

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REMOVAL ADMINISTRATIVE ORDER  
UNDER SECTION 311(c) OF THE CLEAN WATER ACT  
REGION 4

IN THE MATTER OF CANADIAN NATIONAL RAILWAY.

Docket Number: CWA-TBD ~~04-2014-5254~~ (LF) 2/4/14

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. The United States Environmental Protection Agency (USEPA) is issuing this Order to: CN doing business as Illinois Central Railroad, a Mississippi corporation authorized to do business in the State of Mississippi (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 re-delegated to On-Scene Coordinators by USEPA Region 4 Delegation No. 2-89.
2. This Order requires performance of removal actions in connection with a train derailment located at or near US Hwy 98 and Old Highway 24 in New Augusta, Perry County, Mississippi. 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 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 Respondent's 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. Unless otherwise expressly provided herein, terms used in this 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, shall have the meaning assigned to them in the CWA or the OPA. Whenever terms listed below are used in this Order, the following definitions shall apply.
6. "Oil" shall have the meaning set forth in Section 311(a)(1) of the CWA, 33 U.S.C. § 1321(a)(1), for the purposes of the work to be performed under this Order, and Section 1001(23) of OPA, 33 U.S.C. § 2701(23), for purposes of reimbursement of costs.
7. "Hazardous substance" shall have the meaning set forth in Section 311(a)(14) of the CWA, 33 U.S.C. § 1321(a)(14).
8. "Navigable waters" shall have the meaning set forth in Section 502(7) of the CWA, 33 U.S.C. § 1362(7), Section 1001(21) of OPA, 33 U.S.C. § 2701(21), and 40 CFR Part 110.
9. "Facility" shall have the meaning set forth in Section 311(a)(10) and (a)(11) of the CWA, 33 U.S.C. §§ 1321(a)(10) and (a)(11), and by Sections 1001(22) and (24) of the OPA, 33 U.S.C. §§ 2701(22) and (24).
10. "Discharge" shall have the meaning set forth in Section 311(a)(2) of the CWA, 33 U.S.C. § 1321(a)(2) and 40 CFR § 110.1 for purposes of the work to be performed under this Order, and shall have the meaning set forth in Section 1001(7) of the OPA, 33 U.S.C. § 2701(7), for purposes of reimbursement of costs.
11. "Order" shall mean this Order.
12. "National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan, codified at 40 CFR Part 300, including, but not limited to, any amendments thereto.

### IV. FINDINGS OF FACT AND VIOLATIONS

13. The facility is a 19 car train derailment at milepost 77.8 located at or about intersection of US Hwy 98 and Old Hwy 24 in New Augusta, Mississippi.
14. At approximately 08:00 local time on Friday, January 31st, a train carrying crude oil derailed near New Augusta, Ms. Twelve (12) tanker cars filled with crude oil and one (1) rosin oil tanker car derailed into a drainage ditch at the head waters of a unnamed tributary of the Leaf River. The Leaf River discharges into the Pascagoula Bay. All of these waters are considered navigable waters of the United States.

15. Respondent is the owner and/or operator of the facility or vessel from which the discharge or substantial threat of a discharge of oil into or on the navigable waters or on the adjoining shorelines to the navigable waters took place.

16. The Respondent received a verbal Notice of Federal Interest (NOFI) on Friday, January 31st, 2014 and a written NOFI on February 1st, 2014. Since January 31st, 2014, the response has been under the direction of USEPA On Scene Coordinator (OSC) Leo Francendese and the Respondent has been a member of Unified Command.

## V. ORDER

Respondent must comply with the following requirements:

### Work to Be Performed

16. Respondent must perform the work necessary to complete the tasks described below within the dates specified and in accordance with the National Contingency Plan, 40 CFR Part 300.

17. Respondent must take the following immediate stabilization and mitigation actions:
- Maintain effective Site security;
  - Maintain effective stake holder participation;
  - Maintain worker safety in accordance with OSHA CFR 1910.120;
  - Continue to prevent the migration of current aerial extent of oil contamination. Install and maintain effective containment no later than 07:00 Sunday, February 2, 2014;
  - Maintain and prevent impact of the discharge to the surrounding community;
  - Remove and dispose of recoverable oil in accordance with federal, state, and local regulations;
  - Restore areas impacted as a result of the response to discharge of oil;
  - Submit plans as requested by the OSC. Those plans include Health and Safety Plan (HASP), Waste Disposal Plan;
  - Complete attached 20 questions within 90 days of completion of the response;
  - Submit a final report to USEPA detailing all work completed including monitoring and analytical data, disposal records, and all documentation related to the response within 90 days of completion of the response.

18. Respondent must submit the Plans to:

Leo Francendese  
U.S. EPA  
Superfund Division  
Emergency Response Section  
513 Richmond, Circle  
Fairhope, Al. 36532

USEPA will approve, disapprove and require modifications, or modify Respondent's Plans. Once approved or approved with modifications, Respondent's Plan and schedule become an enforceable part of this Order.

#### Reporting Requirements

19. 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.

#### Access to Property and Information

20. Respondent must provide 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.

21. This Order may only be modified by written amendment signed by the undersigned EPA Region 4 On-Scene Coordinator. A written, signed modification will be incorporated by reference into this Order, and, as such becomes an enforceable part of this Order.

22. No informal advice, guidance, suggestions, or comments by EPA shall be construed to modify the requirements of this Order. Routine communications exchanged verbally, in person, by telephone or by electronic mail between the parties to facilitate the orderly conduct of work contemplated by this Order shall not alter or waive any rights and/or obligations of the parties under this Order.

### **VI. RESERVATION OF RIGHTS AND PENALTIES**

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

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

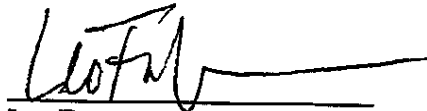
25. Violation of any term of this Order may subject Respondent to a civil penalty of up to \$37,500 per day of violation or an amount up to three times the cost incurred by the Oil Spill Liability Trust Fund as a result of such failure under Section 311(b)(7)(B) of the CWA, 33 U.S.C. § 1321(b)(7)(B), as adjusted by 74 *Fed. Reg.* 626 (Jan. 7, 2009) (codified at 40 CFR Part 19).

26. Respondent may request a conference with USEPA regarding the terms and requirements

of this Order.

**VII. EFFECTIVE DATE**

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



Leo Francendese  
On-Scene Coordinator

2/1/14  
Date

Received by:

  
Representing Respondent

2/1/14  
Date

## **311: 20 Questions**

- 1) Provide the time and date of oil or hazardous substance discharge, and the time and date of discovery that the discharge was reaching or threatening a waterway.
- 2) The time and date of the response to the discharge by EPA, START, and the PRP if applicable. Provide the name(s) of any contractor(s) employed.
- 3) The type of discharge (oil or hazardous substances), the type of oil or the chemical name and formula, the total amount of discharge in gallons, barrels, pounds, or kilograms; and the total number of days of discharge. If the solution discharged was a mixture, please give the percentages of substances in the mixture or solution.
- 4) The location of the discharge including street address, city, county, and state.
- 5) The description of the facility or vessel from which the material was discharged (i.e. pipeline, tank, well, ship, container, etc.).
- 6) The total storage capacity (gallons, barrels, pounds, kilograms, etc.) of the facility or vessel responsible for the discharge.
- 7) Did the oil or hazardous substances discharge into water?
  - a. Please indicate the location, in relation to the facility or vessel responsible for the discharge, of the first water reached.
  - b. If not already in water, what is the distance between the source of discharge and the nearest water body?
  - c. Give the quantity of oil or hazardous substances reaching the water.
  - d. Give the quantity of oil or hazardous substances that did not reach the water.
  - e. Describe the type of waterway affected (i.e. mudflat, sandflat, wetland, ditch, creek, bayou, tributary, stream, river, lake, etc.). Give the name of the waterway and bodies of water to which it connects.

- f. Provide a physical description of the receiving waters, including depth, width, and flow rate.
- g. Indicate if any of the water bodies or connecting water bodies, as described above, are used for commerce, recreation, agriculture, etc.
- h. List any sensitive environments (i.e. wetlands), endangered species, water wells and/or drinking water intakes impacted or potentially impacted by the discharge.

8) Document how this spill violated the Clean Water Act.

9) Describe in detail what actually caused the discharge.

10) Describe the damage to public health and the environment as a result of the spill. How many feet, miles, etc., of land and water were affected by the discharge? Was there observed damage to the terrestrial and aquatic biota and vegetation? Were any drinking water intakes forced to close? Were any persons required to evacuate? If yes, describe the damage.

11) Describe the procedures taken to clean up the discharge and to mitigate the environmental damage and public health threats. Include dates and times for the individual procedures.

12) List the federal and state agencies contacted by the owner or operator at the time of the discharge. Also include the agency's location (mailing address, city, county and state), the date and time of notification, and the name of the official contacted.

13) State whether an SPCC inspection was conducted and describe any findings.  
NA

14) Document the spill history of the facility and list the discharges which have occurred at this facility within the past five years using the following table.  
NA

| DATE | AMT DISCHARGED | AMT IN WATER | SOURCE & CAUSE |
|------|----------------|--------------|----------------|
|------|----------------|--------------|----------------|

- 15) Provide the name, title, home address, and home/work telephone number(s) of the owner(s) of the vessel or facility responsible for the discharge.
- 16) Provide the name, title, home address, and home/work telephone number(s) of the operator(s) of the vessel or facility responsible for the discharge if different from the owner, and the relationship between the owner and operator (i.e. employee, contractor, subcontractor, lessee, etc.)
- 17) Provide the names, titles, home addresses, and home/work telephone numbers of the persons who have knowledge of the facts concerning the spill as an attachment to the report labeled "Table of Witnesses". Include EPA, State, and local officials, START/Strike Team members, other Federal agencies, the company, and the cleanup contractor in the table.
- 18) Does the owner or operator have a National Pollutant Discharge Elimination System (NPDES) permit or any other discharge permit provided by the local, state, or federal government? If yes, name and describe the permit.  
NA
- 19) Has the facility ever been assessed a fine for this incident or any other discharge by any other government entity (i.e. city, county, state, federal)? If yes, name the agency or agencies that have assessed a fine(s) on the facility or vessel, and the date(s) when the fine(s) was assessed.  
NA
- 20) Include the Federal Project Number on the title (cover) sheet of the incident summary report.  
NA



[illegible]