



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

DEC 21 2006

Mr. Jeff W. Styron  
Environmental Counsel  
CSX Transportation, Inc.  
500 Water Street  
Jacksonville, FL 32202

SUBJ: CSX Tucker, GA CAFO

Dear Mr. Styron:

Enclosed please find the final signed and filed Consent Agreement and Final Order (CAFO) regarding alleged violations of the Clean Water Act, as amended by the Oil Pollution Act of 1990, at the Tucker, Georgia facility. Also enclosed is an information sheet from the Securities and Exchange Commission. The penalty will be due thirty (30) days after the date on which the CAFO was filed. If you have any questions, please contact me at 404-562-9589.

Sincerely,

A handwritten signature in black ink, appearing to read "Vera S. Kornylak".

Vera S. Kornylak  
Associate Regional Counsel  
Office of Environmental Accountability

Enclosures

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4

In the Matter of: ) Docket No.: CWA-04-2007-5165  
)  
CSX Transportation, Inc. ) CLEAN WATER ACT  
500 Water Street ) SECTION 311 CLASS I  
Jacksonville, FL 32202 ) CONSENT AGREEMENT  
) AND FINAL ORDER  
Respondent. ) UNDER 40 CFR § 22.13(b)

HEARING CLERK

2006 DEC 21 PM 3:49

RECEIVED  
EPA REGION IV

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 CWA ("CWA"), 33 U.S.C. § 1321(b)(6)(B)(i), as amended by the Oil Pollution CWA of 1990, and under the authority provided by 40 CFR §§ 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 of the RCRA Division to the Chief, RCRA & OPA Enforcement and Compliance Branch ("Complainant").

**CONSENT AGREEMENT**

**Stipulations**

The parties, in their own capacities or by their attorneys or other authorized representatives, hereby stipulate:

1. CSX Transportation, Inc. ("Respondent") is a corporation organized under the laws of the Commonwealth of Virginia with its principal place of business located at 500 Water Street, Jacksonville, Florida 32202, and doing business in the State of Georgia. Respondent is a "person" within the meaning of Sections 311(a)(7) and 502(5) of the CWA, 33 U.S.C. §§ 1321(a)(7) and 1362(5), and 40 CFR § 110.1.

2. Respondent is the owner or operator within the meaning of Section 311(a)(6) of the CWA, 33 U.S.C. § 1321(a)(6), and 40 CFR § 110.1, of railroad facilities located in Tucker (DeKalb County), Georgia where there is a CSX service facility.

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

4. At the Tucker, Georgia CSX service facility, there is an onsite stormwater ditch that flows through the site to an unnamed creek.

5. The unnamed, impacted creek is a water body subject to the jurisdiction of Section 311 of the CWA as defined in Section 502(7) of the CWA. 33 U.S.C. § 1362(7), and 40 CFR § 110.1.

6. Section 311(b)(3) of the CWA 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.

7. For purposes of Sections 311(b)(3) and (b)(4) of the CWA, 33 U.S.C. §§ 1321(b)(3) and (b)(4), discharges of oil 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 environment of the United States are defined in 40 CFR § 110.3 to include 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.

8. Respondent admits to the jurisdictional statements contained herein.

### **Allegations**

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

9. On or about July 11, 2005, Respondent discharged approximately 100 gallons of oil (lubricating oil) as defined in Section 311(a)(1) of the CWA, 33 U.S.C. § 1321(a)(1), and 40 CFR § 110.1, from its onshore facility into or upon the onsite ditch, which discharges to the unnamed creek.

10. Respondent's July 11, 2005, discharge of oil from its facility caused a sheen upon or discoloration of the surface of the onsite ditch and the unnamed creek and adjoining shorelines, and therefore, was in a quantity that has been determined may be harmful under 40 CFR § 110.3, in violation of Section 311(b)(3) of the CWA.

11. Respondent performed mitigation which included vacuum extraction of oil from the creek and the removal of impacted soil. The mitigation effort lasted for several days.

#### **Waiver of Rights**

12. Respondent waives the right 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 this Final Order without further adjudication.

13. Respondent waives any right it may have pursuant to 40 CFR § 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**

14. Complainant proposes, and Respondent consents to, the assessment of a civil penalty of \$1,407.00.

**Payment Terms**

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

15. No later than thirty (30) days after the effective date of this Final Order, the Respondent shall pay the amount of \$1,407.00 by means of a cashier's or certified check, or by electronic funds transfer (EFT). If paying by check, the Respondent shall submit a cashier's or certified check, payable to the "Environmental Protection Agency," and bearing the notation, "OSLTF 311." If the Respondent sends payment via the U.S. Postal Service, the payment shall be addressed to :

U.S. Environmental Protection Agency  
P.O. Box 371009M  
Pittsburgh, PA 15251

If the Respondent sends payment by a private delivery service, the payment shall be addressed to:

Mellon Client Service Center  
ATTN: Shift Supervisor  
Lockbox 371099M Account 9109125  
500 Ross Street  
Pittsburgh, PA 15262-0001

If payment by EFT, the Respondent shall transfer \$1,407.00 to:

Mellon Bank  
ABA 043000261  
Account 9109125  
22 Morrow Drive  
Pittsburgh, PA 15235

In the event of an international transfer of funds, the Respondent shall use SWIFT address MELNUS3P.

16. 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 to the following persons:

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

Jeffrey T. Pallas  
Chief, RCRA & OPA South Enforcement  
and Compliance Section  
RCRA Division  
U.S. EPA Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303

17. Respondent's failure to pay the penalty assessed by this Final Order in full by its due date may subject Respondent to a civil action to collect the assessed penalty, plus interest, attorneys' 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.

**General Provisions**

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

19. This 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 the 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.

20. The undersigned representative of Respondent hereby certifies that s/he 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

**Effective Date**

21. The effective date of this Consent Agreement and Final Order shall be the date upon which it is filed with the Regional Hearing Clerk.

**CSX TRANSPORTATION, INC.**

12/5/06  
DATE

*Carl A. Heister*  
NAME/TITLE, AUTHORIZED  
REPRESENTATIVE OF THE RESPONDENT  
*DIRECTOR ENVIRONMENTAL SYSTEMS*

**U.S. ENVIRONMENTAL PROTECTION AGENCY**

12/14/06.  
DATE

*N. M. Kumar*  
Narindar Kumar  
Chief, RCRA & OPA  
Enforcement and Compliance Branch

**FINAL ORDER**

Pursuant to Section 311(b)(6) of the CWA, 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, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits," codified at 40 CFR Part 22, the forgoing Consent Agreement is hereby approved and incorporated by reference into this Final Order, and the Stipulations by the parties and the 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.

Dec. 21, 2006  
DATE

Susan S. Schub  
Susan Schub  
Regional Judicial Officer

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-04-2007-5165 on the parties listed below in the manner indicated:

Vera S. Kornylak  
Office of Environmental Accountability  
U.S. EPA, Region 4  
61 Forsyth Street  
Atlanta, GA 30303

(Via EPA's internal mail)

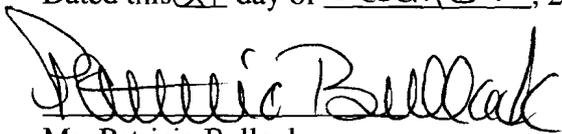
Alan Annicella  
RCRA & OPA Enforcement and Compliance Branch  
U.S. EPA, Region 4  
61 Forsyth Street S.W.  
Atlanta, Georgia 30303

(Via EPA's internal mail)

Mr. Jeff Styron, Esq.  
CSX Transportation  
500 Water Street  
Jacksonville, Florida 32202

(Certified Mail Return Receipt Requested)

Dated this 21 day of December, 2006.

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

**EPA ACCOUNTS RECEIVABLE CONTROL NUMBER FORM**

**TO BE COMPLETED BY THE ORIGINATING OFFICE:**

(Attach a copy of the final order and transmittal letter to Defendant/Respondent)

This form was originated by: Elizabeth Sawyer on 12/19/06  
(Name) (Date)

in the RY ~~WASH~~ RCRA Division - RCRA & OPA Enf & Comp Branch at (404) 562- 8599  
(Office) (Telephone Number)

Non-SF Judicial Order/Consent Decree  
USAO COLLECTS

Administrative Order/Consent Agreement  
FMO COLLECTS PAYMENT

SF Judicial Order/Consent Decree  
DOJ COLLECTS

Oversight Billing - Cost Package required:  
Sent with bill

Other Receivable

Not sent with bill

This is an original debt

Oversight Billing - Cost Package not required

This is a modification

PAYEE: CSX Transportation, Inc  
(Name of person and/or Company/Municipality making the payment)

The Total Dollar Amount of the Receivable: \$ 1,407.00  
(If installments, attach schedule of amounts and respective due dates. See Other side of this form.)

The Case Docket Number: CWA-04-2007-5165

The Site Specific Superfund Account Number: \_\_\_\_\_

The Designated Regional/Headquarters Program Office: \_\_\_\_\_

**TO BE COMPLETED BY LOCAL FINANCIAL MANAGEMENT OFFICE:**

The IFMS Accounts Receivable Control Number is: \_\_\_\_\_ Date \_\_\_\_\_

If you have any questions, please call: Peggy Whitney of the Financial Management Section at: (404) 562-8238.

**DISTRIBUTION:**

A. **JUDICIAL ORDERS:** Copies of this form with an attached copy of the front page of the **FINAL JUDICIAL ORDER** should be mailed to:

- |  |                              |
|--|------------------------------|
| 1. Debt Tracking Officer<br>Environmental Enforcement Section<br>Department of Justice RM 1647<br>P.O. Box 7611, Benjamin Franklin Station<br>Washington, D.C. 20044 | 2. Originating Office (EAD)  |
|  | 3. Designated Program Office |

B. **ADMINISTRATIVE ORDERS:** Copies of this form with an attached copy of the front page of the Administrative Order should be to:

- |                           |                              |
|---------------------------|------------------------------|
| 1. Originating Office     | 3. Designated Program Office |
| 2. Regional Hearing Clerk | 4. Regional Counsel (EAD)    |

**EPA ACCOUNTS RECEIVABLE CONTROL NUMBER FORM**

**PROGRAM SPECIFIC INFORMATION**

**PROGRAM:** RCRA & OPA Enforcement and Compliance Branch  
Man Annicella, 2-8610

**Case Docket Control Number:** CWA-04-2007-5165

**Total Amount Due:** \$ 1,407.00

**Full payment due 30 days after issuance date of** \_\_\_\_\_

**Installment payments to be paid:**

<b>Amount Due:</b>	<b>Date Due:</b>
\$ _____	_____
\$ _____	_____
\$ _____	_____
\$ _____	_____