

FILE

MEMORANDUM OF UNDERSTANDING

BETWEEN

THE OHIO ENVIRONMENTAL PROTECTION AGENCY,

THE UNITED STATES DEPARTMENT OF ENERGY,

AND

THE UNITED STATES DEPARTMENT OF THE INTERIOR

I. INTRODUCTION and AUTHORITY

This Memorandum of Understanding (MOU) by and between the Ohio Environmental Protection Agency (OEPA), the United States Department of Energy (DOE), and the United States Department of the Interior (DOI), collectively referred to as the Natural Resource Damage Trustees (Trustees), is entered into to oversee and to assure implementation of the Natural Resource Restoration Plan (Restoration Plan) in order to restore, replace and rehabilitate natural resources injured by releases of hazardous substances at and from the Fernald Environmental Management Project (FEMP), located near Fernald, Ohio, owned by the United States of America and currently administered by DOE. 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.*, as amended, and to the extent appropriate and selected for use by the Trustees, the Natural Resource Damage Assessment Regulations, 43 C.F.R., Part 11, as amended. The MOU is intended to facilitate coordination and cooperation among the Trustees regarding their responsibilities in implementing the Restoration Plan for the FEMP.

The Trustees' main responsibility is to oversee and to assure implementation of the Restoration Plan in order to restore, replace and rehabilitate natural resources injured by releases of hazardous substances at and from the FEMP. In overseeing and assuring implementation of the Restoration Plan, Trustees' activities include, but are not limited to, (1) the assessment, recovery, and administration of natural resources damages for injury to, destruction of, or loss of natural resources and natural resource services (hereinafter "injury" or "injured natural resources"); (2)

additional restoration planning; (3) oversight of the funding for the costs of restoration, replacement, rehabilitation, and/or acquisition of the 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 being carried out at the FEMP 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 FEMP pursuant to Subpart G of the National Contingency Plan (NCP), 40 C.F.R. 300.600, 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 assure and/or undertake restoration activities. The following officials 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;

Secretary of Energy 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), and Ohio Department of Natural Resources (ODNR).

III. FEMP SITE DEFINITION

The FEMP, for purposes of this MOU, includes all areas within the property boundary of the FEMP and any other areas where natural resources have been injured by releases of hazardous substances at and from the FEMP.

IV. PURPOSE

The Trustees recognize the importance of integrating and coordinating their responsibilities regarding implementation of the Restoration Plan in order to restore injured FEMP natural 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.

V. ORGANIZATION OF THE 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 Secretary of Energy or his designated representative, the Secretary of the Interior or his designated representative, and the Director of the Ohio Environmental Protection Agency or his designated representative. Each Trustee shall designate a representative to the Trustee Council and 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 DOJ, the SOL, the OAG or other legal advisors, as well as other trustees or governmental entities such as the USEPA and the ODNR.

VI. DUTIES AND RESPONSIBILITIES OF THE TRUSTEE 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 applicable federal and state laws and policies. 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 activities may include, but are not limited to, the assessment of natural resources damages for injury to trust natural resources that may have been lost, injured, or destroyed and the monitoring of the progress of restoration of injured natural resources.

B. 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.

C. Coordinate and integrate, to the extent practicable, natural resource trustee concerns and activities with removal, remedial or corrective actions, or other response actions being carried out at the FEMP in an effort to abate and/or minimize continuing and residual injury, and to achieve or enhance restoration of injured natural resources.

D. Coordinate, arrange, and participate in stakeholder involvement activities throughout the restoration process.

The duties of the Trustees' representatives to the Trustee Council shall include, but are not limited to, reviewing and participating in restoration project design, oversight and monitoring of the implementation of the Restoration Plan; scheduling meetings and preparing agendas for those meetings; acting as central contact point for their respective agencies (if applicable); and establishing and maintaining records and relevant documents. Each Trustee Council representative will be responsible for informing the other Trustee Council representatives of all pertinent developments on a timely basis.

VII. DECISION MAKING BY THE TRUSTEE COUNCIL

The Trustees agree that decisions implementing this MOU shall require unanimous approval. In the event that unanimous agreement cannot be reached by the Trustee Council representatives, the matter in dispute will be elevated to the Trustees 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 injured natural resources, rather than upon control of respective trusteeship over those resources.

VIII. RESERVATION OF RIGHTS

The Trustees understand that this MOU is not intended to create any further legal rights or obligations between the Trustees or any other persons not party to this MOU.

IX. MODIFICATION OF MOU

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

X. TERMINATION

This MOU shall be in effect from the date of execution until termination by agreement of the Trustees. In the event that any Trustee withdraws from the MOU, written notice of such withdrawal shall be submitted to the other Trustees 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 parties.

XI. LIMITATION

Nothing in this MOU shall be construed as obligating the Trustees to expend any funds in excess of appropriations authorized by law. Nothing in this Section or the MOU shall be construed to alter DOE's and the State of Ohio's respective positions regarding the appropriation of funding for the compliance requirements set forth in Section IX of the December 2, 1988 Consent Decree, Case No. C-1-86-0217 (U.S. District Court, Southern District of Ohio, Western Division).

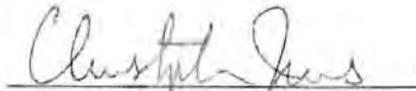
XII. THIRD PARTY CHALLENGES OR APPEALS

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.

XIII. 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.

OHIO ENVIRONMENTAL PROTECTION AGENCY



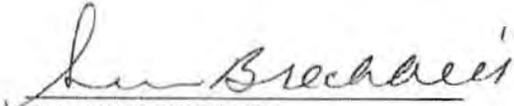
CHRISTOPHER JONES

Director

6-2-01

Date

U.S. DEPARTMENT OF ENERGY



SUSAN BRECHBILL
Manager
DOE, Ohio Field Office

4/7/01
Date

U.S. DEPARTMENT OF THE INTERIOR



WILLIAM F. HARTWIG
Authorized Official
U.S. Department of Interior

7/12/01
Date

APPENDIX

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

Secretary of Interior

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

Designated (alternate) representative for U.S. Fish and Wildlife Service: Field Supervisor, Reynoldsburg, Ohio Field Office

Secretary of Energy

Manager of the Ohio Field Office (currently Susan Brechbill) designates Fernald Project Director (currently Steve McCracken) as the primary representative for the Trustee Council. The Fernald Project Director is authorized to appoint a member of his staff to serve as the primary representative under this MOU.

Director of Ohio Environmental Protection Agency

Designated representative for the Director Ohio Environmental Protection Agency: Fernald Project Manager, Office of Federal Facilities Oversight (presently Thomas Schneider)

Designated (alternate) representative for the Director Ohio Environmental Protection Agency: Chief, Office of Federal Facilities Oversight (presently Graham Mitchell)