

ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

TRANSMONTAIGNE PARTNERS LP

d/b/a RAZORBACK, LLC

2801 WEST HUDSON ROAD

ROGERS, ARKANSAS 72756

EPA ID No. ARD983276494

NPDES PERMIT No. ARG340017

AFIN 04-00240

LIS 10-086

CONSENT ADMINISTRATIVE ORDER

This Consent Administrative Order (hereinafter "Order") is issued pursuant to the authority of the Arkansas Hazardous Waste Management Act (Act 406 of 1979, as amended; Ark. Code. Ann. § 8-7-201 *et seq.*), the Arkansas Remedial Action Trust Fund Act (Act 479 of 1985, as amended; Ark. Code Ann. § 8-7-501 *et seq.*), the Arkansas Water and Air Pollution Control Act (Act 472 of 1949, as amended; Ark. Code Ann. ' 8-4-101 *et seq.*), and the regulations issued thereunder (hereinafter collectively referred to as "the Act"), the Arkansas Pollution Control and Ecology Commission (hereinafter "APC&EC"), APC&EC Regulation No. 2, Regulation No. 23, and APC&EC Regulation No. 8.

The issues herein, as they pertain to TransMontaigne Partners LP d/b/a Razorback, LLC, Rogers, Benton County, Arkansas (hereinafter "TransMontaigne" or "Respondent") having been settled by the agreement of TransMontaigne and ADEQ, it is hereby agreed and stipulated by all parties that the Findings of Fact and Order and Agreement be entered herein.

FINDINGS OF FACT

1. TransMontaigne Partners, L.P. and Razorback, LLC, its indirect subsidiary, own and operate a bulk fuel storage terminal located at 2801 West Hudson Road, Rogers, Arkansas (hereinafter "the Site"). The Site operates as a bulk fuel terminal and interstate pipeline reception point for the transfer of petroleum products with five (5) Aboveground Storage Tanks (hereinafter "ASTs") at the Site.
2. On October 3, 2006, approximately 70,560 gallons of regular unleaded gasoline overflowed the top of AST 202.
3. TransMontaigne alleges all of the overfilled gasoline was contained within the earthen berm area surrounding AST 202.
4. Upon discovery, TransMontaigne initiated emergency response activities including the recovery by vacuum truck of approximately 1,000 gallons of gasoline. Approximately 9,039 cubic yards of contaminated soil were excavated and treated on-site pursuant to an authorization by ADEQ. And, gasoline has been extracted from recovery wells in the vicinity of the AST 202 area.
5. In January 2007, TransMontaigne submitted to ADEQ a Preliminary Remedial Completion Report (hereinafter "PACR"). The PACR states that analysis from the composite soil samples collected at six (6) excavation sections during the emergency response activities ranged from 3,900 mg/kg to 47,000mg/kg of gasoline constituents on a wet weight basis. Based on the concentrations of gasoline constituents in the composite soil samples from the excavations, three estimates were made of the volume of gasoline removed during the response excavation effort. Those estimates were of 17,825 gallons, 54,825 gallons, and 100,473 gallons. In the January 2007 PACR, TransMontaigne used the most conservative estimate of 17,825 gallons removed. Further, evaporation was calculated using two (2) EPA

formulas and the calculations predicted evaporation rates of 88,742 gallons per hour (gph) and 31,140 gph, respectively. Although the EPA formulas predict that all of the gasoline would evaporate, TransMontaigne and ADEQ assume that the predictions are an overestimation.

6. On February 21, 2007, ADEQ-Water Division held a meeting with TransMontaigne at ADEQ to discuss the status of remediation at the Site.
7. In April 2007, TransMontaigne submitted to ADEQ an Addendum to the PACR.
8. In June 2007, an underground oil/water separator was removed by TransMontaigne from an area west of the loading rack facility. A slow leak was discovered from the separator, and approximately 150 cubic yards of impacted soil were excavated.
9. A free product recovery well was established in the vicinity of the former oil/water separator. TransMontaigne believes the subsurface investigation activities that have been undertaken and are continuing have fully characterized and delineated the impacts of the releases from AST 202 and the oil-water separator.
10. On March 30, 2008, TransMontaigne and ADEQ-Water Division (hereinafter "ADEQ-WD") met to discuss the Site objectives, establish a format and parameters for the requested Human Health Risk Assessment (hereinafter "HHRA"), and review the analytical results from the 2007 Semi-Annual Groundwater Monitoring Report.
11. The Report indicated that groundwater concentrations of benzene, on-site and off-site, including the adjacent undeveloped property, were detected above Maximum Contaminant Levels (MCLs).
12. On June 23, 2008, TransMontaigne submitted a Draft HHRA.
13. On July 24, 2008, TransMontaigne met with the ADEQ-WD to discuss the Draft HHRA.

14. In January 2009, TransMontaigne submitted to ADEQ-Regulated Storage Tank Division and ADEQ-WD the 2008 Third Quarter Monitoring Report, December 2008 Mobile Dual Phase Extraction Report and the Final HHRA.
15. On March 31, 2009, TransMontaigne met with ADEQ-Hazardous Waste Division (hereinafter "ADEQ") to discuss current activities taking place at the Site and the need for further remediation. TransMontaigne's current groundwater sampling consists of semi-annual gauging of all wells, collection of groundwater samples from a total of fifty (50) monitoring wells, and laboratory analysis of groundwater samples for volatile organic compounds ("VOCs"), benzene, toluene, ethylbenzene, xylenes, ("BTEX"), methyl tert-butyl ether ("MTBE"), and total petroleum hydrocarbons, gasoline fraction (hereinafter "TPH-GRO"s).
16. On April 27, 2009, ADEQ approved TransMontaigne's Interim Corrective Action Measures outlined in the Source Area Remedial Design Implementation Report dated March 2009.
17. In June 2009, TransMontaigne initiated remedial activities with a Dual Phase Extraction (hereinafter "DPE") remediation system that was approved by ADEQ on April 27, 2009.
18. The purpose of this Order is to implement a schedule for any remedial activities and associated reporting deemed necessary and to establish remediation goals and endpoints by ADEQ to accomplish the intent of this Order.

ORDER AND AGREEMENT

1. TransMontaigne shall, within sixty (60) calendar days of the effective date of this Order, submit to ADEQ the following:
 - a. Semi-Annual Groundwater Monitoring Report for the December 2009 sampling event.
 - b. An evaluation of potential barrier systems to address the onsite dissolved phase constituent plume down-gradient of the AST 202 source area. This requirement may be extended upon written request by TransMontaigne to ADEQ.
 - c. A proposal for a remediation system for the AST 202 source area.
 - d. A report of current remedial measures including:
 - i. Treated free product removed by the instituted remedial measures including the Spill Busters;
 - ii. Treated water effluent concentrations and flow rate, if any;
 - iii. Total volatile organic compound (VOC) concentration emissions from the remedial operations; and
 - iv. Air stripper emissions over run time.
 - e. A copy of their Sampling and Analysis Plan ("SAP"). The SAP shall include a Quality Control and Assurance Plan and a site Health and Safety Plan. TransMontaigne agrees to amend the SAP to provide additional information within thirty (30) calendar days of receiving written notification from ADEQ that additional information is required.
 - f. A water well survey that includes an evaluation of water wells within a one (1) mile radius of the Site through field and database research.

- g. A copy of the Complaint in *MSC, A Limited Liability Company vs. TransMontaigne Inc, et al.*, USDC-Western District of Arkansas Case No. G:07-cv-05153-JLH.
 - h. A copy of the dismissal in *MSC, A Limited Liability Company vs. TransMontaigne Inc, et al.*, USDC-Western District of Arkansas Case No. G:07-cv-05153-JLH.
 - i. A copy of Notification Letter to Manfred Pscherer, Atlas Press, Inc., adjoining property owner.
2. TransMontaigne shall continue to submit to ADEQ Semi-Annual Groundwater Monitoring Reports for the Second and Fourth Quarters of each year. These Semi-Annual Groundwater Monitoring Reports will include groundwater monitoring data and a summary of corrective action including remediation system operation and maintenance reporting. Semi-Annual sampling is typically conducted during the months of June and December. Based upon the anticipated continuation of that schedule, reports will be submitted approximately forty-five (45) days after completion of field work. Upon written request of TransMontaigne, ADEQ may approve less frequent reporting.
3. TransMontaigne shall continue to submit to ADEQ Semi-Annual Corrective Action Progress Reports during the First and Third Quarters of each year. These Corrective Action Reports will include information from the previous two quarters including:
- i. Remediation system operation and maintenance details;
 - ii. Remediation system monitoring data including:
 - 1. Treated water effluent concentrations and flow rate; and
 - 2. Total volatile organic compound (VOC) concentration emissions from the remediation system operations.
 - iii. Information regarding free product recovery and dissolved-phased constituents;
- and

- iv. Remediation system changes, data collection, testing or other activities if conducted.

Reports will be submitted approximately forty-five (45) days after the end of the Quarter.

Upon written request of TransMontaigne, ADEQ may approve less frequent reporting.

4. TransMontaigne agrees to submit an amended remedial action workplan within sixty (60) calendar days of receiving written notification from ADEQ that additional remediation is required. TransMontaigne may at any time develop and submit a proposal to ADEQ recommending a method to establish site-specific remedial goals for the purpose of establishing an end-point for TransMontaigne's remedial activities and monitoring requirements, hereinafter referred to as the Endpoint Conformance Proposal ("ECP"). The ECP may include, but is not limited to, further remedial action believed to be necessary to achieve the site-specific remedial goals, a method and schedule for monitoring the effectiveness of the remedial activities, and a method and schedule for monitoring any further action taken by TransMontaigne to achieve the agreed end-point goals. Once the ECP is approved by the parties, it shall become binding upon the parties. However, the ECP may be revised and amended, by agreement of the parties, as necessary to achieve the site-specific remedial goals.
5. Pursuant to Ark. Code Ann. § 8-7-409(a) *et seq.*, the Director of the Arkansas Department of Environmental Quality may, without notice or hearing, issue an order reciting the existence of such an imminent hazard and substantial endangerment and requiring that such action be taken as the Director determines necessary to protect the health and safety of any affected or threatened persons or the environment and to otherwise meet the emergency.
6. TransMontaigne hereby designates a Project Manager who shall be responsible for overseeing the implementation of all site investigation, remediation and closure activities

subject to the requirements of this Order. The Project Manager shall communicate with ADEQ on all technical issues which arise under this Order and shall be empowered to agree on minor modifications in the implementation of any of the investigation or remediation tasks subject to the requirements of this Order when such modifications are deemed by ADEQ to further the purpose of this Order. TransMontaigne may change their Project Manager by providing written notice of such change to the ADEQ. The initial Project Manager shall be:

Doug Hall, P.G., Director of Environmental Compliance
TransMontaigne Partners, LP
1670 Broadway, Suite 310
Denver, CO 80202
Ph No. (303) 626-8200
Fax No. (303) 626-8228

7. All submittals required by this Order shall be subject to applicable Document Review Fees pursuant to the requirements of APC&EC Regulation No. 23, Section 6(t).
8. TransMontaigne shall submit to ADEQ one (1) electronic copy and one (1) hard copy of all reports, documents, plans or specifications required under the terms of this Order.
9. All submittals required by the Order and Agreement shall be electronically emailed to crist@adeq.state.ar.us, or other designee, submitted by Certified Mail, other means of commercial delivery (i.e. FedEx or UPS), or hand delivered to Tom Crist, Enforcement and Inspection Branch, Hazardous Waste Division, ADEQ, 5301 Northshore Drive, North Little Rock, Arkansas 72118-5317.
10. All requirements by the Order and Agreement are subject to approval by ADEQ. Unless otherwise specified herein, in the event of any deficiencies, TransMontaigne shall, within the timeframe specified by ADEQ, submit any additional information or changes requested, or take additional actions specified by ADEQ to correct any such deficiencies. Failure to

adequately respond to such Notice of Deficiency (NOD) within the timeframe specified in writing by ADEQ constitutes a failure to meet the requirements established by this Order.

11. If any event occurs, including but not limited to Natural Disasters, which causes or may cause delay in the achievement of compliance by TransMontaigne with the requirements of this Order, TransMontaigne shall notify ADEQ, in writing, or by electronic mail, as soon as reasonably possible after it is apparent that a delay will result, but in no case after the deadline has passed. The written notice shall describe in detail the anticipated length of delay, the precise cause of delay, the measures taken and to be taken to minimize the delay, and the timetable by which those measures are implemented
12. ADEQ may grant a written extension of any provision of this Order, provided that TransMontaigne requested such an extension in writing, or by email, and provided that the delay or anticipated delay has been caused by circumstances beyond the control of and without the fault of TransMontaigne. The time for performance may be extended for a reasonable period but, in no event longer than the period of delay resulting from such circumstances.
13. The burden of proving that any delay is caused by circumstances beyond the control of and without fault of TransMontaigne and the length of delay attributable to such circumstances shall rest with TransMontaigne.
14. Nothing contained in this Order shall be construed as a waiver of ADEQ's enforcement authority over alleged violations not specifically addressed herein; nor does this Order exonerate past, present, or future conduct which is not expressly addressed herein.
15. Nothing contained herein shall relieve TransMontaigne of any other obligations imposed by any local, state, or federal laws, nor shall this Order be deemed in any way to relieve TransMontaigne of its responsibilities for obtaining or complying with any necessary permits or licenses.

16. This Order shall be effective upon the date of execution.
17. Unless otherwise specified in this Order, all times for performance of ordered activities shall be calculated from this effective date.
18. However, this Order is subject to public review and comment and may be altered or rescinded based upon comments received within the thirty (30) calendar day public comment period or based on any other considerations which may subsequently come to light. Additionally, this Order is subject to being reopened upon Arkansas Pollution Control & Ecology Commission initiative or in the event a petition to set aside this Order is granted by the Commission.
19. This Order shall apply to and be binding upon ADEQ and upon Respondent, their successors, and assigns.
20. Any changes in ownership or corporate status of Respondent, including, but not limited to, any transfer of shares, assets or other real or personal property, shall in no way alter Respondent's obligations under this Order.

21. Each of the undersigned representatives of the parties certifies that he or she is authorized to execute this Order and to legally bind that party to its terms and conditions.

SO ORDERED THIS 19th DAY OF May, 2010.



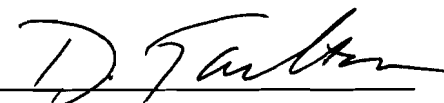
TERESA MARKS

DIRECTOR

APPROVED AS TO FORM AND CONTENT:

TRANSMONTAIGNE PARTNERS L.P

d/b/a RAZORBACK, LLC

BY: Signature 
Print or Type Name Dudley Tarlton
Title V.P. - ESOH
Date 5-17-2010