

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REMOVAL AMENDED ADMINISTRATIVE ORDER

UNDER SECTION 311(C) OF THE CLEAN WATER ACT

REGION 4

IN THE MATTER OF Lance Oil, Piedmont Avenue, Atlanta, GA.

Docket Number: CWA-04-2013-5252

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

I. JURISDICTION AND GENERAL PROVISIONS

1. This Amended Order is issued by the United States Environmental Protection Agency (EPA) 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 EPA by Executive Order No. 12777, 58 Federal Register 54757 (October 22, 1991), and further delegated to the EPA Regional Administrators by EPA Delegation No. 2-89 and to the On-Scene Coordinator by Regional Delegation No. 2-89.

2. This Amended Order requires the performance of removal actions in connection with a facility located at 1539 Piedmont Ave, Atlanta, Fulton County, GA (the Facility or the Site). This Amended Order requires Lance Oil Company, Inc. (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 Amended Order applies to Respondent. The Amended Order further applies to persons acting on behalf of Respondent, or 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 Amended Order.

4. Respondent must ensure that its contractors, subcontractors, and agents comply with this Amended Order. Respondent will be liable for any violation of the Amended Order by its employees, agents, contractors, or subcontractors.

III. DEFINITIONS

5. Unless otherwise expressly provided herein, terms used in this Amended Order which are defined in Section 311 of the CWA, 33 U.S.C. § 1321, or in Section 1001 of the Oil Pollution Act (OPA), 33 U.S.C. §§ 2701, *et seq.*, shall have the meaning assigned to them in the CWA or the OPA. Whenever terms listed below are used in this Amended Order, the following definitions shall apply.

6. “*Amended Order*” shall mean this Amended Order.
7. “*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)).
8. “*Hazardous substance*” means any substance designated pursuant to Section 311(b)(2) of the CWA, 33U.S.C. §1321(b)(2)) (Section 311(a)(14) of the CWA, 33 U.S.C. § 1321(a)(14)).
9. “*Navigable waters*” means the waters of the United States, including the territorial seas (Section 502(7) of the CWA, 33 U.S.C. § 1362(7)).
10. “*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, 33 U.S.C. §1321(a)(1)).
11. “*Onshore facility*” means any facility of any kind located in, on, or under, any land within the United States other than submerged land (Section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10)).
12. “*Order*” shall mean the July 17, 2013 Order issued to Respondent under Section 311(c) of the Clean Water Act, 33 U.S.C. § 1321(c).
13. “*National Contingency Plan*” or “*NCP*” shall mean the 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

14. The Facility currently operates as a convenience store and gasoline fueling station, located at 1539 Piedmont Avenue NE in Atlanta, Fulton County, Georgia.
15. On Saturday April 17, 2010, the Fulton County Fire Department (FCFD) was notified of a petroleum sheen on Clear Creek, a surface water body located approximately 155 feet west/southwest of the Facility.
16. On April 17, 2010, Respondent mobilized Eagle-SWS, its emergency response contractor, to the Site. Free phase petroleum product was observed seeping from the creek bank and into the creek itself, creating a petroleum sheen on the creek. Respondent’s gauge (ATG) records indicated a leak rate above the allowable limit in data collected from underground storage tank (UST) #4, a 4,000-gallon regular grade gasoline UST. Respondent immediately discontinued use of UST #4. UST #4 was subsequently disconnected from the fueling system and emptied of its contents. Respondent conducted a pressurized tank tightness test on UST #4 on April 19, 2010. The

results of this test revealed that a significant leak was present in the UST. Based on the failed tank tightness test and the presence of free phase petroleum product within an adjacent surface water body, a confirmed release was reported to the Underground Storage Tank Management Program (USTMP) on April 19, 2010.

17. Eagle-SWS conducted emergency response activities, placing absorbent boom and other materials to minimize the flow of oil into the creek.

18. On April 21, 2010, a concerned citizen contacted EPA who mobilized to the scene and, in turn, notified the Georgia Environmental Protection Division (GA EPD) Emergency Response Program. Free product was observed flowing into the creek and the original absorbent boom was saturated to capacity with oil to the extent that it was no longer containing the discharge.

19. On April 22, 2010, the EPA On-Scene Coordinator (OSC) issued a Notice of Federal Interest to Respondent. The EPA OSC instructed Respondent to immediately replace the boom and to apply additional absorbent materials to minimize the flow of oil into the creek. The EPA OSC discussed with Respondent a more robust strategy of excavating cutoff trenches in the creek bank to intercept the flow of oil prior to it entering the creek. The City of Atlanta owns the creek bank; thus, Respondent was required to obtain the City's permission before commencing the work.

20. Respondent was unable to obtain the approval necessary to conduct the trenching work on the City's property. The EPA therefore assumed responsibility for the Site and on Friday, April 30, 2010, began site operations including installation of the interceptor trench and assumption of the absorbent boom and pad operations in Clear Creek. On May 14, 2010, the EPA returned responsibility of the Site to Respondent.

21. Respondent has installed monitoring wells between the location of the leaking UST #4 and the creek discharge point, and it has been sampling surface water in Clear Creek since April 2010. In December 2010, the Respondent removed the leaking UST #4.

22. Respondent spent most of 2011 applying for and obtaining the permits for installing and operating a vapor extraction/destruction system to recover the underground plume of oil. The system was brought online in July 2012.

23. Since January 2012, the EPA has been conducting stream monitoring and sampling to ensure water quality is maintained. According to the Respondent's and EPA's sampling results, instream water quality standards for benzene were exceeded in October 2010, November 2011, and November 2012. Respondent failed to report the November 2011 and 2012 exceedances to the National Response Center, as required by the Clean Water Act. Between January and May 2013, the EPA has observed a deterioration of the defensive practices employed by Respondent to prevent additional discharges from occurring into Clear Creek. The interceptor trench has not been maintained such that it has caved in. On Friday May 3, 2013, EPA contractors observed the gasoline plume again discharging raw product into the creek. An EPA OSC was mobilized to the Site and verified the discharge.

24. Respondent is the owner and/or operator of the onshore facility from which the discharge or substantial threat of a discharge took place.

25. On July 17, 2013, EPA issued an Order to Respondent requiring removal actions in connection with its facility located at 1539 Piedmont Ave, Atlanta, Fulton County, GA. Because of an unexplained delay caused by the U.S. Postal Service, the Order was not timely delivered to Respondent. To provide adequate time for completing the removal actions required, this Amended Order is being issued to revise the deadlines contained in the July 17, 2013, Order.

V. ORDER

26. **RESPONDENT IS HEREBY ORDERED** to complete the tasks described below (the Work) in accordance with the National Contingency Plan (NCP), 40 C.F.R. Part 300, and any appropriate area contingency plan, and any applicable CWA Section 311(j), 33 U.S.C. § 1321(j), facility response plan.

27. Removal Action Work Plan. No later than September 11, 2013, Respondent shall submit to the EPA the name and contact information of an environmental contractor who will perform the Work required under this Amended Order; the name and contact information of a Project Manager selected to oversee the Work; and a Work Plan for the EPA's approval. The Work Plan must include a schedule for completing the tasks described below. Respondent shall implement the EPA-approved Work Plan in accordance with the schedule in the approved plan. The Work Plan will be amended as necessary to incorporate unforeseen future activities or changes in the scope of the Work. The Work Plan shall include the following tasks:

- a. Mitigate the flow of oil into Clear Creek by September 11, 2013;
- b. Restore and enlarge the interception trench by October 7, 2013;
- c. Report any and all future discharges in accordance with CWA provisions;
- d. Identify the limits of the gasoline plume with respect to migration towards Clear Creek by November 1, 2013;
- e. Remove the source oil plume;
- f. Maintain all defensive strategies until the source plume has been removed.

28. Respondent must submit the Work Plan and all other documents required by this Amended Order to:

Richard Jardine, Federal On Scene Coordinator
U.S. EPA, Region 4 ERRB
Sam Nunn Atlanta Federal Center
61 Forsyth Street, SW
Atlanta, GA 30303

Or by email to: Jardine.Richard@epa.gov

The EPA will approve, disapprove and require modifications, or modify Respondent's Work Plan. Once approved or approved with modifications, Respondent's Work Plan will become an enforceable part of this Amended Order.

29. Quality Assurance. All activities and deliverables under this Amended Order shall be performed by qualified individuals in accordance with the EPA Region 4 Science and Ecosystem

Support Division (SESD) Field Branches Quality System and Technical Procedures (FBQSTP). Any deviations from these procedures shall be detailed in the report to the EPA.

30. Reporting Requirements. Respondent shall prepare and submit to the EPA OSC the following reports:

- a. Monthly Progress Reports, due seven (7) days after the conclusion of each month.
- b. Final Completion Report, due thirty (30) days after completing all tasks required under this Amended Order.

31. Access to Property and Information. Respondent must provide access to the Facility, to off-site areas where access is necessary to implement this Amended Order, and to all documents related to conditions at the Facility and work conducted under the Amended Order. Respondent must provide this access to EPA and its contractors and representatives.

VI. RESERVATION OF RIGHTS AND PENALTIES

32. This Amended Order shall not preclude the EPA from taking any action authorized by the CWA, the OPA, the National Contingency Plan, or any other applicable law. The EPA reserves the right to direct all activities including off-facility shipping, disposal and all other matters. Further, nothing herein shall prevent the EPA from seeking legal or equitable relief to enforce the terms of this Amended Order or from taking any other legal or equitable action as it deems appropriate and necessary, or to require Respondent in the future to perform additional activities pursuant to the CWA, the OPA, or other applicable law.

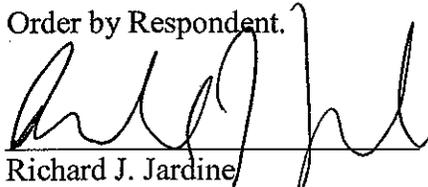
33. Respondent must notify the EPA of any response actions taken to address the discharge described above that are not described in this Amended Order.

34. Failure to comply with any term of this Amended Order may subject Respondent to a civil penalty of up to \$37,500 per day of violation or an amount up to three times the cost incurred by the Oil Spill Liability Trust Fund as a result of such failure under Section 311(b)(7)(B) of the CWA, 33 U.S.C. § 1321(b)(7)(B), as adjusted by 74 Federal Register 626 (January 7, 2009) (codified at 40 C.F.R. § 19.4).

35. Respondent may request a conference with the EPA regarding the terms and requirements of this Amended Order.

VII. EFFECTIVE DATE

36. The effective date of this Amended Order shall be the date of the receipt of this Amended Order by Respondent.


Richard J. Jardine
On-Scene Coordinator

Date 09 SEP 13

Received by: Lance Oil Co

Date 9/19/13

Name Royce Brooks

Title Pres

Representing Respondent