MEMORANDUM OF UNDERSTANDING

Between the Illinois Department of Natural Resources and the Illinois Environmental Protection Agency and the United States Fish & Wildlife Service Regarding Natural Resource Damage Assessment at the Indian Refining Company Refinery and Surrounding Property Lawrenceville - Lawrence County, Illinois

This Memorandum of Understanding ("MOU") executed by the Illinois Department of Natural Resources ("IDNR") and the Illinois Environmental Protection Agency ("IEPA") and the United States Fish & Wildlife Service ("USFWS") (collectively referred to as the "Trustees") is entered into in recognition of their common interests and responsibilities as natural resource trustees, for injured natural resources at or near the Indian Refining Company Refinery in Lawrenceville - Lawrence County, Illinois ("Site"). This MOU is intended to guide the Trustees participation in natural resource damage assessment ("NRDA") activities at the Site. This MOU is not intended to guide the Trustees coordination of any other natural resource trustee activity at any other site or facility. The Trustees enter into this MOU in accordance with the natural resource trustee authorities provided for each trustee under Section 107(f) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), as amended, 42 U.S.C. Section 9607(f), Section 311(f) of the Clean Water Act ("CWA"), as amended, 33 U.S.C. Section 1321(f), Section 1006 of the Oil Pollution Act ("OPA"), as amended, 33 U.S.C. Sections 2706(a)-(g), as well as any other applicable federal and state law and authority including, but not limited to, the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"), as amended, 40 CFR Part 300, ("NRDAR"), as amended, 43 CFR Part 11 and 15 CFR Part 990, as amended.

WHEREAS, the Trustees' primary goal is to ensure the restoration of lost or injured natural resources and to seek compensation, if necessary, for lost use of injured natural resources caused by discharges of oil or releases of hazardous substances at or from the Site;

WHEREAS, the Trustees' activities will require coordination of planning, assessments, and investigations at the Site.

NOW THEREFORE, the Trustees enter this MOU to provide a framework for their coordination and cooperation at the Site.

I. TRUSTEES

A. **Natural Resource Trustees.** The following officials or their designated representatives are authorized to act on behalf of the public as natural resource trustees:

1. Director, Illinois Department of Natural Resources;

2. Director, Illinois Environmental Protection Agency; and

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

B. **Other Natural Resource Trustees.** Any natural resource trustee who is not a Party to this MOU and who has a natural resource interest shall not be precluded from exercising their authority as a natural resource trustee or cooperating in the NRDA process.

II. TRUSTEE DUTIES AND RESPONSIBILITIES

A. The Trustees hereby agree to form a Trustee Council to be comprised of one representative from the IEPA and the IDNR and the USFWS. The Trustee Council shall meet on an as needed basis and each Trustee Council representative shall represent the interests of the representative's individual natural resource trustee agency. The Trustee Council shall have no authority to exercise any legal authority held by any natural resource trustee. The Trustee Council shall have the authority to:

1. Keep the Trustees, their designees and advisors under this MOU informed of, and involved in, all relevant and significant natural resource trustee activities pursuant to this MOU and the Agreement;

2. Coordinate the Trustees participation to minimize injury to natural resources, and restore or replace injured natural resources;

3. Coordinate the Trustees participation in settlement negotiations for natural resource damages with potentially responsible parties ("PRPs"). The Trustees and their representatives will make every effort to keep other natural resource trustees informed of, and provide an opportunity to participate in, any discussions or negotiations with potentially responsible parties;

4. Designate records for inclusion in the administrative record in accordance with applicable federal regulation and guidance documents; and

5. Coordinate and/or carry out such other actions as may be necessary and appropriate to achieve the purposes of this MOU and the Agreement and to fulfill the trust responsibilities of each Trustee.

B. The Trustees hereby agree to designate the IEPA to act as Lead Administrative Trustee ("LAT"). The LAT shall have no authority to exercise any legal authority on behalf of any other natural resource trustee. The LAT shall coordinate its LAT activities with the

Trustee Council. The LAT's responsibilities shall include, but not be limited to, the following:

1. Scheduling and planning meetings;

2. Acting as a central contact point for the Trustees;

3. Circulation of documents among the Trustees;

4. Manage and maintain documents designated for inclusion in the Administrative Record by the Trustee Council. The LAT may recommend additional documents for inclusion in the Administrative Record to the Trustee Council if, in the course of the NRDA activities, it comes to attention of the LAT that those documents should be so included;

5. Maintain the administrative record and relevant documents in accordance with applicable federal regulations and guidance documents;

6. Informing the Trustee Council of all pertinent NRDA assessment developments;

7. Such other duties as are agreed upon and assigned to the LAT by the Trustees Council.

Neither the designation of the IEPA as the LAT, nor the formation of a Trustee Council is intended to alter, abrogate or cede any natural resource trustee authority or responsibility over any affected natural resources whether the natural resource trustee is a party to this MOU or not.

C. This MOU is intended to guide the Trustees coordination and implementation of the NRDA activities as follows:

1. The natural resource trustee with whom the NRDA evaluation contractor has a contract to provide services shall inform all other Trustees of all pertinent NRDA developments and insure the NRDA evaluation contractor, provides any comments, reports, plans or other submittals directly and contemporaneously to the Trustees;

2. The Trustees shall coordinate their individual review of any comment, plan, report or other submittal through the LAT. The LAT shall consolidate the comments received from the Trustees. In the event that Trustees submit conflicting comments, the LAT shall convene a meeting of the Trustee Council to resolve the conflicts. In the event the Trustees are unable to resolve the conflict, the decision making and dispute resolution provision of Section V. (D), shall apply. In the event that Trustees submit conflicting comments, the LAT shall submit the

consolidated comments for review and approval by the Trustee Council after resolution of the conflict(s). Through effective coordination of their activities, the Trustees will strive to minimize costs and expenses where possible;

3. If the Trustees reach agreement with a PRP to conduct NRDA activities at the Site, and when the agreement requires the Trustees to provide comments to a PRP, the Trustees review and evaluation of any plan, report or other submittal shall be based primarily on the following:

   a. abating and mitigating releases of hazardous substances or discharges of oil which are injuring natural resources or limiting the effectiveness of restoration activities; and

   b. seeking to restore the biological, chemical and/or physical condition of the natural resource, and the services it provides, to baseline or pre-release or pre-discharge condition.

4. The Trustees and the Trustee Council members agree that they will endeavor to have coordinated communications with PRPs or their agents for matters related to NRDA activities or future damage claims. This MOU does not preclude a Trustee or Trustee Council member or their agent from having separate communications with PRPs or their agents on matters within the scope of this MOU where circumstances warrant, provided that such Trustee or Trustee Council member or agent, informs and consults with the other Trustees.

III. FUNDING

The Trustees agree to cooperate in good faith when receiving, depositing, holding, disbursing, managing and expending all natural resource damage recoveries obtained or received by the Trustees relating to natural resource injuries at the Site. Each Party shall be solely responsible to provide funding for any administrative, personnel or other resources necessary to carry out its duties and responsibilities pursuant to this MOU and for documentation to support reimbursement of its respective administrative costs. Each Party shall be responsible for identifying the fund into which its administrative costs recovered from a responsible party are to be deposited. The Trustees agree to coordinate their cost-recovery activity or pursuit of any NRDA claim(s).

IV. 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 at the Site be made public. Therefore, such data shall be made public as soon as publication will not prejudice the on-going assessment. Public sharing of scientific data will be the general policy of the Trustees.

However, all parties to this MOU recognized that all written or oral communications related to the assessment and recovery of damages for injury to natural resources may be treated as privileged attorney-client communications, attorney work product or protected by other applicable privilege or legal classification (or a combination thereof), as appropriate, and will be protected from disclosure to the maximum extent possible under applicable federal or state 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 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 disclosing any record for which disclosure is required by law.

V. GENERAL PROVISIONS

A. **Reservation of Rights**. This document is not intended to create any further legal rights or obligations among the Trustees and their representatives or any other person not a Party to this MOU.

B. **Limitation of Authority**. No Party is authorized to represent another Party or another natural resource trustee in any litigation or settlement negotiations that may be commenced by any natural resource trustee. Nothing in this MOU shall be construed as obligating the State of Illinois or the United States or any other public agency, their officers, agents or employees, to expend any funds in excess of appropriations authorized by law or funds received from potentially responsible parties for actions related to natural resource damages.

C. **Termination**. This MOU shall be in effect from the date of execution until termination by agreement of the Trustees. Any Trustee may withdraw from this Agreement upon written notice in accordance herewith. In the event any Trustee withdraws from the Agreement, such withdrawal must be in writing at least thirty days in advance of the withdrawal. In the event of such withdrawal, this agreement remains in full force and effect for the remaining Parties.

D. **Decision Making and Dispute Resolution.** The Trustee Council shall strive for consensus on all comments, positions and decisions necessary to conduct NRDA activities at the Site. All comments, positions and decisions agreed to by the Trustee Council shall be recorded in writing, either by resolution signed by the Trustee Council members, or in minutes approved as to content and form by the Trustee Council members. In the event that the Trustee Council cannot reach a consensus, the Trustee Council shall attempt to resolve the dispute through discussions directed to obtaining a consensus agreement among the Trustee Council members involved in the dispute. The period for discussions shall not exceed fifteen (15) days from the day the dispute is communicated (either orally or in writing) by one Trustee to the other members of the

Trustee Council. If the Trustee Council fails to achieve agreement the Trustees shall expeditiously refer the matter to their respective management. The Trustees agree that discussions will focus upon the Trustees' mutual goals of restoration of injured natural resources rather than upon independent control or trusteeship over the affected natural resources.

E. **Modification**. Modification of this MOU must be in writing and upon approval of all the Trustee Council members.

F. **Reservation of Authority**. Nothing in this MOU is intended to alter, abrogate or cede any natural resource trustee authority or responsibility over any natural resource(s) whether the natural resource trustee is a party to this MOU or not.

G. **Trustee Contact**. The following persons shall serve as the contacts for each party. The contact person for each party may be changed by providing written notice to all other parties.

Greg Ratliff
Illinois Environmental Protection Agency
1021 North Grand Avenue East
Springfield, Illinois 62702
Phone (217) 782-9882
FAX (217) 782-3258
email "gratliff@epa.state.il.us"
-or if on-site-
Phone (618) 943-2399
FAX (618) 943-1991

Michael L. Henry
Natural Resource Trustee Program
Illinois Department of Natural Resources
One Natural Resource Way
Springfield, Illinois 62702-1271
Phone (217) 557-7817
FAX (217) 524-6674
email "mhenry@dnrmail.state.il.us"

Kevin De La Bruere
US. Fish & Wildlife Service
Ecological Services
Division of Environmental Quality
Rock Island Field Office
4469 48th Avenue Court
Rock Island, IL 61201
Phone (309) 793-5800 x530
FAX (309) 793-5804
e-mail Kevin-de-la-Bruere@fws.gov

VI. EFFECTIVE DATE

The date of execution shall be the date of the final Trustees' signature.

VII. SIGNATURES

IN WITNESS WHEREOF the Trustees have executed this MOU on the dates attested to below:

Renee Cipriano, Director
Illinois Environmental Protection Agency

Date: 4/2/02

Brent Manning, Director
Illinois Department of Natural Resources

Date: _____

William Hartwig
Regional Director, US. Fish & Wildlife Service

Date: 6/25/02