



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

AUG 30 2012

UNITED PARCEL SERVICE - OVERNIGHT DELIVERY
SIGNATURE TRACKING

Mr. Carl A. Gerhardstein
AVP Environmental System and Sustainability
CSX Transportation, Inc.
Public Safety & Environment Department
500 Water Street, Mail Code J-275
Jacksonville, Florida 32202

Re: Transmittal of Consent Agreement and Final Order
Discharge of Oil and/or Hazardous Substances
National Response Center Report No. 942506

Dear Mr. Gerhardstein:

Enclosed please find a copy of the executed CAFO as filed with the Regional Hearing Clerk (RHC) in the above referenced matter. The CAFO is effective on the date it is filed with the RHC, and the penalty due date is calculated from the effective date.

Also enclosed, please find a copy of a document entitled "Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings." This document puts CSX, Transportation, Inc. on notice of its potential duty to disclose to the Securities Exchange Commission any environmental actions taken by the United State Environmental Protection Agency

If you have any questions, please contact Alan Newman at (404) 562-8589. Legal questions should be directed to Bonnie Sawyer, Associate Regional Counsel, at (404) 562-9539.

Sincerely,

A handwritten signature in black ink, appearing to read "César A. Zapata for".

César A. Zapata
Chief, RCRA and OPA Enforcement and
Compliance Branch

Enclosures

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF)

CSX Transportation, Inc.)
500 Water Street, J-275)
Jacksonville, Florida 32202)

Respondent)

) CWA SECTION 311 CLASS)
) CONSENT AGREEMENT AND)
) FINAL ORDER)
) UNDER 40 C.F.R. § 22.13(b))

) Docket No. CWA-04-2012-5128(b))

HEARING CLERK

2012 AUG 30 PM 3:51

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LEGAL AUTHORITY

This Consent Agreement and Final Order (CAFO) is proposed and entered into under the authority vested in the Administrator of the United States (U.S.) Environmental Protection Agency (EPA) by Section 311(b)(6)(B)(i) of the Clean Water Act (CWA), 33 U.S.C. § 1321(b)(6)(B)(i), and pursuant to 40 C.F.R. §§ 22.13(b) and 22.18(b)(2). The Administrator has delegated her authority to the Regional Administrator of EPA, Region 4, who has in turn delegated her authority through the Director, Resource Conservation and Recovery Act (RCRA) Division, to the Chief, RCRA and Oil Pollution Act (OPA) Enforcement and Compliance (Complainant).

CONSENT AGREEMENT

Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18 and desire to settle this action. Accordingly, before any testimony has been taken upon the pleadings and without any admission of violation or adjudication of any issue of fact or law and in accordance with 40 C.F.R. § 22.13(b), Complainant and Respondent have agreed to the execution of this CAFO, and Respondent hereby agrees to comply with this CAFO.

For purposes of this CAFO and settlement of this action, Respondent admits to the jurisdictional statements contained herein.

Stipulations

1. Respondent is a corporation organized under the laws of Virginia and is therefore a “person” as defined in Section 311(a)(7) of the CWA, 33 U.S.C. § 1321(a)(7).

2. Respondent was the “owner or operator” (as defined in Section 311(a)(6) of the CWA, 33 U.S.C. § 1321(a)(6)) of two refrigerated rail cars (facility), which constituted an “onshore facility” (as defined in Section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10)) at the time relevant to this CAFO.

3. The facility was located, at the time relevant to this CAFO, 200 meters north of Highway 138 just east of Slaughters, Kentucky in Webster County.

4. County Ditch is a navigable water under Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and 40 C.F.R § 110.1, and therefore subject to CWA Section 311 jurisdiction.

5. Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3), prohibits the discharge of oil into navigable waters of the U.S. in quantities that “may be harmful.”

6. Pursuant to 40 C.F.R § 110.3, discharges of oil in quantities that “may be harmful” include discharges of oil that (1) violate applicable water quality standards; or (2) cause a film, sheen, or discoloration of the surface water or adjoining shorelines, or cause a sludge or emulsion to be deposited beneath the surface water or on adjoining shorelines.

Allegations

Complainant alleges, and Respondent neither admits nor denies, that:

7. On June 1, 2010, Respondent discharged 7.4 barrels of oil (as defined in Section 311(a)(1) of the CWA, 33 U.S.C. § 1321(a)(1)) from its facility into County Ditch.

8. The June 1, 2010, discharge described in paragraph 7 caused a sheen and/or discoloration of the surface water of County Ditch and the adjoining shoreline. Therefore, the discharge was in a quantity that may be harmful pursuant to 40 C.F.R § 110.3. Accordingly, Respondent violated Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3).

Waiver of Rights

9. Respondent waives the right to contest the allegations contained herein, to a hearing under Section 311(b)(6)(B)(i) of the CWA, 33 U.S.C. § 1321(b)(6)(B)(i), or to appeal any Final Order in this matter under Section 311(b)(6)(G)(i) of the CWA, 33 U.S.C. § 1321(b)(6)(G)(i), and consents to the issuance of a Final Order without further adjudication.

Penalty

10. Respondent agrees to pay a civil penalty of Three Thousand One Hundred Dollars (\$3,100.00).

Payment Terms

11. No later than 30 days after the effective date of the Final Order, Respondent shall pay the penalty by corporate cashier's or certified check, electronic funds transfer (EFT), or on-line. If paying by check, it shall be payable to "Environmental Protection Agency," bearing the notation "OSLTF – 311," and Respondent shall note the title and docket number of this case.

If Respondent sends payment by the U.S. Postal Service, the payment shall be sent to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
Post Office Box 979077
St. Louis, Missouri 63197-9000

If paying by EFT, Respondent shall transfer the payment to:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street

New York, New York 10045
Field Tag 4200 of the Fedwire message should read
“D 68010727 Environmental Protection Agency”

If paying on-line, access at www.pay.gov. Enter “sfo 1.1” in the search field and then open the form and complete the required fields.

12. Respondent shall submit a copy of the check, EFT, or on-line payment to:

Patricia Bullock
Regional Hearing Clerk
U.S. EPA- Region 4
61 Forsyth Street, SW
Atlanta, Georgia 30303

and to:

Doug McCurry, Chief
North Enforcement and Compliance Section
RCRA and OPA Enforcement and Compliance Branch
U.S. EPA- Region 4
61 Forsyth Street, SW
Atlanta, Georgia 30303

13. Respondent’s failure to pay the penalty assessed by the Final Order in full by its due date may subject Respondent to a civil action to collect the assessed penalty, plus interest, attorney's fees, costs, and an additional quarterly nonpayment penalty pursuant to Section 311(b)(6)(H) of the CWA, 33 U.S.C. § 1321(b)(6)(H). In any such collection action, the validity, amount and appropriateness of the penalty agreed to herein shall not be subject to review.

14. Pursuant to 26 U.S.C. § 162(f), the penalty is not tax deductible.

General Provisions

15. The Final Order shall be binding upon Respondent and Respondent’s officers, directors, agents, and successors or assigns.

16. The Final Order does not constitute a waiver, suspension or modification of the requirements of Section 311 of the CWA, 33 U.S.C. § 1321, or any regulations promulgated thereunder, and does not affect the right of the Administrator or the United States to pursue any applicable injunctive or other equitable relief or criminal sanctions for any violation of law. Payment of the penalty pursuant to this CAFO resolves only Respondent's liability for federal civil penalties for the violations and facts stipulated to and alleged herein. Except as otherwise set forth, compliance with this CAFO resolves the allegations of violations contained herein.

17. The undersigned representative of Respondent hereby certifies that he or she is authorized to execute and legally bind Respondent to the terms and conditions of this CAFO.

18. A copy of any documents that Respondent files in this action shall be sent to the following attorney who represents EPA and is authorized to receive service in this matter:

Bonnie Sawyer
Associate Regional Counsel, EPA Region 4
61 Forsyth Street, SW
Atlanta, Georgia 30303

19. A copy of any documents that Complainant files in this action shall be sent to the following individual who represents Respondent and is authorized to receive service in this matter:

Carl A. Gerhardstein
AVP Environmental Systems and Sustainability
CSX Transportation, Inc.
Public Safety & Environment Department
500 Water Street, J-275
Jacksonville, Florida 32202


Effective Date

20. This CAFO is effective when it is filed with the Regional Hearing Clerk.

CONSENTED AND AGREED TO:

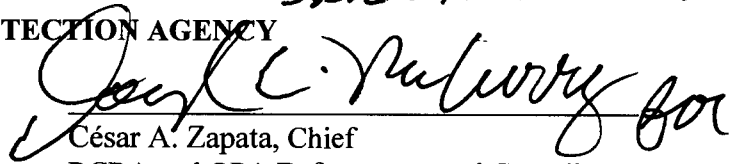
CSX TRANSPORTATION, INC.

Date: 8/15/12


Name: CARL P. GERHARDSSTEIN
Title: ASST. U.P. ENVIRONMENTAL
SYSTEMS & SUSTAINABILITY

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: 8/30/12


César A. Zapata, Chief
RCRA and OPA Enforcement and Compliance Branch

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF)	CWA SECTION 311 CLASS I
)	CONSENT AGREEMENT AND
CSX Transportation, Inc.)	FINAL ORDER
500 Water Street, J-275)	UNDER 40 C.F.R. § 22.13(b)
Jacksonville, Florida 32202)	
)	
Respondent)	Docket No. CWA-04-2012-5128(b)
_____)	

FINAL ORDER

The foregoing Consent Agreement is hereby approved, ratified and incorporated by reference into this Final Order in accordance with the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*, 40 C.F.R. Part 22. The Respondent is hereby ORDERED to comply with all of the terms of the Consent Agreement effective immediately upon its filing with the Regional Hearing Clerk. This Order disposes of this matter pursuant to 40 C.F.R. §§ 22.18 and 22.31.

BEING AGREED, IT IS SO ORDERED this 30 day of August, 2012.

BY: Susan B. Schub
Susan B. Schub
Regional Judicial Officer

In the Matter of CSX Transportation, Inc.
Docket Number: CWA-04-2012-5128(b)

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the Foregoing Consent Agreement and Final Order, in the matter of CSX Transportation, Inc., Docket No. CWA-04-2012-5128(b), on the parties listed below in the manner indicated:

Bonnie Sawyer (Via EPA's internal mail)
Office of Environmental Accountability
U.S. EPA - Region 4
61 Forsyth Street
Atlanta, Georgia 30303-8960

Alan Newman (Via EPA's internal mail)
RCRA and OPA Enforcement and Compliance Branch
U.S. EPA - Region 4
61 Forsyth St., S.W.
Atlanta, Georgia 30303-8960

Quantindra Smith (Via EPA Internal mail)
RCRA and OPA Enforcement and Compliance Branch
U.S. EPA, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

Carl A. Gerhardstein (Via Certified Mail)
AVP Environmental Systems and Sustainability
CSX Transportation, Inc
Public Safety a & Environment Department
500 Water Street, J-275
Jacksonville, Florida 29243

Dated this 30 day of August, 2012.



Patricia Bullock, Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, SW
Atlanta, Georgia 30303-8960
(404) 562-9511