



THE NATURAL RESOURCE DAMAGE ASSESSMENT SETTLEMENT

RESTORATION PLAN I. JONES RECYCLING, Inc. ALLEN COUNTY, INDIANA

December, 2003

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

Indiana Department of Environmental Management

Indiana Department of Natural Resources

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Introduction

This restoration plan is proposed by the Natural Resource Trustees, represented by the U.S. Fish and Wildlife Service (FWS), Indiana Department of Natural Resources (DNR), and the Indiana Department of Environmental Management (DEM), to compensate for similar natural resources injured (lost) prior to and during remedial response actions at and downstream of the I. Jones Recycling site, Fort Wayne, Allen County, Indiana. Implementation of this plan will be conducted by the Natural Resource Trustees under the authority of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA).

Background of Incident and Injury

The I. Jones (IJ) site is located at 3651 North Clinton Street in Fort Wayne, Indiana. The site occupies approximately 4.5 acres and is situated in a predominantly commercial and residential area. The site is bordered on the southwest by Ernest Court, on the southeast by a parking lot adjacent to several small businesses, on the north by retail businesses including the large Glenbrook shopping mall, and on the west by a residence. Four buildings are located on the site.

The facility, formerly known as Hanchar Industrial Waste Management and Continental Waste Systems, began operations in 1980 as a waste recovery and reclamation facility, handling waste oils and solvents along with other hazardous wastes. Over the years, the owner/operators accepted waste from various industrial sources, and accumulated a substantial volume of partially treated and untreated hazardous substances. The facility ceased operations in 1984. While attempts were made to revive the facility, full operation was never achieved. Much of the waste was stored in tanks and drums, and an estimated 400,000 gallons of solvents and waste oils were awaiting treatment when the facility was sold. Some of the treatment methods formerly used on the site included oil/water separation, acid/base neutralization, heavy metal precipitation, and distillation.

In connection with the proposed sale of the site, the United States Environmental Protection Agency (EPA) was asked by the Small Business Administration (SBA), who had financial interest in the property, to conduct a site assessment following an inventory of the closed facility by Pollution Control Systems in January 1985. The SBA was concerned about potential threats to public health and the environment posed by the large number of drums and tanks at the inoperable facility. The EPA and its Technical Assistance Team (TAT) conducted

the inspection on February 25, 1985, and recommended that the current owner activate the sprinkler system, implement security measures, and conduct daily inspections of the facility to detect leaking drums and other unsafe conditions until a new owner took over.

On December 24, 1985, a ceiling collapsed at the facility and sheared off a valve on a 10,000 gallon tank containing highly chlorinated hazardous ink solvents. Five to six thousand gallons of material were spilled and approximately 1,500 gallons entered the storm sewer system. The EPA investigated the spill on January 3, 1986. IJ Recycling contracted Pollution Control Systems to clean up the spill. Clean up delays and financial problems resulted in some of the material entering the St. Joseph River.

The State of Indiana obtained an Agreed Entry of a Preliminary Injunction for IJ Recycling on March 22, 1986. This order prevented them from accepting any additional hazardous material until they lowered their existing inventory.

On September 9, 1986, a chemical fire broke out at the site. The local fire department and Hazardous Materials Response Team extinguished the blaze which narrowly missed igniting approximately 525 drums of hazardous materials in an adjoining room. The City then asked for and was granted a restraining order against IJ Recycling, closing the facility.

Injury to Trust Resources

The St. Joseph River lies approximately 1/4 mile southeast of the IJ site and receives storm water via sewers and surface run-off from the site. The St. Joseph River is Fort Wayne's main water supply.

The topography of the IJ site slopes southeast toward the St. Joseph River and is covered with cement, gravel, and vegetation. The general geology of the area consists of a layer of glacial till on top of a limestone bedrock sloping towards the St. Joseph River. Contaminants have impacted the surface waters and sediment of an unnamed tributary to St. Joseph River and subsequently the St Joseph River. This area contains several acres of riverine, intermittent; riverine, lower-perennial; palustrine, scrub-shrub; and palustrine, emergent wetlands.

In an unrelated visit to the Appleseed Park area on June 6, 1985 we observed mallard (*Anas platyrhynchos*), belted kingfisher (*Megaceryle alcyon*), American robin (*Turdus migratorious*), common grackle (*Quiscalus quiscula*), rough-winged swallow (*Stelgidopteryx ruficollis*), cardinal (*Cardinalis cardinalis*), great blue heron (*Ardea herodias*), blue jay (*Cyanocitta cristata*), northern oriole (*Icterus galbula*), and mourning dove (*Zenaida macroura*). We expect many more species of migratory birds utilize wetland and deep water habitats impacted by releases from the IJ site. Bald eagles (*Haliaeetus leucocephalus*) have been observed along the rivers in the Fort Wayne area during the winter months. It is possible that the Indiana bat (*Myotis sodalis*) could also be found in this area. Several species of federally listed freshwater mussels may also be present in the St. Joseph River, just downstream from the site.

Injury to trust resources resulting from this contamination include those resources associated

with riparian habitats. The habitats injured as a result of these discharges provided food, shelter, breeding areas, and other essential services for the survival of trust wildlife resources. State and Federal trust resources injured or potentially injured include the following:

- aquatic invertebrates;
- birds, including waterfowl and passerines;
- amphibians and reptiles;
- aquatic and terrestrial plants;
- surface waters and sediments.

History of IJ Settlement

On October 14, 1986 the EPA, pursuant to section 106 of CERCLA, 42 U.S.C. Section 9606, determined that conditions at the IJ site constituted an imminent and substantial danger to public health or welfare, or the environment; and issued an order requiring the Potentially Responsible Parties (PRPs) to clean up the site.

The PRPs refused to comply with the order and on November 3, 1986, the EPA Regional Administrator authorized the expenditure of federal funds to initiate a clean up of the IJ site. Almost one year later conditions at the facility still constituted an imminent danger to public health and welfare and prompted the EPA issued second order requiring the same PRPs to clean up the site. On October 19, 1987, after the PRPs had refused to comply with the second order, the EPA initiated removal action.

Although the site had been stabilized considerably by EPA's removal activities, conditions at the site would still constitute a danger to public health. On July 27, 1988 the EPA issued another order requiring the PRPs to perform removal actions. On September 23, 1988, the "Clinton Street group" of PRPs complied with the July 27, 1988 order by submitting a work plan to perform all of the removal work required by the order. The "Clinton Street Group" began removal activities on November 28, 1988 and completed them on August 2, 1989. The group incurred more than \$6 million in costs.

In February 1989 the Department of the Interior (DOI) received a request from the Department of Justice (DOJ) for a covenant not-to-sue the PRPs for natural resources damages at the IJ site for *de minimus* parties. The *de minimus* covenant was granted.

In January 1991 DOI received a second request for a covenant not-to-sue the PRPs. This time, the U.S. Fish and Wildlife Service, Bloomington, Indiana Field Office (BFO) conducted a thorough investigation and determined that natural resources had in fact been impacted at the IJ site. In response, the BFO developed a damage claim valued at \$55,000 that they believed would be sufficient to restore habitat values reduced as a result of the activities at the IJ facility. This amount was based on an estimated 10.9 acres of riparian habitat and 4 acres of emergent and scrub-shrub wetlands habitats that were adversely impacted. The BFO recommended a replacement ratio of 1:1 for restoration and estimated the purchase price of land at \$1,500/acre,

administrative costs of \$7,000, restoration costs of \$1,500/acre, and claim assessment costs at \$3,000.

Settlement payments totaling \$31,308.93 have been recovered from the PRPs and deposited in an interest bearing account within DOI's Natural Resources Damage Assessment and Restoration (NRDAR) Fund. With these funds the natural resource trustees will pursue restoration and acquisition of natural resources equivalent to those lost or injured.

Restoration Project Administration

The Natural Resource Trustees will oversee and implement this restoration plan and ensure that restoration projects meet natural resource damage assessment (NRDA) requirements. Categorical exclusion from National Environmental Protection Act (NEPA) procedures is provided for actions implemented by the FWS for natural resource damage assessment restoration plans that result in a negligible change in the use of affected areas (516 DM 6 Appendix 1). The Natural Resource Trustees will work to ensure that projects either meet the intent of the categorical exclusion or fulfill NEPA requirements.

For any restoration projects considered, the potential for project activities to affect cultural resources such as prehistoric and historic resources, Native American human remains, and cultural objects will be determined early in project planning. To this end, the procedures in 36 CFR 800 implementing Section 106 of the National Historic Preservation Act, requirements of the Native American Graves Protection and Repatriation Act, and policies and standards specified in the Fish and Wildlife Service Manual 614 FW 1-5 will be achieved.

Settlement funds will be administered by the Natural Resource Trustees according to the proposed budget and the "U.S. Department of Interior Departmental Accounting Manual" (National Capital Region General Services Administration, 1995) and "Accounting and Uniform Compliance Guidelines Manual for State Agencies" (State Board of Accounts, 2000).

Project Coordination

The Natural Resource Trustees collectively will be responsible for overall project coordination and support, and will work to ensure that projects meet the NRDA requirements and fulfill the goals of this restoration plan. BFO will administer project funds according to the proposed budget with appropriate cost documentation. The trustees will be responsible for identification of applicable projects, landowner contact, easement development, and any other necessary restoration procedures. Private or other public organizations may assist in the proposal of projects, sites, and/or the acquisition of and deed restrictions for the proposed site(s). Approval of restoration projects, sites, activities, and fund allocation will be through unanimous agreement by the Natural Resource Trustees.

Goal and Objectives of Restoration

The goal of this restoration plan is to address the resource injuries resulting from the releases of hazardous substances from the IJ site. This goal of compensation for losses of injured natural

resources can be achieved through restoration, replacement or acquisition of the equivalent of injured natural resources.

Restoration Alternative Development and Evaluation

A reasonable range of restoration alternatives to address one or more specific injuries while making the environment and the public whole were considered, including the natural recovery/no action alternative, as well as the primary and compensatory restoration alternatives. For each alternative, consideration will be given to costs, benefits, likelihood of success, and effects on public health and safety.

The following are three alternatives the trustees identified to meet the requirements of the NRDA laws, as well as fulfill the goal and objectives of this Restoration Plan.

1. No further action: This alternative would provide for no action to be taken to restore resources injured by the hazardous substance releases from the Site except through natural recovery and would provide no action to compensate the public for the interim losses to natural resources from the time of the incident until recovery is achieved or for the uncertainty associated with the results of natural recovery.
2. Primary restoration of the impacted area: This alternative would provide for efforts to remove the remaining pollutants and their by-products from the Waste Inc. site and associated affected off-site areas. This would include restoration of surface and ground water, stream-bed sediments, shoreline soils, and riparian habitat.
3. Restoration of resources impacted by the Site or that will serve as compensation for injured resources through acquisition, rehabilitation and protection of equivalent resources: This alternative would restore the injured resources and the services they provided by increasing the occurrence of and/or enhancing or restoring habitats that will support these resources.

Summary of Environmental Consequences by Alternative

Alternative #1: The goal of this restoration plan is to address the resource injuries resulting from the releases of hazardous substances from the Waste Inc. site. This alternative does not allow for restoration, replacement, or acquisition of equivalent resources injured in this spill. Without restoration, compensation for injury to natural resources would not occur.

Alternative #2: US EPA and IDEM's CERCLA remedial actions undertaken at the Site served to isolate and prevent further releases of hazardous materials. Complete remediation of the impacted area was not deemed feasible under CERCLA. Removal actions would include extensive soil and sediment removal, and would involve dredging affected riparian and in-stream wetlands. These actions would cause direct destruction of aquatic life and their habitats. Thus, complete remediation of the area affected by contamination is not feasible due to the direct negative impacts which would result, and the extremely high costs involved.

Alternative #3: The trustees have selected Alternative 3, the restoration of habitats that support injured resources, as the preferred alternative. This alternative was selected because it best meets the goal of the restoration plan: to address the resource injuries resulting from the releases of hazardous substances, pollutants and contaminants from the Waste Inc. site. This alternative will focus limited restoration monies on areas where maximum restoration, replacement or acquisition of the equivalent of injured resources can be achieved.

Restoration Process

Acquisition and necessary restoration of bottomland, riparian and wetland habitats will be accomplished using accepted, standard methods. Restoration activities may include, but are not limited to: plugging drainage ditches or subsurface tiles in drained wetlands; removing exotic species; revegetating the wetland or riparian habitats with native trees, shrubs, and/or grasses; stabilizing eroding stream banks with vegetation or other materials.

Implementation of this restoration plan will involve cooperative efforts with voluntary private or public participants who own lands that provide ecological services equivalent to those injured at the IJ site. When cooperative projects are undertaken, the trustees will include agreements with the landowners or land management entities to maintain the natural integrity of the sites receiving restoration for an agreed time period. These agreements may take the form of contracts with the Trustee Agency(ies), perpetual easements, participation in defined programs, or acquisition. If lands are acquired, they will be deeded to the State, other public land management entities, or private land management entities with appropriate easements or deed restrictions.

Therefore, this project will occur in a geographically proximate area with restorable habitat similar to that lost as a result of contamination from the IJ site. The selection of comparable habitat will benefit fish and wildlife similar to those injured as a result of site contamination. The restoration goal for this project is 1:1 (1 acre of restored or enhanced wetlands for 1 acre of degraded, or otherwise detrimentally-impacted wetlands). This is appropriate based on the nature of the impacts, historic lost habitat values, and the importance of the site's wetlands to fish and wildlife.

The project will consist of restoration, protection and/or enhancement of riparian habitat and scrub-shrub wetland habitats. The following items are proposed to compensate for lost habitat values which have occurred as a result of activities at the site; the restoration of at least 10.9 acres of habitat along an intermittent tributary of the St. Joseph River, and the restoration of at least 4 acres of emergent and scrub-shrub wetland habitats. Because this settlement was for only 58 percent of our original claim, our restoration goals will be implemented to the best of our ability.

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 government 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 exclusion 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 will be documented in an Environmental Action Statement (attached).

Monitoring Restoration Effectiveness

Monitoring the implementation of this restoration plan will be done by the Natural Resource Trustees or their designated representatives. Location of property for acquisition or protection through easement or deed restriction and/or sites where restoration can be accomplished will be the first step in implementation. On sites where restoration activities will be completed, design of site plans, site preparation, establishment of hydrology (if required) and vegetation, and maintenance requirements will be considered. A monitoring plan developed for each restoration site may include: data to be collected, sample sizes, sampling schedule and duration, analysis techniques, and performance criteria. The Natural Resource Trustees or their designated representatives will determine if corrective action is indicated by monitoring results.

Schedule and Budget

This project will be initiated in FFY 2004 (SFY 2004) and will be managed cooperatively by the Natural Resource Trustees. A total of \$32,736.00 (+ interest) is available for restoration implementation. The Natural Resource Trustees will attempt to keep administrative costs associated with implementation of this Restoration Plan and monitoring of restoration sites to minimum required. It is anticipated that most administrative costs will be covered by a small portion of the interest earned on principal in the restoration fund.

Final Report

At the completion of the project, a final report documenting the implementation of this restoration plan will be prepared. Photos, digital maps with appropriate location and metadata, field plans for restoration activities, and key documents such as agreements, deeds, easements, etc. will be included in the report.

Project Contacts

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I. JONES RECYCLING,
ALLEN COUNTY, INDIANA

Scott E. Pruitt
U.S. Fish and Wildlife Service
Date: _____

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