

**NOTICE OF INTENT TO CONDUCT RESTORATION PLANNING (pursuant to 15 C.F.R. § 990.44) – Discharge of oil from the July 26, 2010 Enbridge Pipeline Release.**

**SUMMARY:** This public notice confirms that designated federal, state, and tribal trustees (outlined below) will be undertaking restoration planning to assess and redress the potential impacts of the 2010 oil spill into Talmadge Creek and the Kalamazoo River. The discharged oil injured aquatic organisms, birds, wildlife and habitat, while also impacting recreational uses and services provided by these resources. The trustees will evaluate these potential environmental injuries and service losses to determine the need for and scale of restoration. Restoration planning documents will be made available for public comment.

**FACTS:** On or about July 26, 2010, a 30-inch diameter pipeline owned by Enbridge Energy near Marshall, Michigan ruptured, discharging crude oil into a wetland adjacent to Talmadge Creek (Calhoun County). The oil flowed through Talmadge Creek into the Kalamazoo River, a Lake Michigan tributary. Enbridge has estimated that the discharge was 20,082 barrels or 843,444 gallons. The Kalamazoo River was in floodstage at the time of the discharge, and the oil flowed down the river and into its floodplain for approximately 38 miles to Morrow Lake. All of the foregoing is referred to as the “Incident.” The Kalamazoo River is bordered by wetlands, floodplain forest, residential properties, farm lands and commercial properties between Marshall and the Morrow Lake dam. This discharge affected, and continues to adversely affect and threaten natural resources within the jurisdictions of the United States, the State of Michigan, the Nottawaseppi Huron Band of the Potawatomi Tribe, and the Match-E-Be-Nash-She-Wish Band of the Pottawatomi Tribe.

**NATURAL RESOURCE TRUSTEES:** Pursuant to section 1006 of the Oil Pollution Act (“OPA”), 33 U.S.C. §§ 2701, *et seq.*, federal, state and tribal trustees (“the 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 trustees are designated pursuant to the National Contingency Plan (“NCP”), 40 C.F.R. § 300.600 and Executive Order 12777, and, for this Incident, include the United States Department of the Interior, acting through the U.S. Fish and Wildlife Service and the Bureau of Indian Affairs, and United States Department of Commerce, acting through the National Oceanic and Atmospheric Administration. State trustees for Michigan are designated by the Governor of Michigan pursuant to the NCP, 40 C.F.R. § 300.605, and include the Michigan Department of Attorney General, the Department of Environmental Quality, and the Department of Natural Resources. Tribal trustees are designated pursuant to the NCP, 40 C.F.R. § 300.610, and, for this Incident, include the Nottawaseppi Huron Band of the Potawatomi Tribe, and the Match-E-Be-Nash-She-Wish Band of the Pottawatomi Tribe.

**RESPONSIBLE PARTIES:** As defined by OPA, the identified Responsible Parties (“RPs”) for this Incident are Enbridge Energy Partners, L.P.; Enbridge Energy, Limited Partnership; Enbridge Pipelines (Lakehead) L.L.C.; and Enbridge Pipelines (Wisconsin) (“Enbridge”). Pursuant to 15 C.F.R. § 990.14(c), the Trustees have invited the RPs identified above to participate in a natural resource damage assessment (“NRDA”). The Trustees have coordinated with Enbridge representatives on preassessment activities undertaken to date as part of the NRDA process.

**PREASSESSMENT AND RESTORATION PLANNING:** 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 emergency restoration and assessment activities as part of the Restoration Planning Phase.

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

Pursuant to 15 C.F.R. § 990.44, this Notice announces that the Trustees have determined that they have jurisdiction for natural resources affected by the spill and that it is appropriate to pursue natural resource restoration. The Trustees intend to proceed with restoration planning to evaluate, assess, quantify and develop plans for restoring, replacing or acquiring the equivalent of natural resources injured and losses resulting from the 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**

The Trustees have made the following findings pursuant to 15 C.F.R. § 990.41:

1. The rupture of the 30-inch diameter pipeline near Marshall, Michigan on July 26, 2010, and resulting discharges of crude oil into and upon navigable waters of the United States, including Talmadge Creek and the Kalamazoo River, as well as adjoining shorelines, floodplains, and upland areas, constitute an “Incident” within the meaning of 15 C.F.R. § 930.30.

2. The discharges are not permitted pursuant to federal, state, or local law; are not from a public vessel; and are 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 and continue to be injured and/or threatened as a result of discharged oil and associated removal efforts. The discharged oil is harmful to natural resources exposed to the oil, including aquatic organisms, birds, wildlife, vegetation, and habitats. Discharged oil and the response activities to address the discharges of oil have resulted in adverse effects on natural resources in and around Talmadge Creek, the Kalamazoo River, and their shorelines, floodplains, and upland areas and have impaired services that those resources provide. Following the Incident, fishing advisories were issued and the river was closed to boating and other recreational activities.

Based on the above findings, the Trustees have determined that 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 determined that:

1. Observations and data collected pursuant to 15 C.F.R. § 990.43 demonstrate that injuries to natural resources and the services they provide have resulted from the Incident; however, the nature and extent of such injuries has not been fully determined at this time. The Trustees have identified numerous categories of impacted and potentially impacted resources, including fish, mussels, mammals, turtles, birds and other sensitive resources and their habitats, including streams, sediments, stream banks, wetlands, vadose zone soils, and floodplains as well as adverse impacts to human use. 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 by the Trustees, or jointly by the Trustees and Enbridge, 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 containment and recovery of oil from surface water and wetlands, excavation of oil-contaminated soil and removal of weathered tarry oil from overbank areas, recovery of submerged oil from sediment, dredging of oil-contaminated sediment, removal of oiled vegetation, and clearing of vegetation for access and work areas. Investigations have been conducted to monitor potential contamination of surface water, soils, and groundwater. These response actions have not addressed and are not expected to address all injuries resulting from the discharge of oil. In addition, some of the

response actions have caused or are likely to cause injuries to natural resources and the services they provide, including, but not limited to, impacts to stream substrate, stream banks, floodplains, wetlands and vadose zone soils. While injured natural resources may eventually recover to the condition they would have been in had the discharges not occurred, interim losses have occurred, and 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.

3. Feasible restoration actions exist to address the natural resource injuries and losses resulting from the Incident. 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 restoration projects, determine the amounts and types of restoration needed to make the environment and the public whole, and release a draft Restoration Plan for public review and comment.

Based upon these determinations, the Trustees intend to proceed with restoration planning for the Incident.

#### **Administrative Record**

The Trustees have opened an Administrative Record ("AR") in compliance with 15 C.F.R. § 990.45. The AR will be publicly accessible and will include documents considered by the Trustees during the preassessment 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 availability and location of the AR will be addressed in one or more future notices and announcements, and the Index of the AR may be viewed at the following website: <http://www.fws.gov/midwest/oilspill/>.

#### **Opportunity to Comment**

Pursuant to 15 C.F.R. § 990.14(d) and 990.44, 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, and can be found at the following website: <http://www.fws.gov/midwest/oilspill/>.

#### **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.

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For the STATE OF MICHIGAN:

By:   
Bill Schuette  
Attorney General  
Michigan Department of Attorney General

Date: 1/12/2012

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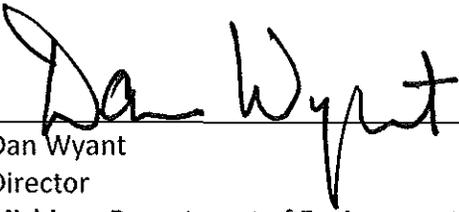
For the STATE OF MICHIGAN:

By:   
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Rodney A. Stokes  
Director  
Michigan Department of Natural Resources

Date: 1-13-12

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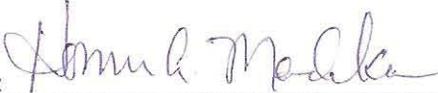
For the STATE OF MICHIGAN:

By:   
Dan Wyant  
Director  
Michigan Department of Environmental Quality

Date: 1-24-12

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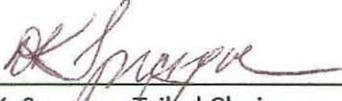
For the NOTTAWASEPPI HURON BAND OF THE POTAWATOMI TRIBE:

By:   
Homer A. Mandoka, Tribal Council Chairperson  
Nottawaseppi Huron Band of the Potawatomi

Date: January 19, 2012

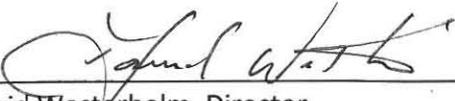
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For the MATCH-E-BE-NASH-SHE-WISH BAND OF THE POTTAWATOMI TRIBE:

By:  Date: 1-26-12  
D.K. Sprague, Tribal Chairman  
Match-E-Be-Nash-She-Wish Band of the Pottawatomoni

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For the UNITED STATES DEPARTMENT OF COMMERCE:

By:  Date: 1/17/2012  
David Westerholm, Director  
Office of Response and Restoration  
National Ocean Service  
National Oceanic and Atmospheric Administration

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For the UNITED STATES DEPARTMENT OF THE INTERIOR:

Charles M. Wooley  
Acting Regional Director

By: \_\_\_\_\_

Tom Melius, Regional Director  
U.S. Fish and Wildlife Service, Region 3  
Authorized Official

Date: \_\_\_\_\_

2/9/12

for