



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
 REGION 8 2009 OCT 13 AM 10:51
 1595 WYNKOOP STREET
 DENVER, CO 80202-1129
 Phone 800-227-8917
 http://www.epa.gov/region08

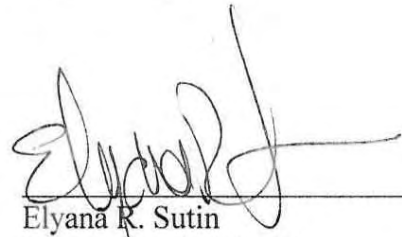
FILED
 EPA REGION VIII
 HEARING CLERK

DOCKET NO.: CWA-08-2010-0001

IN THE MATTER OF:)
)
 BNSF RAILWAY CO.) FINAL ORDER
)
 RESPONDENT)

Pursuant to 40 C.F.R. §22.18, of EPA's Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order. The Respondent is hereby **ORDERED** to comply with all of the terms of the Consent Agreement, effective immediately upon receipt by Respondent of this Consent Agreement and Final Order.

SO ORDERED THIS 13th DAY OF October, 2009.


 Elyana R. Sutin
 Regional Judicial Officer

Respondent admits that on or about July 7, 2008, Respondent's vehicle discharged approximately 1 barrel of diesel fuel and lube oil into or upon the Yellowstone River.

Respondent's discharge caused a sheen upon, or discoloration of, or caused a sludge or emulsion to be deposited beneath the surface of the Yellowstone River.

Respondent's discharge constitutes a violation of Section 311(b)(3) of the Act.

Respondent admits that EPA has jurisdiction in this proceeding.

Respondent waives its right to a hearing before any civil tribunal, to contest any issue of law or fact set forth in this agreement.

This agreement, upon incorporation into a final order, applies to and is binding upon EPA and upon Respondent and Respondent's heirs, successors and assigns. Any change in ownership or corporate status of Respondent, including but not limited to any transfer of assets or real or personal property, shall not alter Respondent's responsibilities under this agreement.

This agreement contains all terms of the settlement agreed to by the parties.

Respondent consents and agrees to the assessment of a civil penalty of \$500.00 for the discharge of oil in violation of Section 311(b)(3) of the Act, which, shall be paid no later than thirty (30) days after the effective date of the Final Order by means of a cashier's or certified check, 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 notations "OSLTF - 311" and the title and docket number of this case. 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
PO Box 979077
St. Louis, MO 63197-9000

If the Respondent sends payment by overnight mail, the payment should be sent to:

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101
Contact: Natalie Pearson
314-418-4087

Wire transfers should be directed to:

Federal Reserve Bank of New York
ABA: 021030004
Account: 68010727
SWIFT address: FRNYUS33
33 Liberty Street
New York, NY 10045

Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

The Respondent shall submit copies of the check (or, in the case of a wire transfer, copies of the confirmation) to the following persons:

Tina Artemis, Regional Hearing Clerk (8RC)
U.S. EPA Region 8
1595 Wynkoop
Denver, CO 80202-1129

and

Donna K. Inman
Technical Enforcement Program (8ENF-UFO)
U.S. EPA Region 8
1595 Wynkoop
Denver, CO 80202-1129

Respondent states, under penalty of perjury, that it has (1) investigated the cause of the spill; (2) cleaned up the spill pursuant to federal requirements; and (3) taken corrective measures to prevent future spills.

Respondent further agrees and consents that if Respondent fails to pay the penalty amount as required by this agreement once incorporated into the final order, or fails to make the

corrective measures to obtain compliance or has not cleaned up the discharged oil as represented, this agreement is null and void, and EPA may pursue any applicable enforcement options.

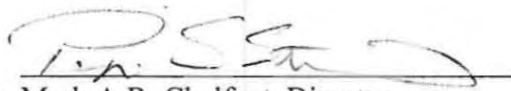
The undersigned representative of Respondent certifies that he/she is fully authorized to enter into the terms and conditions for this agreement and to bind Respondent to the terms and conditions of this agreement.

The parties agree to submit this Consent Agreement to the Regional Judicial Officer, with a request that it be incorporated into a final order.

Each party shall bear its own costs and attorneys fees in connection with this matter.

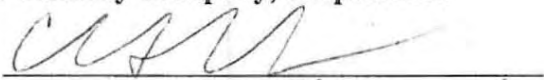
This Consent Agreement, upon incorporation into a final order by the Regional Judicial Officer and full satisfaction by the parties, shall be a complete and full civil settlement of the specific violations described in this agreement.

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION 8,
Office of Enforcement, Compliance and Environmental Justice, Complainant.**

By: 
for Mark A.R. Chalfant, Director
Technical Enforcement Program
Office of Enforcement, Compliance and
Environmental Justice

Date: 10-09-2009

BNSF Railway Company, Respondent.

By: 
Name: Charles Shewmaker
Title: Vice President & G.C.

Date: Oct 5, 2009

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **EXPEDITED CONSENT AGREEMENT/FINAL ORDER** in the matter of **BNSF RAILWAY CO.; DOCKET NO.: CWA-08-2010-0001** was filed with the Regional Hearing Clerk on October 13, 2009.


Further, the undersigned certifies that a true and correct copy of the documents were delivered Amy Swanson, Senior Enforcement Attorney, U. S. EPA – Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129. True and correct copies of the aforementioned documents were placed in the United States mail certified/return receipt requested and e-mailed on October 13, 2009

Charles Shewmake
Vice President and General Counsel
BNSF Railway Co.
2500 Lou Menk Drive-AOB3
Fort Worth, TX 76131

E-mailed to:

Michelle Angel
U. S. Environmental Protection Agency
Cincinnati Finance Center
26 W. Martin Luther King Drive (MS-0002)
Cincinnati, Ohio 45268

October 13, 2009


Tina Artemis
Paralegal/Regional Hearing Clerk

