



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

FEB 17 2011

Elizabeth Rothenberg
McGuireWoods LLP
Bank of America Tower
50 North Laura Street, Suite 3300
Jacksonville, Florida 32202-3661

Re: CSX Transportation, Inc.
Consent Agreement and Final Order - Docket No. CWA-04-2011-5130(b)

Dear Ms. Rothenberg:

Enclosed please find a fully executed Consent Agreement and Final Order issued pursuant to Section 311(b)(6)(B)(ii) of the Clean Water Act, 33 U.S.C. § 1321(b)(6)(B)(ii), as amended by the Oil Pollution Act of 1990.

Thank you for your assistance in the resolution of this matter. Please feel free to contact me at (404) 562-9539, or contact Brian Gross at (404) 562-8604, if you have any additional questions or comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Bonnie Sawyer".

Bonnie Sawyer
Associate Regional Counselor

**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-875)	UNDER 40 C.F.R. § 22.13(b)
Jacksonville, Florida 32202)	
)	
Respondent)	Docket No. CWA-04-2011-5130(b)

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EPA REGION 4

LEGAL AUTHORITY

This Consent Agreement is proposed and entered into under the authority vested in the Administrator of the 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), as amended by the Oil Pollution Act of 1990, and under the authority provided by 40 C.F.R. §§ 22.13(b) and 22.18(b)(2). The Administrator has delegated these authorities to the Regional Administrator of EPA, Region 4, who has in turn delegated these authorities through the Director, RCRA Division, to the Chief, RCRA and OPA Enforcement and Compliance Branch, RCRA Division ("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 Consent Agreement and Final Order (CAFO), and Respondent hereby agrees to comply with the terms of this CAFO. For purposes of this CAFO and settlement of this action, Respondent admits to the jurisdictional statements contained herein.

Stipulations

1. Respondent, CSX Transportation, Inc. ("CSX"), is a Virginia corporation. Respondent is a person within the meaning of Section 311(a)(7) of the CWA, 33 U.S.C. § 1321(a)(7).
2. The Respondent was the "owner and operator" (as defined in Section 311(a)(6) of the Act, 33 U.S.C. § 1321(a)(6)) of a railroad locomotive located near the Armco Road crossing in Ashland, Kentucky (the facility) at all times relevant to this CAFO.
3. The facility is an "onshore facility" within the meaning of Section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10).
4. Hood Creek and the Ohio River are navigable waters as defined in Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and 40 C.F.R. § 110.1, and are therefore subject to the jurisdiction of Section 311 of the CWA.
5. Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3), prohibits the discharge of oil into or upon the navigable waters of the United States or adjoining shorelines in such quantities that have been determined may be harmful to the public health or welfare or environment of the United States.
6. Pursuant to Section 311(b)(4) of the CWA, 33 U.S.C. § 1321 (b)(4), the determination of quantities of oil that may be harmful and thereby prohibited under Section 311(b)(3), 33 U.S.C. § 1321 (b)(3), is found at 40 C.F.R. § 110.3 and includes discharges of oil that (1) violate applicable water quality standards or (2) cause a film or a sheen upon or discoloration of the surface of the water or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of the water or upon the adjoining shorelines.

Allegations

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

7. On or about December 8, 2009, Respondent discharged approximately 71 barrels of oil as defined in Section 311(a)(1) of the Act, 33 U.S.C. § 1321(a)(1) from its facility into or upon Hood Creek and/or its adjoining shorelines.

8. Respondent's December 8, 2009, discharge caused a sheen upon or discoloration of the surface of the Ohio River and/or its adjoining shoreline, and, therefore, was in a quantity that has been determined 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. Solely for the purpose of this Consent Agreement, 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), 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 consents to the payment of a civil penalty of Ten Thousand, Three Hundred Twenty Dollars (\$10,320.00).

Payment Terms

11. No later than 30 days after the effective date of the Final Order, Respondent shall pay the penalty by means of a corporate or certified check, by electronic funds transfer (EFT), or on-line. If paying by check, Respondent shall submit a corporate cashier's or certified check,

payable to "Environmental Protection Agency," and bearing the notation "OSLTF – 311" and Respondent shall note the title and docket number of this case.

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

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

If the Respondent sends payment by an overnight commercial delivery service such as DHL, FedEx or UPS, the payment shall be sent to:

U.S. Bank
U.S. EPA Fines & Penalties
1005 Convention Plaza
Mail Station SL-MO-C2GL
ATTN Box 979077
St. Louis, Missouri 63101
(314) 418-4097

If the Respondent sends payment by wire transfer, the wire transfer should be directed to the Federal Reserve Bank of New York:

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 required fields.

12. Respondent shall submit copies of the check (or, in the case of a wire transfer or on-line payment, a copy of the wire transfer or on-line confirmation) to the following people:

Patricia Bullock
Regional Hearing Clerk
U.S. EPA- Region 4
Atlanta Federal Center
61 Forsyth Street, SW
Atlanta, Georgia 30303-8960

and to:

Doug McCurry, Chief
North Enforcement and Compliance Section
RCRA and OPA Enforcement and Compliance Branch
RCRA Division
U.S. EPA- Region 4
Atlanta Federal Center
61 Forsyth Street, SW
Atlanta, Georgia 30303-8960

13. Penalties paid pursuant to this Consent Agreement and Final Order (CAFO) are not deductible for federal purposes pursuant to 26 U.S.C. § 162(f).

14. 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 Act, 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.

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 herein, compliance with this CAFO shall resolve the allegations of violations contained herein.

17. The undersigned representative of Respondent hereby certifies that he or she is fully authorized to enter into and execute this Consent Agreement and to legally bind Respondent to the terms and conditions of this Consent Agreement and the attached Final Order.

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

Bonnie Sawyer
Associate Regional Counsel
Office of Environmental Accountability
U.S. EPA - Region 4
Atlanta Federal Center
61 Forsyth Street, SW
Atlanta, Georgia 30303-8960
(404) 562-9539
sawyer.bonnie@epa.gov

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

Elizabeth Rothenberg
McGuireWoods LLP
Bank of America Tower
50 North Laura Street, Suite 3300
Jacksonville, Florida 32202-3661
eroghenberg@mcguirewoods.com

Effective Date

20. This Consent Agreement and Final Order is effective when it is filed with the Regional Hearing Clerk.

CONSENTED AND AGREED TO:

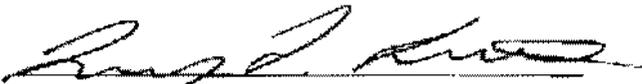
CSX Transportation, Inc.

Date: 02-09-11


Name: R. DE SIMONE
Title: DIR HAZ MAT

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: 02/16/11


Larry Lamberth, Acting Chief
RCRA and OPA Enforcement and Compliance Branch
RCRA Division

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF)	
)	CWA SECTION 311 CLASS 1
)	CONSENT AGREEMENT AND
CSX Transportation, Inc.)	FINAL ORDER
500 Water Street, J-875)	UNDER 40 C.F.R. § 22.13(b)
Jacksonville, Florida 32202)	
)	
Respondent)	Docket No. CWA-04-2011-5130(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 foregoing Consent Agreement effective immediately upon filing of this Consent Agreement and Final Order 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 17th day of February, 2011.

BY: Susan B. Schub
Susan Schub
Regional Judicial Officer

In the Matter of CSX Transportation Inc.
Docket Number: CWA-04-2011-5130(b)

CERTIFICATE OF SERVICE

I hereby certify that I have this day filed the foregoing Consent Agreement and the attached Final Order (CA/FO), in the Matter of CSX Transportation Inc., Docket Number: CWA-04-2011-5130(b), and that on this day, I served a true and correct copy of the CA/FO on the parties listed below in the manner indicated:

Via Certified Mail - Return Receipt Requested

Elizabeth Rothenberg
McGuireWoods LLP
Bank of America Tower
50 North Laura Street, Suite 3300
Jacksonville, Florida 32202-3661

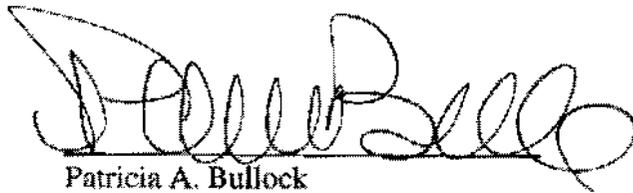
Via EPA's internal mail

Bonnie Sawyer
Associate Regional Counsel
U.S. EPA - Region 4

Via EPA's internal mail

Quantindra Smith
Environmental Protection Specialist
U.S. EPA - Region 4

DATED: 2-17, 2011



Patricia A. Bullock
Regional Hearing Clerk
U.S. EPA - Region 4
61 Forsyth Street, S.W.
Atlanta, GA 30303
(404) 562-9511