

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VIII
ADMINISTRATIVE ORDER

IN THE MATTER OF ExxonMobil Silvertip Pipeline Spill

Docket Number:

Proceedings under Section 311 (c) of the Clean Water Act (CWA), 33 U.S.C. § 1321 (c), as amended by the Oil Pollution Act of 1990 (OPA), 33 U.S.C. § 2701 et seq.

I. JURISDICTION AND GENERAL PROVISIONS

1. The United States Environmental Protection Agency (USEPA) is issuing this Order to: ExxonMobil Pipeline Company, a New Jersey corporation authorized to do business in the State of Montana (Respondent). This Order is issued pursuant to the authority vested in the President of the United States by Section 311(c) of the Federal Water Pollution Control Act, 33 U.S.C. § 1321(c), as amended, commonly referred to as the Clean Water Act (CWA). This authority has been delegated to the Administrator of the USEPA by Executive Order No. 12777, 58 *Fed. Reg.* 54,757 (Oct. 22, 1991), and delegated to the USEPA Regional Administrators by USEPA Delegation No. 2-89 and redelegated to On-Scene Coordinators by USEPA Region 8 Delegation No. 2-89.
2. This Order requires performance of removal actions in connection with a facility located at or near the Silvertip Pipeline System Mile Posts 20.7 and 21.0 in the vicinity of the City of Laurel, Montana. This Order requires the Respondent to immediately conduct removal of a discharge or to mitigate or prevent a substantial threat of a discharge of oil.

II. PARTIES BOUND

3. This Order applies to Respondent. The Order further applies to persons or entities who succeed to an interest in Respondent. Any change in ownership or corporate status of Respondent, including but not limited to a transfer of assets or real or personal property will not alter the responsibilities under the Order.
4. Respondent must ensure that its contractors, subcontractors, and agents comply with this Order. Respondent will be liable for any violation of the Order by its employees, agents, contractors, or subcontractors.

III. DEFINITIONS

5. "Oil" means oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil (Section 311(a)(1) of the CWA, 33U.S.C. §1321(a)(1)).
6. "Hazardous substance" means any substance designated pursuant to subsection (b)(2) of this section (Section 311(a)(14) of the CWA, 33 U.S.C. § 1321(a)(14)).

7. "Navigable water of the United States" means the waters of the United States, including the territorial seas (Section 502(7) of the CWA, 33 U.S.C. § 1362(7)).

8. "Facility" means any facility of any kind located in, on, or under, any of the navigable waters of the United States other than submerged land (Section 311(a)(10) of the CWA, 33U.S.C.§1321(a)(10)).

9. "Discharge" means any spilling, leaking, pumping, pouring, emitting, emptying or dumping, but excludes (A) discharges in compliance with a permit under section 402 of CWA, (B) discharges resulting from circumstances identified and reviewed and made a part of the public record with respect to a permit issued or modified under section 402 of CWA, and subject to a condition in such permit, and (C) continuous or anticipated intermittent discharges from a point source, identified in a permit or permit application under section 402 of CWA which are caused by events occurring within the scope of relevant operating or treatment systems (Section 311(a)(2) of the CWA, 33 U.S.C. § 1321(a)(2)).

10. "Order" shall mean this Order.

11. "National Contingency Plan" or "NCP" shall mean National Oil and Hazardous Substances Pollution Contingency Plan, codified at 40 C.F.R., Part 300, including, but not limited to, any amendments thereto.

IV. FINDINGS OF FACT AND VIOLATIONS

10. This Order is being issued under §311(c) of the Clean Water Act, 33 U.S.C. §1321 for a discharge or a substantial threat of discharge of oil and/or a hazardous substance into waters of the United States.

11. On or about July 1, 2011, at approximately 10:45 P.M., a discharge or a substantial threat of a discharge of crude oil, which is a hazardous substance, reached the Yellowstone River which is a navigable water of the United States. This discharge from the Silvertip Pipeline System at or near Mile Posts 20.7 and 21.0 in the vicinity of the City of Laurel, Montana, "the facility," constitutes a substantial threat to the public health or welfare.

12. Respondent, ExxonMobil Pipeline Company, is the owner/operator of the facility.

V. WORK TO BE PERFORMED (Initial all that apply)

13. **RESPONDENT IS HEREBY ORDERED** to complete the tasks described below within the dates specified and in accordance with the National Contingency Plan, 40 CFR Part 300, and any appropriate area contingency plan, and any applicable §311(j) facility response plan.

14. IMMEDIATE STABILIZATION AND MITIGATION ACTIONS

a. Respondent must identify a contact person responsible for the removal within 1 business day of issuance of this Order.

b. Notify USEPA of the date and time that the Discharge of oil into the Yellowstone River

started and stopped by **July 8, 2011**;

- c. Notify USEPA of the amount of oil Discharged into the Yellowstone River and provide all calculations or other information that supports this assessment by **July 8, 2011**;
- d. Remediate the oil and contaminated soils in and around the immediate vicinity of the release by **August 18, 2011**, and continuing thereafter as necessary and as directed by USEPA;
- e. Deploy appropriate oil recovery and containment devices and equipment, *e.g.* skimmers, vacuum trucks, absorbent/containment booms by **July 8, 2011**, and continuing thereafter as necessary and as directed by USEPA;
- f. Perform air monitoring and sampling as directed by USEPA and public health officials by **July 8, 2011**, and continuing thereafter as necessary and as directed by USEPA;
- g. Perform water, soil and sediment sampling of impacted areas as directed by USEPA by **July 12, 2011**, and continuing thereafter as necessary and as directed by USEPA;
- h. Provide a secure electronic data-sharing website for use by the State of Montana, USEPA, USF&WS, BLM, DOI, and all impacted cities and county officials by **July 11, 2011**.
- i. Remediate all impacted areas (including shoreline) along Yellowstone River by **September 9, 2011**, and continuing thereafter as necessary and as directed by USEPA;
- j. Provide a copy of the Pipeline Repair Plan approved by DOT PHMSA, as soon as it becomes available and before the line is put back into service;
- k. Dispose of all wastes at USEPA approved disposal facilities; and
- l. Submit a final report to USEPA detailing all work completed including monitoring and analytical data, disposal records, and all documentation related to the response by **November 10, 2011**.

VI. REMOVAL ACTION

15. Within two (2) days from the date this Order is signed by EPA, Respondent shall develop and submit to EPA for approval, a Work Plan and schedule for completing the tasks described below. Respondent shall begin work within one (1) day of EPA approval of the Work Plan. The Work Plan shall include the following tasks:

- a. Health and Safety Plan
- b. Sampling and Analysis Plan
- c. QAPP
- d. Oil recovery and containment plan
- e. Source release area remediation plan
- f. Remediation Plan for downstream impacted areas
- g. Waste treatment, transportation, and disposal plan

Within three (3) days from the date this Order is signed by EPA, Respondent shall

develop and submit to EPA for approval, a Sampling Plan and schedule for sampling. Respondent(s) shall implement the Sampling Plan within four (4) days of EPA approval.

16. Respondent must submit the Work Plan to:

Steven Merritt, On-Scene Coordinator
USEPA Region 8, 8EPR-SA
1595 Wynkoop St.
Denver, CO 80202-1129

VII. REPORTING REQUIREMENTS

17. Respondent must submit a written progress report to USEPA concerning actions undertaken pursuant to this Order every 7 calendar days after the effective date of this Order, unless otherwise directed in writing by USEPA personnel. These reports must describe all significant developments during the preceding period, including work performed and any problems encountered, analytical data received during the reporting period, and developments anticipated during the next reporting period, including a schedule of work to be performed, anticipated problems, and planned resolutions of past or anticipated problems. Reports shall be due to EPA by 12:00 P.M., noon on Friday

18. Respondent may assert a business confidentiality claim pursuant to 40 CFR § 2.203(b) with respect to part or all of any information submitted to USEPA pursuant to this Order, provided such claim is allowed by Section 308(b)(2) of CWA, 33 U.S.C. § 1318(b)(2). USEPA shall only disclose information covered by a business confidentiality claim to the extent permitted by, and by means of the procedures set forth at 40 CFR Part 2, Subpart B. If no such claim accompanies the information when it is received by USEPA, USEPA may make it available to the public without further notice to Respondent. Respondent must not assert confidentiality claims with respect to any data or documents related to site conditions, sampling or monitoring.

VIII. ACCESS TO PROPERTY AND INFORMATION

19. Respondent must provide or obtain access to the facility, to off-site areas where access is necessary to implement this Order, and to all documents related to conditions at the facility and work conducted under the Order. Respondent must provide this access to USEPA and the United States Coast Guard and their contractors and representatives.

IX. RESERVATION OF RIGHTS AND PENALTIES

20. This Order does not preclude EPA from taking any actions authorized by CWA, the National Contingency Plan, or any other law. EPA reserves the right to **direct all activities** and to comment on and direct changes to deliverables, off-site shipping and disposal, and all other matters.

21. Respondent shall notify EPA of any response actions it takes as to this discharge that are in addition to those described in this Order.

22. Violation of any term of this ORDER may subject Respondent to an administrative civil penalty of up to \$37,500 per day of violation or an amount up to three times the costs incurred by the Oil Spill Liability Trust Fund as a result of such failure. (Section 311(b)(7)(B) of the

V. EFFECTIVE DATE

23. The effective date of this ORDER shall be the date of the receipt of this Order by the Respondents.



On-Scene Coordinator STEVEN B. MERRITT, OSC

7/6/2011
Date

Received by 

Representing Respondent
GEOFFREY A. CLARK

7-6-2011
Date