



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

**FEB 08 2008**

Richard A. Verkler  
Counsel – U.S. Environment  
CN  
17641 S. Ashland Avenue  
Homewood, IL 60430-1339

Re: Consent Agreement and Final Order for  
Docket No. CWA-04-2008-5191(b)

Dear Mr. Verkler:

Enclosed please find a copy of the final, signed Consent Agreement and Final Order resolving alleged Clean Water Act violations against Illinois Central Railroad Company. Applicable penalties are due within thirty (30) days of the filing date stamped on the CAFOs. Also enclosed is an information sheet from the Securities and Exchange Commission for you to pass onto your client.

If you have any questions, please contact me at 404-562-9589.

Sincerely,

*Vera Kornylak*

Vera S. Kornylak  
Associate Regional Counsel

Enclosures

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
 REGION 4

IN THE MATTER OF  Illinois Central Railroad Company   Respondent.	) ) ) ) ) ) ) ) ) ) )	CWA SECTION 311 CLASS 1 CONSENT AGREEMENT AND FINAL ORDER UNDER 40 C.F.R. § 22.13(b)   Docket No. CWA-04-2008-5191(b)
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RECEIVED  
 EPA REGION IV  
 29 FEB - 9 AM 8:35  
 RECEIVING CLERK

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 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**

**Stipulations**

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

1. Respondent, Illinois Central Railroad Company, is a corporation organized under the laws of Illinois doing business in the State of Mississippi. 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), and 40 C.F.R. § 110.1.

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 Anding, 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. Thompson 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, 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 Section 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 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 C.F.R. § 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.

7. Respondent admits the jurisdictional statements contained herein.

### **Allegations**

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

8. On July 10, 2005, Respondent discharged 500-750 gallons oil as defined in Section 311(a)(1) of the Act, 33 U.S.C. § 1321(a)(1), and 40 C.F.R. § 110.1, from its facility into or upon Thompson Creek and/or its adjoining shorelines.

9. Respondent's July 10, 2005, discharge of oil from its facility caused a sheen upon or discoloration of the surface of the Thompson 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. Respondent waives the right to contest the allegations contained herein, 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. 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 \$7,500.00.

**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 \$7,500.00 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 \$7,500.00 to [www.pay.gov](http://www.pay.gov). Enter SFO 1.1 into the "search public forms" field. Open the form and enter the requested information.

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. 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.

18. 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.

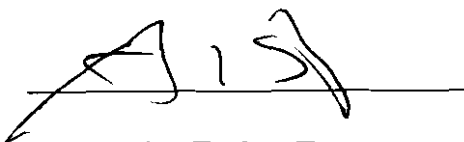
**Effective Date**

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

For

ILLINOIS CENTRAL RAILROAD COMPANY

Date: JANUARY 28, 2008

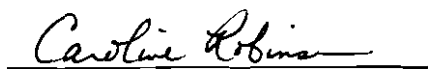


By: Gordon Trafton II  
Title: Illinois Central Senior Vice-President

For

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: 5, February, 2008



Caroline Robinson  
Chief, RCRA and OPA Enforcement and  
Compliance Branch  
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.

Illinois Central Railroad Company, the Respondent, is ordered to comply with the terms of the Consent Agreement, Docket No. CWA-04-2008-5191(b).

Date: 2/7/08

Susan B. Schub  
Susan Schub  
Regional Judicial Officer



CERTIFICATE OF SERVICE

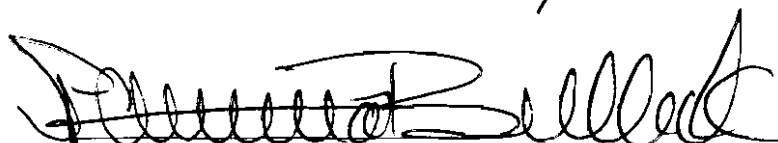
I hereby certify that I have this day served a true and correct copy of the Foregoing Consent Agreement and Final Order, in the matter of Illinois Central Railroad Company, Docket No. CWA-04-2008-5191(b), on the parties listed below in the manner indicated:

Vera S. Kornylak (Via EPA's internal mail)  
Office of Environmental Accountability  
U.S. EPA, Region 4  
61 Forsyth Street  
Atlanta, Georgia 30303

Lonnie Jenkins (Via EPA's internal mail)  
RCRA & OPA Enforcement and Compliance Branch  
U.S. EPA, Region 4  
61 Forsyth St., S.W.  
Atlanta, Georgia 30303

Richard A. Verkler (Via Certified Mail)  
Counsel, Environment  
CN  
Law Department  
17641 South Ashland Avenue  
Homewood, Illinois 60430

Dated this 8 day of February, 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

**EPA ACCOUNTS RECEIVABLE CONTROL NUMBER FORM**

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

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

This form was originated by: Elizabeth Sawyer

(Name)

RCA/Branon in the R4 Waste Management Division - DPA

(Date)

2-8599

(Office)

(Telephone Number)

Administrative Order/Consent Agreement:

**RCRA COLLECTS PAYMENT**

**CoastGuard collects - DPA**

**Overight Billing**

**Other Receivable**

**This is modification**

Non-SF Judicial Order/Consent Decree

**USAO COLLECTS**

SF Judicial Order/Consent Decree

**DOJ COLLECTS**

**This is an original debt**

**PAYER:**

CN or Illinois Central Railroad Company

(Name of person and/or Company/Municipality making the payment)

For Oversight Billing, the satisfactory date or the date reported in the order, or the date as directed by the program office to future billing:

(Date)

The Total Dollar Amount of the Receivable: \$ 7500.00

(If installment, attach schedule of amounts and respective due dates. See other side of this form.)

The Case Docket Number: CWA-04-2008-5791 (6)

The Site Specific Superfund Account Number:

The Designated Regional/Headquarters Program Office: Loniie Jenkins

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

The IPMS Account Receivable Control Number is: \_\_\_\_\_

If you have any questions, please call: Barry Whiting of the Financial Management Section at (404) 567-4228

**DISTRIBUTION:**

**A. JUDICIAL ORDER:** Copies of this form with an attached copy of the final page of the Administrative Order issued to you should be mailed to:

1. Data Tracking Office  
2. Originating Office (OAD)

Environmental Enforcement Section

Department of Justice

P.O. BOX 7811, Benjamins Practice Station

Washington, DC 20044

**B. ADMINISTRATIVE ORDER:** Copies of this form with an attached copy of the final page of the Administrative Order issued to you should be mailed to:

1. Originating Office  
2. Designated Program Office

Regional Hearing Unit

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Designated Program Office

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