



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8  
1595 WYNKOOP STREET  
DENVER, CO 80202-1129  
Phone 800-227-8917  
http://www.epa.gov/region08

2012 FEB 21 PM 3:02

FILED  
EPA REGION VIII  
DENVER CO

DOCKET NO.: CWA-08-2012-0010

IN THE MATTER OF: )  
)  
**DAKOTA, MISSOURI VALLEY,** )  
**and WESTERN RAILROAD, INC.** )  
3501 E. Rosser Avenue )  
Bismarck, ND 58501 )  
)  
**RESPONDENT** )

**FINAL ORDER**

Pursuant to 40 C.F.R. §22.13(b), 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 21<sup>st</sup> DAY OF February, 2012.

Elyana R. Sutin  
Regional Judicial Officer

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

2012 FEB 21 PM 3:02

In the Matter of: )  
)  
**Dakota, Missouri Valley,** )  
**and Western Railroad, Inc.** )  
3501 E. Rosser Avenue )  
Bismarck, ND 58501, )  
)  
Respondent. )

FILED  
EPA REGION VIII  
RECORDING CLERK

**EXPEDITED CONSENT AGREEMENT**

**DOCKET NO. : CWA-08-2012-0010**

1. Pursuant to 40 C.F.R. § 22.13(b), Complainant, United States Environmental Protection Agency, Region 8, and Respondent, Dakota, Missouri Valley, and Western Railroad, Inc., by their undersigned representatives, hereby settle the civil cause of action arising out of a spill of oil that occurred on or about March 31, 2010, and violations of the Spill Prevention Control and Countermeasure (SPCC) Plan regulations, and agree as follows:

2. The Clean Water Act (the Act), as amended, authorizes the Administrator of EPA to assess administrative penalties against any person who discharges oil into or upon the navigable waters and adjoining shorelines of the United States in quantities that have been determined may be harmful to the public health or welfare or environment of the United States, 33 U.S.C.

§§ 1321(b)(6) and (b)(3) or any person who violates the oil pollution prevention (SPCC) regulations, promulgated at 40 C.F.R. Part 112 under Section 311(j) of the Clean Water Act, 33 U.S.C. § 1321(j). This determination includes discharges of oil that (1) violate applicable water quality standards, (2) cause a film, sheen, or discoloration of the surface of the water or the adjoining shoreline, or (3) cause a sludge or emulsion to be deposited beneath the surface of the water or the adjoining shoreline, 40 C.F.R. § 110.3, and the failure to prepare and implement an SPCC plan, in accordance with 40 C.F.R. § 112. This authority has been properly delegated to the undersigned EPA official.

3. Respondent owns and/or operates Dakota, Missouri Valley, and Western Railroad, located at 3501 E. Rosser Avenue, Bismarck, North Dakota.
4. Respondent admits that on or about March 31, 2010, its Dakota, Missouri Valley, and Western Railroad facility discharged approximately 20 to 25 gallons of oil into or upon Hay Creek and/or its adjoining shorelines. Hay Creek is tributary to Apple Creek, which is tributary to the Missouri River.
5. Respondent's discharge from its facility caused a sheen upon, or discoloration of, or caused a sludge or emulsion to be deposited on the surface of the Hay Creek and/or its adjoining shoreline.
6. Respondent's discharge constitutes a violation of Section 311(b)(3) of the Act.
7. Respondent admits its facility is subject to the SPCC regulations.
8. Respondent admits that from the March 31, 2010 spill, until it submitted a final, revised SPCC plan on January 6, 2012, it failed to maintain and implement an adequate SPCC Plan for the Facility in accordance with 40 C.F.R. § 112.3.
9. Respondent admits that EPA has jurisdiction in this proceeding.
10. Respondent waives its right to a hearing before any civil tribunal, to contest any issue of law or fact set forth in this agreement.
11. 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.
12. This Agreement contains all terms of the settlement agreed to by the parties.
13. Respondent consents and agrees to the assessment of a civil penalty of \$2,000 (\$500 for the discharge of oil in violation of Section 311(b)(3) of the Act and \$1,500 for violations of Section 311(j) 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

14. 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

15. 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."

16. 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

**Cynthia Peterson**  
**Technical Enforcement Program (8ENF-UFO)**  
**U.S. EPA Region 8**  
**1595 Wynkoop**  
**Denver, CO 80202-1129**

17. 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; (3) taken corrective measures to prevent future spills; and (4) revised, implemented, and will maintain an SPCC plan in accordance with 40 C.F.R. § 112.

18. 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.

19. 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.

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

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

22. 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.

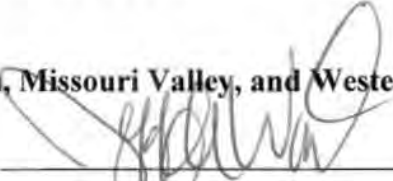
**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION 8,  
Office of Enforcement Compliance and Environmental Justice, Complainant.**

By: 

Date: 2/21/2012

Darcy O'Connor, Acting Director  
UIC/FIFRA/OPA Technical Enforcement Program

**Dakota, Missouri Valley, and Western Railroad, Inc., Respondent.**

By: 

Date: 1/29/12

Name: JEFF A. WOOD

Title: EVP

## CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **EXPEDITED CONSENT AGREEMENT and FINAL ORDER** in the matter of **DAKOTA, MISSOURI VALLEY and WESTERN RAILROAD, INC.; DOCKET NO.: CWA-08-2012-0010** was filed with the Regional Hearing Clerk on February 21, 2012.


Further, the undersigned certifies that a true and correct copy of the documents were delivered to, Marc Weiner, 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 on February 12, 2012 to:

Jeff A. Wood, EVP  
Dakota, Missouri Valley and Western Railroad, Inc.  
3501 E. Rosser Avenue  
Bismarck, ND 58501

E-mailed to:

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

February 21, 2012

  
Tina Artemis  
Paralegal/Regional Hearing Clerk

