

**SETTLEMENT AGREEMENT AMONG
THE UNITED STATES DEPARTMENT OF THE INTERIOR,
THE STATE OF IOWA
AND
DAKOTA MINNESOTA AND EASTERN RAILROAD
CORPORATION d/b/a CANADIAN PACIFIC RAILWAY
FOR THE BALLTOWN, IOWA SPILL**

I. Introduction

A. The United States of America, on behalf of the Department of the Interior (“DOI”) acting through the Fish and Wildlife Service (“FWS”) and the State of Iowa acting through the Iowa Department of Natural Resources (“IADNR”) (collectively referred to as the “Trustees”) and Dakota Minnesota and Eastern Railroad Corporation, d/b/a Canadian Pacific Railway (“CP”) or (“Settling Defendant”), enter into this Settlement Agreement (“Agreement” or “Settlement Agreement”) to resolve, without litigation, the Trustees’ civil claims under the natural resource damages provision of the Oil Pollution Act of 1990 (“OPA”), 33 U.S.C. §2702 and the Clean Water Act, (“CWA”), 33 U.S.C. §§ 1321(f)(4) and (5); and Iowa Code 481A.151 for injury to, impairment of, destruction of, loss of, diminution of value of and/or loss of use of natural resources, including the reasonable costs of assessing the injuries, resulting from the Balltown, Iowa Spill, which is the February 4, 2015 discharge of 30,000 – 53,000 gallons of denatured ethanol into and near the Mississippi River near Balltown, Iowa from CP’s derailed train (“the Spill”).

B. The Trustees have shared jurisdiction for the natural resources and their services injured as a result of the Balltown, Iowa Spill, and this Settlement Agreement is executed by the governmental agencies in their capacity as Natural Resource Trustees under OPA, CWA and the National Contingency Plan, 40 C.F.R. §§ 300.600-300.605. The Trustees have agreed how to allocate funds received under this Agreement between DOI, acting through FWS, and the State of Iowa, acting through the IADNR accordingly.

C. Under OPA, each responsible party for a vessel or facility from which oil is discharged into or upon the navigable waters is liable for damages for injury to, destruction of, or loss of use of, natural resources, including the reasonable costs of assessing such injury. 33 U.S.C. § 2702.

D. Under the CWA, the owner or operator of a facility from which oil or a hazardous substance is discharged to a water of the United States is liable for any costs incurred by the Federal or

state government in the restoration or replacement of natural resources damaged or destroyed as a result of the discharge. 33 U.S.C. § 1321(f)(4).

E. The Parties worked cooperatively in reaching the terms of this Agreement, and CP has shared with Trustees all its available data, studies, reports and calculations collected under 15 C.F.R. § 990.

F. The execution of this Agreement shall not constitute, nor is it in any way an admission by the Settling Defendant of any liability, and shall not be used in any other action against the Settling Defendant as proof of liability.

II. Parties Bound

1. The provisions of this Settlement Agreement shall apply to and be binding upon the Settling Defendant and all of its successors and assigns, and upon the Trustees.

III. Definitions

2. Unless otherwise expressly provided herein, the terms used in this Settlement Agreement that are used in OPA, or in the Natural Resource Damage Assessment regulations promulgated by the National Oceanic Atmospheric Administration (“NOAA”), 15 C.F.R Part 990, shall have the meanings assigned to them by OPA, or by its regulations. Terms that are not used in OPA but are used in the CWA shall have the meaning assigned to them by the CWA and its regulations.

a. “Balltown, Iowa Spill” shall mean the February 4, 2015 discharge of 30,000 – 53,000 gallons of denatured ethanol into the Mississippi River near Balltown, Iowa from CP’s derailed train.

b. “Natural resources” shall mean land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States (including the resources of the fishery conservation zone established by the Magnuson-Stevens Fishery Conservation and Management Act [16 U.S.C. § 1801 et seq.]), or any State government.

c. “Parties” shall mean the Trustees and Settling Defendant.

d. “Settlement Agreement” or “Agreement” shall mean this Settlement Agreement among the United States, the State of Iowa, and Canadian Pacific Railway.

e. “Site” shall mean the area of the Balltown Spill and the geographic area where released hazardous substances came to be located, including but not limited to the Mississippi River near Balltown, Iowa at River Mile 598.1.

IV. Payment of Certain Costs and Damages

3. Within thirty (30) days after the later of the Effective Date (as defined below) of this Settlement Agreement or notification to the Settling Defendant by the United States under Section XII paragraph 22 of the date when payment is due, the Settling Defendant shall pay \$282,391 to the DOI Natural Resource Damage Assessment and Restoration Fund (“NRDAR Fund”) to restore, replace, rehabilitate, or acquire the equivalent of natural resources injured by the Balltown, Iowa Spill.

4. Payment of the amount set forth in Paragraph 3 shall be made by FedWire Electronic Funds Transfer (“EFT”) to the U.S. Department of Justice account, in accordance with instructions provided to Settling Defendant by the Financial Litigation Unit (“FLU”) of the United States Attorney’s Office for the Northern District of Iowa after the Effective Date. The payment instructions provided by the FLU will include a Consolidated Debt Collection System (“CDCS”) number, which Settling Defendant shall use to identify all payments required to be made in accordance with this Settlement Agreement. The FLU will provide the payment instructions to:

William M. Tuttle
120 South Sixth Street
Suite 800
Minneapolis, MN 55402
Email: Bill_Tuttle@cpr.ca
CP on behalf of Settling Defendant.

At the time of payment, Settling Defendant shall send a written notice of payment and a copy of any transmittal documentation to:

Kelly Brooks Bakayza
U.S. Department of the Interior
Office of the Solicitor
3 Parkway Center
Suite 385
Pittsburgh, PA 15220

Aaron Brees
Iowa Department of Natural Resources
502 East 9th Street
Des Moines, IA 50319

With a copy to:

Chief
Environmental Enforcement Section
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, DC 20044
DJ # 90-11-3-10260/1

5. If Settling Defendant fails to make the payment specified in Paragraph 3 when due, Settling Defendant shall pay interest on that payment at the rate specified in 33 U.S.C. § 2705(b)(4). Interest shall be calculated from the Effective Date of this settlement to the date of payment.

6. In addition, if Settling Defendant fails to make the payment specified in Paragraph 3 when due, it shall pay Five Hundred Dollars (\$500) as a stipulated penalty for each day or portion thereof that each payment is overdue until all overdue payments (including stipulated penalties) are paid in full. Separate stipulated penalties shall accrue for failure to make each such payment.

7. A stipulated penalty for failure to make the payment specified in Paragraph 3 shall be paid to the DOI NRDAR Fund in accordance with the payment instructions in Paragraph 4. The stipulated penalty is due and payable within thirty (30) days of the date of the demand for payment of the stipulated penalty by the relevant Trustee. A Trustee making a demand for payment of a stipulated penalty shall simultaneously send a copy of the demand to the other Trustee.

8. Payments made under Paragraph 7 shall be in addition to any other remedies or sanctions available to the Trustees by virtue of the Settling Defendant's failure to comply with the requirements of this Settlement Agreement.

9. Notwithstanding any other provisions of this Section IV, the Trustees may, in their unreviewable discretion, waive payment of any portion of the stipulated penalty that has accrued pursuant to this Settlement Agreement. Such waiver of payment shall not be construed as a waiver of any other payment(s) required under this Settlement Agreement.

10. Settling Defendant shall be liable for attorneys' fees and costs incurred by the Trustees to collect any amount due under this Settlement Agreement that is not timely paid.

V. Covenant Not to Sue and Reservation of Rights by the Trustees

11. In consideration of the payments to be made by the Settling Defendant pursuant to Section IV (Payment of Certain Costs and Damages), the Trustees covenant not to sue or maintain any lawsuit, action, administrative proceeding, or other proceeding against Settling Defendant pursuant to OPA, 33 U.S.C. § 2702, CWA, 33 U.S.C. §§ 1321(f)(4) and (5), or Iowa Code 481A.151, for (i) injury to,

impairment of, destruction of, loss of, diminution of value of, and/or loss of use of natural resources caused by the Balltown, Iowa Spill, known as of the date of execution of this Settlement Agreement by Trustees, and (ii) costs (including NRD costs), attorneys' fees, other fees, or expenses incurred by the Trustees to recover such natural resource damages relating to injuries at or from the Site, including damage assessment costs.

12. These covenants not to sue in Paragraph 11 are not effective until, and are conditioned upon, complete and satisfactory performance by the Settling Defendant of its obligations under Section IV (Payment of Certain Costs and Damages) of this Settlement Agreement. These covenants not to sue extend only to Settling Defendant and do not extend to any other person.

13. Notwithstanding any other provision of this Settlement Agreement, the United States and the State of Iowa reserve, and this Settlement Agreement is without prejudice to any claims not included in Paragraph 11, including, but not limited to:

- a. Claims based upon a failure of the Settling Defendant to meet a requirement of this Settlement Agreement;
- b. Criminal claims;
- c. Claims for response costs or damages that the United States, other than DOI, may have under applicable law;
- d. Claims for response costs or damages that Iowa, other than IADNR, may have under applicable law;
- e. Claims for damages for injury to, destruction of, or loss of natural resources unrelated to the Balltown, Iowa Spill.

14. Notwithstanding any other provision of this Settlement Agreement, the United States and Iowa each reserve the right to file claims against CP seeking recovery of natural resource damages caused by the Balltown, Iowa Spill if Trustees discover:

- a. conditions with respect to the Site, unknown to the Trustees as of the date of execution of this Settlement Agreement, that result in Discharge that contributes to injury or, destruction of, or loss of Natural Resources ("Unknown NRD Conditions"), or
- b. information received by the Trustees after the date of execution of this Settlement Agreement, which indicates that the Balltown Spill has resulted in injury to, destruction of, or loss of Natural Resources of a type or magnitude that was unknown to the Trustees as of the date of execution of this Settlement Agreement ("New NRD Information"). For the purpose of this Paragraph, the information and conditions known to the Trustees shall include any information or conditions listed or identified in records relating to the Site that were in the possession or under

the control of the United States and Iowa as of the date of execution of this Settlement Agreement.

VI. Covenant Not to Sue by the Settling Defendant

15. Settling Defendant hereby covenants not to sue and agrees not to assert any claims or causes of action against the United States or Iowa, including their departments, agencies or instrumentalities, or their employees, agents, experts or contractors, for claims:

- a. Related to natural resource damages at the Site;
- b. Any direct or indirect claim for reimbursement from the Oil Spill Liability Trustee Fund, 33 U.S.C. §§ 2708 and 2713 or any other implementing provisions of law; and
- c. Any claim for costs, attorneys' fees, other fees, or expenses incurred in connection with the Settlement Agreement or claims resolved herein.

16. In any subsequent administrative or judicial proceeding initiated by the United States, including Federal agencies, or Iowa related to the Site and premised on any reservation of rights under Section V, Settling Defendant shall not assert, and may not maintain, any defense or claim based upon principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defense based upon any contention that the claims raised by the United States or Iowa in the subsequent proceeding were or should have been settled in this Settlement Agreement; provided, however, that nothing in this Paragraph affects the enforceability of the covenants not to sue and reservations set forth in Section V (Covenant Not to Sue and Reservation of Rights by the Trustees) herein.

17. This Agreement does not limit or affect the rights of CP or the Trustees against any third parties, not party to this Agreement, nor does it limit the rights of third parties, not party to this Agreement, against CP, except as otherwise provided by law. This Agreement shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Agreement.

VII. Signatories

18. Each of the undersigned representatives of the Parties certifies that he or she is fully authorized to enter into the terms and conditions of this Agreement and to execute and bind legally such Party to this document.

VIII. Entire Agreement

19. This Settlement Agreement constitutes the final, complete, and exclusive agreement and understanding between the Parties with respect to the settlement embodied in the Agreement and supersedes all prior agreements and understanding, whether oral or written. No other document, nor any

representation, inducement, agreement, understanding or promise constitutes any part of this Agreement or the settlement it represents, nor shall it be used in construing the terms of this Agreement.

IX. Modification

20. The terms of this Agreement may be modified only by a subsequent written agreement signed by all of the Parties.

X. Execution

21. This Agreement may be executed in several counterparts, each of which shall constitute an original, and all of which shall constitute one and the same instrument.

XI. Public Comment

22. Final approval by the United States and the effectiveness of this Settlement Agreement are subject to public notice and comment for a period of not less than 30 days after publication of notice of this Settlement Agreement in the Federal Register. Settling Defendant agrees not to withdraw its consent to the Settlement Agreement pending consideration of public comments and approval of the United States. If public comments disclose facts or considerations which indicate that this Settlement Agreement is inappropriate, improper, or inadequate, the United States may withdraw its approval of the Settlement Agreement. Should the United States withdraw its approval, this Agreement shall be null and void.

XII. Effective Date

23. The Effective Date of this Settlement Agreement shall be the date upon which the United States issues written notice to Settling Defendant that the public comment period pursuant to Section XI (Public Comment) has closed and that comments received, if any, do not require modification or withdrawal from this Settlement Agreement.

**FOR DAKOTA MINNESOTA AND EASTERN RAILROAD CORPORATION
d/b/a CANADIAN PACIFIC RAILWAY**

By: 

John M. Ladenthin
Vice President, Finance

Date: December 9, 2020

**FOR THE UNITED STATES OF AMERICA,
ON BEHALF OF THE DEPARTMENT OF THE INTERIOR**

By: _____
NATHANIEL DOUGLAS
Deputy Section Chief
Environmental Enforcement Section

Date: _____

FOR THE STATE OF IOWA

By:  _____
KAYLA LYON
Director
Iowa Department of Natural Resources

Date: 10/20/2020