



## United States Department of the Interior

FISH AND WILDLIFE SERVICE  
5600 American Blvd. West, Suite 990  
Bloomington, MN 55437-1458



APR 29 2020

Mr. William R. Grawe, Director  
National Pollution Funds Center  
U.S. Coast Guard Stop 7605  
2703 Martin Luther King Jr. Ave. SE  
Washington, DC 20593-7605

Re: Big Creek Marathon Spill- Interim Partial Claim for Assessment Costs

Dear Mr. Grawe,

In accordance with Oil Pollution Act (OPA), 33 U.S.C. §§ 2701 *et seq.*, and on behalf of the Trustees, the United States Department of the Interior (DOI) through the U.S. Fish and Wildlife Service (USFWS), is submitting this Interim, Partial Claim for Assessment Costs (Claim). This Claim seeks costs related to the assessment of natural resources and natural resource services injured by the March 20, 2018, discharge of diesel fuel from Marathon pipeline in near Solitude, Indiana (the Incident). The Trustees include the State of Indiana's Department of Environmental Management (IDEM) and the USFWS.

Pursuant to OPA, natural resource Trustees are authorized to assess natural resource damages, develop restoration plans and undertake action to address the injuries caused by an oil spill. At this time, the Trustees are requesting adjudication of our Claim in the amount of \$216,440 for contractor costs to implement an assessment of diesel fuel toxicity to all forms of aquatic life as described in the attached Assessment Plan. The Trustees reserve the right to submit additional claims for amounts related to costs incurred, as needed and in accordance with the regulatory process as described in the OPA regulations.

This Claim was presented to Marathon on August 7, 2019. On September 27, 2019, Marathon responded by indicating they would like to explore the option of foregoing a formal assessment and expediting restoration planning to facilitate an early settlement with the Trustees. On November 15, 2019, the Trustees and Marathon had a call to discuss a path forward. As evidenced in supporting documentation provided as part of the Administrative Record (link below), from late 2019 to March 2020, the Trustees discussed opportunities to resolve the entire claim with Marathon's technical staff and legal counsel, including a claim for restoration of natural resources injuries caused by the Incident. Ultimately, these discussions were unsuccessful. The Trustees and Marathon have not reached agreement on the assessment or restoration of injured natural resources. Accordingly, as of the date of this letter, the original assessment claim remains and is not settled. The Trustees believe further delay will impede implementation of the assessment. As such, this Claim to the National Pollution Funds Center (NPFC) is necessary.

The toxicological assessment described in the Assessment Plan, provides for the use of hydrologically modeling to estimate actual toxic effects that occurred following the Incident relative to what would have occurred under baseline conditions. The data collection and toxicity analysis is necessary to determine adequate compensation and restoration for the loss and injury to natural resources that occurred as a result of the Incident. Actual published literature for toxic effects from these types of spills has not been determined to the degree necessary to fully document injuries to aquatic natural resources.

To assist you with your review of this Claim, the table below details DOI's compliance with the OPA (33 U.S.C. §§ 2701 *et seq.*; 15 CFR Part 990) (Table 1). This table references where specific OPA determinations can be found in the Administrative Record at:

<https://www.fws.gov/midwest/es/ec/nrda/BigCreekIndiana/Index.html#AdminRecord>

Table 1: Determinations under 15 CFR Part 990

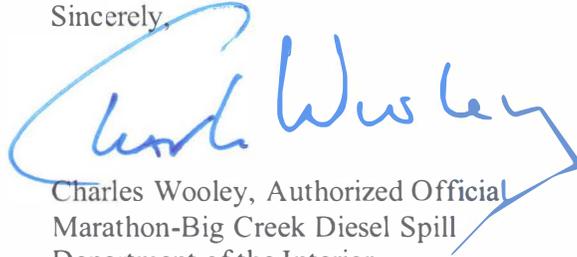
<b>Determination under OPA regulations, 15CFR Part 990</b>	<b>Reference in the Administrative Record</b>
Jurisdiction to pursue restoration under OPA was determined (§990.41)	AR III.A.1
Conditions for collection of data during preassessment phase were appropriate (§990.43)	AR III.B
Conditions for proceeding with assessment beyond the preassessment phase were determined (§990.42)	AR III.C
Finding and conditions for conducting emergency restoration were determined (§990.26)	Not applicable – no emergency restoration is being conducted
Notice of Intent to Conduct Restoration Planning was produced (990.44)	AR III.C
Administrative Record of the assessment was established (§990.14(a))	AR III.C available online at <a href="https://www.fws.gov/midwest/es/ec/nrda/BigCreekIndiana/Index.html#AdminRecord">https://www.fws.gov/midwest/es/ec/nrda/BigCreekIndiana/Index.html#AdminRecord</a>
Lead Administrative Trustee was designated for jointly conducted assessment (§990.14(a))	Trustee MOU is at AR II.A.1
Coordination efforts with co-Trustees, response agencies, and public are documented (§990.14)	AR II.A&B
/Responsible party was invited to participate in the assessment (§990.14(c))	AR II.C.1, 2, 3, & 4
For spills occurring between August 1990 and January 1996, election to complete pre-rule assessments under either CERCLA or OPA rule was made (§990.20)	Not applicable – spill occurred in 2018

Injury was determined, along with exposure and pathway where required (§990.51)	Unknown at this time – activities in this Claim are to determine injury
Appropriate injuries were selected to include in assessment and restoration planning (§990.51(f))	AR IV. A. 1. See Assessment Plan
Injuries resulted from the incident (§990.51(a))	Unknown at this time – activities in this Claim are to determine injury
Injuries were quantified (§990.52(a))	Unknown at this time – activities in this Claim are to determine injury
Analysis of natural recovery was conducted (§990.52(c))	Not applicable – this is not a restoration claim
Range of feasible restoration alternatives was identified, including: (b) primary restoration, includes natural recovery alternative; (c) compensatory restoration alternatives considerations; (d) explanation of scaling of restoration alternatives (990.53); use of regional restoration or other existing project plan as one of the alternatives considered (§990.56)	Not applicable – this is not a restoration claim
Restoration alternatives were evaluated and preferred alternative(s) was selected (§990.54)	Not applicable – this is not a restoration claim
Draft Restoration Plan and Final Restoration Plan were developed (990.55)	Not applicable – this is not a restoration claim
Assessment methodologies met required standards (§990.27)	AR IV. A. 1. See Assessment Plan
Assessment costs are reasonable (§990.30)	AR IV. A. 1. See Assessment Plan
Demand was presented to responsible party and responsible party's response is documented (§990.62)	AR II.C3, 4, 5

No action has been commenced in court against Marathon. The Trustees certify the following: the accuracy and integrity of this Claim; that any actions taken or proposed were or will be conducted in accordance with OPA and consistent with all applicable laws and regulations; that to the best of the Trustee's knowledge and belief, no other trustee has the right to present a claim for the same natural resources damages; and that payment of any sub-part of the Claim presented would not constitute a double recovery for the same natural resources damages.

If you have any questions regarding this Claim, please contact Dan Sparks at 812-334-4261, ext. 219.

Sincerely,

A handwritten signature in blue ink that reads "Charles Wooley". The signature is stylized and written in a cursive-like font. It is positioned above the typed name and title.

Charles Wooley, Authorized Official  
Marathon-Big Creek Diesel Spill  
Department of the Interior

Enclosures

CC: Freddy Hernandez, Division Chief, NRD Claims Division,  
NPFC Richard Nance, Claims Manager, NRD Claims Division,  
NPFC Sarah Shattuck, Attorney-Advisor, Office of the Solicitor  
Dan Sparks, Senior Fish and Wildlife Biologist, FWS  
Nancy King, General Counsel, IDEM