

MEMORANDUM OF AGREEMENT**AMONG**

**THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS AND
THE DEPARTMENT OF ENVIRONMENTAL PROTECTION,
THE NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION,
THE UNITED STATES DEPARTMENT OF THE INTERIOR,
AND THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

REGARDING

**RESPONSE ACTIONS, NATURAL RESOURCE RESTORATION, REPLACEMENT,
AND/OR ACQUISITION OF EQUIVALENT NATURAL RESOURCES AT AND AROUND
THE NYANZA CHEMICAL WASTE DUMP SUPERFUND SITE**

I.**INTRODUCTION**

This Memorandum of Agreement ("Agreement") by and among the Executive Office of Environmental Affairs ("EOEA") and the Department of Environmental Protection ("DEP") of the Commonwealth of Massachusetts, the National Oceanic and Atmospheric Administration ("NOAA"), the Fish and Wildlife Service of the United States Department of the Interior ("DOI/FWS" or "DOI"), and the United States Environmental Protection Agency ("EPA") (hereinafter referred to collectively as "the Parties"), is entered into in recognition of their common interest in the remediation, and the restoration, replacement and/or acquisition of equivalent natural resources which have been injured, destroyed or lost by the releases of hazardous substances from or at the Nyanza Chemical Waste Dump Superfund Site ("Site") located in Ashland, Massachusetts, and to facilitate the coordination and cooperation of the Parties in the application of natural resource damages ("NRD") recovered for the Site.

The United States and the Commonwealth of Massachusetts ("Governments") expect to file complaints in Federal Court to recover costs incurred and to be incurred by the Governments for actions taken, and to be taken, in response to the release or threatened release of hazardous substances at the Site.

The Site is located in Ashland, Massachusetts, about 25 miles west of Boston. Between 1917 and 1978 a succession of interrelated companies manufactured textile dyes and intermediates on the site, producing a large amount of hazardous wastes and contaminants. Nyanza, Inc., successor to these companies, disposed of large quantities of sludges on-site containing high concentrations of mercury, chromium, and lead. Nyanza, Inc. also disposed of large quantities of organic chemicals, such as dichlorobenzene, chlorobenzene, aniline, and nitrobenzene, which caused severe groundwater contamination both on- and off-site.

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The Site was placed on the National Priorities List in 1983. EPA has divided the remediation into four operable units: (1) source control, or the excavation of on-site soils and sludges and their consolidation with other contaminated material under a cap (Record of Decision ("ROD") signed September 4, 1985; construction completed in 1991); (2) an interim groundwater remedy to study the effectiveness of cleanup in the most contaminated portion of the plume (ROD signed September 23, 1991; this interim remedy is currently under reconsideration and may be amended); (3) the cleanup of sludges and sediments in wetlands and drainageways between the original Site and the Sudbury River, and the consolidation of those materials under the cap (ROD signed March 30, 1993); and (4) the cleanup of the Sudbury River, whose biota have elevated levels of mercury (in Remedial Investigation). EPA and DEP are performing the work on each of the operable units.

The Potentially Responsible Parties ("PRPs") with whom the Governments are negotiating include, among others: Rohm Tech, Inc. ("RTI"); PQ Corporation and its wholly owned subsidiary, Nyacol Products, Inc. ("PQ/NPI"); and Scott Taylor ("Taylor"). The Governments propose to enter into Consent Decrees with RTI, PQ/NPI, and Taylor, through which these PRPs will receive covenants not to sue for past and future response costs and natural resources damages primarily in exchange for cash payments. The settlement sum expected from RTI is \$4.2 million, of which approximately \$2.1 million will be for natural resource damages and Trustee oversight expenses to be expended by the Trustees pursuant to this Agreement. The settlement sum expected from Taylor is \$565,000, of which \$35,000 will be for natural resource damages and Trustee oversight expenses to be expended by the Trustees pursuant to this Agreement. Recoveries from the other PRPs identified above for joint Trustee resources at the Site will also be subject to the terms of this Memorandum of Agreement.

Pursuant to the proposed Consent Decrees settling liability with RTI and Taylor, the recoveries for natural resource damages shall be paid to the U.S. Department of the Interior for deposit in its Natural Resource Damage Assessment and Restoration Fund. The Trustees shall be reimbursed for their past assessment costs (not including legal costs), incurred prior to the execution of this MOA, from the recovery from RTI.

**II.
AUTHORITY**

A. The Trustees enter into this Agreement in accordance with the natural resource Trustee authorities provided for each Trustee by Section 107(f) of the Comprehensive Environmental

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Response, Compensation and Liability Act ("CERCLA"), as amended, 42 U.S.C. § 9607(f); Section 5 of the Massachusetts Oil and Hazardous Material Release Prevention Act ("Chapter 21E"), M.G.L. c. 21E, § 5; Executive Order No. 12,580 (January 23, 1987); Subpart G of the National Oil and Hazardous Substance Pollution Contingency Plan ("NCP"), 40 C.F.R. Part 300.600, as amended pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605; and the Massachusetts Contingency Plan ("MCP"), as amended pursuant to Chapter 21E, M.G.L. c. 21E, § 3(b); and other applicable Federal and State laws and regulations. DEP and EPA enter into this Agreement in accordance with their respective authorities under CERCLA; Chapter 21E; Executive Order No. 12,580; the NCP; the MCP; and other applicable Federal and State laws and regulations.

B. In accordance with Subpart G of the NCP, 40 C.F.R. § 300.600 through 300.615, 55 Federal Register 47450 - 47452 (September 15, 1994), the following officials or their designees shall act on behalf of the public as Federal and State Trustees for natural resources under this Agreement:

1. The Secretary of Environmental Affairs for the Commonwealth of Massachusetts,
2. The Secretary of the Interior,
3. The Under Secretary for Oceans and Atmosphere, Administrator of the National Oceanic and Atmospheric Administration, acting on behalf of the Secretary of Commerce.

C. EPA's participation in this Agreement is consistent with its authority under Section 104 of CERCLA, as amended, 42 U.S.C. § 9604, to respond to releases and threats of releases into the environment of hazardous substances, to coordinate with the Trustees, and to consult with the Commonwealth prior to taking remedial action. EPA is not a Trustee agency. The Regional Administrator, or his designee, shall act on behalf of the EPA under this Agreement.

D. DEP's participation in this Agreement is consistent with its authority under Sections 3 and 4 of Chapter 21E, as amended, to secure to the Commonwealth the benefits of CERCLA and to take or arrange for reasonably necessary response actions, respectively. DEP is not a Trustee agency. The Commissioner, or his designee, shall act on behalf of the DEP under this Agreement.

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III.
DEFINITIONS

For purposes of this Agreement the following definitions shall apply:

A. "Ex-Officio Members" and "Ex-Officio Representatives" mean individuals authorized pursuant to Section VII(A) of this Agreement to participate in Trustee Council proceedings, except that they shall have no vote in Trustee Council decisions.

B. "Federal Trustees" means the Secretary of Commerce, acting through NOAA, and the Secretary of the Interior through the Fish and Wildlife Service ("FWS"), or their respective authorized designees.

C. "Joint use" means use of natural resource damage recoveries by the State Trustee or the Federal Trustees, whether individually or collectively, in such a manner as is agreed upon by the Trustees in accordance with the terms of this Agreement.

D. "Natural resources" shall have the same meaning as set forth in Section 101(16) of CERCLA, as amended, 42 U.S.C. § 9601(16), and as used in Section 5 of Chapter 21E..

E. "Natural resource damage(s) recovery(ies)" means any award, judgment, settlement or other payment to the Federal Trustees or the State Trustee which is received or controlled by any of the Trustees, individually or collectively, for or as a result of claims for natural resource damages against any potentially responsible parties at the Site, including any interest accrued on such recoveries; except any such award which is a judgment, settlement, or payment in reimbursement of natural resource damage assessment costs incurred by any of the Trustees prior to the effective date of this Agreement, and except any judgment, settlement, or payment of damages to the Commonwealth for injury to, destruction of, or loss of groundwater.

F. "Response action" means any action undertaken by EPA or DEP pursuant to CERCLA Section 104, 42 U.S.C. § 9604, any action ordered by EPA pursuant to CERCLA Section 106, 42 U.S.C. § 9606, or any action undertaken or ordered by the DEP pursuant to Chapter 21E, to respond to the release or threat of release of a hazardous substance at or from the Site.

G. "Restore," "restoration," "replace," "acquire the equivalent of" mean any actions undertaken by the Trustees pursuant to CERCLA Section 107(f)(1), as amended, 42 U.S.C. § 9607(f)(1), and other applicable laws or regulations, including

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planning, implementation, administration and oversight, which serve to restore, replace, acquire the equivalent of, or provide substitutes for natural resources or natural resource services injured, destroyed or lost as a result of the release of hazardous substances from the Site.

H. "Restoration Coordinator" means the person appointed/hired by the Trustee Council to conduct activities as described at Section VII, Paragraph D.

I. "Site" or "Site vicinity" means the Nyanza Chemical Waste Dump Superfund Site located in Ashland, Middlesex County, Massachusetts, including all areas where releases of hazardous substances at or from the Site are now or may come to be located, and all natural resources, habitats supporting trust resources, and areas which may have been or may be affected by hazardous substances released at or from the Site.

J. "State Trustee" means the Secretary of Environmental Affairs, Commonwealth of Massachusetts, or the Secretary's trustee representative.

K. "Trustees" means the Federal Trustees and the State Trustee.

L. "Trustee Council" means the three Trustee Representatives appointed by the Trustees of NOAA, DOI/FWS and EOEA to oversee coordination of the natural resource restoration project(s) as described herein at Section VII.

M. "Oversight expenses" means any costs associated with individual Trustee participation in the restoration planning process, Trustee Council administrative proceedings, costs associated with the retention of consultants, coordinators, or any other technical or administrative services associated with the development of the restoration plan, or any other costs reasonably related to the implementation of this Agreement other than the implementation of the final restoration plan approved by the Trustee Council.

IV.
PURPOSE

The purpose of this Agreement is to provide for joint effort among the Trustees to develop and implement a Restoration Plan to restore, replace or acquire the equivalent of natural resources (other than groundwater) affected by hazardous substances released from the Site; to provide a framework for intergovernmental coordination amongst the Parties regarding the interplay of restoration and response actions at the Site; and to

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develop a mechanism to permit the Trustees to consider funding response actions at the Site or in the Site vicinity related to injuries arising from the Site as restoration, where and to the extent authorized by law and deemed appropriate by the Trustees. It is understood and acknowledged that additional agreements not inconsistent with this Agreement may be executed among the Parties to this Agreement with regard to natural resource restoration, replacement, and/or acquisition of equivalent natural resources with respect to the Site which have been injured, destroyed or lost by the release of hazardous substances from the Site, with regard to the coordination of response actions with restoration, and to implement Trustee funding of response actions as restoration.

V.

OBJECTIVES

In order to accomplish the general purposes set forth above, the Parties shall coordinate their activities under this Agreement to meet their respective responsibilities under CERCLA and Chapter 21E and other applicable laws and regulations and to achieve the following specific objectives:

- A. Carry out injury characterization, restoration planning and restoration implementation as efficiently and expeditiously as is feasible and allowable under applicable law from the date of execution of this Agreement;
- B. Foster and jointly coordinate public participation in the restoration planning process;
- C. Characterize the scope, nature and extent of natural resource injuries resulting from hazardous substance releases from the Site and prepare a comprehensive Restoration Plan to address natural resource injuries;
- D. Identify and evaluate a range of potential restoration alternatives in the Site vicinity and select appropriate alternatives for restoration, replacement and/or acquisition of equivalent natural resources;
- E. Determine the costs and expenses likely to be incurred for the restoration, replacement and/or acquisition of equivalent natural resources;
- F. Develop the Restoration Plan in compliance with Natural Resource Damage Assessment Regulations at 43 C.F.R. Part 11, the Massachusetts Environmental Policy Act, G.L. c.30 §§ 61-62H, and the federal National

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Environmental Policy Act, 42 U.S.C. § 4321 et seq., and other applicable laws and regulations;

- G. Implement the Restoration Plan to restore, replace, and/or acquire the equivalent natural resources injured, destroyed, or lost;
- H. Fairly allocate the costs and expenses of carrying out the objectives of this Agreement among the Trustees;
- I. Where appropriate and to the greatest extent practicable, coordinate and incorporate the restoration activities under this Agreement with the response actions being developed, planned, or undertaken at the Site;
- J. To the extent authorized by law and deemed appropriate by the Trustees, fund, as restoration, response actions at the Site or in the Site vicinity which may result in the restoration or enhancement of natural resources injured by the Site.

VI.

JOINT USE OF NATURAL RESOURCE DAMAGE RECOVERIES

A. **State and Federal Trusteeships.** The Trustees recognize that each of them has trusteeship under CERCLA over natural resources at the Site and that the scopes of their respective trusteeships overlap.

B. **Joint Use of Natural Resource Damage Recoveries.** The Trustees agree that any natural resource damage recoveries, as defined in Section III of this Agreement, obtained or received by the Parties, individually or collectively, and any interest earned thereon, shall be jointly used consistent with this Agreement to restore, replace, or acquire the equivalent of natural resources (other than groundwater) which have been injured, destroyed or lost as a result of the release of hazardous substances from the Site.

VII.

THE NYANZA NRD TRUSTEE COUNCIL

A. **Composition.** There shall be created, within ten (10) days of the execution of this Agreement, or as soon as practicable thereafter, a Nyanza NRD Trustee Council consisting of three (3) members. Each Federal Trustee and the one State Trustee shall designate one permanent representative to the Trustee Council (hereinafter referred to as the "Representative(s)"). Each Trustee shall also designate an

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alternate representative to serve in the absence of the designated Representative. In addition, each Trustee may designate up to two (2) Ex-Officio (non-voting) Representatives to the Trustee Council from their respective State or Federal agencies or sub-divisions. In addition to the above Ex-Officio Representatives, EPA and DEP may each designate one (1) Ex-Officio (non-voting) Representative to the Trustee Council as well as an alternate to serve in the absence of the designated Ex-Officio Representative. The Trustee Council may invite up to three (3) individuals from local municipal government, the public, or non-government environmental organizations to serve as Ex-Officio (non-voting) Members to the Trustee Council. The costs for participation for all Ex-Officio Members and Ex-Officio Representatives in Trustee Council activities are not considered routine oversight expenses and shall not be reimbursable from the natural resource damage recoveries; provided, however, that the Trustees' use of State or Federal agency personnel as consultants or coordinators, or to provide technical or administrative services, may be reimbursable as otherwise provided in this Agreement. Subject to applicable law, the Trustee Council may exclude from meetings and activities Ex-Officio Members (but not the Ex-Officio Representatives) if the Trustee Council determines that the subject of the meeting or activity is privileged or that public disclosure of the Trustee Council's work would substantially impair the effectiveness of the Trustee Council and the Trustees' ability to carry out their responsibilities under applicable law.

B. Decision-making and Dispute Resolution. Any action taken by the Trustee Council must be approved by the unanimous consent of all of the three Trustee Representatives on the Trustee Council or their respective alternates. If any matter does not achieve the unanimous consent of all three Trustee Representatives, the Trustee Representatives initially shall attempt to achieve agreement through discussion and negotiation. In the event agreement cannot be reached, the matter may be presented by the Trustee Representatives to the Ex-Officio Representatives and/or Ex-Officio Members of the Trustee Council for advice or a recommended decision. Such recommended decision, if made, is advisory only and shall not bind any Trustee. If unanimous consent still cannot be reached after consultation with the Ex-Officio Representatives and/or Ex-Officio Members of the Trustee Council, the Trustee Representatives may elevate the matter to the named State and Federal Trustees for decision or further instruction. The Trustees may establish or agree upon other mechanisms, consistent with the provisions of this Agreement, by which disputes may be resolved.

C. Duties. The Trustee Council shall coordinate all Trustee activities and matters under this Agreement. The Trustee

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Council's duties, subject to review and direction by the Trustees, shall include, but not be limited to, the following:

1. The Trustee Council shall coordinate to make all decisions and to take any actions that are reasonably necessary to carry out the purposes of this Agreement. All decisions shall be issued in writing and signed by all three members of the Trustee Council, as representatives of their respective Trustees.
2. The Trustee Council shall coordinate to agree on all decisions relating to restoration activities or the use of any natural resource damage recoveries, and any interest earned thereon, for restoration activities, including, but not limited to, the payment of reasonable and necessary costs for each Trustee agency's participation in the Trustee Council process and for the planning, implementation, administration and oversight of any activities that are reasonably necessary to carry out the purposes of this Agreement.
3. Expenditures for oversight, as well as all other expenditures, shall be subject to the unanimous approval of the voting members of the Trustee Council. Approvable oversight expenses must be reasonable and appropriate. The total of all expenditures for oversight made after the effective date of this Agreement shall not exceed 20% of the natural resource damages recoveries referenced in Section I of this Agreement.
4. The Trustee Council may establish a committee known as the Nyanza Technical Advisory Committee (hereinafter the "Technical Advisory Committee").
5. The Trustee Council shall have the duty to provide for reasonable public involvement, including notice and comment, in accordance with applicable law, for all restoration projects under this Agreement. The Trustee Council, EPA and DEP shall work together to develop appropriate mechanisms for public participation in matters of joint concern under this Agreement.
6. The Trustee Council may invite representatives of other public agencies and members of the public to its meetings unless, subject to applicable law, the Trustee Council determines that the subject of the meeting is privileged or that public disclosure of the Trustee Council's work would substantially impair the effectiveness of the Trustee Council and the Trustees'

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ability to carry out their responsibilities under applicable law.

7. The Trustee Council may contract with consultants to provide such technical services as the Trustee Council determines are necessary and as permissible under applicable state or federal law.
8. To the extent permitted by applicable law, the Trustee Council may, collectively or through individual Trustees, receive grants or donations to be applied to the restoration, replacement or acquisition of equivalent natural resources at or around the Site.
9. All of the Parties to this Agreement shall, to the greatest extent practicable and consistent with the requirements of CERCLA, the Natural Resource Damage Assessment Regulations, the NCP, and, with respect to the State Trustee, Chapter 21E and the MCP, use their best efforts to coordinate and incorporate the activities under Objectives A through J of Section V of this Agreement with the ongoing response actions being evaluated and implemented at the Site by EPA and DEP. Specifically, the Trustees, EPA and DEP shall consider the feasibility of including all or a portion of the natural resource restoration planning and implementation into the ongoing Remedial Investigation/ Feasibility Study ("RI/FS") and eventual Record of Decision ("ROD") for Operable Unit 4 ("OU4") of the Site. All Parties to this Agreement recognize that decisions regarding response actions at the Site are entirely within the authority of EPA and/or DEP, and that all decisions regarding natural resource restoration planning and implementation are entirely within the jurisdiction of the Trustees.
10. The Trustee Council shall consider whether response actions under consideration by EPA in connection with OU4 at the Site would constitute effective restoration, and shall review and analyze the relative effectiveness and desirability of such response actions as restoration as compared to other restoration alternatives. If EPA selects a response action that accomplishes a restoration objective sought by the Trustees, and if the Trustee Council at its sole discretion so approves the expenditure in accordance with Sections 107(f) and 111(i) of CERCLA, the Trustee Council shall fund such activities as restoration implementation. In so doing, the Trustees shall give appropriate consideration to the respective funding

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obligations of EPA and DEP to perform the specific component(s) of the response action which the Trustees are funding, and to any joint recommendation from EPA and DEP as to the allocation of any such Trustee funding. Such funding by the Trustees shall not exceed the amount recovered by the Trustees.

11. The Trustee Council shall consider whether enhanced or additional response actions at the Site or within the watershed affected by the Site, in addition to those addressed by paragraph 10 above, would constitute effective restoration. The Trustee Council may fund such activities as restoration implementation to the extent such response actions are so approved by the Trustees as part of their restoration plan. In so doing, the Trustees shall give appropriate consideration to the respective funding obligations of EPA and DEP to perform the specific component(s) of the response action which the Trustees are funding, and to any joint recommendation from EPA and DEP as to the allocation of any such Trustee funding. Such funding by the Trustees shall not exceed the amount recovered by the Trustees.

D. **Restoration Coordinator.** The Trustee Council may designate a Restoration Coordinator whose work shall be directed exclusively by the Trustee Council. The responsibilities of the Restoration Coordinator may include:

1. preparation of an injury characterization report and a Restoration Plan;
2. coordination, management, reporting and monitoring of the natural resource restoration process;
3. scheduling of meetings of the Trustee Council and the Technical Advisory Committee (provided for under Section VIII of this Agreement) and preparation of agendas for those meetings and the recording of all actions taken at such meetings;
4. preparing and issuing, from time to time, public reports on the work of the Trustee Council;
5. conducting public outreach and fostering public participation in the development and implementation of the Restoration Plan;
6. to the extent permitted by applicable law, identifying and securing, wherever possible, other financial

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resources such as, but not limited to, grants that may be available to the Trustee Council individual trustees for use according to the terms of this Agreement; and

7. such other duties as are unanimously agreed upon by the Trustee Council.

E. Administrative Trustee. The Trustee Council shall designate an Administrative Trustee. The Administrative Trustee may delegate responsibilities to the Restoration Coordinator with the prior approval of the Trustee Council except that item number four (4) below shall at all times remain the exclusive responsibility of the Administrative Trustee. Except for number four (4) below, which by execution of this Agreement the Parties agree is mandatory, the responsibilities of the Administrative Trustee may include:

1. coordination and monitoring of the natural resource restoration process;
2. scheduling of meetings of the Trustee Council and the Technical Advisory Committee (provided for under Section VIII of this Agreement) and preparation of agendas for those meetings and the recording of all actions taken at such meetings;
3. acting as a central contact for the Trustee Council and the Technical Advisory Committee;
4. effective and ongoing maintenance of all relevant records, proceedings and documents received or generated by the Trustee Council or the Technical Advisory Committee in a manner that allows the Trustee Council and the public to clearly track the restoration planning and implementation process;
5. contracting with consultants to provide such technical services to the Trustee Council as the Technical Advisory Committee may advise or as the Trustee Council determines are necessary;
6. preparing and issuing, from time to time, public reports on the work of the Trustee Council; and
7. such other duties as are unanimously agreed upon by the Trustee Council.

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VIII.

THE NYANZA NRD TECHNICAL ADVISORY COMMITTEE

- A. **Designation.** The Trustee Council may establish a committee known as the Nyanza Technical Advisory Committee (hereinafter the "Technical Advisory Committee").
- B. **Composition.** The State Trustee and the Federal Trustees each may designate up to three (3) members from their respective State or Federal agencies or sub-divisions, and the EPA and DEP may each designate up to two (2) representatives to serve on the Technical Advisory Committee. The Trustee Council may designate individuals from the public or non-government environmental organizations to serve on the Technical Advisory Committee. The Technical Advisory Committee may invite representatives of other public agencies and members of the public to its meetings unless, subject to applicable law, the Trustee Council or Technical Advisory Committee determines that the subject of the meeting is privileged or that public disclosure of the Technical Advisory Committee's work would substantially impair the effectiveness of the Committee and the Trustees' ability to carry out their responsibilities under applicable law. The Trustee Council may limit or expand the size of the Technical Advisory Committee as necessary to meet the objectives of this Agreement and the responsibilities of the Trustees under applicable law.
- C. **Duties.** At the request of the Trustee Council, the Technical Advisory Committee may review and provide technical comment to the Trustee Council on the investigation and characterization of injury, the Restoration Plan and on proposals for natural resource restoration. If requested, the Technical Advisory Committee may also review and comment upon any other materials prepared by or for the Trustee Council or on work that is in progress or that has been completed under contract for the Trustee Council to ensure its compliance with such contract.

IX.

TECHNICAL SERVICES

- A. The Trustee Council may determine that it needs technical advisors, consultants or other service providers to assist it in carrying out its responsibilities under this Agreement. The Trustee Council, through its individual members or collectively, may expend natural resource damage recoveries for service providers to perform the following services:
1. provide project design and technology review, Site analysis, restoration planning or services, testing, sampling, and other services related to the development

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- or implementation of a Restoration Plan for the Site;
2. provide the Trustee Council with logistical support and coordination;
 3. organize and prepare for Trustee Council meetings;
 4. provide technical advice to the Trustee Council during Trustee Council meetings;
 5. provide technical or other advice to the Trustee Council and the Technical Advisory Committee as required to carry out the purposes of this Agreement;
 6. provide such other services, consistent with applicable law, as requested by the Trustee Council.

B. To obtain technical services, the Trustee Council may agree to designate the Restoration Coordinator or any one or more Trustee(s) as authorized to enter into intergovernmental personnel transfers, one or more contracts, or other lawful agreements with professional consultants, advisors, or other service providers that the Trustee Council determines are qualified to provide services to the Trustee Council.

X.
AMENDMENT

A. This Agreement may be amended by agreement of the Parties if it is determined that an amendment is necessary to accomplish the objectives of this Agreement, or is necessary to modify the objectives of this Agreement consistent with the requirements of CERCLA, any amendments thereto, or other applicable Federal or State law.

B. Any amendment of this Agreement shall be effective only if it is in writing and executed by all Parties to this Agreement.

XI.
TERMINATION AND REVIEW OF AGREEMENT; AND
DETERMINATION OF APPROPRIATENESS OF RESTORATION

A. This Agreement shall be in effect from the day of execution until the Trustee Council determines that the Restoration Plan or plans implemented under this Agreement have been completed.

B. The Director of the Office of Site Remediation and Restoration in EPA Region 1, the Assistant Commissioner of the

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Bureau of Waste Site Cleanup of DEP, the Supervisor, New England Field Office, of the U.S. Fish and Wildlife Service, the Director, Office of Ocean Resource Conservation and Assessment, National Ocean Service, of NOAA, and the Secretary of Environmental Affairs of the Commonwealth, or those persons' designees, shall meet annually to review the progress of activities and coordination undertaken pursuant to this Agreement.

C. Subject to subparagraph D below, any Party may withdraw from this Agreement, but only after efforts have been made to resolve any dispute in accordance with paragraph B of Section VII of this Agreement. In addition, prior to seeking to withdraw from or terminate this Agreement, the Trustee Representatives agree to consider engaging in mediation facilitated by a third party neutral. Withdrawal shall only be effective upon written notice to all Parties to this Agreement.

D. In the event that this Agreement is terminated or one of the Parties withdraws, the Trustees expressly agree that they will continue to coordinate their activities to the greatest extent practicable to restore the natural resources of the Site, and that they will be guided by the objectives set forth in Section V of this Agreement. In the event of termination or withdrawal, the disposition of any unobligated sums that are part of natural resource damage recoveries shall be determined by further agreement of the Trustees.

E. In the event that the Trustees cannot reach agreement on the disposition of unobligated natural resource damages recoveries and one or more of the Trustees has withdrawn from the Agreement, a Trustee may petition the United States District Court for the District of Massachusetts for an allocation of such recoveries and interest earned thereon. Such petition shall be filed within thirty days of written notice of the failure to reach agreement or withdrawal of a Trustee from this MOA, whichever comes later. The United States or the Commonwealth, as applicable, shall have thirty days to file a response to any such petition. In making an allocation of these monies among the Trustees, the Court shall consider the Objectives of this MOA and the overlapping jurisdictions of the Federal Trustees and State Trustees.

No natural resource damage recoveries shall be used for any purpose other than to restore, replace, acquire the equivalent of, or provide substitutes for natural resources under the joint trusteeship of the State Trustees and Federal Trustees, which resources have been injured, destroyed or lost as a result of the release of hazardous substances at or from the Site. No natural resource damage recoveries may be used to restore, replace, or

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acquire the equivalent of groundwater.

F. The withdrawal of any Party to this Agreement for whatever reason shall not affect the subsequent validity of this Agreement among the remaining Parties.

XII.
GENERAL

A. Nothing in this Agreement shall be construed as obligating the United States or the Commonwealth, their officers, agents or employees, to expend any funds in excess of appropriations or other amounts authorized by law.

B. If any provision of this Agreement is found invalid, the remainder shall continue in full force and effect.

C. The Governments, through their designated representatives, have signed this Agreement on the day and year appearing opposite their signatures. This Agreement may be executed in multiple counterparts.

D. The effective date of this Agreement will be the date on which the last signature is entered.

[Memorandum of Agreement Concerning Response Actions and Natural Resource Damages in the Matter of THE NYANZA CHEMICAL WASTE DUMP SUPERFUND Site]

FOR THE COMMONWEALTH OF MASSACHUSETTS

J. Reston - Undersecretary 8/22/1997

f. Trudy Coxé
Massachusetts Secretary of Environmental Affairs
State Trustee for Natural Resources

David B. Struhs 7/28/1997

David B. Struhs
Commissioner
Department of Environmental Protection

[Memorandum of Agreement Concerning Response Actions and Natural Resource Damages in the Matter of THE NYANZA CHEMICAL WASTE DUMP SUPERFUND Site]

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY



7/7/1997

John P. DeVillars
Regional Administrator
United States Environmental Protection Agency - Region 1

[Memorandum of Agreement Concerning Response Actions and Natural Resource Damages in the Matter of THE NYANZA CHEMICAL WASTE DUMP SUPERFUND Site 1

FOR THE FEDERAL NATURAL RESOURCE TRUSTEES

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION
NATURAL RESOURCE TRUSTEE
AUTHORIZED OFFICIAL

Charles N. Ehler for 3/16/1998
Charles N. Ehler
Director, Office of Ocean Resource Conservation and Assessment
National Ocean Service

UNITED STATES DEPARTMENT OF THE INTERIOR
NATURAL RESOURCE TRUSTEE
AUTHORIZED OFFICIAL

Willie R. Taylor 1/1997
Willie R. Taylor
Director, Office of Environmental Policy and Compliance

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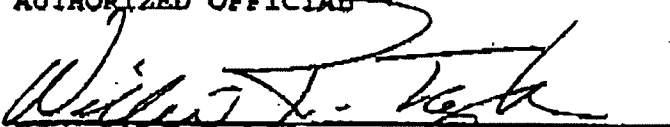
[Memorandum of Agreement Concerning Response Actions and Natural Resource Damages in the Matter of THE NYANZA CHEMICAL WASTE DUMP SUPERFUND Site]

FOR THE FEDERAL NATURAL RESOURCE TRUSTEES

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION
NATURAL RESOURCE TRUSTEE
AUTHORIZED OFFICIAL

_____/_____/1997
Charles N. Ehler
Director, Office of Ocean Resource Conservation and Assessment
National Ocean Service

UNITED STATES DEPARTMENT OF THE INTERIOR
NATURAL RESOURCE TRUSTEE
AUTHORIZED OFFICIAL



Willie R. Taylor
Director, Office of Environmental Policy and Compliance

5/21/1998
~~12/27/97~~