

Document ID Number: 2082

AR: Chalk Point Oil Spill

Title: Letters (11 April 2002 letter from Duane Siler to Sharon Shutler, and Sharon's 15 May 2002 reply letter), re: Request for revision to Draft Restoration Plan

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April 11, 2002

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VIA US MAIL AND TELECOPY

Sharon Shutler, Esq.
Office of the General Counsel
National Oceanic and Atmospheric Administration
1315 East West Highway, 15th Floor
Silver Spring, MD 20910
Telecopier No. 301-713-1229

Re: Draft Chalk Point Restoration Plan

Dear Sharon:

On April 3, 2002, ST Services received the Trustees' Draft Chalk Point Restoration Plan/Environmental Assessment. ST Services is reviewing the draft Plan and will submit technical comments within the timeframe established by Mr. Hoff.

However, as a threshold matter, ST Services objects to statements in the draft Restoration Plan that characterize ST Services as the "operator" of the pipeline and as a "Responsible Party" for purposes of the Oil Pollution Act. These characterizations are unnecessary to the Restoration Plan and are potentially prejudicial to ST Services.

As you know, ST Services has readily cooperated with the Trustees in the assessment of natural resource damages resulting from the April 7, 2000 oil spill, including joining with Pepco to fund the assessment and the Trustees' costs under the Memorandum of Agreement (which by its terms is inadmissible for any purpose). ST Services hopes and expects to continue this cooperation as the NRD process moves into the restoration phase.

However, ST Services' past or future cooperation with the Trustees should not be interpreted as, and is not, an admission by ST Services of any liability to any federal or state governmental agency or to any other person. In particular, ST Services does not admit that it was either the "operator" of the Pepco pipeline or a "responsible party" within the meaning of OPA or for any other purpose. Nor have the Trustees made any investigation or determination of disputed facts that would be necessary in order to support any characterization of ST Services' status.

Sharon Shutler, Esq.
April 11, 2002
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Accordingly, ST Services requests that the Trustees make the enclosed revisions to the draft Restoration Plan before it is published. If you have any questions about the enclosed revisions, or would like to discuss them, please call me.

Sincerely,



Duane A. Siler
Counsel for ST Services, Inc.

Enclosure

cc w/enclosure: Michael Boland, Esq.

RESTORATION PLAN AND ENVIRONMENTAL ASSESSMENT

for the April 7, 2000, Oil Spill at Chalk Point on the Patuxent River,
Maryland



Draft For Public Review and Comment

April 2002

National Oceanic and Atmospheric Administration

Maryland Department of Natural Resources

Maryland Department of the Environment

U.S. Fish and Wildlife Service



EXECUTIVE SUMMARY

On April 7, 2000, a ruptured pipeline spilled roughly 126,000 gallons of oil at the Potomac Electric Power Company (Pepco) generating facility near Benedict, Maryland. Four government agencies—the National Oceanic and Atmospheric Administration (NOAA), U.S. Fish and Wildlife Service (FWS), Maryland Department of Natural Resources (MDNR), and Maryland Department of Environment (MDE)—are responsible for restoring natural resources injured by the spill. These agencies act as trustees on the public's behalf to conduct a natural resource damage assessment (NRDA), a process for determining the nature and extent of injuries to natural resources and the restoration actions needed to reverse these losses.

Draft Plan to restore the resources

The Trustees have written a draft Restoration Plan describing the injuries and proposed restoration alternatives. This plan was developed cooperatively among the Trustees and the responsible parties, Pepco and ST Services (respectively, the putative owner and putative operator of the pipeline). The Trustees are seeking written comments from the public on the proposed restoration alternatives.

What was injured?

Studies conducted by the Trustees identified the following injuries to natural resources and recreational services from the spill:

- Wetlands – 76 acres lightly, moderately, or heavily oiled
- Beaches – 10 acres of shoreline lightly, moderately or heavily oiled
- Ruddy ducks – 553 dead
- Other birds and waterfowl – 143 dead
- Diamondback terrapins – 122 dead and a 10% reduction in turtle hatchlings for year 2000
- Adult muskrats – 376 dead
- Fish and shellfish – 24,549 dead
- Recreational services – an estimated 125,000 trips on the river were affected by the spill

How were restoration alternatives evaluated and selected?

The Trustees considered numerous restoration alternatives to compensate the public for spill-related injuries. The restoration alternatives are intended to restore similar types of resources, and the services provided by the resources, that were injured by the oil spill. Each alternative was evaluated using the following criteria:

- Restore species at the same location of the injury, when possible
- Ensure a high likelihood of success
- Return the injured natural resources to the condition they would have been in if the spill had not occurred
- Address the interim losses—from the time of injury until full recovery
- Prevent future injury and avoids additional injury from implementing the restoration alternative
- Benefit more than one natural resource and/or service
- Benefit or has no negative effect on public health and safety
- Provide a cost-effective approach

CHAPTER 1.0 INTRODUCTION

This draft Restoration Plan and Environmental Assessment was prepared by state and federal natural resource trustees responsible for restoring natural resources¹ and resource services² injured by the April 7, 2000 oil spill at the Potomac Electric Power Company (Pepco) Chalk Point Generating facility. The purpose of restoration, as outlined in the draft Plan, is to make the environment and the public whole for injuries resulting from the spill by implementing restoration actions that return injured natural resources and services to baseline (or prespill) conditions and compensate for interim losses.

The natural resource trustees for this oil spill include four federal and state agencies: the National Oceanic and Atmospheric Administration (NOAA), the primary federal Trustee for coastal and marine resources; the U.S. Fish and Wildlife Service (USFWS), the primary federal Trustee for migratory birds, some fish, many endangered species, and lands managed by the agency, and the Maryland Departments of the Environment (MDE) and Natural Resources (MDNR), which share responsibilities for natural resources and their supporting ecosystems belonging to, managed by, controlled by, or appertaining to the state of Maryland.

The Trustees have assumed for purposes of this draft Plan that, At at the time of the spill, the pipeline was owned by Pepco and operated, at least in part, by Support Terminal (ST) Services and that Pepco and ST Services therefore are “responsible parties” (RPs). Under under the federal Oil Pollution Act of 1990 (OPA).³ Under OPA, RPs these Responsible Parties (RPs) are liable for the costs of conducting a natural resource damage assessment, as well as the costs of implementing the Trustees’ preferred restorations actions identified in the Final Restoration Plan and Environmental Assessment.³

¹ Natural resources are defined under the Oil Pollution Act as "land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States, any State or local government or Indian tribe, or any foreign government.

² Services (or natural resources services) means the functions performed by a natural resource for the benefit of another natural resource and/or the public.

³ For convenience, Pepco and ST Services are referred to in this draft Plan as “RPs.” However, in preparing this draft Plan the Trustees have made no independent inquiry into the ownership or operation of

The Trustees, in cooperation with ~~the Rps~~ Pepco and ST Services, have prepared this draft Plan to inform the public about the natural resource damage assessment and restoration planning efforts that were conducted following the April 7, 2000 spill. The Trustees seek comments on the proposed restoration alternatives presented in this draft Restoration Plan. The Trustees will consider written comments received during the public comment period before finalizing the document and presenting the selected restoration alternatives to the RPs for funding or implementation.

1.1 Overview of the Incident

On April 7, 2000, at approximately 6 pm eastern daylight time, a leak was detected in a 12-inch underground pipeline that supplies oil to the Pepco Chalk Point Generating facility in Aquasco, Maryland. The U.S. Environmental Protection Agency (EPA) reported that between 126,000 and 139,000 gallons of fuel oil spilled from the ruptured pipeline into Swanson Creek, a small tributary of the Patuxent River (U.S. EPA Clean up Order, May 1, 2000) (Figure 1). The spilled oil was a mix of Number 6 fuel, the oil normally transported by the pipeline to generate electricity, and Number 2 fuel, much lighter oil that was being used to flush the pipeline as part of a cleaning process.

Pepco, EPA, and MDE began containment and cleanup immediately following the April 7 spill. Initial response actions were focused in Swanson Creek, and included deployment of boom to limit the spread of oil and the use of vacuum trucks and tanks to collect the discharged oil. An appropriate quantity of boom was not immediately available, and the deployment of what was available was hampered by severe weather conditions (U.S. EPA Clean up Order, May 1, 2000). As a result, oil spread into the Patuxent River, approximately 17 linear miles downstream. About 40 miles of environmentally sensitive downstream creeks and shorelines along the Patuxent River were oiled.

State and federal natural resource Trustee agencies also responded to the spill and observed potential indicators of injury from the effects of the release. Marshes were observed to have been exposed to black oil or sheen, birds were observed to have been oiled, and survey teams collected dead birds, fish, muskrats and other animals. As a result of public health concerns associated with the possible consumption of contaminated shellfish by the public, MDE implemented an emergency health advisory for fishing and the temporary closure of harvesting for oysters and clams in the Patuxent River north of the Thomas Johnson Bridge. A Precautionary Beach Advisory urging residents not to use beaches and shorelines impacted by the spill was also issued by MDE.

Based on information and data collected immediately following the spill, the Trustees initiated a damage assessment pursuant to section 1006 of the Oil Pollution Act (OPA) to

the pipeline. The Trustees acknowledge that neither Pepco nor ST Services admits that it is an "owner" or "operator" of the pipeline for any purpose.



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
Washington, D.C. 20230

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1315 East West Highway
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15 May 2002

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Washington D.C. 20037-1350

Re: Chalk Point Restoration Plan

Dear Duane,

In response to your letter of April 11, 2002 and subsequent phone conversations, I am providing you with the Trustees' response to your request for language changes in the Damage Assessment and Restoration Plan (DARP) for the Chalk Point Oil Spill. We have chosen not to include your changes in the draft DARP for reasons articulated below.

Pursuant to your letter, the Trustees are aware that ST Services objects to being referred to as "operator" of the pipeline and to language that could be construed as an admission of liability by ST Services. Accordingly, ST Services opposes being referred to as a "Responsible Party" without a caveat indicating that this is not an admission of liability. However, the natural resource damage assessment regulations, promulgated pursuant to the Oil Pollution Act of 1990, specifically use the phrase "Responsible Party" or "Responsible Parties." 15 C.F.R. Part 990.

Throughout the natural resource damage assessment, the Trustees have been complying with the regulations. The regulations lay out a comprehensive administrative process for undertaking injury assessment, restoration planning, restoration implementation and for involving the "Responsible Parties." The regulations envision that upon completion of the Final Restoration Plan, the Trustees present their claim to the Responsible Parties. If the Responsible Parties do not agree to the demand within 90 days, the Trustees may either file a judicial action for damages or seek an appropriation from the Oil Spill Liability Trust Fund. 15 C.F.R. §§ 990.62, 990.64. In keeping with the regulations, and prior to an adjudication of liability, the Trustees have used, and will continue to use, the phrase "Responsible Parties" when referring to Pepeco and ST Services.

Sincerely,

Sharon K. Shutler

cc: Rachel Jacobson
Joe Gill
Shelly Hall
Stephanie Williams
Ken Rubin
Mike Boland
Jim Hoff

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