

**Notice of Intent to Conduct Restoration Planning (pursuant to 15 C.F.R. Section 99.44) – DISCHARGE OF OIL FROM MARATHON PIPE LINE LLC PIPELINE INTO BIG CREEK, SOLITUDE, INDIANA, MARCH 20, 2018**

**SUMMARY:** On March 20, 2018, approximately 1,400 barrels of low sulfur diesel fuel was discharged from a Marathon Pipe Line LLC pipeline into Big Creek, near Solitude, Posey County, Indiana (the “Incident”). Approximately 58,800 gallons of diesel fuel is estimated to have been released from the Incident resulting in injuries and threats to the natural resources within the jurisdiction of the United States and the State of Indiana.

Pursuant to section 1006 of the Oil Pollution Act (“OPA”), 33 U.S.C. §§ 2701 *et seq.*, designated Federal and State Trustees for natural resources are authorized to (1) assess natural resource injuries resulting from a discharge of oil or the substantial threat of a discharge and response activities, and (2) develop and implement a plan for restoration of such injured resources. The Federal Trustee is designated pursuant 33 U.S.C. § 2706(b), and the State Trustee is designated pursuant to Governor of Indiana in accordance with 33 U.S.C. § 2706(b). The following agencies are designated natural resources trustees under OPA and are currently acting as trustees for this Incident: the United States Department of the Interior (“DOI”), acting through the U.S. Fish and Wildlife Service (“FWS”); the Indiana Department of Environmental Management (“IDEM”); and the Indiana Department of Natural Resources (“IDNR”) (hereafter collectively referred to as “the Natural Resource Trustees” or “the Trustees”).

The Responsible Party (“RP”) identified for this Incident thus far is Marathon Pipe Line LLC (“Marathon”). Pursuant to 15 C.F.R. 990.14(c), concurrent with the publication of this Notice, the Trustees are inviting the RP identified above to participate in a Natural Resource Damage Assessment (“NRDA”). The Trustees have coordinated with Marathon representatives on activities undertaken to date as part of the NRDA process.

The Trustees began the Preassessment Phase of the NRDA in accordance with 15 C.F.R. § 990.40, to determine if they had jurisdiction to pursue restoration under OPA, and, if so, whether it was appropriate to do so. During the Preassessment Phase, the Trustees collected and analyzed and are continuing to collect and analyze the following: (1) data reasonably expected to be necessary to make a determination of jurisdiction or a determination to conduct restoration planning, (2) ephemeral data, and (3) information needed to design or implement anticipated assessment procedures as part of the Restoration Planning Phase. Attached to this NOI is a report documenting the Trustees’ preassessment activities, *Natural Resource Damage Assessment Preassessment Report for the No. 2 Diesel Fuel Spill on Big Creek near Solitude, Posey County, Indiana, March 20, 2018* (May 10, 2019).

Under the NRDA regulations applicable to OPA, 15 C.F.R. Part 990 (“NRDA regulations”), the Trustees prepare and issue a Notice of Intent to Conduct Restoration Planning (“Notice”) if they determine conditions that confirm the jurisdiction of the Trustees and the appropriateness of pursuing restoration of natural resources have been met.

Pursuant to 15 C.F.R. § 990.44, this Notice announces that the Trustees have determined to proceed with restoration planning to fully evaluate, assess, quantify and develop plans for restoring, replacing or acquiring the equivalent of natural resources injured and losses resulting from the Marathon Big Creek Pipeline Spill Incident. The restoration planning process will include collection of information that the Trustees determine is appropriate for identifying and quantifying the injuries and losses of natural resources, including resource services, and to determine the need for, and type and scale of restoration actions.

## **SUPPLEMENTARY INFORMATION**

### **Determination of Jurisdiction**

Pursuant to 15 C.F.R. § 990.41, the Trustees have made the following findings:

1. A failure in a pipeline operated by Marathon on March 20, 2018, resulted in the discharge of oil into and upon navigable waters of the United States, as well as adjoining shorelines, all of which constitute an "Incident" within the meaning of 15 C.F.R. § 990.30.
2. The Incident was not permitted pursuant to federal, state, or local law; was not from a public vessel; was not from an onshore facility subject to the Trans-Alaska Pipeline Authority Act, 43 U.S.C. 1651 *et seq.*
3. Natural resources under the trusteeship of the Trustees have been injured or may have been injured as a result of discharged oil. The discharged oil is harmful to natural resources exposed to the oil, including freshwater wetland habitats, wildlife, and human uses in the area. Current natural resources and resource services that have been impacted or potentially impacted due to the discharged oil include but are not limited to the following as of the date of this Notice:
  - The federally endangered fat pocketbook pearly mussel (*Potamilus capax*)
  - The federally endangered Indiana bat (*Myotis sodalis*)
  - The federally threatened northern long-eared bat (*Myotis septentrionalis*)
  - Migratory birds
  - Various other biota, including benthic communities and fish

Accordingly, the Trustees have determined they have jurisdiction to pursue restoration under the OPA.

### **Determination to Conduct Restoration Planning**

Pursuant to 15 C.F.R. § 990.42(a), the Trustees have determined that:

1. Data collected and analyzed pursuant to 15 C.F.R. Section 990.43 demonstrate that injuries to natural resources have resulted or are likely to have resulted from the Incident;

however, the nature and extent of injuries has not been fully determined at this time. The Trustees have identified several categories of impacted and potentially impacted resources, including, shellfish, migratory birds and wildlife, as well as their riparian habitats. The Trustees have been conducting and continue to conduct activities to evaluate injuries and potential injuries within these categories. More information on these resource categories will be available in the Administrative Record ("AR", as defined below), including assessment work plans developed jointly by the Trustees and Marathon and information gathered during the Preassessment. The full nature and extent of injuries will be determined during the injury assessment phase of restoration planning.

2. Response actions employed for this spill include: deploying booms to contain and facilitate the collection of the spilled diesel using vacuum-trucks, debris removal from booms, instream and riverbank work to repair and replace the damaged pipeline. These response actions have not addressed and are not expected to address all injuries resulting from the discharges of oil. Although response actions were initiated and conducted appropriately, the nature of discharge and the sensitivity of the environment precluded prevention of injuries to some natural resources. While injured natural resources may eventually naturally recover to the condition they would have been in had the discharges not occurred, interim losses have occurred, or are likely to occur in the future, and these will continue until baseline conditions are achieved. In addition, there have been and will continue to be losses of and diminution of human uses of the resources resulting from the impacts to the natural resources and from the response actions themselves.

3. Feasible restoration actions exist to address the natural resource injuries and losses, including lost human uses, resulting from the discharge of oil. Assessment procedures are available to scale the appropriate amount of restoration required to offset these ecological and human use service losses. During the restoration planning phase, the Trustees will evaluate potential projects, determine the scale of restoration actions needed to make the environment and the public whole, and release a draft Restoration Plan for public review and comment.

Based on the above findings, the Trustees hereby determine that they intend to proceed with restoration planning for the Incident.

### **Administrative Record**

The United States Department of the Interior, acting on behalf of the Trustees, is in the process of establishing and opening an Administrative Record ("AR") in compliance with 15 C.F.R. § 990.45 and applicable state authorities. The AR will be publicly accessible and include documents considered by the Trustees during the Preassessment, assessment, and restoration planning phases of the NRDA performed in connection with the Incident. The AR will be augmented with additional information over the course of the NRDA process. The AR is located at the U.S. Fish and Wildlife Service's Bloomington Indiana Field office, 620 S. Walker Street, Bloomington, Indiana 47403. Arrangements may be made to review the AR by contacting Dan Sparks at that address or by calling him at 812-334-4261, extension 219.

A copy of the AR is also located at the Indiana Department of Environmental Management, Office of Land Quality, IGC-N, 13<sup>th</sup> Floor, 100 N. Senate Ave., Indianapolis, Indiana 46206. Arrangements may be made to review it by contacting Anne Remek Kominowski at that address or at 317-233-0447.

### **Opportunity to Comment**

The Trustees invite the public to participate in restoration planning for this Incident or Incidents in accordance with 15 C.F.R. § 990.14(d) and state authorities. The Trustees will be providing substantial opportunities for public involvement in the restoration planning for this Incident. The opportunities for public involvement will be addressed in future notices and announcements.

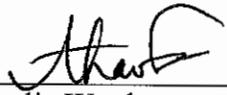
### **Adoption By Natural Resource Trustees**

The undersigned, on behalf of their agencies as designated natural resource Trustees, hereby adopt the foregoing. This document may be signed in counterparts. A copy with all original executed signature pages affixed shall constitute the original.

**SIGNATURES:**

Dated: \_\_\_\_\_, ~~2018~~  
**MAY 28 2019**

UNITED STATES DEPARTMENT OF  
THE INTERIOR

By:   
For Charlie Wooley  
Acting Regional Director  
U.S. Fish and Wildlife Service

Dated: June 3, 2019

STATE OF INDIANA, DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT

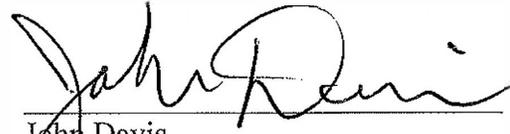
By:

  
Elizabeth Admire  
Indiana Natural Resource Co-Trustee

Dated: May 31, 2019

STATE OF INDIANA, DEPARTMENT OF  
NATURAL RESOURCES

By:



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John Davis  
Indiana Natural Resource Co-Trustee