

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:

Sangamon Street Right of Way Site
Chicago, Cook County, Illinois
(C54R)

AMENDMENT TO ADMINISTRATIVE
SETTLEMENT AGREEMENT AND
ORDER ON CONSENT FOR REMOVAL
ACTION

Respondent:

BNSF Railway Company

Docket No. V-W-16-C-007

Proceeding Under Sections 104, 106(a), 107
and 122 of the Comprehensive
Environmental Response, Compensation,
and Liability Act, as amended,
42 U.S.C. §§ 9604, 9606(a), 9607 and 9622

I. GENERAL PROVISIONS

1. On March 16, 2016, the United States Environmental Protection Agency (U.S. EPA) and BNSF Railway Company (Respondent) entered into an Administrative Order on Consent, Docket No. V-W-16-C-007 (Settlement Agreement), providing for Respondent's performance of removal actions and the payment of certain response costs the United States incurs at or in connection with the Sangamon Street Right of Way Site (Site), which consists of the BNSF right-of-way that runs east of and adjacent to the City of Chicago's Sangamon Street and sidewalk, between 16th Street to the north and 21st Street to the south, in Chicago, Cook County, Illinois. This Amendment to the Settlement Agreement expands the scope of the removal actions to the portion of the Site between 18th and 16th Streets along Sangamon Street and provides for Respondent's payment of response costs incurred by the United States for that additional portion of the Site.

2. This Amendment to the Settlement Agreement is issued under the authority vested in the President of the United States by Sections 104, 106(a), 107, and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9604, 9606(a), 9607, and 9622 (CERCLA). This authority was delegated to the Administrator of EPA on January 23, 1987, by Executive Order 12,580, 52 Fed. Reg. 2,923 (Jan. 29, 1987), and further delegated to Regional Administrators by EPA Delegation Nos. 14-14-A (Determinations of Imminent and Substantial Endangerment, Jan. 31, 2017), 14-14-C (Administrative Actions Through Consent Orders, Jan. 31, 2017) and 14-14-D (Cost Recovery Non-Judicial Agreements and Administrative Consent Orders, May 11, 1994). This authority was further redelegated by the Regional Administrator of EPA Region 5 to the Director of the Superfund Division by Regional Redelegation Nos. 14-14-A, 14-14-C, and 14-14-D.

3. Respondent hereby consents to the issuance of this Amendment to the Settlement Agreement and agrees to abide by each and every provision in the Settlement Agreement, Docket No. V-W-16-C-007, as amended herein. Except as specified in this Amendment to the Settlement Agreement, all provisions of the Settlement Agreement are unchanged and remain in full force and effect.

II. AMENDMENT TO SETTLEMENT AGREEMENT

4. Pursuant to Section XXV of the Settlement Agreement (Modifications), the undersigned hereby unanimously agree that the Settlement Agreement is amended as follows:

a. **The paragraph below is added between Paragraph 7 and Section III's definition of "CERCLA":**

"Amendment to the Settlement Agreement" shall mean the Amendment to this Administrative Settlement Agreement and Order on Consent (Settlement Agreement).

b. **Paragraph 8(b) is replaced with the paragraph below:**

b. Several private properties are adjacent to the ROW which may overlap the Site

property. The City also owns and maintains a sidewalk and portions of the ROW. A title search and property survey will be conducted by BNSF prior to the removal action. The ROW between 18th and 16th Streets along Sangamon Street is adjacent to the National Lead Site, which was in the Illinois Environmental Protection Agency (“IEPA”) voluntary remediation program.

c. **Paragraphs 8(k) and 8(l) are renumbered as Paragraphs 8(l) and 8(m).**

d. **The paragraph below is added as new Paragraph 8(k):**

k. In October 2016, EPA engaged in additional sampling activities along the Site. *See* Attachment B (Revised Final Site Assessment Report (Feb. 2017)). Of the thirteen locations sampled, five had lead concentrations above the EPA industrial RML. Of the three boring locations analyzed for TCLP for lead, two had concentrations above the TCLP threshold of 5 mg/L.

e. **In Paragraph 11, the reference to “ANSI/ASQC E-4-1994, ‘Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs’ (American National Standard, January 5, 1995)” is replaced with the following:**

ASQ/ANSI E4:2014 “Quality management systems for environmental information and technology programs – Requirements with guidance for use” (American Society for Quality, February 2014)

f. **In Paragraph 11, the following sentence is inserted after the first sentence.**

For the portion of the Site between 18th and 16th Streets, Respondent has retained Stiles Construction to perform the Work.

g. **The first sentence of Paragraph 15 is replaced with the following:**

Respondent shall perform, at a minimum, the following removal activities consistent with the Work Plan attached as Attachment A and, for the portion of the Site between 18th and 16th Streets, the 2017 Work Plan attached as Attachment C.

h. **Paragraph 15(e) is replaced with the paragraph below:**

Transport and dispose of all characterized or identified hazardous substances, pollutants, wastes, or contaminants at a RCRA/CERCLA-approved disposal facility in accordance with U.S. EPA’s Off-Site Rule (40 C.F.R. § 300.440) (note: if excavated soil and debris are non-hazardous, dispose of such materials at a Subtitle D landfill that is currently in compliance);

i. **The first three sentences of Paragraph 16(a) are replaced with the following:**

Respondent has submitted and U.S. EPA has approved the Work Plan (attached as Attachment A) and the 2017 Work Plan (attached as Attachment C) for performing the removal action generally described in Paragraph 15 above. The Work Plan and the 2017 Work Plan shall provide a description of, and an expeditious schedule for, the actions required by this Settlement Agreement. The Work Plan and the 2017 Work Plan shall include a Quality Assurance Project Plan ("QAPP").

j. Paragraph 16(b) is replaced with the paragraph below:

The Work Plan, the 2017 Work Plan, the schedule, and any subsequent modifications shall be incorporated into and become fully enforceable under this Settlement Agreement.

k. In Paragraph 17, the first sentence is replaced with the following sentence:

Within 10 business days after the Effective Date, and within 10 business days after electronic receipt by Respondent of a copy of the Amendment to the Settlement Agreement signed by the Director, Superfund Division, U.S. EPA Region 5, Respondent shall submit for U.S. EPA review and comment a plan that ensures the protection of the public health and safety during performance of on-site work under this Settlement Agreement.

l. In Paragraph 17, the reference to "U.S. EPA's Standard Operating Safety Guide (PUB 9285.1-03, PB 92-963413, June 1992)" is replaced with the following:

"OSWER Integrated Health and Safety Program Operating Practices for OSWER Field Activities," Pub. 9285.0-OLC (Nov. 2002), available on the NSCEP database at <https://www.epa.gov/nscep>, and "EPA's Emergency Responder Health and Safety Manual," OSWER Directive 9285.3-12 (July 2005 and updates), available at https://www.epaossc.org/_HealthSafetyManual/manual-index.htm

m. The first sentence of Paragraph 37(a) is replaced with the two sentences below:

Within 30 days after Respondent has received a copy of the Amendment to the Settlement Agreement signed by the Director, Superfund Division, U.S. EPA Region 5, Respondent shall pay to U.S. EPA \$8,056.69, plus interest of \$82.39, for a total of \$8,139.08 for Past Response Costs. Within 30 days after Respondent has received a copy of the Amendment to the Settlement Agreement signed by the Director, Superfund Division, U.S. EPA Region 5, Respondent shall pay to U.S. EPA an additional \$56,228.10 for Past Response Costs associated with the portion of the Site between 18th and 16th Streets.

n. Notice of payment of Past Response Costs under Paragraph 37 and of Future Response Costs under Paragraph 38 shall also be sent to "Robert M. Peachey, Associate Regional Counsel, 77 West Jackson Boulevard, C-14J, Chicago, Illinois, 60604."

- o. Appendix A of this Amendment to the Settlement Agreement (Revised Final Site Assessment Report (Feb. 2017)) is attached as Attachment B to the Settlement Agreement.**
- p. Appendix B of this Amendment to the Settlement Agreement (2017 Work Plan) is attached as Attachment C to the Settlement Agreement.**

III. EFFECTIVE DATE

5. This Amendment to the Settlement Agreement is effective upon electronic receipt by Respondent of a copy of the Amendment to the Settlement signed by the Director, Superfund Division, U.S. EPA Region 5.

IT IS SO AGREED AND ORDERED:

U.S. ENVIRONMENTAL PROTECTION AGENCY:

Dated

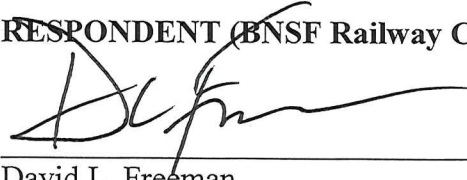
Margaret Guerriero
Acting Director, Superfund Division
Region 5
U.S. Environmental Protection Agency

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The undersigned representative of Respondent certifies that he is fully authorized to enter into the terms and conditions of this Amendment to the Settlement Agreement and to bind the party he represents to this document.

10/27/2017
Dated

RESPONDENT (BNSF Railway Company):

A handwritten signature in black ink, appearing to read 'DL Freeman', written over a horizontal line.

David L. Freeman
Executive Vice President Operations
BNSF Railway Company

Appendix A
Revised Final Site Assessment Report (Feb. 2017)

Appendix B
2017 Work Plan