrees to fully cooperate in fulfilling the goals and objectives of this MOU.

2. This MOU provides a mechanism for the Trustees to coordinate their various natural resource trustee activities.

3. EPA's purpose in entering this MOU with the Trustees is to facilitate its responsibility to coordinate its activities with the Trustees.

II. AUTHORITY

EPA enters into this MOU in furtherance of its notification and coordination responsibilities under Section 104(b)(2) and 122(j)(1) of CERCLA, 42 U.S.C. §§ 9604(b)(2) and 9622(j)(1), as amended, and the Trustees enter into this MOU in accordance with the natural resource trustee authorities provided for each such Trustee by Section 107(f) of CERCLA, as amended, 42 U.S.C. § 9607(f), Section 311(f) of the Clean Water Act, 33 U.S.C. § 1321(f), Section 1006 of the Oil Pollution Act of 1990, 33 U.S.C. § 2706, and other applicable Federal, State and Tribal law including, the National Contingency Plan (NCP), as amended pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, and, to the extent they are utilized, the Natural Resource Damage Assessment Regulations, 43 C.F.R. Part 11 (1998), insofar as they may be amended.

III. TERMS

A. Scope of Activities

Under this MOU, as further described in section III(F), below, the Trustees will coordinate and cooperate to the maximum extent practicable with regard to the following activities:

1. Notification to all other Trustees of the discovery of any injury to, destruction of, loss of, or loss of use of natural resources;
2. Development of a position document identifying the Trustees' issues and concerns;
3. Development of and conducting a preassessment screen to determine whether an assessment should be carried out;
4. Preparation of a natural resource damage assessment plan, if deemed necessary;
5. Assessment of injury to, destruction of, loss of, or loss of use of natural resources, including establishing the nature and extent of and link between releases or discharges of hazardous substances or oil and injury to natural resources;
6. Quantification of the extent of injury to, destruction of, loss of, or loss of use of natural resources;
7. Assessment of:
 - a. Lost resource use, non-consumptive use, and non-use values;
 - b. Rehabilitation and restoration options and costs; and
 - c. Natural resource replacement options and costs.
8. Damage determination; and
9. Development and implementation of a restoration and enhancement plan for natural resources and services lost, injured, or destroyed as a result of releases or discharges on or from the Site.

B. Funding

1. Each Trustee agrees to identify and pursue funding sources necessary for its participation under this MOU to the maximum extent practicable. It is acknowledged and understood that the participation of the Federal Trustees under this MOU is contingent upon the availability of Congressional appropriations, and other appropriate funding sources, for this purpose, and that the participation of other Trustees is also contingent on the availability of funding. EPA is not authorized to expend funds to assess, restore, rehabilitate, replace or acquire the equivalent of natural resource losses.

2. No provision of this MOU shall be construed to require any federal Trustee to obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any state Trustee to obligate or pay funds in contravention of Minn. Stat. § 16A.15.

C. Representatives

Within ten (10) working days of the effective date of this MOU, each Party will identify a representative and alternate for the purpose of implementing this MOU, and will inform all other Parties in the event that another representative is appointed.

D. Trustee Council

1. The Trustees recognize the importance of coordinating their efforts in order to meet their respective Trustee responsibilities effectively and efficiently. Accordingly, there is hereby created to implement this MOU a Trustee Council, whose four members shall include (1) the Regional Director, Midwest Regional Office, Bureau of Indian Affairs, as delegated by the Secretary of the Interior, or his designated representative; (2) the Chairman of the Leech Lake Band of Ojibwe or his designated representative; (3) the Regional Forester for the Eastern Region of the USDA Forest Service as designated by the Secretary of Agriculture, or his designated representative; and (4) the Commissioners of the Minnesota Department of Natural Resources and the Minnesota Pollution Control Agency, as co-Trustees, or their designated representatives. Each Trustee designating a representative to the Trustee Council shall also designate an alternate. Representatives to the Trustee Council shall fully coordinate Trustee activities among themselves and may seek advisory participation from the United States Department of Justice, the Department of the Interior Office of the Solicitor, the Special Environmental Counsel for the Leech Lake Band, the Minnesota Attorney General, or other legal or technical advisors, as well as other Trustees or governmental entities. Each Trustee Council representative will be responsible for informing the other Trustees of all pertinent MOU-related developments in a timely manner.

2. The Trustee Council may create committees when the Council deems them necessary to implement the purposes of this MOU. Such committees may be comprised of members of the Trustee Council in addition to staff or representatives designated by the

Trustees. A representative designated by unanimous consent of the Trustee Council representatives shall serve as Trustee Coordinator for administrative purposes and shall coordinate all activities of the Trustee Council, serving under the direction of the Trustee Council.

E. Trustee Coordinator

The Trustee Coordinator's responsibilities include, but are not limited to:

1. Coordination and monitoring of the progress of the natural resource damage assessment process;
2. Scheduling of meetings of the Trustees, preparation of agendas for those meetings, and preparation of draft meeting minutes for Trustee Council review and adoption;
3. Acting as a central contact point for communications between the Trustee Council and the EPA or any PRP;
4. Coordination, through a procurement committee appointed by the Trustee Council, of the procurement of goods and services necessary to implement this MOU;
5. Development, through a cost accounting committee appointed by the Trustee Council, of a proposed system of cost accounting to facilitate eventual cost recovery;
6. Establishment and maintenance, through a records committee appointed by the Trustee Council, of records and relevant documents;
7. Preparation of a draft public participation plan, through a public participation committee appointed by the Trustee Council; and
8. Such other duties as are agreed upon by the Trustee Council.

The Trustee Coordinator shall notify all Trustees before taking any action on behalf of the Trustee Council that reasonably affects, or could reasonably be expected to affect, the claims and/or natural resource interests of any of the Trustees under this MOU.

F. Natural Resource Trustees' and EPA's Responsibilities

In implementing this MOU, the Trustees and the EPA have the following responsibilities:

1. The U.S. Environmental Protection Agency shall:

a. As required by CERCLA Section 122(j)(1), 42 U.S.C. § 9622(j)(1), provide notice to the Trustees of any CERCLA-related negotiations with any entity that may be liable for any release of a hazardous substance which may have resulted in injury to, destruction of, loss of, or loss of use of natural resources under the trusteeship of the Trustees;

b. As required by CERCLA Section 104(b)(2), 42 U.S.C. § 9604(b)(2), shall seek to coordinate with the Trustees any assessments, investigations, and planning under Section 104 of CERCLA; and

c. As required by CERCLA Section 104(b)(2), 42 U.S.C. § 9604(b)(2), notify the Trustees of potential injuries to natural resources from releases under investigation.

2. The U.S. Department of the Interior shall, to the maximum extent practicable:

a. Provide intra-Departmental coordination and advice as well as serve as a contact for the other Trustees concerning the NRDA regulatory process;

b. Provide information to the other Trustees of natural resources of concern to the agency;

c. Notify the other Trustees before taking any action that reasonably affects, or could reasonably be expected to affect, the claims or natural resource interests of the other Trustees;

d. Consistent with Section 300.615(c) of the NCP, 40 C.F.R. §300.615(c), cooperate with EPA's Remedial Project Manager (RPM) in coordinating assessments, investigations, and planning; and assure that the RPM is informed of the Trustees' activities regarding natural resource damage assessment that may affect response operations; and

e. Undertake such other activities consistent with section III(A), above, as are agreed upon by the Trustee Council.

3. The U.S. Fish and Wildlife Service shall, to the maximum extent practicable:

a. Participate with other Trustees in conducting a preassessment screen for those natural resources within its jurisdiction and documenting the conclusions of that process;

b. Provide information to the other Trustees of natural resources of concern to the agency;

c. Notify the other Trustees before taking any action that reasonably affects, or could reasonably be expected to affect, the claims or natural resource interests of the other Trustees;

d. Consistent with Section 300.615(c) of the NCP, 40 C.F.R. §300.615(c), cooperate with EPA's Remedial Project Manager (RPM) in coordinating assessments, investigations, and planning; and assure that the RPM is informed of the Trustees' activities regarding natural resource damage assessment that may affect response operations; and

e. Undertake such other activities consistent with section III(A), above, as are agreed upon by the Trustee Council.

4. The Bureau of Indian Affairs shall, to the maximum extent practicable:

a. Provide assistance to the Leech Lake Band in participating with other Trustees in conducting a preassessment screen for those natural resources within the Band's jurisdiction and documenting the conclusions of that process;

b. Provide information to the other Trustees of natural resources of concern to the agency;

c. Notify the other Trustees before taking any action that reasonably affects, or could reasonably be expected to affect, the claims or natural resource interests of the other Trustees;

d. Consistent with Section 300.615(c) of the NCP, 40 C.F.R. §300.615(c), cooperate with EPA's Remedial Project Manager (RPM) in coordinating assessments, investigations, and planning; and assure that the RPM is informed of the Trustees' activities regarding natural resource damage assessment that may affect response operations; and

e. Undertake such other activities consistent with section III(A), above, as are agreed upon by the Trustee Council.

5. The Leech Lake Band of Ojibwe shall, to the maximum extent practicable:

a. Participate with other Trustees in conducting a preassessment screen for those natural resources within its jurisdiction, and document the conclusions of that process;

b. Provide information to the other Trustees of natural resources of concern

to the Band including injury to the Leech Lake Band's spiritual, cultural and Treaty-protected natural resources;

c. Notify the other Trustees before taking any action that reasonably affects, or could reasonably be expected to affect, the claims or natural resource interests of the other Trustees;

d. Consistent with Section 300.615(c) of the NCP, 40 C.F.R. §300.615(c), cooperate with EPA's Remedial Project Manager (RPM) in coordinating assessments, investigations, and planning; and assure that the RPM is informed of the Trustees' activities regarding natural resource damage assessment that may affect response operations; and

e. Undertake such other activities consistent with section III(A), above, as are agreed upon by the Trustee Council.

6. The Minnesota Pollution Control Agency shall, to the maximum extent practicable:

a. Participate with other Trustees in conducting a preassessment screen for those natural resources within its jurisdiction, and document the conclusions of that process;

b. Provide information to the other Trustees of natural resources of concern to the agency;

c. Notify the other Trustees before taking any action that reasonably affects, or could reasonably be expected to affect, the claims or natural resource interests of the other Trustees;

d. Consistent with Section 300.615(c) of the NCP, 40 C.F.R. §300.615(c), cooperate with EPA's Remedial Project Manager (RPM) in coordinating assessments, investigations, and planning; and assure that the RPM is informed of the Trustees' activities regarding natural resource damage assessment that may affect response operations; and

e. Undertake such other activities consistent with section III(A), above, as are agreed upon by the Trustee Council.

7. The Minnesota Department of Natural Resources shall, to the maximum extent practicable:

a. Participate with other Trustees in conducting a preassessment screen for those natural resources within its jurisdiction, and document the conclusions of that process;

b. Provide information to the other Trustees of natural resources of concern

to the agency;

c. Notify the other Trustees before taking any action that reasonably affects, or could reasonably be expected to affect, the claims or natural resource interests of the other Trustees;

d. Consistent with Section 300.615(c) of the NCP, 40 C.F.R. §300.615(c), cooperate with EPA's Remedial Project Manager (RPM) in coordinating assessments, investigations, and planning; and assure that the RPM is informed of the Trustees' activities regarding natural resource damage assessment that may affect response operations; and

e. Undertake such other activities consistent with section III(A), above, as are agreed upon by the Trustee Council.

8. The U.S. Department of Agriculture, Forest Service shall, to the maximum extent practicable:

a. Participate with other Trustees in conducting a preassessment screen for those natural resources within its jurisdiction, and document the conclusions of that process;

b. Provide information to the other Trustees of natural resources of concern to the agency;

c. Notify the other Trustees before taking any action that reasonably affects, or could reasonably be expected to affect, the claims or natural resource interests of the other Trustees;

d. Consistent with Section 300.615(c) of the NCP, 40 C.F.R. §300.615(c), cooperate with EPA's Remedial Project Manager (RPM) in coordinating assessments, investigations, and planning; and assure that the RPM is informed of the Trustees' activities regarding natural resource damage assessment that may affect response operations; and

e. Undertake such other activities consistent with section III(A), above, as are agreed upon by the Trustee Council.

G. Decisions and Dispute Resolution

The Trustees agree that decisions implementing this MOU shall be by unanimous consent. In the event of a dispute involving this MOU, the members of the Trustee Council shall initially attempt to resolve the dispute through good faith discussions directed toward obtaining unanimous consent among the Trustee Council. In the event unanimous consent cannot be reached, the matter shall be presented for resolution to the Trustees who executed this MOU (or his or her successor or designee), and their decision shall be by unanimous

consent. The Trustees further agree that decision-making deliberations shall focus upon the Trustees' mutual goal of assessing, restoring, rehabilitating, replacing and/or acquiring the equivalent of the lost or injured natural resources, rather than just upon jurisdiction over or control of respective trusteeship over those resources.

H. Communication

Written communications, other than internal communications within a particular Trustee or EPA, regarding activities under this MOU shall be sent to the following representatives:

1. **For the Leech Lake Band:** Shirley Nordrum, Leech Lake Tribal Council, 15756 State 371 NW, Cass Lake, MN 56633, (telephone: 218-335-7417), (fax: 218-335-7430) lldrm@mail.paul.bunyan.net, with copies to John Persell, Minnesota Chippewa Tribe, P.O. Box 217, Cass Lake, MN 56633, (telephone: 218-335-6303), (fax: 218-335-8187), mctwq@paul.bunyan.net, and Richard Du Bey, Esq., Special Environmental Counsel, Short Cressman & Burgess PLLC, 999 Third Avenue, Suite 3000, Seattle, WA 98104, (telephone: 206-682-3333), (fax: 206-340-8856), rdubey@schlaw.com;

2. **For the Minnesota Pollution Control Agency:** Miriam Horneff, 520 Lafayette Rd., St. Paul, MN 55155, (telephone: 651-296-7228), (fax: 651-297-2343), miriam.horneff@pca.state.mn.us, with copy to Beverly Conerton, Office of the Attorney General, 900 NCL Tower, 445 Minnesota St., St. Paul, MN 55155, (telephone: 651-296-7344), (fax: 651-297-4139), beverly.conerton@state.mn.us.

3. **For the Minnesota Department of Natural Resources:** Marilyn Danks, 500 Lafayette Rd., St. Paul, MN 55155, (telephone: 651-296-0777), (fax: 651-296-1811), marilyn.danks@dnr.state.mn.us, with copy to Beverly Conerton, Office of the Attorney General, 900 NCL Tower, 445 Minnesota St., St. Paul, MN 55155, (telephone: 651-296-7344), (fax: 651-297-4139), beverly.conerton@state.mn.us.

4. **For the U.S. Department of Agriculture, Forest Service:** Bonnie Ilhardt, 310 W. Wisconsin Ave., Suite 500, Milwaukee, WI 53203, (telephone: 414-297-3697), (fax: 414-297-3808) bilhardt/r9@fs.fed.us, with copies to Nancy Salminen, Chippewa National Forest, Rt. 3, Box 244, Cass Lake, MN 56633, (telephone: 218-335-8666), (fax: 218-335-8637), nsalmine/r9_chippewa@fs.fed.us, and Kirk M. Minckler, Office of the General Counsel, U.S. Department of Agriculture, P.O. Box 25005, Denver, CO 80225, (telephone: 303-275-5549), (fax: 303-275-5557), kirk.minckler@usda.gov.

5. **For the Department of the Interior:** Larry Morrin, Regional Director, Midwest Regional Office, Bureau of Indian Affairs, Minneapolis Area Office, Whipple Federal Bldg., 1 Federal Drive, Room 550, Fort Snelling, MN 55111, (telephone: 612-713-4400), (fax: 612-713-4401), larry_morrin@mail.bia.gov, with copy to Michael Schoessler,

Office of the Field Solicitor, U.S. Department of the Interior, Whipple Federal Bldg., 1 Federal Drive, Room 686, Fort Snelling, MN 55111, (telephone: 612-713-7100), (fax: 612-713-7121), michael_schoessler@ios.doi.gov.

6. **For the U.S. Fish and Wildlife Service:** Dave Warburton, U.S. Fish & Wildlife Service, Twin Cities Field Office, 4101 East 80th St., Bloomington, MN 55425, (telephone: 612-725-3548, ext. 203), (fax: 612-725-3609), dave_warburton@fws.gov.

7. **For the Bureau of Indian Affairs:** Jeffery Loman, Bureau of Indian Affairs, 1849 C Street NW, MS:4516, Washington, D.C. 20240, (telephone: 202-208-5474), (fax: 202-208-1605), jeff_loman@ios.doi.gov.

8. **For the Environmental Protection Agency:** Linda A. Kern, U.S. EPA, Region 5, 77 West Jackson Blvd., HSRM-6J, Chicago, IL, 60604, (telephone: 312-886-7341), (fax: 312-886-4071), kern.linda@epamail.epa.gov, with copy to Mony G. Chabria, Office of Regional Counsel, U.S. EPA, Region 5, 77 West Jackson Blvd., C-14J, Chicago, IL 60604, (telephone: 312-886-6842), (fax: 312-886-0747), chabria.monesh@epamail.epa.gov.

I. Confidentiality

1. A "designated privileged communication" is one which occurs with an expectation of confidentiality and includes, but is not limited to, communications between Trustees' attorneys or their staff, agents, and/or experts in anticipation of litigation, in the seeking or giving of legal advice, and/or in the context of pre-decisional government deliberations. A "designated privileged document" is a document which is drafted with an expectation of confidentiality, and includes, but is not limited to, communications between the Trustees' attorneys or their staff, agents, and/or experts in anticipation of litigation, in the seeking or giving of legal advice, and/or in the context of pre-decisional government deliberations.

2. The Trustees recognize that written or oral communications related to the evaluation of effects associated with the release of hazardous substances or discharge of oil, and the assessment and recovery of damages for injury to, destruction of, loss of, or loss of use of natural resources, are being undertaken in anticipation of litigation. Therefore, all designated privileged communications and designated privileged documents and associated work product will be treated and considered by the Trustees to be privileged attorney-client communications, attorney work product, or protected by other applicable privilege and combination thereof, as appropriate, and will be protected from disclosure to the maximum extent possible under federal, state and Tribal law.

3. The transmittal of a designated privileged document to, or a designated privileged communication between or among any of the Trustees or their attorneys does not

waive, or imply any waiver, of any privilege or right which the transmitting Trustee may assert with respect to that document or communication.

4. The designated privileged documents in the custody of each Trustee shall be maintained by that Trustee in such a manner as to insure that no intentional or unintentional disclosure is made which would compromise any asserted privilege.

5. If a subpoena, discovery request, or other request in any form, for a designated privileged document or information provided under this MOU is received by any Trustee, a copy of the subpoena or request will be immediately forwarded to counsel for the other Trustees.

6. At the request and option of any Trustee, designated privileged documents shall be returned to the originating party or destroyed, subject to the provisions of all applicable state and federal laws pertaining to document retention and/or destruction.

7. Nothing contained herein shall be construed as prohibiting or restraining the Trustee Council from agreeing to release a record. The provisions of this subparagraph 7 and in paragraph III(I) are subject to the Trustees' obligations to comply with all applicable laws regarding management and disclosure of documents.

8. The Trustees acknowledge that two of the Trustees, the MPCA and the Leech Lake Band, have two distinct responsibilities with regard to Site remediation and the evaluation of natural resource injuries. These Trustees recognize the need to administer these responsibilities separately and according to applicable statutes and regulations in a manner consistent with the above conditions of confidentiality.

J. Notification of Negotiations with Potentially Responsible Parties

It is recognized that each Party has and reserves all rights, powers and remedies now or hereafter existing at law or in equity, or by statute or otherwise, and that nothing in this MOU waives or forecloses the exercise of any such rights, powers or remedies; however, each Trustee agrees to provide thirty (30) calendar days prior written notice to the other Trustees of its intent to conduct independent negotiations with any PRP regarding settlement or other disposition of claims for the Site Environment. The Trustees further agree to inform each other within five (5) business days of the effective date of this MOU of the existence of any such negotiations that are taking place as of the effective date of this MOU. The Trustees further agree to provide copies of any MOUs or other documents reflecting such Trustee's independent negotiations and/or settlement of such claims.

K. General Provisions

1. All Trustees stipulate that execution of this MOU shall not constitute approval

or admission of, or precedent regarding, any principle, fact or issue in any administrative or judicial proceeding.

2. Each Party has and reserves all of its rights, privileges, presumptions, inherent sovereignty, powers, and remedies now or hereafter existing at law or equity, or by statute, treaty, or otherwise, and nothing in this MOU waives or forecloses the exercise of the same.

3. Nothing in this MOU shall be construed to authorize a Party to enter into settlements on behalf of the other Parties or to represent another Party in any litigation.

4. Nothing in the MOU shall be construed as obligating any of the Parties to expend any funds in excess of appropriations or other amounts authorized by law.

5. This MOU is not intended to, nor shall it, vest rights in persons who do not represent the Trustees or who are not parties to this MOU. The activities to be carried out in furtherance of the Trustees' rights and responsibilities contained in the MOU are intended to be guidance for use and coordination by the Trustees. This MOU is not intended to create or authorize a basis for any third party claims, challenges or appeals to the actions of the Trustees.

6. Each of the undersigned signatories to this MOU certifies that he or she is fully authorized to enter into this MOU on behalf of the Party that he or she represents.

7. Except as provided below in Section III(M), the Parties understand that this MOU is not intended to create any further legal rights or obligations among the Parties.

8. Any Trustee receiving CERCLA funds from EPA's Superfund agrees that such monies shall not be used in a manner inconsistent with applicable law.

L. Execution; Effective Date

This MOU may be executed in counterparts. A copy with all original executed signature pages affixed shall constitute the original MOU, and shall be retained by the Trustee Coordinator. The effective date of this MOU shall be the date of the final signature.

M. Amendment and Withdrawal or Termination

1. This MOU may not be amended except by written agreement of all Parties to this MOU. This MOU shall continue in effect until terminated by agreement of all of the Parties, provided however, that any Trustee or EPA may terminate its participation in the MOU upon giving sixty (60) days written notice to all other Parties. The withdrawal of any Party shall not affect the subsequent validity of this MOU with respect to the other Parties.

2. The confidentiality provisions of this MOU shall continue in effect following withdrawal or termination by any Party, subject to the provisions contained in Section III(I)(7). Upon termination of this MOU or withdrawal by any Party, any Party may request the return of any or all of the confidential documents which that Party may have provided under this MOU. All such documents or information must be returned within fifteen (15) working days of a written request for such return. Thereafter, consistent with Section III(I) of this MOU, any remaining Parties shall have a continuing obligation to maintain the confidentiality of all other materials in their possession which reflect any information provided in the confidential documents that have been returned.

3. In the event of the withdrawal of any Trustee, or at the termination of this MOU, the cost accounting committee, established pursuant to Section III(E)(5), shall promptly prepare, or have prepared, a full and complete accounting of all funds received, deposited, held, disbursed, managed, expended, or otherwise controlled in any joint account established by the Trustee Council.

IN WITNESS WHEREOF the Parties have executed this MOU on the dates noted below.

LEECH LAKE BAND OF OJIBWE

By:

Eli O. Hunt

Title: Chairman, LEECH LAKE BAND OF OJIBWE

Date:

11-10-99

MINNESOTA POLLUTION CONTROL AGENCY

By: Laura A. Huddes
Title: Commissioner

Date: 15 November '99

MINNESOTA DEPARTMENT OF NATURAL RESOURCES

By: _____

Title: _____

Allen Herber
Commissioner

Date: _____

11/5/99

U.S. DEPARTMENT OF AGRICULTURE, FOREST SERVICE

By:

Robert T. Jacob

Title:

Regional Forester

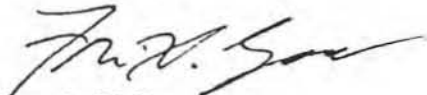
Date: Oct-1, 1999

U.S. DEPARTMENT OF THE INTERIOR

By: Larry D. Orrin
Authorized Official

Date: 9-29-99

U.S. ENVIRONMENTAL PROTECTION AGENCY


Francis X. Lyons
Regional Administrator
Region 5

Date: 9/30/99

Re: Memorandum of Understanding
Among Natural Resource Trustees and
U.S. Environmental Protection Agency
Regarding the St. Regis Paper Company Site,
Cass Lake, Minnesota