

*FINAL*

**RESTORATION PLAN**  
**for the**  
**WEST SHORE PIPE LINE COMPANY**  
Control of Invasive Vegetation  
Long Run Seep Nature Preserve  
Will County, Illinois

*Prepared by:*

Illinois Natural Resources Trustees:  
Illinois Department of Natural Resources and  
Illinois Environmental Protection Agency

March, 2007

FACT SHEET

FINAL RESTORATION PLAN for the West Shore Pipe Line fuel oil spill in a wetland located in Will County, Illinois.

LEAD AGENCY FOR THE FINAL RESTORATION PLAN:  
Illinois Department of Natural Resources

COOPERATING AGENCIES:  
Illinois Environmental Protection Agency

ABSTRACT:  
This final Restoration Plan has been prepared by the state Natural Resource Trustees to address restoration of natural resources and resource services injured as a result of the West Shore Pipe Line fuel oil spill affecting a wetland located on a Commonwealth Edison transmission right-of-way.

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COPIES:

Copies of the final RP are available at the address listed above or available for download at [http://dnr.state.il.us/orep/contaminant\\_assessment/](http://dnr.state.il.us/orep/contaminant_assessment/)

# TABLE OF CONTENTS

<b>List of Acronyms and Abbreviations .....</b>	<b>4</b>
<b>I. Introduction.....</b>	<b>5</b>
<b>II. Incident Description.....</b>	<b>5</b>
<b>III. Natural Resource Trustee and Authorities.....</b>	<b>5</b>
<b>IV. Overview of the Oil Pollution Act of 1990 Requirements .....</b>	<b>6</b>
<b>V. Public Participation .....</b>	<b>7</b>
<b>VI. Restoration Planning .....</b>	<b>8</b>
<b>VII. Restoration Strategy .....</b>	<b>8</b>
<b>VIII. Evaluation Criteria .....</b>	<b>8</b>
<b>IX. Proposed Compensatory Restoration Alternative .....</b>	<b>9</b>
<b>X. Rationale for Preferred Restoration Alternative .....</b>	<b>10</b>
<b>XI. Proposed Action .....</b>	<b>11</b>
<b>XII. Surveillance and Monitoring .....</b>	<b>11</b>
<b>XIII. Fiscal Procedures .....</b>	<b>11</b>
<b>XIV. Coordination with other Programs, Plans, and Regulatory Authorities.....</b>	<b>11</b>

## List of Acronyms and Abbreviations

AGO	Office of the Attorney General
CERCLA	Comprehensive Environmental Response, Compensation & Liability Act
CERP	Comprehensive Environmental Review Process
CWA	Clean Water Act
IDNR	Illinois Department of Natural Resources
IEPA	Illinois Environmental Protection Agency
INPC	Illinois Nature Preserves Commission
NOAA	National Oceanic & Atmospheric Administration
NRDA	Natural Resource Damage Assessment
OPA	Oil Pollution Act
RP	Restoration Plan
Trustees	Illinois Natural Resource Trustees
West Shore	West Shore Pipe Line Company

## **I. Introduction**

When the public's natural resources are injured by a release of hazardous substances or oil, federal law provides a mechanism, Natural Resource Damage Assessment (NRDA), that authorizes Natural Resource Trustees to seek compensation for the public for injuries to natural resources. Releases of hazardous substances and oil into our environment can pose a threat to human health and natural resources. Natural resources are plants, animals, land, air, water, groundwater, drinking water supplies, and other similar resources. This final Restoration Plan (RP) describes a release, injuries to natural resources, and Illinois Natural Resource Trustees' proposal to use the compensation the public received for the injury to natural resources. Primary restoration was achieved through natural recovery of the wetlands, thus the project addresses the goals and objectives in compensating for interim losses. The Illinois Natural Resource Trustees (Trustees) are the Illinois Department of Natural Resources (IDNR) and the Illinois Environmental Protection Agency (IEPA) with legal representation provided by the Office of the Attorney General (AGO).

Due to NRDA action taken by the Trustees and the AGO, West Shore Pipe Line Company (West Shore) agreed to compensate the public based on injury determination that natural resources were injured resulting from the release of fuel oil into the environment from a petroleum pipeline pumping station located in Lemont, Cook County, Illinois. The release migrated off-site and into an adjacent wetland. The settlement, entered in the Federal District Court for the Northern District of Illinois on September 5, 2002, provided approximately \$10,000, earmarked as Natural Resource Restoration funds.

## **II. Incident Description**

On March 25, 1999, there was an un-permitted release of approximately 15,000 gallons of fuel oil into the environment from the petroleum pipeline pumping station, resulting in approximately 750 gallons migrating into the adjacent wetland located on a Commonwealth Edison transmission right-of-way. Natural resources under the trusteeship of the IDNR and IEPA that were impacted include soil, surface water, flora, fauna, wildlife, and aquatic life.

## **III. Natural Resource Trustees and Authorities**

Federal laws establish liability for natural resource damages in order to compensate the public for the injury, destruction, and loss of natural resources and their services due to the un-permitted release of oil or hazardous substances. These authorities are found generally in Section 107(f) of the Federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9607(f), Section 311(f) of the Clean Water Act (CWA), 33 U.S.C. § 1321(f), and Section 1002(b) of the Oil Pollution Act of 1990 (OPA), 33 U.S.C. §2702(b), the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R. Part 300, the OPA NRDA regulations, 15 C.F.R. Part 990, and the CERCLA and CWA NRDA regulations, 43 C.F.R. Part 11. The IDNR and IEPA prepared this final RP. As Trustees, the IEPA and IDNR are each authorized to act on behalf of the public, to assess and recover natural resource damages and to plan and implement actions to restore natural resources and resource services injured or lost as the result of a discharge or threat of a discharge of oil or hazardous substances.

#### **IV. Overview of the Oil Pollution Act of 1990 Requirements**

OPA authorizes Trustees to recover the cost of restoring, rehabilitating, replacing, or acquiring the equivalent of the injured natural resources ("primary restoration"), the diminution in value of those injured natural resources pending restoration ("compensatory restoration"), and reasonable assessment costs. The National Oceanic & Atmospheric Administration (NOAA) promulgated regulations for natural resource damage assessments resulting from oil spills at 15 C.F.R. Part 990. The following provides a summary of the steps taken by the Trustees to address the natural resource injuries associated with these incidents including developing this restoration plan.

After an initial investigation the Trustees determined federal authority provided jurisdiction to pursue recovery for natural resource injuries. The pipeline and spill constitute an "incident" pursuant to OPA Section 1001(14) (33 U.S.C. § 2701(14)). Because the discharge was not authorized by a permit issued under federal, state, or local law and did not originate from a public vessel or from an onshore facility subject to the Trans-Alaska Pipeline Authorization Act, the incident is not an "excluded discharge" within the meaning of OPA Section 1002(c) (33 U.S.C. § 2702(c)). Further, the Trustees determined that natural resources under the trusteeship of the Trustees were injured as a result of the incident. These factors established jurisdiction to proceed with an OPA NRDA claim.

Natural resources are defined 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 (including the resources of the exclusive economic zone), any State or local government or Indian tribe or any foreign government" (33 U.S.C. § 2701(20)). Injury is defined as "an observable or measurable adverse change in a natural resource or impairment of a natural resource service" (15 C.F.R. § 990.30). A NRDA consists of three phases: preassessment, restoration planning, and restoration implementation. Based on information collected during the preassessment phase, the Trustees make a preliminary determination as to whether natural resources and/or services have been injured and/or are likely to be injured by the release. Through coordination with response agencies (e.g., the IEPA) the Trustees next determine whether the oil spill response actions will eliminate the injury or the threat of injury to natural resources. If injuries are expected to continue, and feasible restoration alternatives exist to address such injuries, the Trustees may proceed with the restoration planning phase. Restoration planning may also be necessary if injuries are not expected to continue or endure but are nevertheless determined to have resulted in interim losses of natural resources and/or services from the date of the incident until the date of recovery (15 C.F.R. § 990.30).

The purpose of the restoration planning phase is to evaluate the potential injuries to natural resources and services and to use that information to determine the need for and scale of associated restoration actions (15 C.F.R. § 990.51-990.56). This phase provides the link between injury and restoration and has two basic components: injury assessment and restoration selection.

The goal of injury assessment is to determine the nature and extent of injuries to natural resources and services, thus providing a factual basis for evaluating the need for, type of, and scale of restoration actions. If the Trustees determine that the information gathered during

preassessment is sufficient to provide a basis for restoration, they may proceed directly to the restoration planning phase without completing a formal damage assessment. As the injury assessment is being completed, the Trustees develop a plan for restoring the injured natural resources and services. The Trustees must identify a reasonable range of restoration alternatives, evaluate and select the preferred alternative(s), develop a draft restoration plan presenting the alternative(s) to the public, solicit public comment on the draft restoration plan, and consider public comments into a final restoration plan (15 C.F.R. § 990.55).

During the restoration implementation phase, the restoration plan is presented to responsible parties to implement or to fund the Trustees' costs for assessing damages and implementing the restoration plan. This provides the opportunity for settlement of damage claims without litigation. Should the responsible parties decline to settle, OPA authorizes Trustees to bring a civil action against the responsible parties for damages or to seek reimbursement from the Oil Spill Liability Trust Fund administered by the United States Coast Guard.

In this case, the Trustees and West Shore have already settled claims for natural resource damages. This final RP demonstrates that the settlement is adequate to restore, replace, rehabilitate, or acquire the equivalent of the injured natural resources and services.

## **V. Public Participation**

Public review of the draft RP is an integral component of the restoration planning process. Through the public review process, the Trustees seek public comment on the approaches used to define and assess natural resource injuries and the projects being proposed to restore injured natural resources or replace services provided by those resources.

Public review of the draft RP is consistent with all federal and state laws and regulations that apply to the NRDA process. Following public notice, the draft RP becomes available to the public for a 30-day comment period. Written comments received during the public comment period will be considered by the Trustees in preparing the final RP.

Public comments and suggestions on the proposed restoration alternative(s) is an important part of the public participation process. Anyone who reviews the draft RP is encouraged to evaluate and comment on any part of the draft RP, including descriptions of the affected areas, the proposed restoration project, and/or the restoration selection process. The public is further encouraged to evaluate and comment on the feasibility of the proposed restoration project itself. If additional restoration alternatives are proposed by the public, please describe how the additional restoration alternatives meet the evaluation criteria contained in Section VIII below.

An additional opportunity for public review will be provided in the event that the Trustees decide to make significant changes to this draft RP based on the public comments. No comments were received for the draft RP, thus the RP became finalized effective March 2007.

## **VI. Restoration Planning**

The Trustees solicited restoration project alternatives from divisions and programs of IDNR and IEPA. Such solicitation may involve the generation of projects from entities such as the Natural Resource Conservation Service, local park districts, and/or non-for-profits. To be eligible for the Natural Resource Restoration Trust funds, the Trustees request that the projects be in the general vicinity of where the incident occurred, preferably in the same watershed where the incident occurred. Specifically for this plan, Trustees received one eligible project proposal from the Illinois Nature Preserves Commission (INPC) and supported by the Division of Natural Heritage.

The OPA regulations require that the Trustees state their preferred alternative(s) and explain the basis for their selection or rejection of other alternatives (See Section X). These Trustee determinations may be modified based on public input and comment.

## **VII. Restoration Strategy**

The goal of the NRDA process is restoration of the injured natural resources and compensation for the interim lost uses of those resources. Restoration actions under OPA regulations are either primary or compensatory. Primary restoration is action taken to return the injured natural resources and services to baseline on an accelerated time frame by directly restoring or replacing the resource or service. As one form of primary restoration, the OPA regulations require that Trustees consider natural recovery of the resource. Trustees may select natural recovery under three conditions: 1) if feasible; 2) if cost-effective primary restoration is not available; or 3) if injured resources will recover quickly to baseline without human intervention. Primary restoration alternatives can range from natural recovery, to actions that prevent interference with natural recovery, to more intensive actions expected to return injured natural resources and services to baseline faster or with greater certainty than natural recovery alone.

Compensatory restoration includes actions taken to compensate for the interim losses of natural resources and/or services pending recovery. The type and scale of compensatory restoration depends on the nature of the primary restoration action and the level and rate of recovery of the injured natural resources and/or services, given the primary restoration action. When identifying compensatory restoration alternatives, Trustees must first consider actions that provide services of the same type and quality and that are of comparable value as those lost. If a reasonable range of compensatory actions of the same type and quality and comparable value cannot be found, Trustees then consider other compensatory restoration actions that will provide services of at least comparable type and quality as those lost.

## **VIII. Evaluation Criteria**

The OPA regulations discuss six evaluation criteria for Trustees to consider when developing a range of restoration alternatives. The Trustees then use those criteria to identify preferred restoration alternatives:

- (1) cost to carry out the alternative;



- (2) extent to which each alternative is expected to meet the Trustees' goals and objectives in returning the injured natural resources and services to baseline and/or compensating for interim losses;
- (3) likelihood of success of each alternative;
- (4) extent to which each alternative will prevent future injury as a result of the incident and avoid collateral injury as a result of implementing the alternative;
- (5) extent to which each alternative benefits more than one natural resource and/or service; and
- (6) effect of each alternative on public health and safety.

## **IX. Proposed Compensatory Restoration Alternative**

The preferred alternative consists of one project identified by the Trustees involving the control of invasive vegetation in the nearby Long Run Seep Nature Preserve, to restore/sustain habitat for natural resources similar to those lost or injured as a result of the fuel oil release (See Section X.). This project will restore and preserve or sustain wetland habitat and the flora and fauna that utilize such habitat.

### Project Description:

Long Run Seep Nature Preserve is a high quality 85-acre natural area owned and managed by the IDNR (Fig 1). It is located east of the DesPlaines River, 2 miles southwest of the Village of Lemont. It is comprised of many natural community types including dry-mesic upland forest, wet-mesic floodplain forest, restored savanna, perennial stream, and most notably, fen and seep. The fen/seep wetland complex is recognized on the Illinois Natural Areas Inventory for its outstanding biological quality and the habitat it provides for the federally and state endangered Hine's emerald dragonfly, and the state-listed grass-pink orchid, beaked spike rush, and slender bog arrow grass. While Long Run Seep is one of the highest quality wetlands in the DesPlaines River Valley, it suffers from encroachment by woody and exotic species. This site has recently been cleared of its invasive understory species and now requires extensive herbiciding of both the wood re-sprouts in the forest and savanna areas, and the herbaceous exotic species in the wetland areas where the threatened and endangered species are found.

Under the proposed restoration project, a contractor will be bid to control invasive vegetation in Long Run Seep Nature Preserve. The contractor must possess an Illinois pesticide applicator's license and be familiar with the native flora and exotic species. The contractor will use the pesticide in accordance with the pesticide label and according to the Illinois Pesticide Act, administered by Illinois Department of Agriculture. Application of the pesticide will be controlled to prevent plant dieoff that would cause sufficient plant decay and low dissolved oxygen levels resulting in death to aquatic species and water quality violations. A selective herbicide will be used to minimize potential adverse impacts to non-target plants. Woody vegetation such as bush honeysuckle, buckthorn, and dogwood will be herbicided, either by foliar treatment or basal bark application- depending on the size of each plant. Herbaceous species like reed canary grass, purple loosestrife, narrow-leaf cattail, and common reed will be foliar treated. There is always the potential for adverse impacts to native plants, but the impact from light herbicide damage is much better than the alternative, which is allowing exotics to

dominate the natural area, which will lead to the eventual crowding out of native flora. The proposed activity is anticipated to occur within 12 months after this Restoration Plan is finalized.



Figure 1. USGS Digital Ortho Map of the Long Run Seep Nature Preserve. The Nature Preserve is outlined in red. This map was obtained through WIRT (Wetland Impact Review Tool).

## **X. Rationale for Preferred Restoration Alternative**

The total amount of the West Shore settlement for restoration projects was \$10,000. The preferred restoration project is projected to cost \$10,000.

The preferred restoration project is expected to benefit various natural resources and services associated with natural communities through conservation and restoration (see criteria 5, Section VIII). The project is expected to satisfactorily compensate for losses sustained by the incidents and benefit public health and safety (see criteria 2 and 6, Section VIII). The Trustees considered that the cost to carry out the project was clearly feasible given the settlement claim and the cost of land and labor in the Chicago region which significantly limits the availability of cost effective restoration projects including acquisition or replacement of equivalent resources (see criteria 1, Section VIII). Further, primary restoration was achieved through natural recovery of

the wetlands, thus the project addresses the goals and objectives in compensating for interim losses (see criteria 2 and 4, Section VIII). For these reasons, the Trustees believe this project will be suitable to use for restoration. The likelihood of a successful restoration effort will be increased by regular site surveillance that will be conducted by INPC and IDNR staff (see criteria 3, Section VIII).

## **XI. Proposed Action**

The IDNR, IEPA and AGO propose that the subject settlement monies be allocated to fund the proposed restoration project. The Contaminant Assessment Section staff (IDNR) will work in close coordination with INPC staff to follow the proper procurement process.

## **XII. Surveillance and Monitoring**

An IDNR or INPC staff person will conduct regular site surveillance at Long Run Seep Nature Preserve to provide information that can be used to assess the success of the restoration for NRDA purposes. This surveillance will determine abundance/cover of invasive species, and also the presence of endangered and threatened plant species. In addition, scientific staff from the Illinois Natural History Survey will be monitoring the population of the federally endangered Hine's emerald dragonfly. Once the restoration activities have been completed the site surveillance will occur at least 3 times per year. As part of the ongoing site management exotic species will be controlled by conducting regular prescribed burns and spot herbicide treatment as needed.

## **XIII. Fiscal Procedures**

Restoration funds for the West Shore settlement total \$10,000.00. It is the intention of IDNR to release funds in Fiscal Year 2007 to begin restoration activities. Once funds are released, restoration activities can begin. IDNR will oversee all restoration activities. The IDNR Springfield headquarters will handle all fiscal transactions. All billings with supporting documentation shall be submitted to the IDNR Springfield Office for review and payment. IDNR fiscal agents will be responsible for the approval and payment of all expenses, obligations and contracts in accordance with the State of Illinois fiscal and procurement procedures.

## **XIV. Coordination with Other Programs, Plans, and Regulatory Authorities**

### **Overview**

The major federal laws guiding the restoration of the injured resources and services are the Oil Pollution Act, the Comprehensive Environmental Response, Compensation, and Liability Act, and the Clean Water Act. Overall these statutes provide the basic framework for natural resource damage assessment and restoration. In addition, the State laws relevant for guiding the restoration of injured resources are the Illinois Environmental Protection Act (415 ILCS 5/1, et seq.), the Illinois Natural Areas Preservation Act (525 ILCS 30/1, et seq.), the Illinois Endangered Species Protection Act (520 ILCS 10/1, et seq.), the Interagency Wetland Policy Act of 1989 (20 ILCS 830/1-1, et seq.), and the Comprehensive Environmental Review Process

(CERP). The Trustees must comply with other applicable laws, regulations and policies at the federal and state levels.

### **Key Statutes, Regulations, and Policies**

There are a number of federal and state statutes, regulations, and policies that govern or are relevant to damage assessment and restoration. The potentially relevant laws, regulations, and policies are set forth below.

#### **Oil Pollution Act of 1990, 33 U.S.C. §§ 2701, *et seq.***

The Oil Pollution Act establishes a liability regime for oil spills that injure or are likely to injure natural resources and/or the services that those resources provide to the ecosystem or humans. Federal and state agencies and Indian tribes act as Trustees on behalf of the public to assess the injuries, scale restoration to compensate for those injuries, and implement restoration. The National Oceanic and Atmospheric Administration promulgated regulations for the conduct of natural resource damage assessments at 15 C.F.R. Part 990. Natural resource damage assessments are intended to provide the basis for restoring, replacing, rehabilitating, and acquiring the equivalent of injured natural resources and services. The Trustees actions are substantially consistent with the regulations found at 15 C.F.R. Part 990.

#### **Clean Water Act (Federal Water Pollution Control Act), 33 U.S.C. §§ 1251, *et seq.***

The Clean Water Act is the principal law governing pollution control for water quality of the nation's waterways. Section 404 of the law authorizes a permit program for the disposal of dredged or fill material into navigable waters. The U.S. Army Corps of Engineers administers the program. In general, restoration projects that move significant amounts of material into or out of water or wetlands (e.g., hydrologic restoration of marshes) require Section 404 permits. - Under Section 401 of the CWA, restoration projects that involve discharge or fill to wetlands or navigable waters must obtain certification of compliance with state water quality standards (section 401).

**Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601, *et seq.*** This Act provides the basic legal framework for cleanup and restoration of the nation's hazardous-substances sites. Generally, parties responsible for contamination of sites and the current owners or operators of contaminated sites are liable for the cost of cleanup and restoration. CERCLA establishes a hazard ranking system for assessing the nation's contaminated sites with the most contaminated sites being placed on the National Priorities List.

**Illinois Environmental Protection Act, 415 ILCS 5/1, *et seq.*** The Environmental Protection Act is the state law that prohibits most forms of pollution occurring on land, in water, or in the air. It also establishes a liability regime, including enforcement and penalties, for entities that violate the provisions of the Act. The Environmental Protection Act was developed for the purpose of establishing a unified state-wide program for environmental protection and cooperating with other states and with the United States in protecting the environment. It was also developed to restore, protect and enhance the quality of the environment and to assure that adverse effects upon the environment are fully considered and borne by those who cause them.

**Illinois Natural Areas Preservation Act, 525 ILCS 30/1 *et seq.*** The Act serves to protect any area in Illinois that has been designated as a nature preserve, including the species of plants and animals in each habitat. Any endangered plant and animal species found in designated nature preserves are also protected under this Act. Dedicating and holding an area for natural preserves is also encouraged in this Act.

**Illinois Endangered Species Protection Act, 520 ILCS 10/1 *et seq.*** This Act gives protection to any plant and animal species on the endangered or threatened list from being moved or destroyed. Any species that the Secretary of the Interior of the United States lists as endangered or threatened is also included on Illinois's endangered and threatened species list. The Act also provides rules of law for searching any premises suspected of illegally keeping goods, merchandise, or animals, plants, or animal or plant products subject to the Act and seizing such products.

**Interagency Wetland Policy Act of 1989, 20 ILCS 830/1 *et seq.*** This Act states that state agencies are responsible for preserving, enhancing, and creating wetland areas for the purpose of increasing quality and quantity of the State's wetland resource base. The goal behind the Act is that there shall be no overall net loss of the State's existing wetland acres or their functional value due to State supported activities.

**Comprehensive Environmental Review Process.** All internal Department (IDNR) projects, permits, and plans related to construction development, or other activities that will result in a change to existing environmental conditions shall be reviewed by the CERP staff to ensure compliance with relevant state and federal environmental statutes and to ensure the greatest protection of all natural and cultural resources to the extent possible.