



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1

In the matter of)
)
Central Maine & Quebec Railway US, Inc.)
)
120 S. Sixth St., Ste. 700)
Minneapolis, MN 55402)
)
Respondent.)

Docket No. CWA-01-2024-0002

**CONSENT AGREEMENT AND
FINAL ORDER FOR CLASS II
CIVIL PENALTY UNDER THE
CLEAN WATER ACT**

The United States Environmental Protection Agency, Region 1 (“EPA”) issues, and Central Maine & Quebec Railway US, Inc. (Respondent) consents to, this Consent Agreement and Final Order (“CAFO”). EPA alleges that Respondent violated Section 311(b)(3) of the Clean Water Act (“CWA”), 33 U.S.C. § 1321(b)(3). Specifically, EPA alleges that Respondent discharged oil into waters of the United States in violation of the CWA. The parties agree to resolve this action by the issuance of this CAFO pursuant to 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) of EPA’s *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*, at 40 C.F.R. part 22 (“*Consolidated Rules*”).

STATUTORY AND REGULATORY AUTHORITY

1. EPA takes this action under the authority of Sections 311(b)(6) of the CWA, 33 U.S.C. § 1321(b)(6).
2. Pursuant to Section 311(b)(6)(C)(i), 33 U.S.C. § 1321(b)(6)(C)(i), EPA provided public notice of, and reasonable opportunity to comment on, this action.
3. Section 311(b)(3) of the Act, 33 U.S.C. § 1321(b)(3), prohibits the discharge of oil, as defined in Section 311(a)(1) of the Act, 33 U.S.C. § 1321(a)(1), into or upon the navigable

waters of the United States or adjoining shorelines in such quantities as may be harmful, as determined under Section 311(b)(4) of the Act, 33 U.S.C. § 1321(b)(4).

4. In promulgating 40 C.F.R. § 110.3, which implements Section 311(b)(4) of the Act, EPA has determined that an oil discharge “may be harmful” to the public health or welfare or the environment of the United States if it causes either: (1) a violation of applicable water quality standards; (2) a film or sheen upon, or discoloration of the surface of the water or adjoining shorelines; or (3) a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines (“harmful quantity”).

5. “Navigable waters” of the United States are defined in Section 502(7) of the Act, 33 U.S.C. § 1362(7), as “waters of the United States.”

6. Section 311(b)(6)(A)(i) of the CWA, 33 U.S.C. § 1321(b)(6)(A)(i), provides for the assessment of penalties for owners, operators, or persons in charge of onshore facilities from which oil or a hazardous substance is discharged in violation of Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3).

7. Under Section 311(b)(6)(B)(ii) of the CWA, 33 U.S.C. § 1321(b)(6)(B)(ii), EPA may seek Class II administrative civil penalties for violations of Section 311(b)(6)(A)(ii) of the CWA, up to a maximum amount not exceeding \$125,000. Pursuant to the *Civil Monetary Penalty Inflation Adjustment Rule*, 88 Fed. Reg. 986, 989 (January 6, 2023), that amount has increased up to a maximum of \$279,036, for violations that occurred after November 2, 2015, and are assessed after January 15, 2023.

FINDINGS OF FACT

8. On two separate occasions, freight trains owned and operated by Respondent discharged fuel oil into waters of the United States in violation of Section 311 of the Act.

9. Respondent is a corporation organized under the laws of the State of Delaware with its headquarters located at 700 Main Street, Suite 3, Bangor, Maine and, therefore, is a “person” within the meaning of Section 311(a)(7) of the Act, 33 U.S.C. § 1321(a)(7).

10. Respondent is the “owner or operator,” within the meaning of Section 311(a)(6) of the Act, 33 U.S.C. § 1321(a)(6), of the freight trains involved in each oil spill.

11. Each freight train is considered an “onshore facility” within the meaning of Section 311(a)(10) of the Act, 33 U.S.C. § 1321(a)(10) and 40 C.F.R. § 112.2.

Findings of Fact Regarding LaGrange Oil Spill

12. On October 19, 2022, a freight train owned by Respondent derailed and rolled over in LaGrange, Maine. The compromised freight train released up to approximately 1,000 gallons of fuel diesel oil, 25 gallons of gear oil and 25 gallons of engine oil.

13. The release of fuel oil from Respondent’s freight train on October 19, 2022, constitutes a “discharge” as defined by Section 311(a)(2) of the Act, 33 U.S.C. § 1321(a)(2) of “oil,” as defined in Section 311(a)(1) of the Act, 33 U.S.C. § 1321(a)(1).

14. Respondent indicates that the released oil entered an unnamed tributary which flows to the Dead Stream.

15. The waters listed in Paragraph 14, supra, are each “waters of the United States” as defined in Section 502(7) of the Act, 33 U.S.C. § 1362(7) and are therefore subject to the jurisdiction of Section 311 of the Act, 33 U.S.C. § 1321.

16. The released oil created a sheen on the unnamed tributary’s surface water and free product was observed in the unnamed tributary as well. Accordingly, the October 19, 2022, release constitutes a discharge of oil as “may be harmful” pursuant to 40 C.F.R. § § 110.3.

Findings of Fact Regarding Brassua Oil Spill

17. On April 15, 2023, a freight train owned by Respondent derailed in the Sandwich Academy Grant Township near Brassua, Maine. The compromised freight train released up to approximately 13,630-gallons of oil (12,310 gallons of diesel fuel, 900 to 1,200 gallons of motor oil, and 90 to 120 gallons of hydraulic oil) into an unnamed creek.

18. The release of fuel oil from Respondent's freight train on April 15, 2023, into the unnamed creek constitutes a "discharge" as defined by Section 311(a)(2) of the Act, 33 U.S.C. § 1321(a)(2) of "oil," as defined in Section 311(a)(1) of the Act, 33 U.S.C. § 1321(a)(1).

19. The oil released from the freight train on April 15, 2023, immediately entered an unnamed creek, which flows under the railroad tracks via culverts to a small bay connected to Little Brassua Lake.

20. The waters listed in Paragraph 19, *supra*, are each "waters of the United States" as defined in Section 502(7) of the Act, 33 U.S.C. § 1362(7) and are therefore subject to the jurisdiction of Section 311 of the Act, 33 U.S.C. § 1321.

21. The released oil created a sheen on the surface waters of both the unnamed creek and the small bay connected to Little Brassua Lake. Emulsified oil was observed in the unnamed creek and the small bay as well. Minor oil stains on the vegetation in the immediate vicinity of the banks was observed as well. Accordingly, the April 15, 2023, release constitutes a discharge of oil as "may be harmful" pursuant to 40 C.F.R. § 110.3.

CONCLUSIONS OF LAW

22. Respondent's discharges of oil into navigable waters of the U.S. in a quantity that has been determined may be harmful under 40 C.F.R. § 110.3 constitute two separate violations of Section 311(b)(3) of the CWA.

CONSENT AGREEMENT

23. EPA and Respondent agree that settlement of this cause of action is in the public interest and that entry of this CAFO without further litigation is the most appropriate means of resolving this matter. Therefore, before taking any testimony, upon the pleadings, without adjudication of any issue of fact or law, and upon consent and agreement of the parties, it is hereby ordered and adjudged as follows:

24. Respondent admits the jurisdictional allegations set forth in this CAFO and waives any defenses it might have as to jurisdiction and venue.

25. Respondent neither admits nor denies the factual or non-jurisdictional allegations contained herein.

Waiver of Rights

26. Respondent waives the right to a hearing under Section 311(b)(6)(B)(ii) of the CWA, 33 U.S.C. § 1321(b)(6)(B)(ii), and to any appeal of the Final Order in this matter under Sections 311(b)(6)(G)(ii) of the CWA, 33 U.S.C. § 1321(b)(6)(G)(ii). Respondent consents to the issuance of a Final Order without further adjudication.

Penalty

27. EPA proposes, and Respondent consents to, the assessment of a civil penalty of \$16,544 for the violations alleged in this CAFO.

28. In agreeing to the penalty described in the previous paragraph, EPA has taken into account the statutory penalty factors at Section 311(b)(8) of the CWA, 33 U.S.C. § 1321(b)(8).

29. Respondent shall pay the penalty of \$16,544 for the violations of Section 311 of the CWA, 33 U.S.C. § 1321 alleged herein, within 10 days of the date this Consent Agreement becomes final.

30. Respondent shall make the payment by cashier's or certified check, or by wire transfer. Respondent shall include the case name and docket number (*In the Central Maine & Quebec Railway US, Inc.*; Docket No. CWA-01-2024-0002) and write "Oil Spill Liability Trust Fund-311" on the face of the check or wire transfer confirmation. A check should be payable to "Treasurer, United States of America" and shall be remitted as follows:

If remitted by regular U.S. mail:

U.S. Environmental Protection Agency / Fines and Penalties
Cincinnati Finance Center
P.O. Box 979078
St. Louis, Missouri 63197-9000

If remitted by any overnight commercial carrier:

U.S. Bank
Government Lockbox 979078
3180 Rider Trail S.
Earth City, Missouri 63045

If remitted by wire transfer: Any wire transfer must be sent directly to the Federal Reserve Bank in New York City using the following information:

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"

In addition, at the time of payment, Respondent should also forward notice of payment of the civil penalty as well as copies of the payment check or payment receipt either via email or in hard copy to:

Wanda Santiago, Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100

Mail Code: 4-OM
Boston, Massachusetts 02109-3912
R1_Hearing_Clerk_Filings@epa.gov

and

Jaegun Lee, Attorney-Advisor
U.S. Environmental Protection Agency, Region 1
5 Post Office Square
Mail Code: 4-WD
Boston, Massachusetts 02109-3912
lee.jaegun@epa.gov

31. Pursuant to Section 311(b)(6)(H) of the CWA, 33 U.S.C. § 1321(b)(6)(H), a failure by Respondent to pay the penalty assessed by this CAFO in full by its due date shall subject Respondent to a civil action to collect the assessed penalty, plus interest at the prevailing rates, from the date this Agreement becomes final. The rate of interest assessed shall be at the rate set forth in 31 C.F.R. § 901.9(b), promulgated under 31 U.S.C. § 3717. Any person who fails to pay on a timely basis the amount of an assessed penalty shall be required to pay, in addition to such amount and interest, attorney's fees, costs for collection proceedings, and a quarterly nonpenalty payment for each quarter during which such failure to pay persists. Such nonpayment penalty shall be in an amount equal to twenty percent of the aggregate amount of such person's penalties and nonpayment penalties that are unpaid as of the beginning of such quarter. In any such collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

Supplemental Environmental Projects

32. In response to the alleged violations of Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3), and in settlement of this matter, although not required by this Section or any other federal, state or local law, Respondent agrees to implement a supplemental environmental project ("SEP"), as described below in Paragraphs 33-35.

33. Respondent shall complete an emergency equipment donation SEP, consisting of: The purchase and donation of emergency response equipment to the Jackman, Maine Volunteer Fire Department. The SEP is more specifically described in Attachment A and incorporated herein by reference.

34. Respondent shall spend no less than \$40,240 on implementing the SEP. Respondent shall include documentation of the expenditures made in connection with the SEP as part of the SEP Completion Report.

35. Respondent shall complete the SEP by April 1, 2024. In the event equipment is delayed by reasons beyond the control of Respondent and despite Respondent's reasonable best efforts to fulfill the obligation, Respondent may request an extension of this deadline. If EPA agrees, it may extend the deadline, in writing, for the period of delay.

36. The SEP is consistent with applicable EPA policy and guidelines, specifically EPA's 2015 Update to the 1998 Supplemental Environmental Projects Policy, (March 10, 2015). The SEP advances at least one of the objectives of the CWA by potentially preventing or reducing water pollution, thereby securing significant environmental or public health protection and benefits. The SEP is not inconsistent with any provision of Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3). The SEP relates to the alleged violation(s), and is designed to reduce:

- a. The future likelihood that discharged oil will reach waterways under similar circumstances by allowing local emergency responders to more rapidly address oil spills in remote areas;
- b. The adverse impact to public health and/or the environment to which the alleged violations contribute, specifically by potentially preventing spills from reaching waterways; and

- c. The overall risk to public health and/or the environment potentially affected by the alleged violations by rapidly cleaning up oil discharged near or to waterways.
37. Respondent certifies the truth and accuracy of each of the following:
- a. That all cost information provided to the EPA in connection with the EPA's approval of the SEP is complete and accurate and that the Respondent in good faith estimates that the cost to implement the SEP is \$40,240;
 - b. That Respondent will not include administrative costs or employee oversight of the implementation of the SEP in its project costs;
 - c. That, as of the date of executing this CAFO, Respondent is not required to perform or develop the SEP by any federal, state, or local law or regulation and is not required to perform or develop the SEP by agreement, grant, or as injunctive relief awarded in any other action in any forum;
 - d. That the SEP is not a project that Respondent was planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this CAFO;
 - e. That Respondent has not received and will not have received credit for the SEP in any other enforcement action;
 - f. That Respondent will not receive reimbursement for any portion of the SEP from another person or entity;
 - g. That for federal income tax purposes, Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP; and

- h. That Respondent is not a party to any open federal financial assistance transaction that is funding or could fund the same activity as the SEP described in Paragraphs 33-34.
- i. That Respondent has inquired of the Jackman, Maine Volunteer Fire Department whether it is party to an open federal financial assistance transaction that is funding or could fund the same activity as the SEP and has been informed by the Jackman, Maine Volunteer Fire Department that neither is a party to such a transaction.

38. Any public statement, oral or written, in print, film, or other media, made by Respondent or a representative of Respondent making reference to the SEP under this CAFO from the date of its execution of this CAFO shall include the following language: “This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for alleged violations of the federal laws.”

39. SEP Completion Report.

- a. Respondent shall submit a SEP Completion Report to EPA within 30 days of completion of the SEP. The SEP Completion Report shall contain the following information, with supporting documentation.
 - i. A detailed description of the SEP as implemented, including itemized costs of equipment purchased;
 - ii. A description of any operating problems encountered and the solutions thereto;
 - iii. A description of the environmental and public health benefits resulting from implementation of the SEP; and

- iv. Certification that the SEP has been fully implemented pursuant to the provisions of this CAFO.
 - b. In itemizing its costs in the SEP Completion Report, Respondent shall clearly identify and provide acceptable documentation for all eligible SEP costs.
Where the SEP completion report includes costs not eligible for SEP credit, those costs must be clearly identified as such. For purposes of this paragraph, “acceptable documentation” includes invoices, purchase orders, or other documentation that specifically identifies and itemizes the individual costs of the goods and/or services for which payment is being made. Canceled drafts do not constitute acceptable documentation unless such drafts specifically identify and itemize the individual costs of the goods and/or services for which payment is being made.
 - c. Respondent shall submit all notices and reports required by this CAFO to Jaegun Lee, EPA Region 1 Enforcement Counsel, via electronic mail at lee.jaegun@epa.gov.
 - d. Respondent agrees that failure to submit the SEP Completion Report shall be deemed a violation of this CAFO and Respondent shall become liable for stipulated penalties pursuant to Paragraph 41 below.
- 40. EPA acceptance of SEP Report.
 - a. After receipt of the SEP Completion Report described in Paragraph 39 above, EPA will, in writing to the Respondent, either:
 - i. Identify any deficiencies in the SEP Completion Report itself along with a grant of an additional 30 days for Respondent to correct any

- deficiencies; or
 - ii. Indicate that EPA concludes that the project has been completed satisfactorily; or
 - iii. Determine that the project has not been completed satisfactorily and seek stipulated penalties in accordance with Paragraph 41 herein.
- b. If EPA elects to exercise option (i) above, i.e., if the SEP Report is determined to be deficient but EPA has not yet made a final determination about the adequacy of SEP completion itself, Respondent may object in writing to the notification of deficiency given pursuant to this paragraph within 10 days of receipt of such notification. EPA and Respondent shall have an additional 30 days from the receipt by EPA of the notification of objection to reach agreement on changes necessary to the SEP Report. If agreement cannot be reached on any such issue within this 30 day period, EPA shall provide a written statement of its decision on adequacy of the completion of the SEP to Respondent, which decision shall be final and binding upon Respondent.
41. Stipulated Penalties.
- a. If Respondent fails to timely submit the SEP Completion Report specified in Paragraph 39, in accordance with the timelines set forth in this CAFO, Respondent agrees to the following per day stipulated penalty for each day after the report was due until Respondent submits the report in its entirety:
 - i. \$100 per day for days 1-30
 - ii. \$150 per day for days 31 – 60
 - iii. \$200 per day thereafter

- b. If Respondent does not satisfactorily complete the SEP, including spending the minimum amount on the SEP set forth in Paragraph 34 above, Respondent shall pay a stipulated penalty to the United States in the amount of \$44,264. “Satisfactory completion” of the SEP is defined as Respondent spending no less than \$40,240 to donate emergency response equipment by April 1, 2024, or by the extended deadline pursuant to Paragraph 35. The determinations of whether the SEP has been satisfactorily completed shall be in the sole discretion of EPA.
- c. EPA retains the right to waive or reduce a stipulated penalty at its sole discretion.
- d. Respondent shall pay stipulated penalties not more than 15 days after receipt of written demand by EPA for such penalties. The method of payment shall be in accordance with the provisions of Paragraph 30 above. Interest and late charges shall be paid as stated in Paragraph 43 herein.

General Provisions

42. The provisions of this CAFO shall apply to and be binding on Respondent, its officers, directors, successors, and assigns; and on EPA.

43. The civil penalty provided under this CAFO, and any interest, nonpayment penalties, and charges described in this CAFO, shall represent penalties assessed by EPA within the meaning of 26 U.S.C. § 162(f) and are not tax deductible for purposes of federal, state, or local law. Accordingly, Respondent agrees to treat all payments made pursuant to this CAFO as penalties within the meaning of 26 C.F.R. § 1.162-21, and further agree not to use those payments in any way as, or in furtherance of, a tax deduction under federal, state, or local law.

44. This CAFO does not constitute a waiver, suspension, or modification of the requirements of the CWA or any regulations or permits promulgated thereunder. Payment of the penalty pursuant to this CAFO resolves only Respondent's liability for federal civil and administrative penalties for the violations and facts alleged in this CAFO.

45. This CAFO in no way relieves Respondent or its employees of any criminal liability, and EPA reserves all its other criminal and civil enforcement authorities, including the authority to seek injunctive relief and the authority to undertake any action against Respondent in response to conditions which may present an imminent and substantial endangerment to the public health, welfare, or the environment.

46. Nothing in this agreement shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this CAFO or of the statutes and regulations upon which the Complaint and this CAFO is based as applied to any of Findings of Fact and Conclusions of Law not described in ¶¶ 8-22, above, or for Respondent's violation of any applicable provision of law.

47. Except as described in Paragraph 31 above, the parties shall bear their own costs and fees in this action, including attorney's fees, and specifically waive any right to recover such costs from the other party pursuant to the Equal Access to Justice Act, 5 U.S.C § 504, or other applicable laws.

48. Respondent's obligations under the CAFO shall end when it has paid in full the scheduled civil penalty, and any interest and nonpayment penalties, required by this CAFO.

49. The terms, conditions, and requirements of this CAFO may not be modified or amended except upon the written agreement of all parties, and approval of a Regional

Administrator or his or her properly authorized delegate.

50. Respondent agrees to acceptance of both (a) EPA's digital or an original signature on this CAFO and (b) service of the fully executed CAFO on the Respondent by mail or electronically by e-mail. EPA agrees to acceptance of the Respondent's digital or an original signature on this CAFO.

51. Respondent understands that the mailing or e-mail address may be made public when the CAFO and Certificate of Service are filed and uploaded to a searchable database.

52. Each undersigned representative of the parties to this Consent Agreement certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this CAFO and to execute and legally bind that party to it.

FOR RESPONDENT CENTRAL MAINE & QUEBEC RAILWAY US, INC.

Date: 1/22/24

Chad Livingston, Environmental Officer

Name, Title (printed)

FOR U.S. ENVIRONMENTAL PROTECTION AGENCY:

Carol Tucker, Acting Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 1

Date: _____

FINAL ORDER

1. EPA has provided the public a thirty-day opportunity for public notice and comment on this proposed CAFO, pursuant to Section 311(b)(6)(C)(i) of the CWA, 33 U.S.C. § 1321(b)(6)(C)(i), and 40 C.F.R. § 22.45(b).

2. The foregoing Consent Agreement is hereby ratified and incorporated by reference into this Final Order.

3. Respondent is hereby ordered to comply with the terms of the above Consent Agreement, which will become final 30 days from the date the Final Order is transmitted from Regional Judicial Officer to the Regional Hearing Clerk unless a petition to set aside the Final Order is filed by a commenter pursuant to Section 311(b)(6)(C)(iii) of the CWA, 33 U.S.C. § 1321(b)(6)(C)(iii), and 40 C.F.R. Part 22.

Date: _____

LeAnn Jensen
Regional Judicial Officer
U.S. Environmental Protection Agency, Region 1