

**MEMORANDUM OF AGREEMENT
AMONG TRUSTEES REPRESENTING THE
SOUTH CAROLINA OFFICE OF THE GOVERNOR,
SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL,
SOUTH CAROLINA DEPARTMENT OF NATURAL RESOURCES,
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION
AND
UNITED STATES DEPARTMENT OF THE INTERIOR, ACTING THROUGH THE
UNITED STATES FISH AND WILDLIFE SERVICE, REGARDING COORDINATION OF
NATURAL RESOURCE RESTORATION IMPLEMENTATION ASSOCIATED WITH
THE “KOPPERS-CHARLESTON” SITE**

I. INTRODUCTION and STATEMENT OF PURPOSE

This Memorandum of (“Agreement”) is entered into by and between the Governor of South Carolina (SCOG), the Director of the South Carolina Department of Health and Environmental Control (DHEC), the Director of the South Carolina Department of Natural Resources (DNR), the Director of the National Oceanic and Atmospheric Administration Office of Damage Assessment and Restoration (NOAA), and the Regional Director, Southeast Region 4, of the United States Fish and Wildlife Service (USFWS), on behalf of the United States Department of the Interior (DOI), collectively, “the Trustees.” The Trustees enter into this Agreement in recognition of their common interests and responsibilities as trustees of natural resources, on behalf of the public. The Trustees’ legal authorization to enter into this Agreement is referenced in Section III herein, “Authority.”

This Agreement is intended to provide a framework for continued cooperation and coordination among the Trustees in planning, implementing and overseeing the restoration, replacement, rehabilitation or acquisition of natural resources which have been injured, destroyed or lost as a result of hazardous substances releases at or from the Koppers Site in Charleston, South Carolina, Superfund database identification number: SCD980310239. To the extent possible, and in order to maximize limited settlement funds, the Trustees’ goal is to make the public whole for ecological and groundwater losses suffered as a result of contaminant releases at the site with one or more projects capable of restoring natural resource injuries.

The Trustees additionally enter into this Agreement to provide for the use and expenditure of \$400,000 in natural resource damages, together with interest accruing following receipt, which the Trustees jointly recovered from parties responsible for resource injuries attributed to the Koppers Site (“the Koppers Cash-Out Settlement Funds” or “Funds”). These Funds are expected to be recovered in settlement of the Trustees’ claims for natural resource damages. Once received, the Funds will be held in DOI’s Natural Resource Damage Assessment and Restoration (NRDAR) Fund and are solely for use by the Trustees for the development, finalization, implementation, administration, and oversight of a Restoration Plan related to the Site.

II. PARTIES

The following officials, or their designees, are parties to this Agreement and act on behalf of the public as Trustees for natural resources under this Agreement:

1. The Governor of the State of South Carolina;
2. The Director of the South Carolina Department of Health and Environmental Control;
3. The Director of the South Carolina Department of Natural Resources;
4. The Director of the National Oceanic and Atmospheric Administration's Office of Damage Assessment and Restoration;
5. The Regional Director, Southeast Region 4 of the United States Fish and Wildlife Service, acting on behalf of the United States Department of the Interior.

III. AUTHORITY

The Trustees enter into this Agreement in accordance with 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(l); the National Contingency Plan (NCP), 40 C.F.R. §§ 300.600 through 300.615; 43 C.F.R. Part 11; the South Carolina Hazardous Waste Management Act, S.C. Code Ann. § 44-56-200 (Rev. 2002) and other applicable State and Federal laws.

IV. STATEMENT OF OBJECTIVES

The Funds that the Trustees jointly recovered from parties responsible for resource injuries attributable to releases from the Koppers Site, plus any interest accruing thereon, shall be used by the Trustees to plan, implement and oversee the creation or enhancement of estuarine wetlands and/or the restoration or enhancement of groundwater recharge areas in the Charleston Harbor area, in accordance with the Restoration Plan developed by the Trustees. The Trustees may utilize one or more sub-projects that may serve to increase ecological services in the area as well as provide for groundwater recharge and/or surface water management. In developing a Restoration Plan, the Trustees agree to:

- A. Develop and implement a Restoration Plan or Plans for the resources injured by hazardous releases at and from the Koppers Site in an expeditious and efficient manner, and in accordance with federal and state law, including CERCLA, 43 C.F.R. Part 11, and the South Carolina Hazardous Waste Management Act;
- B. Provide an appropriate opportunity for public review and comment during development of the Restoration Plan or Plans through publication of Draft Restoration and Compensation Determination Plan/Environmental Assessment (RCDP/EAs). The Trustees agree to consider all public comments on the RCDP/EAs before selection of restoration actions and finalization of the RCDP/EA;
- C. Consistent with the terms of the Consent Decree and this Agreement, provide for the expenditure of monies from the Funds, as necessary and appropriate, to develop and implement the final Restoration Plan; and

- D. Pay Trustee administrative costs associated with the development and implementation of the Restoration Plan; provided, however, that the payment shall be capped at 10% of the Funds, and no more than half of that 10% shall be recovered by the Lead Administrative Trustee (LAT) for agency costs. These administrative costs do not include past costs of assessments. Recovered past costs will be allocated to each Trustee according to their actual expenditures, unless otherwise agreed by the Trustees. Future administrative costs for implementing the cash out alternative are subject to the 10% cap.

V. FORMATION OF TRUSTEE TRUSTEE COUNCIL

The Trustees agree to establish a Koppers Restoration Trustee Council (“Trustee Council” or “Council”) to implement this Agreement. The Trustee Council shall be comprised of one representative of each State and Federal Trustee.

A. Designation of Representatives: Each Trustee hereby designates, respectively, the following person as their primary representative on the Trustee Council with responsibility for implementation of this Agreement:

For DHEC:

Susan B. Fulmer
Manager, Federal Remediation Section
South Carolina Department of Health and Environmental Control
2600 Bull Street
Columbia, SC 29201
Phone: 803-898-4331
Fax: 803-898-1297
fulmersb@dhec.sc.gov

For DNR:

Priscilla Wendt
Environmental Quality Manager
South Carolina Department of Natural Resources
P.O. Box 12559
Charleston, SC 29422
Phone: 843-953-9305
Fax: 843-953-9399
wendtp@dnr.sc.gov

For NOAA:

Howard Schnabolk
NOAA Coastal Services Center
2234 South Hobson Avenue
Charleston, SC 29405-2413
Phone: 843-740-1328
Fax: 843-740-1315
Howard.Schnabolk@NOAA.gov

For USFWS:

Anthony Sowers
U.S. Fish and Wildlife Service
4980 Wildlife Drive NE
Townsend, GA 31331
Phone: 912-832-8739 ext. 3
Fax: 912-832-8744
anthony_sowers@fws.gov

B. Alternate Representative: In the event the Council representative is unavailable, he or she may select an alternate representative to attend and participate in meetings.

C. Change of Representatives: A Trustee may change its Council representative by providing written notice to each of the other Trustees' Council representatives. In the event that a Trustee's Council representative can no longer serve in that capacity, that Trustee must designate a new Council representative within 14 days. The Trustee shall notify each of the other Trustees' Council representatives of the new representative's name, address, e-mail address, telephone and facsimile numbers.

D. Duties and Responsibilities: The Council shall coordinate all Trustee activities and matters within the scope of this Agreement. Actions taken by the Council may include, but are not limited to:

1. Overseeing the development, implementation, and finalization of the Restoration Plan(s);
2. Establishing mechanisms to ensure that all actions within the scope of this Agreement are conducted in accordance with applicable administrative procedures and/or legal requirements;
3. Making decisions regarding the use and expenditure of the Funds in accordance with the terms of this Agreement and the Consent Decree;
4. Creating subcommittees, where appropriate, to facilitate any activities under this Agreement; and
5. Taking such actions as the Council determines are necessary or appropriate to implement this Agreement, including seeking advisory participation from the United States Department of Justice, as necessary, or other agencies.

E. Decision Making: All decisions by the Council shall be made by consensus. In the event that consensus cannot be reached, the matter in dispute will be elevated to the appropriate authorized officials. Any agency may abstain from voting, and an abstention from voting by any agency will not negate any decision that the rest of the Council reaches by consensus. Any Trustee who abstains from a vote on a decision shall not have the right to challenge this decision later. Formal, final decisions by the Council shall be documented by written resolution. Electronic documentation and concurrence are acceptable means of participating in decision-making. The Lead Administrative Trustee will maintain records of all resolutions and significant correspondence of the Trustee

Council.

At least quarterly, DNR, and DHEC will keep the SCOG apprised of matters or issues arising in the normal and ongoing course of coordinating, planning, administering and implementing the restoration process contemplated by this MOA, and on these matters, the agreement, vote or signature by the DNR and DHEC representatives on the Council will signify the concurrence of the SCOG.

F. Lead Administrative Trustee: NOAA will serve as the Lead Administrative Trustee (“LAT”) for the Council under this Agreement. As LAT, NOAA will have no decision-making rights beyond those held and shared by all Trustees under this Agreement.

VI. USE OF KOPPERS CASH OUT SETTLEMENT FUNDS

A. General Use: The Funds, including all interest accruing thereon, may only be used by the Trustees to develop, implement and oversee the Restoration Plan. Such use includes payment or reimbursement of the administrative costs and expenses incurred by the Trustees during the development and implementation process of Restoration activities pursued under the Funds award. Trustee administrative costs or expenses include, but are not limited to, costs (both direct and indirect) associated with the preparation and review of documents pertinent to the development or implementation of the Restoration Plan, administration, management, or oversight of contracts or projects, and travel.

B. Procedures for Access to the Funds: The Funds will be deposited into a DOI interest-bearing account. The Council will coordinate the requests for withdrawal of monies from the Funds. Disbursement of any monies from the Funds, including for reimbursement of administrative costs and expenses incurred by the Trustees, will be by unanimous agreement of all Council members, subject to the provisions of Section V.E. above. Electronic concurrence on any of the above is acceptable.

VII. CONFIDENTIALITY

The Trustees agree herein that it is generally in the public interest that scientific information arising out of the Trustee’s restoration activities, as a result of expenditure of the Funds, should be made public. This information shall be made available to the public in accordance with the South Carolina Freedom of Information Act, S.C. Code Ann. § 30-4-10 *et seq.* and applicable Federal law. The Trustees recognize that oral and written communications that are privileged attorney-client communications, attorney-work-product, or which may be characterized as confidential business information, or are otherwise protected by any other privilege, will be protected from disclosure to the extent possible under applicable Federal and/or State law.

The Trustees further agree that whenever a request for production of information that may constitute privileged communication is received by any Trustee, the request will be forwarded to all members

of the Trustee Council for their review. Nothing contained herein shall be construed as prohibiting or restraining any member of the Council from agreeing to release of any information generated by **that** Trustee, nor shall anything contained herein be construed as requiring any Trustee to release information. Unless required by law, a Trustee shall not release information generated by another Trustee without that Trustee's consent.

VIII. RESERVATION OF RIGHTS

Each Trustee has and reserves the right to take any action within the scope of his or her authority as a Trustee, including those actions that may be necessary to pursue and/or to preserve any legal rights or remedies available to him or her as a Trustee. Nothing in this Agreement is intended to waive or foreclose any such rights.

IX. MODIFICATION OF AGREEMENT

This Agreement may be modified by the unanimous consent of the Trustee Council. Any modification of this Agreement shall be in writing, executed by the Trustees. An electronic request for modification of this Agreement, or an electronic consent to modification of this Agreement, is acceptable.

X. TERMINATION

This Agreement shall remain in effect until completion of all work pursuant to the Restoration Plan(s), or at such other time as the Trustees, in their sole discretion, determine. In the event that any Trustee withdraws from this Agreement, such withdrawal must be in writing at least 30 days in advance of the withdrawal. Such withdrawing Trustee forfeits all rights pursuant to this Agreement including, without limitation, the right to decide how the Funds are expended and to authorize any expenditure of the Funds. Such withdrawing Trustee may recoup, subject to availability of funds for Trustee administrative costs, the administrative costs it has incurred as of the date of its withdrawal from this Agreement. In the event of a withdrawal of a Trustee from this Agreement, this Agreement will remain in full force and effect for the remaining Trustees.

XI. LIMITATION

The responsibilities and commitments identified in this Agreement are wholly subject to the lawful availability of funds, including monies from the Funds. Nothing in this Agreement shall be construed to obligate the United States, the State of South Carolina, the Governor of South Carolina, (SCOG), DHEC, DNR, USFWS or NOAA, or any other public agency, to expend any funds in excess of those reimbursable from the Funds, or authorized by law.

XII. EFFECTIVE DATE

This Agreement may be executed in counterparts. A copy with all of the original executed signature pages affixed shall constitute the original Agreement. The date of execution shall be the date that the last Trustee signs.

IN WITNESS WHEREOF, the parties hereto have signed this Agreement on the date appearing under their signatures:

FOR the Governor of the State of South Carolina

Holly G. Pisarik
Chief Legal Counsel
South Carolina Office of the Governor

Date

IN WITNESS WHEREOF, the parties hereto have signed this Agreement on the date appearing under their signatures:



June 9, 2016

Catherine E. Heigel

Date

Director

South Carolina Department of Health and Environmental Control

IN WITNESS WHEREOF, the parties hereto have signed this Agreement on the date appearing under their signatures:

Alvin A. Taylor
Director
South Carolina Department of Natural Resources

Date

IN WITNESS WHEREOF, the parties hereto have signed this Agreement on the date appearing under their signatures:

Cynthia K. Dohner
Regional Director, Southeast Region 4
U.S. Fish and Wildlife Service

Date

IN WITNESS WHEREOF, the parties hereto have signed this Agreement on the date appearing under their signatures:

FOR the Director of the National Oceanic and Atmospheric Administration Office of Damage Assessment and Restoration:

Craig O'Connor
Special Counsel for Natural Resources
NOAA, Office of the General Counsel

Date