



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGIONS 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

JAN 07 2011

REPLY TO THE ATTENTION OF:

SC-5J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Gregory J. Jeffries
BNSF Railway Company
2600 Lou Menk Drive
Fort Worth, Texas 76131

Re: BNSF Railway Company, Fort Worth, Texas
Consent Agreement and Final Order – Docket No: **CERCLA-05-2011-0005**

Dear Mr. Jeffries

Enclosed please find a fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The U.S. EPA has filed the other original CAFO with the Regional Hearing Clerk on January 7, 2011.

Please have BNSF Railway Company pay the CERCLA civil penalty in the amount of \$15,716 in the manner prescribed in paragraphs 27 and 28, and reference their check with the number BD 2751130B005 and docket number CERCLA-05-2011-0005.

The payment is due on February 7, 2011

Please feel free to contact Ruth McNamara at (312) 353-3193 if you have any questions regarding the enclosed documents. Please direct any legal questions to Jerome Kujawa, Associate Regional Counsel, at (312) 886-6731. Thank you for your assistance in resolving this matter.

Sincerely,

Mark J. Horwitz, Chief
Chemical Emergency Preparedness
and Prevention Section

Enclosure

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:) **Docket No. CERCLA-05-2011-0005**
)
BNSF Railway Company) **Proceeding to Assess a Civil Penalty Under**
Fort Worth, Texas) **Section 109(b) of the Comprehensive**
) **Environmental Response, Compensation,**
Respondent.) **and Liability Act**

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Consent Agreement and Final Order
Preliminary Statement

**REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY**

1. This is an administrative action commenced and concluded under Section 109(b) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, 42 U.S.C. § 9609(b), and Sections 22.13(b) and 22.18(b)(2) and (3) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (Consolidated Rules) as codified at 40 C.F.R. Part 22.

2. The Complainant is, by lawful delegation, the Director of the Superfund Division, United States Environmental Protection Agency (U.S. EPA), Region 5.

3. Respondent is BNSF Railway Company (BNSF), a corporation doing business in the States of Minnesota and Wisconsin.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO,

6. Respondent consents to the assessment of the civil penalty specified in this CAFO, and the terms of the CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

Statutory and Regulatory Background

9. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), requires any person in charge of a facility to immediately notify the National Response Center (NRC) as soon as that person has knowledge of any release of a hazardous substance from the facility in an amount equal to or greater than the hazardous substance's reportable quantity.

10. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a) provides a mechanism to alert federal agencies that a response action may be necessary to prevent deaths or injuries to emergency responders, facility personnel and the local community. A delay or failure to notify could seriously hamper the governments' response to an emergency and pose serious threats to human health and the environment.

11. Section 109(b) of CERCLA, 42 U.S.C. § 9609(b), authorizes U.S. EPA to assess a civil penalty of up to \$25,000 per day of violation of CERCLA Section 103. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and its implementing regulations at 40 C.F.R. Part 19 increased these statutory maximum penalties to \$27,500 per day of violation that occurred from January 31, 1997 through March 15, 2004, and to \$32,500 per day of violation for violations that occurred after March 15, 2004.

Factual Allegations and Alleged Violations

12. Respondent is a “person” as that term is defined under Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

13. At all times relevant to this CAFO, Respondent was in charge of the rail car OWIX 15055 (“facility”).

14. Respondent’s facility consists of structure, equipment, storage container, rolling stock, or any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located.

15. Respondent’s facility is a “facility” as that term is defined under Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

16. Ethylene glycol is a “hazardous substance” as that term is defined under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

17. Ethylene glycol CAS# 107-21-1, has a reportable quantity of 5,000 pounds, as indicated at 40 C.F.R. Part 302, Table 302.4.

18. On March 5, 2008, at or about 3:52 p.m. CT, a release occurred from Respondent’s facility of approximately 169,050 pounds of ethylene glycol (the release).

19. In less than a 24 hour time period, the release of ethylene glycol exceeded 5,000 pounds.

20. During the release, approximately 169,050 pounds of ethylene glycol spilled, leaked, poured, emitted, emptied, discharged, escaped, dumped, or disposed into the Mississippi River, a navigable water of the United States.

21. The release is a “release” as that term is defined under Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

22. Respondent had knowledge of the release on March 5, 2008 at approximately 3:52 p.m. CT.

23. Respondent notified the NRC of the release on March 5, 2008, at 6:00 p.m. CT.

24. Respondent did not immediately notify the NRC as soon as Respondent had knowledge of the release.

25. Respondent's failure to immediately notify the NRC of the release is a violation of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

Civil Penalty

26. U.S. EPA has determined that an appropriate civil penalty to settle this action is fifteen thousand, seven hundred and sixteen dollars (\$15,716).

27. Within thirty (30) days after the effective date of this CAFO, Respondent must pay the United States a civil penalty in the amount of fifteen thousand, seven hundred and sixteen dollars (\$15,716) for the CERCLA violation alleged herein.

[if payment by check]

Respondent must pay the penalty by sending a cashier's or certified check, payable to "EPA Hazardous Substance Superfund," to:

[for checks sent by regular U.S. postal service]

U.S. Environmental Protection Agency
Superfund Payments
Cincinnati Finance Center
P.O. Box 979076
St. Louis, MO 63197-9000

[for checks sent by express mail]

U.S. Bank
Government Lockbox 979076 U.S. EPA Superfund Payments
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101

The check must note the following: case title, the docket number of this CAFO and the billing document number 2751130 B005.

[for electronic funds transfer]

Respondent must pay the penalty by electronic funds transfer, payable to "EPA Hazardous Substance Superfund," and sent to:

Federal Reserve Bank of New York
ABA No. 021030004
Account No. 68010727
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire should read "D68010727
Environmental Protection Agency"

In the comment or description field of the electronic funds transfer, state the following: case title, the docket number of this CAFO and the billing document number 2751130 B005

28. A transmittal letter, stating Respondent's name, the case title, Respondent's complete address, the case docket number and the billing document number must accompany the payment. Respondent must send a copy of the check and transmittal letter to the following three people:

Regional Hearing Clerk, (E-19J)
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604-3511

Ruth McNamara, (SC-5J)
Chemical Emergency Preparedness
and Prevention Section
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Jerome Kujawa (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

29. This civil penalty is not deductible for federal tax purposes.

30. If Respondent does not timely pay the civil penalty, U.S. EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, non-payment penalties and the United States' enforcement expenses for the collection action. The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

31. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the United States any amount overdue under this CAFO identified in paragraphs 27 and 30. Interest will accrue on any amount overdue from the date the payment was due at a rate established pursuant to 31 U.S.C. § 3717, which interest Respondent must pay. Respondent must pay a fifteen dollar (\$15) handling charge each month that any portion of the penalty is more than thirty (30) days past due. In addition, U.S. EPA will assess a six percent (6%) per year penalty on any principal amount ninety (90) days past due.

General Provisions

32. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in the CAFO.

33. This CAFO does not affect the right of the U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

34. Respondent certifies that it is complying with Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

35. This CAFO does not affect Respondent's responsibility to comply with CERCLA and other applicable federal, state and local laws, and regulations.

36. This CAFO is a "final order" for purposes of U.S. EPA's Enforcement Response Policy for Section 103 of CERCLA.

37. The terms of this CAFO bind Respondent and its successors, and assigns.

38. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

39. Each party agrees to bear its own costs and fees, including attorneys' fees, in this action.

40. This CAFO constitutes the entire agreement between the parties.

SIGNATORIES

BNSF Railway Company, Respondent

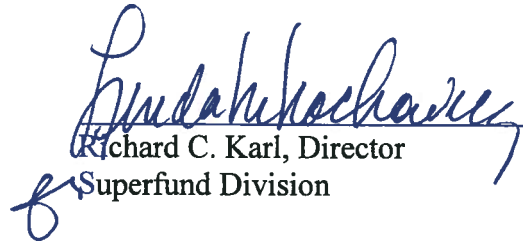
12-14-2010
Date

Greg Jeffries
Name: Greg Jeffries
Title: Manager Environmental Remediation
BNSF Railway Company

In the Matter of:
BNSF Railway Company, Fort Worth, Texas
Docket No.

U.S. Environmental Protection Agency, Complainant

12/22/10
Date


Richard C. Karl, Director
for Superfund Division

In the Matter of:
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Docket No. CERCLA-05-2011-0005

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Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

12-29-10
Date



Susan Hedman
Regional Administrator
U.S. Environmental Protection Agency
Region 5

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Certificate of Service

I, Ruth McNamara, certify that I hand delivered the original of the Consent Agreement and Final Order, docket number CERCLA-05-2011-0005 to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, personally served a copy on the Regional Judicial Officer, and mailed correct copies by first-class, postage prepaid, certified mail, return receipt requested, to BNSF Railway Company by placing them in the custody of the United States Postal Service addressed as follows:

Gregory J. Jeffries
BNSF Railway Company
2600 Lou Menk Drive
Fort Worth, TX 76131

on the 7 day of January, ~~2010~~ 2011 *JW*

Ruth McNamara
Ruth McNamara
U.S. Environmental Protection Agency
Region 5