

U.S. Department of
Homeland Security

United States
Coast Guard



Commanding Officer
United States Coast Guard
Sector Buffalo

1 Fuhrmann Blvd
Buffalo, NY 14203
Staff Symbol: (s)
Phone: (716)843-9520

16600
20 Aug 2020

Mr. Paul Neureuter
Krog Group
4 Centre Drive
Orchard Park, NY 14127

**SUBJ: FORMER EXXONMOBIL REFINERY BUFFALO, NY, ELK STREET
COMMERCE PARK (KROG GROUP) ADMINISTRATIVE ORDER**

Dear Sir or Madam:

On August 7, 2020, the United States Coast Guard was made aware of an oil discharge from property at Elk Street Commerce Park in Buffalo, NY. This discharge is from known contaminated soil resulting from the refinery operations of the site's previous owner, Exxon Mobil.

Pursuant to 33 U.S.C. § 1321(c), 33 U.S.C. § 1321(e)(1)(B), 33 C.F.R. § 1.01-80, 40 C.F.R. § 300.130(d) and 42 U.S.C. §§ 9601 *et. seq.*, I am authorized, as Coast Guard Federal On-Scene Coordinator (FOSC), to issue orders as may be necessary to protect the public health, welfare, and the environment. Consistent with the provisions under 33 USC 1321 (e)(1), I may exercise this authority whenever I have determined that there may be an imminent and substantial endangerment to the public health, welfare, and the environment because of an actual or threatened spill of oil from your facility.

I have determined that such an endangerment exists at the waterfront located at the former ExxonMobil Refinery, now Elk Street Commerce Park, as there is an apparent discharge of waste oil from the facility's grounds into the Buffalo River. As defined under the Clean Water Act (CWA) and 40 CFR 109.2, this oil is present in a "harmful quantity." Since oil is both a pollutant and a combustible substance, this discharge is an imminent and substantial endangerment to the public health and welfare of the United States and the environment as it impacts public and private property, marine and wildlife, environmentally sensitive areas, and other living and nonliving natural resources under the jurisdiction or control of the United States.

For these reasons, and under the above-referenced authority, you are hereby directed to undertake removal actions as ordered by this letter.

1. Contain and remove all oily waste exiting the above described property to prevent the pollution from reaching the Buffalo River. Where used, oily swipes and absorbent boom must be removed on a frequent basis. Oiled containment boom must be maintained in good condition. A weir or drum skimmer is required to be placed in spill area to help with removal of product and oil skimming equipment must be maintained in working order. Prior to the conclusion of removal efforts, any oil stained bulkheads must be

rendered clean. Submit discharge removal, temporary storage, and product disposal plans to Coast Guard no later than August 21, 2020. Due to components of product identified in sample results, Level C PPE to include splash-proof protective suit and APR mask with appropriate cartridge, must be worn when handling product. Spill area and equipment must be tended twice daily; provide those times directly to U.S. Coast Guard so that oversight can be maintained.

2. Conduct air monitoring at the discharge site and surrounding area and provide results to all interested and exposed parties, to include U.S. Coast Guard daily. Fumes are abundantly evident at the spill site, rendering responders, pollution contractors, and individuals working on the property potentially exposed to harmful chemicals. The sample specifically detected the presence of benzene, PCBs, lead, arsenic, barium, and chromium.
3. Provide historical data on the Elk Street Commerce Property and former Exxon Refinery at location to U.S. Coast Guard. Data regarding the contents of historical above ground storage tanks and data obtained from previous remediation efforts on the property is required. Provide this data directly to Chief of Incident Management, LT Jillian Hoffman, at Sector Buffalo, New York.
4. You are directed to appear at a meeting at 1400 on 21 August 2020 at U.S. Coast Guard Sector Buffalo (1 Fuhrmann Blvd, Buffalo, NY 14203). If you are unable to attend at the time noted, contact LT Jillian Hoffman at (716) 346-7561. Please be prepared to present both your short term cleanup solutions and an initial proposal for a long term plan to prevent continued pollution from the Elk Street Commerce Park property into the Buffalo River.

Responsible party or representative of shall conduct daily check-in meeting with U.S. Coast Guard Chief of Incident Management, LT Jillian Hoffman, at 0900. LT Hoffman can be reached at (716) 346-7561. Brief shall encompass current status of site, planned remediation operations for the day, and any other pertinent information related to the oil discharge. You were issued you a Notice of Federal Interest (NOFI) of an oil pollution incident on 19 August 2020. Per the NOFI, and under the Oil Pollution Act of 1990, please be advised that the responsible party is liable for, among other things, removal costs and damages resulting from this condition. The failure or refusal to comply with this Administrative Order will eliminate any defense or entitlement to limited liability, which might otherwise be available under the Act (33 U.S.C. §§ 2701-2762).

Be advised that the following may result from your failure to properly carry out the removal actions as ordered to protect the environment, public health, and welfare. For such failure, the Responsible Party, owners, operators, or persons in charge of the facility from which the substance is discharged are subject under the Federal Water Pollution Control Act, to a civil penalty of up to \$48,192 per day of violation or up to three (3) times the cost incurred by the Oil Spill Liability Trust Fund. Failure to comply with the requirements of this Administrative Order may result in the federal government assuming full or partial control of removal actions.

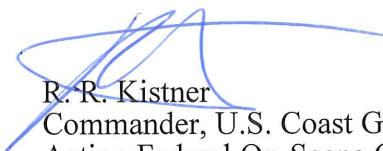
This administrative order is effective upon your receipt of this order. You may request, either orally or in writing, that I reconsider this order within ten days of its issuance. I may be reached

for this purpose at the address and phone number given above. If you wish to appeal my decision on reconsideration, you must direct the request for an appeal to the United States Coast Guard District 9 Commander. The act of requesting reconsideration or placing an appeal does not stay or invalidate this order, but reviewing offices have the authority to take such action if they believe circumstances warrant it.

If you have questions concerning this order, contact CDR William McKinstry at (716) 843-9520.

Issued at U.S. Coast Guard Sector Buffalo.

Sincerely,



R. R. Kistner
Commander, U.S. Coast Guard
Acting Federal On-Scene Coordinator

Received Administrative Order Number 01-20

Owner/Operator/Person in Charge or Owner's Representative
(Print and Signature)

Date

Time