

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
 REGION 4

HEARING CLERK

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IN THE MATTER OF)	
)	CWA SECTION 311 CLASS I
)	CONSENT AGREEMENT AND
Kansas City Southern)	FINAL ORDER
Railway Company)	UNDER 40 C.F.R. § 22.13(b)
)	
)	
Respondent.)	Docket No. CWA-04-2008-5139(b)

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, Kansas City Southern Railway Company, is a corporation organized under the laws of Missouri 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 Ackerman, 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. Bogue Fallah 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.

1

Allegations

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

8. On February 11, 2005, Respondent discharged 900 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 Bogue Fallah Creek and/or its adjoining shorelines.

9. Respondent's February 11, 2005, discharge of oil from its facility caused a sheen upon or discoloration of the surface of the Bogue Fallah 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 \$6,000.00.

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 \$6,000.00 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 \$6,000.00 to 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 there under, 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.

19. The following attorney represents EPA in this matter and is authorized to receive service for EPA in the proceeding:

Joan Redleaf Durbin
Associate Regional Counsel
United States Environmental Protection Agency, Region 4
Sam Nunn Atlanta Federal Center,
61 Forsyth Street, SW
Atlanta, Georgia 30303
(404) 562-9544
Redleaf-Durbin.Joan@epa.gov

The following attorney represents Respondent in this matter and is authorized to receive service for Respondent in the proceeding:

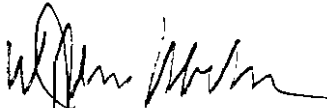
David C. Reeves
Associate General Counsel
The Kansas City Southern Railway Company
Legal Department, Kansas City Southern,
P.O Box 219335
Kansas City, MO 64121-9335
(816) 983-1387

Effective Date

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

For KANSAS CITY SOUTHERN RAILWAY COMPANY


Date: 7/28/08



W. James Wochner, Sr.
Vice President and Chief Legal Officer

For U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: 8/4/08



Caroline Y. F. 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.

Kansas City Southern Railway Company, the Respondent, is ordered to comply with the terms of the Consent Agreement, Docket No. CWA-04-2008-5139(b).

Date: Aug 8, 2008

Susan B. Schub
Susan Schub
Regional Judicial Officer

CERTIFICATE OF SERVICE

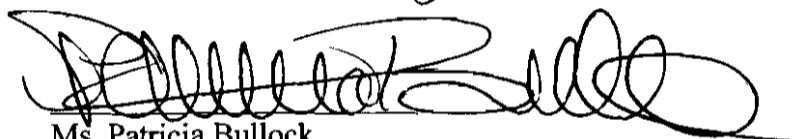
I hereby certify that I have this day served a true and correct copy of the Foregoing Consent Agreement and Final Order, in the matter of Kansas City Southern Railway Company, Docket No. CWA-04-2008-5139(b), on the parties listed below in the manner indicated:

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

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

(Via Certified Mail)
David C. Reeves
Associate General Counsel
The Kansas City Southern Railway Company
Legal Department, Kansas City Southern,
P.O Box 219335
Kansas City, MO 64121-9335
(816) 983-1387

Dated this 12 day of August, 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