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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION VIII  
ADMINISTRATIVE ORDER

FILED  
EPA REGION VIII  
HEARING CLERK

IN THE MATTER OF Baytex Energy USA, LTD Oil Spill to Homestead Draw

Docket Number: **CWA-08-2013-0029**

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. JURISDICTION AND GENERAL PROVISIONS**

1. The United States Environmental Protection Agency (USEPA) is issuing this Order to Baytex Energy USA LTD (Baytex), a Colorado corporation. This Order is issued pursuant to the authority vested in the President of the United States by Section 311(c) of the Federal Water Pollution Control Act, 33 U.S.C. § 1321(c), as amended, commonly referred to as the Clean Water Act (CWA). This authority has been delegated to the Administrator of the USEPA by Executive Order No. 12777, 58 *Fed. Reg.* 54,757 (Oct. 22, 1991), and delegated to the USEPA Regional Administrators by USEPA Delegation No. 2-89 and redelegated to On-Scene Coordinators (OSCs) by USEPA Region 8 Delegation No. 2-89.

2. This Order requires performance of removal actions in connection with a facility located at or near the Baytex energy field battery Facility, approximately 50 miles north of Gillette, Wyoming. This Order requires the Respondent to immediately conduct removal of a discharge to mitigate or prevent a substantial threat of a discharge of oil.

**II. PARTIES BOUND**

3. This Order applies to Respondent. The Order further applies to persons or entities that succeed to an interest in Respondent. Any change in ownership or corporate status of Respondent, including but not limited to a transfer of assets or real or personal property will not alter the responsibilities under the Order.

4. Respondent must ensure that its contractors, subcontractors, and agents comply with this Order. Respondent will be liable for any violation of the Order by its employees, agents, contractors, or subcontractors.

**III. DEFINITIONS**

5. "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, 33 U.S.C. § 1321(a)(1)).

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

7. "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)).

8. "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, 33 U.S.C. § 1321(a)(10)).

9. "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)).

10. "Order" shall mean this Order.

11. "National Contingency Plan" or "NCP" shall mean National Oil and Hazardous Substances Pollution Contingency Plan, codified at 40 C.F.R., Part 300, including, but not limited to, any amendments thereto.

#### IV. FINDINGS OF FACT AND VIOLATIONS

12. 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.

13. On or about September 9, 2013, a discharge of crude oil reached Homestead Draw, which is a navigable water of the United States. This discharge from the Baytex energy facility, at latitude 44.9346000<sup>o</sup>, longitude -105.5681000<sup>o</sup>, or approximately 50 miles north of the of Gillette, Wyoming, constitutes a substantial threat to the public health or welfare.

14. Respondent, Baytex, is the owner/operator of the Facility.

#### V. WORK TO BE PERFORMED

15. **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.

##### 16. IMMEDIATE STABILIZATION AND MITIGATION ACTIONS

- a. Respondent must identify a contact person responsible for the removal within one business day of issuance of this Order.

- b. Remediate the oil and contaminated soils in and around the immediate vicinity of the release in accordance with the direction by the OSC, and continuing thereafter as necessary and as directed by the OSC;
- c. Notify USEPA of the amount of oil discharged into Homestead Draw which flows into Olmstead Creek, a tributary to the Little Powder River and provide all calculations or other information that supports this assessment by September 23, 2013;
- d. Perform water, soil and sediment sampling of impacted areas as directed by the OSC and continuing thereafter as necessary and as directed by OSC. Sediment sampling and analyses shall be by qualified personnel and approved by USEPA;
- e. Provide a plan that documents the corrective actions that will be taken to address the threat of any future oil discharges at the facility; and
- f. Submit a final report to USEPA detailing all work completed, including monitoring and analytical data, disposal records, and all documentation related to the response by October 8, 2013.
- g. Subsequent to the OSC's issuance of the Final Polrep, Baytex will update the final report referenced in subparagraph 16,f, above to include information gathered from the Spring runoff in 2014.

#### VI. REMOVAL ACTION

17. Within two (2) days from the date this Order is signed by EPA, Respondent shall develop and submit to EPA for approval, the six work plans listed below. Respondent shall implement work plans within two (2) days of EPA approval of the work plans.

- a. Health and Safety Plan
- b. Sampling and Analysis Plan
- c. Quality Assurance Project Plan
- d. Remediation Plan shall address remediation of the immediate vicinity of the oil release and all downstream impacts resulting from the spill;
- e. Waste Plan shall address the disposal and transportation of contaminated soil, water, and sediments resulting from the clean up, including USEPA approval of the disposal facilities; and
- f. Monitoring plan for assessing potential off-site migration of contaminated surface water from the pond areas on-site and in close proximity to Homestead Draw during the 2014 Spring runoff season.

18. Respondent must submit the Work Plan to:

Mike Zimmerman, OSC  
 USEPA Region 8, SEPR-SA  
 1595 Wynkoop St.  
 Denver, CO 80202-1129

## VII. REPORTING REQUIREMENTS

19. Respondent must submit a written progress report to USEPA concerning actions undertaken pursuant to this Order every 7 calendar days after the effective date of this Order, unless otherwise directed in writing by the OSC. These reports must 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. Reports shall be due to USEPA by 12:00 P.M., noon on Friday, unless otherwise directed by the OSC.

20. Respondent may assert a business confidentiality claim pursuant to 40 CFR § 2.203(n) with respect to part or all of any information submitted to USEPA pursuant to this Order, provided such claim is allowed by Section 308(b)(2) of CWA, 33 U.S.C. § 1318(b)(2). USEPA 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 CFR Part 2, Subpart B. If no such claim accompanies the information when it is received by USEPA, USEPA may make it available to the public without further notice to Respondent. Respondent must not assert confidentiality claims with respect to any data or documents related to site conditions, sampling or monitoring.

## VIII. ACCESS TO PROPERTY AND INFORMATION

21. Respondent must provide or obtain access to the facility, to off-site areas where access is necessary to implement this Order, and to all documents related to conditions at the facility and work conducted under the Order. Respondent must provide this access to USEPA and the United States Coast Guard and their contractors and representatives.

## IX. RESERVATION OF RIGHTS AND PENALTIES

22. 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.

23. Respondent shall notify EPA of any response actions it takes as to this discharge that are in addition to those described in this Order.

24. 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)(8) 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.)

Baytex Energy USA Ltd.  
121 South Homestead Drive  
Houston, TX

X. EFFECTIVE DATE

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

M. J. Zimmerman  
On-Scene Coordinator

9/18/2013  
Date

[Signature]  
Received by  
Representative Respondent

**Dan G. Anderson**  
President - Baytex Energy USA Ltd.

9/18/2013  
Date


**CERTIFICATE OF SERVICE**

The undersigned certifies that the original of the attached **EMERGENCY ADMINISTRATIVE ORDER** in the matter **BAYTEX ENERGY USA, LTD.; DOCKET NO.: CWA-08-2013-0029**. The **EXPEDITED SETTLEMENT AGREEMANS** was filed with the Regional Hearing Clerk on September 19, 2013.

Further, the undersigned certifies that a true and correct copy of the documents were delivered to, Brenda Morris, Enforcement Attorney, U. S. EPA – Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129. True and correct copies of the aforementioned documents were sent and placed in the United States mail certified/return receipt on September 19, 2013 to:

Dan G. Anderson, President  
Baytex Energy USA, LTD.  
600 17<sup>th</sup> Street, Ste 1600 South  
Denver, Colorado 80202

September 19, 2013

  
Tina Artemis  
Paralegal/Regional Hearing Clerk

