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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VIII
ADMINISTRATIVE ORDER

EPA REGION VIII
HEARING CLERK

IN THE MATTER OF

AVISTA - NOXON DAM

Docket Number: CWA-08-2009-0008

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 2, 26, 09 (date of discharge), a discharge or a substantial threat of a

discharge of 1250 gallons/barrels of oil and/or CLARK FORK RIVER, which is/are hazardous substance(s), reached or may reach CLARK FORK RIVER (body of water) which is a navigable water of the United States. This discharge or substantial threat of a discharge from the AVISTA UTILITIES NOXON DAM, NOXON, BANDELL COUNTY, MONTANA (Name and address of facility) facility constitutes a substantial threat to the public health or welfare.

C. Respondent(s) AVISTA UTILITIES, SPOKANE, SPOKANE COUNTY, WA 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)

SEE ATTACHED SHEET

- _____ BY / / .
- _____ BY / / .
- _____ BY / / .
- _____ BY / / .
- _____ BY / / .

C. REMOVAL ACTION

_____ Within _____ 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 _____ days of EPA approval of the Work Plan. The Work Plan shall include the following tasks:

_____ 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 EVERY 7 DAYS FROM DATE OF THIS ORDER.
- ____ Monthly Progress Reports due on _____
- ____ Final Completion Report due ____ days after the completion of the Removal Action

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.

Donald J. Ryan _____ 02/28/09
On-Scene Coordinator Date

Received by [Signature] _____ 02/28/09 RECEIVED.
Representing Respondent Date