

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY 2014 DEC 18 PM 2: 23
REGION 8

FILED
EPA REGION VIII
HEARING CLERK

IN THE MATTER OF:)	COMBINED COMPLAINT AND CONSENT AGREEMENT
Soo Line Railroad Company, d/b/a Canadian Pacific,)	Docket No. CWA-08-2015-0009
Respondent.)	Simultaneous Commencement and Conclusion of a Proceeding Pursuant to Section 311(b)(6) of the Clean Water Act and 40 C.F.R. § 22.13(b)

Complainant, United States Environmental Protection Agency (EPA), Region 8, and Respondent, Soo Line Railroad Company, d/b/a Canadian Pacific, by their undersigned representatives, hereby consent and agree as follows:

I. STATUTORY AUTHORITY

1. This Combined Complaint and Consent Agreement (Agreement) is issued pursuant to section 311(b)(6) of the Clean Water Act (Act), 33 U.S.C. § 1321(b)(6), and 40 C.F.R. § 22.13(b). Section 311(b)(6) of the Act, 33 U.S.C. § 1321(b)(6), authorizes the Administrator of the EPA to issue a complaint that assesses civil penalties for violations of section 311(b)(3) of the Act, 33 U.S.C. § 1321(b)(3), which authority has been properly delegated to the Assistant Regional Administrator, Office of Enforcement, Compliance and Environmental Justice, Region 8. 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 (Consolidated Rules), 40 C.F.R. Part 22, governs such proceedings. According to 40 C.F.R. § 22.13(b), a proceeding subject to the Consolidated Rules may be simultaneously commenced and concluded by the issuance of a consent agreement and final order pursuant to 40 C.F.R. § 22.18(b)(2) and (3).

II. PARTIES BOUND

2. This Agreement shall apply to and be binding upon the EPA and shall be binding upon the Respondent, its officers, directors, agents, successors, and assigns. Any change in the ownership or legal status of Respondent or the business organization, structure or status of Respondent, including, but not limited to, any transfer of assets or real or personal property, shall not alter its responsibilities under this Agreement.

III. STATEMENT OF PARTIES

3. Respondent stipulates to the EPA's jurisdiction and venue over the matters contained in this Agreement; however, Respondent neither admits nor denies the specific factual allegations contained herein

4. The Parties agree that the date stamped on this Agreement shall be the date the Complaint is filed.

5. Respondent waives its right to a hearing before any tribunal to contest any issue of law or fact set forth in this Agreement, and waives its right to appeal a final order (Final Order) approving this settlement.

6. The signatories to this Agreement certify that they are authorized to execute and legally bind the parties they represent to this Agreement.

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

8. The EPA and Respondent agree that settlement of this matter is in the public interest, and that execution of this Agreement and issuance of the Final Order without further litigation and without adjudication of any issue of fact or law is the most appropriate means of resolving this matter.

9. In accordance with section 311(b)(6)(C) of the Act, 33 U.S.C. §1321(6)(C), the EPA shall provide public notice of and reasonable opportunity to comment on the proposed issuance of a final order in this matter.

IV. STATUTORY AND REGULATORY FRAMEWORK

10. The objective of the Act is to restore and to maintain the chemical, physical, and biological integrity of the nation's waters. 33 U.S.C. § 1251(a).

11. Section 311(b)(3) of the Act, 33 U.S.C. § 1321(b)(3), in pertinent part, prohibits the discharge of any oil or hazardous substances into or upon the navigable waters of the United States or their adjoining shorelines in such quantities as may be harmful as determined by the President.

12. The term "discharge" is defined in section 311(a)(2) of the Act, 33 U.S.C. § 1321(a)(2), to include, in pertinent part, "any spilling, leaking, pumping, pouring, emitting, emptying or dumping"

13. The term "oil" is defined in section 311(a)(1) of the Act, in pertinent part, as "oil of any kind or in any form, including, but not limited to, petroleum [including diesel fuel], fuel oil, sludge" 33 U.S.C. § 1321(a)(1).

14. The term "navigable waters" is defined in section 502(7) of the Act as "waters of the United States, including the territorial seas." 33 U.S.C. § 1362(7).

15. The term "navigable waters," as further defined in 40 C.F.R. § 110.1, "means the waters of the United States, including the territorial seas," and includes, *inter alia*: "(a) All waters that are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters that are subject to the ebb and flow of the tide; (b) Interstate waters, including interstate wetlands; . . . ; (e) Tributaries of waters identified in

paragraphs (a) through (d) of this section, including adjacent wetlands; and (f) Wetlands adjacent to waters identified in paragraphs (a) through (e) of this section”

16. In accordance with section 311(b)(4) of the Act, 33 U.S.C. § 1321(b)(4), the President, through a delegation to EPA, has determined, by regulation, those quantities of oil the discharge of which may be harmful to the public health or welfare or the environment of the United States. Exec. Order No. 11735, 38 Fed. Reg. 21243 (Aug. 3, 1973), and Executive Order 12777, 56 Fed. Reg. 54757 (October 22, 1991). Discharges of oil in such quantities as may be harmful, include discharges of oil that: “(a) Violate applicable water quality standards; or (b) 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 upon adjoining shorelines.” 40 C.F.R. § 110.3.

17. Pursuant to section 311(b)(6)(A) of the Act, 33 U.S.C. § 1321(b)(6)(A), any owner, operator, or person in charge of any vessel, onshore facility or offshore facility from which oil is discharged in violation of section 311(b)(3) of the Act, 33 U.S.C. § 1321(b)(3), may be assessed a class I or class II civil penalty.

18. The term “owner or operator” is defined in section 311(a)(6) of the Act in pertinent part as “in the case of an onshore facility, . . . any person owning or operating such onshore facility” 33 U.S.C. § 1321(a)(6).

19. According to section 311(a)(7) of the Act, “person” includes an individual, firm, corporation, association, and a partnership.” 33 U.S.C. § 1321(a)(7).

20. The term “onshore facility” is defined in section 311(a)(10) of the Act as “any facility (including, but not limited to, motor vehicles and rolling stock) of any kind located in, on, or under, any land within the United States other than submerged land.” 33 U.S.C. § 1321(a)(10).

V. GENERAL ALLEGATIONS

21. Respondent is and was at all relevant times a Minnesota corporation licensed to do business in North Dakota.

22. The registered agent of Soo Line Railroad Company is CT Corporation System. The address of Respondent's registered agent on file with the North Dakota Secretary of State is 314 E. Thayer Ave., Bismarck, North Dakota 58501-4018.

23. Respondent is and was at all times relevant to this Agreement a "person" within the meaning of section 311(a)(7) of the Act, 33 U.S.C. § 1321(a)(7).

24. At all relevant times, Respondent owned and operated the tracks and the locomotives involved in the diesel release referenced in Paragraph 28, *infra*.

25. The referenced locomotives in Paragraph 24, *supra*, were at all relevant times "onshore facilities" within the meaning of section 311(a)(10) of the Act, 33 U.S.C. § 1321(a)(10).

26. The James River and Arrowwood Lake and their tributaries and adjacent wetlands are and were at all relevant times "navigable waters" within the meaning of 40 C.F.R. section 110.1, and section 502(7) of the Act, 33 U.S.C. § 1362(7).

VI. SPECIFIC ALLEGATIONS

27. On August 6, 2011, approximately 31 of the 90 rail cars and the lead locomotive referenced in Paragraph 24, derailed approximately three (3) miles northwest of Kensal, North Dakota, adjacent to Arrowwood Lake near Highway 9, due to flooding conditions that washed out the train track.

28. As a result of the derailment referenced in Paragraph 27, approximately 1,500 gallons of diesel fuel was released from the lead locomotive into wetlands adjacent to the James River which flows into the Arrowwood National Wildlife Refuge posing a threat to aquatic,

migratory, and other wildlife, and impacting the James River and Arrowwood Lake which are drinking water supplies for downstream communities.

29. The Respondent's release of 1,500 gallons of diesel referenced in Paragraph 28 impacted the James River by causing a sheen of oil on the water and the shorelines.

VII. VIOLATION

30. Paragraphs 1 through 29 of this Agreement are re-alleged and incorporated herein by reference.

31. The release of diesel referenced in Paragraph 28 was at all relevant times a "discharge" within the meaning of section 311(a)(2) of the Act, 33 U.S.C. § 1321(a)(2).

32. The discharged diesel referenced in Paragraph 28 was at all relevant times "oil" within the meaning of section 311(a)(1) of the Act, 33 U.S.C. § 1321(a)(1).

33. The oil that was discharged into the James River and its tributaries and adjacent wetlands referenced in Paragraph 28 was discharged in "quantities as may be harmful" within the meaning of section 311(b)(3) of the Act, 33 U.S.C. § 1321(b)(3), and 40 C.F.R. § 110.3.

34. Section 311(b)(6)(B)(ii) of the Act, 33 U.S.C. § 1321(b)(6)(B)(ii), and 40 C.F.R. part 19 authorize the assessment of a Class II civil penalty not to exceed \$16,000 per day for each day during which the violation continues, up to a maximum civil penalty of \$177,500, for violations of section 311(b)(3) of the Act, 33 U.S.C. § 1321(b)(3), occurring after January 12, 2009.

VIII. PAYMENT OF CIVIL PENALTY

35. Respondent, by signing this Agreement, herein certifies to the EPA that Respondent is now in compliance with each of the relevant provisions of the Act that formed the basis of the Complaint.

36. Respondent consents to the issuance of a final order and consents for the purpose of settlement to pay a civil penalty in the amount of thirty nine thousand four hundred and forty nine dollars (\$39,449).

37. The EPA proposes this penalty amount after considering the applicable statutory penalty factors in section 311(b)(8) of the Act, 33 U.S.C. §1321(b)(8): the seriousness of the violation, the economic benefit to the violator, if any, resulting from the violation, the degree of culpability involved, any other penalty for the same incident, any history of prior violations, the nature, extent, and degree of success of any efforts of the violator to minimize or mitigate the effects of the discharge, the economic impact of the penalty on the violator, and any other matters as justice may require.

38. Respondent consents and agrees to pay a civil penalty in the amount thirty nine thousand four hundred and forty nine dollars (\$39,449) within 30 calendar days from the date written on the Final Order, issued by the Regional Judicial Officer that adopts this Agreement.

39. If the due date of the payment falls on a weekend or legal federal holiday, the due date is the next business day. Payments must be received by 11:00 a.m. Eastern Standard Time to be considered as received that day.

40. Payments shall be made by any of the methods set forth in Appendix 1 to this Agreement.

41. At the same time that the payment is made, notice that the payment has been made shall be provided to:

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

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

42. If a payment is made by check, the notice shall include a copy of the check. If a payment is made in any other manner, the notice shall include documentation demonstrating that the payment was made.

43. In the event a payment is not received by the specified due date, interest on the late payment shall accrue from the date of the Final Order, not the due date, at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, and will continue to accrue until payment in full is received (e.g., on the 1st late day for the first payment, 30 days of interest accrues).

44. In addition, a handling charge of fifteen dollars (\$15) shall be assessed on the 31st day from the date of the Final Order, and each subsequent 30-day period that the initial payment, or any portion thereof, remains unpaid, and a handling charge of fifteen dollars (\$15) shall be assessed on the 1st day after the due date of each subsequent payment, and each subsequent 30-day period that any such payment, or any portion thereof, remains unpaid. In addition, a six percent (6%) per annum penalty shall be assessed on any unpaid principal amount if payment is not received within 90 days of the due date (e.g., the 121st day from the date the Final Order is signed). Payments are first applied to handling charges, 6% penalty interest, late interest, and any balance is then applied to the outstanding principal amount. Further, Respondent shall be subject to the fees, costs, and nonpayment penalty set forth in section 311(b)(6)(H) of the Act, 33 U.S.C. § 1321(b)(6)(H).

45. Respondent agrees that the penalty shall never be claimed as a federal or other tax deduction or credit.

IX. OTHER TERMS AND CONDITIONS

46. Failure by Respondent to comply with any of the terms of this Agreement shall constitute a breach of this Agreement and may result in referral of the matter to the United States

Department of Justice for enforcement of this Agreement and for such other relief as may be appropriate.

47. Nothing in this Agreement shall be construed as a waiver by Complainant or any other federal entity of its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of Respondent's failure to perform pursuant to the terms of this Agreement.

48. This Agreement, upon incorporation into a final order by the Regional Judicial Officer and full payment of the penalty (\$39,449) shall resolve Respondent's liability for civil penalties for the violations alleged in this Agreement.

49. This Agreement shall not in any case affect the EPA's right to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law whether or not alleged in this Agreement.

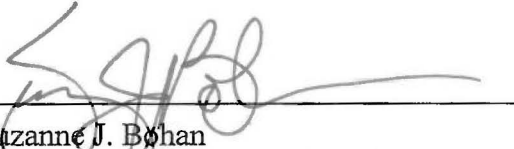
50. This Agreement shall not affect Respondent's right to assert any defense in any action by the EPA to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

51. Each party shall bear its own costs and attorney fees in connection with all issues associated with this Agreement.

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


Date: December 18, 2014

By: _____


Suzanne J. Bohan
Acting Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice

SOO LINE RAILROAD COMPANY,
d/b/a Canadian Pacific,
Respondent

NOV 25, 2014
Date

By: 
Signatory
CHRIS BUNCE

Combined Complaint and Consent Agreement - Appendix 1

The following are acceptable payment methods for the civil penalty required to be paid pursuant to the Agreement.

1. If payment is being made by check, submit the check, including the name, docket number, and the notation, "Oil Spill Liability Trust Fund-311," payable to "**Environmental Protection Agency**" :

Regular Mail:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077 ,
St. Louis, MO 63197-9000

Federal Express, Airborne, or other commercial carrier:

US Bank
Cincinnati Finance Center Box 979077
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

Contact: Craig Steffen
513-487-2091

2. Wire Transfers:

Wire transfers must indicate the name and docket number of this case and be sent directly to the Federal Reserve Bank in New York City with the following information:

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"

3. ACH (also known as REX or remittance express):

Please indicate the name and docket number of this case on Automated Clearinghouse (ACH) payments to EPA made through the US Treasury using the following information:

US Treasury REX/Cashlink ACH Receiver

ABA: 051036706

Account Number: 310006, Environmental Protection Agency

CTX Format Transaction Code 22 – checking

Physical location of US Treasury Facility

5700 Rivertech Court

Riverdale, MD 20737

US Treasury Contact Information:

Randolph Maxwell: 202-874-7026

Remittance Express (REX): 1-866-234-5681

4. On-line Payment:

There is now an On Line Payment Option, available through the Dept. of Treasury. This payment option can be accessed from the information below:

www.pay.gov

Enter "sfo 1.1" (without the quotation marks) in the "Search Public Forms" field.

Click on the first link to open the form, complete required fields, and then click on "Submit Data" button at bottom of form.

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION 8
1595 Wynkoop Street; Denver, CO 80202-1129**

PUBLIC NOTICE AND OPPORTUNITY TO COMMENT ON CLEAN WATER ACT SETTLEMENT

Action: EPA is providing notice of a Combined Complaint and Consent Agreement with penalty assessment and the opportunity for public comment on the proposed administrative penalty assessment against Soo Line Railroad Company, d/b/a Canadian Pacific for discharge of oil into waters of the U.S.

Summary: EPA is authorized in Class II proceedings under Section 311(b)(6) of the Clean Water Act (Act), 33 U.S.C. § 1321(b)(6), to issue orders assessing civil penalties for violations of the Act and its implementing regulations, after providing the person subject to the penalty notice an opportunity for a hearing, and after providing the public with notice of the proposed penalty, and the opportunity to submit written comments and to participate in a Class II penalty proceeding (hearing), if any. The deadline for submitting public comment is thirty (30) calendar days after issuance of this notice.

On November xx, 2014, EPA filed a Combined Complaint and Consent Agreement pursuant to Section 311(b)(6)(B)(ii) of the Act. Pursuant to Section 311(b)(6)(C) of the Act, and 40 C.F.R. § 22.38, EPA hereby notifies the public of this proposed penalty assessment:

In the matter of: Soo Line Railroad Company, d/b/a Canadian Pacific
501 Marquette Avenue # 1101
Minneapolis, MN 554021203

EPA Docket Number: CWA-08-2015- 0009

Proposed penalty in the Complaint: \$39,449.00

Alleged violations: A train derailment resulted in the discharge of at least 1,500 gallons of diesel fuel into flooded wetlands adjacent to the James River, which flows to the Arrowwood Lake and National Wildlife Refuge threatening aquatic, migratory, and other wildlife in Stutsman County, North Dakota, in violation of section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3).

Written comments on the Combined Complaint and Consent Agreement are encouraged and will be accepted at the address listed below for a period of thirty (30) calendar days after the publication of this notice. Written comments submitted by the public, as well as information submitted by Soo Line Railroad Company, d/b/a Canadian Pacific, will be available for public review, subject to the provisions of law restricting the disclosure of confidential information. Any person submitting written comments has a right to participate in a hearing, if one is held. The Combined Complaint and Consent Agreement is available for review between 9:00 a.m. and 4:00 p.m. at the address listed below and on the internet at: <http://yosemite.epa.gov/oa/rhc/epaadmin.nsf>.

Submit written comments to: Tina Artemis
Regional Hearing Clerk (8RC);
EPA Region 8
1595 Wynkoop Street
Denver, CO 80202-1129
Telephone: (303) 312-6765.

FOR FURTHER INFORMATION: Persons wishing to receive a copy of the Combined Complaint and Consent Agreement, or other documents in this proceeding (such as the regulations in 40 C.F.R. part 22, which establish procedures for hearings), or to comment upon the proposed penalty assessment, or any other aspect of the matter, should contact the Regional Hearing Clerk identified

above. No action will be taken by EPA to finalize a settlement in this matter until thirty (30) calendar days after this public notice.