

**BILLING CODE:** 3510-JE

**U.S. DEPARTMENT OF COMMERCE**

**NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION**

**AGENCIES:** National Oceanic and Atmospheric Administration, U.S. Department of Commerce; U.S. Fish and Wildlife Service, U.S. Department of the Interior; State of Maryland Department of the Environment; and State of Maryland Department of Natural Resources

**ACTION:** Notice of Intent to Conduct Restoration Planning

**SUMMARY:** The agencies listed above (the Trustees) are providing notice of their efforts to plan restoration actions for injuries to natural resources in Swanson Creek and the Patuxent River caused by the April 7, 2000, release of 126,000 gallons of oil from a ruptured pipeline owned by Potomac Electric Power Company (Pepco). The pipeline supplied oil to Pepco's Chalk Point Generating Station and is managed by Support Terminal Services Operating Partnership (ST Services). The purpose of this restoration planning is to evaluate potential injuries to natural resources and services, and use that information to determine the need for and scale of restoration actions.

The Trustees seek public involvement in the restoration planning process for this spill.

Opportunities for public comment are provided through public review and comment on documents contained in the Administrative Record, as well as on the Draft and Final Restoration Plans when they have been prepared.

#### **SUPPLEMENTARY INFORMATION:**

Pipeline Break and Oil Spill Incident: On April 7, 2000, a break in the pipeline that supplies oil to the Pepco Chalk Point Generating Station released an estimated 126,000 gallons of oil into Swanson Creek and the surrounding marsh area. A storm during the night of April 8, 2000, blew the oil over the containment booms that were placed at the mouth of Swanson Creek and into the Patuxent River and its tributaries. As a result, the oil spread about 10 miles, primarily downstream of the spill location.

Since the spill, the Trustees' have initiated a number of preassessment data collection activities. Findings demonstrate or suggest four general areas of natural resource injuries: (1) wetlands and shorelines; (2) fisheries and other aquatic resources; (3) birds and wildlife; and (4) lost interim use of public services. The Trustees have implemented or are developing studies to assess the extent of these injuries.

The natural resource Trustees for this oil spill incident are the U.S. Department of Commerce, National Oceanic and Atmospheric Administration (NOAA); U.S. Department of the Interior,

Fish and Wildlife Service (FWS); State of Maryland Department of the Environment (MDE); and State of Maryland Department of Natural Resources (MDNR). The Trustees are designated pursuant to the National Contingency Plan, 40 C.F.R. Sections 300.600 and 300.605.

The Responsible Parties (RP's) for this incident are Pepco, the pipeline owner, and ST Services, the manager of the pipeline. To date, the RP's have cooperated with the Trustees in the performance and/or funding of response, cleanup and preassessment data collection activities.

Administrative Record: The Trustees have opened an Administrative Record (Record) in compliance with 15 C.F.R. Section 990.45. The Record will include documents relied upon by the Trustees during the assessment performed in conjunction with the incident. To date, the Record contains:

- (1) a copy of this notice;
- (2) a letter from the Trustees to Pepco inviting their participation in a cooperative natural resource damage assessment;
- (3) a letter from the Trustees to ST Services inviting their participation in a cooperative natural resource damage assessment; and
- (4) a letter to the Trustees from ST Services indicating their willingness to participate in a cooperative natural resource damage assessment.

The Record is on file at the NOAA Damage Assessment Center in Silver Spring, Maryland.

Duplicate copies will be maintained for public review at the following locations:

Calvert County  
Swanson Creek Command Center  
Calvert County Industrial Park  
230 Bugeye Square  
Prince Frederick, MD 20678

St. Mary's County  
Pepco Community Outreach Center  
Light Point Commerce Center  
30383 Three Notch Road  
Charlotte Hall, MD 20622

Information Resource Center  
Maryland Department of Natural Resources  
580 Taylor Avenue, B-3  
Annapolis, MD 21401

Trustees' Determination of Jurisdiction: Following the notice of the pipeline break and oil

discharge, the Trustees initiated preassessment data collection activities. The following

determinations were made as required by 15 C.F.R. 990.41:

(1) The spill of approximately 126,000 gallons of fuel oil from the pipeline on April 7, 2000, into the Swanson Creek Marsh, Swanson Creek, and the Patuxent River was an incident as defined at 15 C.F.R. Section 990.30.

(2) The incident was not permitted under Federal, state, or local law; it did not occur from a public vessel; and it did not occur from an offshore facility subject to the Trans-Alaska Pipeline Authority Act, 43 U.S.C. 1651, et seq.

(3) Based upon information gathered during the response and preassessment phases, the Trustees have determined that natural resources under the trusteeship of NOAA, DOI, and

Maryland, have been injured as a result of the incident. The oil released contains components that are toxic at sufficiently high exposure levels to aquatic organisms, birds, wildlife, and vegetation. In addition, the Trustees observed birds, marshes and aquatic organisms that were exposed to the oil from this discharge.

Based on the above findings, the Trustees made the determination that they have jurisdiction to pursue restoration pursuant to the Oil Pollution Act, 33 U.S.C. Sections 2702 and 2706 (b)-(c).

Trustee Determination to Conduct Restoration Activities: For the reasons discussed below, the Trustees have made the determination required by 15 C.F.R. Section 990.42(a) and are proceeding with restoration planning to develop restoration alternatives that will restore, replace, rehabilitate, or acquire the equivalent of natural resources injured and/or natural resource services lost as a result of this incident.

(1) Injuries have resulted from the incident. The Trustees base this determination upon data collected and analyzed pursuant to 15 C.F.R. Section 990.43 that demonstrate that injuries to natural resources are likely to have resulted from the incident, including, but not limited to, the following:

(A) Wetlands and Shorelines: Spilled oil spread throughout Swanson Creek and about 10 miles downstream from Chalk Point, oiling approximately 25 miles of shoreline and 75 acres of wetlands. As part of the response, data was collected on types of shorelines

impacted and degree(s) of oiling. This work, along with aerial photography and field measurements, will be used to define the extent and degree of impact.

(B) Birds and Wildlife: Oiled birds, mammals, reptiles and amphibians were collected during the response. Ruddy ducks and muskrats were the two biggest categories of oiled animals. Ospreys and great blue herons were also found oiled but to a lesser extent. The diamondback terrapin is a resource of special concern to the State of Maryland; both adults and nesting beaches for this species were oiled as a result of the spill. The Trustees are continuing to monitor the nesting success of ospreys and great blue herons and will develop studies to determine the impact of the spill on the muskrats and diamondback terrapins.

(C) Shellfish, Finfish and Crabs: The watershed provides valuable spawning and nursery habitat for anadromous species such as striped bass, white perch and herring, all of which were entering their spawning period at the time of the spill. The effect of the spill on these species will be determined during the damage assessment.

(D) Lost Use: MDE issued fishing, shellfishing, and crabbing advisories and closures immediately following the spill. These areas have since been reopened. In addition, sections of the river and its tributaries were closed to boat traffic as part of the response.

(2) Response actions during clean up have not adequately addressed the injuries resulting from the incident. Although response actions were initiated promptly, the nature of discharge and the sensitivity of the environment precluded prevention of injuries to some natural resources. It is anticipated that injured natural resources will eventually return to baseline levels,

but there is a potential for significant interim losses to have occurred and to continue to occur, until return to baseline is achieved.

(3) Feasible primary and compensatory restoration exists to address injuries from this incident. Among the available procedures are marsh injury assessment studies to be used in conjunction with Habitat Equivalency Analysis to determine compensation for injuries to marsh vegetation and marsh services. Other approaches are available for evaluating injuries to fauna such as migratory birds. Components of a restoration plan may include wetland habitat enhancement, water quality improvement projects, bird and wildlife enhancement activities and compensation for lost human use.

**PUBLIC INVOLVEMENT:** Pursuant to 15 C.F.R. 990.44, the Trustees seek public involvement in restoration planning through public review and comment on the documents contained in the Administrative Record. Comments should be sent to Jim Hoff, NOAA Damage Assessment Center, Room 10218, 1305 East West Highway, Silver Spring, MD 20910-3281, (301) 713-3038 ext. 188.

**FOR FURTHER INFORMATION CONTACT:**

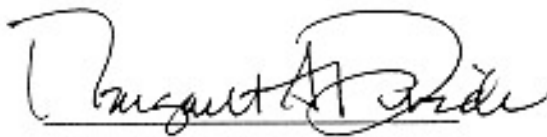
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Dated: \_\_\_\_\_

A handwritten signature in cursive script, appearing to read "Margaret A. Davidson". The signature is written in dark ink and is positioned above the printed name and title.

Margaret A. Davidson  
Acting Assistant Administrator for Ocean Services  
and Coastal Zone Management