

MEMORANDUM OF AGREEMENT

AMONG

THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS AND
THE DEPARTMENT OF ENVIRONMENTAL PROTECTION,
THE NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION,
AND THE UNITED STATES DEPARTMENT OF THE INTERIOR,

REGARDING

NATURAL RESOURCE RESTORATION, REPLACEMENT, AND/OR
ACQUISITION OF EQUIVALENT NATURAL RESOURCES AT
AND AROUND THE CHARLES GEORGE
LAND RECLAMATION TRUST LANDFILL SUPERFUND SITE

I.

INTRODUCTION

This Memorandum of Agreement ("Agreement") by and between the Executive Office of Environmental Affairs ("EOEA") and the Department of Environmental Protection ("DEP") of the Commonwealth of Massachusetts, the National Oceanic and Atmospheric Administration ("NOAA"), and the Fish and Wildlife Service of the United States Department of the Interior ("DOI/FWS" or "DOI"), (hereinafter referred to collectively as "the Parties"), is entered into in recognition of their common interest for the restoration, replacement and/or acquisition of equivalent natural resources which have been injured, destroyed or lost by the releases of hazardous substances from or at the Charles George Land Reclamation Trust Landfill Superfund Site ("Site") located in Tyngsborough, Massachusetts and to ensure the coordination and cooperation of the Parties in their application of natural resource damages ("NRD") recovered for the Site.

The United States and the Commonwealth of Massachusetts filed complaints in Federal Court on June 13, 1986 and July 1, 1985, respectively, to recover, among other things, damages for injury to, destruction of, or loss of natural resources resulting from the releases of hazardous substances into the environment in and around the Charles George Land Reclamation Trust Landfill Superfund Site in Tyngsborough, Massachusetts. These releases of hazardous substances have included inorganic and organic contaminants at or from the Site, owned and/or operated since 1967 by the named defendants in the matter of United States, et al. v. Charlie George Trucking Co., et al., Civil Action No. 85-2463-WD (D. Mass.) and Commonwealth of Massachusetts v. Charlie George Trucking Co., et al., Civil Action No. 85-2714-WD (D. Mass.). Three Records of Decisions ("RODs") have been entered into and implemented by the Environmental Protection Agency and the DEP, in order to remediate the Site in accordance with the Comprehensive Environmental Response, Compensation, and Liability Act and Massachusetts General Laws, Chapter 21E. Pursuant to the Consent Decree in the above

referenced matters, the Commonwealth recovered \$918,900.05 for damages to state natural resources, NOAA recovered \$134,624.00 for damages and future oversight expenses, and DOI recovered \$299,916.00 for damages and future oversight expenses. The total recovery of damages and future oversight expenses for all the trustees is \$1,353,440.05.

II. AUTHORITY

A. The Parties enter into this Agreement in accordance with the natural resource Trustee authorities provided for each such Trustee by Section 107(f) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), as amended, 42 U.S.C. § 9607(f), Section 5 of the Massachusetts Oil and Hazardous Material Release Prevention Act ("Chapter 21E"), M.G.L. c. 21E, § 5, and other applicable Federal and State laws and regulations including, Executive Order No. 12,580 (January 23, 1987); and Subpart G of the National Oil and Hazardous Substance Pollution Contingency Plan ("NCP"), 40 C.F.R. Part 300.600, as amended pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, and the Massachusetts Contingency Plan ("MCP"), as amended pursuant to Chapter 21E, M.G.L. c. 21E, § 3(b).

B. In accord with Subpart G of the NCP, 40 CFR § 300.600 through 300.615, 55 Federal Register 47450 - 47452 (September 15, 1994), 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 Secretary of Environmental Affairs for the Commonwealth of Massachusetts,
2. The Secretary of the Interior,
3. The Under Secretary for Oceans and Atmosphere, Administrator of the National Oceanic and Atmospheric Administration, acting on behalf of the Secretary of Commerce.

III. DEFINITIONS

For purposes of this Agreement the following definitions shall apply:

A. **"Federal Trustees"** means the Secretary of Commerce, acting through NOAA, and the Secretary of the Interior or their respective authorized designees.

B. **"Joint use"** means use of natural resource damage recoveries by the State Trustee 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. **"Natural resources"** shall have the same meaning as set forth in Section 101(16) of CERCLA, as amended, 42 U.S.C. §9601(16).

D. **"Natural resource damage(s) recovery(ies)"** means any award, judgment, settlement or other payment to the Federal Trustees or the State Trustee which is received or controlled by any of the Trustees, individually or collectively, for or as a result of claims for natural resource damages against any potentially responsible parties at the Site, except any such award which is judgment, settlement, or payment in reimbursement of natural resource damage assessment costs incurred by any of the Trustees.

E. **"Oversight expenses"** means any costs associated with individual trustee participation in the restoration planning process, Trustee Council administrative proceedings, costs associated with the retention of consultants, coordinators, or any other technical or administrative services associated with the development of the restoration plan, or any other costs reasonably related to the implementation of this Agreement other than the physical implementation of the final restoration plan approved by the Trustee Council.

F. **"Restore," "Restoration," "Replace," "Acquire the Equivalent of"** means any actions undertaken by the Trustees pursuant to CERCLA Section 107(f)(1), as amended, 42 U.S.C. §9601(f)(1), and other applicable laws or regulations, including planning, implementation, administration and oversight, which serve to restore, replace, acquire the equivalent of, or provide substitutes for natural resources or natural resource services injured, destroyed or lost as a result of the release of hazardous substances from the Site.

G. **"Restoration Coordinator"** means the person appointed/hired by the Trustee Council to conduct activities as

described at Section VIII, Paragraph D.

H. "Site" or "Site vicinity" means the Charles George Land Reclamation Trust Landfill Superfund Site ("Site"), encompassing approximately seventy (70) acres and located in Tyngsborough and Dunstable, Middlesex County, Massachusetts, including all areas beyond those acres where releases of hazardous substances at or from the Site are now or come to be located, and all natural resources and areas which may have been or may be affected by hazardous substances released at or from the Site, located in or near Tyngsborough and Dunstable.

I. "State Trustee" means the Secretary of the Executive Office of Environmental Affairs, Commonwealth of Massachusetts or the Secretary's trustee representative.

J. "Trustees" means the Federal Trustees and the State Trustee.

K. "Trustee Representatives" means the three (3) authorized designees appointed by the Trustees of NOAA, DOI/FWS and EOEA to the Trustee Council.

L. "Trustee Council" means the three Trustee Representatives appointed by the Trustees of NOAA, DOI/FWS and EOEA to oversee coordination of the natural resource restoration project as described herein at Section VIII.

IV. SCOPE

This Agreement is intended to cover natural resources as defined under Section 101(16) of CERCLA, as amended, 42 U.S.C. § 9601(16), and as used in Section 5 of Chapter 21E, belonging to or managed by, controlled by, or appertaining to the Trustees under CERCLA and the NCP in the vicinity of the Site located in or near Tyngsborough, Massachusetts.

V. PURPOSE

The purpose of this Agreement is to provide a framework for intergovernmental coordination among the Parties for development and implementation of a Restoration Plan to restore, replace or acquire the equivalent of natural resources affected by hazardous substances released from the Site. It is understood and acknowledged that additional agreements may be executed among the Trustees with regard to natural resource restoration, replacement, and/or acquisition of equivalent natural resources in the vicinity

of the Landfill which have been injured, destroyed or lost by the release of hazardous substances from the Site.

VI. OBJECTIVES

The Parties shall coordinate their activities under this Agreement to meet their respective natural resource trustee responsibilities under CERCLA and Chapter 21E and other applicable laws and regulations and to achieve the following objectives:

- A. Use a Restoration Coordinator to coordinate the efforts of the Parties in implementing the Objectives of this Agreement;
- B. Prepare a comprehensive Restoration Plan to address natural resource injuries resulting from hazardous substance releases from the Site;
- C. Develop the Restoration Plan in compliance with the Massachusetts Environmental Policy Act, G.L. c.30 §§ 61-62H, and the federal National Environmental Policy Act, 42 U.S.C. § 4321 et seq.;
- D. Identify and evaluate a range of potential restoration alternatives in the Site vicinity and select appropriate alternatives for restoration, replacement and/or acquisition of equivalent natural resources;
- E. Determine the costs and expenses likely to be incurred for the restoration, replacement and/or acquisition of equivalent natural resources;
- F. Implement the Restoration Plan to restore, replace, and/or acquire the equivalent natural resources injured, destroyed, or lost;
- G. Fairly allocate the costs and expenses of carrying out the objectives of this Agreement among the Trustees;
- H. Where appropriate, coordinate the activities under this Agreement with the ongoing remedial actions being undertaken at the Site; and
- I. Foster public participation in development and implementation of the Restoration Plan.

VII.

JOINT USE OF NATURAL RESOURCE DAMAGE RECOVERIES

A. **State and Federal Trusteeships.** The Parties recognize that each of them has trusteeship, through their respective natural resource Trustees, under CERCLA over natural resources at the Site and that the scopes of their respective trusteeships overlap.

B. **Joint Use of Natural Resource Damage Recoveries.** The Trustees agree that any natural resource damage recoveries, as defined in Section III of this Agreement, obtained or received by the Parties, individually or collectively, and any interest earned thereon, shall be jointly used to restore natural resources which have been injured, destroyed or lost as a result of the release of hazardous substances from the Site.

VIII.

THE CHARLES GEORGE NRD TRUSTEE COUNCIL

A. **Composition.** There shall be created, within ten (10) days of the execution of this Agreement, or as soon as practicable thereafter, a Charles George NRD Trustee Council consisting of three (3) members. Each Federal Trustee and the one State Trustee shall designate one permanent representative to the Trustee Council (hereinafter referred to as the "Representative(s)"). Each Trustee shall also designate an alternate representative to serve in the absence of the designated Representative. In addition, each Trustee may designate up to two (2) ex-officio (non-voting) members to the Trustee Council from their respective State or Federal agencies or sub-divisions. The Trustee Council may invite up to three (3) individuals from the public or non-government environmental organizations to serve as ex-officio (non-voting) members to the Trustee Council. Subject to applicable law, the Trustee Council may exclude from meetings and activities ex-officio non-government parties if the Trustee Council determines that the subject of the meeting or activity is privileged or that public disclosure of the Trustee Council's work would prejudice the effectiveness of the Trustee Council and the Trustees' responsibilities under applicable law.

B. **Decision-making and Dispute Resolution.** Any action taken by the Trustee Council must be approved by the unanimous consent of all of the three Trustee Representatives on the Trustee Council or their respective alternates. If any matter does not achieve the unanimous consent of all three Trustee Representatives, the Trustee Representatives initially shall attempt to achieve agreement through discussion and negotiation. In the event agreement cannot be reached, the matter may be presented by the Trustee Representatives to the ex-officio members of the Trustee Council for advice or a recommended decision. Such recommended decision, if made, is advisory only and shall not bind any Trustee.

If unanimous consent still cannot be reached after consultation with the ex-officio members of the Trustee Council, the Representatives may elevate the matter to the Trustees for decision or further instruction. The Trustees may establish or agree upon other mechanisms, consistent with the provisions of this Agreement, by which disputes may be resolved.

C. Duties. The Trustee Council shall coordinate all Trustee activities and matters under this Agreement. The Trustee Council's duties, subject to review and direction by the Trustees, shall include, but not be limited to, the following:

1. The Trustee Council shall coordinate to make all decisions and to take any actions that are reasonably necessary to carry out the purposes of this Agreement. All decisions shall be issued in writing and signed by all three members of the Trustee Council, as representatives of their respective Trustees.
2. The Trustee Council shall coordinate to agree on all decisions relating to restoration activities or the use of any natural resource damage recoveries, and any interest earned thereon, for restoration activities, including, but not limited to, the payment of reasonable and necessary costs for each Trustee's participation in the Trustee Council process and for the planning, implementation, administration and oversight of any activities that are reasonably necessary to carry out the purposes of this Agreement.
3. The Trustees agree that not more than \$203,017.00 of the total damages and future oversight expenses recovered, \$1,353,440.05, shall be expended on oversight expenses. This amount includes \$25,000.00 for NOAA and \$25,000.00 for DOI which NOAA and DOI obtained as future oversight expenses as part of settlement in the Charles George litigation. The expenditure of the remaining oversight budget balance of \$153,000.00, as well as all other expenditures, shall be subject to the unanimous consent of the Trustee Council.
4. The Trustee Council may establish a committee known as the Charles George Technical Advisory Committee (hereinafter the "Technical Advisory Committee").
5. The Trustee Council shall have the duty to provide for reasonable public involvement, including notice and comment, in accordance with applicable law, for all restoration projects under this Agreement.
6. The Trustee Council may invite representatives of other public agencies and members of the public to its meetings

unless, subject to applicable law, the Trustee Council determines that the subject of the meeting is privileged or that public disclosure of the Trustee Council's work would prejudice the effectiveness of the Trustee Council and the Trustees' responsibilities under applicable law.

7. The Trustee Council may contract with consultants to provide such technical services as the Trustee Council determines are necessary and as permissible under applicable state or federal law.
8. To the extent permitted by applicable law, the Trustee Council may collectively or through individual Trustees, receive grants or donations to be applied to the restoration, replacement or acquisition of equivalent natural resources at or around the Site.

D. Restoration Coordinator. The Trustee Council may designate a Restoration Coordinator whose work shall be directed exclusively by the Trustee Council. The responsibilities of the Restoration Coordinator may include:

1. preparation of a Restoration Plan;
2. coordination, management, reporting and monitoring of the natural resource restoration process;
3. scheduling of meetings of the Trustee Council and the Technical Advisory Committee (provided for under Section IX of this Agreement) and preparation of agendas for those meetings and the recording of all actions taken at such meetings;
4. preparing and issuing, from time to time, public reports on the work of the Trustee Council;
5. conducting public outreach and fostering public participation in the development and implementation of the Restoration Plan;
6. to the extent permitted by applicable law, identify and secure, wherever possible, other financial resources such as, but not limited to, grants that may be available to the Trustee Council individual trustees for use according to the terms of this Agreement.
7. such other duties as are unanimously agreed upon by the Trustee Council;

E. Administrative Trustee. The Trustee Council shall designate an Administrative Trustee. The Administrative Trustee may delegate responsibilities to the Restoration Coordinator with

the prior approval of the Trustee Council except that item number four (4) below shall at all times remain the exclusive responsibility of the Administrative Trustee. The responsibilities of the Administrative Trustee may include:

1. coordination and monitoring of the natural resource restoration process;
2. scheduling of meetings of the Trustee Council and the Technical Advisory Committee (provided for under Section IX of this Agreement) and preparation of agendas for those meetings and the recording of all actions taken at such meetings;
3. acting as a central contact for the Trustee Council and the Technical Advisory Committee;
4. maintenance of all records and relevant documents received or generated by the Trustee Council or the Technical Advisory Committee;
5. contracting with consultants to provide such technical services to the Trustee Council as the Technical Advisory Committee may advise or as the Trustee Council determines are necessary;
6. preparing and issuing, from time to time, public reports on the work of the Trustee Council;
7. such other duties as are unanimously agreed upon by the Trustee Council.

IX.

THE CHARLES GEORGE NRD TECHNICAL ADVISORY COMMITTEE

A. Designation. The Trustee Council may establish a committee known as the Charles George Technical Advisory Committee (hereinafter the "Technical Advisory Committee").

B. Composition. The State Trustee and the Federal Trustees each may designate up to three (3) members from their respective State or Federal agencies or sub-divisions to serve on the Technical Advisory Committee. The Trustee Council may designate individuals from the public or non-government environmental organizations to serve on the Technical Advisory Committee. The Technical Advisory Committee may invite representatives of other public agencies and members of the public to its meetings unless, subject to applicable law, the Trustee Council determines that the subject of the meeting is privileged or that public disclosure of the Trustee Council's work would prejudice the effectiveness of the Trustee Council and the Trustees' responsibilities under applicable

law. The Trustee Council may limit or expand the size of the Technical Advisory Committee as necessary to meet the objectives of this Agreement and the responsibilities of the Trustees under applicable law.

C. **Duties.** At the request of the Trustee Council, the Technical Advisory Committee may review and provide technical comment to the Trustee Council on the Restoration Plan and on proposals for natural resource restoration. If requested, the Technical Advisory Committee may also review and comment upon work that is in progress or that has been completed under contract or other agreement for the Trustee Council to ensure its compliance with such contract or other agreement.

X. TECHNICAL SERVICES

A. The Trustee Council may determine that it needs technical advisors, consultants or other service providers to assist it in carrying out its responsibilities under this Agreement. The Trustee Council, through its individual members or collectively, may expend natural resource damage recoveries for service providers to perform the following services:

1. provide project design and technology review, site analysis, restoration planning or services, testing, sampling, and other services related to the development or implementation of a restoration plan for the Site;
2. provide the Trustee Council with logistical support and coordination;
3. organize and prepare for Trustee Council meetings;
4. provide technical advice to the Trustee Council during Trustee Council meetings;
5. provide technical or other advice to the Trustee Council and the Technical Advisory Committee as required to carry out the purposes of this Agreement;
6. provide such other services, consistent with applicable law, as requested by the Trustee Council.

B. To obtain technical services, the Trustee Council may agree to designate the Restoration Coordinator or any one or more Trustee(s) as authorized to enter into intergovernmental personnel transfers, one or more contracts, or other lawful agreements with professional consultants, advisors, or other service providers that the Trustee Council determines are qualified to provide services to the Trustee Council.

XI.
AMENDMENT

A. This Agreement may be amended by agreement of the Parties if it is determined that an amendment is necessary to accomplish the objectives of this Agreement, or is necessary to modify the objectives of this Agreement consistent with the requirements of CERCLA, any amendments thereto, or other applicable Federal or State law.

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

XII.
TERMINATION

A. 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 of this Agreement.

B. Any Party may withdraw from this Agreement, but only after efforts have been made to resolve any dispute in accordance with paragraph B of Section VIII of this Agreement. Such withdrawal shall only be effective upon written notice upon all Parties to this Agreement.

C. In the event that this Agreement is terminated or one of the Parties withdraws, the Trustees expressly agree that they will continue to coordinate their activities to the greatest extent practicable to restore the natural resources of the Site, and that they will be guided by the objectives set forth in Section VI of this Agreement.

XIII.
GENERAL

Nothing in this Agreement shall be construed as obligating the United States or the Commonwealth, 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.

The effective date of this agreement will be the date on which the last signature is entered.

[Memorandum of Agreement Concerning Natural Resource Damages in the
Matter of THE CHARLES GEORGE LAND RECLAMATION TRUST LANDFILL
SUPERFUND SITE]

THE FEDERAL NATURAL RESOURCE TRUSTEES

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION
NATURAL RESOURCE TRUSTEE
AUTHORIZED OFFICIAL


C. Ehler

4/9/1996

Charles N. Ehler
Director, Office of Ocean Resources, Conservation and Assessment

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Matter of THE CHARLES GEORGE LAND RECLAMATION TRUST LANDFILL
SUPERFUND SITE]

FOR THE DEPARTMENT OF THE INTERIOR
NATURAL RESOURCE TRUSTEE
AUTHORIZED OFFICIAL

 5/23/1996
William R. Taylor
Director, Office of Environmental Policy and Compliance

[Memorandum of Agreement Concerning Natural Resource Damages in the
Matter of THE CHARLES GEORGE LAND RECLAMATION TRUST LANDFILL
SUPERFUND SITE]

FOR THE COMMONWEALTH OF MASSACHUSETTS

Trudy Cox 11/11/1996
Trudy Cox
Massachusetts Secretary of Environmental Affairs
State Trustee for Natural Resources

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Matter of THE CHARLES GEORGE LAND RECLAMATION TRUST LANDFILL
SUPERFUND SITE]

FOR THE DEPARTMENT OF ENVIRONMENTAL PROTECTION



David B. Struhs
Commissioner

1 / 11 / 1996