NATURAL RESOURCE TRUSTEE MEMORANDUM OF AGREEMENT FOR THE SHEBOYGAN RIVER AND HARBOR SITE

This Memorandum of Agreement (MOA) is entered into by and between the following governmental entities as Natural Resource Trustees (Trustees):

a) National Oceanic and Atmospheric Administration (NOAA), on behalf of Department of Commerce;

b) the U.S. Fish and Wildlife Service (FWS) on behalf of United States Department of the Interior; and

c) the Wisconsin Department of Natural Resources (WDNR).

hereinafter collectively referred to as the Sheboygan River Natural Resource Trustee Council (Trustee Council).

I. Purpose

This Memorandum of Agreement (MOA) is entered into in recognition of the common interests of the Trustees in the assessment and restoration of natural resources and associated services that have been injured, destroyed or lost as a result of releases of hazardous substances (Releases) from various facilities located in and around the Sheboygan River and Harbor. The purpose of this MOA is to provide a framework for coordination and cooperation among the Trustees to ensure timely and efficient implementation of a natural resource damage assessment and restoration (NRDAR) to restore natural resource injuries, including service losses, caused by the Releases. Through this MOA, the Trustees also intend to use recovered damages to plan and implement actions appropriate to restore, replace, rehabilitate or acquire the equivalent of natural resources or resource services injured or lost as a result of the Releases.

II. Geographic Scope

This MOA is intended to address NRDAR activities within the lower 14 miles of the Sheboygan River from Sheboygan Falls to, and including, the Sheboygan Harbor. The site incorporates the Sheboygan River and Harbor Superfund site (added to the National Priorities List [NPL] in 1986), the Kohler Company Landfill Superfund site (added to the NPL in 1984), and the former Campmarina manufactured gas plant site (not listed on the NPL but which is a Superfund Alternative Site)(hereinafter collectively noted for purposes of this MOA as "the Site").

III. Authority

The Trustees enter into this MOA 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 § 9607(f); Section 311(f) of the Clean Water Act, 33 U.S.C. § 1321(f); Section 292.11 Wis. Stats., the National Oil and Hazardous Substances Pollution Contingency Plan, as amended, 40 C.F.R. Part 300; and the CERCLA Natural Resource Damage Assessments Regulations, 43 C.F.R. Part 11, and other applicable Federal and State laws.

IV. Definitions

For purposes of this MOA, the following definitions shall apply:

"Assessment Costs" means the reasonable costs that may be recovered for the cost of performing a damage assessment as defined in 43 C.F.R. § 11.14(ee). These costs include, but are not limited to, the costs of determining injury and developing a restoration plan; reasonable administrative and legal costs; sample collection and analysis; monitoring and oversight costs; costs associated with public participation; and all indirect costs.

"Lead Authorized Official" means the Trustee agency selected by the participating Trustees to coordinate NRDAR activities and as defined in 43 CFR §11.14(w).

"Natural Resources" shall have the same meaning as set forth in 43 C.F.R. § 11.14(z).

"Natural Resource Damage Assessment" shall have the same meaning as set forth in 43 C.F.R. §11.14(aa).

"Natural Resource Damages" shall have the same meaning as set forth in 43 C.F.R. § 11.14(l), and shall include any compensation recovered by the Trustees as part of the NRDAR at the Site.

"Potentially Responsible Party" or "PRP" shall have the same meaning as set forth in 43 C.F.R. §11.14(kk).

"Restore and Restoration" means any actions undertaken by the Trustees to restore, replace, or acquire the equivalent of injured natural resources and natural resource services pursuant to 42 U.S.C. § 9607(f)(1), and other applicable laws and regulations.

"Trustee Council" refers to the Trustee Representatives appointed by NOAA, FWS and WDNR pursuant to Section VI to coordinate NRDAR activities at the Site.

"Trustee Representatives" mean the authorized designees appointed by NOAA, FWS, and WDNR pursuant to Section VI.

VI. Trustee Council Establishment and Responsibilities

A. Trustee Council. Pursuant to this MOA, the Trustees hereby establish the Sheboygan River Natural Resource Trustee Council which will be the forum through which the Trustees coordinate NRDAR activities at the Site.

B. Trustee Council Membership. The Trustee Council shall consist of one voting Trustee Representative from each of the Trustees. Other advisors of each Trustee may attend meetings and participate in the deliberations of the Trustee Council. A Trustee may designate different individuals to serve as its Trustee Council representative regarding the different activities that are the subject of this MOA.

1. Within 15 working days after the execution of this MOA by a Trustee, the Trustee will notify the other Trustees of the names, addresses, email, telephone numbers and facsimile numbers of the Trustee's primary, alternate and legal representatives to the Trustee Council. Where the Trustee has designated different individuals to serve as the Trustee Council representative regarding different subject matters, the Trustee's notification will identify the subject matter assigned to each of its representatives. To the extent there is a change in either the primary or alternate or legal representative, the Trustee will notify the other Trustees of such change and provide the same contact information as set forth above.

2. A representative of the Lead Authorized Official (LAO), as defined herein, will serve as the Chairperson for Trustee Council meetings. The Chairperson will be responsible for organizing and scheduling meetings, preparing proposed agendas, identifying in the agendas any issues to be voted upon at the proposed meeting, distributing agendas to the designated representatives of each Trustee at least three (3) days prior to the meeting date, and will preside over convened meetings. If the Trustee Council agrees, a person from one of the Trustees that is not the LAO may be selected to act as Chairperson for the Trustee Council or to perform selected duties of the Chairperson.

C. Lead Authorized Official. Unless the Trustees decide otherwise, the State of Wisconsin will be the LAO under this MOA. By unanimous agreement the Trustee Council may designate another Trustee as LAO. The LAO may delegate any of its duties to another Trustee with the unanimous approval of the Trustee Council. The duties of the LAO include, but are not limited to the following:

1. Assist the Trustee Council in coordinating NRDAR activities at the Site;

2. Convene Trustee Council meetings and develop and disseminate Trustee Council meeting agendas, action items, resolutions, and budgets;

3. Ensure that Trustees responsible for or overseeing studies provide regular status updates to the Trustee Council; and

4. Develop and maintain an Administrative Record.

D. Trustee Council Meetings. Trustee Council meetings may be convened by face-to-face meetings, by telephone conference call, or by some combination that involves the direct participation of Trustee representatives. Any member of the Trustee Council may, upon reasonable notice through the LAO, call a meeting of the Trustee Council.

E. Trustee Council Responsibilities. The Trustee Council shall coordinate all Trustee activities and matters regarding NRDAR activities at the Site, including, but not limited to, the following activities:

1. Coordinate Trustee activities with other federal or state agencies' response, remedial and/or corrective actions, including Trustee review and comment on plans, proposals and work products developed by or under such agencies where such items implicate the assessment or restoration of the natural resources that are the subject of this MOA;

2. Oversee the development and implementation of any damage assessment, restoration planning, restoration implementation, and oversight, both prior to and subsequent to, final settlement or judgment of all NRDAR claims at the Site;

3. Create, as appropriate, task-oriented workgroups, which shall report to the Trustee Council, when they are deemed necessary and appropriate to further the purposes of this MOA;

4. Coordinate Trustee decision-making, planning, and project contracting, technical or otherwise, and ensure such actions are conducted in accordance with applicable administrative procedures and/or legal requirements;

5. Make all necessary decisions, as a case by case basis and in accordance with applicable law, for the management and administration of funds pursuant to Section VII of this MOA;

6. Establish protocols, standards, procedures, or other directions as necessary to support access to, or the use of, damages or other funds received to support NRDAR activities;

7. Coordinate Trustee decision-making concerning the resolution of NRDAR claims through negotiations with PRPs or a potential joint prosecution of claims;

8. Coordinate with the public as appropriate and determine which records are appropriate for public review and comment in compliance with relevant laws and regulations; and

9. Take such further actions as may be necessary to further the purposes and achieve the objectives of this MOA.

F. Trustee Council Decisions. The three Trustee members of the Trustee Council shall have equal authority, and shall abide by the following guidelines in reaching all decisions under this MOA:

1. Each Trustee Council member will have one vote;

2. All decisions under this MOA shall be by unanimous agreement of the Trustees, except where a Trustee has otherwise notified the Trustee Council of its intent to limit its involvement in any component of the NRDAR by notifying the Trustee Council in writing, and in a timely manner, of those NRDAR activities for which the Trustee would like to limit or end its participation;

3. Should a Trustee limit or end its participation in a NRDAR component, the Trustee Council may make decisions relative to that NRDAR component without the vote of the Trustee choosing to limit or end its involvement in said component;

4. Trustees will conduct extensive good faith discussions directed toward obtaining unanimous agreement;

5. Trustee Council decisions will be recorded in writing, either by resolution signed by the voting representatives or in minutes approved as to form and content by the voting representatives;

6. All Trustee Council decisions authorizing the expenditure of funds or the acceptance of work effort as satisfying in-kind contribution obligations shall be memorialized in a Trustee Council resolution signed by the voting representatives;

7. All records of Trustee Council decisions plus copies of any supporting document shall be maintained in the administrative record; and

8. The Trustee Council may seek advisory participation from other federal, state or local agencies or any other entity as the Trustee Council may deem appropriate.

G. Dispute Resolution. In the event of a dispute involving any decisions or votes under this MOA, any Trustee may initiate this dispute resolution process by providing written notice of the initiation to the Trustee Council. Dispute resolution shall involve the following process:

1. Any dispute that cannot be resolved at the staff level will be elevated to the Trustee Council for resolution. The Trustee Representative for each Trustee

shall attempt to resolve the dispute through good faith discussions directed toward unanimity within thirty (30) working days after the receipt of written notice initiating the dispute resolution process.

2. If the Trustee Representatives are unable to resolve the dispute, the matter will be elevated to the Trustee Representatives' respective managers.

3. If the Trustees continue to disagree, the matter will be elevated to the officials who executed this MOA on behalf of each Trustee, or to any other official having authority to decide on such matter and to bind the Party, for resolution. The officials will resolve the matter or decide the appropriate forum or means for ultimate resolution.

4. The provisions of this section do not preclude separate dispute resolution discussions between and among the Trustees.

5. In the event of irreconcilable disputes relating to the disposition of funds recovered from the PRPs, such disputes shall be governed by this section of this MOA.

VII. Funds

A. Use of Funds. Any funds made available to the Trustees by the PRPs or other sources shall be used in accordance with this MOA, consistent with CERCLA, and as agreed to by the Trustee Council.

B. PRP Agreement to Fund NRDAR Activities. The Trustees may enter into an agreement with one or more of the PRPs in which the PRP agrees to fund and/or participate in NRDAR activities. Such agreements shall specify the terms of the activity, monetary disbursement, and PRP participation.

C. Trustee Agency Funds. Each Trustee agrees to coordinate the expenditures of any funds available to a Trustee for NRDAR activities with the other Trustees, except for funds that reimburse Assessment Costs. Each Trustee is entitled to a full reimbursement of its Assessment Costs and no Trustee shall be required to coordinate the use of its reimbursed Assessment Costs. The goal of this provision is to prevent duplication of efforts, ensure optimum coordination among the individual Trustees, and ensure that the assessment costs are reasonable.

D. Restoration Funds. By resolution, the Trustees shall identify one or more entities to serve as the depository and manager for all or any portion of the natural resource damages recovered via the settlements that are the subject of this MOA. In selecting the entity or entities, the Trustees will comply with applicable law and will take into consideration whether the proposed depository generates interest; any management or administrative fees or charges imposed by the depository; the record of performance of the depository in similar cases; the administrative convenience or complexity in making

deposits to or obtaining withdrawals from the depository; and the security of the investment vehicles utilized by the depository. The resolution identifying each depository shall include specific instructions regarding procedures for disbursement from the depository that will at a minimum require a trustee resolution for each disbursement.

E. Character and Joint Use of Recovered Natural Resource Damages. Any and all Natural Resource Damages, except for the Assessment Costs of individual Trustees, recovered via settlements or judgments that are the subject of this MOA are subject to the joint and undivided interest and control of all the Trustees. Allocation of a portion of recovered Natural Resource Damages to reimburse Restoration costs incurred by a Trustee does not affect the undivided nature of the balance of the funds. Recovered Natural Resource Damages that are the subject of this MOA must be used only to restore, replace or acquire the equivalent of the natural resources for which the damages were recovered or as otherwise provided in any judgment, consent decree or settlement agreement under which such damages are recovered.

F. Cost Accounting and Reimbursement. The Trustees shall adopt restoration and restoration oversight cost accounting and reimbursement guidelines that shall insure that recovered damages are spent only on reasonable and adequately documented costs. Documentation of costs will, at a minimum, (i) evidence the actual time spent, by date, and the hourly salary rate applicable to each agency participant; (ii) identify all indirect or overhead rates used in determining costs, including the manner of their application; and (iii) 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 MOA. No Trustee is to certify or warrant any assessment or restoration cost information other than its own

VIII. Communications with PRPs

A. Trustee Coordination. The Trustees recognize that their interests in the recovery of claims for natural resource damages are related and agree to use best efforts to coordinate negotiation and, if necessary, litigation of their claims that arise out of the Release.

B. Notification. The Trustees agree to notify and consult with each other concerning any action or decision they make that may affect the NRDAR process.

C. Independent Negotiations. Should a Trustee determine it needs to enter into independent negotiations with a PRP, the Trustee shall, to the extent practicable, provide twenty (20) days prior written notice to each of the other Trustees of its intent to participate in negotiations with the PRP regarding settlement or other disposition of Natural Resource Damages claims at the Site.

D. PRP Communications. The Trustees agree to inform each other within fourteen (14) days of any communications to or from the PRP regarding settlement or other disposition of Natural Resource Damages claims at the Site. The substance of any such communications will be shared with all other Trustees.

E. Agreements. The Trustees agree to provide to the Trustee Council copies of any agreements or other documents reflecting settlement of Natural Resource Damage claims arising from the Release. If a Trustee refuses to do so, that Trustee shall no longer be party to this MOA unless all remaining Trustees agree in writing within ten days (10) of the refusal that the Trustee remains a party.

X. Confidentiality

A. Data. Public sharing of validated scientific data and final studies will be the general policy of the Trustees. Therefore, the Trustees agree that, consistent with the applicable law, all validated scientific data arising out of their review of injuries to natural resources as a result of hazardous substance releases at the Site are to be made available to the public.

B. Communications and Work Products. The Trustees recognize that some written or oral communications related to the assessment and recovery of damages for injuries to natural resources may be prepared in anticipation of litigation. Accordingly oral and written communications and work products that result from efforts by the Trustee Council or any one Trustee will be treated as privileged attorney-client communications, attorney work product, or protected by other applicable privileges, and will be protected from disclosure to the maximum extent possible under applicable Federal or State law. In addition, all pre-decisional drafts of documents, studies, reports or analyses shall be labeled as "DRAFT" prominently on the first page of such document. The transmittal of any designated privileged documents or designated privileged communication between or among any of the Trustees, or with other federal and state agencies, or with other federal or state Trustees (and their counsel, representatives, contractors, and consultants) does not waive, or imply any waiver of, any privilege or right which the transmitting government may assert with respect to that document or communication.

C. Shared Documents. Except as provided in this Section, no Trustee shall release to a non-Trustee any privileged information, documents or communications which is/are developed and exchanged pursuant to this MOA. If a party determines that it needs to share such information, documents or communications with one or more of its contractors or subcontractors in order to assist that party in this natural resource damage assessment, it may do so. Any such contractor or subcontractor will be informed of the terms of, and agree to be bound by, a confidentiality agreement consistent with this MOA before receiving any such information, documents or communications. Such information, documents or communications exchanged or disclosed by the parties pursuant to this Agreement shall be disclosed only to those contractor or subcontractor employees who, in the discretion of the Trustee, require access to such information, documents or communications for the performance of their official duties.

D. Document Production. The Trustees agree that whenever a request for production for privileged information is received pursuant to any applicable federal or

state law, the request will be forwarded for consultation with the Trustees to which a 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.

E. Confidentiality Obligations. The confidentiality obligations established by this MOA shall remain in full force and effect, without regard to whether the MOA is terminated pursuant to Section XI and without regard to whether any asserted claims are terminated by final judgment or settlement.

XI. Miscellaneous Provisions

A. Records. All records created by the Trustee Council in support of this MOA (e.g., meeting agendas, meeting minutes, resolutions, etc) shall be considered "Draft" unless approved as a "Final" record by the Trustee Council

B. Public Statement. Except as otherwise stated in this MOA, the Trustee Council agrees that each Trustee will not make public representations about the legal or factual positions of another Trustee unless agreed to in writing.

C. Execution and Effective Date. This MOA may be executed in counterparts. A copy with all original signatures affixed shall constitute the original MOA and shall be maintained by the LAO. The effective date shall be the date of the final signature of the parties to this MOA. This MOA, once executed, shall not be confidential and shall be made available in the administrative record.

D. Amendment. This MOA may be amended by unanimous approval of the Trustees. Any amendment must be in writing and signed by all the Trustees who are party to the MOA at the time of amendment.

E. Termination. This MOA shall be in effect from the date of execution until termination by agreement of the Trustees. At any time that the Trustees determine that the purposes set forth in this MOA have been satisfied, the MOA may be terminated.

F. Withdrawals from the MOA. In the event any Trustee withdraws from the MOA, such withdrawal must be in writing and provided to the other parties of this MOA at least thirty (30) days in advance of withdrawal. If the Trustee seeks to withdraw due to a dispute that Trustee must first attempt to resolve the dispute in accordance with Section VI. Withdrawal shall be effective thirty (30) days after written notice is provided to all other Trustees. Should any Trustee withdraw from this MOA, such withdrawal shall not affect the subsequent validity of the Trustee Council or this MOA among the remaining Trustees. A Trustee that has withdrawn from this MOA shall have no further obligations or privileges under this MOA except to a) maintain confidentiality as agreed in Section X, and b) within ninety (90) days of the effective date of withdrawal, to account for and return to the Trustees unobligated funds recovered for natural resource damages to

develop and implement an Assessment Plan and/or a Restoration Plan to restore injured natural resources as mandated by 42 U.S.C. §9607(f)(1).

G. Reservations. The Trustees recognize that each has independent authority under respective Federal or State law to seek restoration of natural resources or payment of natural resource damages. Accordingly, nothing in this MOA is intended to imply any signatory Trustee is in any way abrogating or ceding any responsibility or authority inherent in its trusteeship over natural resources. Nothing in this MOA shall be construed to restrict, enlarge, or otherwise determine the rights, interests or jurisdiction of any Trustee nor does it intend to waive the Trustees' claims or defenses in any legal action.

H. Limitation of Authority. No Trustee is authorized to enter into settlements on behalf of the other Trustees and no Trustee represents another Trustee in any litigation that may be commenced by the PRP or any other party.

I. Commitment of Resources. Nothing in this MOA shall be construed as obligating any Trustee, or its respective officers, agents, employees, to expend any funds in excess of appropriations authorized by law.

J. Existing Directives. Nothing in this MOA is intended to conflict with existing directives of any Trustee. If the terms of this MOA are inconsistent with existing directives of any Trustee, those portions of this MOA that are determined to be inconsistent shall be identified by the affected Trustee. At the first opportunity for review of this MOA, all identified inconsistencies will be discussed among the Trustees for possible amendment of this MOA as the Trustees determine appropriate.

K. Enforceability. This MOA shall not be enforceable by any person other than the parties hereto, and does not create any rights in any party not a signatory hereto.

The Sheboygan River Natural Resource Trustee Council members, through their designated representatives, have signed this MOA on the day and year appearing opposite their signatures.

FOR THE UNITED STATES:

David Westerholm, Director
Office of Response and Restoration,
National Oceanic and Atmospheric Administration

DATE: 3/20/2012

The Sheboygan River Natural Resource Trustee Council members, through their designated representatives, have signed this MOA on the day and year appearing opposite their signatures.

FOR THE UNITED STATES:

Charles M. Wooley
Acting Regional Director

DATE: 3/5/12

Tom Melius, Regional Director
U.S. Fish & Wildlife Service

The Sheboygan River Natural Resource Trustee Council members, through their designated representatives, have signed this MOA on the day and year appearing opposite their signatures.

FOR THE STATE OF WISCONSIN:

Kenneth Johnson, Water Division Administrator
Wisconsin Dept. of Natural Resources

DATE: 3/26/12