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UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 7

Received by
EPA Region 7
Hearing Clerk

IN THE MATTER OF:

Keystone Pipeline
Mill Creek, Washington County, Kansas

TC Oil Pipeline Operations Inc.,
Respondent.

DOCKET NO. CWA-07-2023-0037

Administrative Order on Consent

Proceeding Under Section 311(c) and (e) of
the Federal Water Pollution Control Act, as
amended, 33 U.S.C. § 1321(c) and (e).

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I. JURISDICTION AND GENERAL PROVISIONS

1. This Consent Order is issued pursuant to the authority vested in the President of the United States by Section 311(c) and (e) of the Federal Water Pollution Control Act, 33 U.S.C. § 1321(c) and (e), as amended (“CWA”). This authority has been delegated to the Administrator of the United States Environmental Protection Agency (“EPA”) by Executive Order No. 12777, 58 Fed. Reg. 54757 (October 22, 1991), and further delegated to the Regional Administrators by EPA Delegation Nos. 2-85 and 2-89 and to the Superfund & Emergency Management Division Director by Regional Delegations No. R7-2-85 and R7-2-89.

2. This Consent Order pertains to a discharge of oil, which occurred at a facility (“Facility”) located at Mill Creek, in Washington County, Kansas. This Consent Order requires the Respondent to conduct removal actions described herein to abate or mitigate an imminent and substantial threat to the public health or welfare of the United States that may be presented by the actual or substantial threat of a discharge of oil from Respondent’s Facility into navigable waters, adjoining shoreline, or exclusive economic zone.

3. EPA has notified the State of Kansas of this action pursuant to Section 311(e)(1)(B) of CWA, 33 U.S.C. § 1321(e)(1)(B).

4. Respondent consents to issuance of the Consent Order. Respondent’s participation in this Consent Order shall not constitute an admission of liability. Respondent neither admits nor denies the factual allegations and legal conclusions asserted by the United States in this Consent Order. Respondent retains the right to controvert in any subsequent proceedings, other than proceedings to implement or enforce this Consent Order, the validity of EPA’s Findings of Fact or Conclusions of Law.

5. This Consent Order is also based on Section 1002 of the Oil Pollution Act (“OPA”), 33 U.S.C. § 2702, for reimbursement of costs.

II. PARTIES BOUND

6. This Consent Order applies to and is binding upon Respondent and Respondent’s successors and assigns. Any change in ownership or corporate status of Respondent, including, but not limited to, any transfer of assets or real or personal property shall in no way alter Respondent’s responsibilities under this Consent Order.

7. Respondent shall ensure that its contractor and subcontractor companies and its employees that are directly involved with the Work receive a copy of this Consent Order and comply with this Consent Order. Respondent shall be responsible for any noncompliance with this Consent Order.

III. DEFINITIONS

8. Unless otherwise expressly provided herein, terms used in this Consent Order which are defined in Section 311 of the CWA or in the OPA shall have the meaning assigned to them in the CWA or OPA. Whenever terms listed below are used in this Consent Order or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

9. “Act of God” shall have the definition set out in Section 1001(1) of the OPA, 33 U.S.C. § 2701(1).

10. “CWA” shall mean the Federal Water Pollution Control Act, as amended, commonly referred to as the Clean Water Act, 33 U.S.C. § 1251 *et seq.*

11. “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 Consent 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.

12. “Discharge” shall have the meaning set forth in Section 311(a)(2) of the CWA, 33 U.S.C. § 1321(a)(2), and 40 C.F.R. § 110.1 for purposes of the work to be performed under this Consent 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.

13. “EPA” shall mean the United States Environmental Protection Agency and any successor departments or successor agencies of the United States.

14. “Facility” shall mean the portion of the Keystone Pipeline that is owned by TransCanada Keystone Pipeline, LP and operated by TC Oil Pipeline Operations, Inc., and which is located near Mill Creek in Washington County, Kansas, and depicted generally on the map attached as Appendix A. The Facility shall also have the meaning as 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).

15. “Hazardous Substance” shall mean any substance defined in Section 311(a)(14) of the CWA, 33 U.S.C. § 1321(a)(14).

16. “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.

17. “Navigable water” shall have the meaning set forth in Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and Section 1001(21) of the OPA, 33 U.S.C. § 2701(21), and 40 C.F.R. Part 110.

18. “Administrative Order on Consent” or “Consent Order” shall mean this Consent Order and all appendices attached hereto. In the event of conflict between this Consent Order and

any Appendix, this Consent Order shall control.

19. “OPA” shall mean the Oil Pollution Act of 1990, 33 U.S.C. § 2701 *et seq.*

20. “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 Consent Order, and Section 1001(23) of the OPA, 33 U.S.C. § 2701(23), for purposes of reimbursement of costs.

21. “Paragraph” shall mean a portion of the Consent Order identified by an Arabic numeral or an uppercase letter.

22. “Respondent” shall mean TC Oil Pipeline Operations, Inc.

23. “Section” shall mean a portion of this Consent Order identified by a roman numeral.

24. “State” shall mean the State of Kansas.

25. “United States” shall mean the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Marianas, and any other territory or possession of the United States.

26. “Vessel” shall mean every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water, other than a public vessel.

27. “Work” shall mean all activities Respondent is required to perform under this Consent Order, except those required under Paragraph 63 (Record Retention).

IV. FINDINGS OF FACT

28. TC Oil Pipeline Operations, Inc. is the operator of a pipeline located near Mill Creek in Washington County, Kansas. The pipeline is part of the Keystone Pipeline System and is owned by TransCanada Keystone Pipeline, LP. Respondent’s operation of the pipeline includes

the use of the pipeline for transporting crude oil.

29. TC Energy Corporation (“TC Energy”) is a parent company to Respondent and TransCanada Keystone Pipeline, LP.

30. On December 7, 2022, at approximately 9:01 p.m. Central Standard Time (“CST”), TC Energy received a leak detection alarm. TC Energy received an emergency-line trip alarm six minutes later. The pipeline was subsequently shut down and isolation valves closed at 9:08 p.m. CST. The affected segment of the pipeline spans from the Steele City pump station (Mile Post (“MP”) 0.0) to Hope pump station (MP 95.7, approximately). Upon receiving the leak alarms, TC Energy and/or Respondent dispatched personnel, who identified a crude oil odor north of U.S. Highway 36.

31. On December 8, 2022, at approximately 12:30 a.m. CST, a TC Energy employee made an initial report to the National Response Center (“NRC”) (Incident Report No. 1354442), stating that a leak detection alarm could mean the potential release of materials, but that there had been no leak discovered at that time. In the initial report, Respondent noted a crude oil odor in the area.

32. On December 9, 2022, a TC Energy employee updated the estimated quantity of the discharge provided to the NRC from “unknown” to “14,000 barrels” (Incident Report No. 1354625). The updated report noted that the discharge had been secured and the cleanup was ongoing.

33. The pipeline rupture occurred south of where the pipeline crosses Mill Creek, in Washington County, Kansas, near 39.841667 degrees north latitude and 96.995578 degrees west longitude.

34. As a result of the rupture, Respondent initially estimated that approximately

588,000 gallons of oil, or 14,000 barrels, were discharged overland and into Mill Creek. The discharge of oil resulted in vegetation staining and a film or sheen upon or discoloration of the surface of the water of Mill Creek and adjoining banks. Oil in Mill Creek was observed by the Federal On-Scene Coordinator on December 8, 2022, to be present bank-to-bank at the 20th Street Bridge, three miles downstream from the pipeline rupture. The United States has asserted that impacts to Mill Creek may have extended at least 3.5 miles downstream beyond a bridge crossing at 20th Street.

35. On December 9, 2022, as a result of the discharge, the Kansas Department of Health and Environment issued a stream advisory for Mill Creek from 18th Road to the Little Blue River, warning residents to not enter the creek and keep livestock, pets, and children out of the creek.

36. The Keystone Pipeline is a 2,687-mile hazardous liquid pipeline system between Hardisty, Alberta, Canada, and Patoka, Illinois, and Port Arthur, Texas. The 36-inch diameter Cushing Extension was Phase 2 of the Keystone Pipeline. Construction was completed in 2011 for the Cushing Extension. The Cushing Extension begins in Steele City, Nebraska and goes to Cushing, Oklahoma, and is approximately 288 miles long.

37. Mill Creek is a perennial stream and a tributary of the Little Blue River. The Little Blue River is a perennial stream and a tributary of the Big Blue River. The Big Blue River is a perennial stream and tributary of the Kansas River. The Kansas River is a traditionally navigable water. Mill Creek is therefore a “water of the United States.”

38. Since December 8, 2022, Respondent has been performing spill response/removal actions. On December 10, 2022, the EPA On-Scene Coordinator (“OSC”) signed the initial Incident Action Plan, which outlined Respondent’s intended response/removal actions at that

time.

39. EPA and Respondent have been undertaking a Unified Command to address response/removal actions associated with the discharge. The Unified Command process is iterative by design and is utilized to determine necessary actions for a specific period of time (e.g., the following 24-hour period) based on the actions and activities that occurred in a prior period of time (e.g., the prior 24-hour period).

V. CONCLUSIONS OF LAW AND DETERMINATIONS

40. Based on the Findings of Fact set forth above, EPA alleges the “Conclusions of Law and Determinations” set forth in Paragraphs 40 to 52 of this Consent Order. The Respondent neither admits nor denies the allegations set forth in Paragraphs 40 to 52.

41. The pipeline operated by TC Energy Oil Pipeline Operations, Inc., and located near Mill Creek is an “onshore facility,” as defined in Sections 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10), and by Section 1001(24) of the OPA, 33 U.S.C. § 2701(24).

42. Respondent is an “owner or operator” as defined by Section 311(a)(6) of CWA, 33 U.S.C. § 1321(a)(6), and Section 1001(26) of the OPA, 33 U.S.C. § 2701(26). Respondent is also a “responsible party” as defined by Section 1001(32) of the OPA, 33 U.S.C. § 2701(32).

43. Respondent is a “person” as defined by Section 311(a)(7) of the CWA, 33 U.S.C. § 1321(a)(7), and by Section 1001(27) of the OPA, 33 U.S.C. § 2701(27).

44. The entry of oil from the pipeline failure described in the Statement of Facts into Mill Creek is a “discharge” as defined in Section 311(a)(2) of the CWA, 33 U.S.C. § 1321, 40 C.F.R. § 110.1, and Section 1001(7) of the OPA, 33 U.S.C. § 2701(7).

45. The “discharge” is into or on a navigable water and may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States.

46. The quantity of oil discharged from the Facility is a harmful quantity within the meaning of Section 311(b)(3) of CWA, 33 U.S.C. § 1321(b)(3), and 40 C.F.R. § 110.3(b), because the discharge caused or may cause a violation of applicable water quality standards and caused a film or sheen upon or a discoloration of the surface of the water or adjoining shorelines and caused or may cause a sludge or emulsion to be deposited beneath the surface of the water or adjoining shorelines.

47. The discharge is a violation of Section 311(b) of the CWA, 33 U.S.C. §1321(b), and Section 1002 of the OPA, 33 U.S.C. § 2702, because a harmful quantity of oil has been discharged from the onshore facility into or upon the navigable waters of the United States and which may affect natural resources belonging to or appertaining to the United States.

48. The discharge has caused an imminent and substantial threat to the public health or welfare of the United States, including fish, shellfish, wildlife, public and private property, shorelines, habitat, and/or other living and nonliving natural resources under the jurisdiction or control of the United States.

49. The removal actions required by this Consent Order are necessary to protect the public health and welfare of the United States of America, including fish, shellfish, wildlife, public and private property, shorelines, habitat, and other living and/or nonliving natural resources under the jurisdiction or control of the United States. Further, these measures are necessary to ensure effective and immediate removal 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.

50. The removal actions required by this Consent Order are in accordance with the NCP and are authorized by EPA pursuant to the authority granted in Section 311(c) and (e) of the

CWA, 33 U.S.C. § 1321(c) and (e), as delegated by the President in Executive Order 12777, Section 2(b)(1), 56 Fed. Reg. 54757 (October 22, 1991).

51. Under Section 1002(b)(1) of the OPA, 33 U.S.C. § 2702(b)(1), and CWA Section 311(f), 33 U.S.C. § 1321(f), Respondent is liable to the United States for all removal costs incurred by the United States in connection with discharge or the threatened discharge of oil from the Facility.

52. A “removal,” as defined in Section 311(a)(8) of the CWA, 33 U.S.C. § 1321(a)(8) and Section 1001(30) of the OPA, 33 U.S.C. § 2701(30), is necessary at the Facility to minimize and mitigate damage to the public health or welfare.

VI. ORDER

53. Based upon the Findings of Fact and Conclusions of Law and Determinations set forth above, EPA hereby orders and Respondent agrees that Respondent shall comply with all requirements of this Consent Order and shall perform the following actions:

54. Work to Be Performed. Respondent shall perform, at a minimum, the following removal activities:

A. Pipeline Discharge Source Area. Removal activities will, at a minimum, include the recovery of oil and oil-contaminated soil and vegetation that could migrate and impact Mill Creek. This will also involve the installation of temporary runoff control measures to limit continued migration of oil to surface waters as removal activities are conducted.

B. Mill Creek. Removal activities will, at a minimum, include the assessment of Mill Creek to identify the extent of impact as a result of the incident, as well as conducting ongoing assessment to monitor for migration of impacts to downstream locations. Containment measures shall be put into place to prevent further downstream impacts. Those measures shall be

monitored during the removal activities to ensure they are operating effectively. Removal activities shall also include the recovery of oil from Mill Creek, including oil impacting surface waters, sediments, and shoreline (e.g., creek banks). Oil spill recovery shall be completed to an end point agreed upon by EPA and the Natural Resource Trustee Agencies.

C. Air Monitoring. Air monitoring to document and confirm the health and safety of response personnel as well as surrounding populations shall be conducted throughout the removal activities. Air monitoring shall be conducted in accordance with Section VI (Health and Safety Plan).

D. Sampling. The collection of additional environmental samples shall be conducted at the request of EPA, in accordance with Section VI (Quality Assurance and Sampling).

55. Designation of Contractor, Project Coordinator, and On-Scene Coordinator

A. Respondent shall perform the removal action itself or retain contractor(s) to perform the removal action. If Respondent elects to perform the Work, it shall notify EPA of the names and qualifications of such personnel within five (5) working days after the effective date of this Consent Order. If Respondent elects to retain contractor(s), Respondent shall notify EPA of the name(s) and qualification(s) of such contractor(s) within five (5) working days after the effective date of this Consent Order. Within five (5) working days of receiving the name(s) and qualifications(s) of the personnel and or contractor(s), EPA shall have the right to disapprove the selection of any, or all, of the contractors and/or subcontractors retained by the Respondent, or of Respondent's choice of itself to conduct the removal action. If EPA disapproves the selection of a contractor, Respondent shall retain a different contractor or notify EPA that it will perform the removal action itself within seven (7) working days following EPA's disapproval of

Respondent's selection and shall notify EPA of that contractor's name or Respondent's name and qualifications within seven (7) working days of EPA's disapproval.

B. Within five (5) working days after the effective date of this Consent Order, Respondent shall designate an individual as a Project Coordinator who shall be responsible for administration of all the Respondent's actions required by the Consent Order. Respondent shall submit the designated coordinator's name, address, telephone number, and qualifications to EPA. To the extent possible, the Project Coordinator shall be present at the Facility or readily available during work at the Facility. Within five (5) working days of receiving the name, contact information and qualifications of the Project Coordinator, EPA shall have the right to disapprove the selection of any Project Coordinator named by the Respondent. If EPA disapproves the selection of a Project Coordinator, Respondent shall retain a different Project Coordinator and shall notify EPA of that person's name and qualifications within five (5) working days following receipt of EPA's disapproval. Receipt by Respondent's Project Coordinator of any written notice or communication from EPA relating to this Consent Order shall constitute receipt by Respondent.

C. EPA has designated Jeffrey Pritchard of the Superfund and Emergency Management Division as its On-Scene Coordinator ("OSC"). Respondent shall direct all submissions and notifications required by this Consent Order to the OSC at pritchard.jeffrey@epa.gov or (913) 551-7772.

D. EPA and Respondent shall have the right to change their designated OSC or Project Coordinator, respectively. EPA shall notify the Respondent, and Respondent shall notify EPA promptly, both in writing, before such a change is made. Notification may initially be made orally but shall be followed promptly by written notice.

56. Work Plan and Implementation

A. Within five (5) working days after the effective date of this Consent Order, the Respondent shall submit to EPA for approval a draft Work Plan for performing the removal action set forth above. The draft Work Plan shall provide a description of, and an expeditious schedule for, the action required by this Consent Order.

B. 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 three (3) working 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 Consent Order and fully enforceable under this Consent Order.

57. Health and Safety Plan. Within five (5) working days after the effective date of this Consent Order, the Respondent shall submit for EPA review and comment a Health and Safety Plan that ensures the protection of human health and safety during performance of on-site and off-site work under this Consent Order. This plan shall be prepared in accordance with the applicable portions of EPA's Standard Operating Safety Guide, (November 1984, updated 1988 and 1992, NTIS Publication No. PB92-963414). In addition, the plan shall comply with all current applicable Occupational Safety and Health Administration (OSHA) regulations, including but not limited to Hazardous Waste Operations and Emergency Response Standards (29 C.F.R. Part 1910), Construction Standards (29 C.F.R. Part 1926), General Industry Standards (29 C.F.R. Part 1910), and the general duty requirement of Section 5(a)(1) of the Occupational Safety and Health Act of 1970 (29 U.S.C. § 651 *et seq.*). Respondent shall incorporate all changes to the plan

requested by EPA and implement the plan during the removal action.

58. Quality Assurance and Sampling

A. Respondent shall develop a plan for quality assurance/quality control (“QA/QC”), data validation, and chain of custody procedures regarding all sampling and analyses performed pursuant to this Order. Respondent shall submit such plan to EPA for its approval.

B. Upon request by EPA, Respondent shall have a qualified laboratory, as determined by EPA, analyze samples submitted by EPA for quality assurance monitoring. Respondent shall provide to EPA the QA/QC procedures followed by all sampling teams and laboratories performing data collection and/or analysis.

C. Upon request by EPA, Respondent shall allow EPA or its authorized representative(s) to take split and/or duplicate samples of any samples collected by Respondent or their 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 unless a shorter time frame is required, in which case the Respondent will notify the OSC as expeditiously as possible and inform the OSC of the need for a shorter time frame and the reason for the shorter time frame. EPA shall have the right to take any additional samples that it deems necessary and shall provide Respondent with the results of all such sample collection activities.

59. Oil Pollution Prevention Plans. The Respondent shall comply with the Oil Pollution Prevention requirements (40 C.F.R. Part 112) for any applicable oil storage areas associated with removal actions undertaken pursuant to this Order.

60. Reporting. Respondent shall submit progress data and reports to the OSC concerning actions undertaken pursuant to this Order every day after the date of receipt of EPA’s approval of the Work Plan until termination of this Consent Order, unless otherwise directed in

writing by EPA. Respondent shall have the option to request an alternate frequency for progress reports, and such alternate frequency request shall be subject to EPA's approval. These reports shall 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.

61. Completion Report. Within sixty (60) working days after completion of construction and implementation of the removal actions required under this Consent Order, Respondent shall submit for EPA review and approval a report summarizing the actions taken to comply with this Consent Order. The report shall include at a minimum, a listing of quantities and types of materials removed off-site or handled on-site, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destinations of those materials, a presentation of the analytical results of all sampling and analyses performed, and accompanying appendices containing all relevant documentation generated during the removal action, *e.g.*, Incident Action Plans (IAPs), disposal manifests, and permits. The final report shall also include the following certification signed by a person who supervised or directed the preparation of that report:

Under penalty of law, I certify that to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of the report, the information submitted is true, accurate, and complete. I am aware that under Section 309(c)(4) of the Clean Water Act, 33 U.S.C. § 1319(c)(4), there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

62. Access to Property and Information

A. Respondent shall provide and/or obtain access to the Facility and off-site

areas to which access is necessary to implement this Consent Order. Respondent shall also provide, upon request, access to all records and documentation related to the conditions at the Facility and the actions conducted pursuant to this Order. Such access shall be provided to EPA employees, employees of the Natural Resources Trustee Agencies, the Coast Guard (USCG), their contractors, agents, consultants, designees, representatives, and State of Kansas representatives. These individuals shall be permitted to move freely at the Facility and appropriate off-site areas in order to conduct actions which EPA or the State determines to be necessary. Respondent shall submit to EPA, upon request, the results of all sampling or tests and all other data generated by Respondent or their contractor(s), or on the Respondent's behalf during implementation of this Consent Order. EPA personnel will follow the health and safety requirements that are in place for the Facility, as long as those requirements don't interfere with the ability of EPA personnel to exercise their duties and authorities under this Consent Order, the CWA, or the NCP.

B. Where Work under this Consent Order is to be performed in areas owned by or in the possession of a person other than Respondent, Respondent shall use its best efforts to obtain all necessary access agreements (1) within five (5) working days after the effective date of this Consent Order, or as otherwise specified in writing by EPA; or (2) as expeditiously as possible, upon identifying a property for which Respondent becomes aware that access is required following the effective date of this Consent Order. Respondent shall immediately notify EPA if after using its best efforts it is unable to obtain such agreements. Respondent shall describe in writing its effort(s) to obtain access. EPA may then assist Respondent in gaining access, to the extent necessary to effectuate the removal actions described herein, using such means as EPA deems appropriate. EPA reserves the right to seek reimbursement from Respondent for all costs

and attorney's fees incurred by the United States in obtaining access for Respondent.

63. Record Retention, Documentation and Availability of Information

A. Respondent shall preserve all documents in its control or possession and information relating to work performed under this Consent Order or relating to the oil discharged from the Facility, for six years following completion of the removal actions required by this Consent Order. At the end of this six-year period and 60 days before any such document or information is destroyed, Respondent shall notify EPA that such documents and information are available to EPA for inspection, and upon request, shall provide the originals or copies of such documents and information to EPA. In addition, Respondent shall provide documents and information retained under this Section at any time before expiration of the six-year period upon the written request of EPA. Documents will be provided to the designated OSC.

B. Respondent may assert a business confidentiality claim pursuant to 40 C.F.R. § 2.203(b) with respect to part or all of any information submitted to EPA pursuant to this Order, provided such claim is allowed by Section 308(b)(2) of CWA, 33 U.S.C. § 1318(b)(2). EPA 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 C.F.R. Part 2, Subpart B. If no such claim accompanies the information when it is received by EPA, EPA may make it available to the public without further notice to Respondent.

C. Respondent may assert that certain documents, records and other information requested are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Respondent asserts such a privilege in lieu of providing documents, it shall provide EPA with the following:

- (1) the title of the document, record, or information;

- (2) the date of the document, record, or information;
- (3) the name and title of the author of the document, record, or information;
- (4) the name and title of each addressee and recipient;
- (5) a description of the contents of the document, record, or information; and
- (6) the privilege asserted by Respondent.

However, no documents, reports or other information created or generated pursuant to the requirements of the Consent Order shall be withheld on the grounds that they are privileged.

64. Off-Facility Shipments

A. Respondent shall, prior to any off-Facility shipment of oil or hazardous substances, oil- or hazardous substances-contaminated soil, or oil- or hazardous substances-contaminated water, provide written notification of such shipment to the appropriate state environmental official and to the designated OSC. The notification shall include:

- (1) the name and location of the facility to which the oil, hazardous substances, soil or water, will be shipped;
- (2) the type and quantity of the oil, hazardous substances, soil or water to be shipped;
- (3) the expected schedule for the shipment of the oil, hazardous substances, soil or water;
- (4) the transporter and method of transportation of the shipment of oil, hazardous substances, soil or water; and
- (5) the planned disposal, recycling, or reuse method of the oil, hazardous substances, soil or water.

Respondent shall also notify the designated OSC and the appropriate State environmental official of major changes in the shipment plan, such as a decision to ship the oil, hazardous substances,

soil or water to another facility.

B. All off-Facility shipments of oil or hazardous substances, oil or hazardous substances-contaminated soil, and oil or hazardous substances-contaminated water shall be transported, stored, and disposed of in accordance with all applicable U.S. Department of Transportation regulations, the NCP, and all other applicable Federal, State, and local laws and regulations.

65. Compliance With Other Laws. Respondent shall perform all actions required pursuant to this Consent Order in accordance with all applicable Federal, state, and local laws and regulations. Where any portion of the work requires a Federal or state permit or approval, Respondent shall submit timely applications and take all other actions necessary to obtain and to comply with all such permits or approvals. This Consent Order is not, and shall not be construed to be, a permit issued pursuant to any Federal or state law or regulation.

66. Emergency Response and Notification of Discharges

A. If any incident, or change in Facility conditions, during the actions conducted pursuant to this Consent Order causes or may cause a substantial threat of a discharge or an additional discharge of oil or hazardous substances from the Facility or a substantial threat to the public health or welfare of the United States (including but not limited to fish, shellfish, wildlife, other natural resources, and the public and private beaches and shorelines of the United States), the Respondent shall immediately take all appropriate action. The Respondent shall take these actions in accordance with all applicable provisions of this Consent Order, including, but not limited to the Health and Safety Plan, in order to prevent, abate or minimize such discharge or substantial threat of a discharge. Respondent shall also immediately notify the OSC or, in the event of his unavailability, shall notify the EPA Region 7 Duty at (913) 281-0991 of the incident

or Facility conditions. If Respondent fails to respond, EPA may respond to the discharge or threatened discharge and seek recovery of its costs of response work under Section IX.

Respondent shall take such action in consultation with the OSC, unless it is not possible for the Respondent to contact the OSC prior to the time the action becomes necessary.

B. In addition, in the event of any discharge of oil or a hazardous substance, Respondent shall immediately notify the National Response Center at telephone number (800) 424-8802. Respondent shall submit a written report to EPA within seven (7) days after each discharge, setting forth the events that occurred and the measures taken or to be taken to mitigate and prevent the recurrence of such a discharge. This reporting requirement is in addition to, not in lieu of, reporting under Section 311(b)(5) of CWA and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. §§ 11001 *et seq.*, if applicable, or under any other Federal, State, or local laws.

VII. AUTHORITY OF THE EPA ON-SCENE COORDINATOR

67. The OSC is authorized to oversee the proper and complete implementation of this Consent Order, including the authority to:

- (1) remove or arrange for the removal of a discharge, and mitigate or prevent a substantial threat of a discharge, at any time;
- (2) direct or monitor all Federal, State, and private actions to remove a discharge;
- (3) remove and, if necessary, destroy a vessel discharging, or threatening to discharge, by whatever means are available; and
- (4) determine when the removal is complete.

Absence of the OSC from the Facility shall not be cause for stoppage of work unless specifically directed by the OSC.

VIII. ENFORCEMENT: PENALTIES FOR NONCOMPLIANCE

68. Violation of any provision of this Consent Order may subject Respondent to civil penalties of up to fifty-one thousand seven hundred and ninety-six dollars (\$51,796) per day of violation, or an amount up to three (3) times the cost incurred by the United States, as provided in Section 311(b)(7)(B) of the CWA, 33 U.S.C. § 1321(b)(7)(B), as adjusted pursuant to the Civil Monetary Penalty Inflation Adjustment Rule of 2022.

IX. REIMBURSEMENT OF OVERSIGHT COSTS

69. The United States will submit to Respondent a bill(s) and accounting(s) of removal costs incurred by the United States. Removal costs consist of all costs, including indirect costs, incurred by the United States, its employees, agents, contractors, consultants and other authorized and/or designated representatives in connection with United States oversight, monitoring, obtaining access, and performing emergency response and/or performance of the Work plan.

70. Respondent shall, within thirty (30) calendar days of receipt of a bill(s) and accounting(s), remit a certified or cashier's check for the amount of those costs made payable to the United States of America, or make such payments via electronic transfer, as directed by the U.S. Checks shall reference the Facility name and FPN (UCGPE23702) and be sent to:

Chris Marcy, Regional Manager
National Pollution Funds Center
2703 Martin Luther King Blvd SE
Washington, SC 20598-7100
FPN UCGPE23702

71. In the event that the payment(s) required by this Consent Order are not made by the 30th day following the date of receipt of the bill and accounting by the responsible party or

guarantor, Respondent shall pay interest on the unpaid balance at the rate established by Section 1005(b)(4) of the OPA. Payments made under this Paragraph shall be in addition to such other remedies or sanctions as are available to the United States by virtue of Respondent's failure to make timely payments under this Consent Order, including by not limited to the sanctions set forth in Section 311(b)(7)(B) of the CWA, 33 U.S.C. § 1321(b)(7)(B).

X. RESERVATION OF RIGHTS

72. Except as specifically provided in this Consent Order, nothing herein shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health or welfare of the United States, or to prevent, abate, or minimize an actual or substantial threat of a discharge of oil, hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, from or outside of the Facility. Further, nothing herein shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Consent Order, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring the Respondent in the future to perform additional activities pursuant to CWA or any other applicable law. The United States reserves the right to bring an action against Respondent under Section 311(f) of the CWA, 33 U.S.C. § 1321(f), and/or Sections 1002 and 1015 of the OPA, 33 U.S.C. §§ 2702 and 2715, for recovery of any costs incurred by the United States related to this Consent Order and not reimbursed by Respondent. Response costs shall include, but are not limited to, past costs, direct costs, indirect costs, costs of monitoring, and accrued interest as provided in Section 311(f) of the CWA, 33 U.S.C. § 1321(f), and Section 1005 of the OPA, 33 U.S.C. § 2705.

73. Notwithstanding any other provision of this Consent Order, at any time during the response action, EPA reserves the right to perform its own studies, complete the removal action

or any portion of the removal action, and seek reimbursement from Respondent for its costs, or seek any other appropriate relief.

74. Nothing in this Consent Order shall preclude EPA from taking any additional enforcement actions, including modification of this Consent Order or issuance of additional Consent Orders, and/or additional response actions as EPA may deem necessary, or from requiring Respondent in the future to perform additional activities pursuant to the CWA, the OPA, the Resource Conservation and Recovery Act (RCRA) as amended by the Hazardous and Solid Waste Act (HSWA), the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), or any other applicable law.

75. Pursuant to Section 311(c) and (e) of the Clean Water Act, 33 U.S.C. § 1321(c) and (e), EPA and its agents are authorized to enter property owned or controlled by Respondent to perform the activities necessary to assess the source, nature and extent of the discharge or threatened discharge at the Facility and to remove the discharge or to prevent threatened discharges of oil or hazardous substances. Notwithstanding any provision of this Order, the United States hereby reserves all of its information-gathering, inspection and all enforcement authorities and rights under all applicable statutes and regulations. The United States expressly reserves all rights to issue additional Orders or to take any other action it deems necessary to protect the public health or welfare of the United States.

76. Notwithstanding any provision of this Order, EPA reserves the right to assess an administrative penalty pursuant to Section 311(b)(6) of CWA, 33 U.S.C. § 1321(b)(6), and/or to seek a civil penalty pursuant to Section 311(b)(7), 33 U.S.C. § 1321(b)(7).

77. Nothing in this Order shall limit the authorities of the OSC as outlined in the NCP.

78. If a court issues an order that invalidates any provision of this Consent Order or

finds that Respondent has sufficient cause not to comply with one or more provisions of this Consent Order, Respondent shall remain bound to comply with all provisions of this Consent Order not invalidated by such court's order.

XI. OTHER CLAIMS

79. By issuance of this Consent Order, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondent. The United States or EPA shall not be deemed a party to any contract entered into by the Respondent or its directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Consent Order.

80. Nothing in this Consent Order shall constitute a satisfaction of or discharge from any claim or cause of action against the Respondent or any person, for any liability such person may have under the CWA, the OPA, other statutes, or the common law, including but not limited to any claims of the United States for penalties, costs, damages, and interest.

XII. MODIFICATIONS

81. Modifications to any plan or schedule required by this Consent Order, may be made in writing by the OSC or at the OSC's oral direction. If the OSC makes an oral modification, it will be memorialized in writing within seven (7) working days, provided, however, that the effective date of the modification shall be the date of the OSC's oral direction. Modifications to any portion of the Consent Order, other than plans or schedules, may only be made in writing under signature of the Director of the Superfund and Emergency Management Division.

82. If Respondent seeks permission to deviate from any approved plan or schedule, Respondent's Project Coordinator shall submit a written request to EPA for approval outlining the

proposed modification and its basis.

83. No informal advice, guidance, suggestion, or comment by EPA regarding reports, plans, specifications, schedules, or any other writing submitted by the Respondent's shall relieve the Respondent of its obligation(s) to obtain such formal approval as may be required by this Consent Order, and to comply with all requirements of this Consent Order unless it is formally modified.

XIII. NOTICE OF COMPLETION

84. When EPA determines, after EPA's review of the Completion Report, that all removal actions have been fully performed in accordance with this Consent Order, with the exception of any continuing obligations required by this Consent Order, EPA will provide written notice to the Respondent. If EPA determines that any removal actions have not been completed in accordance with this Consent Order, EPA will notify the Respondent in writing, provide a list of the deficiencies, and require that Respondent modify the Work Plan to correct such deficiencies. The Respondent shall implement the modified and approved Work Plan and shall submit a modified Final Report in accordance with the EPA notice. Failure by Respondent to implement the approved modified Work Plan shall be a violation of this Consent Order.

XIV. ADDITIONAL REMOVAL ACTIONS

85. If EPA determines that additional removal actions not included in an approved plan are necessary to protect the public health or welfare of the United States, EPA will notify Respondent of that determination. Unless otherwise stated by EPA, within thirty (30) days of receipt of notice from EPA that additional removal actions are necessary to protect public health or welfare of the United States, Respondent shall submit for approval by EPA a Work Plan for the additional removal actions. The plan shall conform to the applicable requirements of Section VI

of this Consent Order. Upon EPA's approval of the plan pursuant to Section VI (Work Plan and Implementation), Respondent shall implement the plan for additional removal actions in accordance with the provisions and schedule contained therein. This Section does not alter or diminish the OSC's authority to make oral or written modifications to any plan or schedule pursuant to Section XII.

XV. ACT OF GOD

86. Respondent agrees to perform all requirements under this Consent Order within the time limits established, unless the performance is delayed by an Act of God. For purposes of this Consent Order, an Act of God is defined as an "unanticipated grave natural disaster or other natural phenomenon of an exceptional, inevitable, and irresistible character the effects of which could not have been prevented or avoided by the exercise of due care and foresight." The following are not recognized as an Act of God: financial inability to complete work or increased cost of performance.

87. Respondent shall notify EPA orally within 24 hours after Respondent becomes aware of any event that Respondent contends constitutes an Act of God and in writing within 5 (five) days after the event. Such notice shall: identify the event causing the delay or anticipated delay; estimate the anticipated length of delay, including necessary demobilization and remobilization; state the measures taken or to be taken to minimize the delay; and estimate the timetable for implementation of the measures. Respondent shall take all reasonable measures to avoid and minimize the delay. Failure to comply with the notice provision of this Section shall be grounds for EPA to deny Respondent an extension of time for performance. Respondent shall have the burden of demonstrating that the event is an Act of God, that the delay is warranted under the circumstances, and that best efforts were exercised to avoid or mitigate the effects of

the delay.

88. If EPA determines that a delay in performance of a requirement under this Consent Order is or was attributable to an Act of God, the time-period for performance of that requirement shall be extended as deemed necessary by EPA. Such an extension shall not alter Respondent’s obligation to perform or complete other tasks required by the Consent Order which are not directly affected by the Act of God.

XVI. EFFECTIVE DATE

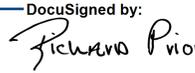
89. This Consent Order shall be effective immediately upon signature by the Regional Administrator or person to whom delegated.

XVII. SIGNATORIES

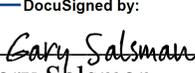
90. Each undersigned representative of a signatory to this Administrative Order on Consent certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Order and to bind such signatory, to this document.

In the matter of TC Oil Pipeline Operations, Inc., Docket No. CWA-07-2023-0037.

FOR RESPONDENT TC OIL PIPELINE OPERATIONS, INC.

DocuSigned by:

BY: _____
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Richard Prior
President
Liquids Pipelines

DATE: January 3, 2023, 2023

DocuSigned by:

BY: _____
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Gary Salzman
Vice-President
Field Operations, Liquids Pipelines

DATE: January 3, 2023, 2023

IT IS SO ORDERED

U.S. ENVIRONMENTAL PROTECTION AGENCY

BY: _____

DATE: _____, 2023

Robert D. Jurgens
Director, Superfund & Emergency Management Division
Region 7
U.S. Environmental Protection Agency