

**MEMORANDUM OF AGREEMENT BETWEEN THE TRUSTEES
AND THE RESPONSIBLE PARTIES GOVERNING COOPERATIVE
NATURAL RESOURCE DAMAGE ASSESSMENT
AND RESTORATION PLANNING ACTIVITIES
FOR THE CHALK POINT OIL SPILL, MARYLAND**

I. INTRODUCTION AND AUTHORITY

This Memorandum of Agreement (MOA) is made by and between the National Oceanic and Atmospheric Administration (NOAA), the U.S. Fish and Wildlife Service on behalf of the Department of Interior, the Maryland Department of Natural Resources (MDNR) and the Maryland Department of Environmental Protection (MDE), natural resource trustees (Trustees) and PEPCO and Support Terminals Operating Partnership, LP (ST Operating Partnership) (Responsible Parties) under Section 1006 of the Oil Pollution Act of 1990, 33 U.S.C. Section 2706, and Subpart G of the National Contingency Plan 40 C.F.R. Section 300.600, and the OPA Natural Resource Damage Assessment Regulations (Regulations) 15 C.F.R § 990.14. The Trustees and the Responsible Parties are collectively referred to as "Parties" and individually as a "Party." All terms in this MOA shall have the same meaning as set forth in OPA, 33 U.S.C. §§ 2701 et seq. and the Regulations, 15 C.F.R. §§990 et seq.

II. PURPOSE

The purpose of this MOA is to provide the framework for a cooperative Natural Resource Damage Assessment (NRDA) to facilitate resolution of any natural resource damage ("NRD") claims arising from the Chalk Point Oil Spill on or about April 7, 2000 in and around the Patuxent River, MD. Accordingly, this MOA lays out procedures for (a) undertaking cooperative NRD studies including those necessary for preassessment, the determination and quantification of injury to natural resources and/or services, and the development of a restoration plan for said injured resources and/or services, and (b) payment of reasonable assessment costs, including but not limited to restoration planning and oversight, incurred by the Trustees. Through this MOA, the Parties intend to work efficiently and in a cost effective manner to resolve NRD claims related to the Spill.

III. FUNDING

- A. Cooperative Studies. The Responsible Parties shall (1) provide funding to the Trustees to execute cooperative studies as described in this MOA and/or (2) implement the cooperative studies as described in this MOA per Trustee oversight. The Parties shall meet at least annually to identify Cooperative Studies pursuant to IV.A.
- B. Reasonable Assessment Costs.
 - 1. Funding. The Responsible Parties shall fund all reasonable assessment costs arising from or related to the Spill including but not limited to (a) cooperative studies as defined in IV.A. and (b) restoration planning,

administrative, monitoring, oversight, and legal costs. 15 U.S.C. § 990.30. Funds shall be transferred to the Trustees pursuant to IX.B.

2. Incurred Costs. Within 60 days of the date of execution of this MOA, the Trustees shall provide the Responsible Parties with a statement of the natural resource damage assessment costs incurred from April 7 through August 31, 2000, together with supporting documentation. The Responsible Parties agree to pay all undisputed costs within 30 days of receipt of the Trustees' statement.
3. Budget Estimate.
 - a. Within 90 days of execution of this MOA, the Trustees shall provide the Responsible Parties with an estimated annual budget. The Responsible Parties shall fund all undisputed costs of the estimated budget on a quarterly basis, in equal payments, making the first quarterly payment no later than 30 days of receipt of the estimated annual budget. The next quarterly payment shall be due 30 days in advance of the immediately upcoming quarter
 - b. Either Party may propose adjustments to the current annual budget based on the results of the quarterly cost accounting pursuant to III.B.6.a.
 - c. Within 30 days of completion of the first 6 months of the first annual budget and thereafter within 30 days of completion of each successive 6 month budget interval, the Trustees shall provide the Responsible Parties with a revised estimated annual budget. The Responsible Parties shall fund successive budgets as prescribed in III.B.3.a.
4. Exceedance of Budget Estimate. Should the costs of a Cooperative Study undertaken by the Trustees or costs associated with III.B.1.b. exceed the budget estimate, the Trustees shall seek payment of those costs in subsequent quarterly estimates. Unless the Responsible Parties dispute these costs pursuant to IX.A., the Responsible Parties shall pay the Trustees as part of the next quarterly payment due. The Trustees reserve the right to seek disputed costs from the Responsible Parties in subsequent budget estimates or in a final accounting at the conclusion of the NRD process.
5. Noncommitted Funds. To the extent that funds provided by Responsible Parties for reasonable assessment costs have not been expended or committed, such funds shall be retained by the Trustees and applied towards the next annual budget estimate.
6. Accounting.

- a. Within 45 days after the completion of each quarter, the Trustees shall provide the Responsible Parties with cost accounting for that quarter. The first quarter shall begin on or about August 30, 2000.
- b. Within 120 days after completion of all natural resource damage assessment studies, the Trustees shall provide the Responsible Parties with a final cost accounting. Any outstanding costs owed to the Trustees pursuant to this accounting shall be paid by the Responsible Parties within 30 days of submission of the final cost accounting.
- c. In the event that the final cost accounting demonstrates that the Responsible Parties overpaid the Trustees, the Trustees shall reimburse the Responsible Parties within 30 days of submission of the final cost accounting.

7. Partial Credit. Payments by the Responsible Parties pursuant to III.B. shall be credited towards assessment costs under 15 C.F.R. Section 990.25.

- C. Independent Studies. The Parties expressly reserve the right to perform independent NRDA studies ("Independent Studies"). The Trustees reserve their right to seek reimbursement of costs arising from or related to Independent Studies to the extent permitted under § 1002(b)(2)(A) of OPA, 33 U.S.C. §2702(b)(2)(A) and the Regulations, 15 C.F.R. § 990.30.
- D. Nonwaiver. Agreement by the Responsible Parties to fund activities and costs pursuant to this MOA shall not act as a waiver of their right to seek to limit their liability pursuant to 33 U.S.C. § 2704.
- E. Disputed Costs. The Responsible Parties reserve the right to dispute those costs of Independent Studies and reasonable assessment costs that are insufficiently or inaccurately documented pursuant to VI.

IV. COOPERATIVE ASSESSMENT ACTIVITIES

A. General.

- 1. The Parties shall determine whether there are specific facts, data, or conclusions related to the Spill that the Parties can reach agreement on and stipulate to in advance of performing any Cooperative Study. All matters to which the Parties stipulate shall be reduced to writing and made a part of the Administrative Record.
- 2. The parties will attempt to reach consensus on the necessity, selection, design and protocols for performing studies relating to the NRDA process for the Spill. Any Party may propose studies. Any proposed study that all Parties agree is reasonable and appropriate shall be deemed a

"Cooperative Study." The study plan for each Cooperative Study is, or will be attached to, and incorporated by reference into, this Agreement and will be subject to all of its terms and conditions. Each study shall include a schedule of appropriate milestones.

- B. Retention of Persons Performing Cooperative Studies. Performance of all or part of a cooperative study shall be undertaken by a mutually agreed upon Expert. The Expert shall be retained by either of the Parties per written agreement. The Parties agree that prior to retention of a mutually agreed upon Expert, such Expert must disclose to the Parties potentially conflicting relationships. The Parties further agree to require in all contracts for Expert services reasonable and appropriate strictures and controls to prevent the transfer of privileged or confidential information until such time as the information is made part of the Administrative Record..
- C. Responsible Parties Implementation. Any Cooperative Studies conducted by the Responsible Parties pursuant to this section and as described in the study plan attached, or to be attached, to this MOA will be undertaken at the direction and oversight of the Trustees.
- D. Data Collection.
1. General. All parties may be present during data collection for Cooperative Studies. The Parties agree to give 10 days advance notice, unless otherwise agreed upon, of data collection activities for Cooperative Studies. All data collected for Cooperative Studies shall be fully and freely shared among the Parties concurrently as soon after it is collected and as is reasonably practical.
 2. Data Collected from Human Respondents. The Parties may agree, in the case of data collection from human respondents (such as surveys or interviews), that the presence of all Parties and the sharing of complete data may impede the collection of accurate, complete and candid responses. In such cases, the Parties shall agree on procedures for the collection and sharing of such data that depart from the requirements of IV.D.2. (such as the use of neutral interviews and the aggregation of data prior to dissemination to protect the confidentiality of individual responses) to the extent necessary to promote the accuracy and candor of the responses.
- E. Interpretation.
1. Consensus on Interpretation. The Parties will employ good faith efforts to reach consensus on the interpretation of, and conclusions to be drawn from, data collected during Cooperative Studies. All matters to which the Parties stipulate shall be reduced to writing and made a part of the Administrative Record.

2. Independent Interpretations. In the event that the Parties fail to reach consensus on the interpretation of, and conclusions to be drawn from, data collected during Cooperative Studies, the Parties expressly reserves the right to produce and present separate and independent interpretations and conclusions. All separate and independent interpretations and conclusions, produced and presented pursuant to this Paragraph, shall be included in the administrative record for this NRDA. Parties submitting separate and independent interpretations and conclusions shall do so within 60 days of receipt of the final interpretations and conclusions for the Cooperative Study in question. Separate and independent interpretations and conclusions are not part of a Cooperative Study.
- F. Modification of Cooperative Studies. A Party may propose to modify any Cooperative Study based on preliminary results, changed circumstances, or for other reasons. Any proposed modification that the Parties jointly agree is reasonable and appropriate shall be incorporated into the study plan. The modified study plan will be incorporated by reference into this Agreement and will be subject to all of its terms and conditions.
- G. Withdrawal from Cooperative Studies. The Responsible Parties will not withdraw from their obligation to fund an ongoing Cooperative Study so long as the study is conducted consistently with the agreed study plan and any agreed modifications thereto.
- H. Challenges to Studies. The Parties agree any data collected pursuant to a Cooperative study, including the associated study design, data collection methodologies, and quality assurance procedures, as well as conclusions or interpretations of a Cooperative Study that are not challenged by a Party in writing, with an explanation of the basis for such challenge, within 60 days of receipt of the final report shall be binding upon such party in any civil judicial or administrative proceeding between or among the Parties relating to natural resource damages arising from the Spill. A Party, however, has the right to challenge, in any judicial or administrative proceeding between the Parties relating to natural resource damages arising from the Spill, only those results, conclusions or interpretation that a Party has timely challenged pursuant to this subsection.

V. PUBLIC INVOLVEMENT

- A. Consistency with the Regulations. The Trustees will undertake public outreach consistent with the Preamble to the Regulations governing coordination with the public (Subpart A - Introduction, III.E.). Consistent with the Preamble, the Trustees will provide public notice and solicit public review and comment of documents the Trustees deem appropriate including those identified in the Regulations. Costs associated with public outreach as defined in the Preamble and the Regulations constitute reasonable assessment costs as defined in 15 C.F.R. § 990.30.

- B. Cooperative Efforts for Public Involvement. The Parties will work cooperatively to identify opportunities for public involvement that may enhance the decision making of the Trustees. Further, the Parties will cooperatively develop and disseminate public information on damage assessment activities related to the spill where possible. Where public outreach and information dissemination activities are undertaken separately, the Parties shall notify each other in advance of dissemination.
- C. Initiation of Activities. In the event that the Parties have entered agreements that propose activities for which public notice, review and comment is legally required, 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 cases, certain studies may go forward pending the public notice, review and comment process.

VI. COST DOCUMENTATION

- A. Documentation. The Trustees shall provide the Responsible Parties with documentation of all NRDA costs incurred, excluding however, confidential business information on an annual basis beginning 6 months from the date on which the first advance payment is provided by the Responsible Parties to the Trustees.
- B. Categories of Documentation. Each Trustee shall provide cost documentation which includes, at minimum, the following information:
1. Labor costs of each employee including the name, title, applicable pay period, employee's grade and total hours per pay period.
 2. Travel and transportation including travel orders, vouchers, and receipts.
 3. Rent including building and equipment rent.
 4. Printing and reproduction costs
 5. Contracts including billing period, amount of invoice, and report of activities.
 6. Supplies and materials including copies of bills for purchase and supporting receipts.
 7. Equipment acquired in direct support of the case including copies of bills for purchase and supporting receipts.
- C. Objections. In the event that the Responsible Parties object to the reasonableness of any claimed assessment costs, or allege that the Trustees have made a mathematical error, the Responsible Parties provide a written statement identifying with specificity the contested assessment costs, and the bases for its

objections within 30 days of receipt of the NRDA documentation, or shall be deemed to have waived any objections. The Parties agree to use dispute resolution procedures pursuant to IX.A. to resolve objections.

VII. RESERVATION OF RIGHTS AND CLAIMS

- A. This MOA shall not be admissible as evidence or proof of liability or non-liability. Except as specifically provided in this MOA or in any Attachments, the Parties agree that:
1. None of them is making any admission of fact or law by entering into this MOA,
 2. This MOA shall not be admissible as to the validity or non-validity of any claim or defense in any proceeding relating to this matter,
 3. Nothing in this MOA is intended nor shall be construed as a waiver by any of the Parties of any defenses or affirmative claims in any proceedings relating to the Spill,
 4. Nothing in this MOA shall be construed as a waiver of attorney-client privilege, work product privilege or any other privilege that has been or may be asserted in this or any other matter unless explicitly stated herein.
 5. Raw or factual data collected pursuant to the Cooperative Studies provisions of this MOA shall not be considered work product or attorney-client privileged.
- B. The Responsible Parties are not released from any liability under the MOA, including but not limited to claims for 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 including all reasonable costs of the assessment.
- C. This MOA does not affect any of the Responsible Parties' obligations under other agreements, consent orders, permits, etc. issued by the Maryland Department of the Environment or any agency of the Federal government.

VIII. CONFIDENTIALITY

- A. Subject to the terms of this MOA 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 the Responsible Parties leading up to and pursuant to this MOA 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.
 3. Maps, photographs, and data which have been compiled, verified, and validated by the Trustees, shall not be treated as confidential.
- B. Any Party who receives a request for documents pursuant to the federal Freedom of Information Act or the Maryland Public 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 them, if they so choose, to assert a privilege or statutory exception seeking to prevent the release of such documents.

IX. GENERAL PROVISIONS

A. Dispute Resolution.

1. Informal. The parties attempt to resolve any disputes concerning the implementation of this agreement through good faith informal negotiations between the Trustee and Responsible Parties. The period of informal negotiations shall not exceed 30 days from the time the dispute arises unless otherwise agreed in writing between all Parties involved.
2. Written Notice. A dispute shall be considered to have arisen when one Party sends the other Party a written Notice of Dispute. The notice shall describe the dispute with enough specificity to allow the other Parties to identify the issues involved and to respond effectively. To the extent practicable, such notice will be provided at least 30 days prior to the initiation of any field, analytical, or other assessment work which is the subject of the disagreement.
3. Effect of Dispute. An unresolved dispute regarding a Cooperative Study, or an aspect thereof, has the effect of removing that Study, or portion thereof, from the Cooperative Study definition. An unresolved dispute regarding a Cooperative Study, or an aspect thereof, does not result in termination of this MOA. If the Trustees decide to perform an independent study which was removed as a Cooperative Study because of an unresolved dispute, the Trustees reserve the right to seek reimbursement from the Responsible Parties for the cost of that study.

B. Payment of Funds. Payment of funds to the Trustees by the Responsible Parties shall be as follows:

1. **For NOAA:**

Checks should be made payable to NOAA, Department of Commerce
Checks should reference "Chalk Point Oil Spill"

Mail to:

NOAA/NOS/OR&R
ATTN: Kathy Salter, DARRF Manager
1305 East West Highway
Silver Spring, Md 20910-3281

2. **For the Department of Interior:**

Checks should be made payable to the Department of Interior
Checks should reference Chalk Point Oil Spill, Acct 14X5198 (NRDAR)

Mail to:

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

Payment notification to:

Bruce Nesslage, Restoration Fund Manager
Office of Natural Resource Damage Assessment and Restoration
Mailstop 4449
1849 C St. NW
Washington, D.C. 20240

3. **For MDNR**

Sumita Chaudhuri, Assistant Secretary
Management Services
Maryland Department of Natural Resources
580 Taylor Avenue, C-4
Annapolis, MD 21401

4. **For MDE**

Checks should be made payable to Maryland Department of Environment
Checks should reference "Chalk Point Oil Spill, PCA #13764"

Mail to:

Maryland Department of the Environment
POB 1417
Baltimore, MD 21203-1417

- C. Correspondence. All correspondence relative to this MOA shall be given to the following persons on behalf of the Parties:

For the Trustees:

Sharon Shutler, Esq.

Dr. James Hoff

NOAA General Counsel
15th floor
1315 East West Highway
Silver Spring, MD 20910

Damage Assessment Center, NORR3
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1305 East West Highway
Silver Spring, MD 20910

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ST Services
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Duane Siler, Esq.
Patton Boggs LLP
2550 M Street NW
Washington D.C. 20037

- D. Modification and Termination Any modifications to this MOA or its attachment(s) must be in writing and executed by all of the Parties. Any party may terminate this MOA by giving 30 days written notice to all Parties.

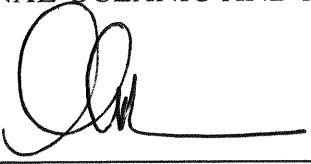
- E. Assignment of Rights. This MOA shall be binding on the heirs, successors in interest, representatives and assigns of the Parties.
- F. Effective Date. This MOA may be executed in one or more counterparts, all of which shall be considered an original. The Effective Date of this MOA shall be the last date of execution of any counterpart hereto.

Signature on the Agreement lines provided below shall constitute acceptance of the terms and conditions of this Agreement.

Agreement Regarding Cooperative Natural Resource Damage
Assessment Activities With Respect To The *Chalk Point* Oil Spill

FOR THE TRUSTEES:

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

By:  _____

10/2/00

Date

Agreement Regarding Cooperative Natural Resource Damage
Assessment Activities With Respect To The *Chalk Point* Oil Spill

FOR THE TRUSTEES:

UNITED STATES FISH AND WILDLIFE SERVICE

By: Sherry H. Morgan

October 23, 2000
Date

Agreement Regarding Cooperative Natural Resource Damage
Assessment Activities With Respect To The *Chalk Point* Oil Spill

FOR THE TRUSTEES:

MARYLAND DEPARTMENT OF NATURAL RESOURCES

By: *Carol J. Taylor Page*

September 21, 2008
Date

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FOR THE TRUSTEES:

MARYLAND DEPARTMENT OF THE ENVIRONMENT

By: Jane Nishida
Jane Nishida, Secretary

10/3/00
Date

Agreement Regarding Cooperative Natural Resource Damage
Assessment Activities With Respect To The *Chalk Point* Oil Spill

FOR THE RESPONSIBLE PARTIES:

SUPPORT TERMINALS OPERATING PARTNERSHIP, LP
BY ITS GENERAL PARTNER, SUPPORT TERMINAL SERVICES, INC.

By: Alan Barclay 9/22/00
Alan Barclay, Senior Vice President Mid Atlantic Date
Support Terminal Services, Inc.

**Agreement Regarding Cooperative Natural Resource Damage
Assessment Activities With Respect To The Chalk Point Oil Spill**

FOR THE RESPONSIBLE PARTIES:

PEPCO:

By: James Potts
James Potts, Vice President of Environment
Pepeco

9/28/00
Date