MEMORANDUM OF AGREEMENT

BETWEEN THE

KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT

AND THE

UNITED STATES DEPARTMENT OF THE INTERIOR

I. INTRODUCTION

This Memorandum of Agreement (MOA) by and between the Kansas Department of Health and Environment (KDHE) and the United States Department of the Interior (DOI) (hereinafter collectively referred to as the Trustees) is entered into by the Trustees in recognition of their common interests in and responsibilities for protecting natural resources on the public's behalf as Trustees for the natural resources. This MOA is to ensure the cooperation and coordination of the Trustees in preparing Natural Resource Damage Assessments and applying natural resource damages jointly recovered from responsible parties resulting from said assessments, including any interest which may accrue thereon pending use, toward the costs associated with the restoration, replacement, rehabilitation, or acquisition of the equivalent of the natural resources or resource services which were injured, destroyed or lost as provided in the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 et seq., the Federal Water Pollution Control Act, 33 U.S.C.§ 1251 et seq., and the Oil Pollution Act of 1990, 33 U.S.C. § 2701 et seq. (hereinafter collectively referred to as the "Acts").

II. PARTIES

The KDHE and the DOI are parties to this agreement. The following officials are

authorized to enter into this MOA on behalf of their respective Trustee agencies and, for purposes of this MOA, act on behalf of said Trustee:

1. Secretary, Kansas Department of Health and Environment
2. Program Manager, Natural Resource Damage Assessment and Restoration Program, United States Department of the Interior

Other parties may be added or deleted to this MOA, as appropriate, if both the Secretary of the KDHE and the DOI, Natural Resource Damage Assessment and Restoration (NRDAR) Program Manager consent to the involvement of another party. The other parties must agree to the terms and conditions of this MOA in writing.

III. AUTHORITY

The Trustees enter into this MOA in accordance with the natural resource trustee authorities provided for each Trustee by the Acts as well as the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R. Part 300, Natural Resource Damage Assessment Regulations, 43 C.F.R. Part 11 and 15 C.F.R. Part 990, and other applicable State and Federal laws, regulations and policies.

IV. COVERED EVENTS

This MOA is intended to address all releases of hazardous substances or oil, spills or other incidents, occurrences, or events (hereinafter referred to as "events") in the State of Kansas and its boundary waters, which: 1) affect natural resources under the concurrent jurisdiction of the Trustees, or are coexisting or contiguous natural resources under the legally authorized trusteeship of the Trustees; and 2) give rise to a claim for natural resource damages under the Acts. Events will be determined to be covered by this MOA under mutual written agreement of the Trustees' representatives designated pursuant to Section VI.B. below. Once such a determination is made, the events shall be considered as "covered events".

V. PURPOSE

This MOA is intended to guide and provide a framework for cooperation and coordination

among the Trustees, consistent with their duties and responsibilities as Trustees pursuant to the Acts, including assessing injuries and using recovered damages to plan and implement actions appropriate to restore, replace, rehabilitate or acquire the equivalent of natural resources or resource services injured, lost, or destroyed pursuant to the Acts or provide oversight of restoration actions by Potentially Responsible Parties in accomplishing these goals.

VI. NATURAL RESOURCES TRUSTEE COUNCIL

A. Organization. The Trustees hereby establish the KDHE / DOI Trustee Council to conduct NRDAR activities under the auspices of this MOA. The Council shall be comprised of representatives for the State and Federal Trustee. The Trustee Council may seek advisory participation from the United States Department of Justice, the Kansas Department of Wildlife and Parks, the Kansas Attorney General, or other agencies, when necessary or appropriate.

B. Designation of Council Members. Upon the occurrence of an event, each Trustee will designate a primary and alternate representative who shall serve as the Trustee's representative to the Council for all matters related to the event. The parties shall use reasonable efforts to designate representatives with experience and expertise in natural resources in the Midwestern United States.

C. Changing Representatives. A Trustee may change its primary or alternate Council representative by providing notice, along with the new representative's name, address, telephone and facsimile numbers, to each of the other Trustees' designates to the Council. In the event a Trustee's designated representative can no longer serve, the Trustees must designate a new Council representative within fourteen (14) business days from the date the need presents itself. Business days will exclude state and federal holidays.

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

E. Duties and Responsibilities. The Trustee Council shall coordinate all Trustee activities and

matters within the scope of this MOA. Actions to be taken or authorized by the Trustee Council in implementing this MOA will include, but are not limited to:

1. Conducting scientific and technical studies, sampling and other matters related to the assessment of natural resource damages resulting from covered events;

2. Seeking compensation from responsible parties for the damages assessed by the Trustees and for the costs of planning and implementing the assessment;

3. Participating in negotiations with responsible parties;

4. Overseeing the development and implementation of a plan for the restoration, replacement, rehabilitation, and/or acquisition of the equivalent of natural resources or resource services injured, destroyed or lost in accordance with applicable laws by the Trustee or third parties;

5. Coordinating Trustee decision-making, planning, and project contracting, technical or otherwise, and ensuring such actions are conducted in accordance with applicable administrative procedures and/or legal requirements;

6. Making all necessary decisions, on a case by case basis and in accordance with applicable law, for the management and administration of funds pursuant to Section VIII of this MOA;

7. Establishing protocols, standards, procedures, budgets, or other directions as necessary to support access to or the use of damages and/or interest;

8. Taking other actions as the Trustee Council determines necessary or appropriate to implement this MOA, including fulfillment of the responsibilities of the Trustees under applicable State or Federal laws;

9. Coordinating with the National Pollution Funds Center and to establish access to the Oil Spill Liability Trust Fund; and

10. Designating a Lead Administrative Trustee. The duties of the Lead Administrative Trustee as defined by OPA (15 CFR 990.30) or the Lead Authorized Official as defined by CERCLA (43 CFR 11.14), include the following:

a. Scheduling meetings, preparing agendas and recording actions of the Trustee Council meetings;
b. Acting as the central contact for the Trustee Council;
c. Maintaining records and documents received or generated by the Trustee Council;
d. Preparing, issuing or arranging for public notices or reports as determined necessary by the Trustee Council;
e. Maintaining records of fund expenditures and receipts related to covered events;
f. Such other duties as agreed upon by the Trustee Council. The parties agree that the Lead Administrative Trustee possesses no decision-making rights beyond those normally held by each Trustee and is not authorized to act on behalf of the Trustees, except as provided for in this agreement; and
g. Seeking and receiving approval from the State and Federal Trustees on binding decisions.

VII. DECISION-MAKING AUTHORITY

All decisions by the Trustee Council implementing this MOA shall be made by unanimous agreement among the Trustee representatives of the Trustee Council. In the event that a unanimous decision cannot be reached among the Trustee representatives of the Trustee Council, the matter in dispute shall be elevated to the State and Federal Trustees. If necessary, the Trustees may by mutual agreement 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 assessing, restoring, replacing, rehabilitating, and/or acquiring the equivalent of the injured natural resources and/or resource services. Trustee administrative costs associated with dispute resolution will not be reimbursable from settlement funds.

VIII. FUNDS

The Trustees agree to cooperate in good faith to attempt to establish, maintain, and/or utilize, to the extent consistent with applicable law, a joint trust account(s), joint court registry account(s), the United States Department of the Interior, NRDAR Fund, or the Kansas Natural

Resources Damages Trust Fund, for purposes of NRDAR activities under this MOA. NRDAR activities under this MOA shall include receiving, depositing, holding, disbursing, and expending all funds for the restoration, replacement, rehabilitation or acquisition of the equivalent of the natural resources or resource services which were injured, destroyed or lost. For the purposes of this section, "funds" are those monies that are recovered by the Trustees pursuant to natural resource damage settlements or litigation under the Acts, including interest earned thereon, and any monies received from the federal government and/or other sources for these purposes and the purposes of this MOA.

If the Trustees are unable to agree upon which of the above accounts is appropriate for receiving, depositing, holding, disbursing, and /or expending the above funds, the Trustees shall mutually identify and segregate to the extent possible, State and Federal funds. Each Trustee shall then determine which of the above accounts to utilize with respect to the funds designated on its behalf. Funds received by the State for natural resources exclusively subject to state trusteeship will be expended and administered at the sole discretion of the State, subject to applicable law.

The Trustees agree to deposit any recoveries for natural resources under the concurrent jurisdiction of the Trustees or for coexisting or contiguous natural resources under the trusteeship of the Trustees that are obtained or received as a result of joint activities taken under Federal and/or State natural resource damage assessment regulations and/or those funds not otherwise capable of being segregated in a joint account(s), unless all Trustees agree that particular funds require different treatment. Funds received into any such account shall be segregated and identified by applicable site and funding source. The Trustees agree that disbursement of any of these joint funds will be by unanimous written agreement of all Trustee Council members. All funds recovered for a covered event shall be expended for the original purpose.

The Trustees agree that they will use all recovered damages for natural resource injuries exclusively for activities that would restore, replace, rehabilitate or acquire the equivalent of the injured resource that is consistent with Trustee approved plans conducted pursuant to this MOA to address those injuries to natural resources and the services that they provide. In accordance with their decision making process in Section VII, the Trustees will establish standards and procedures governing the joint use of all natural resource damages received by the Trustees for the purposes

of developing and administering or implementing a Final Restoration Plan for restoring, replacing, rehabilitating and/or acquiring the equivalent of natural resources injured as a result of an incident and the reduced or lost services provided by those resources.

The Trustees agree to pursue the recovery of the past, current and future reasonable costs of all natural resource damage assessment activities pursued by the Trustee Council with respect to natural resource injuries or lost services resulting from a covered event under this MOA. Reasonable assessment costs for each trustee will be specifically identified as such in any collection, settlement, or recovery. The Trustees agree to request sources reimbursing reasonable assessment costs to separately reimburse each individual Trustee agency. The Trustees agree that regardless of the location of the initial deposit, the reasonable costs recovered will be disbursed by electronic transfer or by check to each individual agency within thirty (30) business days. Each Trustee's recovered assessment costs shall be used at its individual discretion. The Trustees agree to mutually establish appropriate parameters, including but not limited to, "caps", budgets, estimates, documentation procedures or limitation upon administrative expenses for joint accounts and/or joint court registry accounts. Costs for administering any fund established by the parties shall be jointly reviewed and approved by the Trustee Council prior to incurring any costs.

IX. CONFIDENTIALITY

The parties understand that all written or oral communications related to the assessment and recovery of damages for injury to natural resources are undertaken in anticipation of litigation. Accordingly, all oral and written communications and work products will be treated as privileged attorney-client communication, attorney work product or protected by other applicable privilege (or a combination thereof), as appropriate, and will be protected from disclosure to the maximum extent possible under applicable law. Both parties further agree that whenever a request for production of such a record is received pursuant to any applicable law, the request will be forwarded in a timely manner for response to the party to whom the privilege applies, or who originally generated or contributed the record requested. Nothing herein shall be construed as prohibiting or restraining the parties from agreeing to release any record, without waiving the privilege with respect to other documents.

The parties agree to notify each other if they are independently contacted by a

potentially responsible party (PRP), or prior to contacting any PRP, with respect to settlement negotiations or any substantive NRDAR activities being undertaken by a party to this MOA.

X. RESERVATION OF RIGHTS

Except for the confidentiality agreement contained in Section IX, all Trustees understand that this document is not intended to create or waive any further legal rights or obligations among the Trustees or any other person not a party to this MOA. Nothing in this MOA is to imply that any signatory government is in any way abrogating or ceding any responsibilities or authority inherent in its control or trusteeship over natural resources.

XI. MODIFICATION OF AGREEMENT

Modification of this MOA shall be in writing and upon approval of all Trustees currently parties to the MOA. It is acknowledged that additional agreements may be executed by the Trustees with regard to natural resource damage claims that arise and for planning the restoration, replacement, rehabilitation, and/or acquisition of equivalent natural resources that may be injured, destroyed or lost. Site and/or event-specific MOAs shall not be considered modifications to this MOA and will be the subject of the same procedural and substantive requirements contained herein.

XII. TERMINATION

This MOA shall be in effect from the date of execution until mutually agreed in writing by the Trustees and shall survive the closure or termination of any covered event under this MOA. At any time the Trustees determine that there is no purpose served by this MOA, the MOA will terminate upon such a finding. Any Trustee may withdraw from this MOA at any time for any reason. In the event any Trustee withdraws from the MOA, it must provide thirty days written notice before the withdrawal can become effective.

At the closure or termination of any covered event, upon the withdrawal of any Trustee, or at the termination of this MOA, each Trustee agrees to cooperate in preparing a full and complete accounting for and status report of all funds managed by the Trustees or their representatives pursuant to Section VIII of this MOA. Furthermore, obligations arising under Section IX of this MOA survive the closure or termination of any covered events under this MOA, the withdrawal

of any party to this MOA or the termination of this MOA.

XIII. LIMITATION

Nothing in this MOA shall be construed as obligating the United States, the State of Kansas or any other public agency, their officers, agents or employees, to expend any funds in excess of appropriations authorized by law.

XIV. THIRD PARTY CHALLENGES OR APPEALS

The rights and responsibilities contained in this MOA may not be the basis of any third party challenges or appeals. Nothing in this MOA creates any rights or causes of action in persons not parties to this agreement.

XV. EXECUTION: EFFECTIVE DATE

This MOA may be executed in counterparts. A copy with all original executed signature pages affixed shall constitute the original MOA. The date of execution shall be the date of the final Trustee's signature.

11/6/02

Clyde D. Graeber, Secretary Date
Kansas Department of Health and Environment

10/25/2002

Frank DeLuise, Program Manager Date
U.S. Department of the Interior
Natural Resource Damage Assessment and Restoration Program