

Model Administrative Order for Section 311(c)  
of the Clean Water Act, as amended by the Oil Pollution Act

2011 JUN -1 AM 10: 03

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EPA REGION VIII  
HEARING CLERK

Purpose of the Order

The 311(c) order is designed to be used for oil spills, or a discharge of less than a reportable quantity of a CWA-listed hazardous substance, with one (or a very few) responsible parties and/or where an order must be issued quickly. If the oil spill is large or the liability is complex the appropriate order will be a more formal 311(e) order (which will require an attorney and an enforcement specialist). The 311(c) order can also be used to place a responsible party under order until a 311(e) order can be issued.

The order may be issued by an On-Scene Coordinator (OSC) either unilaterally (UAO) or with the consent of the responsible party(ies). A UAO is preferable under emergency circumstances or when a quick remedy is warranted.

Using the Order

- Fill out the name of the case after "In the Matter Of"(use a combination of responsible party and site name and location).

- Fill out the docket number after "Docket No."

To get a docket number, call the Regional Hearing Clerk, Tina Artemis (303-312-6765), and ask for a docket number for a Clean Water Act - 311(c) order. If Tina cannot be reached, leave docket number blank and it will be assigned and typed into the original when filed.

- Fill out the "Findings of Fact and Violations" completely. Be as specific as possible (i.e., give the date of the actual discharge if known, any supporting facts such as quantity of

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oil/hazardous substance spilled, the person responsible for the discharge, the waters of the U.S. impacted or any natural resource belonging to or managed by the U.S.).

- Fill out the appropriate section for all work that the responsible party will perform.
- Initial the blank to the left of the section at the beginning of any filled out section.
- Sign and date the order and have a representative of the responsible party sign the order (if it is an order on consent). Also note on the order if the responsible party consented, accepted receipt of a UAO or refused to sign and a UAO was issued.
- If a copy machine is available, give the responsible party a copy of the order.
- If there is no copy machine available, fill out two copies and sign both of them (and have the representative of the responsible party sign both).

#### Follow Up

- When you return to the office, make a copy of the order for the files (and for your files) and send the ORIGINAL to the Regional Hearing Clerk (Tina Artemis). A copy should be sent to the enforcement specialist (contact TEP, Director for person assigned to case). When you return to the office, make sure an FPN and account number are obtained.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION VIII  
ADMINISTRATIVE ORDER

2011 JUN -1 AM 10:03

FILED  
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HEARING CLERK

IN THE MATTER OF: Nadel & Gussman Rockies, LLC owner of the ESPY 12 tank and associated battery located at approximately N 41.598582, W 107.372037 lat/long, generally south of Rawlins, Wyoming.

Docket Number: CWA-08-2011-0014

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,

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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 May 22, 2011 (date discharge identified), a discharge or a substantial threat of a discharge of 12-300 barrels, estimates vary, gallons/barrels of oil reached or may reach Emigrant Creek then Little Sage Creek, which then flowed toward Teton Reservoir (body of water) which is a navigable water of the United States. This discharge or substantial threat of a discharge from the ESPY 12 tank battery located south of Rawlins, Wyoming, which is owned by Nadel and Gussman Rockies, LLC. Nadel and Gussman is based in Denver and list an address of 621 17<sup>th</sup> Street, Suite 1301, Denver, CO 80293 (Name and address of facility) facility constitutes a substantial threat to the public health or welfare.

C. Respondent(s) Nadel and Gussman Rockies, 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)

1. Stop all in situ burning of product on ground surface, effective immediately. If use of this remediation technique is desired, Nadel and Gussman shall contact EPA to initiate proper procedures under the NCP.
2. Similar to #1 above, effective immediately, if bioremediation techniques or washing agents of any kind (i.e. surfactants) are sought for use, Nadel and Gussman shall contact EPA to initiate proper procedures under the NCP prior to use.
3. Beginning immediately - Deploy sorbent boom (and containment boom where appropriate) and construct filter fence to collect crude oil product from Little Sage Creek and Emigrant Creek. Boom locations must be located by GPS or lat/long coordinates. All boom shall be deployed by close of business 05/28/2011.  
In addition, beginning immediately, Nadel and their representatives shall develop a plan for boom maintenance (inspection and replacement schedule) along Emigrant and Little Sage Creek.
4. Effective immediately - Maintain vac truck operations at the siphon location to collect crude oil product. In addition ensure siphon is properly maintained, booms managed, to eliminate or reduce product travelling further downstream.
5. Once #3 above is complete (boom in place) - Utilizing trash pumps, use water from creek to flush crude oil product from riparian vegetation at stream banks upstream of siphon location. EPA, BLM and Nadel representatives will watch for evidence of erosion and cease this operation if significant erosion occurs. Flushing will not be done further up stream banks where soils are burned/dry.  
Flushing shall be completed in this area by COB 05/31/2011.

6. Effective immediately – yellow/oil-stained snow in drifts along stream edge (upstream of siphon) will be collected for subsequent disposal.  
Snow removal shall be completed by COB 05/31/2011.
7. Beginning 05/27/2011 – investigate land from heater-treater, located at tank battery, to the creek to identify additional crude oil source materials (meaning other areas where product may have spilled). If additional crude oil product is identified, EPA will communicate with Nadel representatives subsequent removal actions and this order amended as appropriate.
8. Beginning 05/27/2011, EPA and Nadel representatives will investigate nature and extent of oil discharge downstream of the siphon area to Teton Reservoir and determine appropriate removal actions. It is anticipated that this area will also be flushed using trash pumps and any free product will be collected and actions subsequent that will be determined based on site conditions.

#### C. REMOVAL ACTION

*gac 5-28-11*  
gac Within 10 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 1 days of EPA approval of the Work Plan. The Work Plan shall include the following tasks:

- 1) Develop plans for disposal of contaminated debris from cleanup operations and for disposal of product collected during response activities.

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gac 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:

As of the date of this order, EPA is collecting samples for their analyses at this time and will provide splits to Nadel and/or their representatives. EPA is collecting samples per appropriate sampling plans for the Agency. This item may be changed and this order amended as site conditions warrant.

#### D. REPORTING REQUIREMENTS

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

Weekly Progress Reports due on Friday, beginning 6/3 and every Friday thereafter until notified by EPA in writing that a different reporting frequency is required/justified.

Monthly Progress Reports due on \_\_\_\_\_

Final Completion Report due 30 days after the completion of the Removal Action, per notification from EPA.

#### E. OTHER REQUIREMENTS

*gac*

gac EPA and Nadel representatives understand that Double K Oilfield Services (based in Gillette, WY) is the contractor on scene receiving these instructions. If Nadel representatives choose to change contractors or provide additional personnel, they shall notify EPA in writing of such changes.

#### 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.

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*Aina Cristiano*

*5-28-11*

On-Scene Coordinator

Date

Received by

*Joe Catanzano*  
Representing Respondent

*5/28/11*

Date

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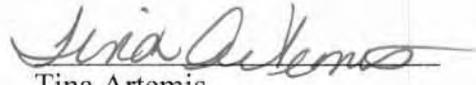
**CERTIFICATE OF SERVICE**

The undersigned certifies that the original of the attached **ADMINISTRATIVE ORDER** in the matter of **NADEL AND GUSSMAN ROCKIES, LLC.; DOCKET NO.: CWA-08-2011-0014**. The documents were filed with the Regional Hearing Clerk on May 27, 2011.

Further, the undersigned certifies that a true and correct copy of the documents were delivered to, David Janik, 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 June 1, 2011, to:

Nadel and Gussman Rockies, LLC.  
621 17<sup>th</sup> Street, Suite 1301  
Denver, CO 80293

June 1, 2011

  
Tina Artemis  
Paralegal/Regional Hearing Clerk

