

MEMORANDUM OF AGREEMENT

AMONGST

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

DEPARTMENT OF THE INTERIOR

STATE OF MARYLAND DEPT. OF NATURAL RESOURCES

STATE OF MARYLAND DEPT. OF ENVIRONMENT

REGARDING NATURAL RESOURCE DAMAGE ASSESSMENT, RESTORATION AND
OTHER NATURAL RESOURCE TRUSTEE ACTIVITIES ARISING FROM
THE PEPCO CHALK POINT OIL SPILL

I. INTRODUCTION

This Memorandum of Agreement (Agreement) by and among the National Oceanic and Atmospheric Administration (hereinafter "NOAA"), U.S. Fish and Wildlife Service (hereinafter "FWS") on behalf of the Department of the Interior, the State of Maryland, Department of Natural Resources (hereinafter, "DNR"), Maryland Department of Environment (hereinafter "MDE"), (collectively hereinafter "Trustees") is entered into in recognition of the common interests of the Trustees in (a) assessing injuries to natural resources and services, (b) restoring natural resources and services and (c) compensating for lost use of natural resources which have been injured, destroyed or lost as a result of the April 7th, 2000 Pepco pipeline oil spill at the Chalk Point Generating Station in Aquasco, Maryland.

II. AUTHORITY

A. The natural resource Trustees enter into this Agreement in accordance with the natural resource Trustee authorities provided for each Trustee under Section 1006(a)-(g) of the Oil Pollution Act (OPA) of 1990, 33 U.S.C. § 2706(a)-(g); Section 311(f) of the Clean Water Act (CWA), 33 U.S.C. §1321(f), and other applicable Federal law, and State statutory and common 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, and the Oil Pollution Act Natural Resource Damage Assessments Final Rule, 15 C.F.R. Part 990, 61 F.R. 440 (January 6, 1996).

B. In accord with Section 1006(b) of the Oil Pollution Act of 1990 (OPA), 33 U.S.C. § 2706(b), and Subpart G of the NCP, 40 CFR § 300.600 through 300.615, the following officials or their designees shall act on behalf of the public as Federal and State Trustees for natural resources under this Agreement:

1. The Under Secretary for Oceans and Atmosphere, Administrator of the National Oceanic and Atmospheric Administration, for the Department of Commerce.

2. The Secretary of the Interior, for the Department of the Interior,

3. The Secretary of the Maryland Department of Natural Resources,

4. The Secretary of the Maryland Department of Environment.

III. DEFINITIONS

Unless specifically defined, all terms shall have the same meaning as set forth in OPA, 33 U.S.C. §§ 2701 et. seq and 15 C.F.R. §§ 990 et. seq. Other definitions are as follows:

A. "Trustees" means the Secretary of Commerce, acting through NOAA, the Secretary of the Interior, the Maryland Secretary of DNR, and the Maryland Secretary of MDE.

B. "Joint use" means use of natural resource damage recoveries by the State Trustees or the Federal Trustees, whether individually or collectively, in such a manner as is agreed upon by the Trustees in accordance with the terms of this Agreement.

C. "Lead Administrative Trustee" or "LAT" means the trustee who is selected by all participating Trustees for the purpose of coordinating natural resource damage assessment activities, together with other activities as authorized by the Trustee Council.

D. "Natural resource damage(s)" means damages specified in § 1002 (b) of OPA, 33 U.S.C. §2702(b), and includes the costs of assessing damages, as defined in section 1001(5) of OPA (33 U.S.C. 2701(5)) and in the definition of reasonable assessment costs found at §990.30 of the OPA regulations, 15 C.F.R. §990.30.

E. "Responsible Parties", are Pepco, the owner or operator of the Chalk Point Generating Station facility, and ST Services, operator of the pipeline at the Chalk Point Generating Station facility.

F. "Restore" and "Restoration" mean any actions undertaken by the Trustees pursuant to OPA Section 2706(c), (d) and (f), and regulations (15 C.F.R. §990.30), including planning, implementation, administration, oversight, and monitoring which serve to restore, rehabilitate, replace, or acquire the

equivalent of natural resources or natural resource services injured, destroyed or lost as a result of the Spill. Restoration includes both primary and compensatory restoration as defined in 15 C.F.R. §990.30.

G. "Spill" means the Pepco Chalk Point Oil Spill, Aquasco, MD, which is believed to have been discovered by PEPCO on or about April 7, 2000 and resulted in the discharge and substantial threat of discharge of oil into the Patuxent River and tributaries, surface waters, sediments and soils, together with any and all impacts to natural resources arising therefrom.

IV. PURPOSE

The purpose of this Agreement is to provide a framework for intergovernmental coordination among the Trustees and for implementation of the Trustees' activities in furtherance of their natural resource trustee responsibilities under OPA and other applicable Federal law, and State statutory and common law, with respect to natural resource damage assessment, restoration, and other natural resource Trustee activities.

V. OBJECTIVES

The Trustees shall coordinate their efforts to meet their respective natural resource trustee responsibilities under OPA and other applicable Federal law and State statutory and common law. In pursuing these objectives, the Trustees shall remain cognizant of all relevant principles and concerns, including without limitation, the goals of the Oil Pollution Act of 1990, the nature and extent of each Trustee's resource concerns, and general principles of equity. The Trustees' objectives include, but are not limited to, the following:

A. Coordinating the preassessment and restoration planning phases consistent with the natural resource damage assessment guidance and procedures provided at 15 CFR Part 990.

B. Implementing or ensuring implementation by the Responsible Parties of all phases of restoration.

C. Seeking recovery of all damages, to the extent possible, incurred by the Trustees from the Responsible Parties.

D. Achieving joint settlement of all trustee natural resource

damages claims, including the costs of assessment, in a manner consistent with 15 CFR Section 990.25.

E. Coordinating efforts of the Trustees in litigation, if necessary.

VI. FUNDING

A. Use of Funds. Any funds provided by a Trustee, and any funds made available to the Trustees by the Responsible Parties or from other private sources shall be used in accordance with this Agreement, consistent with OPA and its implementing regulations, and upon agreement by the Trustee Council established pursuant to section VII.

B. Responsible Parties Funding. The Trustee Council may enter into an agreement with the Responsible Parties which (1) provides for the Responsible Parties to fund and/or conduct natural resource damages assessment activities including appropriate public participation, and (2) determines the terms of monetary disbursement and Responsible Parties participation.

Any such Cooperative Agreement between the Trustees and the Responsible Parties shall be consistent with VI.A.

C. Unobligated Sums. The disposition of any unobligated sums provided from the Responsible Parties as natural resource damages, and any interest earned thereon, shall be determined by the Trustee Council pursuant to the objectives of this MOA, the objectives of OPA and its implementing regulations.

VII. PEPSCO CHALK POINT OIL SPILL TRUSTEE COUNCIL

A. Composition. Each Trustee shall designate one primary voting delegate to the Pepco Pipeline Oil Spill Trustee Council ("Trustee Council"). The primary voting delegates shall be as follows:

For NOAA: Carol-Ann Manen
For DOI: Beth McGee
For Maryland DNR: Carolyn V. Watson
For Maryland MDE: Bob Summers

Each Trustee shall also designate an alternate delegate to act in the absence of the primary voting delegate. The designated delegates shall be as follows:

For NOAA: Jim Hoff
For DOI: Dan Murphy
For Maryland DNR: Sarah-Taylor Rogers
For Maryland MDE: Robin Grove

Each Trustee may, by written notification to all other Trustees, change the designated delegate and/or alternate. The Trustee Council may seek advice from the U.S. Department of Justice, the Office of the Attorney General for the State of Maryland, and in-house counsel for each of the Trustees. Each of the above mentioned entities may provide one delegate in a legal/consultative role, who shall not be a member of the Trustee Council, but who shall nonetheless be able to attend all meetings of, or organized by, the Trustee Council.

B. Communications. To the extent not designated herein, within ten (10) days of the execution of this Agreement each Trustee shall notify all of the Trustees of the address(es), phone number(s), and facsimile number(s), of the Trustee's primary and alternate delegates to the Trustee Council who shall receive, and shall be responsible for on behalf of that Trustee, all correspondence and communications on behalf of such Trustee.

C. Decisionmaking. The four (4) members of the Trustee Council shall have equal voting power, and all decisions under this Agreement shall be by unanimous agreement of Trustee Council members.

D. Dispute Resolution. In the event of a dispute involving any decisions under this Agreement, the Trustee Council shall initially attempt to resolve the dispute through good faith discussions directed toward obtaining unanimity among the Trustees. If unanimous consent cannot be reached, the matter may be elevated.

E. Duties and Authority. The Trustee Council shall coordinate and authorize all Trustee activities and matters under this Agreement directed towards the resolution of natural resource damages claims arising from the Spill. In addition, the Trustee Council shall be responsible for all natural resource damage assessment activities, including but not limited to, restoration planning, restoration implementation, and oversight both prior to and subsequent to, final settlement or judgment covering all Trustee natural resource damages claims arising from the Spill.

Towards this end, the Trustee Council may take the following actions, among others:

1. Request and receive relevant materials and/or information from Trustee staff and/or the public.

2. Develop at minimum, a 6 month budget to estimate future expenditures for studies pursuant to VII.E.2. and other reasonable and necessary costs of the assessment including personnel time. Deviations from any budget may be authorized upon agreement of the Trustee Council.

3. Develop procedures for determining appropriate scientific, economic, or any other technical studies necessary to undertake preassessment, restoration planning, and restoration implementation pursuant to 15 C.F.R. §990.

4. Conduct or oversee scientific, economic, or any other technical studies necessary to undertake preassessment, restoration planning, and restoration implementation pursuant to 15 C.F.R. §990. To that end, the Trustees may enter into contracts through its individual members, for the benefit of the Trustee Council, with consultants to provide such technical services, as well as to provide logistical support and coordination, as Trustee Council determines are necessary and permissible under state or Federal law.

5. Acting in concert with its attorneys, participate in negotiations with the Responsible Parties.

6. Acting through its attorneys, seek damages from the Responsible Parties either incurred or expected to be incurred.

7. Develop, or oversee development by the Responsible Parties of, a Restoration Plan pursuant to 15 C.F.R. §§990.53 - 990.56.

8. Implement the Restoration Plan and associated monitoring using funds recovered from Responsible Parties, or oversee implementation of the Restoration Plan and associated monitoring should the Responsible Parties undertake those activities.

9. Authorize disbursement of any Responsible Parties funding received pursuant to Section VI.B. of this Agreement, including but not limited to, the payment of administrative and

oversight costs to individual Trustees that the Trustee Council determines are reasonable and necessary.

10. Assign specific duties or functions to individual Trustees.

11. To the extent permitted by applicable law, consider the use of grants or donations to enhance the restoration actions undertaken by the Trustees.

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

F. Public Review and Comment and Information Dissemination.

When the Trustee Council determines that a Restoration Plan or any other deliverable is acceptable for public review, that deliverable may be made available for public comment. The dates and length of the public comment period shall be established by the Trustee Council. In addition, the Trustees shall designate members from their respective State or Federal agencies to: (i) attend and participate in public meetings and other community forums convened by the Lead Administrative Trustee regarding the natural resource damage assessment and restoration process, (ii) prepare fact sheets concerning the activities conducted under this MOA for public distribution, and (iii) provide timely and appropriate responses to inquiries from the public.

H. Lead Administrative Trustee. The Trustees acknowledge that they have designated NOAA to act as Lead Administrative Trustee (LAT) under this Agreement for the purpose of coordinating the natural resource damage assessment activities arising from the Spill under the direction of the Trustee Council. The duties of the LAT include but are not limited to the following:

1. Convene Trustee Council meetings and develop and disseminated Trustee Council meeting agendas.

2. Develop and disseminate Trustee Council action items and resolutions arising out of Trustee Council meetings.

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

4. Ensure development and dissemination of budgets to the

Trustee Council.

5. Develop and maintain an Administrative Record.

6. Timely circulate any documents relating to the NRDA to the Trustee Council.

Other duties of the LAT and/or the other Trustee entities shall be arrived at by agreement of the Trustee Council. The LAT is not authorized to enter into settlements on behalf of the other Trustees nor does the LAT represent another Trustee in any litigation that may be commenced by the other Trustees.

I. Meetings. Any member of the Trustee Council may, upon reasonable notice through the LAT call a meeting of the Trustee Council to be conducted either in person or by telephone conference call.

J. Trustee Council Termination. The Trustee Council created pursuant to this Section shall terminate upon the termination of this MOA pursuant to Section XI.E of this MOA.

VIII. JOINT USE OF NATURAL RESOURCE DAMAGE RECOVERIES

The Trustees agree that any natural resource damage recoveries, as defined in Section III.E of this Agreement, obtained or received by the Trustees, individually or collectively, and any interest earned thereon, shall be used as follows:

1. Reimburse the trustees for previously incurred damage assessment costs, including but not limited to, reasonable and necessary costs of technical studies and support, participation in the Trustee Council process, and planning, implementation, administration and oversight of any activities to carry out the purposes of this Agreement and as agreed upon by the Trustee Council pursuant to VII.E.2.

2. Restore natural resources and services which have been injured, destroyed or lost as a result of the Spill.

IX. NEGOTIATIONS WITH RESPONSIBLE PARTIES

A. Coordination. The Trustees recognize and agree that their

interests in the recovery of claims for natural resource damage assessment, and natural resource damages associated with the Spill, are related and agree to use all best efforts to coordinate negotiation and, if necessary, litigation of their claims and damages that arise out of the Spill.

B. Independent Negotiations. Recognizing that the intent of this MOA is to arrive at a jointly negotiated settlement of claims for natural resource damages between all the Trustees and the Responsible Parties, it is also recognized that each Trustee has and reserves all rights, powers and remedies existing at law or in equity, and that nothing in this Agreement waives or forecloses the exercise of any such rights, powers or remedies. Each Trustee agrees to the extent practicable to provide twenty (20) days prior written notice to each Trustee to this Agreement of its intent to participate in negotiations with any Responsible Parties or other entity regarding settlement or other disposition of natural resource damages claims arising from the Spill, and to permit the other parties to join in these negotiations.

The Trustees agree to inform each other within five (5) working days of any oral or written communications to or from the Responsible Parties regarding settlement or other disposition of natural resource damages claims in regard to the Spill. The substance of any such communications will be shared with the Trustees.

The Trustees further agree to provide copies of any agreements or other documents reflecting settlement or other disposition of such claims, including quasi-public claims involving or related to natural resource injuries arising from or related to the Spill. If a Trustee refuses to do so for any reason, that Trustee shall no longer be a Party to this Agreement unless all remaining Trustees request in writing within ten days (10) that such Trustee remain a Party.

X. INFORMATION DISSEMINATION AND CONFIDENTIALITY

A. Information Dissemination. The Trustees agree that, to the extent consistent with the effective and efficient negotiation and litigation of their claims, public dissemination of final data and studies related to injuries arising from the Spill is in the best interests of the public and the Trustees. Such

final data and studies shall be made available to the public upon request to the extent consistent with the foregoing confidentiality provisions. In addition, the Trustees shall open and maintain a publicly available administrative record to the extent required by, and consistent with the requirements of 15 C.F.R. § 990.45.

B. Confidentiality. The Trustees recognize that in order to effectively and efficiently negotiate and/or litigate their claims, their counsel, employees and consultants may, at each Trustee's discretion, exchange documents and information including draft reports, analyses, opinions, conclusions, and advice prepared in anticipation of litigation, and/or subject to attorney-client privilege or other forms of privilege. The Trustees therefore hereby agree as follows:

1. Except as provided by law or otherwise provided herein, the Trustees shall treat all designated privileged documents and communications by, between or among the Trustees as privileged attorney-client communications, attorney work product or protected by other applicable privileges (or as a combination thereof), and shall protect such documents and communications from disclosure to the maximum extent possible under applicable Federal and State law.

2. The transmittal of a privileged document to, or a privileged communication between or among any of the 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.

3. If a subpoena, discovery request, FOIA or other request in any form, for a privileged document or information is received by any Trustee, a copy of the subpoena or request will be immediately forwarded to counsel for the Trustee to which the privilege applies and to the government representative(s) who originally generated the document or communication requested. The Trustee who receives such a request shall also provide a draft of the Trustee's intended response to such request not less than ten (10) days prior to the date that the Trustee intends to issue its response.

4. Only by specific written agreement among the Trustees or pursuant to Court Order shall disclosure of a

privileged document or communication be made public or disclosed. Such agreement shall not be construed as a waiver of privilege or confidentiality regarding any other documents or communications.

5. Designated privileged documents shall be maintained in such a manner as to insure that no intentional or unintentional disclosure is made which would compromise any asserted privilege, including segregating designated privileged documents in files that are identified as containing privileged documents that are not to be disclosed publicly or in response to a discovery request in this or any other case.

XI. GENERAL PROVISIONS

A. Limitation of Authority. A Trustee may not enter into settlements on behalf of any of the other Trustees nor may a Trustee represent any of the other Trustees in any litigation commenced by that Trustee relative to the Spill.

B. Third Parties. This Memorandum of Agreement is not intended to, nor shall it, vest rights in persons who do not represent the Parties to this Agreement or who are not Parties to this Agreement.

C. Effective Date. This Agreement shall be effective when executed by all of the Trustees. The effective date of this agreement will be the date on which the last signature is entered. This Agreement can be executed in one or more counterparts, each of which will be considered an original document.

D. Modification of Agreement.

1. This Agreement may be modified by agreement of the Trustees consistent with the requirements of OPA and its implementing regulations, or other applicable Federal law or State common or statutory law.

2. Any amendment of this modification shall be effective only if it is in writing and executed by all Trustees to this Agreement.

E. Termination.

1. This Agreement shall be in effect from the day of execution until the Trustee Council determines that the restoration plan or plans implemented under this Agreement have been completed, except that this Agreement may be extended by written agreement, as provided in Section XI.D.

2. Any Trustee may withdraw from this Agreement, but only after efforts have been made to resolve any dispute in accordance with paragraph D of Section VIII of this Agreement. Such withdrawal shall only be effective upon thirty (30) days written notice upon all Trustees to this Agreement.

3. The withdrawal of any Trustee to this Agreement for whatever reason, shall not affect the subsequent validity of this Agreement among the remaining Trustees. A party that has withdrawn from this agreement shall have no further obligations under this agreement except to maintain confidentiality as agreed in Section XI, and to expend unobligated funds recovered for natural resource damages solely to develop and implement a plan to restore injured natural resources under their trusteeship, as mandated by Section 1006 of the Oil Pollution Act (OPA), 33 U.S.C. § 2706.

G. Federal Natural Resource Damages Regulations. It is the intention of the Trustees to follow the NOAA natural resource damage assessment regulations, 15 CFR Part 990 in matters relating to the Spill.

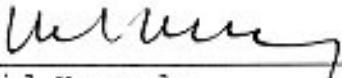
H. Antideficiency. Nothing in this Agreement shall be construed as obligating the United States or Maryland, their officers, agents or employees, to expend any funds in excess of appropriations or other amounts authorized by law.

The GOVERNMENTS, through their designated representatives, have signed this Agreement on the day and year appearing opposite their signatures.

Memorandum of Agreement Concerning Natural Resource Damages in
the Matter of THE PEPCO CHALK POINT OIL SPILL

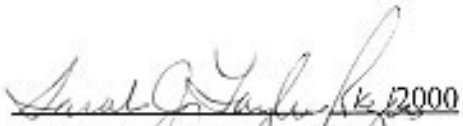
FOR THE FEDERAL NATURAL RESOURCE TRUSTEES

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION
AUTHORIZED OFFICIAL

 _____ 8/14/2000
David Kennedy
Director, Office of Response and Restoration

Memorandum of Agreement Concerning Natural Resource Damages in the Matter of THE PEPCO
CHALK POINT OIL SPILL

FOR THE STATE NATURAL RESOURCE TRUSTEES
MARYLAND DEPARTMENT OF NATURAL RESOURCES


Sarah Taylor-Rogers, PhD.

Secretary of the Department of Natural Resources

Memorandum of Agreement Concerning Natural Resource Damages in
the Matter of the PEPCO CHALK POINT OIL SPILL


FOR THE STATE NATURAL RESOURCE TRUSTEES
STATE OF MARYLAND DEPARTMENT OF ENVIRONMENT

Jane Nishida 6/21/00
Jane Nishida
Secretary of the Department of the Environment

Memorandum of Agreement Concerning Natural Resource Damages in the Matter of THE
PEPCO CHALK POINT OIL SPILL

THE FEDERAL NATURAL RESOURCE TRUSTEES

FOR THE DEPARTMENT OF THE INTERIOR
AUTHORIZED OFFICIAL

 7/12/00
Regional Director, U.S. Fish and Wildlife Service