

## **Appendix D**

### **Scope of Work for ARCG II Restoration Workplans**

#### **I. Purpose**

The purpose of this Scope of Work is to set forth the requirements for the Restoration Workplans to be developed by the ARCG II and submitted to the Trustees for review and approval pursuant to the Consent Decree.

#### **II. Restoration Properties**

1. Certain Restoration Properties have been identified and approved by the Trustees for acquisition and/or restoration by the ARCG II.
2. Additional Restoration Properties may be identified by either the Trustees or the ARCG II for acquisition and/or restoration by the ARCG II, upon approval by the Trustees.

Once any Additional Restoration Property has been identified, the Trustees will provide direction to the ARCG II on the elements to be included in any Specific Restoration Workplan.

#### **III. Restoration Workplan Requirements (General)**

The Restoration Workplans for each Restoration Property and each Additional Restoration Property shall include:

1. Topographic maps showing the location of the Property relative to all other Restoration Properties and the Ashtabula River and Harbor.
2. The total acreages of each Property, as well as an estimate from aerial photographs and GIS, or other mapping software, of the acreages of various habitat types existing on each Property.
3. A brief description of the ecological value of the Property and natural resource services provided by the Property. A brief description of wetlands and other features on the Property which may be enhanced through actions such as control of exotic and/ or invasive species, establishment of native species, or

establishment of hydraulic connections to the Ashtabula River and Harbor and a plan for implementation of such activities, including restoration performance measures, to enhance natural resource services provided by the Property. The Trustees may, at their discretion, require Workplan Supplements for such activities.

4. A brief description of trash and/or debris, if any, on the Property and a plan for removal of such.
5. Detailed Restoration Project cost estimates and an implementation schedule for items 4 and 5 above.

The ARCG II shall obtain all permits required for implementation of the Restoration Projects. The reasonable costs incurred by the ARCG II in the development of the general Restoration Workplans and the implementation thereof constitute Qualified Costs as defined in Section IV, Paragraph 4.y of the Consent Decree.

#### **IV. Restoration Workplan Requirements (Specific)**

- **Ashtabula Township Park Commission [formerly CDM] Property**

In addition to the General Requirements described above, the Restoration Workplan for the Ashtabula Township Park Commission (ATPC) [formerly CDM] Property shall include:

1. A detailed design for construction of a small (12 - 20 car) parking lot on the ATPC [CDM] Property with access from East 24<sup>th</sup> Street. The parking lot will be constructed of gravel or other pervious materials and will connect to a trail around the wetland and to the canoe launch described below.
2. A detailed design for construction of a canoe launch on the ATPC [CDM] Property in proximity to East 24<sup>th</sup> Street, including a pathway from the parking lot described above. All structures should be built with recycled materials and the pathway from the parking lot to the canoe launch should be constructed with pervious materials.
3. A detailed design for construction of a boardwalk running along the northern border of the approximately 6 acre wetland located on the ATPC [CDM] Property. The boardwalk should follow the upland border of the existing wetland and, to the extent possible, be constructed of recycled materials. Crushed stone or other pervious material should be used to provide a trail between the boardwalk and the East 24<sup>th</sup> Street parking lot. The boardwalk shall have at least one look-out point that shall include weather resistant signage

describing wetland plant and animal species and interactions, as well as benefits and services provided by wetlands.

4. A detailed design for removal of exotic and/or invasive species and replanting of native vegetation throughout the ATPC [CDM] Property, including the approximately 6 acres of wetland.
5. A detailed design of wetland restoration for the approximately 6 acre wetland. Cost estimates will be based on planting 10 tree species from Table 1, 10 shrub/sub-canopy tree species from Table 2, and 10 herbaceous wetland species from Table 3. The trees and shrubs will be planted to a design density of at least 500 individuals per acre. The herbaceous species will be planted at a design seed planting density of at least 18 pounds per acre. The detailed design of wetland restoration will incorporate the findings of a wetland delineation, performed by the ARCG II according to the up-to-date version of the 1987 Corps of Engineers Wetland Delineation Manual ([Technical Report Y-87-1](#)), on the approximately 6 acre wetland during leaf-out, optimally in late spring of 2010, and the planting requirements specified above, unless otherwise specified by the Trustees.

**Table 1: Tree Species**

Scientific Name	Common Name	Wetland Indicator Status <sup>1</sup>	Habitat
<i>Acer negundo</i>	Box Elder	FAC+	riparian forest
<i>Acer rubrum</i>	Red Maple	FAC	wet woods surrounding pool
<i>Acer saccharinum</i>	Silver Maple	FACW	wet woods surrounding pool and riparian forest
<i>Carya cordiformis</i>	Bitternut Hickory	FACU+	riparian forest
<i>Carya laciniosa</i>	Shellbark Hickory	FAC	wet woods surrounding pool
<i>Juglans nigra</i>	Black Walnut	FACU	riparian forest
<i>Platanus occidentalis</i>	Sycamore	FACW-	riparian forest
<i>Populus deltoides</i>	Cottonwood	FAC	riparian forest
<i>Quercus bicolor</i>	Swamp White Oak	FACW+	wet woods surrounding pool
<i>Quercus palustris</i>	Pin Oak	FACW	wet woods surrounding pool
<i>Quercus rubra</i>	Red Oak	FACU-	riparian forest
<i>Tilia americana</i>	American Basswood	FACU	riparian forest
<i>Ulmus americana</i>	American Elm	FACW-	wet woods surrounding pool
<i>Ulmus rubra</i>	Slippery Elm	FAC	riparian forest

<sup>1</sup> USDA. Interpreting Wetland Indicator Status. URL: <http://plants.usda.gov/wetinfo.html> (Site Visited: 12 Mar 2010)

**Table 2: Shrub/Small Tree Species**

Scientific Name	Common Name	Wetland Indicator Status	Habitat
<i>Asimina triloba</i>	Paw Paw	FACU+	drier areas of riparian forest
<i>Cephalanthus occidentalis</i>	Buttonbush	OBL	within pool
<i>Cornus sericea</i>	Red-Osier Dogwood	FACW+	at edge of pool
<i>Corylus americana</i>	American Hazelnut	FACU-	drier areas of riparian forest
<i>Ilex verticillata</i>	Winterberry	FACW+	at edge of pool and in wetter areas of riparian forest
<i>Lindera benzoin</i>	Spicebush	FACW-	in wetter areas of riparian forest
<i>Morus rubra</i>	Red Mulberry	FACU	drier areas of riparian forest
<i>Ptelea trifoliata</i>	Hop-Tree	FAC	drier areas of riparian forest
<i>Rosa palustris</i>	Swamp Rose	OBL	within pool
<i>Salix discolor</i>	Pussy Willow	FACW	at edge of pool
<i>Sambucus canadensis</i>	Common Elderberry	FACW-	at edge of pool
<i>Staphylea trifolia</i>	Bladdernut	FAC	riparian forest (near river)
<i>Viburnum prunifolium</i>	Blackhaw	FACU	drier areas of riparian forest
<i>Viburnum recognitum</i>	Northern Arrowwood	FACW-	at edge of pool

**Table 3: Wetland Herbaceous Species**

Scientific Name	Common Name	Wetland Indicator Status
<i>Glyceria striata</i>	Fowl Manna Grass	OBL
<i>Cinna arundinacea</i>	Wood Reed	FACW+
<i>Leersia virginica</i>	Whitegrass	FACW
<i>Dryopteris carthusiana</i>	Spinulose Wood Fern	FAC+
<i>Onoclea sensibilis</i>	Sensitive Fern	FACW
<i>Impatiens capensis</i>	Jewelweed	FACW
<i>Lysimachia ciliata</i>	Fringed Loosestrife	FACW
<i>Boehmeria cylindrica</i>	False Nettle	FACW+
<i>Mimulus alatus</i>	Sharpwing Monkeyflower	OBL
<i>Carex tribuloides</i>	Blunt Broom Sedge	FACW+
<i>Carex lupulina</i>	Hop Sedge	OBL
<i>Carex grayi</i>	Gray's Sedge	FACW+
<i>Carex crinita</i>	Fringed Sedge	OBL
<i>Scirpus polyphyllus</i>	Leafy Bulrush	OBL

6. Detailed cost estimates and an implementation schedule for items 1 through 5 above.

- **Additional Restoration Properties**

In addition to the General Requirements described above, the Restoration Workplan for any Additional Restoration Property shall include:

1. A detailed design for construction, if applicable.
2. A detailed design for removal of exotic and/or invasive species and replanting of native vegetation, if applicable. The design shall include restoration performance measures and, if applicable, shall be consistent with Ohio EPA's wetland monitoring program.
3. A performance monitoring plan, if applicable.
4. Detailed Restoration Project cost estimates and an implementation schedule for applicable items 1, 2 and 3 above.

The reasonable costs incurred by the ARCG II in the development of the specific Restoration Workplans and the implementation thereof constitute Qualified Costs as defined in Section IV, Paragraph 4.y of the Consent Decree.

## **V. Progress Reports**

During the period of the development and implementation of the Restoration Workplans, the ARCG II shall submit brief (1 to 2 page) monthly progress reports delineating the status of the Restoration Projects. The Progress Report for each month shall be submitted by the 10<sup>th</sup> day of the following month. The frequency of the Progress Reports may be reduced as agreed to by the Trustees. The progress reports shall include:

1. Activities conducted during the period;
2. Problems encountered during the period;
3. Schedule variances and corrective actions, if necessary;
4. Projected activities for the next month;
5. Documents related to or appertaining to conservation agreements; and,
6. Status of permits, applications, and Qualified Costs.

## VI. Deliverables

The following deliverables will be generated and submitted to the Trustee representatives for approval as per the schedule below. Note that some specific deliverables may be streamlined or waived at the discretion of the Trustees.

<b>DELIVERABLE (UNLESS WAIVED BY THE TRUSTEES)</b>	<b>DUE DATE</b>
Restoration Workplans	Due 90 days after the effective date of the Consent Decree for Restoration Properties acquired prior to the Effective Date of the Consent Decree; or due 60 days after Additional Restoration Properties have been acquired or identified.
Progress Reports	By the 10 <sup>th</sup> day of the subsequent month during the period of implementation of the Restoration Workplan(s), unless the due date is modified or the requirement is waived by the Trustees
Restoration Completion Report	In accordance with the Consent Decree, paragraph 22

Deliverables shall be submitted via electronic mail to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the ARCG II in writing:

- Dave Devault, U.S. Fish and Wildlife Service, dave\_devault@fws.gov
- Kevin Tloczynski, U.S. Fish and Wildlife Service, kevin\_tloczynski@fws.gov
- Sheila Abraham, Ohio EPA, sheila.abraham@epa.state.oh.us
- Regan Williams, Ohio EPA, regan.williams@epa.state.oh.us

## Appendix E

### Environmental Covenant Template

## ENVIRONMENTAL COVENANT

This Environmental Covenant is entered into by \_\_\_\_\_ (Owner), the United States Fish and Wildlife Service (FWS), the National Oceanic and Atmospheric Administration (NOAA) and the Ohio Environmental Protection Agency (Ohio EPA) pursuant to Ohio Revised Code (ORC) §§ 5301.80 to 5301.92 for the purpose of subjecting the Property to the activity and use limitations set forth herein.

Background. The Ashtabula River, approximately 40 miles long, flows through the northeast quadrant of Ashtabula County to Lake Erie. The approximately 137 square mile watershed is located south of the city of Ashtabula, Ohio. Beginning in the 1940's, the sediments and associated floodplains became contaminated with a variety of contaminants, including volatile organic compounds (VOCs), semi-volatile organics, polycyclic aromatic hydrocarbons (PAHs), polychlorinated biphenyls (PCBs), heavy metals and low-level radionuclides.

Fields Brook, a 3-mile tributary of the Ashtabula River, was designated a Superfund Site and placed on the National Priorities List (NPL) in 1983; the Remedial Investigation (RI) began in 1985 with a Record of Decision (ROD) issued in 1986.

Under an agreement with the United States Environmental Protection Agency pursuant to the Great Lakes Legacy Act, an agreement with the United States Army Corps of Engineers pursuant to the Water Resources Development Act, and separate agreements with the Ohio Environmental Protection Agency, the Ashtabula City Port Authority and the members of the Ashtabula River Cooperating Group II, contaminated sediment was dredged from a segment of the Ashtabula River in 2007 and 2008. A dedicated landfill was constructed for the contaminated sediment.

The Ashtabula River watershed and associated natural resources, including macroinvertebrates, fish and fish-eating birds, were substantially impacted as a result of the contamination.

Negotiations between the responsible parties and the natural resource trustees, i.e., the FWS, NOAA and Ohio EPA (Trustees), in conjunction with the United States Department of Justice and the Ohio Attorney General, resulted in a settlement filed in the United States District Court, Northern District of Ohio, Eastern Division, captioned United States v. Cabot Corporation, et. al., Case No. 10-CV, dated \_\_\_\_\_, 2010. The Administrative Record for this Site, including the Natural Resource Restoration Plan & Environmental Assessment for the Ashtabula River and Harbor Site (Restoration Plan), is maintained at Ohio EPA's Northeast District Office, 2110 East Aurora Road, Twinsburg, Ohio.

Now therefore, Owner, and the FWS, NOAA and Ohio EPA agree to the following:

1. Environmental Covenant. This instrument is an environmental covenant developed and executed pursuant to ORC §§ 5301.80 to 5301.92.

2. Property. This Environmental Covenant concerns an approximately \_\_\_ acre tract of real property, located \_\_\_\_\_, in \_\_\_\_\_, Ashtabula County, Ohio, identified as

permanent parcel number \_\_-\_\_-\_\_-\_\_, and more particularly described in Exhibit A attached hereto and hereby incorporated by reference herein (Property).

3. Owner. \_\_\_\_\_ (Owner), [located at] \_\_\_\_\_ currently owns the Property.

4. Holder. [*Owner, whose address is listed above, is the holder of the Environmental Covenant.*]

5. Activity and Use Limitations. As part of the Restoration Plan approved by the Trustees pursuant to the settlement filed in the United States District Court, Northern District of Ohio, Eastern Division, captioned United States v. Cabot Corporation, et. al., Case No. \_:10-CV\_\_\_, dated \_\_\_\_\_, 2010, Owner hereby imposes the following activity and use limitations on the Property and agrees to comply with such limitations:

- A. The Property shall be kept in its natural state, i.e., no building, billboards or other structures of any kind, either temporary or permanent, shall be placed or erected on the Property, unless otherwise expressly provided hereunder.
- B. There shall be no filling, excavating, or removal of top soil, sand, gravel, or rock, minerals or other materials on or at the Property, nor any building of roads or change in topography of the land in any manner, other than that caused by the forces of nature, except in accordance with the Restoration Plan approved by the Trustees pursuant to the settlement filed in the United States District Court, Northern District of Ohio, Eastern Division, captioned United States v. Cabot Corporation, et. al., Case No. \_:10-CV\_\_\_, dated \_\_\_\_\_, 2010.
- C. The control, management and eradication of animal or plant species on the Property must be pursuant to a Non-Native, Noxious or Nuisance Species Control Plan approved by the FWS, Reynoldsburg, Ohio Field Office. Methods must comply with the State and Federal requirements and manufacturer guidelines.
- D. No power or petroleum transmission lines may be constructed, nor any other interests in the Property shall be granted for this purpose. However, the Owner reserves the right to maintain and repair telephone, electric, water, wells, or other utility lines or mains on existing easements needed to provide for the needs of the Owner, successors or assigns. The area affected by the repair work shall be the minimum necessary to accomplish the task. Upon completion of all construction for such utilities, the area shall be restored to its previous state.
- E. No towers for communication or otherwise shall be constructed on the Property.
- F. No trees, ground cover or other vegetation shall be removed from the Property, except that which is necessary to: maintain foot paths and trails; restore natural habitat areas; promote natural vegetation; protect life and property; or comply with the Restoration Plan approved by the Trustees pursuant to the settlement filed in the United States District Court, Northern District of Ohio, Eastern

Division, captioned United States v. Cabot Corporation, et. al., Case No. \_:10-CV\_\_, dated \_\_\_\_\_, 2010.

- G. The Property shall at all times be kept free of garbage, trash, and machinery; and no other unsightly material shall be allowed to accumulate or be stored thereon.
- H. Use of vehicles for recreation, including snow mobiles, all terrain vehicles or other motorized vehicles, shall not be permitted on the Property.
- I. Hunting and trapping on the Property are prohibited without prior written consent of the FWS and Ohio EPA.
- J. Each and every other activity or construction that is inconsistent with the purpose of this Environmental Covenant or which may endanger, affect or impair the natural or scenic state of the Property is prohibited.
- K. The Property shall not be subdivided. The Owner, its successors or assigns shall notify the Trustees of any proposed transfer of the Property, or any portion thereof, at least ninety (90) days prior to any such proposed transfer. The Owner, its successors or assigns shall not transfer the Property, or any portion thereof, without the prior written consent of the Trustees.

6. Breach. If any event or action by or on behalf of a person who owns an interest in or holds an encumbrance on the Property, or any other person constitutes a breach of the activity and use limitations, Owner or Transferee shall notify the FWS, NOAA and Ohio EPA within thirty (30) days of becoming aware of the event or action, and shall remedy the breach of the activity and use limitations within sixty (60) days of becoming aware of the event or action.

7. Running with the Land. This Environmental Covenant, including the activity and use limitations set forth in paragraph 5 herein, shall be binding upon the Owner and all assigns and successors in interest, including any Transferee, and shall run with the land, pursuant to ORC § 5301.85, subject to amendment or termination as set forth herein. The term “Transferee,” as used in this Environmental Covenant, shall mean any future owner of any interest in the Property including, but not limited to, owners of an interest in fee simple, mortgagees, easement holders, and/or lessees.

8. Compliance Enforcement. In the event of a violation of this Environmental Covenant, a civil action for injunctive and/or other equitable relief may be maintained by the United States on behalf of the FWS and/or NOAA, or the Ohio Attorney General on behalf of Ohio EPA, or other parties authorized by law pursuant to ORC § 5301.91. Failure to timely enforce compliance with this Environmental Covenant or the activity and use limitations contained herein by any party shall not bar subsequent enforcement by such party and shall not be deemed a waiver of the party’s right to enforce this Environmental Covenant. Nothing in this Environmental Covenant shall restrict the Trustees from exercising their authority under applicable law.

9. Rights of Access. Owner hereby grants to the FWS, NOAA, Ohio EPA, the Ohio Department of Natural Resources, their agents, contractors, and employees, [and] the County of Ashtabula [, and the City of Ashtabula – if the property is located in the City] the right of access to the Property for implementation or enforcement of this Environmental Covenant.

10. Compliance Reporting. Owner or any Transferee shall submit to the FWS, NOAA, Ohio EPA, [and] the County of Ashtabula [and the City of Ashtabula], on an annual basis, written documentation verifying compliance with this Environmental Covenant.

11. Notice upon Conveyance. Each instrument hereafter conveying any interest in the Property, or any portion thereof, shall contain a notice of the activity and use limitations set forth in this Environmental Covenant, and provide the recorded location of this Environmental Covenant. The notice shall be substantially in the following form:

THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL COVENANT, DATED \_\_\_\_\_, 20\_\_, RECORDED IN THE DEED OR OFFICIAL RECORDS OF THE ASHTABULA COUNTY RECORDER ON \_\_\_\_\_, 20\_\_, IN [DOCUMENT \_\_\_\_, or BOOK \_\_\_\_, PAGE \_\_\_\_].

Owner shall notify the FWS, NOAA and Ohio EPA within ten (10) days after each conveyance of an interest in the Property. Owner's notice shall include the name, address, and telephone number of the Transferee, a copy of the deed or other documentation evidencing the conveyance, and a survey map that shows the boundaries of the property being transferred.

12. Representations and Warranties. Owner hereby represents and warrants to the other signatories hereto:

- A. that the Owner is the sole owner of the Property;
- B. that the Owner holds fee simple title to the Property which is subject to the following interests or encumbrances: \_\_\_\_\_;
- C. that the Owner has the power and authority to enter into this Environmental Covenant, to grant the rights and interests herein provided and to carry out all obligations hereunder;
- D. that the Owner has identified all other persons that own an interest in or hold an encumbrance on the Property and notified such persons of the Owner's intention to enter into this Environmental Covenant; and,
- E. that this Environmental Covenant will not materially violate or contravene or constitute a material default under any other agreement, document or instrument to which Owner is a party or by which Owner may be bound or affected.

13. Amendment. This Environmental Covenant may be amended by consent of all of the following: the Owner or a Transferee; the FWS; NOAA; and the Ohio EPA, pursuant to ORC §

5301.90 and other applicable law. The term, “Amendment” as used in this Environmental Covenant, shall mean any changes to the Environmental Covenant, including the activity and use limitations set forth herein, or the elimination of one or more activity and use limitations when there is at least one activity and use limitation remaining.

This Environmental Covenant may be amended only by a written instrument duly executed by the Regional Director of the FWS, the General Counsel of NOAA (or his/her designee), the Director of Ohio EPA and the Owner or Transferee of the Property, as applicable. Within thirty (30) days of signature by all requisite parties on any amendment of this Environmental Covenant, the Owner or Transferee shall file such instrument for recording with the Ashtabula County Recorder’s Office, and shall provide a file and date-stamped copy of the recorded instrument to the FWS, NOAA and Ohio EPA.

14. Severability. If any provision of this Environmental Covenant is found to be unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

15. Governing Law. This Environmental Covenant shall be governed by and interpreted in accordance with the laws of the State of Ohio.

16. Recordation. Within thirty (30) days after the date of the final required signature upon this Environmental Covenant, Owner shall file this Environmental Covenant for recording, in the same manner as a deed to the Property, with the Ashtabula County Recorder’s Office.

17. Effective Date. The effective date of this Environmental Covenant shall be the date upon which the fully executed Environmental Covenant has been recorded as a deed record for the Property with the Ashtabula County Recorder.

18. Distribution of Environmental Covenant. The Owner shall distribute a file- and date-stamped copy of the recorded Environmental Covenant to: the FWS; NOAA; Ohio EPA; [*and*] the County of Ashtabula [*; and, the City of Ashtabula– if the property is located in the City*].

19. Notice. Unless otherwise notified in writing by or on behalf of the current owner, the FWS or Ohio EPA, any document or communication required by this Environmental Covenant shall be submitted to:

Regional Director  
U.S. Fish and Wildlife Service  
Region 3  
1 Federal Drive  
Fort Snelling, Minnesota 55111

Ashtabula River Site Coordinator  
DERR  
Ohio EPA  
2110 East Aurora Road  
Twinsburg, Ohio 44087

General Counsel’s Office for Natural Resources/NE  
NOAA Office of General Counsel  
55 Great Republic Drive  
Gloucester, Massachusetts 01930

[Chairman  
Ashtabula Township Park Commission  
120 Manola Avenue  
Ashtabula, OH 44004]

[Brenda Stephens, Administrative Assistant  
Ashtabula Township Park Commission  
120 Manola Avenue  
Ashtabula, OH 44004]

The undersigned [representative of] Owner represents and certifies that [he/she] is authorized to execute this Environmental Covenant.

**IT IS SO AGREED:**

[ \_\_\_\_\_ ] [Owner]

\_\_\_\_\_ [signature] [title]

\_\_\_\_\_  
Printed Name and Title

\_\_\_\_\_  
Date

State of \_\_\_\_\_ )

) ss:

County of \_\_\_\_\_ )

Before me, a notary public, in and for said county and state, personally appeared \_\_\_\_\_, [a duly authorized representative of \_\_\_\_\_], who acknowledged to me that [he/she] did execute the foregoing instrument [on behalf of \_\_\_\_\_].

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Date of My Commission Expiration

OHIO ENVIRONMENTAL PROTECTION AGENCY

\_\_\_\_\_  
Chris Korleski, Director

\_\_\_\_\_  
Date

State of Ohio            )  
                                  )        ss:  
County of Franklin    )

Before me, a notary public, in and for said county and state, personally appeared Chris Korleski, the Director of Ohio EPA, who acknowledged to me that he did execute the foregoing instrument on behalf of Ohio EPA.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Date of My Commission Expiration

U.S. Fish & Wildlife Service

\_\_\_\_\_  
Robyn Thorson, Regional Director, Region 3

\_\_\_\_\_  
Date

State of \_\_\_\_\_ )

)

ss:

County of \_\_\_\_\_ )

Before me, a notary public, in and for said county and state, personally appeared Robyn Thorson, a duly authorized representative of the FWS, who acknowledged to me that she did execute the foregoing instrument on behalf of the FWS.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Date of My Commission Expiration

National Oceanic and Atmospheric Administration

\_\_\_\_\_  
[name] [title]

\_\_\_\_\_  
Date

State of \_\_\_\_\_ )

)

ss:

County of \_\_\_\_\_ )

Before me, a notary public, in and for said county and state, personally appeared \_\_\_\_\_, a duly authorized representative of NOAA, who acknowledged to me that [he/she] did execute the foregoing instrument on behalf of NOAA.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Date of My Commission Expiration

This instrument prepared by:

Mark J. Navarre, Esq.  
Supervising Attorney  
Ohio EPA  
50 West Town Front Street  
Columbus, Ohio 43216

## Appendix F

### Trustee Memorandum of Understanding

DIV. OF EMERGENCY &  
REMEDIATION RESPONSE

99 FEB 12 AM 10:20

RECEIVED

**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.

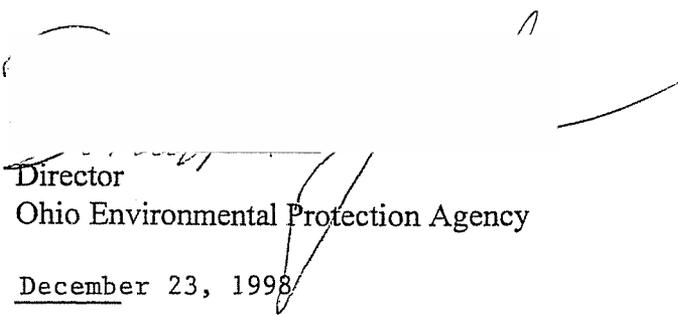
**XIV. THIRD PARTY CHALLENGES OR APPEALS**

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.

  
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



## 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)