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MEMORANDUM OF UNDERSTANDING
BETWEEN
THE OHIO ENVIRONMENTAL PROTECTION AGENCY
AND
THE U.S. DEPARTMENT OF THE INTERIOR

I. INTRODUCTION and AUTHORITY

This Memorandum of Understanding (MOU) by and between the Ohio Environmental Protection Agency (OEPA), and the United States Department of the Interior (DOI) is entered into to ensure coordination and cooperation, in assessment of injuries and planning and implementation of restoration or replacement of natural resources injured by releases of hazardous materials from the Fields Brook Superfund Site. The Trustees enter into this MOU pursuant to the authorities of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 et seq. and other federal and state laws and authorities including, but not limited to, the Federal Water Pollution Control Act, 33 U.S.C. 1251 et seq., the Oil Pollution Act of 1990, 33 U.S.C. 2701 et seq., and to the extent appropriate and elected for use by the Trustees, the Natural Resource Damage Assessment Regulations, as amended, 43 C.F.R. Part 11. The MOU is intended to facilitate coordination and cooperation among the Trustees in their assessment and monitoring of injuries to natural resources in connection with the Fields Brook Superfund Site and in the restoration of those natural resources.

The Trustees' responsibilities include, but are not limited to, the assessment, recovery, and administration of natural resource damages for: (1) injury to, destruction of, or loss of natural resources and natural resource services (hereinafter "injury" or "injured natural resources"); (2) restoration planning; (3) the costs of restoration, replacement, rehabilitation, and/or acquisition of equivalent (hereinafter "restoration" or "restore") of the injured natural resources; and (4) coordination of trustee concerns and activities associated with removal, remedial or corrective actions, 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.

II. PARTIES and ADVISORS

The Trustees specified in Section I have trusteeship over certain natural resources at, or related to the Fields Brook Superfund Site pursuant to Section 300.600 Subpart G of the National Contingency Plan (NCP), as amended, and other applicable laws. The Trustees have authority to act on behalf of the public to bring claims for natural resource damages against potentially responsible parties and to undertake restoration activities. However, nothing in this MOU is to imply, or operate in a manner, that any natural resource trustee with an interest in the Fields Brook Superfund 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 which may have been affected by the Site. Such other trustees may be added to this MOU by amendment in accordance with section XI. The following officials, collectively referred to as the "Trustees", are parties to this MOU and act on behalf of the public as trustees for natural resources under this MOU:

A. Natural Resource Trustee Parties:

Director, Ohio Environmental Protection Agency or his delegated representative

and

Secretary of the Interior or his delegated representative(s) including:

Director, Office of Environmental Policy & Compliance (OEPC)

Regional Director, Region 3, U.S. Fish and Wildlife Service

B. Advisors

United States Department of Justice (DOJ), the Department of the Interior Office of the Solicitor (SOL), the Ohio Attorney General (OAG), the United States Environmental Protection Agency (USEPA), United States Department of Commerce through the National Oceanic and Atmospheric Administration (NOAA), the United States Coast Guard (CG), and Ohio Department of Natural Resources (ODNR).

III. EVENTS

This MOU is intended to address all releases, spills, or other incidents, occurrences, or events (hereinafter referred to as "events"), related to the Fields Brook National Priority List (NPL) Site (also known as the Fields Brook Superfund Site) which give rise to claims and/or potential claims for Natural Resource Damages. Locations covered by this MOU include the Fields Brook Superfund Site, Fields Brook, Ashtabula River, and their supporting or affected ecosystems including Lake Erie.

IV. PURPOSE

The Trustees recognize the importance of integrating and coordinating the assessment of damages for injuries to natural resources and seeking compensation for those injuries to natural resources and/or the services they provide, and restoration of those affected resources and/or services provided by those resources. The purpose of this MOU is to provide a framework for coordination and cooperation between the Trustees, and for the implementation of the activities of the Trustees in furtherance of their responsibilities as trustees for natural resources. The Trustees' activities will involve assessing damages for injuries to natural resources, seeking compensation for those injuries to natural resources, and using funds recovered as compensation to restore and/or replace the injured natural resources and/or the services provided by those natural resources.

V. ORGANIZATION OF A TRUSTEE COUNCIL

The Trustees recognize the importance of coordinating their efforts in order to meet their respective natural resources trustee responsibilities effectively and efficiently. Accordingly, there is hereby created to implement this MOU, a Trustee Council, whose membership shall include the Secretary of the Interior or his designated representative, and the Director of the Ohio Environmental Protection Agency or his designated representative. Each Trustee designating a representative to the Trustee Council shall also designate an alternate (see Appendix). Representatives to the Trustee Council shall fully coordinate Trustee activities among themselves and may seek advisory participation from NOAA, the United States Department of Justice, the Department of the Interior Office of the Solicitor, the State Attorney General or other legal advisors, as well as other trustees or governmental entities such as the U.S. Environmental Protection Agency and the Ohio Department of Natural Resources.

VI. DUTIES AND RESPONSIBILITIES OF THE COUNCIL

The Trustee Council representatives shall coordinate and authorize all Trustee activities and matters under this MOU in accordance with the decision making requirements contained in section VII. The Trustees through their representatives may take whatever actions they determine are necessary to fulfill their responsibilities under the Acts and applicable state Laws. It is expected that the representatives, in accordance with applicable laws and policies, may take the following actions, inter alia, to address the Trustees' natural resource responsibilities.

A. Conduct scientific and technical studies, sampling, and other activities relating to trust natural resources. These may include, but are not limited to, the assessment of natural resource damages for injury to trust natural resources which may have been lost, injured, or destroyed.

B. Seek compensation from responsible parties for the damages assessed by the Trustees and for the costs of planning and implementing the assessment.

C. In concert with attorneys for the Trustees, participate in negotiations with responsible parties.

D. Make all the necessary decisions for the management and administration of funds pursuant to Section VIII of this MOU in accordance with applicable law.

E. Supervise, manage, obligate, and arrange for disbursement of any money paid to the Trustees by, or on behalf of, responsible parties for the purpose of assessing, restoring, replacing, rehabilitating and/or acquiring the equivalent of the affected natural resources in accordance with applicable law.

F. Arrange for necessary contracts with professional consultants, technical or otherwise, that the Trustees determine are best qualified to provide services to the Trustees, in accordance with applicable law.

G. In consultation with the Ohio Department of Natural Resources and other Trustees or Advisors as necessary, oversee the development and the implementation of a plan for the restoration, replacement, rehabilitation and/or acquisition of equivalent resources for those trust resources, and/or the services provided by those resources, that were injured, destroyed, or lost.

H. Coordinate and integrate, to the extent practicable, natural resource trustee concerns and activities with removal, remedial or corrective actions, 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 duties of the Trustees' representatives to the Trustee Council shall include, but are not limited to: coordination and monitoring of the progress of the natural resource damage assessment process; scheduling of meetings and preparation of agendas for those meetings; acting as central contact point for their respective agencies (if applicable); and establishment and maintenance of records and relevant documents. Each Trustee Council representative will be responsible for informing the other Trustees of all pertinent developments on a timely basis.

VII. DECISION MAKING BY THE COUNCIL

The Trustees agree that decisions implementing this MOU shall require unanimous approval. In the event that unanimous agreement cannot be reached between voting Trustee Council representatives, the matter in dispute will be elevated to the Trustee officials having signature authority either to resolve the dispute or to establish a dispute resolution mechanism by which the dispute may be resolved. The Trustees further agree that decision making deliberations will focus upon the Trustees' mutual goal of assessing, restoring, rehabilitating, replacing and/or acquiring the equivalent of the affected natural resources, rather than upon control of respective trusteeship over those resources.

VIII. FUNDS

The Trustees, through their representatives, have agreed either to utilize the DOI's Natural Resource Damage Assessment and Restoration Fund or to establish, to the extent consistent with applicable law, a court registry account for purposes of receiving, holding, disbursing, managing, and expending all natural resource damage recoveries obtained or received by the Trustees relating to the natural resource injuries arising out of the events and any interest earned thereon. Such recovered funds shall be used for restoration activities conducted under this MOU to offset those injuries to natural resources and the services that they provide. Any damage recoveries for injury to natural resources at a Site obtained or received by or on behalf of any Trustee shall be deposited in accordance with the Site's Consent Decree(s) provisions for payment of natural resource damages, either into this account, or as otherwise directed specifically in the Consent Decree(s).

The Trustee Council representatives, in accordance with the decision making process outlined in Section VII, shall establish standards and procedures governing the joint use of all natural resource damages received by the Trustees for the purposes of restoring, replacing, rehabilitating, and/or acquiring the equivalent of natural resources injured and the lost services provided by such resources.

The Trustees further agree that monies for assessment and oversight costs shall be separated and advanced or reimbursed to each Trustee and advisors, as appropriate. This may include, but is not limited to, the reasonable unreimbursed costs jointly agreed upon, for the planning, conduct, evaluation, and coordination of all natural resource damage assessment activities pursued by the Trustee representatives. Monies for the payment of U.S. Department of the Interior's assessment costs shall be paid directly to the U.S. Fish and Wildlife Service's Natural Resource Damage Assessment and Restoration Fund (NRDAR) account number 14X5198 subactivity 9843. Monies for payment of the State of Ohio's assessment costs shall be paid to Treasurer, State of Ohio/Hazardous Waste Special Clean Up Account, sent to Fiscal Officer, Ohio EPA, with a copy to Fiscal Officer, DERR.

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 as a result of the Events be made public. Therefore, public sharing of scientific data will be the general policy of the Trustees.

However, all parties to this MOU recognize that some 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, oral and written communications and work product which are privileged attorney-client communications, attorney work product, or protected by other applicable privilege (or a combination thereof), and which are protected from disclosure under applicable Federal or State law, will be handled consistent with applicable law. They further agree that whenever a request for production of such a record is received pursuant to any applicable Federal or State law, a copy of the request will be forwarded for comment to the Trustee or Trustees to which the privilege applies or whose representatives originally generated or contributed the record requested. Nothing contained herein shall be construed as prohibiting or restraining the Trustees or the Trustee Council from agreeing to release any record or from responding to a request in accordance with applicable law.

X. RESERVATION OF RIGHTS

Except for the confidentiality agreement contained in Section IX, the parties understand that this document is not intended to create any further legal rights or obligations between the Trustees or any other persons not parties to this MOU.

XI. MODIFICATION OF AGREEMENT

Modification of this MOU must be in writing and approved by all Trustees currently parties to the MOU.

XII. TERMINATION

This MOU shall be in effect from the date of execution until termination by agreement of the Trustees. In the event any Trustee withdraws from the MOU, such withdrawal must be in writing at least thirty days in advance of the withdrawal. In the event of such withdrawal, this MOU remains in full force and effect for the remaining party or parties.

In the event of the withdrawal of any Trustee, or at the termination of this MOU, there shall be a full and complete accounting of all funds received, deposited, held, disbursed, managed, or expended pursuant to Section VIII of this MOU, or otherwise controlled in any joint account by the Trustees as a result of any occurrence.

XIII. LIMITATION

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

XIV. THIRD PARTY CHALLENGES OR APPEALS

The activities to be carried out in furtherance of the Trustees' rights and responsibilities contained in this MOU are subject to the availability of funding and 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.

XV. EXECUTION: EFFECTIVE DATE

This MOU may be executed in counterparts. A copy with all original executed signature pages affixed shall constitute the original MOU.

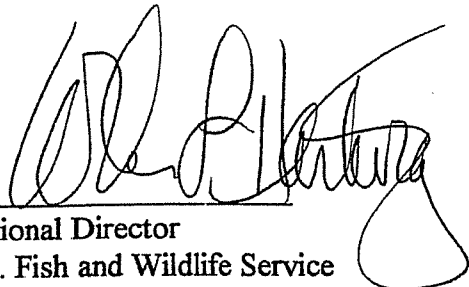
The effective date of this MOU shall be the date of the signature of the Trustee who is last to sign.

A handwritten signature in black ink, appearing to read "Donald Blumhagen", is written over a horizontal line.

Director
Ohio Environmental Protection Agency

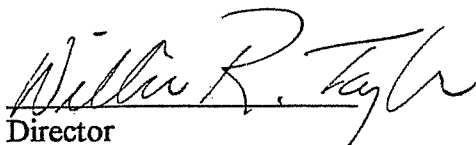
December 23, 1998

Date



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

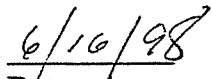
6/10/98
Date



Director

Office of Environmental Policy
and Compliance

U.S. Department of the Interior



Date

APPENDIX

Section V. of this MOU establishes the Trustee Council whose membership includes the Secretary of the Interior or his delegated representative (and alternate) and the Director of Ohio Environmental Protection Agency or his delegated representative (and alternate). The delegated representative and alternate of each agency are the following:

Secretary of the Interior

Delegated representative for U.S. Fish and Wildlife Service: Field Supervisor, Reynoldsburg, Ohio Field Office (presently Kent Kroonemeyer)

Delegated (alternate) representative for U.S. Fish and Wildlife Service: appointed by the Field Supervisor, Reynoldsburg, Ohio Field Office (presently William Kurey)

Director of Ohio Environmental Protection Agency

Delegated representative for the Director of Ohio Environmental Protection Agency: Environmental Specialist 3, Division of Emergency and Remedial Response, Ohio EPA Northeast District Office (presently Sheila Abraham)

Delegated (alternate) representative for the Director of Ohio Environmental Protection Agency: Fields Brook Site Coordinator, Division of Emergency and Remedial Response, Ohio EPA Northeast District Office (presently Regan Williams)