

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

IN THE MATTER OF:

D&L ENERGY, INC.

Respondent.

) DOCKET NO:

**V-W-13-C-006**

)  
) **ORDER BY CONSENT FOR COMPLIANCE**  
) **UNDER SECTION 311(c) AND (e) OF THE**  
) **CLEAN WATER ACT**

)  
)

I. JURISDICTION AND GENERAL PROVISIONS

1. The United States Environmental Protection Agency (EPA) is issuing this Order to D&L Energy, Inc. (Respondent). This Order is issued pursuant to the authority vested in the President of the United States by Sections 311(c) and (e) of the Federal Water Pollution Control Act (CWA), 33 U.S.C. § 1321(c) and (e), as amended. This authority has been delegated to the Administrator of the EPA by Executive Order No. 12777, 58 Federal Register 54757 (October 22, 1991), and delegated to the EPA Regional Administrators by EPA delegation No. 2-89.

2. This Order requires performance of removal actions in connection with the release of oil at or from a facility located at or about 2755 Salt Springs Road, Youngstown, Ohio (the "Facility"). This Order requires the Respondent to continue to conduct removal of a discharge or to mitigate or prevent a substantial threat of a discharge of oil.

II. PARTIES BOUND

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

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

III. DEFINITIONS

5. 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 (OPA) shall have the meaning assigned to them in CWA or OPA. Whenever terms listed below are used in this Order or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply.

6. "Oil" shall have the meaning 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, and Section 1001(23) of OPA, 33 U.S.C. § 2701(23), for purposes of reimbursement of costs.

7. "Hazardous substance" shall have the meaning set forth in Section 311(a)(14) of the CWA, 33 U.S.C. § 1321(a)(14).

8. "Navigable waters" shall have the meaning 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. Part 110.

9. "Facility" shall have the meaning set forth in Sections 311(a)(10) and (a)(11) of the CWA, 33 U.S.C. §§ 1321(a)(10) and (a)(11), and by Sections 1001(22) and (24) of OPA, 33 U.S.C. §§ 2701(22) and (24).

10. "Discharge" shall have the meaning set forth in Section 311(a)(2) of the CWA, 33 U.S.C. § 1321(a)(2) for purposes of the work to be performed under this Order, and shall have the meaning set forth in Section 1001(7) of OPA, 33 U.S.C. § 2701(7), for purposes of reimbursement of cost.

11. "Order" shall mean this Order.

12. "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.

#### IV. FINDINGS OF FACT AND VIOLATIONS

13. The Facility contains approximately 20-30 portable 22,000-gallon storage tanks, containing a mixture of at least crude oil, drilling mud, and brine, adjacent to a storm sewer connected to the Mahoning River.

14. On January 31, 2013, the Ohio Department of Natural Resources discovered that an employee of Hardrock Excavating, LLC, was intentionally discharging oil and waste water generated from oil and gas drilling operations into an adjacent storm sewer. An undetermined quantity of these discharged materials made their way to the Mahoning River. An EPA On-Scene Coordinator responded to the discharge location on February 2, 2013.

15. The discharge of oil and waste water to the storm sewer traveled approximately 3000 feet through the storm sewer to the outfall at the small unnamed tributary. The storm sewer is impacted with pockets of oil and other drilling wastes. The unnamed tributary has been oiled in numerous places including the banks, vegetation, overbank, and sediment. In multiple areas, creek sediment is impacted with oil at least a foot deep. On February 2, 2013, EPA found pools of oil located in the Mahoning River near the confluence of the unnamed tributary and the Mahoning River.

16. The Mahoning River and the adjacent tributary are navigable waters of the United States.

17. The Respondent is the owner of the Facility from which the discharge and/or substantial threat of discharge occurred.

18. On February 1, 2013, Respondent reported the release to Ohio EPA. The Respondent also made a notification to the National Response Center on the same date.

19. The Respondent has responded to the discharge of oil and waste water by deploying oil recovery and containment equipment in the Mahoning River, the adjacent tributary, and the storm sewer and by retaining contractors to remediate the discharge.

20. The Respondent, upon the request of the EPA On-Scene Coordinator, identified a contact person responsible for the work required by this Order. Respondent's contact person is Nick Paparodis.

21. The Respondent, upon the request of the EPA On-Scene Coordinator, took the following stabilization and mitigation actions:

a. Commencing on February 8, 2013, met with EPA's On-Scene Coordinator twice daily at or about 7:00 a.m. and 6:00 p.m. to provide daily work plans, to report on the work previously performed and to address future work;

b. Commencing on February 1, 2013, began containment of the flow of oil from the Facility to prevent it from reaching the Mahoning River and other navigable waters;

c. Commencing on February 1, 2013, began remediation of the release of oil as directed by EPA, including the removal of oil and oily sediment from the storm sewer, creek and contaminated soils;

d. Commencing on February 1, 2013, began the deployment of appropriate oil recovery and containment devices and equipment;

e. Performed sampling and/or an evaluation of impacted areas as directed by EPA's On-Scene Coordinator.

f. Commenced the restoration of areas excavated to their original condition;

g. Prepared and submitted to the EPA's On-Scene Coordinator on February 20, 2013 a final Emergency Response Plan to address the remaining remediation and restoration of impacted areas.

## V. CONCLUSIONS OF LAW AND DETERMINATIONS

Based on the findings of fact in section IV, above, and the administrative record in this matter, EPA has determined that:

22. The Facility is an "onshore facility" as defined by Section 311(a)(10) of CWA, 33 U.S.C. § 1321(a)(10) and by Section 1001(24) of the Oil Pollution Act (OPA), 33 U.S.C. § 2701(24).

23. The Respondent is a "person" as defined by Section 311(a)(7) of CWA, 33 U.S.C. § 1321(a)(7) and by Section 1001(27) of OPA, 33 U.S.C. § 2701(27).

24. The Respondent is the "owner" of the Facility as defined by Section 311(a)(6) of CWA, 33 U.S.C. § 1321(a)(6) and Section 1001(26) of OPA, 33 U.S.C. § 2701(26).

25. A "removal" as defined in Section 311(a)(8) of CWA, 33 U.S.C. § 1321(a)(8) and Section 1001(30) of OPA, 33 U.S.C. § 2701(30), is necessary at the Facility to minimize and mitigate damage to the public health or welfare.

26. An actual or threatened "discharge" as defined in Section 311(a)(2) of CWA, 33 U.S.C. § 1321(a)(2) and Section 1001(7) of OPA, 33 U.S.C. § 2701(7), is occurring, has occurred or will occur at or from the Facility.

27. "Oil" as defined in Section 311(a)(1) of CWA, 33 U.S.C. § 1321(a)(1) and Section 1001(23) of OPA, 33 U.S.C. § 2701(23), is currently present at and around the Facility.

28. "Hazardous substance" as defined in Section 311(a)(14) of CWA, 33 U.S.C. § 1321(a)(14) is currently present at and around the Facility.

29. The Mahoning River and its tributaries are each a "navigable water" of the United States as defined 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).

30. The Mahoning River and its tributaries are each a "natural resource" within the meaning of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 C.F.R. § 300.5, and Section 1001(20) of OPA, 33 U.S.C. § 2701(20).

31. A discharge at or from the Facility may affect "natural resources," as defined in the NCP, 40 C.F.R. § 300.5, and Section 1001(20) of the OPA, 33 U.S.C. § 2701(20).

32. The Facility may pose an imminent and substantial threat to the public health or welfare of the United States because of an actual or threatened discharge of oil from the Facility in violation of Section 311(b) of CWA, 33 U.S.C. § 1321(b).

33. There is or has been a release, or a substantial threat of a release, of regulated substances into the environment from the Facility owned by the Respondent.

34. The measures in this Order are necessary to abate, minimize, stabilize, mitigate or eliminate the discharge or threat of a discharge of oil at or from the Facility.

35. Under Section 1002(b)(1) of OPA, 33 U.S.C. § 2702(b)(1), Respondent is liable to the United States for the removal costs incurred by the United States in connection with the Facility.

## VI. ORDER

Respondent must comply with the following requirements:

## Work to Be Performed

36. Respondent must continue to perform the work necessary to complete the tasks described below within the date specified and in accordance with the National Contingency Plan (NCP), 40 C.F.R. Part 300.

37. Respondent must continue to take the following stabilization and mitigation actions:

a. Perform the remaining work set forth in the Respondent's February 20, 2013 Emergency Response Plan;

b. Contain any remaining flow of oil from the Facility or other impacted areas and prevent it from reaching the Mahoning River and other navigable waters;

c. Remediate the release of oil and restore the impacted areas as directed by EPA, including but not limited to removing and properly disposing of oil and oily sediment from the storm sewer, creek and contaminated soils;

d. Continue to maintain, as necessary, appropriate oil recovery and containment devices and equipment; i.e. berms, underflow dams, skimmers, vacuum trucks, excavators, dump trucks, absorbent/containment booms, tanker trucks, fractionation tanks, etc.;

e. Perform sampling and/or evaluation of impacted areas as directed by EPA or its authorized representative;

f. Restore all areas excavated (i.e. soil, sewer, river banks) to original condition;

g. Dispose of all site generated wastes at EPA approved disposal facilities;

h. Record and track the volume of recovered oil during the response, including but not limited to oil, oily water and other oily materials (e.g., boom, soil, etc.);

i. By March 15, 2013, complete the work described above.

38. Respondent must submit all reports to:

Jeffrey Lippert  
U.S. EPA  
On-Scene Coordinator  
Superfund Response Section 9311 Groh Road  
Grosse Isle, Michigan 48138  
[Lippert.Jeffrey@epa.gov](mailto:Lippert.Jeffrey@epa.gov)

and

Mony Chabria  
U.S. EPA  
Office of Regional Counsel  
77 W. Jackson Blvd. (C-14J)  
Chicago, IL 60604  
[Chabria.Monesh@epa.gov](mailto:Chabria.Monesh@epa.gov)

### Reporting Requirements

39. Within 30 days after completion of the work required by this Order, submit a final report to EPA detailing all work completed, including monitoring and analytical data, disposal records, and all documentation related to the removal and response actions completed.

40. The Respondent 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 EPA pursuant to this Order, provided such claim is allowed by Section 308(b)(2) of CWA, 33 U.S.C. § 1318(b)(2). 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 EPA, EPA may make it available to the public without further notice to the Respondent. The Respondent must not assert confidentiality claims with respect to any data or documents related to site conditions, sampling or monitoring.

### Access to Property and Information

41. The Respondent must provide 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. The Respondent must provide this access to EPA and the United States Coast Guard and their contractors and representatives. The Respondent shall notify EPA immediately of any denial of access to areas that they do not own or control.

42. The Respondent must retain all documents relating to this Order for six years after completing removal actions required by the Order. Before destroying any documents, the Respondent must notify EPA that the documents are available to EPA for inspection and, upon request, must provide the originals or copies of the documents to EPA. In addition, the Respondent must provide these documents at any time before the six year period expires at the written request of EPA.

## VII. RESERVATION OF RIGHTS AND PENALTIES

43. This Order shall not preclude EPA from taking any action authorized by the CWA, the OPA, the National Contingency Plan, or any other applicable law. EPA reserves the right to direct all activities including off-facility shipping, disposal and all other matters. Further, nothing herein shall prevent 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 the Respondent in the future to perform additional activities pursuant to the CWA, the OPA, or other applicable law.

44. Respondent expressly denies any liability for any violations alleged in this Order and expressly reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action with respect to any matter or issue relating in any way to this Order or any removal or response action performed thereunder, other than in a proceeding to challenge the validity of this Order or its terms. In addition, Respondent expressly reserves all rights to contest any additional work that is inconsistent with the NCP.

45. The Respondent must notify EPA of any response actions related to the discharge which is the subject of this Order that is not described in this Order.

46. Violation of any term of this Order may subject the Respondent 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 40 C.F.R. § 19.4.

#### VIII. EFFECTIVE DATE

47. The effective date of this Order shall be the date of execution of this Order by the EPA Superfund Division Director.

2-27-13  
Date

Richard C. Karl  
Richard C. Karl, Director  
Superfund Division  
USEPA, Region 5

2/26/2013  
Date

By: [Signature]  
Print Name: NICHOLAS C. PAPADONIS  
Title: PRESIDENT  
D&L Energy, Inc.