Exhibit A

MEMORANDUM OF AGREEMENT
AMONG THE
PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL PROTECTION,
PENNSYLVANIA GAME COMMISSION,
PENNSYLVANIA FISH AND BOAT COMMISSION,
PENNSYLVANIA DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES,
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION,
AND
UNITED STATES DEPARTMENT OF THE INTERIOR

REGARDING NATURAL RESOURCE DAMAGE ASSESSMENT, RESTORATION, AND OTHER NATURAL RESOURCE TRUSTEE ACTIVITIES FOR THE PALMERTON ZINC PILE SUPERFUND SITE

I. INTRODUCTION and PURPOSE

This Memorandum of Agreement (Agreement) executed by the Pennsylvania Department of Environmental Protection (PADEP), the Pennsylvania Game Commission (PAGC), the Pennsylvania Fish and Boat Commission (PAFBC), the Pennsylvania Department of Conservation and Natural Resources, the National Oceanic and Atmospheric Administration of the United States Department of Commerce (NOAA), and the United States Department of the Interior (DOI) (collectively referred to as "Trustees"), is entered into to ensure the coordination and cooperation of the Trustees in addressing their respective natural resource damage and restoration concerns and responsibilities arising from the release of hazardous substances at and from the Palmerton Zinc Pile Superfund Site ("Site"). The Trustees agree that the scope of their coordination and cooperation may include, to the extent deemed appropriate by the Trustees, any and all hazardous substances (together with their sources) which are considered to impact or influence either Site related injuries to natural resources, or restoration options related to such injuries.

B. Activities of the Trustees covered under this Agreement include, but are not limited to: (1) the assessment of natural resource damages (hereinafter "NRDA") for injury to, destruction of, or loss of natural resources and natural resource services (hereinafter "injury" or "injured natural resources"); (2) restoration planning and implementation; and (3) coordination of any activities undertaken pursuant to this Agreement with response, remedial or corrective actions carried out by or under the direction of other federal and state agencies. This Agreement provides a framework for coordination and cooperation among the Trustees and for the implementation of the

activities of the Trustees in furtherance of their mutual goal of restoring injured natural resources.

II. AUTHORITY

The Trustees enter into this Agreement in accordance with the natural resource damage provisions under Section 107(f) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), as amended, 42 U.S.C. §9607(f), and other applicable federal and state law and authority (hereinafter "other applicable law") including, but not limited to, the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"), as amended, 40 C.F.R. Part 300, and, to the extent appropriate and elected for use by the Trustees, the Natural Resource Damage Assessment Regulations, as amended, at 43 C.F.R. Part 11. The Pennsylvania Fish and Boat Commission enters into this agreement under the further authority of Chapter 25 of the Fish and Boat Code of 1980, (30Pa.C.S. Ch 25). The Pennsylvania Game Commission enters into this agreement under the further authority of Sections 323 and 2161 of the Pennsylvania Game and Wildlife Code (34 Pa. C. S. Sections 323 and 2161). The Pennsylvania Department of Environmental Protection enters into this agreement under the further authority of Sections 301 of the Pennsylvania Hazardous Sites Cleanup Act, act of October 18, 1988, P.L. 756, no.108, 35 P.S. 6020.101 et seq. The Pennsylvania Department of Conservation and Natural Resources enters into this agreement under the further authority of the Conservation and Natural Resources Act, 71 P.S. Section 1340.101 et seq.

This Agreement is intended to cover natural resources as defined under Section 101(16) of CERCLA, as amended, 42 U.S.C. 9601(16), Section 2506 of the Pennsylvania Fish and Boat Code of 1980 (30 Pa. C.S. 2506), and Sections 101 and 103 of Title 34 of the Game and Wildlife Code of 1986 (34 Pa. C.S Sections 101 and 103.), 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 Palmerton, Pennsylvania.

III. PARTIES

. **Natural Resource Trustees**. The Parties to this Agreement have shared trusteeship over the natural resources at the Site pursuant to Subpart G of the NCP, 40 C.F.R §300.600, as amended, and other applicable law. The following officials or their designated representatives act on behalf of their respective Party for all activities under this Agreement:

The Secretary of the Pennsylvania Department of Environmental Protection, acting on behalf of the Governor of the Commonwealth of Pennsylvania

The Executive Director of the Pennsylvania Game Commission, acting on behalf of the Governor of the Commonwealth of Pennsylvania

The Executive Director of the Pennsylvania Fish and Boat Commission, acting pursuant to Pennsylvania law as subtrustee of the Governor of the Commonwealth of Pennsylvania

The Secretary of the Pennsylvania Department of Conservation and Natural Resources

The Director, Office of Response and Restoration, National Oceanic and Atmospheric Administration, acting on behalf of the Secretary of Commerce, and

The Regional Director, U.S. Fish and Wildlife Service Northeast Region, as Authorized Official, acting on behalf of the Secretary of the Department of the Interior, and representing interests of both the U.S. Fish and Wildlife Service and National Park Service.

. **Other Natural Resource Trustees**. Notwithstanding any other provision of this Agreement, any other natural resource trustee, who is not a Party to this Agreement and who has an interest with respect to any natural resource impacted or affected by the Site shall not be precluded from participating in the NRDA activities or any other natural resource trustee activities under this Agreement. Such other Trustees may include, but are not limited to, tribal governments, other federal agencies, or affected trustee agencies from other states, which may be added by addendum to this Agreement, as necessary and appropriate under applicable law.

. **Advisors**. As determined to be appropriate by the Trustees, or as required by applicable law, the Trustees will coordinate with, and seek the advisory participation of appropriate federal and state agencies and departments, and the public.

IV. NATURAL RESOURCE TRUSTEE COUNCIL

. **Composition**. The Trustees recognize the importance of coordinating their efforts in order to effectively and efficiently address their respective natural resource concerns and responsibilities under applicable law. Accordingly, the Trustees hereby agree to create the Palmerton Zinc Pile Superfund Site Natural Resource Trustee Council ("Trustee Council"). Each Party, as specified herein shall designate one primary voting representative to the Trustee Council and one alternate representative to act in the absence of the primary voting representative, but who shall have the right to attend all meetings and actively participate in meetings. In addition, the U.S. Department of Justice, the Pennsylvania Attorney General and in-house counsel for each of the

Trustees, may provide one delegate in a legal/consultative role, who shall not be a member of the Trustee Council, but who shall nonetheless be able to attend all meetings of, or organized by, the Trustee Council. Each Trustee may, by written notification to all other Trustees, change the designated delegate and/or alternate.

. **Communications.** To the extent not designated herein within ten (10) days of the execution of this Agreement each Trustee shall notify all of the Trustees of the name(s), address(es), phone number(s), E-Mail address(es), and facsimile number(s) of the Trustee's primary and alternate delegates and legal representatives to the Trustee Council who shall receive, and shall be responsible for all correspondence and communications on behalf of such Trustee.

. **Meetings**. Any Party may, upon reasonable notice, call a meeting of the Trustee Council to be conducted either in person or by telephone conference call.

. **Decisionmaking**. The members of the Trustee Council shall have equal authority, and all decisions under this Agreement shall be by unanimous agreement of all Trustee Council voting representatives.

. **Dispute Resolution**. In the event of a dispute involving any decisions under this Agreement, the Trustee Council shall initially attempt to resolve the dispute through good faith discussions directed toward obtaining consensus among the Trustees involved in the dispute and consensus by the Trustee Council as a whole. If unanimous consent still cannot be reached after good faith discussions, the matter shall be elevated to the next management level within each Trustee's agency for decision or further instructions. If necessary, the Trustees may establish other mechanisms by which disputes may be resolved. The Trustees agree that decisionmaking deliberations will focus upon the Trustees' mutual goals of restoration of injured natural resources, rather than upon independent control or trusteeship over the affected natural resources.

. **Duties, Objectives, and Authorities**. In accordance with applicable law, the Trustees hereby authorize the Trustee Council to carry out the following duties:

. To undertake appropriate NRDA and restoration activities.

. To carry out studies, prepare reports, and collect information that the Trustee Council determines are necessary and relevant to the NRDA;

. To share information with and consult with each other as is determined to be appropriate and consistent with this Agreement;

. To coordinate activities undertaken pursuant to this Agreement with response, remedial or corrective actions carried out by other federal and state agencies, as appropriate;

- To develop, consider and evaluate plans for the restoration of injured natural resources and to arrange for, oversee or undertake restoration;

- To participate in removal, remedial, corrective or other actions under the authority of EPA or other federal or state agencies in accordance with applicable law;

- To support the Trustees' efforts to have restoration undertaken by, and/or recover damages for injuries to natural resources from potentially responsible parties ("PRPs");

- To authorize individual Trustees to contract as deemed necessary to achieve these objectives;

- To coordinate and/or carry out such other actions as may be necessary and appropriate to achieve the purposes and objectives of this Agreement and to address the natural resource damage concerns and responsibilities of the Trustees.

- To encourage public participation and involvement in a manner consistent with applicable law and regulation.

V. PRP FUNDING

. If PRP funding of NRDA or restoration activities becomes available, the Trustee Council may enter into an agreement with the PRP(s) to determine the terms of monetary disbursement and PRP participation in Trustee Council activities. Each Trustee agrees to cooperate through the Trustee Council in the development of any Trustee /PRP Cooperative Assessment Agreements, and agrees that the Trustee Council shall have decision authority over the expenditure of any funding source or sources that may become available to the Trustees from PRPs.

VI. COORDINATION & NOTIFICATION

The Trustees recognize and agree that their interests in the development and recovery of claims for natural resource damages associated with the Site are related and have agreed to coordinate development, negotiation and, if necessary, litigation of their claims and damages that arise out of the Site. Towards that end, the Trustees agree to notify and consult with each other concerning activities, events, or decisions that may affect the NRDA process or the recovery of natural resource damages for injuries to natural resources at or from the Site. The Trustees intend by this Agreement to communicate with each other on, among other things, the following:

- Plans or proposals for NRDA or for restoration;

- Response, removal or remedial actions that any Trustee is involved with in regard to the Site;

- Developments in litigation with the PRPs;

- Any communications any Party may have, or anticipates having, with any PRP concerning the settlement or other resolution of any Party's claim for natural resource damages at or related to the Site.

. The Trustees shall provide information to each other concerning such matters as promptly as practicable, but not later than within 10 days, with the goal of enabling the other Trustees to comment on any issues they deem significant. The Trustees further agree to provide copies of any agreements or other documents reflecting settlement or other disposition of claims, including quasi-public claims, involving or related to natural resource injuries arising from or related to the Site, provided such documents are not privileged. If a Trustee is found to have failed to provide any of the above for any reason, that Trustee shall no longer be a Trustee to this Agreement unless all remaining Trustees request in writing within ten days (10) that such Trustee remain a party to this agreement.

VII. USE OF NATURAL RESOURCE DAMAGES RECOVERIES

. State and Federal Trusteeships. The Trustees recognize that each of them has trusteeship under CERCLA over natural resources associated with the Site and that the scopes of some of their respective trusteeships overlap.

. The Trustees agree that any natural resource damage recoveries, with the exception of recoveries to reimburse past damage assessment costs or fund future administrative costs for trustee activities, obtained or received by the Trustees, individually or collectively, and any interest earned thereon, shall be jointly used to restore, replace, rehabilitate, and/or acquire the equivalent of the natural resources which have been injured, destroyed or lost as a result of the release of hazardous substances from the Site.

. To the extent permitted by applicable law, the Trustees agree that all natural resource damages recoveries received by the Trustees, either as a result of judgment or settlement of natural resource damage claims brought against responsible parties for the Palmerton Site, shall be deposited in an interest bearing account to be disbursed only for the purposes described in this Agreement. The Trustee Council shall establish standards and procedures governing the joint use of all natural resource damages received by the Trustees.

. The trustees agree that expenditures from the account should be managed in such a way as to maximize expenditures for restoration activities and control expenditures for post-settlement planning and administrative costs.

VIII. CONFIDENTIALITY

. As a result of the release of hazardous substances at and from the Site, the Trustees have potential claims for damages and anticipate possible litigation with the PRP(s). In furtherance of their common interests, the Trustees to this Agreement have been meeting and will continue to meet to discuss matters of common interest, including the possibility of litigation by the Trustees against the PRPs.

. The Trustees recognize that; in order to effectively and efficiently negotiate and litigate their claims, their counsel, employees and consultants may, at each Party's discretion, exchange documents and information including draft reports, analyses, opinions, conclusions, and advice prepared in anticipation of litigation, and/or subject to attorney-client privilege or other forms of privilege. The Trustees therefore hereby agree as follows:

. Except as provided by law or otherwise provided herein, the Trustees shall treat all designated privileged documents generated, and designated privileged communications, by, between or among the Trustees as privileged attorney-client communications, attorney work product or protected by other applicable privileges (or as a combination thereof), and shall protect such documents and communications from disclosure to the maximum extent possible under applicable Federal and State law. A "designated privileged document" is one identified on its cover page or elsewhere as subject to one or more privileges or forms of immunity. A "designated privileged communication" is one which occurs with an expectation of confidentiality and includes, but is not limited to, communications between the Governments' attorneys or their staff, agents, and/or experts in anticipation of litigation, in the seeking or giving of legal advice, and/or in the context of pre-decisional government deliberations.

. The transmittal of a privileged document to, or a privileged communication between or among any of the Trustees (and their counsel, representatives, contractors and consultants) does not waive, or imply any waiver, of any privilege or right which the transmitting government may assert with respect to that document or communication.

A. Unless otherwise specifically provided, the Trustees shall each be entitled to assert any applicable privilege with respect to any document or communication jointly transmitted, prepared, or funded by the Trustees. Each

Party shall be entitled to assert an applicable privilege with respect to any document or communication transmitted, prepared, or funded solely by that Party.

B. If a subpoena, discovery request, or other request in any form, for a privileged document or information is received by any Party, a copy of the subpoena or request will be immediately forwarded to counsel for the Party or Trustees to which the privilege applies and to the government representative(s) who originally generated the document or communication requested. The Party who receives such a request shall also provide a draft of the Party's intended response to such request not less than ten (10) days prior to the date that the Party intends to issue its response. To the extent that applicable law may require a response more promptly than is consistent with the above temporal requirement, the Trustees agree to act in good faith to meet any such requirements.

. Only by specific written agreement among the Trustees or pursuant to Court Order shall disclosure of a privileged document or communication be made public or disclosed to a party-opponent or non-party. Such agreement shall not be construed as a waiver of privilege or confidentiality regarding any other documents or communications. However, nothing herein in any way affects or limits the authority of any Party to waive any privilege and release any documents, information, analysis, opinion, conclusion, or advice that are subject to privileges held exclusively by that Party.

. Designated privileged documents shall be maintained in such a manner as to insure that no intentional or unintentional disclosure is made which would compromise any asserted privilege.

. At the request and option of any Party, designated privileged documents shall be returned to the originating Party or destroyed, unless such destruction is prohibited by applicable state or federal law.

. The Trustees agree that, to the extent consistent with the effective and efficient negotiation and litigation of their claims, public dissemination of final data and studies related to injuries arising from the Site is in the best interests of the public and the Trustees. Such final data and studies shall be made available to the public upon request to the extent consistent with the foregoing confidentiality provisions. In addition, the Trustees shall open and maintain a publicly available administrative record to the extent required by, and consistent with the requirements of, the Federal Natural Resource Damage Regulations that the Trustees select for use in connection with the Site.

IX. GENERAL PROVISIONS

Reservation of Rights and Authority

. Nothing in this Agreement is intended or shall be construed to be an admission by the Trustees in any dispute or action between the Trustees or between the Trustees and a third party. Nothing in this Agreement is intended or shall be construed as a waiver by the Trustees of any claims or defenses in any legal action, or of any other rights or remedies.

. Neither execution of this Agreement nor performance of any activities pursuant to this Agreement shall constitute an admission by any Party named herein (or any government) of (nor be construed as precedent for) any legal responsibility under federal, state or other applicable law, to protect, restore, or enhance any natural resources associated with the Site over which any other Party or non-party asserts trusteeship, standing or jurisdiction. Furthermore, neither execution of this Agreement nor performance of any activities pursuant to this Agreement shall constitute an admission by any Party named herein (or any government) of (nor be construed as precedent for) any liability for damage or injury (which may be shown to have occurred by the NRDA activities performed under this Agreement) to any natural resources associated with the Site over which any other Party or non-party asserts trusteeship, standing or jurisdiction.

. Nothing in this Agreement is meant to imply, or operate in a manner, that any natural resource trustee with an interest in the Site, whether a Party to this Agreement or not, is in any way abrogating or ceding any natural resource trustee responsibility or authority over natural resources of the Site.

. Nothing in this Agreement shall be construed as a waiver of, or foreclosing the exercise of, any rights, powers, remedies or privileges of the individual Trustees now or hereafter existing at law or in equity, by statute or otherwise.

. **Limitation of Authority**. No party is authorized to enter into any settlement on behalf of any other party. No Trustee is authorized to represent another Trustee in any litigation that may be commenced by another Trustee. Nothing in this Agreement shall be construed as obligating any of the Trustees to expend any funds in excess of appropriations or other amounts authorized by law.

. **Third Parties**. This Memorandum of Agreement is not intended to, nor shall it, vest rights in persons who do not represent the Trustees to this Agreement or who are not Parties to this Agreement.

. **Effective Date/ Amendment and Termination**. This Agreement shall be

effective when executed by all of the Trustees and may not be amended except by written agreement of all the Trustees. This Agreement can be executed in one or more counterparts, each of which will be considered an original document. This Agreement shall continue in effect until the Trustees determine that the restoration plan or plans implemented under this agreement have been completed, unless terminated before that time or extended beyond that time by written agreement of all the Trustees. However, any Party may terminate its participation in the Agreement upon giving thirty (30) days written notice to all other Trustees or as otherwise provided for herein. The withdrawal of any Trustee from this Agreement for whatever reason, shall not affect the subsequent validity of this Agreement among the remaining Trustees A party that has withdrawn from this agreement shall have no further obligations under this agreement except for the obligations to continue to coordinate activities to the greatest extent practicable, and to expend unobligated funds recovered for natural resource damages solely to restore injured natural resources related to the Site under their trusteeship, as mandated by Section 107(f) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), as amended, 42 U.S.C. §9607(f).

IN WITNESS WHEREOF the Trustees have executed this Agreement on the dates attested to below.

The United States Department of the Interior

By: James H. Lingin ACTING

Name: Richard Bennett

Title: Acting Regional Director, U.S. Fish and Wildlife Service

Date: OCT - 7 2008

COMMONWEALTH OF PENNSYLVANIA
Acting by and Through

Pennsylvania Game Commission

By: Vernon R. Ross

Vernon Ross
Executive Director

9/29/03
Date

Approved as to legality and form

William R. Porosa
Authorized Agency Attorney - PGC

COMMONWEALTH OF PENNSYLVANIA
Acting by and Through

Pennsylvania Fish and Boat Commission

By: _____ 9/29/03
Dennis T. Guise
Deputy Executive Director

Date

Approved as to legality and form

Laurie E Shepler 9/29/03
Authorized Agency Attorney - PFBC

COMMONWEALTH OF PENNSYLVANIA
Acting by and Through

Pennsylvania Department of Conservation and Natural Resources

By: _____ 10.01.03
Michael DiBerardinis
Secretary

Date

Approved as to legality and form

_____
Authorized Agency Attorney - DCNR

COMMONWEALTH OF PENNSYLVANIA
Acting by and Through

Pennsylvania Department of Environmental Protection

By: _____
Kathleen McGinty
Secretary

10/22/03
Date

Approved as to legality and form

_____
Authorized Agency Attorney - DEP

The United States Department of Commerce

By: _____

Name: David Kennedy

Title: Director, Office of Response and Restoration
National Oceanic and Atmospheric Administration

Date: October 20, 2003

Approved as to Legality and Form
Commonwealth of Pennsylvania

Approval- Office of General Counsel — Date 11/12/03

Approval- (Deputy) Attorney General — Date 11/13/03