

HOLYOKE GAS TAR DEPOSITS & FORMER HOLYOKE GAS WORKS SITE,
HOLYOKE, MASSACHUSETTS:
MEMORANDUM OF AGREEMENT FOR
SETTLEMENT FUNDS MANAGEMENT
AMONG THE
COMMONWEALTH OF MASSACHUSETTS,
ACTING THROUGH THE EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS;
NATIONAL OCEANIC & ATMOSPHERIC ADMINISTRATION;
AND
UNITED STATES DEPARTMENT OF THE INTERIOR,
ACTING THROUGH THE UNITED STATES FISH & WILDLIFE SERVICE
REGARDING COORDINATION OF
NATURAL RESOURCE RESTORATION

I. INTRODUCTION

This Memorandum of Agreement for Settlement Funds Management (the Agreement) is entered into by and between the Executive Office of Environmental Affairs (EOEA), acting on behalf of the Commonwealth of Massachusetts; the National Oceanic and Atmospheric Administration (NOAA); and the United States Fish and Wildlife Service (USFWS), acting on behalf of the United States Department of the Interior (collectively referred to as "the Trustees") in recognition of their common interests and responsibilities as Trustees of natural resources on behalf of the public to ensure the coordination and cooperation among the Trustees.

This Agreement is appropriate to plan, implement and oversee the restoration, replacement, rehabilitation or acquisition of natural resources, which may have been injured, destroyed or lost as a result of hazardous substance releases at or from the Holyoke Gas Tar Deposits and former Holyoke Gas Works (together, the "Site") in Holyoke, Massachusetts.

This Agreement provides the framework for the use and expenditure of \$345,000.00 in natural resource damages, together with interest accruing following receipt, which the Trustees jointly recovered from parties responsible for resource injuries attributed to the Site, in order to plan, implement and oversee such restoration.

These funds were recovered in settlement of the Trustees' joint claim for natural resource damages asserted in United States v. Holyoke Water Power Co., Civil No. 04-30119-MAP (D. Mass. 2004), pursuant to a Consent Decree entered on November 5, 2004 (hereafter, "Consent Decree") and are being held in the Department of the Interior's Natural Resource Damage Assessment and Restoration (NRDAR) Account (hereafter, the "Account"), solely for use by the Trustees to plan, implement and oversee restoration projects to restore, replace, and/or acquire natural resources equivalent to those injured by the release of hazardous substances at the Site.

This Agreement will serve as the Memorandum of Agreement required by the Consent Decree to be entered into among the Trustees for the expenditure of the settlement funds and any accrued interest.

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 Secretary of the Executive Office of Environmental Affairs of the Commonwealth of Massachusetts, for the Commonwealth of Massachusetts,
2. The Director, Office of Response and Restoration, of the National Oceanic and Atmospheric Administration, and
3. The Regional Director, Region 5 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(f); the National Contingency Plan (NCP), 40 C.F.R. §§ 300.600 through 300.615; Chapter 21E of the Massachusetts General Laws ("M.G.L. Chapter 21E"), and other applicable state and Federal laws.

IV. PURPOSE AND SCOPE

This Agreement is intended to guide and provide a framework for cooperation and coordination among the Trustees and to govern the Trustees' use and expenditure of jointly recovered natural resource damages to plan and implement actions appropriate to restore, replace, rehabilitate, and/or acquire the equivalent of natural resources or resource services injured, lost or destroyed as a result of releases of hazardous substances at or from the Site, consistent with their duties and responsibilities as Trustees and the terms of the Consent Decree.

V. STATEMENT OF OBJECTIVES

The natural resource damages, which the Trustees jointly recovered for the Site, plus any interest accruing thereon (together "the Settlement Funds"), shall be used by the Trustees to plan, implement and oversee restoration projects to restore, replace, and/or acquire natural resources equivalent to those injured by the release of hazardous substances at the Site, in accordance with a restoration plan (hereafter, "Restoration Plan") to be developed by the Trustees. In developing this Restoration Plan and in accomplishing this shared objective, the Trustees will coordinate with one another to:

- A. Develop and implement a Restoration Plan for the Site in an expeditious and efficient manner, and in accordance with the Federal and state law, including requirements applicable to restoration planning as may be found within CERCLA, 43 C.F.R. Part 11 and M.G.L. Chapter 21E.

- B. Provide an appropriate opportunity for public review and comment during development of that Restoration Plan through publication of a Draft Restoration Plan and consider all public comments on the draft plan before finalizing the selection of restoration actions;
- C. Consistent with the terms of the Consent Decree and this Agreement, provide for the expenditure of monies from the Settlement Funds as necessary or appropriate to develop and implement the Final Restoration Plan.

VI. NATURAL RESOURCE TRUSTEE COUNCIL

A. Organization. The Trustees herein establish the Holyoke Gas Works Trustee Council (the Council) to implement this Agreement. Within fourteen (14) days of the execution of this Agreement, each Trustee shall designate a Primary Trustee Representative to the Council, who shall be authorized to vote on behalf of that Trustee. Each Trustee shall also designate an Alternate Trustee Representative who shall be authorized to act, and vote in the absence of the Primary Trustee Representative. Each Trustee may, by written notification to all other Trustees, change the Primary and Alternate Trustee Representative designees.

The U.S. Department of Justice, the Office of the Attorney General for the Commonwealth of Massachusetts, and in-house counsel for each of the Trustees, may each appoint one attorney who may attend all meetings of, or organized by, the Council in a legal/consultative role but who shall not be a member of the Trustee Council. The Commonwealth of Massachusetts may appoint one representative from the Massachusetts Department of Environmental Protection or another appropriate Commonwealth agency who may attend all meetings of, or organized by, the Council in a consultative role but who shall not be a member of the Trustee Council.

B. Communications. All correspondence and communications to or between the Trustees pertaining to activities, which are subject to coordination and cooperation under this Agreement, shall be sent to the primary representative of each Trustee as designated.

C. Duties and Responsibilities. The Council shall coordinate all Trustee activities and matters within the scope of this Agreement. Actions to be taken or authorized by the Council in implementing this Agreement include but are not limited to:

1. Planning, contracting for, or otherwise undertaking and overseeing the development and implementation of the Restoration Plan;
2. Taking such other actions as the Council determines are necessary or appropriate to implement this Agreement.

D. Decision making. All decisions by the Council implementing this Agreement shall be made by consensus. In the event that unanimous agreement cannot be reached among the members of the Council, the matter in dispute will be elevated to the Authorized Officials of each Trustee agency, for resolution. If necessary, the Trustees, including through the Council, may establish further mechanisms by which disputes may be resolved. The Trustees further agree that, while recognizing the areas of expertise and authority of the Trustees, decision-making deliberations will focus on the Trustees' mutual purpose of restoring, replacing, rehabilitating, and/or acquiring the equivalent of the affected natural resources.

E. Dispute Resolution. In the event of a dispute involving any decisions under this Agreement, the Council shall initially attempt to resolve the dispute through good faith discussions directed toward obtaining unanimity among the Trustees involved in the dispute and consensus by the Council as a whole. If unanimous consent cannot be reached, the matter shall be elevated to the signatories of this Agreement who may expressly delegate their decision-making authority to a senior supervisory level designee for decision or further instructions. If necessary, the Trustees may establish other mechanisms by which disputes may be resolved.

F. Lead Administrative Trustee. The Trustees designate NOAA as Lead Administrative Trustee (LAT) under this Agreement for the purpose of coordinating trustee activities towards planning and implementing restoration. The LAT shall fully coordinate its activities with and only act under the direction of the Trustee Council. Other duties of the LAT and/or the other Trustee entities shall be arrived at by resolution of the Trustee Council.

VII. USE OF FUNDS

A. General Use. The funds in the Account, including all interest accruing, may only be used by the Trustees to plan, implement and oversee the Restoration Plan. Such use includes payment or reimbursement of the administrative costs and expenses incurred by the Trustees to develop and implement that plan, in accordance with this Agreement.

Trustee administrative costs or expenses include, but are not limited to, costs, both direct and indirect, associated with preparation or 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 Relating to Use or Access to Funds. The Council, in accordance with the decision-making process identified in Section VI, shall identify protocols, standards, procedures, budgets, or other directions as necessary to support access to or the use of damages, or interest thereon, and to otherwise effectuate the purposes of this Agreement. Disbursement of all funds from the Account, including for reimbursement of administrative costs and expenses incurred by the Trustees, will be by unanimous written agreement of all Council members.

VIII. RESERVATION OF RIGHTS

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

IX. MODIFICATION OF AGREEMENT

- A. This Agreement may be modified by the agreement of the Trustees.
- B. Any modification of this Agreement shall be in writing, executed by the Trustees.

X. TERMINATION

A. This Agreement shall remain in effect until completion of all work required pursuant to the Restoration Plan or at such other time as the Trustees, in their sole discretion, determine appropriate.

B. In the event any Trustee withdraws from the Agreement, such withdrawal must be in writing at least thirty (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 Settlement Funds are to be expended and to authorize expenditures of Settlement Funds from the Account. Such withdrawing Trustee may recoup such administrative costs it has incurred as of the date of its withdrawal from this Agreement, as provided in and subject to the terms of Section VII.B above. In the event of such withdrawal, this Agreement remains 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 from the Account. Nothing in this Agreement shall be construed as obligating the United States, the Commonwealth of Massachusetts, EOEA, USFWS, NOAA or any other public agency, their officers, agents, or employees to expend any funds in excess of those that are reimbursable from the Account or authorized by law.

XII. THIRD PARTY CHALLENGES OR APPEALS

The rights and responsibilities contained in this Agreement represent guidance for the respective Parties. This Agreement does not, and is not to be construed as, providing the basis of any third party challenges or appeals.

XIII. NONDISCRIMINATION

In performing this Agreement, the Trustees will not discriminate against any person because of race, color, religion, sex, national origin, age, physical or mental handicap, sexual orientation, marital status or political affiliation.

XIV. EXECUTION: EFFECTIVE DATE

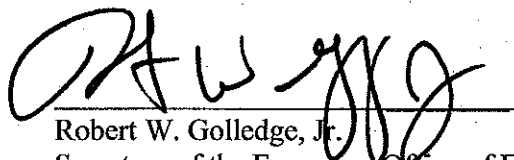
This Agreement may be executed in counterparts. A copy with all original executed signature pages affixed shall constitute an original Agreement. The date of execution shall be the date of the last of the Trustees' representatives to sign.

XV. ANTI-DEFICIENCY

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

IN WITNESS WHEREOF, the parties hereto have signed this Settlement Funds Management Agreement on the date appearing under their signatures.

COMMONWEALTH OF MASSACHUSETTS



Robert W. Gollidge, Jr.
Secretary of the Executive Office of Environmental Affairs

September 27, 2006
Date

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

Ken Barton
Acting Director
Office of Response and Restoration

Date

UNITED STATES DEPARTMENT OF THE INTERIOR

Marvin Moriarty
Regional Director
U.S. Fish & Wildlife Service, Region 5

Date