

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8  
ADMINISTRATIVE ORDER

2010 MAY -3 PM 2:11

FILED  
EPA REGION VIII  
HEARING CLERK

IN THE MATTER OF Wolf Creek Pass Tanker Truck Release, Mile 179 of Highway  
160, Mineral County, Colorado, and J. C. Hunt Trucking, c/o Carl Hunt, 1261 South  
Main St., Blanding, Utah 84511

Docket Number: CWA-08-2010-0013

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. DEFINITIONS**

- A. "BTEX" shall mean benzene, toluene, ethyl benzene, and xylenes.
- B. "CWA" shall mean the Clean Water Act, 33 U.S.C. §§1251-1387.
- C. "Data Quality Objectives" shall mean those qualitative and quantitative statements derived from the outputs of a scientific and legally defensible data collection planning process.
- D. "Day" shall mean a calendar day unless expressly stated to be a working day. "Working day" shall mean a day other than a Saturday, Sunday, or Federal holiday. In computing any period of time under this Order, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business of the next working day.
- E. "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 OPA, 33 U.S.C. §2701(7), for purposes of reimbursement of cost.
- F. "Effective Date" of this Order shall be the date of the receipt of this Order by the Respondent(s).
- G. "EPA" shall mean the United States Environmental Protection Agency and any successor departments or successor agencies of the United States.
- H. "Facility" shall have the meaning set forth in section 311(a)(10) of the CWA, 33 U.S.C. §1321(a)(10), and by sections 1001(9) and (24) of OPA,

33 U.S.C. §§2701(9) and (24).

- I. "Hazardous Substance" shall mean any substance defined in section 311(a)(14) of the CWA 33 U.S.C. §1321(a)(14).
- J. "Hazardous Waste" shall have the meaning set forth at section 1004(5) of RCRA, 42 U.S.C. §6903(5) and 40 C.F.R. §§261.3 and 261.10.
- K. "CDPHE" shall mean the Colorado Dept. of Public Health & Environment.
- L. "National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan codified at 40 C.F.R. Part 300.
- M. "Navigable waters" include, inter alia all navigable waters of the United States, as defined in judicial decisions prior to the passage of the 1972 Amendments of the CWA and tributaries of such waters; and interstate waters. *Am. Petroleum Inst.*, 2008 WL 834435, at \*17.
- N. "Oil" as used in this Order shall have the meaning set forth in section 311(a)(1) of the CWA, 33 U.S.C. §1321(a)(1), for purposes of the work to be performed under this Order, and OPA section 1001(23), 33 U.S.C. §2701(23), for purposes of reimbursement of costs.
- O. "OPA" shall mean the Oil Pollution Act, 33 U.S.C. §§2701-2761.
- P. "OSC" refers to the EPA On-Scene Coordinator.
- Q. "Order" shall mean this Administrative Order, any amendments thereto, and any documents incorporated by reference into this Order.
- R. "PAH" means polycyclic aromatic hydrocarbon.
- S. "Respondent" means J.C.Hunt Trucking.
- T. "Site" as used in this Order or the "Wolf Creek Pass Tanker Truck Release Site" shall mean the impacted area and/or the total extent of the oil contamination migration on the roadside, adjacent wetlands, and the South Fork of the Rio Grande River and its shorelines, river bed, and banks, at/near mile marker 179 of Highway 160, in Mineral County, Colorado.
- U. Statement of Work or "SOW" shall mean the statement of work for implementation of the removal activities and any modifications made in accordance with this Order.

- V. "Work" shall mean all the activities and requirements specified in this Order including, but not limited to any Work Plan and/or Additional Work that may be required by this Order.

## II. GENERAL PROVISIONS

- A. This Order shall apply to and be binding upon Respondent and Respondent's officers, directors, employees, agents, successors, assigns, trustees, receivers, and upon all persons, including but not limited to contractors and consultants, acting on behalf of Respondent. Any change in the ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter Respondent's responsibilities under this Order.
- B. Respondent shall ensure that its contractors, subcontractors, laboratories, consultants, and representatives comply with this Order and shall be responsible for any noncompliance with this Order.
- C. Respondent's obligation to perform the Work will begin on the Effective Date of this Order.
- D. The Work undertaken pursuant to this Order is subject to EPA approval and shall be conducted in compliance with all applicable EPA guidance, policies and procedures and with this Order.
- E. In the event of an inability or unanticipated inability on the part of Respondent to perform any of the actions or Work required by this Order in the time and manner required herein, the Respondent shall notify EPA orally as soon as possible, but no later than within twenty-four (24) hours of the time the Respondent becomes aware or should have become aware of such event (or, if the event occurs on a Friday or Saturday, no later than the following Monday) and in writing no later than seven (7) calendar days after Respondent becomes aware or should have become aware of such delay or anticipated delay. Such written notice shall describe fully the nature of the delay, including how it may affect the Work, Work Plan and schedule; the actions that will be or have been taken to mitigate, prevent, and/or minimize further delay; and the timetable according to which future actions to mitigate, prevent and/or minimize the delay will be taken. The Respondent shall adopt all reasonable measures to avoid and minimize such delay.
- F. Failure of Respondent to carry out any requirement of this Order in accordance with the terms and conditions specified herein may result in the unilateral performance of the required actions by EPA.

- G. Nothing in this Order shall be construed to limit any powers EPA may have under the CWA, OPA, the NCP, or any other law or regulation.

### **III. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

- A. The Respondent's facility is an "onshore facility" as defined by CWA section 311(a)(10), 33 U.S.C. §1321(a)(10), and by OPA section 1001(24), 33 U.S.C. §2701(24).
- B. Respondent is a "person" as defined by CWA section 311(a)(7), 33 U.S.C. §1321(a)(7), by OPA section 1001(27), 33 U.S.C. §2701(27).
- C. Respondent is an "owner or operator" of the facility, as defined by CWA section 311(a)(6), 33 U.S.C. §1321(a)(6), and OPA section 1001(26), 33 U.S.C. §2701(26).
- D. A "removal" as defined in CWA section 311(a)(8), 33 U.S.C. §1321(a)(8), and OPA section 1001(30), 33 U.S.C. §2701(30), is necessary at the site to minimize and to mitigate damage to the public health and welfare.
- E. An actual or threatened "discharge" as defined in CWA section 311(a)(2), 33 U.S.C. §1321(a)(2), OPA section 1001(7), 33 U.S.C. §2701, and 40 C.F.R. §110.1, is occurring and has occurred from the Facility.
- F. Unleaded gasoline fuel is "oil" within the meaning of CWA section 311(a)(1), 33 U.S.C. §1321(a)(1), and OPA section 1001(23), 33 U.S.C. §2701(23).
- G. Oil is currently present at and around the Facility/Site, including the adjacent wetlands, and is within less than 40 feet of the South Fork of the Rio Grande River.
- H. The South Fork of the Rio Grande River and the adjacent wetlands are "navigable waters" of the United States as defined in CWA section 502(7), 33 U.S.C. §1362(7), and OPA section 1001(21), 33 U.S.C. §2701(21).
- I. The South Fork of the Rio Grande River and its banks, sediments, and adjacent wetlands are a "natural resource" within the meaning of the NCP, 40 C.F.R. §300.5, and OPA section 1001(20), 33 U.S.C. §2701(20).
- J. "Natural resources", as defined in OPA section 1001(20), 33 U.S.C. §2701(20), and the NCP, 40 C.F.R. §300.5, have been or may be affected by the discharge or threatened discharge at or from the Facility/Site.
- K. The discharge of oil from the Facility/Site is an actual or threatened discharge of oil in violation of CWA section 311(b), 33 U.S.C. § 1321(b).
- L. The discharge of oil from the Facility/Site has occurred or threatened to occur in a "harmful quantity" within the meaning of CWA section 311(b)(3), 33 U.S.C.



§1321(b)(3), and 40 C.F.R. §110.3, because a discharge of oil from the Facility/Site into the navigable water has or would violate applicable water quality standards, and/or has caused or may cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines, or has caused or may cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines.

- M. A discharge or a substantial threat of a discharge of oil, including unleaded gasoline, and/or hazardous substance(s), reached or may reach the South Fork of the Rio Grande River and the adjacent wetlands at/or near mile marker 179 of Highway 160 in Mineral County, Colorado, which are navigable waters of the United States. This discharge or substantial threat of a discharge from the Wolf Creek Pass Tanker Truck Release Site constitutes a substantial threat to the public health or welfare.
- N. The measures set forth in this Order are necessary and appropriate to abate, minimize, stabilize, mitigate, or eliminate the discharge or substantial threat of a discharge of oil at or from the Facility and to protect the public health or welfare, within the meaning of the CWA. Further, these measures ensure effective and immediate removal of a discharge and mitigation or prevention of a substantial threat of a discharge of oil into or on the navigable waters, on the adjoining shorelines to the navigable waters, or that may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States. These measures are also necessary to protect the public health and the environment.
- O. Information sought in this Order is required to carry out the purposes and objectives of the CWA.

#### IV. ORDER

- A. Based on the above, and on other information contained in the administrative record for this Order, EPA has determined that the activities required by this Order are necessary to protect human health and/or the environment. EPA, therefore, hereby orders Respondent to perform the work specified in this Order in the manner and by the dates specified herein. All work undertaken pursuant to this Order shall be performed in a manner consistent with this Order, including all documents incorporated herein pursuant to this Order, and all applicable laws.
- B. Respondent shall finance and perform the Work in accordance with this Order, including, but not limited to, plans, standards, specifications and schedules set forth in this Order or developed by Respondent and approved by EPA pursuant to this Order.
- C. 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.
- D. Respondent is or will be liable to the United States Government for any costs that the United States has incurred or may incur in connection with the Site, under

OPA section 1002(b)(1), 33 U.S.C. §2702(b)(1), and/or as otherwise provided by law.

- E. Respondent shall undertake and complete all of the Work to the satisfaction of EPA.
- F. Upon request by EPA, Respondent shall allow EPA or its authorized representatives to take split and/or duplicate samples of any samples collected by Respondent or its contractors or agents while performing work under this Order. Respondent shall notify EPA not less than three (3) working days in advance of any sample collection activity. EPA may take any additional samples that it deems necessary.
- G. A Site health and safety plan shall be in effect before any clean-up activities commence. This plan shall comply with applicable Occupational Safety and Health Administration ("OSHA") regulations found at 29 C.F.R. Part 1910.
- H. All containment, remediation, mitigation, and removal actions performed by Respondent shall be consistent with OPA, CWA and NCP.
- H. Respondent shall perform all actions pursuant to this Order in accordance with all applicable local, state, and federal laws and regulations.

#### **V. WORK TO BE PERFORMED**

**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.

##### **A. Project Coordinator and On-Scene Coordinator.**

1. Respondent shall designate its Project Coordinator and shall notify EPA in writing within three (3) days of the Effective Date of this Order of the name, address, phone number, electronic mail address and qualifications of its Project Coordinator.
2. The EPA OSC is:  
  
Peter D. Stevenson, 8EPR-ER  
U.S. EPA, Region 8  
On Scene Coordinator, Emergency Response  
1595 Wynkoop St.  
Denver, CO 80202-1129  
  
Tel: 303-312-6799  
Email: [Stevenson.peter@epa.gov](mailto:Stevenson.peter@epa.gov)
3. EPA will approve/disapprove of Respondent's Project Coordinator (original or replacement) based upon the person's qualifications and ability to effectively perform this role. The qualifications of the

persons undertaking the Work for Respondent shall be subject to EPA's review for verification that such persons meet minimum technical background and experience requirements of the EPA. All persons under the direction and supervision of Respondent's Project Coordinator must possess all necessary professional licenses required by federal and state law. EPA retains the right to disapprove any of the contractors or subcontractors retained by Respondent. If EPA disapproves a selected contractor, Respondent shall retain a different contractor within three (3) working days following EPA's disapproval, and shall notify EPA of the new contractor's name and qualifications within four (4) working days of EPA's disapproval.

**B. WORK PLAN AND IMPLEMENTATION.**

1. **Respondent shall not commence or undertake any removal actions at the facility without prior EPA approval.**
2. Within 15 days after the effective date of this Order, the Respondent shall submit to EPA for approval, a draft Work Plan for performing the removal action set forth below. The draft Work Plan shall provide a description of, and an expeditious schedule for, the action required by this Order. Following EPA's approval or modification of the Work, Respondent shall implement the Work Plan in accordance with the schedule and provisions approved by EPA.
3. EPA may approve, disapprove, require revisions to, or modify the draft Work Plan. If EPA requires revisions, Respondent shall submit a revised draft Work Plan within 10 days of receipt of EPA's notification of the required revisions. Respondent shall implement the Work Plan as finally approved in writing by EPA in accordance with the schedule approved by EPA. Once approved, or approved with modifications, the Work Plan, the schedule, and any subsequent modifications shall be deemed to be incorporated into this Order and fully enforceable under this Order. Respondent(s) shall notify EPA at least 48 hours prior to performing any on-site work pursuant to the EPA- approved Work Plan.

**C. STATEMENT OF WORK.**

1. **IMMEDIATE STABILIZATION MITIGATION and REMOVAL ACTIONS**
  - a. Continue collection of gasoline/water mix from the site recovery holes and trenches. Tabulate recovered product/water volume by date and location, and continue recording data for all future recovery actions. Please submit all data with the weekly report.
  - b. Continue inspection program of all monitoring wells, recovery holes, recovery trenches, and the interceptor trench in three locations. Inspection will occur weekly at T-1, T-2, T-3, T-4, T-5, T-6, T-7, RH-1, RH-2, RH-3, RH-4, RH-5,

recovery trench, and three locations in the interceptor trench, and any other existing unnumbered monitoring wells, recovery holes, or trenches. Record visual observations and PID readings and provide data with the weekly report.

- c. Continue the current sampling activity weekly and provide the results with the weekly report.
- d. Conduct vegetation inventory/assessment in all potentially impacted areas of the Site in anticipation of site restoration activities.
- e. Continue maintenance of existing booms in the river not washed away by the current high flow.
- f. Conduct further plume delineation activities as directed by the OSC.
- g. Submit a Sampling and Analysis Plan with schedule for all anticipated future sampling activities within 15 days from the date of this Order. Include provisions for trip blanks and MS/MSD samples to be submitted with each batch of samples collected. Provide Groundwater monitoring well construction and sampling Standard Operating Procedures (SOPs). Provide surface water sample collection SOPs. The Sampling Plan shall be implemented within 10 days of EPA approval.
- h. Remove Contaminated Soil at Roadside. Provide all disposal acceptance paperwork, including but not limited to hazardous waste manifests, sample profile data, letters of acceptance from the disposal facilities, bills of lading, or any other paperwork associated with wastewater disposal.
- i. Provide a detailed description of proposed wastewater aeration activities. Provide copies of all existing and all future disposal facilities, bills of lading, or any other paperwork associated with wastewater disposal.
- j. Provide a detailed description of further monitoring and containment activities proposed for the two areas outside both ends of the interceptor trench.
- k. Provide a detailed description of proposed site protection activities including but not limited to sandbagging RH-1, the upstream area to the interceptor trench, and the interceptor trench.
- l. Identify additional solid and absorbent boom locations near the interceptor trench and the downstream confluence of the high water channel and the main channel of the river.
- m. Complete site restoration with excavated soil sample data upon completion of all site activities pursuant to US Forest Service and Colorado Department of Transportation Specifications.
- n. Submit a proposal for long term monitoring at the site within 30 days.



## 2. REPORTING REQUIREMENTS

- a. Within 5 days of the effective date of this Order, provide hole and well construction details, to include depth, diameter, and material used for construction.
- b. Within 5 days of the effective date of this Order, provide technical specifications and manufacturer's information on all boom and absorbent material used on site.
- c. Within 15 days of the effective date of the Order, provide all existing data, including but not limited to PID, field data, and sample analysis.
  - i. Data should be submitted in tabulated form, when appropriate.
  - ii. References to a detailed and accurate set of site maps should be included.
- d. Within 7 days of the effective date of this Order, conduct vegetation inventory/assessment in all potentially impacted areas of the site in anticipation of site restoration activities.
- e. Respondent(s) shall prepare and submit to the On-Scene Coordinator the following reports:
  - i. Weekly Progress Reports shall be due on Thursdays, at 0800 hours.
  - ii. Monthly Progress Reports shall be due On April 30, 2010, and the 30th of each month thereafter.
  - iii. Final Completion Report shall be due 120 days after the completion of the Removal Action.
- f. All reports shall be sent to the established representatives of the following agencies: US Army Corps of Engineers, US Forest Service, Colorado Dept. of Transportation, CDPHE, Colorado Department of Public Safety Highway Patrol Hazardous Materials Technicians, EPA, and EPA Contractor. Other agencies or entities may be added to this list.

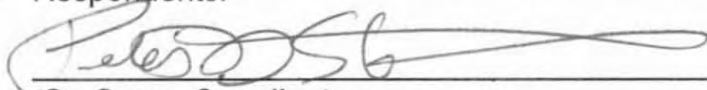
## VI. RESERVATION OF RIGHTS AND PENALTIES

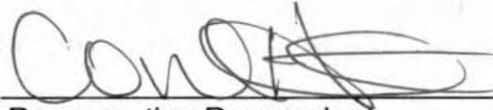
- A. This Order does not preclude EPA from taking any actions authorized by CWA, the National Contingency Plan, or any other law. EPA reserves the right to direct all activities and to comment on and direct changes to deliverables, off-site shipping and disposal, and all other matters.
- B. Respondent shall notify EPA prior to of any response actions it takes as to this discharge that are in addition to those described in this Order.

- C. 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 Clean Water Act, 33 U.S.C. § 1321(b)(7)(B) as amended by the Oil Pollution Act of 1990, 33 U.S.C. §§ 2701 et seq.)

**VII. EFFECTIVE DATE**

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

  
On-Scene Coordinator \_\_\_\_\_ Date 4/19/10

Received by   
Representing Respondent \_\_\_\_\_ Date 4-26-10

**ATTACHMENT TO ADMINISTRATIVE ORDER WOLF CREEK PASS TANKER TRUCK RELEASE SITE pursuant to Section V, Work to be Performed**

The Work to be conducted by representatives of J. C. Hunt Trucking on the Wolf Creek Pass Tanker Truck Release Site consists of the following:

**IMMEDIATE STABILIZATION ACTIONS**

1. Continue emergency actions, including construction of an interceptor trench in the wetlands, and contaminated soil along the side of the road.
2. Continue permit applications processes with the US Forest Service and US Army Corps. of Engineers until all permit issues are resolved.
3. Prepare site inspection schedule and description of activities for short and long term monitoring.
4. Conduct vegetation inventory/assessment in all potentially impacted areas of the Site in anticipation of site restoration activities.

**REMOVAL ACTION**

1. Submit a Sampling and Analysis Plan with schedule for all anticipated future sampling activities within 15 days from the date of this Order. The Sampling Plan shall be implemented within 10 days of EPA approval.
2. Submit a Work Plan with schedule for all anticipated future site activities within 15 days from the date of this Order. The Work Plan shall include but not be limited to the following tasks:

Interceptor Trench/Recovery Trench Construction and product recovery;

Contaminated Soil Removal at Roadside;

Site Restoration upon completion of all site activities pursuant to US Forest Service and Colorado Department of Transportation Specifications; and

Short and Long Term Monitoring.

The Work Plan shall be implemented within 10 days of EPA approval.





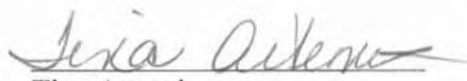
## CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **ADMINISTRATIVE ORDER** in the matter of **WOLF CREEK PASS TANKER TRUCK RELEASE, Mile 179 of Highway 160, Mineral County, and J.C. HUNT TRUCKING, c/o CARL HUNT; DOCKET NO.: CWA-08-2010-0013** was filed with the Regional Hearing Clerk on May 3, 2010.

Further, the undersigned certifies that a true and correct copy of the documents were delivered via e-mail to Brenda Morris, Senior Enforcement Attorney, U. S. EPA – Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129. True and correct copies of the aforementioned documents were placed in the United States mail certified/return receipt requested on May 3, 2010, to:

Carl Hunt  
J. C. Hunt Trucking  
1261 South Main Street  
Blanding, UT 84511

May 3, 2010

  
Tina Artemis  
Paralegal/Regional Hearing Clerk



