



THE NATURAL RESOURCE DAMAGE ASSESSMENT SETTLEMENT RESTORATION PLAN

for

MARATHON OIL COMPANY, MARION COUNTY, INDIANA

February 1999

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

Indiana Department of Natural Resources
Division of Fish and Wildlife

Indiana Department of Environmental Management
Office of Land Quality

Released for Public Comment
September 1999

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Office of Land Quality**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 natural resources injured or lost as a result of the discharge of oil products from the Marathon Oil Company's Indianapolis refinery. Implementation of this plan will be conducted by the Natural Resource Trustees under the authority of the Clean Water Act, 33 U.S.C. 1251 *et seq.* and the Oil Pollution Act 33 U.S.C. 2701 *et seq.* (OPA).

Background of Incident and Injury**Incident**

On November 25, 1990 and February 15, 1992, Marathon Oil Company discharged contaminants from a refinery owned and operated by Marathon in Indianapolis. Approximately 3,000 gallons of jet fuel/kerosene were discharged in 1990; in 1992 an estimated 1,470 gallons of slop oil were discharged. The spills entered Oil Creek, Crooked Creek and other waters of the United States and the State of Indiana.

The primary types of habitat injured as a result of the discharges covered under this natural resource damage assessment were riparian habitat and its associated wetlands. In total, approximately 9.24 miles of riverine habitat and 50 acres of wetland habitat were impacted. Oil and Crooked Creeks are narrow, forested corridors which exist in a suburban residential setting.

Summary of Injury Assessment Procedures Used

Assessment of the injury to trust resources was performed by FWS, DNR and DEM staff. Initial field surveys were followed by sampling and chemical analysis of sediments, bioassays of sediment samples, and field surveys of fish, mussel and benthic macroinvertebrate communities.

Overview of the Crooked Creek Watershed

Oil and Crooked Creeks are located in the White River watershed in Hamilton and Marion Counties. Oil Creek is a small stream with a drainage area of 2.38 mi² that flows into Crooked Creek. Crooked Creek is a small, warm-water stream with an average discharge, recorded at a U.S.G.S. gage station near the 42nd street bridge, of 19.4 ft³/s. Crooked Creek drains 65.53 mi² of primarily urban landscape. Crooked Creek flows in a

southerly direction through Pike and Washington Townships, discharging into the White River in northwest Center Township. Residential development dominates the Crooked Creek watershed. Land uses in the watershed include residential, commercial, light and heavy industrial, and agricultural.

Several characteristics of the watershed may influence implementation of this restoration plan. For example, options for restoration along Oil Creek must consider the effects of residual, chronic contamination. Additionally, Crooked Creek is in close proximity to Eagle Creek Reservoir; Eagle, Little Eagle and Fall Creeks; and the West Fork of the White River. This region supports multiple sites of ecological diversity and recreational opportunity in an urban matrix. Indianapolis has placed a high value on greenspace and has developed the Indianapolis Greenways Plan. Their plan identifies the Crooked Creek watershed as an area of high greenway potential, designating a plan for a Crooked Creek Corridor to improve fish and wildlife habitat as well as recreational opportunities. The city's efforts will link natural and recreational areas along the river system. Crooked Creek represents a potential arm of a greenway network that may connect it to the larger White River Greenway.

Natural Resource Injury

Petrochemical products and byproducts have historically been discharged into Oil Creek, causing severe contamination, since 1977. Marathon Oil Company is responsible for eight reportable spills to Oil Creek. This restoration plan addresses the 1990 and 1992 spills, during which significant fish kills and other injuries to trust resources occurred. The mortality caused by the 1990 spill extended more than 4.5 miles downstream of the facility. During the 1992 spill, approximately 9 miles of stream and several acres of riparian wetlands were injured by a large quantity of undiluted slop oil. Response actions did not prevent injury to trust resources, did not contain all the oil spilled and did not detoxify the oil not captured. After response actions were completed, sediments remained oiled, creating an elevated Biological Oxygen Demand (BOD), and a chronic source of contamination, which will likely have long-term adverse effects on aquatic resources. Chronic adverse effects can be expected for these aquatic resources as persistent contaminants in the sediments become resuspended. Pre-assessment surveys indicated stressed or nonexistent populations of fish, predominately missing benthic macroinvertebrate communities, and an absence of freshwater mussels in the watershed. Evidence of physiological and behavioral injuries were also observed in wildlife.

The discharges of oil contamination into Oil Creek have resulted in severe degradation of water quality, sediments, and overall habitat quality of Oil Creek and Crooked Creek. Oil and grease, slop oil, jet fuel/kerosene, diesel fuel asphalt, fuel oil # 2, and oil wastes are the documented contaminants which have been discharged into the Crooked Creek watershed. Injury to trust resources resulting from this contamination encompasses the full complement of resources associated with riparian wetlands.

Crooked Creek contained sufficient habitat to support a small warm water fishery and a complete macroinvertebrate community prior to the spill. This community in turn supported a myriad of other amphibians, reptiles, birds and mammals. The habitat injured as a result of these discharges provided food, shelter, breeding areas, and other services essential to the survival of trust wildlife resources. In addition, this habitat provided sport and personal-use fisheries, recreational uses, and aesthetic value to human communities of the Crooked Creek watershed. State and Federal trust resources injured or potentially injured include the following:

- fish communities
- macroinvertebrates
- birds, including waterfowl, shorebirds, raptors, and others
- amphibians, reptiles, and mammals
- aquatic and terrestrial plants and microorganisms
- surface waters, groundwater, and sediments

History of Settlement

Evaluation of injuries to natural resources was initiated within a week of notification of the spill. The Preassessment Screen and Notice of Violation for Clean Water Act violations were completed and sent to

Marathon Oil Company on February 16, 1993. Following receipt of these documents, Marathon Oil Company entered into settlement negotiations with the Natural Resource Trustees and legal representatives for the Federal Government and the State of Indiana.

On March 26, 1996, a consent decree was signed between the Federal and State Trustees and Marathon Oil Company settling claims for injury to natural resources in violation of the Clean Water Act, 33 U.S.C. 1251 *et seq.*, and the Oil Pollution Act, 33 U.S.C. 2701 *et seq.* Marathon agreed to pay to the Trustees \$31,250.00 for past assessment costs and \$273,380.00 for natural resource damages. The consent decree states that this sum is to be used in a manner consistent with Section 1006 (f) of OPA, 33 U.S.C. 2706(f), including expenditures for the following: restoration, rehabilitation, and replacement activities to address natural resource injury caused by or arising out of the spills; acquisition of fee title of, or conservation easements on lands or property in the area of the spills or similar ecosystems constituting natural resources equivalent to any affected by the spills; and performance of studies and projects necessary and appropriate to the above activities.

Restoration Project Administration

The Natural Resource Trustees will oversee and implement this restoration plan and ensure that projects meet Natural Resource Damage Assessment (NRDA) requirements. Restoration projects will involve the voluntary restoration of privately and/or publicly owned lands that provide services equivalent to those lost as a result of the discharges by Marathon, in 1990 and 1992. Natural resource damage assessment restoration plans that will result in negligible changes in use of the affected areas have been included as categorical exclusions for National Environmental Protection Act (NEPA) compliance for actions implemented by FWS (516 DM6 Appendix I). Additionally, restoration implementation will likely include those types of activities that are also considered categorical exclusions and/or negligible changes in land use, as in the FWS's Partners for Wildlife Program. The NEPA compliance has been documented in an Environmental Action Statement (attached).

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 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, following the guidelines presented in "Superfund Financial Management and Recordkeeping Guidance for Federal Agencies" (EPA publication EPA 220 M-8900), and the equivalent publications used by state agencies.

Project Coordination

The Natural Resource 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 property and deed restrictions for the proposed site(s). On November 5, 1996, an announcement of the initiation of restoration planning and a request for suggestions was released to the public with a 30 day comment period. Approval of restoration sites, restoration 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 1990 and 1992 spills of petroleum products from the Marathon Oil Indianapolis refinery. Objectives to accomplish this goal

include: acquisition, remediation, or restoration of resources injured; compensating for the loss of services provided by the injured resources to the ecosystem; and compensating the community members for the lost recreational and aesthetic uses associated with the injuries to natural resources.

Restoration Alternative Development and Evaluation

A range of restoration alternatives was considered following OPA 990.53 and evaluated under OPA 990.54. OPA requires the Natural Resource Trustees to consider a reasonable range of restoration alternatives to address one or more specific injuries while making the environment and the public whole. Alternatives must be considered for natural recovery/no action as well as for primary and compensatory restoration. For each alternative, consideration must be given to costs, benefits, likelihood of success, and effects on public health and safety.

The following are three alternatives identified to meet the requirements of OPA and 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 oil spill at an accelerated rate, and would provide no action to compensate the public for the interim losses 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 spill site: This alternative would provide for efforts to remove the remaining pollutants and their by-products from the affected natural resources. Affected natural resources include surface water, stream-bed sediments, shoreline, ground water, riparian habitat, and wetland habitat.
3. Restoration of riparian and wetland habitats within Crooked Creek and other nearby watersheds: This alternative would restore the injured habitats and the services they provided to the environment and the public by increasing the occurrence of and/or enhancing existing riparian and wetland habitat within Crooked Creek and other nearby watersheds.

Summary of Environmental Consequences by Alternative

Alternative #1: The goal of OPA 1006 is to make the environment and public whole for injuries to natural resources resulting from an incident involving an oil discharge. This goal is achieved through returning injured natural resources to baseline and compensating for interim losses of such natural resources through restoration, rehabilitation, replacement or acquisition of equivalent natural resources. This alternative does not allow for restoration, rehabilitation, replacement, or acquisition of equivalent resources injured in this spill. Without restoration, the public would not be compensated for injury to natural resources.

Alternative #2: Further remediation of the spill site would require extensive studies to determine the current extent of contamination, the composition of the remaining contaminants, and the feasibility of returning conditions to pre-spill levels. Removal actions would include dredging sediments, which would cause direct destruction of aquatic wildlife, and their habitats. Furthermore, Oil Creek received contamination over many years prior to the spills addressed by this settlement. This settlement only covers the costs of addressing the November 25, 1990 and February 15, 1992 spills to Oil Creek. Thus, further remediation of the spill site is not feasible due to the direct negative impacts which would result, the extremely high costs involved, and the general lack of compensation to the public for the resources lost since the spill.

Alternative #3: The Natural Resource Trustees have selected Alternative 3, the restoration of riparian and wetland habitats within Crooked Creek and other nearby watersheds, as the **Preferred Alternative**. This alternative was selected because it best meets the goal of OPA, to make the public whole for injuries to natural resources resulting from an incident involving an oil discharge, and the goal of this restoration plan. Standard procedures of implementation have been developed for restoration of wetland and riparian habitat, and have been shown to be highly successful.

Restoration Process

Implementation of this restoration plan will involve voluntary private or public participants who own lands that provide ecological services equivalent to those injured by the Marathon Oil spill. The Natural Resource Trustees will enter into agreements with the landowners or land management entities requiring them to maintain or enhance the natural integrity of the sites receiving restoration for an agreed time period. These agreements may take the form of contracts with the Trustees, perpetual easements, participation in defined programs, or property acquisitions. 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.

Restoration of riparian and wetland habitats will be accomplished by using accepted, standard methods, such as those outlined in the Indiana Drainage Handbook. These may include, but are not limited to: plugging drainage ditches or subsurface tiles in drained wetlands, revegetating the riparian zone with native trees, shrubs, and/or grasses, removing exotic species, stabilizing eroding stream banks with vegetation or other materials, and enhancing the stream environment through microhabitat creation and/or channel modification. Access to some of these restored areas will be developed, by creating and enhancing trail systems and otherwise improving public access. All restoration activities will comply with Federal, State and local laws, regulations and planning requirements.

Monitoring Restoration Effectiveness

Monitoring the implementation of this restoration plan will be done by the Natural Resource Trustees. It is estimated that at least five years are necessary for the stabilization of restored wetlands and riparian habitat. During the initial five years of each project, restoration sites will be monitored to determine the success of each stage of implementation. Stages in the restoration process include design of site plans, site preparation, establishment of hydrology and/or vegetation, and maintenance. Overall success of the plan will depend upon success at each restoration site. A monitoring plan will be developed for each restoration site, which will include project objectives, and performance criteria that will be used to determine whether project objectives have been met. At each stage, the Natural Resource Trustees will determine if there is a need for corrective action.

Projects Selected to Implement the Preferred Alternative

Juan Solomon Park Restoration

Juan Solomon Park is a forty-six acre park under the management of the Indianapolis Parks and Recreation Department. Twenty-two acres of this park have been designated as a natural area that will be used for environmental education. This site would benefit from actions to restore riparian habitat along the creek, address impacts associated with public use, and direct educational activities.

The natural area within Juan Solomon Park has suffered from disturbance related to recreational use and exotic plant species invasion. Exotic species are species that have been introduced into alien environments (such as a continent where the species did not previously exist) either intentionally or accidentally (Begon et al. 1990). Disturbed urban forests, such as Juan Solomon Park, are more vulnerable to exotic species introduction than

larger intact rural forests, as the probability of introduction is greater in systems that experience more disturbance. Predators that may help control the exotics in their native environments are generally not present in the new environments. Thus, once the exotic species are introduced, they tend to reproduce rapidly, form dense stands, and out-compete native plant species. Invasion by exotic plant species injures natural areas by altering ecosystem processes, displacing native species, hybridizing with native species and changing their genetic makeup, and supporting other non-native plants, animals, and pathogens (Randall 1996). The availability of water and nutrients, the rate of soil erosion, and the number of native plants which support native animal species may be altered by exotic species. In forested areas, the level of sunlight and soil temperature are important variables that can be affected by the exotic plants as well.

Juan Solomon Park's natural area has been invaded by a number of aggressive exotic plants including bush honeysuckle (*Lonicera tatarica, maackii*), garlic mustard (*Alliaria officinalis*), wintercreeper (*Euonymus fortunei*), tree-of-heaven (*Ailanthus altissima*), and privets (*Ligustrum spp.*). Exotic trees such as tree-of-heaven grow into the canopy where they shade out or topple other trees and prevent regeneration of native species (Randall 1996). On the ground, exotic species, such as garlic mustard, bush honeysuckle, wintercreeper and privets spread rapidly and eliminate native herbaceous species. Garlic mustard is an invasive European species of deciduous forests (Nuzzo 1993). Wintercreeper is an Asian species which has spread into upland and lowland forests in America. It spreads across the ground covering trees, rocks, and herbaceous plants and forming dense mats which smother and kill native vegetation (Schwegman 1996). Privets are a group of species that escaped cultivation and now invade many types of natural areas including floodplain forests (Haragan-Dalton 1996).

Control and eradication of these species can be achieved through a combination of efforts including cutting, pulling and herbicide applications. Control and eradication of these exotic species in Juan Solomon Park will allow the native plant community to re-establish, restoring elements of the floodplain forest that are vital to its continued function. However, recreational use of the nature park may contribute to the re-establishment of these exotic plant species. Therefore, it is important to provide a management plan for the natural area that minimizes disturbance of the forest floor. A system of trails that allows access to this area will encourage visitors to follow a designated path rather than trample various areas of the forest. Trails made of a gravel base are relatively persistent and provide a stable surface for public access. Steep topography along the trails' routes, which is vulnerable to erosion, can be covered with the gravel trail material and plastic timber to create steps.

In summary, the Natural Resource Trustees have identified the following activities as meeting the goal and objectives of this restoration plan:

- Exotic Plant Species Removal
- Construction of Trails for Access to Southern Park Property
- Construction of Trails for Access to Northern Park Property
- Construction of Property Overlook

- Estimated Budget: \$95,936.00

Creation of an Outdoor Education Program at Crooked Creek Elementary School

Crooked Creek Elementary School is located on Crooked Creek, near the intersection of Kessler Boulevard and Michigan Road. The Crooked Creek School students have been involved in the Kingfisher Project, a volunteer effort in which they regularly monitor the health of Crooked Creek. The results of the school's monitoring program are posted on a database on the World Wide Web and are used by other students and organizations who also monitor the White River watershed. The school would like to expand their environmental education program, by developing an outdoor education lab, acquiring updated research and reference materials, restoring part of the riparian zone of Crooked Creek and creating a marsh on school property.

In summary, the following are projects identified by the Natural Resource Trustees as meeting the goal and objectives of this restoration plan:

- Tree planting on the west bank of Crooked Creek and along the border of a ditch on the property
- Creation of a marsh using native species
- Expanding the water studies education program, through which urban watershed management, stream flow monitoring, water quality monitoring, macro-invertebrate monitoring, plant inventory, water-cycle analysis, erosion impacts, and aquatic wildlife are undertaken
- Expanding the Indiana woodland education program, through which tree identification, insect identification, terrestrial wildlife observations, and habitat studies are undertaken
- Acquiring library and research materials to support educational programs

Estimated Budget:

\$9,400.00

Restoration of Riparian Habitat Cold Springs School

Cold Springs School is an environmental magnet school located on Crooked Creek near its confluence with the White River. A 10 acre lot on the school's property is undeveloped and exists as a degraded woodlot. Exotic species, including tree-of-heaven (*Ailanthus altissima*) and guelder rose (*Viburnum opulus* var. *opulus*) are present in large sections of the forested area. Removal of these exotic species is required to improve ecosystem function. Restoration of this area will include the selection of approximately three acres within the woodlot for clearing and application of herbicide to control exotic plant species. Following the clearing of three acres in the Fall, native oak, walnut and prairie grass species will be planted in the Spring. Approximately 100 trees per acre will be planted. Additionally, the school would like to expand their trail system, to create a direct access route to the area where restoration will occur.

In summary, the Natural Resource Trustees have identified the following activities as meeting the goal and objectives of this restoration plan:

- Exotic species control on a three acre lot on school property
- Reforestation of the three acre lot
- Planting of one acre of prairie grasses

Estimated Budget:

\$6,600.00

Property Acquisition

A number of landowners have expressed interest in selling land along Crooked Creek and the White River to the Natural Resource Trustees. Perpetual easements will be placed on property that is acquired, to ensure protection of the land and river systems. Property will then be deeded to state and/or private management entities. Specific acquisitions have not yet been identified, however site selection should proceed quickly following project plan approval and funding.

Habitat Enhancement Projects

The Natural Resource Trustees are also continuing to explore opportunities to implement habitat improvement and recreation enhancement projects in conjunction with public, civic and conservation organizations, on lands within the Crooked Creek watershed and other nearby watersheds, to achieve the goal of the restoration plan.

Schedule and Budget

This project will be initiated in 1999, and will be managed cooperatively by the Natural Resource Trustees. A total of \$273,380, which is in a court registry account under joint management of the Department of Interior FWS and the State of Indiana, is available for restoration implementation. Administrative costs will not exceed 5% of settlement funds. A summary of the funds allocated thus far is provided below:

\$ 95,936	Juan Solomon Park Enhancement
\$ 9,400	Crooked Creek Elementary Outdoor Education Lab Creation
\$ 6,600	Cold Spring School Riparian Restoration

\$111,936	Total cost allocated to above projects
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Actual costs for all activities approved under these projects are based on reimbursement of actual expenses incurred during the implementation of this restoration plan. Any moneys not expended on projects discussed in this restoration plan will be applied to projects as determined by the Natural Resource Trustee Council.

Final Report

At the completion of the project, a final report documenting the implementation of this restoration plan will be prepared. Pictures of the sites, before and after restoration, field plans for restoration activities, and key documents such as agreements, deeds, etc. will be included.

Project Contacts

Betsy Nightingale
Contaminants Program
Indiana Department of Natural Resources
402 West Washington Street
Room W 273
Indianapolis, Indiana 46204

Jim Smith
Office of Land Quality
Indiana Department of Environmental Management
100 N. Senate Ave. Room N-1125
P.O. Box 6015
Indianapolis, Indiana 46206-6015

Dan Sparks
U.S. Fish and Wildlife Service
620 South Walker Street
Bloomington, Indiana 47403-2121

References

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- Haragan-Dalton, P. 1996. *Ligustrum vulgare*, *L. sinense*, *L. japonicum*: Privet. pp. 58-59 in Randall, John M. and Janet Marinelli (eds.). 1996. Invasive Plants: Weeds of the Global Garden. Brooklyn Botanic Garden Inc., Brooklyn NY.
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Restoration Plan Addendum – Response to Comments

Comment #1. *The original request from Crooked Creek Elementary School included funding for a "log cabin" for environmental education to be used by the school's student body and the general community. This "cabin" would house the expanded "woodland education program" and "water studies education program" at the school, as well as house the "library and research materials to support (these) educational programs". (Indeed), this structure would be an environmental classroom. It would assist in creating a "relationship" with the creek by the school's student body and general community, providing better stewardship of Crooked Creek for generations to come.*

Response #1. The Natural Resource Trustees agreed to provide funding for several aspects of the education center, including the establishment of wetland(s) and tree species, re-construction of the creek-side trail, and purchase of materials to supplement and/or establish outdoor education. While the Trustees believe that the log cabin will be beneficial to the school, we do not believe that it is an appropriate use of settlement funds as the Trustees' primary emphasis for use of settlement money was to restore, replace, or acquire the equivalent of the injured natural resources [Comprehensive Environmental Response, Compensation and Liability Act Section 107(f), Oil Pollution Act Section 1006(c)].

Comment #2. *"The cabin should be funded by the interest made on the settlement funds during this long process."*

Response #2. Interest earned on this settlement will also be spent on projects that restore, replace, or acquire the equivalent of the injured natural resources.

Comment #3. *"No accounting or mention has been made for the interest accumulated on the settlement funds during the period from March 26, 1996 to present."*

Response #3. It is our current understanding that nearly \$48,000 in interest was earned in the Court Registry Account during this time, less any fees the Trustees may be charged by the Court for managing the account. Interest earned on this settlement will also be spent on projects that restore, replace, or acquire the equivalent of the injured natural resources.

Comment #4. *"The Crooked Creek Community Council (C4) is currently developing two projects that could be linked by a mini path" from West 56th Street at the Crooked Creek, under the Kessler Blvd. Bridge, following the creek through the school's campus to Michigan Road. The southern link would be a path along Knollton Road south to West 51st Street and then east to the old Inter-urban rail line. This abandoned rail line would be converted to a Greenway path connecting the Crooked Creek Community with the Water Company's "Tow Path". This would allow our community to link with Butler University, Indianapolis Museum of Art, Broad Ripple and downtown via the "Tow Path". The northern link would connect at the school's campus via the "mini path" with the proposed Michigan Road Multi-purpose Path, leading north to the proposed Crooked Creek Library Branch at 60th and*

Michigan Road. We believe that this "mini-path" falls with in the Settlement's criteria. It would create an important safety link between two destinations - connecting the community with the creek and the school campus. This is as valid a project as the proposed trails to access the "Northern and Southern Park Properties."

Response #4. The Trustees require more information about the proposed path before they could support such a project. Please send us a detailed proposal on these projects so that we can consider them for funding. Submitted proposals will be evaluated relative to other such submissions.

Comment #5 *"The creating and funding of a "Crooked Creek Watershed Quality Improvement Committee" would empower the community to address water quality concerns and develop long term stewardship of the Crooked Creek. IDEM's "Wildcat Creek Pilot Project" would serve as a blueprint for this endeavor. The Crooked Creek Community, IDEM, DNR, Department of Health, HUPUI and other interested groups would serve on this committee. Again, we feel that this meets the "Goals and Objectives of Restoration", as outlined in the September, 1999 Restoration Plan. If the Trustees disagree with our judgement, we request that the sewer overflows impacting Crooked Creek be addressed with settlement funds."*

Response #5. This issue is outside of the Trustees' scope and authorities and it is believed that projects more suited to the restoration goals of this project have been or will be located. The Trustees believe that there are more appropriate ways for citizens to be empowered to make a local government comply with State and Federal laws. Combined sewer overflow problems are the responsibility of the City of Indianapolis which is required to comply with the Clean Water Act designation of the White River as "fishable and swimmable" under current Indiana regulations. Additionally, the Department of Justice has recommended against Trustees using settlement funds to implement Clean Water Act requirements that municipalities are mandated to do (see the Restoration Plan for New Bedford Harbor, MA). The request for funding of a "Crooked Creek Watershed Quality Improvement Committee" should be addressed to the Office of Water Management in the Indiana Department of Environmental Management. That Office could determine if application for a 319 Grant, or other funding, might be more appropriate for the proposed activity.

Comment #6. *" C4 requests that the cost of the Juan Solomon Park Restoration Project be awarded through C4. We desire to attract matching funds for additional improvements."*

Response #6. Our contracting process requires that we develop a contract with the landowner to implement restoration projects. Thus, we cannot channel funds through a third party.

Comment #7. *"One item which the Natural Resource Trustees did not identify as meeting the restoration goals and objectives was the enhancement of the existing rustic nature trail which runs along a substantial portion of the riparian ground of the creek. We feel that enhancing the 300 yards of the trail with gravel base, mulch top, and treated lumber sides is necessary not only from the vantage point of our educational program, but to protect the natural area and minimize disturbance to existing and restored riparian environment. A well laid, persistent trail encourages visits and study of the unique wildlife area and at the same time provides protection to that area by encouraging students and visitors to follow the designated path."*

Response #7. The Natural Resource Trustees concur, with the exception of the use of treated lumber in an area that is subject to flooding. Chemicals used to treat the lumber can leach into water, and negatively affect living organisms and water quality. The Trustees will require that either non-treated hardwoods, such as cedar, or recycled plastic "lumber" be used in construction of the trail.

Comment #8. *"As homeowners along Oil Creek, we encourage you during the selection process to assess whether it would be possible to leverage the subject funds against other pending settlements with Marathon, if any, or even combine these funds with other monies planned for use in the area. We are unaware of any specific projects in the planning stage however money may be available from other sources such as the City of Indianapolis, IDEM, U.S. Fish and Wildlife Service, or private foundations. We would rather see the Trustees not use any funds until all other possible funding sources (especially pending litigation against Marathon, if any) are quantified."*

Response #8. The primary goal of the Natural Resource Trustees is to achieve restoration of the resources that were injured through the contamination. We are receptive to the idea of combining the Marathon settlement funds with other sources of funds when possible, and maximizing the value obtained through the use of these settlement funds, as long as the restoration goals are still being achieved. We have been working in cooperation with a number of local agencies to implement restoration projects. The Natural Resource Trustees are also open to considering restoration projects within the Oil Creek watershed and encourage the submission of restoration project proposals from that area.

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 Marathon Oil Spill, Marion County, Indiana.

X is a categorical exclusion as provided by 516 DM 2, 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):

X Restoration Plan

_____ Environmental Assessment and FONSI

_____ Public comments

Michael P. Litwin 3/1/99 [Signature] 7-12-99
(1) Initiator Date (2) RHPO Date
Acting Supervisor

Dina Mandell 7/12/99 [Signature] 7/16/99
(3) REC Date (4) ARD Date

[Signature] 7/14/99
ACT (5) RD Date

NATURAL RESOURCE DAMAGE ASSESSMENT SETTLEMENT
FINAL RESTORATION PLAN

Co-Trustee concurrence on the Final Restoration Plan for:
Marathon Oil Company
Marion County, Indiana



Scott E. Pruitt

U.S. Fish and Wildlife Service

Date: 2/1/2000



Carrie Deehrmann

Indiana Department of Natural Resources

Date: 5/1/00



Elizabeth Admire

Indiana Department of Environmental Management

Date: 4/11/2000