

Natural Resource Damage Assessment Settlement

RESTORATION PLAN

Douglass Road Landfill
St. Joseph County, Indiana

February 1997

*Department of the Interior
U.S. Fish and Wildlife Service*

Introduction

This restoration project is proposed by Region 3 of the U.S. Fish and Wildlife Service (FWS) to compensate for similar natural resources injured (lost) prior to remedial response actions at the Douglass Road Landfill (DRL) in St. Joseph County, Indiana. Implementation of this plan will be conducted by natural resource trustees under the authority of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) and Executive Order 12580.

Project Background and History of the Landfill Site

The DRL is located just northwest of Mishawaka, Indiana, and occupies approximately 19 acres. The landfill was leased and operated by Uniroyal, Inc. from 1954 to 1979. Between 1954 and 1971 unknown quantities of solvents, fly ash, paper, wood stock, and rubber and plastic scraps were disposed of at the landfill. In addition, more than 6,000 drums totaling approximately 300,000 gallons of liquid considered Resource Conservation and Recovery Act (RCRA) hazardous wastes were emptied into unlined pits at the site. These wastes included methyl ethyl ketone, acetone, tetrahydrofuran, toluene, and several other toxic chemicals.

In 1970 Uniroyal settled out-of-court on a claim for contamination of a private well. In 1971, the Indiana State Board of Health ordered the site closed because of groundwater contamination. Between 1971 and the final closure, landfilling of fly ash from the facility boiler operation was approved of by the State of Indiana (State). In December 1979 the landfill was permanently closed. Several years later, the U.S. Environmental Protection Agency (EPA) conducted a "Potential Hazardous Waste Site" inspection. Preliminary findings indicated that the primary pathway of migration for contaminants was via soil leaching and infiltration into groundwater supplies, which ultimately discharged to Juday Creek. The site was proposed for listing on the National Priorities List (NPL) in June 1986 and placed on the NPL in March 1989. Finally, in 1994, a Remedial Investigation (RI) was conducted at the DRL by CH2M HILL for the EPA.

The RI revealed a groundwater contamination plume that extended over 3000 feet southwest of the site. Contaminants detected in the groundwater at and near the site included volatile organic compounds (VOCs), semi-volatile organic compounds (SVOCs), and inorganics. In addition, VOCs, SVOCs, inorganics, polychlorinated biphenyls (PCBs), pesticides, and dioxins were found in soil samples at the site.

Trust Resources

The DRL was originally developed as a sand and gravel borrow. The site is situated in the Kankakee Lowland which is underlain by outwash sand and gravel deposits. Due to the geology of the area, most of the precipitation directly infiltrates the soil and serves as groundwater recharge. Surface runoff is minimal; however, when it occurs, the runoff flows southwesterly towards Juday Creek, a tributary to the St. Joseph River. The creek runs east-west approximately 1500 feet south of the site and discharges into the river about 4 miles downstream. A number of wetlands exist, in association with Juday Creek, just southwest of the site.

A Preliminary Natural Resources Survey (PNRS) was conducted by the FWS in 1988. The resources at the site were described as follows:

"The National Wetlands Inventory map indicates several wetlands located along Juday Creek to the southwest of the landfill. There are 11 wetlands greater than five acres; and 21 wetlands less than five acres that stretch approximately two miles west along the creek. Many of the smaller wetlands are palustrine, open-water, excavated ponds that are likely to attract migratory waterfowl.... The larger wetlands consist of forested, shrub-scrub, emergent, and aquatic bed habitats.

Four miles down creek, Juday Creek empties into the St. Joseph River. An anadromous fishery is well-established in the lower 33 miles of the river. Under the St. Joseph River Trout and Salmon Plan (Plan), a cooperative agreement between Indiana and Michigan, an additional 30 miles will be enhanced to support the fishery. The project called for construction of a fish hatchery which was completed in 1983. The Twin Branch Hatchery (currently the Bodine Hatchery) is located approximately 300 yards upstream from the Twin Branch Dam at Mishawaka."

The PNRS indicated that the DRL was in the range of the federally endangered Indiana bat. A review of more recent information suggests that the site is also within the range of the federally threatened copperbelly water snake (northern population listed January, 29, 1997) and within the wintering range of the Federally Threatened bald eagle. In addition, the site is within the range of the eastern massasauga rattlesnake, a species of concern to various resource agencies. This current information may be particularly important in designing and locating the restoration project(s).

DRL Settlement History

In May, 1987, the FWS Bloomington, Indiana Field Office (BFO) received a request from the Office of Environmental Project Review to conduct a PNRS to determine whether any trust resources had been affected by the release of hazardous substances from the DRL. Acting as a trustee for natural resources under CERCLA §107, BFO sent a letter dated July 14, 1988 which contained the results of the natural resource survey.

In November, 1991, five companies, successors of Uniroyal, Inc., filed for Chapter 11 Bankruptcy. In response to these pending bankruptcies, the EPA attorney requested in a January 7, 1992 memorandum that the FWS prepare Proofs of Claim against the parties involved.

In May, 1992, a memorandum from BFO to the Regional Director, FWS, Twin Cities, Minnesota discussed in detail the trust resource impacts and replacement recommendations. The impacts to trust resources were identified as degraded water quality and contaminated habitat along Juday Creek, potentially resulting in decreased food availability to migratory birds and possibly the Indiana bat. The estimated natural resource damages claim was \$144,250. This amount was calculated according to an estimated 45 acres of adversely impacted wetlands, and approximately 2.5 miles of impacted instream habitat. BFO recommended a replacement ratio of 0.5:1 for wetland restoration, and estimated the purchase price of land to be \$3,000/acre and the restoration cost to be \$1,500/acre. In addition, the cost of instream habitat restoration was approximated at \$15,000. Finally, loss of use was estimated at \$25,000 and FWS assessment costs, \$3,000.

In August, 1992, a proposed Settlement Agreement and Stipulated Order was lodged in the U.S. Bankruptcy Court, Northern District of Indiana, in Chapter 11 bankruptcy proceedings captioned In re U.E. Systems, Inc. et al. (No. 91-32791-HCD), in connection with the DRL site. This agreement required the defendants (successors of Uniroyal, Inc.) to pay a claim of \$144,000, split evenly between 4 of the defendants, to the Department of Interior for natural resource damages resulting from the release and/or threatened release of hazardous substances from the DRL. The agreement also provide a covenant not-to-sue pending distribution of the funds.

In 1993, a consent decree was lodged in the U.S. District Court, Northern District of Indiana, as United States v. Uniroyal, Inc., also in connection with the DRL site. The consent decree required the defendants to pay DOI \$19,035 for natural resource damages resulting from the release and/or threatened release of hazardous substances related to the DRL site and provided the settling defendants a covenant not-to-sue providing the terms of the decree were met.

To date, settlement funds totaling \$55,527.69 have been submitted by the responsible parties and deposited into the National Natural Resources Damage Assessment and Restoration (NRDAR) Fund. With these funds, the FWS will pursue restoration, rehabilitation, replacement and/or acquisition of natural resources equivalent to those lost or injured.

Restoration Project Site

Because direct restoration of site-impacted areas is not possible due to the presence of residual contamination, this project will occur in a geographically proximate and similar area with restorable habitat comparable to that impacted by the landfill. The project will consist of restoration and enhancement of instream/riparian habitat and palustrine wetlands. This project will occur in the vicinity of St. Joseph County, Indiana. If possible, the restoration site(s) will be selected in proximity to rivers and streams, enhancing and protecting the riparian areas, and will enhance the structure and function of the stream systems. The restoration site(s) will be protected and enhanced so that, over time, they will provide full analogous ecological function. This approach will benefit fish and wildlife by restoring habitats similar to those affected by the DRL.

Restoration Process

This project will involve the voluntary restoration of privately and/or publicly owned lands with perpetual easements offered to the landowner(s) or acquisition of areas that provide services equivalent to those lost at the DRL site. Restoration efforts will focus primarily on riparian and wetland habitats. Typically, previously drained wetlands are restored by either plugging drainage ditches or subsurface tiles. Both techniques have been proven successful and are acceptable means of restoration. Riparian restoration will be accomplished essentially through floodplain reforestation projects. Existing easements over suitable areas may be expanded. If lands are acquired, they will be deeded to the State and/or private land management entities with perpetual easements.

Specific potential properties have not yet been identified; however, numerous landowners have expressed interest in wetland restorations and/or easements in Indiana. Additionally, several landowners in the area have expressed interest in the Wetland Reserve Program. At the end of 1996, nearly 1,000 wetlands had been restored in Indiana by the FWS and partners utilizing several governmental programs. Therefore, final site selection should proceed quickly following project plan approval and funding.

Natural resource damage assessment restoration plans that result in a negligible change in the use of the affected areas have been included as categorical exclusions for National Environmental Policy Act (NEPA) compliance for actions implemented by the FWS (516 DM 6 Appendix 1). Additionally, restoration implementation will likely include those types of activities that are also considered categorical exclusions. The NEPA compliance has been documented in an Environmental Action Statement (attached).

Project Coordination

The BFO will be responsible for overall project coordination and support. BFO will administer project funds according to the proposed budget and accountability will be maintained following the "Superfund Financial Management and Record keeping Guidance for Federal Agencies" (EPA publication EPA 220 M-89 00). In addition, the Indiana Department of Natural Resources (IDNR) and Department of Environmental

Management (IDEM) will be invited to participate in the restoration implementation in accordance with a Memorandum of Understanding, signed August 3, 1993, to cooperatively conduct Natural Resource Damage Assessments.

BFO's Private Lands Program will be responsible for identifying potential project sites, landowner contacts, easement development, and any necessary wetland restoration procedures. Additionally, private organizations may assist in the acquisition of and deed restrictions for the proposed site(s).

Schedule and Budget

This restoration will be implemented by DOI-FWS, in coordination with IDNR and IDEM, and could potentially be completed during FY 1997. A total of \$55,527.69 is available for restoration implementation. DOI-FWS funds will be distributed as follows:

- \$53,527.69 - land acquisition(s), easement purchase(s), and/or instream and wetland habitat restorations;
- \$2,000 - administrative costs by Bloomington, Indiana Field Office.

Final Report

At the completion of the project, a final report documenting the restoration will be prepared. Pictures of the site(s), before and after restoration, and key documents (e.g., - lease agreements, deeds, the Environmental Action Memorandum) will be included.

Project Contact

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Bloomington, Indiana
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UNITED STATES FISH & WILDLIFE SERVICE

ENVIRONMENTAL ACTION STATEMENT

Within the spirit and intent of the Council of Environmental Quality's regulations for implementing the National Environmental Policy Act (NEPA) and other statutes, orders, and policies that protect fish and wildlife resources, I have established the following administrative record and have determined that the action of Natural Resource Damage Assessment Settlement Restoration Plan for the Douglass Road Landfill, St. Joseph County, Indiana:

X is a categorical exclusion as provided by 516 DM 6 Appendix 1 and 516 DM 6, Appendix 1. No further documentation will therefore be made.

_____ is found not to have significant environmental effects as determined by the attached Environmental Assessment and Finding of No Significant Impact.

_____ is found to have significant effects, and therefore further consideration of this action will require a notice of intent to be published in the Federal Register announcing the decision to prepare an EIS.

_____ is not approved because of unacceptable environmental damage, or violation of Fish and Wildlife Service mandates, policy, regulations, or procedures.

_____ is an emergency action within the context of 40 CFR 1506.11. Only those actions necessary to control the immediate impacts of the emergency will be taken. Other related actions remain subject to NEPA review.

Other supporting documents (list):

_____ Environmental Assessment and FONSI

_____ Public comments

<u>David R. Felder</u>	4/11/97	<u>N. U. G.</u>	3-11-97
(1) Initiator	Date	(2) RHPO	Date
<u>Lisa Mandell</u>	3/11/97	<u>W. K. ...</u>	3.11.97
(3) REC	Date	(4) ARD	Date
<u>M. E. Moriarty</u>	3/13/97		
(5) RD	Date		

M. E. Moriarty
Acting Regional Director