

PUBLIC NOTICE

**UNITED STATES FISH AND WILDLIFE SERVICE;
STATE OF MICHIGAN, ATTORNEY GENERAL; STATE OF MICHIGAN,
DEPARTMENT OF ENVIRONMENTAL QUALITY; AND STATE OF
MICHIGAN, DEPARTMENT OF NATURAL RESOURCES**

NOTICE OF INTENT TO CONDUCT RESTORATION PLANNING

Pursuant to the Oil Pollution Act of 1990 (OPA) and 15 C.F.R. § 990.44

Summary

Under the Oil Pollution Act of 1990 (OPA), and in accordance with the provisions of appertaining regulations at 15 CFR §§ 990.42 and 990.44, the Rouge River Mystery Spill Trustee Council is proceeding with a Natural Resource Damage Assessment (NRDA), which shall include injury assessment and restoration planning, for the April 2002 mystery spills and subsequent oil removal and cleanup operations, collectively referred to in this Notice of Intent to Conduct Restoration Planning (Notice) as the "Incident." The purpose of OPA is to make the environment and public whole for injuries to natural resources and services resulting from an incident involving a discharge of oil. The NRDA will identify and quantify the nature and extent (both temporal and spatial) of injuries to natural resources and resource services arising out of the Incident, and to develop plans for the restoration, replacement or rehabilitation of those injured resources, or for the acquisition of equivalent resources or resource services. The assessment will be conducted pursuant to the regulations for NRDA, as promulgated at 15 CFR Part 990, and in accordance with the Assessment Procedures and overall approach specified in the November 2, 2005 "2002 Rouge River Mystery Spill Assessment Claim" (Claim) and approved by the Trustee Council. The NRDA will address natural resources and resource services in the state of Michigan and the Rouge and Detroit Rivers for which injuries attributable to the 2002 Rouge River Mystery Spill Incident have been or can be determined.

2002 Rouge River Mystery Spill – April 2002

Following a heavy rain event, a mixture of (approximately 30%) diesel fuel and (approximately 70%) lube waste oil was observed the morning of April 9, 2002, in the Rouge River, south of Detroit, Michigan. The Rouge River is a tributary of the Detroit River, which flows from Lake Saint Clair southward to Lake Erie. This oil swept down the Rouge River into the Detroit River and into Lake Erie. United States and Canadian shorelines were impacted by this first release. In the late evening of April 12, 2002, or the early morning of April 13, another oil spill occurred after a heavy rainfall. It appeared the oil came from one of the combined sewer outfalls on the Rouge River (Baby Creek Outfall). This release was trapped in the Rouge River due to booming at the mouth, preventing further releases of oil into the Detroit River. No responsible party has been identified for either spill. .

Many natural resources were exposed to oil from this Incident and experienced injuries. For example, the observed number of birds protected by the Migratory Bird Treaty Act on the United States side of the spill impact area that were either dead, rehabilitated or observed oiled was 58. Other wildlife directly observed to be impacted on the United States side included one dead and two rehabilitated turtles. Additional (non-observed) impacts to other birds and resources likely occurred; and loss of public use due to closures or curtailment of use of parks, waterfronts, boating and fishing also occurred.

Pursuant to section 1006(b) of OPA (33 U.S.C. . § 2706(b)), the following have been designated trustees (“Trustees”) for natural resources that were impacted by this Incident: The United States Department of the Interior, represented by U.S. Fish and Wildlife Service (USFWS, website: <http://www.fws.gov>) and the State of Michigan represented by the Department of Attorney General (MDAG, website: <http://www.michigan.gov/ag>), the Michigan Department of Environmental Quality (MDEQ, website: <http://www.michigan.gov/deq>), and the Michigan Department of Natural Resources (MDNR, website: <http://www.michigan.gov/dnr>). These Trustees are responsible for assessing the damages to natural resources under their trusteeship that have resulted from the Incident, developing a plan for the restoration of the injured resources, and pursuing funding from responsible parties, if known, for implementation of that plan, or implementation of the restoration plan by the responsible parties themselves. If no responsible party is found by the time the restoration plan is complete, the Trustees may request funding for restoration plan implementation from the Oil Spill Liability Trust Fund (OSLTF) administered by the United States Coast Guard National Pollution Funds Center (NPFC). On behalf of their respective governments, USFWS, MDAG, MDEQ, and MDNR have formed the Rouge River Mystery Spill Trustee Council (“Trustee Council”) to carry out these duties. The United States Fish and Wildlife Service is the Lead Administrative Trustee (LAT) for this Incident. The LAT was selected by the Trustees to coordinate the NRDA.

The Trustee Council conferred with state and federal investigators following the 2002 Rouge River Mystery Spill and determined that no Responsible Party (RP) had been identified for this Incident by 2005. Accordingly, as provided by OPA, the Trustee Council subsequently submitted the Claim, which incorporated the Assessment Procedures and approach approved by the Trustee Council, to the NPFC for payment from the OSLTF. The NPFC approved and funded the Claim, including the incorporated Assessment Procedures and approach, in accordance with its established claim review process. Additional information on the NPFC, OSLTF, and the oil spill claim process can be obtained from the NPFC website, on the Internet at <http://www.uscg.mil/hq/npfc/>. No RP has been identified at the time of this Notice, so the Trustee Council is proceeding with restoration planning using funding from the OSLTF.

Trustees’ Determinations

(a) Determination of Jurisdiction.

The Trustees have determined, pursuant to 15 C.F.R. § 990.41, that they have jurisdiction to pursue restoration under OPA for the 2002 Rouge River Mystery Spill. Specifically:

- (1) The discharges of oil products into a navigable waterway (Rouge River, Detroit River, and Lake Erie) constitutes an incident under OPA, as defined at 15 C.F.R. § 990.30.
- (2) This Incident was not permitted under federal, state, or local law.
- (3) The discharges were not from a public vessel.
- (4) The discharges were not from an onshore facility subject to the Trans-Alaska Pipeline Authority Act, 43 U.S.C. §§ 1651, *et seq.*
- (5) Natural resources under the trusteeship of the Trustees may have been injured as a result of the Incident.

(b) Determination to Conduct Restoration Planning

The Trustees have determined, pursuant to 15 C.F.R. § 990.42(a), that the necessary conditions prerequisite to restoration planning have been met. Specifically:

- (1) Injuries to natural resources, as defined at 15 C.F.R. § 990.30, have resulted or are likely to have resulted from the Incident.
- (2) Response actions have not adequately addressed the injuries resulting from the Incident.
- (3) Feasible primary and/or compensatory restoration actions exist to address the potential injuries.

Potential Resource Injuries and Potential Restoration Actions

As detailed in the “2002 Rouge River Mystery Spill Assessment Claim,” natural resource injuries arising out of the Incident may include, but are not limited to:

- (a) Oiling of, and associated impacts to, Detroit River shoreline, including coastal marshes;
- (b) Oiling of, and associated impacts to, Rouge River shoreline, including coastal marshes;
- (c) Oiling of, and associated impacts to, Lake Erie shoreline;
- (d) Oiling of, and associated impacts to, wildlife habitat;
- (e) Wildlife mortalities, including birds and turtles;
- (f) Fish mortalities;
- (g) Loss of public recreational use of beaches and other recreational resources including river (Detroit River and Rouge River) closures; fishing closures; and reduced or lost use of Lake Erie Metropark (LEMP) and Detroit River International Wildlife Refuge.

The type and scale of potential restoration actions that are necessary and appropriate to address natural resource injuries attributable to the 2002 Rouge River Mystery Spill Incident shall be determined as part of the injury assessment and restoration planning that are the subjects of this Notice. Such actions might include, but are not limited to, replacement/restoration of, or increased protections for, habitats and/or biological resources of the types injured by the Incident; and development or enhancement of public recreational facilities or opportunities, to compensate for lost or diminished public use of,

or access to, those public use resources affected by the Incident. As required under OPA and the National Environmental Policy Act (NEPA), and pursuant to 15 C.F.R. § 990.55, the planning of any restoration actions as part of the NRDA will be subject to public review and comment prior to finalization of the Restoration Plan.

A full discussion and description of the potential assessment procedures to evaluate the injuries and define the appropriate type and scale of restoration for the injured natural resources and services may be found in the Trustee's assessment claim document entitled, "2002 Rouge River Mystery Spill Assessment Claim" (November 2005). In summary, injuries resulting directly or indirectly from the Incident shall be determined and quantified through spill history file review, the use of oil spill fate and effects computer modeling, literature review, site visits and interviews with witnesses. Restoration planning shall occur through surveys of available and appropriate projects to compensate for interim losses, or accelerate recovery, where feasible. Restoration projects likely shall be sized (scaled) using a service-to-service scaling approach for lost biological resources and a value-to-cost/benefits transfer approach for restoration projects addressing losses of public use.

Administrative Record

The Trustees have opened an Administrative Record ("Record") in compliance with 15 CFR § 990.45. As restoration planning for the Incident proceeds, the Record will be periodically updated to include documents relied upon by the Trustees in making decisions pertaining to the injury assessment and restoration planning that are the subjects of this Notice. The Record is on file at the U.S. Fish and Wildlife Service's office in Grosse Ile, MI. For access, please contact Dr. Stephanie Millsap at U.S. Fish and Wildlife Service, U.S. EPA Large Lakes Research Station, 9311 Groh Rd., Grosse Ile, MI 48138; telephone (734)692-7628; e-mail stephanie_millsap@fws.gov. The Record is also available on the Internet at: http://www.marineincidents.com/rouge_river.html

Opportunity to Comment

Pursuant to 15 CFR §§ 990.14(d) and 990.55, the Trustees will seek public involvement in restoration planning for the Incident through public review of, and comment on, the 1) this Notice of Intent, and 2) the Draft Damage Assessment and Restoration Plan (DARP) once it is completed. When the Draft DARP is prepared, the public will be notified of its availability and the opportunity to comment. Prior to completion of the Draft DARP, the public is invited to submit any information or comments that may inform the injury assessment and restoration planning process, including comments on interim reports that may be posted on the Internet as part of the Administrative Record, to Dr. Stephanie Millsap at the address listed below.

Questions regarding this Notice may be directed to:
Dr. Stephanie Millsap
U.S. Fish and Wildlife Service
U.S. EPA Large Lakes Research Station

9311 Groh Rd.
Grosse Ile, MI 48138

She may be reached by telephone at (734)692-7628 or by email at
stephanie_millsap@fws.gov.

Dated: September 11, 2008.