

US EPA ARCHIVE DOCUMENT

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

IN THE MATTER OF:	)	
	)	ORDER FOR REMOVAL
ENBRIDGE ENERGY,	)	UNDER SECTION
LIMITED PARTNERSHIP,	)	311(c) OF THE CLEAN WATER ACT
<i>et al.,</i>	)	
Respondents.	)	DOCKET NO: CWA

I. JURISDICTION AND GENERAL PROVISIONS

1. Today, the United States Environmental Protection Agency (“U.S. EPA”) is issuing this order (“Order”) to Enbridge Energy, Limited Partnership, Enbridge Pipelines (Lakehead) L.L.C., Enbridge Energy Partners, L.P., Enbridge Energy Management LLC, Enbridge Energy Company, Inc., Enbridge Employee Services, Inc., Enbridge Operational Services, Inc., Enbridge Pipelines, Inc., and Enbridge, Inc. (“Respondents” or “Enbridge”) 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 U.S. EPA by Executive Order No. 12777, 56 *Fed. Reg.* 54,757 (Oct. 22, 1991), and delegated to the EPA Regional Administrator by U.S. EPA Delegation No. 2-89 and redelegated to On-Scene Coordinators (“OSCs”) by U.S. EPA Region 5 Delegation No. 2-89.

2. This Order requires Respondents to perform certain response actions in Kalamazoo and Calhoun Counties, Michigan to remove and mitigate the effects of oil discharged into Talmadge Creek, the Kalamazoo River and adjoining shorelines during July 2010 from a pipeline known as pipeline 6B, which is owned and/or operated by Respondents.

3. This Order incorporates all prior U.S. EPA administrative orders and directives issued to Respondents in connection with the July 2010 pipeline 6B oil discharge in Marshall, Michigan and all prior orders’ obligations remain in effect. To the extent the prior orders conflict with this Order, this Order will govern.

II. PARTIES BOUND

4. This Order applies to Respondents. The Order further applies to persons acting on behalf of Respondents, or who are successors to any of the Respondents. Any change in ownership or corporate status of Respondents, including but not limited to a transfer of assets or real or personal property will not alter the responsibilities under the Order.

5. The Order further applies to persons acting on behalf of Respondent, or who are successors to Respondents. Any change in ownership or corporate status of Respondents,

including but not limited to a transfer of assets or real or personal property of any one Respondent, will not alter the responsibilities of that Respondent under this Order.

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

III. FINDINGS OF FACT

Based on available information and the administrative record in this matter, U.S. EPA finds that:

7. Respondents own and/or operate pipeline 6B (“facility”) and a pumping station at or near 16000 Division Drive in Marshall, Michigan. The facility is a pipeline that carries, *inter alia*, crude oil.

8. On July 26, 2010, at approximately 1:33 pm, the National Response Center received a call from Enbridge notifying it of the crude oil discharge. See Extended Spill Summary Report for DataID #813595. U.S. EPA OSCs responded on the same day, with additional OSCs arriving the following day.

9. Enbridge has estimated it discharged over 843,000 gallons of crude oil into the Kalamazoo River, by way of Talmadge Creek, a tributary to the Kalamazoo River, and onto the adjoining shorelines of Talmadge Creek and the Kalamazoo River. The source of the discharge was a rupture of Respondents’ pipeline 6B adjacent to Talmadge Creek in Marshall, Michigan.

10. On July 27, 2010, U.S. EPA issued Enbridge Energy Partners, L.P. an order pursuant to Section 311(c) of the CWA (the “July 27, 2010 Order”), which required Enbridge Energy Partners, L.P. to, *inter alia*, abate a discharge of oil to waters of the United States by performing removal actions in response to the discharge of oil from the facility into the Kalamazoo River, by way of Talmadge Creek. See July 27, 2010 Order (Docket No. CWA 1321-5-10-001.)

11. On September 23, 2010, U.S. EPA issued Enbridge Energy, Limited Partnership, Enbridge Pipelines (Lakehead) LLC, Enbridge Pipelines (Wisconsin) and Enbridge Energy Partners, L.P. a supplement to the July 27, 2010 Order (“Supplement”) which required additional actions including:

[f]or submerged oil and oil-contaminated sediments, remediate all impacted areas in and along Talmadge Creek, the Kalamazoo River, and Morrow Lake by October 31, 2010;
[p]erform operation and maintenance activities as directed by U.S. EPA until otherwise notified by U.S. EPA.

Supplement at ¶ 6.

12. On November 10, 2010, U.S. EPA issued Enbridge Energy Partners, L.P., *et al.* an

amendment to the July 27, 2010 Order and the September 23, 2010 Supplement ("Amendment") which added additional Enbridge affiliates to the orders. Amendment dated November 10, 2010 (Docket No. CWA 1321-5-10-001).

13. Since issuance of the July 27, 2010 Order, the Supplement and Amendment, Respondents have conducted substantial response actions to address the July 2010 pipeline 6B oil discharge. Despite these response actions, oil remains in the Kalamazoo River.

14. Most of the remaining discharged oil has settled into the sediments of the Kalamazoo River (up to the western end of Morrow Lake).

15. Submerged oil and/or oil-contaminated sediment exists throughout approximately 38 miles of the Kalamazoo River (up to the western end of Morrow Lake) and accumulates in numerous natural and/or anthropogenic depositional areas.

16. As of the effective date of this Order, submerged oil and/or oil-contaminated sediment is most evident in three main impacted areas of the Kalamazoo River:

- a) upstream of Ceresco Dam;
- b) upstream of the Battle Creek Dam (Mill Ponds area); and
- c) in the Morrow Lake Delta.

17. The submerged oil and/or oil-contaminated sediment in these areas generates oil sheen and/or oil globules, sometimes spontaneously, and also when disturbed by actions such as poling or motor boat engines.

IV. DEFINITIONS

18. Unless otherwise expressly provided herein, terms used in this Order which are defined in Section 311 of the CWA or in the Oil Pollution Act, 33 U.S.C. §§ 2701-2762 ("OPA"), shall have the meaning assigned to them in the CWA or the OPA. Whenever terms listed below are used in this Order or in the appendices attached hereto and incorporated herein, the following definitions shall apply:

19. "Onshore facility" shall have the meaning set forth in Section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10) and by Section 1001(24) of the OPA, 33 U.S.C. § 2701(24).

20. "Person" shall have the meaning set forth in Section 311(a)(7) of the CWA, 33 U.S.C. § 1321(a)(7) and by Section 1001(27) of the OPA, 33 U.S.C. § 2701(27).

21. "Owner and/or operator" shall have the meaning set forth in Section 311(a)(6) of the CWA, 33 U.S.C. § 1321(a)(6) and Section 1001(26) of the OPA, 33 U.S.C. § 2701(26).

22. "National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan, codified at 40 C.F.R. Part 300, including, but not limited to, any amendments thereto.
23. "Discharge" shall have the meaning set forth in Section 311(a)(2) of the CWA, 33 U.S.C. § 1321(a)(2) and Section 1001(7) of the OPA, 33 U.S.C. § 2701(7).
24. "Oil" shall have the meaning set forth in Section 311(a)(1) of the CWA, 33 U.S.C. § 1321(a)(1), and Section 1001(23) of the OPA, 33 U.S.C. § 2701(23).
25. "Sludge" is defined by 40 C.F.R. § 110.1 and means "an aggregate of oil or oil and other matter of any kind in any form other than dredged spoil having a combined specific gravity equivalent to or greater than water."
26. "Order" shall mean this Order and all appendices attached hereto and incorporated herein. In the event of a conflict between this Order and any appendix, this Order shall control.
27. "Navigable waters" shall have the meaning set forth in Section 502(7) of the CWA, 33 U.S.C. § 1362(7), Section 1001(21) of the OPA, 33 U.S.C. § 2701(21), and 40 C.F.R. § 110.1.

V. CONCLUSIONS OF LAW AND DETERMINATIONS

Based on the Findings of Fact and Definitions in Sections III and IV above and the administrative record in this matter, U.S. EPA has determined that:

28. Pipeline 6B is an "onshore facility."
29. The Respondents are "owners and/or operators."
30. Respondents are "persons."
31. The spill from pipeline 6B described in the Statement of Facts and in the July 27, 2010 Order, Supplement and Amendment is a "discharge."
32. Talmadge Creek and the Kalamazoo River are "navigable waters" of the United States.
33. There is or has been a discharge of oil into navigable waters and adjoining shorelines from Respondents' facility.
34. The submerged oil and oil-contaminated sediments are sludge as defined by 40 C.F.R. § 110.1.
35. The removal actions required by this Order are necessary to ensure the effective and immediate removal of a discharge of oil into navigable waters and adjoining shorelines.

36. The removal actions required by this Order are in accordance with the NCP and are authorized by U.S. EPA pursuant to the authority granted in Section 311(c) of the CWA, 33 U.S.C. § 1321(c), as delegated by the President in Executive Order 12777, Section 2(b)(1), 56 *Fed. Reg.* 54,757 (Oct. 22, 1991).

VI. ORDER

Based on the Findings of Fact, and Conclusions of Law and Determinations in Section III and Section V above and the administrative record in this matter, U.S. EPA orders Respondents to comply with all provisions of the Order and perform the following actions:

Notice of Intent to Comply

37. Within five (5) business days of the effective date of this Order, Respondents must provide a written response to U.S. EPA stating whether they intend to comply with the Order.

Work to Be Performed

38. Respondents must perform the work necessary to complete the response actions described below within the dates specified and in accordance with the National Contingency Plan.

39. Respondents must continue to comply with the following plans which were submitted and approved pursuant to the July 27, 2010 Order, and/or Supplement in this matter: Quality Assurance Project Plan (“QAPP”), Health and Safety Plan (“HASP”), Sampling and Analysis Plan (“SAP”), Waste Treatment, Transportation and Disposal Plan (“WTTDP”), and Source Area Response Plan/Response Plan for Downstream Impacted Areas (“SAR/RPDIA”), and all supplements, addenda, and/or modifications to these plans which were approved by U.S. EPA. Those plans are attached to and incorporated into this Order. See Attachments A-E.

40. Respondents must identify a Project Coordinator responsible for the response actions within five (5) business days of the effective date of this Order. This Project Coordinator shall be approved or disapproved by U.S. EPA in writing. If disapproved, Respondents must identify another contact person to U.S. EPA within one business day of U.S. EPA’s disapproval.

41. Within fifteen (15) business days of the effective date of this Order, Respondents must develop and submit to U.S. EPA for approval, a work plan (“Work Plan”) that includes a detailed description of the following response activities and detailed schedule for completing such actions:

- a. Initiation of immediate steps to prevent the migration of submerged oil, oil-contaminated sediment, sludge, surface oil, and/or sheen accumulations, including:

- i. Installation of containment devices and equipment to ensure that any submerged oil, oil-contaminated sediment and/or sludge currently upstream of Ceresco Dam does not migrate to areas downstream of Ceresco Dam;
 - ii. Installation of containment devices and equipment to ensure that any submerged oil, oil-contaminated sediment and/or sludge currently between Ceresco Dam and the Kalamazoo Dam at Battle Creek does not migrate to areas downstream of the Kalamazoo Dam at Battle Creek;
 - iii. Installation of containment devices and equipment to ensure that any submerged oil, oil-contaminated sediment and/or sludge currently between the Kalamazoo Dam at Battle Creek and the neck of the Morrow Lake Delta does not migrate to areas downstream of the neck of the Morrow Lake Delta; and
 - iv. Installation of containment devices and equipment at additional locations at the direction of U.S. EPA to ensure that surface oil, sheen, submerged oil, oil-contaminated sediment, and/or sludge are contained.
- b. Removal of the submerged oil, oil-contaminated sediment and/or sludge (i.e., sources of sheen) by August 1, 2013, in the following mile post ("MP") areas: MP 4.5-5.80 (upstream of Ceresco Dam); MP 13.9-15.7 (upstream of the Kalamazoo Dam at Battle Creek, *i.e.* Mill Ponds area); and MP 36.5-39.85 (Morrow Lake, Morrow Lake Delta and adjacent areas).
- c. Monitoring and maintaining currently installed and additional containment devices and equipment installed at the direction of the U.S. EPA. This includes, but is not limited to recovery of the submerged, oil-contaminated sediment, and/or sludge from sediment traps.
- d. Performance of submerged oil reassessment activities.
- e. Collection and interpretation of scientific data necessary to effectively complete the work under this Order, including, hydrodynamic assessment/modeling, data to support the ongoing net environmental benefit analysis and other data necessary for ongoing operational support.
- f. Performance of air monitoring and/or sampling.
- g. Performance of water, sediment and/or soil sampling.
- h. Disposal of all wastes at U.S. EPA-approved disposal facilities.
- i. Updating, as appropriate, the existing QAPP, SAP, and HASP necessary to perform the work under this Order.

42. Respondents must submit five (5) hardcopies and an electronic copy of the Work Plan and all other submittals to:

Ralph Dollhopf
U.S. EPA, Region 5
Superfund Response Section 1
801 South Garfield Ave. #229
Traverse City, MI 49686

U.S. EPA will approve, disapprove, require modifications, or modify Respondents' Work Plan. Once approved or approved with modifications, Respondents' Work Plan and schedule become an enforceable part of this Order.

43. Respondents shall implement the Work Plan immediately upon approval or approval with modifications by U.S. EPA.

44. Respondents must perform all response actions in accordance with all federal, state and local laws. Undertaking activities directed by U.S. EPA does not obviate the need for Respondents to acquire all necessary permits and comply with all applicable requirements.

Reporting Requirements

45. Respondents must submit monthly progress reports detailing all work conducted pursuant to this Order. Such monthly reports shall include all monitoring and analytical data, disposal records, and all documentation related to response actions that have been created on or behalf of Respondents since the previous month's report. Additionally, the Work Plan, identified above, should, as appropriate, include the preparation and schedule for additional reports regarding work required by this Order (*e.g.*, Spring 2013 Submerged Oil Reassessment Report).

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

Access to Property and Information

47. Respondents must provide access to U.S. EPA and their contractors and representatives for the response work identified above, including but not limited to boat launch facilities, dredge pads, and waste management and decontamination areas owned, leased, and/or controlled by Respondents.

48. Respondents must make best efforts, including compensating property owners, to obtain access to areas where access is necessary to implement this Order.

49. At U.S. EPA's request, Respondents must provide all documents and information related to conditions in the impacted area and work conducted under the Order. This shall include, but not be limited to: analytical data, scientific data, hydrodynamic model, Geographic Information Systems data, and native format electronic files.

VII. RESERVATION OF RIGHTS AND PENALTIES

50. This Order shall not preclude U.S. EPA from taking any action authorized by the CWA, the OPA, the National Contingency Plan, or any other applicable law. U.S. EPA reserves the right to direct all activities including off-facility shipping, disposal and all other matters. Further, nothing herein shall prevent U.S. EPA from seeking legal or equitable relief to enforce the terms of this Order or from taking any other legal or equitable action as it deems appropriate and necessary, or to require Respondents in the future to perform additional activities pursuant to the CWA, the OPA, or other applicable law.

51. Respondents must notify U.S. EPA of any response actions taken to address the discharge described above that are not described in this Order.

52. Violation of any term of this Order may subject Respondents to a civil penalty of up to \$37,500 per day of violation or an amount up to three times the cost incurred by the Oil Spill Liability Trust Fund as a result of such failure under Section 311(b)(7)(B) of the CWA, 33 U.S.C. § 1321(b)(7)(B), as adjusted by 74 *Fed. Reg.* 626 (Jan. 7, 2009) (codified at 40 C.F.R. § 19.4).

VIII. EFFECTIVE DATE

53. On October 3, 2012, U.S. EPA sent Respondents a proposed Order providing Respondents with an opportunity to comment on the proposed Order and/or conference with U.S. EPA regarding the proposed Order.

54. On X, Respondents[describe Respondents' response to proposed Order here.]

55. U.S. EPA considered Respondents comments and . . .

56. This Order is effective when the OSC signs the Order.

On-Scene Coordinator

Date

Attachments

- A Approved Quality Assurance Project Plan (August 17, 2010)
- B Approved Sampling and Analysis Plan (August 17, 2010), including all approved Supplements and Addenda (“SAP”)
- C Approved Health and Safety Plan (August 2, 2010), as amended (April 2012) (“HASP”)
- D Approved Waste Treatment, Transportation and Disposal Plan (August 8, 2010), as amended (May 20, 2011”)
- E Approved Source Area Response Plan and Response Plan for Downstream Impacted Areas (August 17, 2010, including all approved Supplements and Addenda) (“SAR/RPDIA”)
- F Administrative Record Index (draft as of October 3, 2012)