

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VIII
ADMINISTRATIVE ORDER

IN THE MATTER OF PEAKS OIL SPILL (FPN E08803, EPA Site Z80K)

Docket Number: CWA-08-2008-0012

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

"Oil" means oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil (Section 311(a)(1) of the CWA, 33U.S.C. §1321(a)(1)).

"Hazardous substance" means any substance designated pursuant to subsection (b)(2) of this section (Section 311(a)(14) of the CWA, 33 U.S.C. § 1321(a)(14)).

"Navigable water of the United States" means the waters of the United States, including the territorial seas (Section 502(7) of the CWA, 33 U.S.C. § 1362(7)).

"Facility" means any facility of any kind located in, on, or under, any of the navigable waters of the United States other than submerged land (Section 311(a)(10) of the CWA, 33U.S.C. §1321(a)(10)).

"Discharge" means any spilling, leaking, pumping, pouring, emitting, emptying or dumping, but excludes (A) discharges in compliance with a permit under section 402 of CWA, (B) discharges resulting from circumstances identified and reviewed and made a part of the public record with respect to a permit issued or modified under section 402 of CWA, and subject to a condition in such permit, and (C) continuous or anticipated intermittent discharges from a point source, identified in a permit or permit application under section 402 of CWA which are caused by events occurring within the scope of relevant operating or treatment systems (Section 311(a)(2) of the CWA, 33 U.S.C. § 1321(a)(2)).

II. FINDINGS OF FACT AND VIOLATIONS

A. 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.

B. On or about April 1, 2008 (date of discharge), a discharge or a substantial threat of

a discharge of 1300 gallons of oil (diesel fuel), reached or may reach Gorrone Creek, Prospect Creek (body of water) which is a navigable water of the United States. This discharge or substantial threat of a discharge from the Peaks Resort and Spa – 136 Country Club Drive, Telluride, CO 81435 (Name and address of facility) facility constitutes a substantial threat to the public health or welfare.

C. Respondent(s) Peaks Owners Association, Inc. c/o WHM, LLC
_____ is/are the owner(s)/operator(s) of the facility.

III. WORK TO BE PERFORMED (Initial all that apply)

A. **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, and any applicable §311(j) facility response plan.

B. IMMEDIATE STABILIZATION AND MITIGATION ACTIONS
(see attached sheet for further requirements)

Complete source removal – EPA oversight must be present:

Remove all diesel contaminated soils in UST area that may contribute to a release to surface water.

As a guideline, state of Colorado has set a standard of 100 ppm Total Petroleum Hydrocarbon (TPH)

BY 06 /13/08.

Continue pond aeration and water treatment to prevent emulsion and sheen from building up on pond surface until sheen/emulsion is not seen for a period of 72 hours with aeration running.

ONGOING

C. REMOVAL ACTION

X Within 28 days from the date this Order is signed by EPA, Respondent(s) shall develop and submit to EPA for approval, a Work Plan and schedule for completing the tasks described below. Respondent(s) shall begin work within 7 days of EPA approval of the Work Plan. The Work Plan shall include the following tasks:

1.) Securing/cleaning the storm water system such that releases of sheen to wetlands adjacent to the pond are stopped. The intent of this is such that the work plan is due to EPA within 14 days of completion of the UST excavation.

2.) Develop recommendation/schedule for rehabilitation of impacted wetlands – upon OSC approval, work on this task shall begin as agreed upon by the PRP, OSC, and site attorney.

____ Within ____ days from the date this Order is signed by EPA, Respondent(s) shall develop and submit to EPA for approval, a Sampling Plan and schedule for sampling. Respondent(s) shall implement the Sampling Plan within ____ days of EPA approval. The

Sampling Plan must satisfy the following requirements:

D. REPORTING REQUIREMENTS

____ Respondent(s) shall prepare and submit to the On-Scene Coordinator the following reports:

Weekly Progress Reports due on Monday of each week

____ Monthly Progress Reports due on _____

Final Completion Report due 60 days after the completion of the Removal Action

Reports may be submitted electronically or in hardcopy to the On Scene Coordinator at myers.craig@epa.gov or 8EPR-ER, 1595 Wynkoop, Denver, Co 80202.

E. OTHER REQUIREMENTS

IV. 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 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 Respondents to an administrative civil penalty of up to \$27,500 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.)

V. EFFECTIVE DATE

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



On-Scene Coordinator

5/23/08
Date

Received by R. A. Smith AGENT IN CHARGE
Robert A. Smith, Vice President of Engineering
Luxury Resorts and Hotels

5/26/08
Date

Note: no one with signature authority was on site, so three originals will be signed. One will be filed upon OSC return to EPA's office, two will be sent to Mr. Smith for signature, one of which will be returned to EPA. This is a negotiated Order on Consent.