

Memorandum of Understanding

Between

The Ohio Environmental Protection Agency

And

The U.S. Department of the Interior

For

Dover Chemical Site

Tuscarawas County, Ohio

I. Introduction and Authority

This Memorandum of Understanding (MOU) is entered into by and between the Ohio Environmental Protection Agency (Ohio EPA) and the U.S. Department of the Interior (DOI), represented by the U.S. Fish and Wildlife Service (FWS) (collectively, the "Trustees"). The purpose of this Agreement is to provide a framework for the coordination and cooperation of the Trustees, and for implementation of activities in furtherance of the Trustees' natural resource trust responsibilities with regards to releases of hazardous substances associated with the Dover Chemical facility, located in Tuscarawas County, Ohio (the Site). 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") to the injured natural resources; and (4) coordination of Trustee concerns and activities associated with 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 Trustees enter into this MOU pursuant to the authorities provided for each Trustee under Section 107(f) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. 9607(f), Section 311(f) of the Clean Water Act (CWA), 33 U.S.C. 1321(f), and other applicable federal and state law and authority including, but not limited to, the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), as amended 40 C.F.R. Part 300, Ohio Revised Code (ORC) § 3745.01, and the Governor of Ohio's July 20, 2007 designation of the Director of Ohio EPA as Trustee for Ohio's natural resources, 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

II. Parties

A. Natural Resource Trustee Parties

The MOU is intended to facilitate coordination and cooperation between the Trustees in their assessment of injuries to natural resources in connection with the Site and in the restoration of those natural resources. The Trustees specified in Section I have trusteeship over natural resources at, or related to the Site pursuant to 40 C.F.R. Section 300.600, subpart G, of the NCP, 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 (PRPs) and to undertake restoration activities. Such other trustees may be added to this MOU by modification in accordance with Section X. In accordance with Subpart G of the NCP, and other applicable federal or state law, the following officials or their designated representatives are parties to this MOU and act on behalf of the public as trustees for natural resources under this MOU:

1. Director, Ohio Environmental Protection Agency
2. Regional Director, Region 3, U.S. Fish and Wildlife Service, as the Authorized Official for DOI.

B. Other Natural Resource Trustees

Notwithstanding any other provision of this Agreement, any natural resource trustee who is not a party to this Agreement and who has a natural resource interest that is affected by this Site may be invited, at the discretion of the parties to this MOU, into the restoration process and any other natural resource trustee activities under this MOU. Such other trustees may be added by addendum to this MOU, as necessary, appropriate and authorized by applicable federal or state law.

C. Reservation of Authority

Nothing in this MOU is to imply, or operate in a manner, that any natural resource trustee with an interest in the 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.

D. Advisors

As determined to be appropriate by the Trustee Parties, or as required by applicable federal or state law, the Trustee Parties will coordinate and seek the advisory participation of the following federal and state government agencies or departments:

1. U.S. Department of Justice;
2. Ohio Attorney General's Office;

3. U.S. Department of the Interior, Office of the Solicitor; and
4. Other federal and state agencies and departments, as applicable.

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 Dover Chemical facility which gives rise to claims and/or potential claims for natural resource damages. The sixty (60) acre Dover Chemical facility is located at 3676 Davis Road, Dover, Ohio 44622.

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 cooperation and coordination between 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.

IV. Organization of a Trustee Council

The Trustees recognize the importance of coordinating their efforts in order to meet their respective natural resource trustee responsibilities effectively and efficiently. Accordingly, the Trustees hereby create the Dover Chemical Site Trustee Council ("Trustee Council"), whose membership shall include the designated representatives of: the Director of the Ohio Environmental Protection Agency and the Secretary of the Interior. Each Trustee designating a representative to the Trustee Council shall also designate an alternate to act in the absence of the primary voting representative (see Appendix). Representatives to the Trustee Council shall fully coordinate Trustee activities among themselves and may seek advisory participation from the United States Department of Justice, the Department of the Interior Office of the Solicitor, the Ohio Attorney General or other legal advisors, as well as other governmental entities such as the U.S. Environmental Protection Agency (EPA) and the Ohio Department of Natural Resources (ODNR). The Trustee Council may create subcommittees as necessary to affect the purposes of this MOU. The Trustee Council members unanimously agree that Ohio EPA will serve as Lead Coordinating Trustee (LCT). The LCT shall cooperate fully and act under the direction of the Council.

V. Duties and Responsibilities of the Council

The Trustee Council shall coordinate and authorize all Trustee activities and matters under this MOU in accordance with the decision making requirements contained in Section VI. The Trustees may take whatever actions they determine are necessary to

fulfill the responsibilities of each Trustee under applicable federal and state laws. It is expected that the Trustees, through their representatives, in accordance with applicable laws and policies, may take the following actions, *inter alia*, to address the Trustees' natural resource responsibilities:

1. Conduct scientific and technical studies, sampling and other activities relating to natural resources. These may include, but are not limited to, the assessment of natural resource damages for injury to natural resources which may have been lost, injured or destroyed;
2. In recognition of the Congressional intent under CERCLA and the legislative intent under Part 201 to restore natural resources injured as a result of releases of hazardous substances, the measure of recoverable natural resource damages contemplated under this MOU and that the Trustees may seek compensation from responsible parties for such damages may include:
 - a. the costs of restoring injured natural resources,
 - b. interim lost use or diminution of value of the injured natural resources pending natural recovery or restoration of the injured natural resources,
 - c. reasonable costs of the assessment of natural resource damages and restoration, and
 - d. Trustee oversight costs associated with administering or implementing restoration projects for injured natural resources. This may include documented Trustee costs of participation in response actions carried out by others in an effort to abate and/or minimize continuing and residual injury, and to achieve or enhance restoration of injured natural resources;
3. In concert with attorneys for the Trustees, participate in negotiations with PRPs;
4. Make all necessary decisions for the management and administration of funds pursuant to Section VII of this MOU in accordance with applicable law;
5. 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;
6. 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;

7. In consultation with the ODNR, EPA and other agencies, as necessary, oversee the development and 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, lost, or destroyed, and/or the services provided by those resources;
8. Conduct or oversee the development and the implementation of a plan for the restoration, replacement, rehabilitation and/or acquisition of equivalent resources for those natural resources that were injured, lost, or destroyed, and/or the services provided by those resources;
9. Coordinate and integrate, to the extent practicable, concerns and activities of the natural resource Trustees 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;
10. Communicate with the public and encourage public review and comment on assessment and restoration planning;
11. Execute additional agreements, as necessary, to carry out the duties and responsibilities of this MOU; and
12. Seek compensation from PRPs for damages assessed by the Trustees for the costs of planning and implementing the assessment.

The Ohio EPA, as LCT, will perform the following duties and administrative tasks: coordinating, monitoring and reporting the progress of the natural resource damage assessment process; scheduling meetings and preparing agendas for Trustee Council meetings; notifying Trustee Council representatives of those meetings on a timely basis; acting as central contact point for the Trustee Council; and other such duties as may be directed by the Trustee Council representatives. The LCT will be responsible for informing the other Trustees of all pertinent developments on a timely basis. The LCT shall be responsible for managing and maintaining documents designated for inclusion in the Administrative Record by the Trustee Council representatives in accordance with applicable federal and state law and guidance.

VI. Decision Making by the Council

The Trustees agree that decisions implementing this MOU shall require unanimous approval of the Trustee Council and, as necessary, shall be by signed resolution of the Trustee Council.

In the event that unanimous agreement cannot be reached between Trustee Council representatives, the matter in dispute will be elevated to the following contacts for each Trustee:

Ohio EPA: Cindy Hafner, or her successor
Chief, Division of Emergency and Remedial Response
50 West Town Street, Suite 700
Columbus, OH 43215
(614) 644-2924

and

Craig Butler, or his successor
Chief, Southeast District Office
2195 Front Street
Logan, OH 43138
(740) 385-8501

U.S. Fish and Wildlife Service:

Mary M. Knapp, or her successor
Field Supervisor
U.S. Fish and Wildlife Service
4625 Morse Road
Suite 104
Columbus, OH 43230-8355
(614) 416-8993, ext. 12

and

Frank Horvath, or his successor
Chief of Damage Assessment and Response
U.S. Fish and Wildlife Service
Ecological Services
1 Federal Drive
Fort Snelling, MN 55111
(612) 713-5336

In the event the aforementioned Trustee officials cannot reach a unanimous agreement, the matter in dispute will be elevated to the Trustee official having signatory authority either to resolve the dispute or 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.

VII. Funds

The Trustees agree that they will use all recovered damages for natural resource injuries arising out of an Event under this MOU exclusively for activities that would restore, replace, rehabilitate or acquire the equivalent of the injured resources. Said activities shall be consistent with Trustee Council approved plans to address those injuries to natural resources and the services that they provide. In accordance with their decision making process in Section VI, the Trustees will establish standards and procedures governing the use of all natural resources damages jointly received by the Trustees for the purposes of developing and administering or implementing a Final Restoration Plan for restoring, replacing, rehabilitating and/or acquiring the equivalent of natural resources injured as a result of an Event and the reduced or lost services provided by those resources.

The Trustees agree to pursue the recovery of reasonable costs (past, current and future) for the initiation of damage assessment and for the planning, conducting, evaluating, and coordinating of all natural resource damage assessment activities pursued by the Trustee Council with respect to natural resource injuries or lost services resulting from the Event(s). The Trustees agree to request that recovered costs be separately reimbursed to each individual Trustee agency claiming same. Recovered administrative costs will be disbursed by electronic transfer or by certified check to each recovering agency as soon as possible and shall be used at the individual agency's discretion. For administrative costs not separately reimbursed, the Trustees agree that the reasonable costs, which are jointly agreed upon, shall be reimbursed to each Trustee.

Monies for the payment of DOI's costs shall be paid directly to the Department of the Interior's Natural Resource Damage Assessment and Restoration Fund.

Monies for payment of the State of Ohio's costs shall be paid to Treasurer, State of Ohio, and be sent to Fiscal Officer, Ohio EPA, with a copy to Fiscal Officer, DERR, Ohio EPA.

Each Trustee is responsible for tracking and documenting the costs and expenses it incurs as a result of its participation in the natural resource damage assessment and restoration process under this MOU in a form and manner sufficient to support the recovery of such costs under CERCLA. The documentation of such costs will, at a minimum: (1) evidence the actual time spent, by date, and the hourly salary rate applicable to each agency participant; (2) identify all indirect or overhead rates used in determining costs, including the manner of their application; and (3) 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 MOU. No Trustee is to certify or warrant any assessment or restoration cost information other than its own.

VIII. Confidentiality

The Trustees and their representatives agree that it is in the public interest, consistent with applicable law, that all validated scientific data, arising out of their review of the injury to natural resources as a result of the Event(s), be made public. Consistent with applicable law, such data shall be made public as soon as publication will not prejudice the accomplishment of the purposes of this MOU, unless state or federal law requires earlier availability.

However, the Trustees and their representatives 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 any 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. The transmittal of any designated privileged documents or designated privileged communication between or among any of the Trustees or federal or state response action agencies or their 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. They further agree that whenever a request for production of such record is received pursuant to any federal or state law, a copy of the request will be forwarded for discussion to the Trustee 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.

The Trustees and the Trustee Council members agree that they will coordinate with each other regarding communications with PRPs or their agents for matters related to the natural resource damage assessment and restoration for the Site. No Trustee or Trustee representative will discuss these matters with a PRP without first providing the other Trustees with notice, and, as appropriate, an opportunity to participate in such discussions. This agreement shall not preclude a Trustee or Trustee representative from having separate communications with a PRP on matters within the scope of this MOU where circumstances warrant, provided that each Trustee or Trustee representative notifies the other Trustee of the person contacted and summarized the subject of the communications.

IX. Reservation of Rights

Except for the confidentiality agreement contained in Section VIII, the Trustees understand that this document is not intended to create any further legal rights or obligations between the Trustees and is not intended to create any legal right whatsoever for any persons not parties to this MOU.

X. Modification of Agreement

Modification of this MOU must be in writing and will become effective upon approval by the Trustees.

XI. 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 and submitted to the other Trustee at least thirty (30) days in advance of the withdrawal.

In the event of the withdrawal of any Trustee, or at the termination of this MOU, there shall be a complete accounting of all funds jointly received, deposited, held, disbursed, managed, or expended pursuant to Section VII of this MOU, or otherwise controlled in any separate or joint account by the Trustees as a result of any occurrence.

A Trustee that has withdrawn from this MOU shall continue to coordinate activities with the other Trustee to the greatest extent practicable, and to expend unobligated funds recovered for natural resource damages solely to restore injured natural resources related to the Site under their trusteeship, as mandated by Section 107(f) of CERCLA.

XII. Limitation

Nothing in this MOU shall be construed as obligating the United States, the State of Ohio, or any other public agency, their officers, agents, or employees, to expend any funds in excess of appropriations authorized by law.

XIII. 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.


XIV. Execution and Effective Date

This MOU may be executed in counterparts. A copy with all original executed signature pages affixed shall constitute the original MOU.

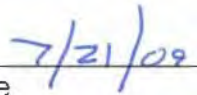
The effective date of this MOU shall be the date of signature of the Trustee who is the last to sign.

Tom Melius Regional Director
U.S. Fish and Wildlife Service, Region 3
Authorized Official for U.S. Department
of the Interior

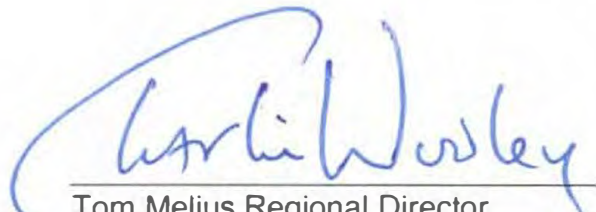
Date



Chris Korleski, Director
Ohio Environmental Protection Agency



Date


Tom Melius Regional Director
U.S. Fish and Wildlife Service, Region 3
Authorized Official for U.S. Department
of the Interior

7/22/09
Date

Chris Korleski, Director
Ohio Environmental Protection Agency

Date

APPENDIX

Section IV of this MOU establishes the Trustee Council whose membership includes the following designated representatives of the Director of Ohio EPA and the Secretary of the Interior or their delegated representative:

Secretary of the Interior:

Designated representative for U.S. Fish and Wildlife Service: Natural Resource Damage Assessment Case Manager, Ohio Field Office (presently David DeVault)

Designated alternate representative for U.S. Fish and Wildlife Service: Fish and Wildlife Biologist, Ohio Field Office (presently Kevin Tloczynski)

Director of the Ohio Environmental Protection Agency:

Designated representative for the Ohio Environmental Protection Agency: Natural Resource Damage Assessment Coordinator, Columbus, Ohio (presently Brian Tucker)

Designated alternate representative for the Ohio Environmental Protection Agency: Environmental Manager, Southeast District Office, Logan, Ohio (presently Brian Blair)