

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

2009 AUG 20 AM 9:09
HEARING CLERK
EPA REGION 4

IN THE MATTER OF)	CWA SECTION 311 CLASS I
)	CONSENT AGREEMENT AND
Norfolk Southern Railway Company)	FINAL ORDER
Three Commercial Place)	UNDER 40 CFR § 22.13(b)
Norfolk, Virginia 23510)	
)	
)	
Respondent)	Docket No.: CWA-04-2009-5155(b)

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 ("Act"), 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 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, RCRA Division, to the Chief, RCRA and OPA Enforcement and Compliance Branch, RCRA Division ("Complainant").

CONSENT AGREEMENT

Preliminary Statements

1. Respondent, Norfolk Southern Railway Company, is a corporation organized under the laws of the Commonwealth of Virginia and is registered as a foreign corporation doing business in the State of Alabama. The Respondent is a person within the meaning of Sections 311(a)(7) and 502(5) of the Act, 33 U.S.C. §§ 1321(a)(7) and 1362(5).
2. The Respondent is the owner and operator within the meaning of Section 311(a)(6) of the Act, 33 U.S.C. § 1321(a)(6), of the Norris Yard facility located in Irondale, Alabama ("the Facility").

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. An unnamed tributary to Shades Creek, into which a part of the Facility's storm water system discharges is a navigable water as defined in Section 502(7) of the Act, 33 U.S.C. § 1362(7), and in 40 CFR § 110.1. The unnamed tributary is subject to the jurisdiction of Section 311 of the Act.

5. Section 311(b)(3) of the Act, 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. For purposes of Sections 311(b)(3) and (b)(4) of the Act, 33 U.S.C. §§ 1321(b)(3) and (b)(4), discharges 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 are defined in 40 CFR § 110.3 to include discharges of oil that (1) violate applicable water quality standards or (2) that cause a film or 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 adjoining shorelines.

7. For the purposes of this Consent Agreement, Respondent admits to EPA's jurisdiction over the matters set out above, but neither admits nor denies the factual allegations or other legal conclusions set forth in this Agreement. Neither this Consent Agreement nor any part thereof, nor any entry into or performance under this Order, shall constitute or be construed as an admission or acknowledgment of liability in this proceeding or any subsequent legal action, including but not limited to United States v. Norfolk Southern Railway Company,

C.A. No.: 1:08-cv-01707-MBS. Complainant and Respondent agree that neither party will seek admission of this document in any proceedings, except in an action to enforce the terms of this document.

Allegations

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

8. On or about February 3, 2005, a master shoe retarder at the Facility breached the diesel fuel tank of a locomotive engine causing the release of approximately 14 barrels of diesel fuel onto the rail yard.

9. An unknown amount of diesel fuel entered the unnamed tributary to Shades Creek. The fuel caused a sheen upon or discoloration of the surface of the unnamed tributary of Shades Creek and/or its adjoining shoreline, and, therefore, was in a quantity that has been determined may be harmful under 40 C.F.R § 110.3, in violation of Section 311(b)(3) of the Act.

Waiver of Rights

10. Solely for the purpose of this Consent Agreement, Respondent waives the right to contest the allegations contained herein, subject to Paragraph 7, above; to a hearing under Section 311(b)(6)(B)(i) of the Act, 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 Act, 33 U.S.C. § 1321(b)(6)(G)(i); and consents to the issuance of a Final Order without further adjudication.

11. Nothing in this Consent Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a party to this Consent Agreement. Except as otherwise provided herein, Complainant and Respondent each expressly reserves any and all rights, defenses, claims, demands, and causes of action which it may have with respect to any matter, transaction, or occurrence relating in any way to the facts alleged in the Consent Agreement against any person not a party hereto.

Penalty

12. The Complainant proposes, and Respondent consents to, the assessment of a civil penalty of **\$4,200.00**.

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 **\$4,200.00** by means of a cashier's or certified check, or by online payment or by wire transfer. If paying by check, the Respondent shall submit a 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 sent to:

US Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO 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
Government Lockbox 979077
U.S. EPA Fines & Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, Missouri 63101
314-418-1028

Respondent may also elect the On Line Payment Option, available through the Department of Treasury. This payment option can be accessed at www.pay.gov. Enter sfo 1.1 in the search field and then open form and complete required fields.

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."

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 a wire transfer, a copy of the wire transfer confirmation) to the following addresses:

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

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

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. The Final Order shall be binding upon Respondent and Respondent's officers, directors, agents, servants, employees, and successors or assigns.
17. 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 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 Consent Agreement 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 Consent Agreement shall resolve the allegations of violations contained herein.
18. The undersigned representative of Respondent hereby certifies that he or 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.
19. 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:

Michael T. Newton, Attorney
OLS – 13th Floor
U.S. EPA – Region 4
61 Forsyth Street, SW
Atlanta, Georgia 30303-8960
404-562-9567

20. 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:

David Montgomery Moore, Esq.
Balch & Bingham LLP
30 Ivan Allen Jr. Blvd., NW, Suite 700
Atlanta, Georgia 30308-3036
404-962-3530

Effective Date

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

CONSENTED AND AGREED TO:

NORFOLK SOUTHERN RAILWAY COMPANY

Date: August 11, 2009

A. Gayle Jordan
Name: A Gayle Jordan (Typed or Printed)
Title: Gen. Solicitor - Env. (Typed or Printed)

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: 8/17/09

Caroline Y. F. Robinson
Caroline Y. F. Robinson, Chief
RCRA and OPA Enforcement and Compliance Branch
RCRA Division

Norfolk Southern Railway Company)	CONSENT AGREEMENT AND
Three Commercial Place)	FINAL ORDER
Norfolk, Virginia 23510)	UNDER 40 CFR § 22.13(b)
)	
)	
Respondent)	Docket No.: CWA-04-2009-5155(b)
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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 CFR 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 CFR §§ 22.18 and 22.31.

BEING AGREED, IT IS SO ORDERED this 20th day of August, 2009.

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

In the Matter of Norfolk Southern Railway Company
Docket No.: CWA-04-2009-5155(b)

CERTIFICATE OF SERVICE

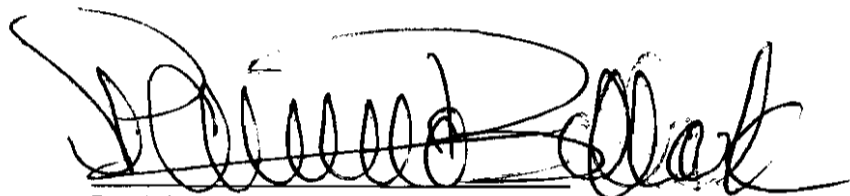
I hereby certify that on AUG 20 2009, I filed the foregoing Consent Agreement and the attached Final Order (CA/FO), in the Matter of Norfolk Southern Railway Company, Docket No.: CWA-04-2009-5155(b) and that on AUG 20 2009, I served a true and correct copy of the CA/FO on the parties listed below in the manner indicated:

Via Certified Mail - Return Receipt Requested

David Montgomery Moore, Esq.
Balch & Bingham LLP
30 Ivan Allen Jr. Blvd., NW, Suite 700
Atlanta, Georgia 30308-3036

Via EPA's internal mail

Michael T. Newton, Attorney
Office of Regional Counsel
U.S. EPA - Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960



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