

STATE OF NEW YORK  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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In the Matter of the Alleged Violations of  
Articles 3, 17 & 71 of the Environmental Conservation  
Law (“ECL”), Article 12 of the Navigation Law of the  
State of New York and Title 6 of the Official Compilation  
of Codes, Rules and Regulations (“6 NYCRR”) of the  
State of New York by:

**CONSENT  
ORDER**

**Case No. 07-51061SWO**

ExxonMobil Oil Corporation,  
Respondent.

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**WHEREAS:**

1. The New York State Department of Environmental Conservation (the “Department”) is an agency of the State of New York, which, pursuant to Titles 3 and 10 of Article 17 of the Environmental Conservation Law (“ECL”), is authorized to regulate the storage and handling of petroleum in the State of New York.
2. Respondent, ExxonMobil Oil Corporation, is a corporation authorized to do business in the State of New York.
3. Respondent is the owner and/or operator of a petroleum bulk storage facility (the “Facility”) named Mobil Station 17-QDM located on/at 150-54 West 145th Street, New York, New York.
4. Navigation Law §173 prohibits the discharge of petroleum.
5. The Department alleges that Respondent discharged petroleum in violation of the Navigation Law at the Facility and damaged natural resources.

6. The Respondent, without admitting or denying the allegations made and the violations described herein, agree to enter into this Consent Order to address the petroleum contamination at, arising from or relating to this Facility. Respondent have consented to the issuing and entering of this Order on Consent pursuant to the provisions of Articles 17 and 71 of the ECL, and have agreed to be bound by the provisions, terms and conditions herein. Except in relation to the responsibilities set forth in this Order, the existence of this Consent Order or Respondent's compliance with this Order shall not be construed as an admission of liability, fault, or wrongdoing by Respondent, and shall not give rise to any presumption of law or finding of fact which shall inure to the benefit of any third party.

THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION HEREBY ORDERS  
THAT:

**I. COMPLIANCE SCHEDULE**

- A. Upon the effective date of this Order, this Consent Order shall supercede any Stipulation Agreement or any emergency authorization issued by the Department and shall govern hereinafter all remedial activities to be conducted at the Facility.
- B. Respondent shall comply with the terms and schedule set forth in the Corrective Action Plan (attachment A), which shall be deemed incorporated into and enforceable as part of this Order. The Corrective Action Plan may be modified in writing and may be agreed between the parties, and as set forth below.
- C. In addition, Respondent shall comply with the following requirements relating to all additional remedial or investigative plans. All remedial or investigative plans or reports, which Respondent must submit pursuant to this Order, are subject to the

Department's approval. Except as otherwise specifically provided, this approval process shall be as follows:

(1) The Department shall make a good faith effort to review and respond in writing to each of the submittals Respondent make pursuant to this Order within sixty (60) Days. The Department's response shall include an approval or disapproval of the submittal, in whole or in part. All Department-approved submittals shall be incorporated into and become an enforceable part of this Order.

(2) If the Department disapproves a submittal, it shall specify the reasons for its disapproval. Within forty-five (45) days after the date of Respondent's receipt of the Department's written notice that Respondent's submittal has been disapproved, Respondent may submit a revised submittal addressing the Department's comments. To the extent Respondent deem it necessary to have additional time to modify its submittal, Respondent may request such additional time with a justification for it. The Department's approval of such additional time shall not unreasonably be withheld.

(3) After the Department's receipt of Respondent's revisions, the Department shall notify Respondent in writing of its approval or disapproval. If the Department approves the revised submission, Respondent shall implement it in accordance with the schedule and terms, as approved.

(4) If the Department determines that Respondent have failed to appropriately address the Department's comments, Respondent shall be in violation of this Order, and the Department shall proceed to enforce the violation as it deems appropriate. Respondent reserve any rights it may have to file an Article 78 action to challenge any final decision of the Department.

(5) The Department agrees that any modifications it specifies will be reasonable and consistent with customary engineering standards for remediation at retail service stations.

(6) Within thirty (30) Days after the Department's approval of a final report, Respondent shall submit such final report, as well as all data gathered and drawings and submittals made pursuant to such Work Plan, in an electronic format acceptable to the Department. If any document cannot be converted into electronic format, Respondent shall submit such document in an alternative format acceptable to the Department.

## **II. SPILL COMPENSATION FUND**

Notwithstanding any other provision of this Order, if with respect to the Facility there currently exists or may exist in the future a claim of any kind or nature on the part of the New York State Environmental Protection and Spill Compensation Fund against Respondent or any of its successors or assigns, nothing in this Order shall be construed, or deemed, to preclude the State of New York from recovering such claims plus applicable fines and/or penalties from Respondent or any of its successors or assigns. Respondent reserve its rights to recover costs incurred under this Order from any appropriate third party, other than the State of New York or the New York State Environmental Protection and Spill Compensation Fund.

### **III. THE DEPARTMENT'S RESERVATION OF RIGHTS**

If, for any other reason, Respondent fail to comply with any of the requirements of this Order, the Department reserves the right to perform the work. Under such circumstances, the Department will either bring administrative enforcement including cost recovery, or refer to the Attorney General a request that the Attorney General pursue Respondent or any of its successors or assigns, for reimbursement to the New York State Environmental Protection and Spill Compensation Fund [New York Navigation Law Article 12] of any costs relating to the work performed by Department plus any applicable fines and/or penalties.

### **IV. PENALTIES**

Respondents are hereby assessed a civil penalty in the amount of fifty thousand (\$50,000) dollars for the violations stated herein.

### **V. ACCESS**

Respondent shall use "best efforts" to obtain all Site access, permits, easements, right-of-way, rights-of-entry, approvals, institutional controls, or authorizations necessary to perform Respondent's obligations under this Order. If Respondent is unable to gain access to a location, which the Department has determined must be accessed for investigation and/or remediation required under this Order, or unable to obtain building, zoning or wetlands permits for the remediation work, solely at the request of Respondent, the Department agrees, to the extent authorized by law, to assist the Respondent in gaining such access or permits. If, even with the Department assistance, such access is still unavailable to the Respondent, the Department will, to the extent that it deems necessary, legally obtain access for the Department's Contractors to do such work, in which case the Department shall consider hiring

the Respondent's contractor to do such work. Providing that such consideration must be consistent with the Department's normal contractual procurement procedures. If the Department has to utilize its Contractors, Respondent shall, within 30 days of receipt of the bills, reimburse the Department for all costs that the State incurs.

Respondent's inability to gain access to a location, which the Department has determined must be accessed pursuant to this Order, or to obtain any permits necessary for the remediation work, in a timely manner, despite good faith efforts, shall not be deemed non-compliance with this Order.

#### **VI. INVESTIGATION AND REMEDIATION COSTS**

Department Costs. Within 30 days of the effective date of this Consent Order, Respondent shall pay to the Department costs in the amount of ten thousand (\$10,000) dollars. Respondent shall also pay to the Department costs in the amount of forty thousand (\$40,000) dollars, which shall represent full reimbursement for all past and future costs of the Department, including, but not limited to, 1) direct labor, 2) fringe benefits, 3) indirect costs, 4) travel incurred by the State of New York, 5) negotiation of this Consent Order, 6) review of submittals and revised submittals made pursuant to this Consent Order. The Department agrees that it will not seek any additional sums from the Respondent for past or future costs attributable solely to the Department Oversight of the remediation work at the site. For the purposes of this Order, it is expressly understood and agreed that the term, "Department Oversight Costs" shall be the relevant costs of Department Staff (including NYS Department of Health Staff), including, but not limited to, 1) direct labor, 2) fringe benefits, 3) indirect costs, 4) travel incurred by the State of New York, 5) negotiation of this Consent Order, 6)

review of submittals and revised submittals made pursuant to this Consent Order. It is expressly agreed that Department Oversight Costs, as defined above, shall not include any contractual costs which have been or which may be incurred by the State of New York pursuant to the Environmental Conservation Law or Sections 176 or 181 of the Navigation Law.

#### **VII. CLOSURE**

The Department, upon submission by Respondent of satisfactory documentation (as set forth in the Corrective Action Plan) that Respondent have substantially complied with the requirements of this Order, shall issue a letter (within a reasonable time period) confirming that Respondent have completed the requirements of the Order.

#### **VIII. NOTICES**

Any notice, request, consent, waiver or other communication required or permitted to be given throughout this Consent Order shall be effective only if in writing and shall be deemed sufficient only if delivered in person or sent by first class mail, e-mail, telecopy, overnight or by certified or registered mail, postage prepaid, return receipt requested, addressed as follows:

To ExxonMobil:                      ExxonMobil Oil Corporation  
Ken Drake  
297 Route 72W  
Suite 35, #285  
Manahawkin, NJ 08050-2890

With a copy to:                      Kevin J. Vaughan  
ExxonMobil Law Department  
3225 Gallows Road, Rm 3D2109  
Fairfax, VA 22037

ExxonMobil Oil Corporation  
Case Number 07-51061SWO

Mobil Station 17-QDM  
2 November 2009

To the Department:

Michael Haggerty  
NYS Department of Environmental Conservation  
Division of Environmental Remediation  
Floor 12  
625 Broadway  
Albany, New York 12233-7016

With Copy to:

Scott W. Owens, Esq.  
NYS Department of Environmental Conservation  
Division of Environmental Enforcement  
625 Broadway, 14<sup>th</sup> Floor  
Albany, New York 12233-5550

Or such other people as the parties may designate.



**IX. STANDARD PROVISIONS** Respondent shall further comply with the standard provisions which are attached, and which constitute material and integral terms of this Order and are hereby incorporated into this document.

DATED: NOV 16, 2009

, New York

New York State Department of Environmental Conservation

By: *[Signature]*

CONSENT BY RESPONDENT

Respondent hereby consents to the issuing and entering of this Order without further notice, and agrees to be bound by the terms, conditions and provisions contained in this Order.

~~ExxonMobil Oil~~  
~~ExxonMobil Corporation~~ Respondent

By (Signature): *[Signature]* (w)

Title: GLOBAL ASSET MGMT MGR

Print Name: STEVEN C POLKEY

Date: Nov 5, 2009

ACKNOWLEDGMENT

STATE OF ~~NEW YORK~~ <sup>VIRGINIA</sup> )ss:

COUNTY OF ~~FAIRFAX~~ )

On the 5<sup>th</sup> day of November in the year 2009 before me personally came to me, known, who being by me duly sworn, did depose and say that s/he is the Agent and Attorney-in-Fact of, the corporation described in and which executed the above instrument; and that s/he signed his/her name thereto by authority of the board of said corporation.

*Steven C. Polkey*

Notary Public, Signature and Office of individual taking acknowledgment

*[Signature]*



## STANDARD PROVISIONS

**Payment.** Any penalty or oversight cost assessed pursuant to the terms and conditions of this Order shall be paid by submitting a certified or cashier's check or money order, payable to the Department of Environmental Conservation, to: Department of Environmental Conservation, Division of Environmental Enforcement, Attn: Maria Mastroianni, 14<sup>th</sup> Floor, 625 Broadway, Albany, New York 12233-5550. Unpaid penalties and oversight costs imposed by this Order shall bear interest at the rate of 9 percent per annum for each day the penalty, or any portion thereof, remains unpaid. Payments received shall first be applied to accrued interest charges and then to the unpaid balance of the penalty.

**Duration.** This Order shall take effect when it is signed by the Commissioner of Environmental Conservation, or her designee, and shall expire when the Department notifies the Respondent that the Respondent has substantially complied with the requirements of this Order.

**Access.** For the purpose of monitoring or determining compliance with this Order, employees and agents of the Department shall be provided access to any facility, site, or records owned, operated, controlled or maintained by Respondent, in order to inspect and/or perform such tests as the Department may deem appropriate, to copy such records, or to perform any other lawful duty or responsibility.

**Force Majeure.** If Respondent cannot comply with a deadline or requirement of this Order, because of an act of God, war, strike, riot, catastrophe, or other condition which was not caused by the negligence or willful misconduct of Respondent and which could not have been avoided by the Respondent through the exercise of due care, Respondent shall apply in writing to the Department within a reasonable time after obtaining knowledge of such fact and request an extension or modification of the deadline or requirement.

**Indemnity.** Respondent shall indemnify and hold the Department, the State of New York, and their representatives and employees harmless for all claims, suits, actions, damages and costs resulting from the acts and/or omissions of Respondent, intentional, negligent, or otherwise, of every nature and description, arising out of or resulting from the compliance or attempted compliance with the provisions of this Order by Respondent or its employees, servants, agents, successors or assigns.

**Modifications.** Except in relation to changes in the Corrective Action Plan, which may be modified by agreement between the parties without amendment to this Order, no change in this Order shall be made or become effective except as specifically set forth by written order of the Commissioner or her designee, being made either upon written application of Respondent, or upon the Commissioner's own findings after notice and opportunity to be heard have been given to Respondent. Respondent shall have the burden of proving entitlement to any modification requested pursuant to this Standard Provision or the "Force Majeure" provision, *supra*. Respondent's requests for modification shall not be unreasonably denied by the Department, which may impose such additional conditions upon Respondent as the Department deems appropriate.

**Other Rights.** Nothing contained in this Order shall be construed as barring, diminishing, adjudicating or in any way affecting (1) any legal, administrative or equitable rights or claims, actions, suits, causes of action or demands whatsoever that the Department may have against anyone other than Respondent; (2) any right of the Department to enforce administratively or at law or in equity, the terms, provisions and conditions of this Order; (3) any right of the Department to bring any future action, either administrative or judicial, for any other violations of the ECL, the rules and regulations promulgated thereunder, or conditions contained in orders or permits, if any, issued by the Department to Respondent; (4) the summary abatement powers of the Department, either at common law or as granted pursuant to statute or regulation.

**Entire Agreement.** This Order shall constitute the entire agreement of the Department and Respondent with respect to settlement of those violations specifically referenced herein.

**Binding Effect.** The provisions, terms, and conditions of this Order shall be deemed to bind Respondent and Respondent's heirs, legal representatives, receivers, trustees in bankruptcy, successors and assigns.

**Multiple Respondents.** If more than one Respondent is a signatory to this Order, use of the term "Respondent" in these Standard Provisions shall be deemed to refer to each Respondent identified in the Order.



## **REVISED CORRECTIVE ACTION PLAN SCHEDULE**

**Mobil Service Station No. 12827 (17-QDM)  
150-54 West 145<sup>th</sup> Street  
New York, New York**

**June 26, 2009**

This Revised Corrective Action Plan (CAP) will provide ExxonMobil Environmental Services Company (the Respondent) with general conditions to properly investigate and remedy the presence of subsurface hydrocarbons associated with the Mobil service station located at 150-54 West 145<sup>th</sup> Street in New York, New York (the Site).

Upon New York State Department of Environmental Conservation (NYSDEC) approval of this CAP, Respondent must complete the investigatory and remedial work included below:

- 1.) Within 60 days approval of the Remedial Action Plan (RAP), Respondent will initiate the activities detailed in the RAP.
- 2.) Within 90 days of the execution of the Order, the Respondent will submit a Site Status Update Report to the NYSDEC. Site Status Update Reports will continue to be submitted to the NYSDEC on a quarterly basis until a written request to reduce the reporting frequency and/or elimination of the requirement is approved by the NYSDEC.

Respondent and the NYSDEC shall work cooperatively in an effort to complete the work outlined in the CAP. Any unforeseen delays in implementing any Item(s) (either in part or wholly) of the CAP shall be communicated by the Respondent in writing and an appropriate extension requested. Upon approval of the extension, the Item(s) shall be completed according to the approved revised schedule.