



Illinois

Department of Natural Resources

<http://dnr.state.il.us>

One Natural Resources Way • Springfield, Illinois 62702-1271

George H. Ryan, Governor • Brent Manning, Director

Authorization for Incidental Take and Implementing Agreement

Pursuant to the Illinois Endangered Species Protection Act (Act) (520 ILCS 10/5.5), authorization is hereby granted to BP Pipelines - N.A. (BP) for the incidental take of the state-endangered sheepsnose (*Plethobasus cyphus*), and the state-threatened purple wartyback (*Cyclonaias tuberculata*) and black sandshell (*Ligumia recta*) at BP's pipeline crossing on the Kankakee River (NE1/4 of NW1/4 of Sec. 22, T33N, R9E) in Will County, Illinois. The Illinois Department of Natural Resources (Department) has determined that this taking is incidental to the removal of two inactive petroleum pipelines from the bed of the Kankakee River.

Procedural History

BP prepared a conservation plan as described by the Act (520 ILCS 10/5.5). That plan and BP's request for incidental take of sheepsnose, purple wartyback and black sandshell mussels were received by the Department on April 30, 2002. Public notice of BP's request for authorization of incidental take was published in the Edwardsville Intelligencer on May 8, 2002, and in the Wilmington Advocate on May 8, 15, and 22, 2002. Public comments on BP's conservation plan were accepted by the Department until June 21, 2002. No comments were received from the public.

Compliance with the Illinois Endangered Species Protection Act

The Act includes six criteria which must be satisfied for the authorization of incidental take of an endangered or threatened species. These criteria and the Department's determination for each are listed below.

1. The taking will not be the purpose of, but will only be incidental to, the carrying out of an otherwise lawful activity:

The stated and apparent purpose of this proposed action is to remove two (2) inactive petroleum pipelines from the bed of the Kankakee River. This action is being taken in response to an inspection finding from the U.S. Department of Transportation, Office of Pipeline Safety. The pipeline removal is being carried out in order to reduce the risk of damage to nearby active pipelines as a result of unplanned movement of the inactive pipelines. The inactive pipelines will be removed by cutting each pipeline near each bank of the Kankakee River and dragging the severed portions of the pipeline from the river. BP will employ a consultant who holds all required permits to relocate all mussels found within the area that will be disturbed by pipeline removal. Relocation constitutes a "take" under the Act. This take is not the purpose of BP's activities, but is incidental to the carrying out of an otherwise lawful activity.

2. The parties to the conservation plan will, to the maximum extent practicable, minimize and mitigate the impact caused by the taking:

BP has planned this project to cause minimal disturbance within the Kankakee River. No soil will be discharged into the river. A soil erosion and sediment control plan has been developed in accordance with the Illinois Urban Manual. Heavy equipment will enter the river to lift and remove the pipelines after relocation of mussels has been completed. The relocation will be conducted by Helms and Associates under permits from the Department. The mussel relocation will be done according to all provisions and protocols that are included in federal and state permits held by the company and will be initiated only after execution of this authorization for incidental take.

3. The parties to the conservation plan will ensure that adequate funding for the conservation plan will be provided:

The conservation plan prepared by BP estimates the cost of the relocation of mussels to be approximately \$30,000. By the signature of a responsible company official on this authorization, BP has recognized their obligation to provide funding for the relocation as well as for all follow-up surveys and monitoring.

4. Based on the best available scientific data, the Department has determined that the taking will not reduce the likelihood of survival or recovery of the endangered species or threatened species in the wild in Illinois, the biotic community of which the species is a part, or the habitat essential to the species' existence in Illinois:

A pre-project survey of mussels in the vicinity of the pipelines showed that the purple wartyback, sheepnose and black sandshell made up 6.1%, 2.6% and 0.9% of the mussel community, respectively. These three mussel species are listed as endangered or threatened in Illinois because their numbers and geographic ranges have diminished in recent decades. The Kankakee River, however, continues to provide habitat for these species.

Relocation of mussels from the project area will assure that very few, if any, mussels will be killed or injured by project activities. The relocation will follow established protocols designed to maximize survival of individual mussels.

Post-project monitoring will provide information on the survival of relocated mussels and on the re-colonization of the project area by mussels in the years following pipeline removal.

There can be no guarantee that no endangered or threatened mussels will be overlooked during the relocation effort and be subject to harm from pipeline removal. The number of mussels subject to this threat will be very small and should have no overall effect on the population of the three species in the Kankakee River or in Illinois.

BP's conservation plan describes high-quality mussel habitat in the area as being concentrated along the east and west banks of the Kankakee River. Most of the width of the river is underlain by bedrock, which is not considered suitable habitat for most mussel species. The pipelines have apparently caused some expansion of mussel habitat along the river's banks by promoting the deposition of gravel, sand and silt over the bedrock.

Removal of two pipelines may diminish this effect, but the continued existence of an active pipeline in the corridor should result in the continued presence of suitable substrates for mussels. Any reduction in the area of suitable habitat in the pipeline corridor is not likely to be significant in terms of overall habitat availability in the Kankakee River.

5. Any measures required under Section 5.5 of the Illinois Endangered Species Protection Act [520 ILCS 10/5.5 - Section 1080.40(b)], will be performed:

Additional measures are listed below under "Authorization." This authorization is, by definition, subject to those terms and conditions and BP's signature on this authorization indicates their commitment to performing those measures.

6. The public has received notice of the application and has had the opportunity to comment before the Department made any decision regarding the application:

Public notice was printed in the Edwardsville Intelligencer on May 8, 2002 and in the Wilmington Advocate on May 8, 15 and 22, 2002. That notice identified June 21, 2002, as the deadline for submittal of comments to the Department by mail or e-mail. No comments were received from the public.

Authorization

It is the determination of the Department that the measures that will be implemented by BP at the project site will adequately minimize and mitigate the anticipated taking of sheepsnose, purple wartyback and black sandshell mussels associated with the removal of two inactive petroleum pipelines from the Kankakee River. Further, it is our opinion that the take authorized herein will not diminish the likelihood of the survival of the sheepsnose, purple wartyback and black sandshell in the wild within the State of Illinois, the biotic community of which those species are part or the habitat essential to the species' existence in Illinois.

Pursuant to Section 5.5 of the Illinois Endangered Species Protection Act [520 ILCS 10/5.5 - Section 1080.40(b)], this authorization is issued subject to the following additional terms and conditions:

1. This authorization is effective upon signature of the Department and shall remain in effect for a period of two (2) years from the date of execution, unless terminated pursuant to Section 5.5 of the Illinois Endangered Species Protection Act (520 ILCS 10/5.5 - Section 1080.80).
2. Prior to removal of two inactive petroleum pipelines, BP shall conduct or cause to be conducted, a thorough survey of the area to be directly affected by the pipeline removal and shall relocate or cause to be relocated any freshwater mussels found within that area to suitable habitat upstream of the project site. Handling of mussels shall be in compliance with any and all conditions and/or protocols included in the federal and state authorizations for this work. Relocated mussels shall be identified to species and

enumerated. A report on the species and numbers of mussels relocated and the location(s) at which they were released shall be provided to the Department within 60 days of the completion of the relocation.

3. BP shall conduct, or cause to be conducted, a thorough survey of the project area and the area(s) in which mussels are released in the second year and fifth year following completion of the removal of the inactive petroleum pipelines. For example, if pipeline removal is completed in 2002, these surveys shall be conducted in 2004 and 2007. These surveys will be of an intensity adequate to determine: 1) if mussels have re-colonized the project area, 2) the estimated density of mussels in the release area(s), and 3) changes in the estimated density of mussels in the project area and release area(s) since the previous survey. A report on the results of each survey shall be provided to the Department within 60 days of completion of the survey.

4. The effective period of this authorization may be altered by mutual agreement between BP and the Department.

5. This authorization may be revoked pursuant to Section 5.5 of the Illinois Endangered Species Protection Act (520 ILCS 10/5.5 - Section 1080.80) if the Department finds that BP has failed to comply with any of these terms and conditions or has been responsible for the taking (relocation) of sheepnose, purple wartyback or black sandshell mussels beyond that which is incidental to the removal of two inactive petroleum pipelines from the Kankakee River in Will County, Illinois.

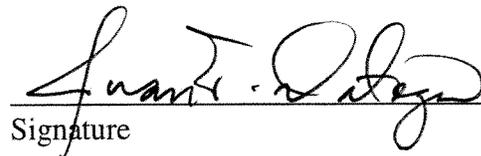
6. The BP official identified below is authorized to execute this agreement. Execution by BP indicates acceptance of all terms and conditions as described in this document.

For the Illinois Department of
Natural Resources

For BP Pipelines (N.A.)



Kirby Cottrell, Director
Office of Resource Conservation



Signature

7/29/02

Date Signed

JUAN F. ORTEGA

Printed Name and Title DISTRICT MANAGER

7/29/02

Date Signed