

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

IN THE MATTER OF ALABAMA & GULF COAST RAILWAY, LLC.

Docket Number: CWA-04-2013-5254

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: Genessee & Wyoming, Inc. doing business as Alabama & Gulf Coast Railway, LLC., an Alabama corporation authorized to do business in the State of Alabama (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 Highway 14 and Highway 2 in Aliceville, Pickens County, Alabama. 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 26 car train derailment at milepost 683 located at or about intersection of Hwy 14 and Hwy 2 in Aliceville, Alabama.
14. Shortly after 12:00 am on Friday, November 8th, a 90 car unit train carrying crude oil enroute from Amory, Mississippi to Walnut Hill, Florida derailed near Aliceville, Al. Twenty six (26) tanker cars filled with crude oil derailed into a wetland slough at the head waters of a unnamed tributary of Lubbub Creek. Lubbub Creek discharges into the Tombigbee River. All of these waters are considered navigable waters of the United States. Lubbub Creek contains multiple threatened and endangered species according to the Department of Interior.



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 Notice of Federal Interest (NOFI) on Friday, November 8th, 2013. Since November 8th, 2013, the response has been under the direction of USEPA On Scene Coordinator (OSC) Jordan Garrard 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:

- Continue to prevent the migration of oil into Lubbub Creek or other surrounding water bodies;
- Complete all product transfers by 1800 on Thursday, November 21, 2013;
- Move all rail cars out of water to a land based position by 1800 Friday, November 22, 2013. Location of rail cars should not discharge oil into a navigable water body;
- Complete oil recovery operations along west side of rail line, except for excavation of impacted soils by 1800 on Wednesday, November 20, 2013;
- Begin Long-term Operation and Maintenance of boom and absorbents on west side of the rail line by 1800 on Wednesday, November 20, 2013;
- Complete oil recovery operations along the east side of rail line, except for excavation of impacted soils by Tuesday, November 26, 2013;
- Begin Long-term Operation and Maintenance of boom and absorbents on east side of the rail line by 1800 on Tuesday, November 26, 2013;
- Excavate all impacted soils along rail line by Monday, December 9, 2013;
- Continue the deployment of appropriate oil recovery and containment devices and equipment, e.g. skimmers, vacuum trucks, absorbent/containment booms;
- Complete an analytical/summation of total oil estimated to be discharged, burned, transferred, and recovered;
- 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 March 3, 2014.

*By the deadlines listed below*

18. ~~Within 3 business days from the effective date of this Order,~~ Respondent must develop and submit to USEPA for approval, a work plan (Work Plan) that includes a schedule for

completing the tasks described below. Respondent must continue remediation work while awaiting USEPA approval of the Work Plan. The Work Plan must include the following tasks:

- Long-Term Operation and Maintenance Plan - *Nov 26, 2013*
- Site Restoration Plan, including wetlands - *Dec 9, 2013*

19. Respondent must submit the Work Plan to:

Jordan J. Garrard  
U.S. EPA  
Superfund Division  
Emergency Response Section  
61 Forsyth Street, SW  
Atlanta, GA 30303

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

#### Reporting Requirements

20. Respondent must submit a written progress report to USEPA concerning actions undertaken pursuant to this Order every calendar day 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.

21. 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

22. 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.

23. This Order may be modified by agreement of the Parties. Any modification to the Order must be in writing and signed by both Parties. A written, signed modification will be incorporated by reference into this Order, and, as such becomes an enforceable part of this Order.

24. 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**

25. 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.

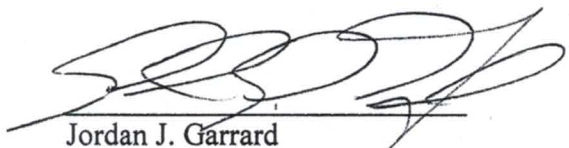
26. Respondent must notify USEPA of any response actions taken to address the discharge described above that are not described in this Order.

27. 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).

28. Respondent may request a conference with USEPA regarding the terms and requirements of this Order.

## **VII. EFFECTIVE DATE**

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

  
Jordan J. Garrard  
On-Scene Coordinator

11/18/13  
Date

Received by:   
Representing Respondent

11/18/13  
Date