

2. The Respondent was the owner and operator within the meaning of Section 311(a)(6) of the Act, 33 U.S.C. § 1321(a)(6), and 40 C.F.R. § 110.1 of a railroad transportation vehicle (“the facility”) that was in Hattiesburg, Mississippi during the time of discharge.

3. The facility is an onshore facility within the meaning of Section 311(a)(10) of the Act, 33 U.S.C. § 1321(a)(10).

4. Myers Creek is a navigable water subject to the jurisdiction of Section 311 of the Act as defined in Section 502(7) of the Act, 33 U.S.C. § 1362(7), and 40 C.F.R. § 110.1.

5. Section 311(b)(3) of the Act prohibits the discharge of hazardous substances 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. For purposes of Sections 311(b)(3) and (b)(4) of the Act, discharges of hazardous substances into or upon the navigable waters of the United States in such quantities that have been determined may be harmful to the public health or welfare or the environment of the United States are discharges of hazardous substances identified in 40 C.F.R. Part 116 in excess of the corresponding quantities listed in 40 C.F.R. Part 117.

7. Respondent admits the jurisdictional statements contained herein.

Allegations

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

8. On March 8, 2007, Respondent discharged 18,260 gallons (231,902 pounds) of hydrochloric acid, which is designated as a hazardous substance in 40 C.F.R. Part 116, from its facility into or upon Myers Creek and/or its adjoining shorelines.

9. Respondent's discharge, as described in the preceding Paragraph, was in excess of the quantity of such substance established in 40 C.F.R. Part 117, which is 5,000 pounds. Consequently, Respondent's discharge was in a quantity that has been determined may be harmful under 40 C.F.R. Part 117, which therefore violated Section 311(b)(3) of the Act.

Waiver of Rights

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

11. Respondent waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during any discussions with, or to be served with and reply to, any memorandum or communication addressed to EPA officials where the purpose of such discussion, memorandum or communication is to persuade such official to accept and issue this Consent Agreement or the Final Order.

Penalty

12. The Complainant proposes, and Respondent consents to, the assessment of a civil penalty of \$20,000.00.

Payment Terms

Based on the forgoing, the parties, in their own capacity or by their attorneys or authorized representatives, hereby agree that:

13. No later than 30 days after the effective date of the Final Order, the Respondent shall pay the amount of \$20,000.00 by means of a corporate cashier's or certified check, or by electronic funds transfer (EFT). If paying by check, the Respondent shall submit a corporate

cashier's or certified check, payable to "Environmental Protection Agency," and bearing the notation "OSLTF – 311." If the Respondent sends payment by the U.S. Postal Service, the payment shall be addressed to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 93197-9000

If paying by EFT, the Respondent shall transfer \$20,000.00 to:

Federal Reserve Bank of New York
ABA 021030004
Account 68010727
33 Liberty St.
New York, NY 10045

Field tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency." In the case of an international transfer of funds, the Respondent shall use SWIFT address FRNYUS33.

14. If paying by check, the Respondent shall note on the penalty payment check the title and docket number of this case. The Respondent shall submit copies of the check (or, in the case of an EFT transfer, copies of the EFT confirmation) to the following people:

Patricia Bullock
Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 4
SNAFC
61 Forsyth Street, SW
Atlanta, GA 30303

Frank Ney, Acting Chief
South Enforcement and Compliance Section
RCRA and OPA Enforcement and Compliance Branch
RCRA Division
U.S. Environmental Protection Agency

Region 4
SNAFC
61 Forsyth Street, SW
Atlanta, GA 30303

15. 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

16. Complainant reserves the right, pursuant to 40 C.F.R. § 22.45(c)(4)(iii), to withdraw from this Consent Agreement and proposed Final Order within 15 days of receipt of a Commenter's petition requesting, pursuant to 40 C.F.R. § 22.45(c)(4)(ii), that the Regional Administrator set aside the Consent Agreement and proposed Final Order on the basis that material evidence was not considered.

17. The Final Order shall be binding upon Respondent and Respondent's officers, directors, agents, servants, employees, and successors or assigns.

18. The Final Order does not constitute a waiver, suspension or modification of the requirements of Section 311 of the Act, 33 U.S.C. § 1321, or any regulations promulgated there under, 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 Consent Agreement resolves only Respondent's liability for federal civil penalties for the violations and facts stipulated to and alleged herein.

19. The undersigned representative of Respondent hereby certifies that he/she is fully authorized to enter into the terms and conditions of this Consent Agreement and to execute and legally bind Respondent to this Consent Agreement.

20. The following attorney represents EPA in this matter and is authorized to receive service for EPA in the proceeding:

Joan Redleaf Durbin
Associate Regional Counsel
United States Environmental Protection Agency, Region 4
Sam Nunn Atlanta Federal Center,
61 Forsyth Street, SW
Atlanta, Georgia 30303
(404) 562-9544
Redleaf-Durbin.Joan@epa.gov

The following attorney represents Respondent in this matter and is authorized to receive service for Respondent in the proceeding:

David C. Reeves
Associate General Counsel
The Kansas City Southern Railway Company
Legal Department, Kansas City Southern,
P.O Box 219335
Kansas City, MO 64121-9335
(816) 983-1387

[Effective Date and Signatures on Next Page]

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF)	
)	CWA SECTION 311 CLASS II
)	CONSENT AGREEMENT AND
Kansas City Southern)	FINAL ORDER
Railway Company)	UNDER 40 C.F.R. § 22.13(b)
)	
)	
Respondent.)	Docket No. CWA-04-2008-5140(b)
_____)	

Effective Date

21. This Consent Agreement and attached Final Order is effective upon the filing of the Final Order with the Regional Hearing Clerk.

For KANSAS CITY SOUTHERN RAILWAY COMPANY:

Date: 7/22/08

Signature: 
W. James Wochner, Sr.
Vice President and Chief Legal Officer

For U.S. ENVIRONMENTAL PROTECTION AGENCY:

Date: 8/08/08

Signature: 
G. Alan Farmer
Director
RCRA Division

FINAL ORDER

Pursuant to Section 311(b)(6) of the Clean Water Act, 33 U.S.C. § 1321(b)(6), and the delegated authority of the undersigned, and in accordance with the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits,” codified at 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order, and the Stipulations by the parties and Allegations by the Complainant are adopted as Findings in this Final Order.

The Respondent is ordered to comply with the terms of the Consent Agreement, Docket No. CWA-04-2008-5140(b).

Date: AUG 22 2008

Signature: 
J. I. Palmer, Jr.
Regional Administrator

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 Kansas City Southern Railway Company, Docket No. CWA-04-2008-5140(b), on the parties listed below in the manner indicated:

Joan Redleaf Durbin
Office of Environmental Accountability
U.S. EPA, Region 4
61 Forsyth Street
Atlanta, Georgia 30303

(Via EPA's internal mail)

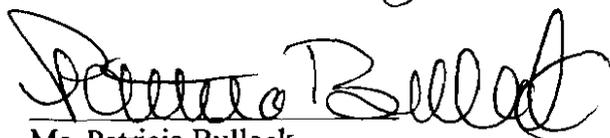
Lonnie A. Jenkins II
RCRA & OPA Enforcement and Compliance Branch
U.S. EPA, Region 4
61 Forsyth St., S.W.
Atlanta, Georgia 30303

(Via EPA's internal mail)

David C. Reeves
Associate General Counsel
The Kansas City Southern Railway Company
Legal Department, Kansas City Southern,
P.O Box 219335
Kansas City, MO 64121-9335
(816) 983-1387

(Via Certified Mail)

Dated this 26 day of August, 2008.



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