

**IN THE PROVINCIAL COURT OF ALBERTA  
CRIMINAL DIVISION**

**Between:**

**HER MAJESTY THE QUEEN**

**and**

**CANADIAN NATIONAL RAILWAY COMPANY also known as COMPAGNIE DES  
CHEMINS DE FER NATIONAUX DU CANADA**

**Agreed Statement of Facts**

**Background**

1. On Information 160956397P1, Canadian National Railway Company also known as Compagnie des chemins de fer nationaux du Canada ("CN") stands charged that:

Count 1: On or about the 9th day of April 2015, at or near Edmonton, in the Province of Alberta, did release or permit the release into the environment of a substance in an amount, concentration or level or at a rate of release that causes or may cause a significant adverse effect contrary to section 109(2) of the Environmental Protection and Enhancement Act and did thereby commit an offence contrary to s. 227(j) of the Environmental Protection and Enhancement Act.

Count 4: On or about the 9th day of April 2015, at or near Edmonton, in the Province of Alberta, being a person responsible for a substance that is released into the environment and that may cause, is causing or has caused an adverse effect, did fail, as soon as that person became aware or ought to have become aware of the release, to take all reasonable measures to remediate, manage, remove or otherwise dispose of the substance in such a manner as to prevent an adverse effect or further adverse effect contrary to section 112(1)(a)(ii) of the Environmental Protection and Enhancement Act and did thereby commit an offence contrary to s. 227(j) of the Environmental Protection and Enhancement Act.

2. CN is a company incorporated under the laws of Canada. CN employs in excess of 22,000 railroaders across Canada and the United States, it has approximately 19,600 route miles of track, and in 2016 it had revenues of approximately \$12 billion.

#### **Bissel Yard Oil Water Separator**

3. CN owns and operates a railway yard known as the "Bissel Yard" in Edmonton. The Bissel Yard contains a train fuelling facility known as the Bissell West Fuelling Facility.
4. The Bissell West Fuelling Facility has a catchment sump under the tracks to collect any spilled material. Snow and rain also collect in the sump, resulting in the materials in the sump typically being a mixture of water and hydrocarbons.
5. The liquid that collects in the sump are periodically pumped to an oil water separator called the "West Separator".
6. The West Separator is designed to separate the hydrocarbons, including diesel, from the water in the collected liquid. The West Separator achieves this by skimming hydrocarbons from the top of its central tank and removing them to a waste oil tank, such that when working properly only water then drains to a final "Outflow Chamber". By design, only water should ever reach the final Outflow Chamber, as hydrocarbon should not collect in the central tank in a quantity sufficient to exit the water drain into the Outflow Chamber.
7. The Outflow Chamber discharges into a catchment basin, the "Stormwater Sump". In turn, the Stormwater Sump discharges into the City of Edmonton's storm sewer system.

## **Bissel Yard Oil Water Separator Safeguards and Maintenance**

8. The West Separator contained a number of safeguards designed to avoid a release of hydrocarbons. CN also had procedures regarding the use and maintenance of the West Separator.
9. The West Separator had a float sensor. The sensor was designed to set off a computer alarm if either too much hydrocarbon or too much water was in the system. The sensor also regulated the amount of hydrocarbon in the system as the float would prompt the skimming function of the West Separator if the machine was running continually.
10. A heating element or "heat trace" was designed to ensure that liquid could run through the system at all times of the year. The heat trace had failed some time prior to the release. The lack of a heat trace did not affect the operation of the machine except to the extent that the machine would have to be manually turned on after the system had unfrozen following winter weather. If too much hydrocarbon had accumulated during winter months, the system could become overwhelmed.
11. Filters were to be present on the machine. CN employees had started to change the filters shortly before the release. Upon doing so, CN learned that they did not have the proper replacement filters. The employee doing the work had not reinstalled the filters correctly.
12. CN employees did monitor and maintain the Water Separator. Multiple employees were all working to ensure that the machine was operating. However, upon whom responsibility fell to ensure that the machine was working properly and who was monitoring the machine was not clearly understood by different CN employees at the operational level.

## **August 9, 2015 Event and Investigation**

13. On April 9, 2015, a CN employee manually turned on the West Separator between 8:30 am and 9:00 am. At between 9:30 am and 10 am a different CN employee identified a mixture of diesel and water in the Outflow Chamber and turned off the pump to stop material from being pumped to the West Separator.
14. As is apparent from the foregoing, for a period of time between about 8:30 am and 10:00 am on April 9, 2015, the West Separator was not functioning properly and discharged a mixture of diesel and water from the Outflow Chamber into the

Stormwater Sump (the "Discharge"). The exact quantity of diesel in the Discharge is unknown.

15. At 11:00 am on April 9, 2015, CN employees informed their supervisor of the Discharge. As the supervisor was in Montreal at the time, he was unable to physically observe the West Separator until April 11, 2015. In the meantime no further material was pumped through the West Separator.
16. Also on April 9, 2015, Alberta Environment received various public complaints about a hydrocarbon sheen (up to 2 kilometres long) being present on the North Saskatchewan River extending downstream from Outfall 8 in the City of Edmonton. Alberta Environment responded and confirmed the presence of the hydrocarbon sheen on the River.
17. City of Edmonton and Environment Canada employees endeavoured to trace the hydrocarbons from the storm sewer outfall underneath the Quesnell Bridge through the City of Edmonton drainage system to the manhole nearest the Outflow Chamber. No hydrocarbon was observed further upstream from that location. Water samples taken from the storm sewer near that manhole matched the discharge from the Discharge material. Water samples taken from further downstream near the storm sewer outfall were indeterminate as a match to the Discharge material.
18. On April 11, 2015, the CN supervisor attended at the West Separator and observed diesel in the Stormwater Sump. However, at the time the supervisor observed the diesel, the diesel was at a level below the Stormwater Sump's outflow pipe connecting the Stormwater Sump to the City of Edmonton storm sewer system.
19. The CN supervisor arranged for a service company to clean out any diesel from the West Separator and the Stormwater Sump on April 13, 2015. CN took no prior actions, other than to leave the West Separator off, to confine the Release.
20. CN reported the Discharge to Alberta Environment on July 7, 2015.
21. On July 22, 2015, CN ceased using the West Separator in accordance with the July 21, 2015 direction from Alberta Environment and Parks.
22. The exact quantity of diesel hydrocarbon that reached the North Saskatchewan River as a result of the Discharge is unknown. However, the diesel that reached

the North Saskatchewan River as a result of the Discharge impaired the quality of the water in the North Saskatchewan River by rendering a portion of it unfit for consumption by humans or animals for a short but unknown period.

### Agreements

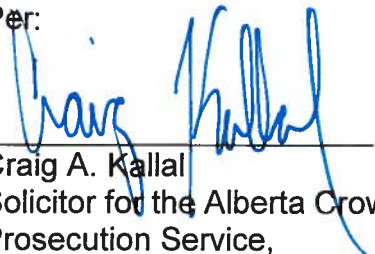
23. The parties agree:

- a. Canadian National Railway Company also known as Compagnie des chemins de fer nationaux du Canada ("CN") will plead guilty to Count 1 (s. 109(2) *Environmental Protection and Enhancement Act*) and Count 4 (s. 112(a)(ii) *Environmental Protection and Enhancement Act*) on Information 160956397P1.
- b. The facts contained within this Agreed Statement of Facts are fully admitted and acknowledged by CN and will solely form the facts to be considered by the Judge pronouncing sentence upon CN.
- c. The parties will jointly submit that CN should receive a global penalty of \$125,000.00 on Information 160956397P1.
- d. This Agreed Statement of Facts may be filed and relied upon even if signed in counterpart or by facsimile copies of the signatures of any person or both.

CONSENTED TO WITH RESPECT TO FORM AND SUBSTANCE THIS 25<sup>th</sup> day of May, 2017.

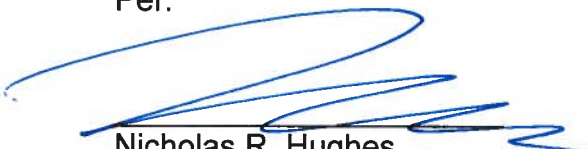
Alberta Crown Prosecution Service

Per:

  
\_\_\_\_\_  
Craig A. Kallal  
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Per:

  
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