

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REMOVAL ADMINISTRATIVE ORDER
UNDER SECTION 311(c) OF THE CLEAN WATER ACT
REGION 5

IN THE MATTER OF ENBRIDGE ENERGY PARTNERS, L.P.

Docket Number: CWA 1321-5-10-001

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: Enbridge Energy Partners L.P., a Delaware corporation authorized to do business in the State of Michigan (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 5 Delegation No. 2-89.

2. This Order requires performance of removal actions in connection with a facility located at or near 16000 Division Drive in Marshall, Michigan. 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 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. 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 Part 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 cost.

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 pipeline pumping station located at or about 16000 Division Drive in Marshall, Michigan. The pumping station and the pipeline are an onshore facility.

14. On July 26, 2010, at 1:33 pm eastern time Respondent notified the National Response Center of an earlier spill at or near Respondent's pump station. Respondent's pipeline (a 30 inch, 190,000 barrels per day pipe) began discharged at least 840,000 gallons of oil to the Kalamazoo River by way of Talmadge Creek, a tributary to the Kalamazoo River and/or the adjoining shoreline according to Respondent. The Kalamazoo River and Talmadge Creek are 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 took place.

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

18. Respondent must take the following immediate stabilization and mitigation actions:

- Stop the flow of oil into Talmadge Creek and Kalamazoo River by July 28, 2010;
- Notify USEPA of the date and time that the flow of oil into Talmadge Creek and the Kalamazoo River stopped by July 28, 2010;
- Remediate the oil and contaminated soils in and around the immediate vicinity of the release by August 27, 2010;
- Deploy appropriate oil recovery and containment devices and equipment, *e.g.* skimmers, vacuum trucks, absorbent/containment booms by July 28, 2010;
- Perform air monitoring and sampling as directed by USEPA and public health officials by July 27, 2010 and continuously thereafter until notified by USEPA;
- Perform water and sediment sampling of impacted areas as directed by USEPA by July 27, 2010 and continuously thereafter until notified by USEPA;
- Remediate all impacted areas (including shoreline) along Talmadge Creek, the Kalamazoo River, and if impacted Morrow Lake by September 27, 2010;
- Dispose of all wastes at USEPA approved disposal facilities; and
- 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 27, 2010.

19. Within 2 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 begin work within 1 business day of USEPA approval of the Work Plan. The Work Plan must include the following tasks:

- Health and Safety Plan
- Pipeline Repair workplan
- Sampling and Analysis Plan
- QAPP

- Oil recovery and containment plan
- Source release area remediation plan
- Remediation Plan for downstream impacted areas
- Waste treatment, transportation, and disposal plan

20. Respondent must submit the Work Plan to:

Ralph Dollhopf
U.S. EPA (ME-W)
Superfund Response Section 1
25089 Center Ridge Road
Westlake, Ohio 44145

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

21. 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.

22. 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

23. 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.

VI. RESERVATION OF RIGHTS AND PENALTIES

24. 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.

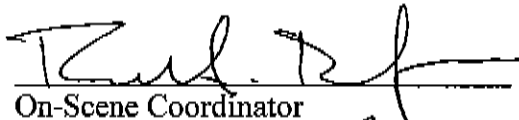
25. Respondent must notify USEPA of any response actions taken to address the discharge described above that are not described in this Order.

26. 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 19.4).

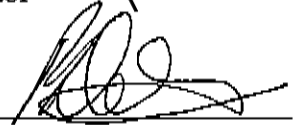
27. Respondent may request a conference with USEPA regarding the terms and requirements of this Order.

VII. EFFECTIVE DATE

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


On-Scene Coordinator

7/27/10
Date

Received by: 
Representing Respondent

Date