

**Former Indian Refinery  
Natural Resource Damage Assessment  
Funding and Participation Agreement**

**I Parties**

This Agreement is between the Illinois Department of Natural Resources ("IDNR") and the Illinois Environmental Protection Agency ("IEPA"); the United States Department of the Interior ("USDOI"), acting through the U.S. Fish and Wildlife Service ("USFWS"); and Chevron Environmental Management Company ("CEMC"), a wholly owned subsidiary of ChevronTexaco Corporation on behalf of Texaco Inc. The IDNR, IEPA, and USFWS shall be collectively referred to hereafter as the "Trustees." CEMC and the Trustees are collectively referred to hereafter as the "Parties."

**II Trustee Authority**

The Trustees enter into this agreement in accordance with the legal authorities provided each Trustee by Section 107(f) of CERCLA, 42 U.S.C. § 9607(f), Section 311(f) of the Clean Water Act, 33 U.S.C. § 1321(f), and any other applicable Federal and State statutes and regulations including Subpart G of the National Contingency Plan ("NCP"), 40 C.F.R. §§ 300.600-300.615, and the Natural Resource Damage Assessment Regulations at 43 C.F.R. Part 11, to assess natural resource damages ("NRD").

USDOI (hereafter "Federal Trustee"), acting through the USFWS, is designated by the President of the United States as a natural resource trustee and as such is duly authorized by Section 107(f) of CERCLA, 42 U.S.C. § 9607(f), to pursue and consent to settle claims for NRD for resources under the trusteeship of USDOI.

The Directors of the IEPA and IDNR (collectively hereafter "State Trustees") are designated by the Governor of the State of Illinois as natural resource trustees and as such are duly authorized by Section 107(f) of CERCLA, 42 U.S.C. § 9607(f), to assess and recover NRD on behalf of the State of Illinois.

The NCP, 40 C.F.R. § 300.615(d)(2), authorizes the Federal Trustee to participate in negotiations with potentially responsible parties ("PRP") and State Trustees to obtain PRP-financed or PRP-conducted assessments of NRD and, where appropriate, to agree to covenants not to sue. Further, pursuant to 43 C.F.R. § 11.32(d), a PRP may conduct all or any part of a Trustee approved assessment, under the direction, guidance, and monitoring of the Trustees. This Agreement is the result of the negotiations between the Trustees and CEMC as authorized by the NCP and the Natural Resource Damage Assessment Regulations at 43 C.F.R. Part 11.

### **III The Natural Resource Damage Assessment Process**

The Trustees have completed a preassessment screen in accordance with 43 C.F.R. Part 11 for the former Indian Refinery Site in Lawrenceville, Illinois ("Site"). Based on the results of the preassessment screen, the Trustees have determined that a natural resource damage assessment ("NRDA") is warranted. The Trustees have invited CEMC to participate in the development of the type and scope of the assessment and in performing all or part of the assessment. The Parties intend the NRDA to include a cooperative injury assessment to facilitate resolution of any natural resource damage claims, including restoration, replacement and/or acquisition of injured natural resources, and to minimize the transaction costs associated with such claims.

The Parties have jointly developed a statement of work ("SOW"), attached hereto and made part of this Agreement, that describes some of the major tasks that the Parties will complete to develop an assessment work plan ("Work Plan"). CEMC has agreed that, under the direction, guidance and monitoring of the Trustees but without admitting the fact of natural resource damages, it will gather data, samples and other information ("NRDA Activities") that are sufficient to complete the Work Plan. The results of NRDA Activities may allow for performance of interim activities that will further the restoration process and the Parties may address those activities by stipulation pursuant to Paragraph VII of this Agreement.

Although no Party makes any admission with regard to the applicability or scope of the Trustees' authorities with regard to petroleum, including crude oil or any fraction thereof, the Parties will, consistent with the Work Plan, address any hazardous substances, oil or petroleum during the performance of the NRDA Activities or Cooperative Studies (as hereinafter defined).

The Parties may propose alternative or additional studies to address unknown conditions or changed circumstances and any proposed study that is agreed to in writing by all Parties prior to commencement of the study, shall be deemed a "Cooperative Study." The final work plan or description of activities for each Cooperative Study, when agreed to in writing by all Parties, will become a part of this Agreement and will be subject to all of its terms and conditions.

A proposed study not agreed to in writing by all Parties, shall be deemed an "Independent Study." Any party may conduct any Independent Study after providing written notice to all other parties at least thirty (30) days prior to the initiation of the Independent Study. If any party provides written notice of its intent to proceed with an Independent Study, any party may invoke dispute resolution pursuant to Paragraph XII. When a party invokes dispute resolution pursuant to this paragraph, no party shall proceed with an Independent Study until the completion of the dispute resolution process. If any Party conducts an Independent Study, the Parties agree it shall not be subject to the terms and conditions of this Agreement.

#### **IV Administrative**

The Parties agree to form a technical and administrative team (“Team”) for NRDA Activities and Cooperative Studies. The objective of the Team is to maintain an open dialogue regarding the scope, objectives, and other technical issues to ensure that the requirements of the NRDA are fulfilled in a timely, effective, technically sound and efficient manner. The Team is authorized to address administrative and technical issues only as they relate to the Team objective. The Team will refer all other issues to the management of each individual Party for appropriate consideration and determination. To further support the Team, technical subgroups may be formed, if needed, to address specific technical issues. Membership on the Team and all technical subcommittees shall be open to all Parties and their authorized representative.

#### **V Acceptance and Approval of Submissions**

CEMC will submit all samples, data, information and written documents required by the terms of this Agreement within the agreed upon time frames set forth in the Work Plan or Cooperative Study. The Trustees will review all such samples, data, information and written documents and will either approve, disapprove or require revisions or modifications to any written submission. The Trustees will provide CEMC with written comments that set forth the reasons for all required revisions or modifications or any disapproval. CEMC will submit revised documents that respond to the Trustees’ comments within 30 days or any other time period specified in writing by the Lead Administrative Trustee. If the Trustees disapprove any re-submittal the disapproval shall automatically initiate the dispute resolution provisions in Paragraph XII of this Agreement.

The Parties agree that any submission required by NRDA Activities or a Cooperative Study that is approved by the Trustees shall become a part of this Agreement and subject to its terms and conditions. The Parties further agree that except for unresolved disputes as set forth in Paragraph XII, all data, reports, analyses, and conclusions required by NRDA Activities or a Cooperative Study and approved by the Trustees shall be binding on the Parties in any judicial or administrative proceeding between or among the Parties related to natural resource damage at the Site. The Illinois Environmental Protection Agency (“IEPA”), and Texaco, voluntarily agreed to a Consent Decree (“Decree”) pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (“CERCLA”). The Decree, which was entered in the United States District Court for the Central District of Illinois on October 1, 2001, requires Texaco to undertake certain response actions for certain areas at or near the former Indian Refinery Site in Lawrenceville, Illinois (“Site”). The IEPA’s approval in its role as a Trustee will not constitute approval in its role as a remedial agency for purposes of the Consent Decree.

#### **VI Data Sharing**

Where the product of the NRDA Activities or a Cooperative Study is a report or an analysis, a final draft of such report or analysis shall be delivered to the other Parties, providing a reasonable opportunity for them to review and comment, before the report or analysis is finalized. Any

comments so provided, as well as the final draft and the final report or analysis, shall be placed in the administrative record ("Administrative Record") maintained by the Lead Administrative Trustee for this matter.

Where a Cooperative Study involves field work, the Party conducting the field work shall provide the other Parties with reasonable advance notice so that they may have an opportunity to arrange and coordinate observation of such field activities.

### **VII Stipulations**

The Parties may enter into written stipulations, when appropriate and in the public interest, during the course of the NRDA to address and narrow issues of fact, law or both. Any Party may propose a stipulation at any time. A stipulation that is agreed to by all the Parties and is in the public interest shall become a part of this Agreement and shall survive the termination of this Agreement. Any stipulation that becomes part of this Agreement is for the benefit of the Parties only and shall not be admitted for any purpose in any proceeding involving third parties unless required by state or federal laws governing record production or the litigation discovery process.

### **VIII Reservation of Rights and Claims**

The Parties agree that none of them is making any admission of fact or law by entering into this Agreement. The Parties agree further that nothing herein shall constitute any admission of liability or waiver of any defense on the part of the Parties in connection with natural resource injuries or damages under any Federal or State Law, nor affect the Parties' right to bring an action under Federal or State Law against persons, entities or parties who have not signed this agreement.

Nothing in this Agreement is intended, nor shall it be construed as a waiver of any attorney-client privilege, work product protection, or any other privilege that has been or may be asserted in this or any other matter unless explicitly stated herein. Laboratory analysis or field data collected pursuant to this Agreement shall not be considered work product or attorney-client privileged.

Nothing in this Agreement is intended, nor shall be interpreted, to limit the scope of the NRDA appropriate for this Site or to otherwise restrict or abrogate the authority or discretion of the Trustees to determine the scope of that assessment. Further, except as specifically set forth in Paragraph IX, CEMC is not released from any liability, including but not limited to claims for damage, injury, loss or destruction of natural resources or their services, claims for the costs of assessing damage, injury, loss or destruction of natural resources or their services, claims for restoration, rehabilitation, replacement or acquisition of the equivalent of natural resources or lost services of those resources, or any other causes of action or requests for relief, either administratively or judicially, under either Federal or State law, as well as any claims, causes of action, arising from the releases at the Site.

Though not admissible on the issue of liability, the expenditure or payment of money by CEMC in accordance with this Agreement may be admissible to reduce the amount of the Trustees' claim(s)

for assessment costs arising from the release or potential release of oil or hazardous substances under applicable federal, State, or local laws or regulations.

The Trustees reserve the right to seek reimbursement in a future administrative or judicial action from any and all responsible parties for any and all NRDA costs not reimbursed by CEMC, including, but not limited to, costs associated with any Independent Study conducted, or contracted for, by the Trustees.

### **IX Covenants Not to Sue**

The Trustees covenant not to sue or take administrative action against CEMC under Section 107(f) of CERCLA, or Section 311(c) of CWA for all claims related to Trustee costs and expenses that CEMC has reimbursed pursuant to Paragraph X of this Agreement. Furthermore, upon completion of the NRDA, and its approval by the Trustees, the Trustees covenant not to sue or take administrative action against CEMC under Section 107 of CERCLA, or Section 311 of the CWA for all claims for natural resource damage assessment costs associated with the approved NRDA and reimbursed pursuant to Paragraph X.

### **X Funding**

The Parties recognize that in proceeding under this Agreement, the Trustees will incur costs and expenses as they provide direction, guidance, monitoring, and approval of CEMC's performance of the NRDA or the performance of interim activities to further the restoration process.

The Parties also recognize that to provide direction, guidance, monitoring, and review of NRDA Activities and submittals the Trustees may have to incur costs for a consultant or a contractor to assist the Trustees in reviewing a submission prepared by CEMC as part of the NRDA. The Trustees agree that for purposes of this Agreement they will utilize employee expertise to provide direction, guidance, monitoring and review of the NRDA and Cooperative Studies and submittals to the extent practical provided employee expertise and availability exists for the specific issue or submittal under consideration. The Trustees agree not to incur costs for more than one contractor or consultant for any specific activity.

For purposes of this Agreement the Trustees will seek reimbursement or funding for future costs that in their opinion are recoverable pursuant to applicable statutory and regulatory authority. For purposes of this Agreement CEMC agrees to pay all future costs that they believe the Trustees may recover pursuant to applicable statutory and regulatory authority, including but not limited to, direct and indirect costs that the Trustees, their employees, agents, contractors, consultants and other authorized representatives incur to pay for the implementation of this Agreement including costs and expenses to provide direction, guidance, monitoring, and approval of CEMC's performance of the NRDA. For purposes of this agreement "future costs" means those costs incurred after June 30, 2003 and "past costs" means those costs incurred through June 30, 2003. Nothing in this Agreement shall restrict the Trustees' authority to request payment of costs incurred that are associated with

their activities regarding the Site, and nothing in this Agreement shall constitute a waiver of any right, claim or defense by CEMC regarding payment of any cost requested by the Trustees. The Parties recognize that some of the activities that may be agreed to in a Cooperative Study may be commenced by the Trustees or a contractor working under the direction of the Trustees. CEMC agrees to reimburse the Trustees for their reasonable costs incurred ("Study Costs") for the activities required by a Cooperative Study that the Parties agree are to be performed by the Trustees, whether by their own personnel or through contractors acting at their direction and on their behalf. For those Cooperative Studies or portions of such studies which the Parties agree that CEMC or its contractors will perform, CEMC shall be entirely responsible for funding said activities. For purposes of this Agreement CEMC is not obligated to pay the costs and expenses associated with a Trustee's performance of an Independent Study unless agreed to in writing by CEMC.

CEMC also agrees to pay past costs and expenses of the Trustees as identified below:

IEPA:	\$68,752.93	(This amount includes a percentage of Past Allocated Costs and Past Indirect Costs through June 30, 2003 associated with the Past Allocated Costs incurred by the Illinois EPA.)
IDNR:	\$45,209.27	
USFWS:	\$28,948.44	

CEMC will reimburse each Trustee within sixty (60) days of the effective date of this Agreement, in accordance with the procedure in this Agreement.

Provided a Cooperative Study is conducted consistent with the agreed upon study plan and any agreed modification thereto, CEMC agrees not to withdraw from its obligation to fund such Cooperative Study without the express consent of the Trustees. If CEMC withdraws funding for any Cooperative Study without the express consent of the Trustees the Trustees reserve the right to fund the study and to seek reimbursement for such costs.

Within 90 days of execution of this Agreement, the Federal Trustee shall provide CEMC with an estimated initial budget through September 30, 2005. Within sixty (60) days of receipt of the estimated initial budget, CEMC shall deposit with the Federal Trustee an amount equal to one half the estimated initial budget or \$15,000, whichever is less. The Federal Trustee shall use such monies to establish a fund ("Fund") dedicated solely to activities at the Site. Within 90 days of the execution of this Agreement and on a quarterly basis thereafter, the Federal Trustee shall provide CEMC an accounting of its reasonable assessment costs and Study Costs as defined in this Agreement and which the Federal Trustee has drawn against said Fund. CEMC shall, within thirty days of receipt of the accounting, deposit into the Fund an amount equal to the amount drawn or, in the event that CEMC challenges the propriety of any costs, an amount equal to the undisputed costs. The Parties intend that in this manner the Fund will always be replenished to an amount reasonably anticipated to cover the next quarterly draw. In July of each calendar year, or more frequently as deemed necessary

by the Team, CEMC and the Federal Trustee will discuss and agree upon funding levels anticipated to be necessary for the upcoming calendar year. CEMC and the Federal Trustee shall develop annually a written budget ("Written Budget") of all agreed-upon funding, and the means for accounting of costs and expenses.

Should the costs associated with the Federal Trustee's role in a Cooperative Study exceed the budget estimate, the Federal Trustee shall seek payment of those costs in the next calendar year quarterly estimates. Unless CEMC disputes these costs pursuant to Paragraph XII, CEMC shall pay such costs into the Fund with the next calendar year quarterly payment due. The Federal Trustee reserves the right to seek disputed costs from CEMC in subsequent budget estimates or in a final accounting at the conclusion of the NRDA process.

Within 120 days after completion of all NRDA Activities, the Federal Trustee shall provide CEMC with a final cost accounting. Any outstanding costs that cannot be covered by the Fund and owed to the Federal Trustee pursuant to this accounting shall be paid by CEMC within 30 days of submission of the final cost accounting. In the event that the final cost accounting demonstrates that CEMC overpaid the Federal Trustee and that monies remain in the Fund, the Federal Trustee shall reimburse CEMC within 30 days of submission of the final cost accounting.

The State Trustees agree to submit periodically to CEMC an accounting of Study Costs, and reasonable assessment costs, that CEMC has agreed to fund pursuant to this Agreement. The accounting shall consist of a summary of the costs incurred with supporting documentation as to each Trustee's Study Costs, administrative costs and expenses, and other miscellaneous expenses (e.g., overnight mail, supplies, travel). Each State Trustee shall submit a final summary of its costs within sixty (60) calendar days after the completion of NRDA Activities and Cooperative Studies, or withdrawal by a Party or termination of this Agreement in accordance with the Modification and Termination (XI). The failure of any Trustee to submit a final summary of its reasonable assessment costs within sixty (60) calendar days pursuant to this Paragraph shall not relieve CEMC of its obligation to reimburse those assessment costs. If CEMC refuses to pay any cost requested by a Trustee, that refusal shall be in writing, and shall specify the reason for the refusal and the costs for which payment is refused. Such a refusal shall serve to initiate the Procedure Upon Disagreements included in Section XII of this Agreement.

CEMC shall reimburse each State Trustee for reasonable assessment costs within sixty (60) calendar days after receipt of an itemized accounting in accordance with the documentation instructions in the preceding paragraph and the payment instructions provided by each Trustee.

These accountings should be directed to the following representative of CEMC:

Robert W. Conlon  
Project Manager  
Chevron Environmental Management Company

6000 Bollinger Canyon Road, Building K  
San Ramon, California 94583-2324

Promptly upon receipt of funds from CEMC for reimbursement of a Trustee's costs, the Trustee shall provide CEMC with an acknowledgment of receipt of such funds.

Payments to the Federal Trustee shall be made payable to the Department of the Interior and sent to the following address:

Department of the Interior  
NBC/Division of Financial Management Services  
Branch of Accounting Operations  
Mailstop 1313  
1849 C Street, NW  
Washington, D.C. 20240

Each check shall reference the following information:

Account: 14X5198 (NRDAR)  
Site Name: Former Indian Refinery

Notification of payments made to the Federal Trustee shall be sent to:

Bruce Nessler, Restoration Fund Manager  
Natural Resource Damage Assessment and Restoration Program  
Mailstop 4449  
1849 C Street, NW  
Washington, D.C. 20240

Payments to the IDNR shall be made payable via certified check to the following:

"Treasurer of the State of Illinois, for deposit in the Natural Resource Restoration Trust Fund,"  
and be delivered to:  
Illinois Department of Natural Resources  
Office of Fiscal Management  
One Natural Resources Way  
Springfield, Illinois 62702-1271

The following information shall be submitted with the CEMC's check:

Site Name: Former Indian Refinery Site - Lawrenceville, IL  
CEMC's FEIN.  
Fund Allocation: Assessment Costs



Payments to the IEPA shall be made payable to the "Illinois Environmental Protection Agency, for deposit in the Hazardous Waste Fund" and sent to the following address:

Illinois Environmental Protection Agency  
Division of Administration, Fiscal Services Section  
1021 North Grand Avenue East, P.O. Box 19276  
Springfield, Illinois 62794-9276

The following information shall be submitted with the CEMC's check:

Site Name: Former Indian Refinery Site - Lawrenceville, IL  
CEMC's FEIN.

### **XI Modification and Termination**

Any modification of this Agreement must be in writing and executed by all of the Parties. Any Party may terminate its participation in this Agreement at any time by giving 30 days written notice to all other Parties. Notice of intent to terminate participation in this Agreement must clearly state the reasons for such termination and must be signed by an authorized official of the terminating Party(ies). Termination by a single Trustee shall not terminate this Agreement as to the remaining Trustees.

### **XII Procedure Upon Disagreements**

The Parties agree to expedite resolution of any disputes concerning the implementation of this agreement through good faith negotiations. A dispute shall be considered to have arisen when one Party sends the other Parties a written Notice of Dispute. To the extent practicable, such notice will be provided at least twenty-one (21) days prior to the initiation of any field, analytical, or other work which is the subject of the disagreement or upon such other period for notice identified below as may be agreed upon by the Parties.

Disputes will be directed to the Trustee Management Designees identified below. Each Party must submit a concise report of not more than five (5) pages to the Trustee Management Designees with copies to all Parties outlining the issue and their position on the dispute no later than fifteen (15) days after the notice of dispute is provided. The Trustee Management Designees will provide the parties with an opportunity to meet and confer with the Designees, so that the parties may negotiate their position on the dispute. The Trustee Management Designees and the parties shall meet and confer within thirty (30) days of the receipt of the reports required in this paragraph. If the Trustee Management Designees and the Parties are unable to reach agreement during this negotiation, the matter shall be considered an Unresolved Dispute which shall have the effect of removing, or preventing, any cost, study, plan, sampling results or other submittal or activity that is the subject of the dispute from being deemed a part of the NRDA pursuant to this Agreement, or binding on the Parties pursuant to Paragraph V.

For purposes of this Paragraph the Trustee Management Designees shall be as follows:

For the Department of the Interior  
Richard C. Nelson, Field Supervisor

For Illinois Department of Natural Resources  
Leslie Sgro, Deputy Director

For the Illinois Environmental Protection Agency  
William Child, Chief – Bureau of Land

The Trustees may designate a new Trustee Management Designee by providing written notice to the Parties.

### **XIII Survival**

The covenant not to sue provided by Paragraph IX, and stipulations adopted pursuant to Paragraph VII, shall survive the termination of this Agreement, or the termination of the participation of one or more Parties as provided in Paragraph XI. The rebuttable presumption contained in Section 107(f)(2)(C) of CERCLA, as amended, 42 U.S.C. § 9607(f)(2)(C), shall survive the termination of this Agreement, or the termination of the participation of one or more Parties, for any NRDA Activities conducted prior to the termination of this Agreement.

### **XIV Tolling Agreement**

Any time limitations set forth in Section 113(g)(1) of CERCLA, as amended, 42 U.S.C. § 9613(g)(1), Section 1012(h)(2) of the Oil Pollution Act, as amended, 33 U.S.C. § 2712(h)(2), the Federal Water Pollution Control Act, or any other Federal statute or regulation with respect to claims for natural resource damages against CEMC or any other time limitations for the filing of natural resource damage claims against CEMC under any other applicable Federal law are tolled in their entirety until ninety (90) days after the termination of this Agreement. If one Trustee terminates this Agreement, this tolling provision shall survive that termination as to the terminating Trustee and all other Trustees. The ninety (90) day expiration of the tolling period shall be calculated from the termination of this Agreement as to all Trustees.

### **XV Effective Date**

This Agreement may be executed in one or more counterparts. The Effective Date of this Agreement shall be the date of the last affixed signature. The Effective Date of any Attachment, including stipulations, hereafter developed and incorporated into this Agreement shall be the date set forth in such Attachment.

## **XVI Trustee Contact Personnel**

The Trustees have determined that IEPA will serve as the Lead Administrative Trustee for the NRDA. Within ten (10) days of the effective date of this Agreement, the Parties will provide written notice to all Parties to this Agreement identifying their respective contact representative. The Parties may designate different contact personnel upon written notice to all other Parties.

## **XVII Indemnification**

CEMC agrees to indemnify, save and hold harmless the Trustees and their departments, officials, agents, contractors, subcontractors, employees and representatives from any and all claims or causes of action: (a) arising from, or on account of, acts or omissions of CEMC and CEMC's officers, heirs, directors, employees, agents, contractors, subcontractors, receivers, trustees, successors or assigns, in carrying out actions pursuant to this Agreement; and (b) for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between CEMC, and any persons for performance of work pursuant to this Agreement, including claims on account of construction delays. The Trustees shall not be construed to be a party to any contract involving CEMC at the Site.

## **XVIII Severability**

If a court of competent jurisdiction issues an order that invalidates any provision of this Agreement or finds that CEMC has sufficient cause not to comply with one or more provisions of this Agreement, CEMC shall remain bound to comply with all other provisions of this Agreement not invalidated by the court's order.

## **XIX Confidentiality**

Subject to the terms of this Agreement regarding documents which may be placed in the Administrative Record and to the requirements of law and of any court order, the Parties agree:

1. Oral communications between the Trustees and CEMC leading up to and pursuant to this Agreement are in furtherance of settlement pursuant to Federal Rule of Evidence 408;
2. Written communications which are marked "settlement negotiations" or which in some way indicate that they are confidential settlement communications, shall be treated by the Parties as confidential and shall be deemed in furtherance of settlement pursuant to Federal Rule of Evidence 408; and
3. Maps, photographs, and data, which have been compiled, verified, and validated by the Trustees, shall not be treated as confidential.

Any Party who receives a request for documents pursuant to the Federal Freedom of Information Act or the Illinois Freedom of Information Act, or who is served with a subpoena or discovery request for any document which the Parties have agreed should be treated as confidential, shall provide notice to the other Parties at the earliest opportunity so as to allow the Party, if it so chooses, to assert a privilege or statutory exception seeking to prevent the release of such documents.

### **XX Other Claims**

By entering this Agreement, the Trustees assume no liability for injuries or damages to persons or property resulting from any acts or omissions of CEMC. The Trustees shall not be a party or be held out as a party to any contract entered into by CEMC or their directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out activities pursuant to this Agreement.

Except as expressly provided in Paragraph IX, nothing in this Agreement constitutes a satisfaction of or release from any claim or cause of action against CEMC or any person not a party to this Agreement, for any liability such person may have under CERCLA, the Illinois Environmental Protection Act, other statutes, or the common law, including but not limited to any claims for costs, damages and interest under Section 107(a) of CERCLA, 42 U.S.C. §9607(a).

### **XXI Public Involvement**

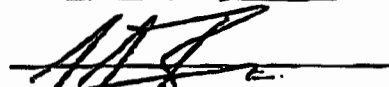
In compliance with applicable law and regulations, the Trustees will provide public notice and solicit public review and comment of documents throughout the NRDA process. In the event that the Parties have entered agreements that propose activities subject to public notice, review and comment, the Parties agree that none of the activities shall be initiated until the appropriate notice, review and comment requirements are fulfilled unless a time sensitive or emergency situation exists. In such case, certain studies may go forward pending the public notice, review and comment process.

**XXII Signatories**

Each undersigned representative of a signatory to this agreement certifies that he or she is fully authorized to enter into the terms and conditions of this Agreement and to bind such signatory, its directors, officers, employees, agents, successors and assigns to this document.

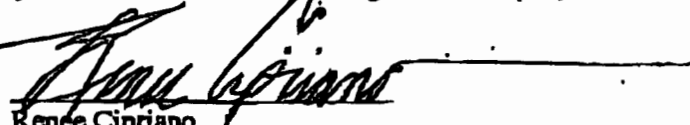
Agreed this 2 day of Nov, 2004.

BY:



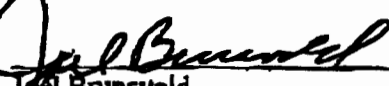
Chemcon Environmental Management Company

BY:



Renee Cipriano  
Illinois Environmental Protection Agency

BY:



Joel Brunsvold  
Illinois Department of Natural Resources

BY:



Robyn Thorson, Regional Director  
U.S. Fish and Wildlife Service/Department of the Interior

**Natural Resource Damage Assessment  
Funding and Participation Agreement  
Statement of Work (SOW)**

This Statement of Work (SOW) describes the following major tasks the Team, as defined in section IV of this Agreement, will complete to develop a Natural Resource Damage Assessment Work Plan:

- Review the Trustee-prepared Pre-Assessment Screen (“PAS”) to define the basic elements of the Assessment Plan.
- Establish how acceptable biological injury criteria will be used to determine and quantify losses.
- Review of existing data and other activities conducted at the Site including characterizations and evaluations of habitat, flora and fauna and Groundwater. These data will be used as a basis for determining additional data needs to be included in the Assessment Plan for injury assessment. Additional data may be gathered through study, including, but not limited to fish injury determination and quantification, mussel injury determination and quantification, migratory bird injury determination and quantification, reptile injury determination and quantification.
- Identify appropriate methods to establish the baseline services for the purpose of quantifying the identified exposure scenarios and injuries.
- Establish criteria for identifying potential restoration opportunities, linking requirements of the Assessment Plan (injury determination) to potential restoration projects (compensation).
- Establish how scaling methods, such as the Habitat Equivalency Analysis may be used for quantifying the size (scale) of compensatory restoration.
- Establish how surplus restoration may be used to manage uncertainty.