

# **RESPONSIVENESS SUMMARY FOR FINAL DEQ ADMINISTRATIVE ORDER ON CONSENT WITH BRIDGER PIPELINE LLC FOR THE BRIDGER POPLAR PIPELINE OIL DISCHARGE INTO THE YELLOWSTONE RIVER**

## **1.0 INTRODUCTION**

The Montana Department of Environmental Quality (DEQ) solicited public comment on the proposed DEQ Administrative Order on Consent (Consent Order), Docket No. WQ-15-12, with Bridger Pipeline LLC (Bridger) for the January 17, 2015 Bridger Poplar Pipeline Oil Discharge into the Yellowstone River occurring near Glendive, Dawson County, Montana. The public comment period ran from December 20, 2016 to January 23, 2017. DEQ received three public comments during the public comment period. DEQ extends its thanks to those who submitted comments.

### **1.1 Community Involvement Background**

DEQ attempts to ensure that Montana citizens have the opportunity to be actively involved in the DEQ decision making process with respect to Administrative Orders on Consent. DEQ has endeavored to involve the community, including local officials and residents, in all aspects of the investigation and cleanup of the Discharge.

### **1.2 Notification of Public Comment Period**

DEQ published notice about the Consent Order public comment period in the major daily newspapers in the area most affected, which were the Billings Gazette, the Glendive Ranger Review, and the Sidney Herald. The notice appeared on December 21, 2016 in the Billings Gazette, on December 22, 2016 in the Glendive Ranger, and on December 25, 2016, in the Sidney Herald.

The notice and Consent Order were posted to DEQ's agency website on December 20, 2016 as a press release and were sent to the Glendive and Sidney public libraries to be made available to the public.

### **1.3 Administrative Record**

All public comments submitted to DEQ during the comment period, all documents cited within the properly submitted written public comments, and all documents cited, considered, or relied upon by DEQ in DEQ's responses are part of the administrative record for the Consent Order. This Responsiveness Summary is part of the administrative record for the Consent Order. It does

not necessarily include legal citations such as those found in the Montana Code Annotated (MCA), Administrative Rules of Montana, United States Code, and Code of Federal Regulations.

The complete administrative record is located at:

Montana Department of Environmental Quality  
Waste Management and Remediation Division  
Contaminated Site Cleanup Bureau  
1225 Cedar Street  
Helena, Montana 59601  
Telephone: (406) 444-6444

#### **1.4 Explanation of Responsiveness Summary**

All three comments received during the public comment period on the Consent Order have been reviewed and considered by DEQ in the decision-making process and are addressed in this Responsiveness Summary.

## **2.0 RESPONSES TO WRITTEN COMMENTS**

**2.1** One commenter expressed gratitude for Bridger's response to the Discharge as well as past community support and concern that fines are being imposed by DEQ.

RESPONSE:

DEQ took Bridger's cooperation and cleanup response into consideration in making its determination of a penalty amount. The penalty amount was negotiated between DEQ and Bridger officials, and was not the maximum amount that could have been sought in response to the Discharge. Penalties were authorized in part by §§ 75-5-611 and 631, MCA, and penalty amounts were determined in accordance with the factors set forth in § 75-1-1001, MCA.

DEQ believes that the \$1,000,000 penalty, consisting of a \$200,000 cash payment with the remaining \$800,000 balance mitigated by Supplemental Environmental Projects (SEPs), helps ensure protection of public health, safety, welfare, or the environment by encouraging pipeline operators to take measures necessary to prevent future discharges and will benefit public health and the environment and offset damage caused by the Discharge.

DEQ does not believe that the comment requires a change to the Consent Decree as the agency believes its response should address the concerns expressed.

**2.2** One commenter questioned why the \$200,000 penalty is being directed to the State general fund rather than local governmental entities and first responders, and expressed the hope that the SEP would be in eastern Montana.

RESPONSE:

DEQ is required by § 75-5-634, MCA, to deposit the penalties assessed under the Montana Water Quality Act into the State general fund. DEQ is not granted discretion to alternatively dispose of such funds.

Under § 75-1-1001(3), MCA, DEQ may accept a SEP as mitigation for a portion of the penalty. Bridger is responsible for designing and completing the SEP, and DEQ's approval is based on criteria established primarily in administrative policy guidance. While DEQ anticipates that the SEP will be proposed for eastern Montana, there is no such express requirement. DEQ directs the commenter to its response to 2.3 below for further information.

DEQ does not believe that the comment requires a change to the Consent Decree as the agency believes its response should address the concerns expressed.

**2.3** One commenter requested information on how to submit ideas for potential SEPs.

RESPONSE:

Bridger is responsible for designing and completing a minimum of \$800,000 on DEQ-approved SEPs. DEQ's approval of a SEP plan, in accordance with the terms set forth in the Consent Order, is based primarily on criteria set forth in administrative policy, which can be accessed at the following address:

[https://deq.mt.gov/Portals/112/DEQAdmin/ENF/Documents/SEP\\_Policy\\_Final.pdf](https://deq.mt.gov/Portals/112/DEQAdmin/ENF/Documents/SEP_Policy_Final.pdf).

There is not currently a system established for public submission of SEP ideas, recommendations, or requests, but those so interested may contact Bridger directly.

DEQ does not believe that the comment requires a change to the Consent Decree as the agency believes its response should address the concerns expressed.

### **3.0 OUTCOME OF DEQ REVIEW OF COMMENTS**

After carefully reviewing and considering all three written public comments that were timely submitted, and receiving no request for extension of the public comment period, DEQ has signed the Consent Order. The Consent Order was signed by Bridger on December 13, 2016, prior to

the beginning of the public comment period. The Consent Order was signed by DEQ on February 8, 2017, which is the “Effective Date” of the final Consent Order.

A copy of this Responsiveness Summary and the Consent Order can be found at: <http://deq.mt.gov/DEQAdmin/dir/postresponse/yellowstonespill2015>. DEQ will publish a notice and a brief description of the final Consent Order in the following newspapers: the Billings Gazette, the Glendive Ranger Review, and the Sidney Harald. DEQ will make the final Consent Order and Responsiveness Summary available to the public at:

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