

**CITGO Petroleum Corporation**



P.O. Box 4689  
Houston, TX 77210-4689

**CERTIFIED MAIL**

February 17, 2009

Linda Burlington  
NOAA Office of General Counsel for Natural Resources  
GCNR  
1315 East-West Highway, Bldg. 3  
Silver Spring, Maryland 20910

Dear Ms Burlington:

CITGO Petroleum Corporation ("CITGO") is a refiner and wholesale marketer of petroleum products. CITGO owns and operates three petroleum refineries with a combined refining capacity of over 650 thousand barrels per day. CITGO also owns and operates light oils marketing terminals, lubricants manufacturing facilities and product pipelines. CITGO employs over 4000 workers in 20 states and distributes gasoline and other petroleum products throughout the United States. In addition, in 2004, CITGO owned and operated two asphalt refineries, one of which was located in Paulsboro, New Jersey.

CITGO commends the Trustees for seeking additional comments on the Draft Damage Assessment and Restoration Plan and Environmental Assessment Report. CITGO is taking this opportunity to submit comments on the Draft Report for the November 26, 2004 M/T Athos I Oil Spill.

CITGO was a large employer in Paulsboro, New Jersey until its asphalt refinery there was purchased by NuStar Asphalt Company in 2008. The spill disrupted refinery operations due to the ongoing recovery activities that were staged on site and the delay in crude receipt that starved operating units. Because of our potential interest in the event, CITGO is concerned about several aspects of the report:

Use of models to estimate losses so long after the event itself, especially in light of estimated recovery periods that have already passed at the time of this report;

Estimation methods for lost recreational use are flawed due to incorrect model assumptions;

Inappropriate funding of local infrastructure projects with national Oil Spill Liability Trust Fund monies;

Linda Burlington  
DARP Comments  
Page 2 of 5

And

Inappropriate taking of agricultural land.

If you have any questions or require additional information, please contact me at  
(832) 486-4903.

Sincerely,

A handwritten signature in black ink, appearing to read "Renae Schmidt". The signature is fluid and cursive, with a large initial "R" and "S".

Renae Schmidt  
Manager of Environmental Protection

Attachments

**Use of Models:**

According to the Draft Assessment and Restoration Plan, full recovery is estimated to have occurred by 2009, 5 years after the event. This report, dated January 2009, is not justified in using models and estimates when real data is available. Modeling should be utilized as a predictive tool where actual data is not readily available, otherwise speculative tools are replacing actual observation of real world conditions where reliable measurements should be made. NOAA and other Trustees should use real data for this report since the areas in question are predicted to have recovered fully at this point in time. Restoration and Recovery for damages would only be appropriate going forward for any areas still impacted by the event, which, according to this report, are expected to be very few at this point.

**Modeled Wildlife Loss:**

Bird mortality was estimated at 100% for even trace oiled individuals. This is overly conservative at best and severely over-estimates mortality. Using 100% mortality for moderate to severely oiled birds results in an estimated loss of 4,620 birds, not the 11,869 cited in the report. In fact the report indicates that direct injuries totaled 3,308 adult birds, even less than the modeled 4,620 birds. The additional 8,561 lost birds were estimated based on assumed reproductive failure.

Since habitat is modeled to be 99% recovered at this point, real data should be used to determine if bird populations have recovered to baseline levels. Further, injury assessments for lost wildlife should be based only on actual numbers recorded as a result of the event. Fully four years after the event, with all eco systems projected to be at full recovery, there is sufficient data available to reliably assess actual population densities and determine more accurately whether the estimated reproductive failure actually occurred.

To further support this assertion that the estimated bird losses are excessively high, the Report notes that there were no significant fish kills or significant water column losses, leaving the food source intact for aquatic birds and other wildlife. Furthermore, the Trustees "believe that baseline conditions (i.e. no spill-associated service losses) were reached in 14 months, with a substantial impact on productivity in the months immediately following the spill"<sup>1</sup>. Given the low impact of the spill event and the quick recovery, CITGO believes that only the direct losses justify compensation and that only actual data should be used to assess whether or not there was any effect on population levels.

**Lost Recreational Use:**

---

<sup>1</sup> Draft Damage Assessment and Restoration Plan and Environmental Assessment, November 26, 2004, page 38

The number of lost trips is estimated to be 20,652 fishing trips, 5,498 boating trips and 15,559 hunting trips for a total of 41,709 trips. Over the course of the 10 month recovery from the spill, these trips would amount to over 137 trips per day, every day. Another way to look at these trips is that six boats would be on 115 mile stretch of the river every hour, every day, night and day, even though the dates of the spill were not during the hunting and fishing season. These estimated lost trips are therefore significantly too high.

Since ecological conditions have recovered to baseline, some as early as 10 months after the spill, the use of offsets and compensatory restoration for habitat and ecological loss is no longer justified. Only lost recreational value and wildlife losses can be justified for offset and compensation.

Once again, the Trustees have misapplied models to estimate lost recreational use and once again, actual data should be used. The Report does not take into account the fact that this event occurred in late November and into the winter months when recreational river use would be at its lowest level. Furthermore, estimating the number of trips based on the number of moored boats inflates trip numbers without taking into account condition and usability of moored boats, past history of use and time of year.

Use of national values for boating estimates on the Delaware River is inappropriate because of the nature of the East Coast River area itself. The Delaware River is a major shipping route for commercial and industrial boat traffic. It is certainly less used less for pleasure craft than lakes, National and State Recreational areas, areas where climate is more conducive to year round boating and a number of other factors that would inflate use of national numbers for the Delaware River area in question.

#### **Infrastructure Projects:**

The DARP proposes 9 projects to be implemented as a result of the Athos spill:

- Augustine Boat Ramp
- Blackbird Reserve
- Darby Creek Dam
- John Heinz NWR
- Lardner's Point Riparian Restoration
- Mad Horse Wetland Restoration
- Oyster Reef Restoration
- Stow Creek Boat Ramp
- Tinicum Island Recreational Trail

CITGO believes that taking of agricultural land and the use of trust fund money to fund previously identified infrastructure projects is inappropriate. If dam removal and obstruction removal was already planned due to obsolescence or other factors, then public trust money should not be used to accomplish these tasks. It is inappropriate to allocate trust money for infrastructure activities already planned and chargeable to the

local tax base. CITGO believes that NRDA trust fund money is not to be used for infrastructure improvement projects already identified and earmarked for future funding.

As previously stated, CITGO believes that the estimated damages to natural resources have been grossly overstated, and that in fact only compensation for lost recreational activities and wildlife can be justified at this point. Of the 9 projects identified, only four seem to meet those criteria: the Augustine and Stow Creek Boat Ramps, the Oyster Reef Restoration and Lardner's Point Riparian Restoration.

Mad Horse Wetlands and the John Heinz NWR pose additional concerns not addressed in the project report. Both of these areas contain dredge spoils. CITGO knows from its own experience with dredge spoils on the Paulsboro site that the spoils are heavily contaminated with PHA's and heavy metals. There is no consideration of the negative impact of disturbing these materials and reintroducing those contaminants to the ecosystem. CITGO feels this is a fatal flaw in the evaluation of the projects in these areas and that disturbing these areas will result in the unnecessary release of additional and more toxic contamination. Because of this unaddressed issue, costs for these projects would be significantly higher than estimated.

Blackbird Reserve contains agricultural land. CITGO strongly objects to removal of agricultural lands from use. Rising food prices and a weak economy argue against such actions.

Since there was no fish kill associated with the event, CITGO sees no justification for the Darby Creek Dam removal. This dam is also part of a local infrastructure project that needs to be funded by local revenues, not the national trust fund as explained earlier.

While Little Tinicum Island Recreational Trail would be an acceptable project as long as the dredge material on the island is not unnecessarily disturbed, this project is unnecessary in light of the Boat Ramp renovations identified at Augustine and Stow Creek that will compensate for lost recreational use.