

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION VII  
901 NORTH 5<sup>th</sup> STREET  
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION  
AGENCY-REGION VII  
REGIONAL HEARING CLERK

IN THE MATTER OF:

COFFEYVILLE RESOURCES  
REFINING & MARKETING, LLC  
400 North Linden Street  
Coffeyville, Montgomery County, Kansas

RESPONDENT.

Proceeding under Section 311(c) and (e) of  
the Federal Water Pollution Control Act,  
as amended, 33 U.S.C. § 1321(c) and (e).

Docket No.  
CWA-07-2007-0056

**ADMINISTRATIVE ORDER ON CONSENT**

## **I. JURISDICTION AND GENERAL PROVISIONS**

1. This Administrative Order on Consent ("Consent Order") is entered into and issued pursuant to the authority vested in the President of the United States by Section 311(c) and (e) of the Federal Water Pollution Control Act, 33 U.S.C. § 1321(c) and (e), as amended ("CWA"). This authority has been delegated to the Administrator of the United States Environmental Protection Agency ("EPA") by Executive Order No. 12777, 58 Fed. Reg. 54757 (October 22, 1991), and further delegated to the Administrators of EPA's Regional offices by EPA Delegation Nos. 2-85 and 2-89.

2. This Consent Order pertains to a discharge of oil, which has occurred at and from a facility owned and operated by Respondent located at or near 400 North Linden Street in Coffeyville, Montgomery County, Kansas (the "Facility"). A map depicting the location of the Facility is attached hereto as Attachment 1. Pursuant to this Consent Order, Respondent agrees to conduct response actions described herein to abate or mitigate a discharge of oil from Respondent's Facility into navigable waters of the United States or adjoining shorelines.

3. EPA has notified the State of Kansas of this action pursuant to section 311(e)(1)(B) of CWA, 33 U.S.C. § 1321(e)(1)(B).

4. Respondent consents to the issuance of this Consent Order. Respondent's participation in this Consent Order does not constitute an admission of liability or a waiver of its defenses under the CWA, OPA, or other applicable law. Respondent does not admit and retains the right to controvert in any subsequent proceedings, other than a proceeding to implement or enforce this Consent Order, the validity of EPA's Findings of Fact or Conclusions of Law.

## **II. PARTIES BOUND**

1. This Consent Order applies to and is binding upon Respondent and Respondent's agents and assigns. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property shall in no way alter Respondent's responsibilities under this Consent Order.

2. Respondent shall ensure that its contractors, subcontractors, and representatives receive a copy of this Consent Order and comply with this Consent Order. Respondent shall be responsible for any noncompliance with this Consent Order.

## **III. DEFINITIONS**

1. Unless otherwise expressly provided herein, terms used in this Consent 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 Consent Order or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

2. "Day" shall mean a calendar day unless expressly stated to be a working day. "Working day" shall mean a day other than a Saturday, Sunday, or Federal holiday. In computing any period of time under this Consent Order, where the last day would fall on a

Saturday, Sunday, or Federal holiday, the period shall run until the close of business of the next working day.

3. "Discharge" shall have the meaning set forth in section 311(a)(2) of the CWA, 33 U.S.C. § 1321(a)(2), and 40 C.F.R. § 110.1 for purposes of the work to be performed under this Consent 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.

4. "EPA" shall mean the United States Environmental Protection Agency and any successor departments or successor agencies of the United States.

5. "Facility" shall mean that refinery owned and operated by Coffeyville Resources Refining & Marketing LLC located at or near 400 North Linden Street, Coffeyville, Montgomery County, Kansas. The facility shall also have the meaning as set forth in section 311(a)(10) and (a)(11) of the CWA, 33 U.S.C. §1321(a)(10) and (a)(11), and by section 1001(22) and (24) of OPA, 33 U.S.C. § 2701(22) and (24).

6. "Hazardous substance" shall mean any substance defined in section 311(a)(14) of the Clean Water Act 33 U.S.C. § 1321(a)(14).

7. "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.

8. "Navigable water" 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 CFR Part 110.

9. "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 Consent Order, and section 1001(23) of OPA, 33 U.S.C. § 2701(23), for purposes of reimbursement of costs.

10. "OPA" shall mean the Oil Pollution Act of 1990, 33 U.S.C. § 2701 et seq.

11. "Consent Order" shall mean this Administrative Order on Consent and any attachments hereto. In the event of conflict between this Consent Order and any attachment, this Consent Order shall control.

12. "Paragraph" shall mean a portion of the Consent Order identified by an Arabic numeral or an uppercase letter.

13. "Response" or "respond" shall refer to those activities required by this Consent Order.

14. "Section" shall mean a portion of this Consent Order identified by a roman numeral.

15. "Work" shall mean all activities that Respondent has agreed to perform under this Consent Order, except those required by Section VI (Record Retention).

16. "Work Plan" shall mean the Incident Action Plans and other submittals required pursuant to Section VI, 1.B. hereto.

#### **IV. FINDINGS OF FACT**

1. Coffeyville Resources Refining & Marketing LLC ("CRRM") owns and operates an oil refinery that is located at or near 400 North Linden Street, Coffeyville, Montgomery County, Kansas. The refinery has been in existence and operating since approximately 1906, and owned and operated by CRRM since 2004. Respondent's operations at the Facility include, among other things, the processing of crude oil and the production of gasoline and diesel.

2. On July 1, 2007, an initial incident report was made by the Kansas Department of Health and Environment ("KDHE") to the National Response Center (Incident Report No. 840571) that there was a discharge of oil occurring from the Facility into the Verdigris River. This report indicated that "an unknown oil product has spilled into the ... Verdigris River from a 12 inch transfer pipeline connecting a storage facility and a refinery." The quantity of oil discharged from the Facility into the Verdigris was unknown at that time.

3. On July 1, 2007, Respondent also made an initial report to the National Response Center (Incident Report No. 840578) stating that there was a release of oil from the Facility into the Verdigris River flood waters. The exact quantity of oil discharged from the Facility into the Verdigris River flood waters was unknown at that time, but it was estimated that at least 100 barrels had been released.

4. Early on July 1, 2007, two On-Scene Coordinators ("OSCs") from EPA Region VII were dispatched to the Facility. Upon arriving at the Facility the OSCs observed that the Verdigris River had topped a levee and the secondary containment dikes surrounding above-ground storage tanks at the Facility. The above-ground storage tank area of the Facility was observed to be inundated with water. Several of the above-ground storage tanks were observed to have shifted off of their foundations within the flooded, diked areas due to the flood waters. The OSCs also observed what appeared to be oil being discharged from the Facility into the flood waters and the Verdigris River.

5. On July 1, 2007, Respondent established an incident command center to respond to the release of oil. Respondent mobilized environmental consultants and oil spill response contractors to Coffeyville. On July 2, 2007, EPA dispatched additional OSCs to Coffeyville with EPA's Mobile Command Post to conduct monitoring and coordinate pollution assessments related to the flooding and the apparent discharges of oil into the Verdigris River.

6. Beginning on July 2, 2007, EPA's OSCs and Respondent began jointly conducting daily aerial overflights of the Coffeyville area and the Facility. On July 2nd and 3rd, oil was observed to be in the flood waters surrounding the above-ground storage tanks located at the Facility. EPA and Respondent also observed oil from other sources in the surrounding areas. Oil was observed to be in the Verdigris River and in flood waters that had inundated a portion of the town of Coffeyville. A sheen of oil was also observed extending downstream approximately

ten (10) miles. A series of photographs taken during a July 2<sup>nd</sup> overflight depicted the discharge of oil from the Facility into the flood waters of the Verdigris River and into the community of Coffeyville.

7. Located at the Facility is an above-ground tank designated "tank 8010" by Respondent, which is used for the storage of crude oil. During a meeting attended by EPA and Respondent on July 3, 2007, Respondent informed EPA's OSCs that it estimated that approximately 1,700 barrels (71,400 gallons) of crude oil had been discharged from tank 8010 beginning on or about July 1, 2007, into the Verdigris River flood waters.

8. Sampling of the flood waters downstream of the Facility and in the immediate area of the City of Coffeyville conducted by EPA and Respondent has shown the presence of the volatile organic compounds benzene, toluene, ethyl benzene, xylene, and naphthalene, common constituents of oil. Sampling of the air quality in the City of Coffeyville by EPA and Respondent has not indicated the presence of volatile organic compounds at a level of concern.

## **V. EPA'S CONCLUSIONS OF LAW AND DETERMINATIONS**

Based on the Findings of Fact set forth above, EPA has determined that:

1. The Facility is an "onshore facility" as defined in section 311(a)(10) of CWA, 33 U.S.C. § 1321(a), and by section 1001(24) of OPA, 33 U.S.C. § 2701(24).

2. Respondent is an "owner or operator" as defined by section 311(a)(6) of CWA, 33 U.S.C. § 1321(a)(6), Section 1001(26) of OPA. Respondent is also a "responsible party" as defined by section OPA § 1001(32)), 33 U.S.C. § 2701(26).

3. 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).

4. The incident described in the Statement of Facts above is a "discharge" and presents a substantial threat of a "discharge" as defined in section 311(a)(2) of CWA, 33 U.S.C. § 1321, and 40 C.F.R. § 110.1 and section 1001(7) of OPA, 33 U.S.C. § 2701(7).

5. The "discharge" and substantial threat of a "discharge" is into or on "navigable waters" as defined by section 1001(21) of OPA, 33 U.S.C. § 2701(21), and waters within the meaning of section 502(7) of CWA, 33 U.S.C. § 1362(7) and 40 C.F.R. § 112.2.

6. The quantity of oil or hazardous substances discharged from the Facility is a harmful quantity within the meaning of section 311(b)(3) of CWA, 33 U.S.C. § 1321(b)(3), and 40 C.F.R. § 110.3(b), because the discharge caused and may continue to cause a film or sheen upon or a discoloration of the surface of the water or adjoining shorelines.

7. The discharge and continued threat of a discharge is a violation of section 311(b) of CWA, 33 U.S.C. § 1321(b), and section 1001 of OPA, 33 U.S.C. § 2701(7), subject to available defenses provided in those statutes, because a harmful quantity of oil or hazardous substances has been discharged and may continue to be discharged from the Facility into or upon the navigable waters of the United States and adjoining shorelines.

8. The discharge and continuing substantial threat of a discharge has caused and may continue to cause, an imminent and substantial threat to the public health or welfare of the United States, including fish, shellfish, wildlife, public and private property, shorelines, beaches, habitat, and/or other living and nonliving natural resources under the jurisdiction or control of the United States.

9. The removal actions required by this Order are necessary to protect the public health and welfare of the United States, including fish, shellfish, wildlife, public and private property, shorelines, beaches, habitat, and other living and/or nonliving natural resources under the jurisdiction or control of the United States. Further, these measures are necessary to ensure effective and immediate removal of a discharge and the mitigation or prevention of a substantial threat of a discharge of oil into or on the navigable waters, on the adjoining shorelines to the navigable waters, or that may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States.

10. The removal actions agreed upon in this Consent Order are in accordance with the National Oil and Hazardous Substance Pollution Contingency Plan ("NCP"), 40 C.F.R. Part 300, and are authorized by EPA pursuant to the authority granted in section 311(c) and 311(e) of CWA, 33 U.S.C. § 1321(c) and 1321(e), as delegated by the President in Executive Order 12777, Section 2(b)(1), 56 Fed. Reg. 54757 (October 22, 1991).

11. Under section 1002(b)(1) of OPA, 33 U.S.C. § 2702(b)(1), and section 311(f) of CWA, 33 U.S.C. § 1321(f), Respondent is potentially liable to the United States for all removal costs incurred by the United States in connection with discharge or the threatened discharge of oil from the Facility, subject to the defenses provided by those statutes.

12. A "removal," as defined in section 311(a)(8) of the 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.

## **VI. CONSENT ORDER**

1. EPA hereby orders, and Respondent hereby agrees, that Respondent shall comply with all requirements of this Consent Order and shall perform the following actions:

A. To the extent not already completed, the following actions shall be taken immediately to respond to the discharge of oil from the Facility that began to occur on July 1, 2007:

### **FACILITY:**

- Secure all discharge sources and all sources with a potential to discharge oil and/or hazardous substances to navigable waters.
- Contain and secure all released oil so that further releases from the Facility into navigable waters are stopped.
- To the extent practicable, initiate oil recovery efforts.

- Discharge flood waters to the Verdigris River, provided such flood waters are boomed and managed to remove free oil prior to the discharge, and take other steps as EPA's OSC may direct.
- Sample and monitor any discharge of flood waters from the Facility into the Verdigris River resulting from de-watering activities conducted at the Facility.
- Assess Facility inventories and provide periodic updated estimates on the quantity of oil released.

OFF-FACILITY:

- Assess, secure, and contain all oil that was discharged from the Facility (off-Facility oil) that may pose an imminent threat to public health and the environment. Priority shall be given to any discharges that threaten Lake Oologah and any other public drinking water supplies.
- Initiate oil recovery efforts.
- Assess other releases of oil that do not present an imminent threat to public health and environment, develop an inventory of impacted areas, and develop a strategy for conducting shoreline contamination assessments of these areas.
- If required by EPA, periodically sample and continue to monitor the Verdigris River for oil and hazardous substances (that are constituents of oil) from the Facility upstream of the three (3) public water supply intakes for the towns of Lenapah, Delaware, and Nowata.
- If required by EPA, boom or take actions to physically protect the three (3) public water supply intakes for the towns of Lenapah, Delaware, and Nowata from oil and hazardous substances (that are constituents of oil) released from the Facility.

The foregoing actions shall be taken at the direction, and within the discretion of EPA's OSC. Respondent shall promptly comply with any directions provided by EPA's OSC to contain and respond to the discharge of oil that has occurred, or may occur, from the Facility.

**B. Response Implementation**

To the extent not already completed, the following actions shall be taken to respond to the release of oil from the refinery that began to occur on July 1, 2007:

- Respondent has submitted and is required to continue to submit daily Incident Action Plans ("IAPs") to EPA's OSC to implement the response action set forth above in accordance with the directives of EPA's OSC. The IAP includes and shall continue to include the strategies, techniques, and timeline for conducting short-term and long-term assessment and recovery efforts. The

IAPs and other documents described below constitute the Work Plan.

- The names, contact information, and relevant experience of key personnel and removal contractors and/or consultants who are performing the Work. Respondent will advise EPA of any changes in key personnel. (CRRM has provided EPA's OSC with the initial names and contact information for key personnel).
- Within seventy-two (72) hours after the effective date of this Consent Order, CRRM will submit to EPA for review and approval a Quality Assurance Project Plan ("QAPP") which will describe all sampling and analysis procedures to be followed to document the type and quality of data needed to satisfy the requirements of this Consent Order to provide the basis for collecting and assessing those data which are to be collected to meet the requirements of this Consent Order. The QAPP shall comply with the requirements of the document entitled *EPA Requirements for Quality Assurance Project Plans for Environmental Data Operations*, EPA QA/R-5, November 1999.
- Within seventy-two (72) hours after the effective date of this Consent Order, CRRM will submit to EPA for review and comment a Health and Safety Plan ("HSP") which will ensure worker protection and the protection of the public health and safety during performance of off-Facility Work under this Consent Order. The HSP shall be prepared in accordance with EPA's *Standard Operating Safety Guide* (PUB 9285A-03, PB 92-963414, June 1992). In addition, the HSP shall comply with all currently applicable Occupational Safety and Health Administration ("OSHA") regulations found at 29 C.F.R. Part 1910.
- Within seventy-two (72) hours after the effective date of this Consent Order, CRRM will submit to EPA for review and approval a strategy and timeline for conducting shoreline contamination assessments for all impacted areas beyond the boundaries of the Facility (as required by the IAP).
- Within seventy-two (72) hours after the effective date of this Consent Order, CRRM will submit to EPA for review and approval a plan for developing a shoreline contamination assessment report which inventories all impacted areas, prioritizes impacted areas for clean-up and recovery efforts, discusses containment, cleanup and recovery techniques to be used to address all impacted areas (as required by the IAP).



- Within seventy-two (72) hours after the effective date of this Order, CRRM will submit a plan for addressing third-party property damage caused by pollution conditions including assessing, cleanup, sampling, and restoration of third party property.
- EPA may approve, disapprove, require revisions to, or modify any element of any of the above submittals. If EPA requires revisions to any submittal, Respondent shall submit revisions to that element of the Work Plan within seventy-two (72) hours of receipt of EPA's notification of the required revisions. Respondent shall implement the element of the Work Plan as finally approved in writing by EPA in accordance with the schedule approved by EPA. Once approved, or approved with modifications, the elements of the Work Plan, the schedule, and any subsequent modifications shall be deemed to be incorporated into this Consent Order and fully enforceable under this Consent Order. At the request of Respondent and with the permission of EPA's OSC, Respondent may reduce the frequency of the submission of the IAPs as warranted by field conditions.

**C. Designation of Project Coordinator and EPA's On-Scene Coordinator**

- i Respondent has designated Christopher G. Swanberg as its Project Coordinator who will be responsible for Respondent's administration of the Work agreed upon in this Consent Order. If Respondent elects to change its Project Coordinator, Respondent shall notify EPA of the name(s) and qualification(s) of any such replacement(s) prior to selecting such party. EPA retains the right to at any time disapprove of the selection of Respondent's Project Coordinator. If EPA disapproves of the selection of a Project Coordinator, Respondent shall retain a replacement within seven (7) days following EPA's disapproval of Respondent's selection and shall notify EPA of the replacement's name and qualifications within seven (7) days of EPA's disapproval. To the extent possible, the Project Coordinator shall be present at the Facility or readily available during the performance of the Work. Receipt by Respondent's Project Coordinator of any notice or communication from EPA relating to this Consent Order shall constitute receipt by Respondent.
- ii EPA has designated Paul Doherty of EPA Region VII's Superfund Division as its On-Scene Coordinator ("OSC") for this matter. Respondent shall direct all submissions and notifications required by this Consent Order to EPA's OSC at:

Paul Doherty  
U.S. Environmental Protection Agency, Region VII  
SUPR/ER&R  
901 North 5<sup>th</sup> Street  
Kansas City, Kansas 66101  
Phone Number: 913-551-7924  
Facsimile: 913-551-9924  
Cell Phone: 913-645-6449  
E-mail: doherty.paul@epa.gov

- iii EPA and Respondent shall have the right to change their designated OSC or Project Coordinator, respectively. EPA will notify Respondent, and Respondent shall notify EPA promptly, before such a change is made. Notification may initially be made orally but shall be followed promptly by written notice.

**D. Scope of Response Action**

Nothing in this Consent Order shall be deemed to require Respondent to be responsible for or take any action to respond to releases of oil or any other substances from facilities not owned or operated by Respondent. This Consent Order is limited to responding to the release of oil from the Facility that occurred beginning on July 1, 2007.

**2. Final Report**

Within ninety (90) days after completion of the Work required by this Consent Order, Respondent shall submit to EPA for review and approval a final report summarizing the actions taken to comply with this Consent Order. The final report shall include at a minimum: a listing of quantities and types of off-Facility materials removed and off-Facility materials handled On-Facility, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destinations of those materials, a presentation of the analytical results of all sampling and analyses performed, and accompanying appendices containing all relevant documentation generated during the removal action. The final report shall also include the following certification signed by a person who supervised or directed the preparation of that report:

Under penalty of law, I certify that to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of the report, the information submitted is true, accurate, and complete. I am aware that under section 309(c)(4) of the CWA, 33 U.S.C. § 1319(c)(4), there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

**3. Access to Property and Information**

A. Respondent shall provide and/or obtain access to the Facility as necessary to review the implementation of the Work Plan by Respondent. Respondent shall also provide access to all records and documentation related to the conditions at the Facility as it relates to the

discharge of oil that occurred from the Facility on or about July 1, 2007, and implementation of this Consent Order. Such access shall be provided to EPA employees, employees of the Natural Resources Trustee Agencies, the U.S. Coast Guard ("USCG"), their contractors, agents, consultants, designees, representatives, and State of Kansas representatives. These individuals shall be permitted to move freely at the Facility and, if Respondent secures access to off-Facility areas in order to conduct actions which EPA determines to be necessary to implement this Consent Order. Respondent shall submit to EPA, upon receipt, the results of all sampling or tests and all other data generated by Respondent or its contractors, or on Respondent's behalf during implementation of this Consent Order. The foregoing notwithstanding, privileged and business confidential information shall be protected pursuant to Paragraph 4 of this Section.

B. Where the Work under this Consent Order is to be performed in areas owned by or in the possession of a person other than Respondent, Respondent shall use its best efforts to obtain all necessary access agreements as specified by EPA. Respondent shall immediately notify EPA if after using its best efforts it is unable to obtain such agreements. At EPA's request, Respondent shall describe in writing its efforts to obtain access. EPA may then assist Respondent in gaining access, to the extent necessary to effectuate the Work, using such means as EPA deems appropriate. EPA reserves the right to seek reimbursement from Respondent for all costs and attorney's fees incurred by the United States in obtaining access for Respondent.

4. Record Retention, Documentation and Availability of Information

A. Respondent shall preserve all documents and information relating to work performed under this Consent Order, or relating to the oil or hazardous substances found on or discharged from the Facility, for six (6) years following completion of the removal actions required by this Consent Order, provided that Respondent is not required to retain drafts of reports, duplicate information or documents, or matters not reasonably calculated to provide relevant information concerning the work agreed to under this Consent Order. At the end of this six-year period and sixty (60) days before any document or information is destroyed, Respondent shall notify EPA that such documents and information are available to EPA for inspection, and upon request, shall provide the originals or copies of such documents and information to EPA. In addition, Respondent shall provide documents and information retained under this Section at any time before expiration of the six-year period upon the written request of EPA.

B. 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 Consent 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 such information available to the public without further notice to Respondent.

C. Respondent may assert that certain documents, records and other information requested are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Respondent asserts such a privilege in lieu of providing documents, it shall provide EPA with the following:

- (1) the title of the document, record, or information;
- (2) the date of the document, record, or information;
- (3) the name and title of the author of the document, record, or information;
- (4) the name and title of each addressee and recipient;
- (5) a description of the contents of the document, record, or information; and
- (6) the privilege asserted by Respondent.

However, no documents, reports or other information created or generated pursuant to the requirements of the Consent Order shall be withheld on the grounds that they are privileged.

5. Off-Facility Shipments

A. Respondent shall, prior to any off-site shipment of oil or hazardous substances, oil- or hazardous substances-contaminated soil, or oil- or hazardous substances-contaminated water related to the release, provide notification of such shipment to EPA's OSC. The notification shall include:

- (a) the name and location of the facility to which the oil, hazardous substances, soil or water, will be shipped;
- (b) the quantity of the oil, hazardous substances, soil or water to be shipped;
- (c) the expected schedule for the shipment of the oil, hazardous substances, soil or water; and
- (d) the transporter and method of transportation of the shipment of oil, hazardous substances, soil or water. Respondent shall also notify EPA of any major changes in the shipment plan, such as a decision to ship the oil, hazardous substances, soil or water to another facility.

In the OSC's discretion, the foregoing notice may be waived.

B. All off-Facility shipments of oil or hazardous substances, oil or hazardous substances-contaminated soil, and oil or hazardous substances-contaminated water shall be transported, stored, and disposed of in accordance with all applicable U.S. Department of Transportation regulations, the NCP, and all other applicable Federal, State, and local laws and regulations.

6. Compliance With Other Laws

Respondent shall perform all actions agreed upon in this Consent Order in accordance with all applicable Federal, state, and local laws and regulations. Where any portion of the Work requires a Federal or state permit or approval, Respondent shall submit timely applications and take all other actions necessary to obtain and to comply with all such permits or approvals. This Consent Order is not, and shall not be construed to be, a permit issued pursuant to any Federal or state law or regulation.

7. Emergency Response and Notification of Discharges

A. If any incident or change in Facility conditions during the performance of the Work conducted pursuant to this Consent Order causes or may cause a substantial threat of an additional discharge of oil or hazardous substances (in excess of a reportable quantity) from the Facility or a substantial threat to the public health or welfare of the United States (including but not limited to fish, shellfish, wildlife, other natural resources, and the public and private beaches and shorelines of the United States), Respondent shall immediately take all appropriate action. Respondent shall take these actions in accordance with all applicable provisions of this Consent Order in order to prevent, abate or minimize such discharge or substantial threat of a discharge. Respondent shall also immediately notify EPA's OSC or, in the event of his/her unavailability, shall notify EPA Region VIPs Duty Officer at 913-281-0991 of the incident or Facility conditions. If Respondent fails to respond, EPA may respond to the discharge or threatened discharge. Respondent shall take such action in consultation with EPA's OSC, unless it is not possible for Respondent to contact EPA's OSC prior to the time the action becomes necessary.

B. In addition, in the event of any new discharge of oil or a hazardous substance (in excess of a reportable quantity), Respondent shall immediately notify the National Response Center at 800-424-8802. Respondent shall submit a written report to EPA within seven (7) days after each discharge, setting forth the events that occurred and the measures taken or to be taken to mitigate and prevent the recurrence of such a discharge. This reporting requirement is in addition to, not in lieu of, reporting under section 311(b)(5) of CWA and section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. §§ 11001 et. seq., if applicable, or under any other Federal, State, or local laws.

## **VII. AUTHORITY OF EPA'S ON-SCENE COORDINATOR**

EPA's OSC is authorized to oversee the proper and complete implementation of this Consent Order, including the authority to:

- (i) remove or arrange for the removal of a discharge, and mitigate or prevent a substantial threat of a discharge, at any time;
- (ii) direct or monitor all Federal, State, and private actions to remove a discharge; and
- (iii) determine when the Work is complete.

The absence of EPA's OSC from the Facility shall not be cause for stoppage of work unless specifically directed by EPA's OSC.

## **VIII. ENFORCEMENT: PENALTIES FOR NONCOMPLIANCE**

1. The violation of any provision of this Consent Order may subject Respondent to civil penalties of up to thirty-two thousand five hundred dollars (\$32,500) per day of violation, or an amount up to three (3) times the cost incurred by the United States, as provided in section 311(b)(7)(B) of CWA, 33 U.S.C. § 1321(b)(7)(B), as adjusted by 61 Fed. Reg. 69360 (December 31, 1996).

## **IX. RESERVATION OF RIGHTS**

1. Except as specifically provided in this Consent Order, nothing herein shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health or welfare of the United States, or to prevent, abate, or minimize an actual or substantial threat of a discharge of oil, hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, from or outside of the facility. Further, nothing herein shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Consent Order, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring Respondent in the future to perform additional activities pursuant to CWA or any other applicable law. The United States reserves the right to bring an action against Respondent under section 311(f) of CWA, 33 U.S.C. § 1321(f), and/or Sections 1002 and 1015 of Oil Pollution Act, 33 U.S.C. §§ 2702 and 2715, for recovery of any costs incurred by the United States related to this Consent Order and not reimbursed by Respondent. Response costs shall include those costs allowed by section 311(f) of CWA, 33 U.S.C. § 1321(f), and Section 1005 of OPA, 33 U.S.C. § 2705.

2. Notwithstanding any other provision of this Consent Order, at any time during the response action, EPA reserves the right to perform its own studies, complete the removal action or any portion of the removal action, and seek reimbursement from Respondent for its costs, or seek any other appropriate relief.

3. Nothing in this Consent Order shall preclude EPA from taking any additional enforcement actions, including issuance of additional orders, and/or additional response actions as EPA may deem necessary, or from requiring Respondent in the future to perform additional activities pursuant to the Resource Conservation and Recovery Act (RCRA) as amended by the Hazardous and Solid Waste Act (HSWA), the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), the Clean Water Act (CWA), the Oil Pollution Act (OPA), or any other applicable law.

4. Pursuant to section 311(c) and (e) of the Clean Water Act, 33 U.S.C. § 1321(c) and (e), EPA and its agents are authorized to enter the Facility and to perform the activities necessary to assess the source, nature and extent of the discharge or threatened discharge at the facility and to remove the discharge or to prevent threatened discharges of oil or hazardous substances. Notwithstanding any provision of this Consent Order, the United States hereby reserves all of its information-gathering, inspection and all enforcement authorities and rights under all applicable statutes and regulations. The United States expressly reserves all rights it has to issue additional orders or to take any other action it deems necessary to protect the public health or welfare of the United States.

5. Notwithstanding any provision of this Consent Order, EPA reserves the right to assess an administrative penalty pursuant to section 311(b)(6) of CWA, 33 U.S.C. § 1321(b)(6), and/or to seek a civil penalty pursuant to section 311(b)(7), 33 U.S.C. § 1321(b)(7).

6. Nothing in this Consent Order shall limit the authorities of EPA's On-Scene Coordinator as outlined in the NCP.

7. If a court issues an order that invalidates any provision of this Consent Order, or finds that Respondent has sufficient cause not to comply with one or more provisions of this Consent Order, Respondent shall remain bound to comply with all provisions of this Consent Order not invalidated by such court's order.

8. Respondent expressly reserves all defenses to any action or proceeding brought by EPA, including any action or proceeding as to which EPA has reserved its rights in this Section, except that in a proceeding by EPA to enforce this Consent Order, Respondent is bound by its agreements herein.

#### **X. OTHER CLAIMS**

1. By issuance of this Consent Order, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondent. The United States or EPA shall not be deemed a party to any contract entered into by Respondent or its directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Consent Order

2. Nothing in this Consent Order shall constitute a satisfaction of or discharge from any claim or cause of action against Respondent or any person, for any liability such person may have under CWA, OPA, other statutes, or the common law, including but not limited to any claims of the United States for penalties, costs, damages, and interest.

#### **XI. MODIFICATIONS**

1. Modifications to the Work Plan or any plan or schedule agreed upon in this Consent Order, may be made in writing by EPA's OSC or at his/her oral direction. If EPA's OSC makes an oral modification, it will be memorialized in writing by Respondent within three (3) working days, provided, however, that the effective date of the modification shall be the date of the OSC's oral direction. Modifications to any portion of the Consent Order, other than to plans or schedules, may only be made in writing under signature of the Administrator of EPA Region VII and Respondent.

2. If Respondent seeks permission to modify the Work Plan or to deviate from any approved plan or schedule, Respondent's Project Coordinator shall submit a written request to EPA for approval outlining the proposed modification and its basis. EPA will attempt to respond in a timely fashion to any such request and will not unreasonably withhold consent thereto.

3. No informal advice, guidance, suggestion, or comment by EPA regarding reports, plans, specifications, schedules, or any other writing submitted by Respondent shall relieve Respondent of its obligation to obtain such formal approval as may be required by this Consent Order, and to comply with all requirements of this Consent Order unless it is formally modified.

#### **XII. NOTICE OF COMPLETION**

1. When EPA determines: (a) after EPA's review of the Final Report, that the Work is complete and that all removal actions have been fully performed in accordance with this Consent Order, with the exception of any continuing obligations required by this Consent Order;

(b) or that continued Work under this Consent Order is no longer necessary or desired, EPA will provide written notice to Respondent. If EPA determines that any removal actions have not been completed in accordance with this Consent Order, EPA will notify Respondent in writing, provide a list of the deficiencies, and require that Respondent modify the Work Plan to correct such deficiencies. Respondent shall implement the modified and approved Work Plan and shall submit a modified Final Report in accordance with the EPA notice. Failure by Respondent to implement the approved modified Work Plan shall be a violation of this Consent Order.

### **XIII. ACT OF GOD**

1. Respondent agrees to perform all requirements under this Consent Order within the time limits established, unless the performance is delayed by an Act of God. For purposes of this Consent Order, an Act of God is defined as an "unanticipated grave natural disaster or other natural phenomenon of an exceptional, inevitable, and irresistible character the effects of which could not have been prevented or avoided by the exercise of due care and foresight." The following are not recognized as an Act of God: financial inability to complete work or increased cost of performance.

2. Respondent shall notify EPA orally within 24 hours after Respondent becomes aware of any event that Respondent contends constitutes an Act of God and in writing within 5 days after the event. Such notice shall: identify the event causing the delay or anticipated delay; estimate the anticipated length of delay, including necessary demobilization and remobilization; state the measures taken or to be taken to minimize the delay; and estimate the timetable for implementation of the measures. Respondent shall take all reasonable measures to avoid and minimize the delay. Failure to comply with the notice provision of this Section shall be grounds for EPA to deny Respondent an extension of time for performance. Respondent shall have the burden of demonstrating that the event is an Act of God, that the delay is warranted under the circumstances, and that best efforts were exercised to avoid or mitigate the effects of the delay.

3. If EPA determines that a delay in performance of a requirement under this Consent Order is or was attributable to an Act of God, the time period for performance of that requirement shall be extended as deemed necessary by EPA. Such an extension shall not alter Respondent's obligation to perform or complete other tasks required by the Order which are not directly affected by the Act of God.

### **XIV. EFFECTIVE DATE**

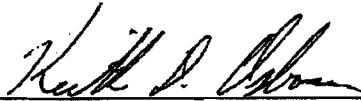
1. This Consent Order shall be effective upon the date that Respondent receives notification that this Consent Order has been executed by EPA.



**IT IS SO AGREED**

**BY COFFEYVILLE RESOURCES REFINING & MARKETING, LLC**


July 9, 2007

  
\_\_\_\_\_  
Keith D. Osborn  
Executive Vice President and Refinery General  
Manager  
\_\_\_\_\_  
Coffeyville Resources Refining & Marketing,  
LLC

**IT IS SO AGREED AND ORDERED**

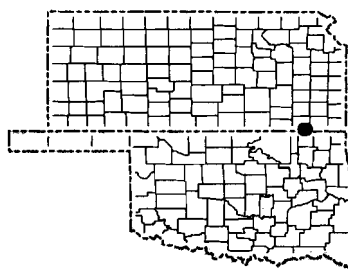
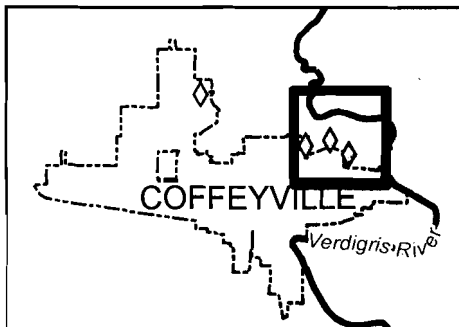
**FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

July 10, 2007

  
\_\_\_\_\_  
John B. Askew  
Regional Administrator  
U.S. Environmental Protection Agency, Region VII

\*

# Coffeyville Resources Refining



0 0.05 0.1 0.2 0.3 0.4 0.5 Miles

## Legend

- ◆ RMP
- Verdigris River
- Est. Flood Extent
- Cities
- Counties



EPA does not warrant the accuracy, completeness, or timeliness of the information shown. The information herein is subject to revision and is not in final form. EPA shall not be liable for any detrimental reliance upon the information shown.

-DRAFT-

This map has not been submitted to the EPA peer review process

7/5/2007

Coffeyville\_Refinery\_map\_CJM\_070507

