

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III**

**IN THE MATTER OF:**

**DOCKET NO. CWA-03-2023-0078CW**

Sandstone, WV Train Derailment Site  
Sandstone, West Virginia 25976

Proceeding under Section 311(c) of the  
Clean Water Act, 33 U.S.C. § 1321(c), as  
amended by the Oil Pollution Act of 1990,  
33 U.S.C. § 2701, et seq.

CSX Transportation, Inc.  
500 Water Street  
Jacksonville, Florida 32202,

Respondent.

**FPN: UCGPE23306**

**EMERGENCY REMOVAL/RESPONSE ADMINISTRATIVE ORDER**

**I. JURISDICTION AND GENERAL PROVISIONS**

- A. This Emergency Removal/Response Administrative Order (“Order”) is issued by the United States Environmental Protection Agency (“EPA”) to CSX Transportation, Inc. (“CSX”). 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 (“Clean Water Act” or “CWA”), 33 U.S.C. § 1321(c), as amended by the Oil Pollution Act (“OPA”), 33 U.S.C. § 2701 et seq. This authority has been delegated to the Administrator of the United States Environmental Protection Agency by Executive Order No. 12777, 56 Federal Register 54757 (October 22, 1991), as amended by Executive Order 13638, 78 Federal Register 17589 (March 15, 2013), and further delegated to the Regional Administrators and to On-Scene Coordinators by EPA Delegation No. 2-89.
- B. This Order requires the performance of removal actions located at or near the Sandstone WV Train Derailment Site (hereinafter “Derailment Site” or the “Site”) in Summers County, West Virginia. This Order requires the Respondent to conduct removal actions described herein to remove the discharge from the Derailment Site into the New River and to mitigate and prevent the ongoing discharge and substantial threat of discharge of oil into the New River and its tributaries and the adjoining shorelines.

**II. PARTIES BOUND**

This Order shall apply to and be binding upon Respondent and Respondent’s directors,

officers, employees, agents, receivers, trustees, successors, and assigns. Neither a change in ownership or corporate partnership status of Respondent, nor a change in ownership or control of any facility shall in any way alter Respondent's responsibilities under this Order.

### **III. DEFINITIONS**

- A. "Oil" shall have the meaning as 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 Order.
- B. "Hazardous substance" shall have the meaning as set forth in Section 311(a)(14) of the CWA, 33 U.S.C. § 1321(a)(14).
- C. "Navigable waters" shall mean waters of the United States and territorial seas, as set forth in Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and Section 1001(21) of OPA, 33 U.S.C. § 2701(21), and 40 C.F.R. § 110.1.
- D. "Onshore facility" shall have the meaning as set forth in Section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10).
- E. "Derailment Site" or "Site" shall mean the location where four CSX Transportation locomotives and several rail cars derailed in Sandstone, Summers County, West Virginia, on March 8, 2023, sending two of the locomotives into the New River, and the area to which oil and any constituents thereof have come to be located, including the New River and its tributaries and their adjoining shorelines.
- F. "Discharge" shall have the meaning as set forth in Section 311(a)(2) of the CWA, 33 U.S.C. § 1321(a)(2).
- G. "Emergency Removal/Response Administrative Order" shall mean this Order and all appendices attached hereto. In the event of conflict between this Order and any appendix, this Order shall control.
- H. "Day" shall mean a calendar day unless expressly stated to be a business day. "Business day" shall mean a day other than a Saturday, Sunday, or federal holiday. EPA has the authority to order emergency removal/response activities to be conducted at any time to protect human health and the environment.
- I. "Respondent" shall mean CSX Transportation, Inc. ("CSX") and its agents, successors, or assigns.

- J. “WVDEP” as used in this Order shall mean the West Virginia Department of Environmental Protection and any successor departments or successor agencies of the State of West Virginia.
- K. “Sheen” shall have the meaning as set forth in 40 C.F.R. § 100.1.
- L. All terms not defined herein shall have the meanings set forth in OPA, CWA and the National Oil and Hazardous Substances Pollution Contingency Plan (“National Contingency Plan” or “NCP”), 40 C.F.R. Part 300.

#### **IV. NOTICE TO THE STATE**

Notice of issuance of this Order will be provided to the State of West Virginia.

#### **V. RESERVATION OF RIGHTS AND PENALTIES**

- A. This Order shall not preclude EPA from taking any action authorized by the CWA, the NCP, or any other applicable law. EPA reserves the right to direct or monitor all activities undertaken pursuant to this Order, including commenting on and directing changes to deliverables, off-site shipping and disposal procedures, and all other matters.
- B. Respondent shall notify EPA of any response actions it has taken or plans to take that are not described in this Order.
- C. Pursuant to CWA Section 311(b)(7)(B), 33 U.S.C. § 1321(b)(7)(B), a violation of any term of this Order, or any subsequent oral directives made by the EPA On-Scene Coordinator (“OSC”) and identified as oral orders under Section 311(c) of the CWA, 33 U.S.C. § 1321(c), may subject Respondent to an administrative civil penalty of up to \$55,808 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.

#### **VI. EFFECTIVE DATE**

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

#### **VII. FINDINGS OF FACT, VIOLATIONS AND CONCLUSIONS OF LAW**

- A. On March 8, 2023, four CSX locomotives with 109 empty coal cars derailed from a rail line that runs along the eastern bank of the New River in Sandstone, West Virginia.
- B. The CSX train derailment resulted in injuries, a locomotive fire, and two of the four locomotives being pushed partially or entirely into the New River, where they released an unknown quantity of petroleum products, including, but not limited to, lubricating oil and diesel fuel, into the New River and onto the adjacent shoreline soil.
- C. The four locomotives contained a total of approximately 10,990 gallons of diesel and 1,600 gallons of lubricating oil at the time of the derailment; 1,650 gallons of diesel were recovered from two of the locomotives following the derailment.
- D. Beginning on March 8, 2023, CSX began utilizing vacuum trucks and hard and sorbent boom in the New River and near Laurel Creek, downstream of the Derailment Site, to attempt to recover the discharged petroleum products.
- E. One downstream water system intake, the New River Regional Water Treatment Plant, which is approximately 45 miles from the Derailment Site, was closed in the evening of March 8, 2023, based upon approaching odor reports and flow modeling. That night, petroleum odors were reported at the treatment plant and water samples indicated diesel range organics.
- F. The New River Water Regional Treatment Plant restarted regular treatment of intake water in the morning of March 9, 2023 based on sample results and lack of odor detection.
- G. On March 9, 2023, EPA contractors collected surface water samples near the Derailment Site in the New River, which contained 28,000,000 µg/L of Total Petroleum Hydrocarbon - Diesel Range Organics and 933,000 µg/L of Total Petroleum Hydrocarbon - Gasoline Range Organics.
- H. EPA's OSCs have observed petroleum product and sheen discharging in the New River and from the adjacent shoreline at the Derailment Site into the New River, upstream of the confluence of the New River and Laurel Creek, since March 8, 2023, with sheening still ongoing as of the date of this Order's issuance.
- I. On March 11 and 12, 2023, EPA OSCs observed heavy sheen near the confluence between the New River and Laurel Creek, and on the New River along River Road.
- J. On March 13, 2023, heavy sheen was documented moving downstream of the Derailment Site down the center of the New River. While collecting oily product from the seep area

- which was discharging into the New River, CSX identified a burrow along the shoreline that was also full of oil product, and vacuumed out approximately 1,000 gallons.
- K. On March 15, 2023, WVDEP issued Order No. MM-23-11 (“WVDEP Order”), which, in pertinent part, orders CSX to “... immediately properly operate and maintain all containment measures. Additional containment measures shall be installed as needed to ensure the capture of contaminants and to prevent migration of petroleum sheens downriver.”
  - L. The morning of March 16, 2023, EPA OSCs observed petroleum product and sheen which had escaped containment near the Derailment Site due to fouling of the boom by debris which had built up overnight.
  - M. Immediately thereafter, EPA OSCs notified CSX’s contractors, and shortly thereafter CSX employees, of the OSCs’ observations of the sheen outside of the boom and conveyed concerns to CSX personnel about the insufficiency of the current boom structure and/or maintenance.
  - N. During the afternoon of March 16, 2023, EPA OSCs again observed petroleum product and sheen near the Derailment Site outside of the booming containment. No CSX personnel were present monitoring or conducting maintenance, or otherwise responding to the ongoing breach of the previously implemented boom containment measures. EPA OSCs again notified CSX personnel of the observed sheen outside of the boom.
  - O. The train locomotives from which oil was discharged are each an “onshore facility” as defined by Section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10).
  - P. Respondent is a “person” as defined by Section 311(a)(7) of the CWA, 33 U.S.C. § 1321(a)(7).
  - Q. Respondent is the “owner or operator” of each Facility as defined by Section 311(a)(6) of the CWA, 33 U.S.C. § 1321(a)(6).
  - R. Diesel fuel and lubricating oil are each an “oil” as defined in Section 311(a)(1) of CWA, 33 U.S.C. § 1321(a)(1).
  - S. “Oil” as defined in Section 311(a)(1) of CWA, 33 U.S.C. § 1321(a)(1), has been stored, handled, transferred, or transported within each Facility and is currently present at the Derailment Site.

- T. A “discharge” as defined in Section 311(a)(2) of the CWA, 33 U.S.C. § 1321(a)(2), is occurring or has occurred at or from the Facility.
- U. The New River is the home of sensitive aquatic populations, used for various recreational activities, and used as a drinking water source for nearby communities.
- V. The New River and Laurel Creek and their tributaries are “navigable waters” of the United States as defined in Section 502(7) of the CWA, 33 U.S.C. § 1362(7).
- W. The New River and Laurel Creek and their tributaries, as well as the adjoining shorelines of the New River and Laurel Creek and their tributaries, are a “natural resource” within the meaning of Section 1001(20) of the OPA, 33 U.S.C. § 2701(20), and the NCP, 40 C.F.R. § 300.5.
- X. “Natural resources,” as defined in OPA, 33 U.S.C. § 1001(20) and the NCP, 40 C.F.R. § 300.5, may be affected by the discharge from the onshore facilities at the Derailment Site.
- Y. The discharge of oil from the Facilities has occurred in such quantities as may be “harmful” within the meaning of Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3), and 40 C.F.R. § 110.3(b) because a discharge of oil from the Facilities violated applicable water quality standards or caused a film or sheen upon or discoloration of the surface of the New River or upon its adjoining shorelines or caused a sludge or emulsion to be deposited beneath the surface of the New River or upon its adjoining shorelines.

#### **VIII. WORK TO BE PERFORMED**

- A. Respondent is hereby ordered to follow the terms set forth in this Order and perform the work described herein.
- B. Respondent shall perform the work necessary to complete the task(s) described below within the dates specified and in accordance with the National Contingency Plan, 40 C.F.R. Part 300.
- C. Beginning immediately, Respondent shall perform the following, in accordance with EPA’s direction:
  - 1. Immediately implement additional measures (in addition to the amount of booming installed as of the date of this Order’s issuance) in the New River and/or its adjoining shoreline to ensure the containment of the discharging oil and to

prevent the migration of oily sheen across and down the New River. Such measures may include, but are not limited to, activities such as:

- a. Installing and maintaining several additional rows of boom;
  - b. Increasing the frequency of vacuum operations and/or boom maintenance, potentially resuming 24-hour response operation hours if the safety of operators can be ensured;
  - c. Increasing the frequency of monitoring and observations of the implemented containment measures; and/or
  - d. Monitoring the upcoming weather forecast to better anticipate upcoming inclement weather and then, correspondingly, implement protective measures, if possible, prior to the inclement weather (e.g., impermeable covering of oil-contaminated soil at the Derailment Site/shoreline, vacuum seep burrow on the shoreline beforehand, etc.) and monitor and replace boom and vacuum oil as necessary shortly after the weather event to prevent further migration of contaminants.
2. Respondent shall replace each boom if the boom becomes saturated or if EPA determines replacement is necessary. Respondent shall visually inspect all booms at least twice each day and following each rain event.
  3. Documentation of boom replacement and daily inspections shall be included in the progress reports described in Paragraph VIII.D, below. Additionally, the progress reports shall reflect what increased containment measure(s) Respondent is implementing pursuant to Paragraph VIII.C.1.
  4. If Respondent implements additional containment measure pursuant to Paragraph VIII.C.1 and documented in Paragraph VIII.C.3, but petroleum products and oily sheen continue to be observed outside of the boom containment area and migrating away from the Derailment Site in the New River, EPA reserves the right to request that Respondent implement additional containment measures after providing Respondent with notice of the need for additional containment measures (i.e., after EPA provides Respondent with dates and brief observations of ongoing oily sheen migration).
  5. Respondent shall dispose of and/or otherwise handle all recovered oil in an environmentally appropriate manner, in compliance with applicable laws and regulations.

6. Designate a Project Coordinator for the Respondent who shall serve as EPA's point of contact for communications pertaining to the implementation of this Order. Respondent may change its designated Project Coordinator, but if Respondent does so, Respondent shall email [armistead.erik@epa.gov](mailto:armistead.erik@epa.gov) with the newly designated Project Coordinator's name and contact information.
- D. Beginning immediately, and every 7 days thereafter, Respondent shall submit progress reports for the preceding 7-day period to EPA's OSC at the address listed below or by email to [armistead.erik@epa.gov](mailto:armistead.erik@epa.gov). In addition to the items identified above in Paragraph VIII.C.3, progress reports shall include, at a minimum:
1. Documentation regarding boom and river observations, boom maintenance activities, oil seepage and burrow observations, and any oil recovery from the New River and adjoining shorelines, including amount of oil/water mixture, percentage of oil, and proposed disposal and storage locations; and
  2. A description of any other removal activities completed in the New River or the adjoining shoreline, including those actions related to any emergency response, and the actions that have been taken toward achieving compliance with this Order.

#### **IX. NOTICE OF COMPLETION**

When EPA determines that all work to be performed, as specified in Section VIII of this Order, has been fully performed, EPA will provide a notice of completion to the Respondent.

**ERIK ARMISTEAD** Digitally signed by ERIK  
ARMISTEAD  
Date: 2023.03.17 14:22:22 -04'00'

Erik Armistead  
On-Scene Coordinator  
U.S. Environmental Protection Agency  
Region III  
4 Penn Center  
1600 JFK Boulevard  
Philadelphia, PA 19103  
(267) 889-8119  
[armistead.erik@epa.gov](mailto:armistead.erik@epa.gov)

Received By:   
Respondent

Date: 3/17/2023

Hand-delivery By: Rij Armen, EPA OSC