



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

15 15 2011

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

David C. Reeves
Associate General Counsel
The Kansas City Southern Railway Company
427 West 12th Street
Kansas City, Missouri 64121

SUBJ: The Kansas City Southern Railway Company
Docket Number CWA-04-2011-5134(b)

Dear Mr. Reeves:

Enclosed please find a fully executed Consent Agreement and Final Order (CA/FO) issued pursuant to Section 311(b)(6)(B)(i) of the Clean Water Act, 33 U.S.C. § 1321(b)(6)(B)(i), as amended by the Oil Pollution Act of 1990.

Please Note: According to paragraph 12 of this CA/FO, no later than 30 days after the effective date of this CA/FO, the penalty of \$13,270 is due.

Thank you for your assistance in the resolution of this matter. Please feel free to contact me at (404) 562-9532, or contact Nancy McKee at (404) 562-8674, if you have any additional questions or comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Frank S. Ney".

Frank S. Ney, Acting Chief
RCRA & OPA Enforcement and Compliance Branch
RCRA Division

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF)

The Kansas City Southern)
Railway Company)
427 West 12th Street)
Kansas City, Missouri 64105)

Respondent)

CWA SECTION 311 CLASS I)
CONSENT AGREEMENT AND)
FINAL ORDER)
UNDER 40 C.F.R. § 22.13(b))

Docket No. CWA-04-2011-5134(b))

11 AUG 15 PM 1:08

USEPA, REGION 4
OFFICE OF ENVIRONMENTAL
ACCOUNTABILITY

Regional Hearing Clerk (B)

LEGAL AUTHORITY

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 (“CWA”), 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”) pursuant to EPA Region 4 Clean Water Act Delegation 2-51.

CONSENT AGREEMENT

Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18 and desire to settle this action. Accordingly, before any testimony has been taken upon the pleadings and without any admission of violation or adjudication of any issue of fact or law and in accordance with 40 C.F.R. § 22.13(b), Complainant and Respondent have agreed to the execution of this Consent Agreement and Final Order (“CAFO”), and hereby agree

to comply with the terms of this CAFO. For purposes of this CAFO and settlement of this action, Respondent admits to the jurisdictional statements contained herein but neither admits nor denies the allegations, and by this settlement makes no admission of fault, responsibility, or liability to Complainant.

I. Stipulations

1. Respondent, The Kansas City Southern Railway Company (“KCSR”), is a corporation organized under the laws of Missouri doing business in the State of Tennessee. Respondent is a person within the meaning of Section 311(a)(7) of the CWA, 33 U.S.C. § 1321(a)(7).

2. At all times relevant to this CAFO, the Respondent was an “owner and operator” within the meaning of Section 311(a)(6) of the CWA, 33 U.S.C. § 1321(a)(6)), of a railroad locomotive vehicle (“the facility”) situated during the time of discharge near the rail-grade public crossing of the KCSR railroad track and Highway 57 (i.e., SR 057) located in the State of Tennessee approximately one mile west of the City of Counce in the County of Hardin.

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

4. Chambers Creek is a navigable water subject to the jurisdiction of Section 311 of the CWA, 33 U.S.C. § 1321, as defined in Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and 40 C.F.R. § 110.1.

5. Section 311(b)(3) of the CWA, 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. Pursuant to Section 311(b)(4) of the CWA, 33 U.S.C. § 1321 (b)(4), the determination of quantities of oil the discharge of which may be harmful and thereby prohibited under Section 311(b)(3), 33 U.S.C. § 1321 (b)(3), is found by regulation at 40 C.F.R. § 110.3 and includes discharges of oil that (a) violate applicable water quality standards; or (b) 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 adjoining shorelines.

7. Respondent stipulates to the jurisdictional statements contained herein solely for settlement purposes and strictly for resolution of this matter by entry of this CAFO.

II. Allegations

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

8. On or about the morning of October 14, 2009, as Respondent's locomotive was crossing Highway 57 the driver of a truck approaching the rail crossing failed to yield the right of way to Respondent's locomotive (an action for which the driver was subsequently cited by police) thereby causing the truck to strike the locomotive's fuel tank from which was discharged, within the meaning of "discharge" as defined in Section 311(a)(2) of the CWA, 33 U.S.C. § 1321(a)(2), approximately 1,050 gallons (i.e., roughly 25 barrels) of number two diesel fuel oil, within the meaning of "oil" as defined in Section 311(a)(1) of the CWA, 33. U.S.C. § 1321(a)(1), from the facility and into or upon Chambers Creek and/or its adjoining shorelines.

9. The October 14, 2009, discharge of oil from Respondent's facility, as described hereinabove, caused a sheen upon or discoloration of the surface of Chambers Creek and/or its adjoining shoreline that, pursuant to 40 C.F.R. § 110.3, constitutes a discharge of oil in a quantity

that has been determined may be harmful and which, as a consequence, caused a violation of Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3).

III. 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 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 a Final Order in this matter without further adjudication.

IV. Penalty

11. Respondent consents to the payment of a civil penalty in the amount of Thirteen Thousand, Two Hundred Seventy Dollars (\$13,270.00).

V. Payment Terms

12. No later than 30 days after the effective date of the Final Order, Respondent shall pay the penalty by means of a corporate or certified check, by electronic funds transfer (EFT), or on-line. If paying by check, Respondent shall submit a corporate cashier's or certified check, payable to "Environmental Protection Agency," and bearing the notation "OSLTF – 311" and Respondent shall note the title and docket number of this case.

If the Respondent sends payment by the U.S. Postal Service, the payment shall be sent to:

U.S. Environmental Protection Agency
Fines and Penalties - CFC
Post Office 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
U.S. EPA Fines & Penalties
1005 Convention Plaza
Mail Station SL-MO-C2GL
ATTN Box 979077
St. Louis, Missouri 63101
(314) 418-4097

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."

If paying on-line, access www.pay.gov, enter sfo1.1 in the search field, and then open the form and complete the required fields.

13. Respondent shall submit copies of the check (or, in the case of a wire transfer or on-line payment, a copy of the wire transfer or on-line confirmation) to each of the following two individuals:

Attn: Belinda Johnson
Acting Regional Hearing Clerk
U.S. EPA- Region 4
Atlanta Federal Center
61 Forsyth Street, SW
Atlanta, Georgia 30303-8960

and:

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

14. Penalties paid pursuant to this Consent Agreement and Final Order are not deductible for federal tax purposes pursuant to 26 U.S.C. § 162(f).

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 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.

VI. General Provisions

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

17. The 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 authority 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 CAFO 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 CAFO 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 and execute this Consent Agreement and to legally bind Respondent to the terms and conditions of this Consent Agreement and the attached Final Order.

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:

Gregory D. Luetscher
Associate Regional Counsel
Office of Environmental Accountability
U.S. EPA - Region 4
Atlanta Federal Center
61 Forsyth Street, SW
Atlanta, Georgia 30303-8960
(404) 562-9677
luetscher.greg@epa.gov

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 C. Reeves
Associate General Counsel
The Kansas City Southern Railway Company
P.O. Box 219335
Kansas City, MO 64121-9335
(816) 983-1387
DReeves@KCSouthern.com

VII. Effective Date


21. This Consent Agreement and Final Order is effective when it is filed with the Regional Hearing Clerk.

In the Matter of The Kansas City Southern Railway Company; CWA Section 311, Class I; Consent Agreement and Final Order: Docket No. CWA-04-2011-5134(b)

CONSENTED AND AGREED TO:

FOR: The Kansas City Southern Railway Company

This date: 8/2/2011

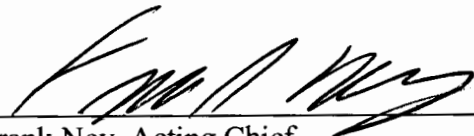
BY: 
(Signature)

Name: CHESTER CULLEY
(Please type or print)

Title: GENERAL DIRECTOR

FOR: THE U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: 8/9/11


Frank Ney, Acting Chief
RCRA and OPA Enforcement and Compliance Branch
RCRA Division

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4**

IN THE MATTER OF)	
)	CWA SECTION 311 CLASS I
The Kansas City Southern)	CONSENT AGREEMENT AND
Railway Company)	FINAL ORDER
427 West 12 th Street)	UNDER 40 C.F.R. § 22.13(b)
Kansas City, Missouri 64105)	
)	
Respondent)	Docket No. CWA-04-2011-5134(b)
_____)	

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 C.F.R. 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 C.F.R. §§ 22.18 and 22.31.

BEING AGREED, IT IS SO ORDERED this 15th day of August, 2011.

BY: Susan O. Schub
Susan Schub
Regional Judicial Officer

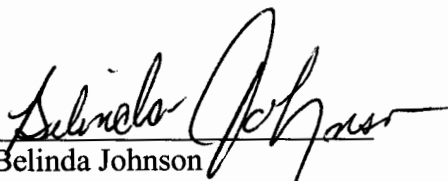
CERTIFICATE OF SERVICE

I hereby certify that I have this day filed the original and a true and correct copy of the foregoing Consent Agreement and the attached Final Order (CA/FO), in the Matter of The Kansas City Southern Railway Company, Docket Number: CWA-04-2011-5134(b) on _____ 2011, and on _____ 2011, served the parties listed below in the manner indicated:

Gregory D. Luetscher (Via EPA's internal mail)
Associate Regional Counsel
Office of RCRA, OPA and UST Legal Support
U.S. EPA - Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

Mr. David C. Reeves (Via Certified Mail- Return Receipt Requested)
Associate General Counsel
The Kansas City Southern Railway Company
P.O. Box 219335
Kansas City, MO 64121-9335

Date: AUG 15 2011 _____


Belinda Johnson
Acting Regional Hearing Clerk
U.S. EPA - Region 4
61 Forsyth Street, S.W.
Atlanta, GA 30303

(404) 562-9686

CERTIFICATE OF SERVICE

I hereby certify that I have this day filed the original and a true and correct copy of the foregoing Consent Agreement and the attached Final Order (CA/FO), in the Matter of The Kansas City Southern Railway Company, Docket Number: CWA-04-2011-5134(b) on August 15, 2011, and on August 15, 2011, served the parties listed below in the manner indicated:

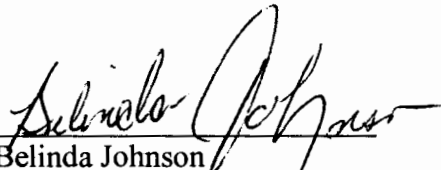
Gregory D. Luetscher
Associate Regional Counsel
Office of RCRA, OPA and UST Legal Support
U.S. EPA - Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

(Via EPA's internal mail)

Mr. David C. Reeves
Associate General Counsel
The Kansas City Southern Railway Company
P.O. Box 219335
Kansas City, MO 64121-9335

(Via Certified Mail- Return Receipt Requested)

Date: AUG 15 2011


Belinda Johnson
Acting Regional Hearing Clerk
U.S. EPA - Region 4
61 Forsyth Street, S.W.
Atlanta, GA 30303

(404) 562-9686