UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1

IN THE MATTER OF PAN AM RAILWAYS, INC., SPRINGFIELD TERMINAL RAILWAY CO. INC., AND MAINE CENTRAL RAILROAD COMPANY 55 College Avenue Waterville, Maine 04901 Respondent. Proposing to Assess a Civil Penalty Under Sections 309(g) and 311(b)(6) of the Clean Water Act, 33 U.S.C. §§ 1319(g), 1321(b)(6)	Docket No. CWA-01-2015-0004 **CONSENT AGREEMENT AND FINAL ORDER**

This Consent Agreement and Final Order ("CAFO") is issued under the authority granted to the United States Environmental Protection Agency ("EPA") by Sections 309(g) and 311(b)(6) of the Clean Water Act ("CWA" or "Act"), 33 U.S.C. §§ 1319(g) and 1321(b)(6), as amended by the Oil Pollution Act of 1990, and in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. Part 22.

I. PRELIMINARY STATEMENT

1. EPA initiated this proceeding against Pan Am Railways, Inc. ("Pan Am"), Springfield Terminal Railway Co., Inc. ("Springfield Terminal Railways"), and the Maine Central Railroad Company ("MCRR") (collectively "Respondents") pursuant to Sections 309(g) and 311(b)(6) of the CWA, 33 U.S.C. §§ 1319(g) and 1321(b)(6), by filing an administrative complaint against Respondents on January 30, 2015 (the "Complaint").

2. The complete factual and jurisdictional basis for proposing the assessment of a

civil penalty is set forth in the Complaint and is incorporated herein by reference.

3. Pursuant to Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), the State of Maine has been given an opportunity to consult with EPA regarding the assessment of the administrative penalty for CWA violations against Respondent.

4. Sections 309(g)(4)(A) and 311(b)(6)(C) of the CWA, 33 U.S.C. §§ 1319(g)(4)(A) and 1321(b)(6)(C), provide that, prior to issuing an order assessing a penalty under Sections 309(g) and 311(b)(6) of the CWA, 33 U.S.C. §§ 1319(g) and 1321(b)(6), EPA must provide public notice of, and reasonable opportunity to comment on, the proposed issuance of such order. EPA has satisfied this requirement by providing public notice of, and reasonable opportunity to comment on, the proposed issuance of such order.

II. CONSENT AGREEMENT

5. Respondents stipulate that EPA has jurisdiction over the subject matter alleged in the Complaint.

6. Respondents waive any defenses they may have as to jurisdiction and venue, and, without admitting or denying the facts and violations alleged in the Complaint, consent to the terms of this CAFO.

III. WAIVER OF RIGHTS

7. Respondents hereby waive their right to request a hearing under Sections 309(g)(2)(B) and 311(b)(6)(B)(ii), 33 U.S.C. §§ 1319(g)(2)(B) and 1321(b)(6)(B)(ii), and to any appeal of the Final Order in this matter under Sections 309(g)(8)(B) and 311(b)(6)(G)(ii), 33 U.S.C. §§ 1319(g)(8)(B) and 1321(b)(6)(G)(ii). Respondents consent to the issuance of the Final Order included with this Consent Agreement without further adjudication.

IV. PENALTY

8. EPA proposes and Respondents consent to the assessment of a civil penalty in the

amount of $62,000.

V. PAYMENT TERMS

9. In agreeing to the penalty described in paragraph 8 above, EPA has taken into account the statutory penalty factors at Sections 309(g)(3) and 311(b)(8) of the CWA, 33 U.S.C. §§ 1319(g)(3) and 1321(b)(8).

10. Respondents shall pay a total penalty of $62,000 for violations of Sections 301 and 311 of the CWA, 33 U.S.C. §§ 1311 and 1321, within ten (10) days of the date this Agreement becomes final. Of the total amount $42,000 shall represent payment for Respondents' violations of Sections 301 of the CWA, and $20,000 shall represent payment for Respondents' violations of Section 311 of the CWA.

a. Respondents shall make the payment of $20,000 for the violations of Section 311(j) of the CWA by cashier's or certified check, payable to "Treasurer, United States of America," referencing the case name and docket number of this action (*In the matter of Pan Am Railways, Inc., et. al.,* No. CWA-01-2015-0004) and "Oil Spill Liability Trust Fund – 311" on the face of the check. The payment shall be mailed via regular U.S. Postal Service mail, to:

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

b. Respondents shall make the payment of $42,000 for the violations of Section 301 of the CWA by cashier's or certified check, payable to "Treasurer, United States of America," referencing the case name and docket number of this action (*In the matter of Pan Am Railways, Inc., et. al.,* No. CWA-01-2015-0004). The payment shall be mailed via regular U.S. Postal Service mail, to:

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

11. At the time of payment, Respondents shall simultaneously send notice of the payment and copies of the checks to:

Wanda Santiago
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100 (Mail Code ORA 18-1)
Boston, MA 02109-3912

and

Jeffrey Kopf
Senior Enforcement Counsel
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100 (Mail Code: OES04-4)
Boston, MA 02109-3912

12. Pursuant to Sections 309(g)(9) and 311(b)(6)(H) of the CWA, 33 U.S.C. §§ 1319(g)(9) and 1321(b)(6)(H), a failure by the Respondents to pay the penalty assessed by this CAFO in full by its due date shall subject Respondents 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.

VI. GENERAL PROVISIONS

13. The provisions of this CAFO shall apply to and be binding on Respondents, their officers, directors, agents, servants, employees, successors, and assigns.

14. 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, Respondents agree 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.

15. 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 Respondents' liability for federal civil penalties for the violations and facts alleged in the Complaint.

16. This CAFO in no way relieves Respondents or their 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 Respondents in response to conditions which may present an imminent and substantial endangerment to the public health, welfare, or the environment.

17. 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 Respondents' violation of this CAFO or of the statutes and regulations upon which the Complaint and this CAFO is based, or for Respondents' violation of any applicable provision of law.

18. The Parties shall bear their own costs and fees in this action, including attorney's

fees, and Respondents specifically waive any right to recover such costs pursuant to the Equal Access to Justice Act, 5 U.S.C § 504, or other applicable laws.

19. 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 Pan Am Railways, Inc., Springfield Terminal Railways Co., Inc., and Maine Central Railroad Company

Cynthia S. Scarano — Date: 7/13/15

Cynthia S. Scarano
Executive Vice President
Pan Am Railways, Inc.

For U.S. Environmental Protection Agency:

Susan Studlien — Date: 07/17/15

Susan Studlien, Director
Office of Environmental Stewardship
U.S. Environmental Protection Agency, Region 1

FINAL ORDER

20. The forgoing consent agreement is hereby approved and incorporated by reference into this Order. The Respondents are hereby ordered to comply with the terms of the above Consent Agreement, which will become final 30 days from the date it is signed by the Regional Judicial Officer.

Date: 7/20/15

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

In the matter of Pan Am Railways, Inc., Springfield Terminal Railways Co., Inc., and Maine Central Railroad Company
Docket No. CWA-01-2015-0004

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Consent Agreement and Final Order has been sent to the following persons on the date noted below:

Original and one copy,
hand-delivered:

Ms. Wanda Santiago
Regional Hearing Clerk
U.S. EPA, Region I (ORA18-1)
5 Post Office Square, Suite 100
Boston, MA 02109-3912

Copy, by Certified Mail,
Return Receipt Requested

Robert B. Culliford, Esq.
Senior Vice President & General Counsel
Pan Am Railways, Inc.
1700 Iron Horse Park
North Billerica, MA 01862

Dated: 7/21/15

Jeffrey Kopf
Senior Enforcement Counsel
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100 (OES04-3)
Boston, MA 02109-3912
Tel (617) 918-1796
Fax (617) 918-0796