

**Memorandum of Understanding
Between
The Ohio Environmental Protection Agency
and
The United States Department of the Interior**

I. Introduction and Authority

This Memorandum of Understanding ("MOU" or "Agreement") by and between the Ohio Environmental Protection Agency ("Ohio EPA") and the U.S. Department of the Interior ("DOI"), acting through its representative, the U.S. Fish and Wildlife Service ("Service") (collectively the "Trustees"), is entered into to facilitate coordination and cooperation among the natural resource Trustees in their assessment of injuries to natural resources and natural resource services resulting from the discharge of oil from the Mid-Valley Pipeline into the Oak Glen Nature Preserve in Hamilton County, Ohio (the "Site"), and the application of any damages recovered toward the restoration, rehabilitation, replacement, and/or acquisition of equivalent natural resources. The Trustees enter into this MOU pursuant to the natural resource authorities provided for each Trustee under the Oil Pollution Act of 1990 ("OPA") 33 United States Code § 2701 *et seq.*, the Ohio Revised Code ("ORC") § 3745.01, and the State of Ohio's June 30, 2011 designation of the Director of Ohio EPA as Trustee for the State of Ohio's natural resources. Other applicable federal and state laws and authorities include, but are not limited to, the Federal Water Pollution Control Act ("CWA"), 33 U.S.C. § 1321 *et seq.*, and, to the extent appropriate and elected for use by the Trustees, the applicable Natural Resource Damage Assessment ("NRDA") regulations, as amended, 15 C.F.R. part 990.

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 the equivalent of the injured natural resources (hereinafter "restoration" or "restore"); 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

A. Trustees

The Trustees specified in Section I have trusteeship over certain natural resources at, or related to the Site pursuant to 40 C.F.R. 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 ("PRPs") 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 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 or agreeing to the existence and scope of Trustee responsibility or authority asserted by any Trustee with respect to such resources. The following officials, collectively referred to as "Trustees," are parties to this MOU and act on behalf of the public as trustees for natural resources under this MOU:

- (1) Director, Ohio Environmental Protection Agency, or delegated representative,
and
- (2) Secretary of the Interior or delegated representative, including Regional
Director, Region 3, U.S. Fish and Wildlife Service, as Authorized Official for
DOI.

B. Additional Trustees

Any natural resource trustee designated pursuant to 40 C.F.R. Part 300-Subpart G that is not a party to this MOU and that has a natural resource interest shall not be precluded from exercising its authority as a natural resource trustee or cooperating in the natural resources damage assessment process. Additional trustees may join this MOU through a modification as described in Section X, Modification of Agreement.

III. Events

This MOU is intended to address all releases, discharges, spills, or other incidents, occurrences, or events (hereinafter referred to as "Events") related to the Site which give rise to claims and/or potential claims for natural resource damages. Locations covered by this MOU include, but are not limited to, 29.8 acres of stream and adjacent land in and around Oak Glen Nature Preserve in Hamilton County, Ohio and two private parcel lots on the East Miami River Road in Colerain Township, Ohio; a 5.8 acre vernal pool/wetland and adjacent area; 8.3 acres of prairie that was used to create a staging area and road for access to the spill area; and any area where oil from the spill has come to be located.

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 cooperation and coordination between 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, collaborating with responsible parties who seek to perform restoration activities, and using any damages recovered or restoration projects

implemented as compensation to restore and/or replace the injured natural resources and/or the services provided by those natural resources.

IV. Organization of a Trustee Council

The Trustees recognize the importance of coordinating their efforts in order to meet their respective natural resource trustee responsibilities effectively and efficiently. Accordingly, there is hereby created, to implement this MOU, a Trustee Council, whose membership shall include: the Director of the Ohio Environmental Protection Agency or his delegated representative and the Secretary of the Interior or her delegated 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 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 governmental entities such as the U.S. Environmental Protection Agency and the Ohio Department of Natural Resources. The Trustee Council may create subcommittees as necessary to affect the purposes of this MOU. The Trustee Council members unanimously agree that Ohio EPA will serve as the Lead Coordinating Trustee ("LCT"). The Federal Lead Administrative Trustee shall be the Fish and Wildlife Service. The LCT shall cooperate fully and act under the direction of the Council.

V. Duties and Responsibilities of the Council

The Trustee Council shall coordinate and authorize all Trustee activities and matters under this MOU in accordance with the decision making requirements contained in Section VI. The Trustees may take whatever actions they determine are necessary to fulfill the responsibilities of each Trustee under applicable federal and state laws. It is expected that the Trustees, through their representatives, in accordance with applicable laws and policies, may take the following actions, among others, to address the Trustees' natural resource responsibilities:

1. Conduct scientific and technical studies, sampling, and other activities relating to natural resources. These may include, but are not limited to, the assessment of natural resource damages for injury to natural resources which may have been lost, injured, or destroyed.
2. Seek compensation from the PRPs for natural resource damages assessed by the Trustees. In recognition of the Congressional intent under the OPA to restore natural resources injured as a result of the release of oil, the measure of recoverable natural resource damages contemplated under this MOU and that the Trustees may seek compensation from PRPs may include:
 - a. The cost of restoring, rehabilitating, replacing, or acquiring the equivalent of the damaged natural resources.

- b. Interim lost use or the diminution in value of those injured natural resources pending natural recovery or restoration of the injured natural resources.
 - c. The reasonable cost of assessing those damages, including Trustee oversight costs associated with administering or implementing restoration projects for injured natural resources. This may include documented Trustee costs of participation in removal, remedial, corrective or other response actions carried out by others in an effort to abate and/or minimize continuing and residual injury, and to achieve or enhance restoration of injured natural resources.
- 3. In concert with attorneys for the Trustees, participate in negotiations with PRPs.
- 4. Make all necessary decisions for the management and administration of funds pursuant to Section VII of this MOU in accordance with applicable law.
- 5. Supervise, manage, obligate, and arrange for disbursement of any money paid to the Trustees by, or on behalf of, PRPs for the purpose of assessing, restoring, replacing, rehabilitating and/or acquiring the equivalent of the affected natural resources in accordance with applicable law.
- 6. 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.
- 7. In consultation with the Ohio Department of Natural Resources, the U.S. Environmental Protection Agency, and other agencies, as necessary, oversee the development and 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, lost, or destroyed, and/or the services provided by those resources.
- 8. Conduct and/or oversee the development and the implementation of a plan for the restoration, replacement, rehabilitation, and/or acquisition of equivalent resources for those natural resources that were injured, lost, or destroyed, and/or the services provided by those resources.
- 9. Coordinate and integrate, to the extent practicable, 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.
- 10. Communicate with the public and encourage public review and comment on assessment and restoration planning.

11. Execute additional agreements, as necessary, to carry out the duties and responsibilities of this MOU.

12. Seek compensation from PRPs for damages assessed by the Trustees and for the costs of planning and implementing the assessment.

The Ohio EPA, as LCT, will perform the following duties and administrative tasks including, but not limited to: coordination, monitoring and reporting of the progress of the natural resources damage assessment process; scheduling of meetings and preparation of agendas for Trustee Council meetings; notifying members of those meetings on a timely basis; acting as central contact point for the Trustee Council; and other such duties as may be directed by the Trustee Council representatives. The LCT will be responsible for informing other Trustees of all pertinent developments on a timely basis. The LCT will also be responsible for managing and maintaining documents designated for inclusion in the Administrative Record by the Trustee Council representatives in accordance with applicable federal and state law and guidance.

VI. Decision Making By the Council

The Trustees agree that decisions implementing this MOU shall require unanimous approval of the Trustee Council and, as necessary, shall be by signed resolution of the Trustee Council.

In the event that unanimous agreement cannot be reached between Trustee Council representatives, the matter in dispute will be elevated to the following contacts for each Trustee:

Ohio EPA:

Mark Rickrich, or his successor
Ohio EPA
Manager, Division of Environmental Response and Revitalization
50 West Town Street, Suite 700
Columbus, Ohio
(614) 644-2305

U.S. Fish & Wildlife Service:

Dan Everson, or his successor
Field Supervisor, Ohio Field Office
U.S. Fish and Wildlife Service
4625 Morse Road, Suite 104
Columbus, OH 43230
(614) 416-8993

In the event the aforementioned Trustee officials cannot reach a unanimous agreement, the matter in dispute will be elevated to the Trustee Officials having

signature authority, or his/her designee, either to resolve the dispute or 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.

VII. Funds

The Trustees agree to cooperate in good faith to attempt to establish, maintain, and utilize, to the extent consistent with applicable law, a joint trust account(s); joint court registry account(s); the United States Department of the Interior, Natural Resource Damage Assessment and Restoration Fund ("the Fund"); the Ohio Natural Resource Damages Fund; or the Ohio Hazardous Waste Cleanup Fund for purposes of receiving, depositing, holding, disbursing, and expending all funds, and the interest earned thereon, recovered, obtained or received by the Trustees from the responsible party for natural resource injuries arising out of the Events. The Trustees agree to deposit any funds recovered for injury to natural resources, obtained or received by or on behalf of any Trustee as a result of joint assessment and restoration activities under Federal and/or State natural resource damage assessment regulations, in a joint account(s) or the Fund, unless all Trustees agree that funds recovered require different treatment. Disbursement of any funds obtained or received by, or on behalf of, any Trustee as a result of joint assessment and restoration activities will be by unanimous written agreement of the Trustee Council.

The Trustees agree that they will use all recovered damages for natural resource injuries arising out of the Events under this MOU exclusively for activities that would restore, replace, rehabilitate, or acquire the equivalent of the injured resource. Said activities shall be consistent with Trustee Council approved plans to address those injuries to natural resources and the services that they provide. In accordance with their decision making process in Section VI, the Trustees will establish standards and procedures governing the use of all natural resource damages jointly received by the Trustees for the purposes of developing and administering or implementing a Final Restoration Plan for restoring, replacing, rehabilitating, and/or acquiring the equivalent of natural resources injured as a result of the Events and the reduced or lost services provided by those resources. The Trustees agree to pursue the recovery of reasonable costs (past, current, and future) for the initiation of damage assessment and for the planning, conducting, evaluating, and coordinating of all natural resource damage assessment activities pursued by the Trustee Council with respect to natural resource injuries or lost services resulting from the Events. The Trustees agree to request that recovered costs be separately reimbursed to each individual Trustee agency claiming same. Recovered administrative costs will be disbursed by electronic transfer or by certified check to each recovering agency as soon as possible and shall be used at the individual agency's discretion. For assessment or administrative costs not separately reimbursed, the Trustees agree that the reasonable costs, which are jointly agreed upon, shall be reimbursed to each Trustee.

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Payment of DOI's assessment costs shall be made directly to the Department of the Interior's Natural Resource Damage Assessment and Restoration Fund.

Payment of the State of Ohio's assessment costs shall be made to Treasurer, State of Ohio/Hazardous Waste Cleanup Fund, and sent to Fiscal Officer, Ohio EPA, with a copy to Fiscal Officer, DERR.

Each Trustee is responsible for tracking and documenting the costs and expenses it incurs as a result of its participation in the natural resource damage assessment and restoration process under this MOU in a form and manner sufficient to support the recovery of such costs under the OPA. The documentation of such costs will, at a minimum, (1) evidence the actual time spent, by date, and the hourly salary rate applicable to each agency participant; (2) identify all indirect or overhead rates used in determining costs, including the manner of their application; and (3) include evidence (such as invoices or receipts) of all contract costs or other expenditures presented for payment. Each Trustee will be responsible for the accuracy of the assessment costs it reports or presents for payment under this MOU. No Trustee is to certify or warrant any assessment or restoration cost information other than its own.

VIII. Confidentiality

The Trustees and their representatives agree that it is in the public interest, consistent with applicable law, that all validated scientific data arising out of their review of the injury to natural resources as a result of the Events be made public. Consistent with applicable law, such data shall be made public as soon as publication will not prejudice the accomplishment of the purposes of this MOU, unless state or federal law requires earlier availability.

However, the Trustees and their representatives to this MOU recognize that the written and oral communications related to the assessment and recovery of damages for injuries to natural resources are being undertaken in anticipation of litigation. Accordingly, all oral and written communications and work product will be treated as either privileged attorney-client communications, attorney work product, or protected by other applicable privileges (or a combination thereof), as appropriate. Such communications and work product will be protected from disclosure to the maximum extent possible under applicable federal or state law. The transmittal of any designated privileged documents or designated privileged communication between or among any of the Trustees or federal or state response action agencies or other federal, state, or tribal trustees (and their counsel, representatives, contractors, and consultants) does not waive, or imply any waiver of, any privilege or right which the transmitting party may assert with respect to that document or communication. They further agree that whenever a request for production of such record is received pursuant to any Federal or State law, a copy of the request will be forwarded for discussion to the Trustee or Trustees to which the privilege applies or whose representatives originally generated or

contributed the record requested. Except as otherwise provided, 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 as required by law. Nothing in this Agreement shall be construed to prevent the Trustees from complying with the Freedom of Information Act ("FOIA"), 5 U.S.C. 552, or Ohio Public Record Laws, ORC Chapter 149, and applicable federal rules and regulations implementing FOIA.

The Trustees and the Trustee Council members agree that they will coordinate with each other regarding communications with the PRPs or their agents for matters related to the natural resource damage assessment and restoration for the Site. No Trustee or its representative will discuss these matters with a PRP without first providing the other Trustees with notice and, as appropriate, an opportunity to participate in such discussions. The above agreement shall not preclude a Trustee or its Trustee representative from having separate communications with a PRP on matters within the scope of this MOU where circumstances warrant, provided that each Trustee notifies the other Trustees of the person contacted and summarizes the subject of the communications.

IX. Reservation of Rights

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

X. Modification of Agreement

Modification of this MOU must be in writing and will become effective upon approval by all Trustees currently Parties to the MOU.

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

A Trustee that has withdrawn from this Agreement shall continue to coordinate activities to the greatest extent practicable, and to expend unobligated funds recovered for natural resource damages solely to restore injured natural resources related to the Site under their trusteeship, as mandated by the OPA.

XII. Limitation

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

XIII. 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.

XIV. 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 signature of the Trustee who is last to sign.

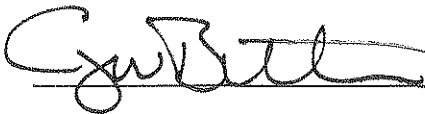


Charles M. Wooley
Acting Regional Director

For Thomas O. Melius, Regional Director, Region 3
U.S. Fish and Wildlife Service

Date:

2/13/15



Craig W. Butler, Director
Ohio Environmental Protection Agency

Date:

3-2-15

APPENDIX

Section IV of this MOU establishes the Trustee Council whose membership includes the Director of the Ohio Environmental Protection Agency and the Secretary of the Interior or their delegated representative. The designated representative, and alternate, for each agency are:

Secretary of the Interior:

Delegated representative for U.S. Fish and Wildlife Service: Natural Resource Damage Assessment Case Manager, Columbus Ohio Field Office (presently Deborah Millsap).

Delegated alternate representative for U.S. Fish and Wildlife Service: Fish and Wildlife Field Supervisor, Columbus Ohio Field Office (presently Dan Everson).

Director of the Ohio Environmental Protection Agency:

Delegated representative for the Ohio Environmental Protection Agency: Environmental Specialist, Southwest District Office, Dayton, Ohio (presently Tamara McPeck).

Delegated alternate representative for the Ohio Environmental Protection Agency: Natural Resource Damage Assessment Coordinator, Columbus, Ohio (presently Brian Tucker).