

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 7  
11201 RENNER BOULEVARD  
LENEXA, KANSAS 66219

BEFORE THE ADMINISTRATOR

IN THE MATTER OF	)	
	)	
UNION PACIFIC RAILROAD COMPANY	)	Docket No. CWA-07-2015-0052
DeSoto, Missouri	)	
	)	FINDINGS OF VIOLATION AND
	)	ORDER FOR COMPLIANCE
Respondent.	)	ON CONSENT
	)	
Proceedings under Section 309(a) of the	)	
Clean Water Act, 33 U.S.C. § 1319(a)	)	
_____	)	

**Preliminary Statement**

1. This Administrative Order for Compliance on Consent ("Order on Consent") is issued by the United States Environmental Protection Agency ("EPA") pursuant to the authority vested in the Administrator of the EPA by Section 309(a) of the Clean Water Act ("CWA"), 33 U.S.C. § 1319(a)(3), as amended. This Authority has been delegated by the Administrator of the United States Environmental Protection Agency ("EPA") to the Regional Administrator, EPA Region 7 and further delegated to the Director of Region 7's Water, Wetlands and Pesticides Division.

2. Respondent, Union Pacific Railroad Company ("Respondent" or "UPRR"), is and was at all relevant times a corporation under the laws of and authorized to conduct business in the State of Missouri.

3. The EPA, together with the Respondent (hereafter collectively referred to as the "Parties") enter into this Section 309(a)(3) Order for the purpose of carrying out the goals of the CWA, 33 U.S.C. § 1251 *et seq.*, to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters."

4. It is the Parties' intent through entering into this Order to address alleged noncompliance by the Respondent in violation of its National Pollutant Discharge Elimination System ("NPDES") permit. As set forth in this Order on Consent, the Parties have amicably reached agreement regarding the timeframes for the Respondent to attain compliance with the CWA and its NPDES permit.

5. By entering into this Order on Consent, Respondent (1) consents to and agrees not to contest the EPA's authority or jurisdiction to issue and enforce this Section 309(a) Order on Consent, (2) agrees to undertake all actions required by the terms and conditions of this Order on

Consent, and (3) consents to be bound by the requirements set forth herein. Respondent also waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this Order on Consent, including any right of judicial review under Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.

6. Respondent neither admits nor denies the factual allegations or legal conclusions asserted by the EPA set forth in this Order on Consent.

### **Statutory and Regulatory Framework**

7. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants except in compliance with, *inter alia*, Section 402 of the CWA, 33 U.S.C. § 1342. Section 402 of the CWA, provides that pollutants may be discharged in accordance with the terms of a NPDES permit issued pursuant to that Section.

8. The CWA prohibits the “discharge” of “pollutants” from a “point source” into a “navigable water” of the United States, as these terms are defined by Section 502 of the CWA, 33 U.S.C. § 1362.

### **Stormwater**

9. Section 402(p) of the CWA, 33 U.S.C. § 1342(p), sets forth requirements for the issuance of NPDES permits for the discharge of stormwater. Section 402(p) of the CWA requires, in part, that a discharge of stormwater associated with an industrial activity must conform with the requirements of a NPDES permit issued pursuant to Sections 301 and 402 of the CWA.

10. Pursuant to Section 402(p) of the CWA, the EPA promulgated regulations setting forth the NPDES permit requirements for stormwater discharges at 40 C.F.R. § 122.26.

11. 40 C.F.R. §§ 122.26(a)(1)(ii) and 122.26(c) require dischargers of stormwater associated with industrial activity to apply for an individual permit or to seek coverage under a promulgated stormwater general permit.

12. 40 C.F.R. § 122.26(b)(14)(ii) defines “stormwater discharge associated with industrial activity.” Included in the categories of facilities considered to be engaging in “industrial activity” are transportation related facilities under Standard Industrial Classification 40-45, which includes railcar maintenance facilities. *See* 40 C.F.R. § 122.26(b) (14)(viii). Pursuant to Section 402(p) of CWA, 33 U.S.C. § 1342(p), EPA promulgated regulations at 40 C.F.R. § 122.26 that set forth the NPDES permit requirements for stormwater discharges.

13. The Missouri Department of Natural Resources (“MDNR”) is the state agency with the authority to administer the federal NPDES program in Missouri pursuant to Section 402 of

the CWA. EPA maintains concurrent enforcement authority with authorized states for violations of the CWA.

**EPA's General Allegations**

14. Respondent is a "person" as defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

15. At all times relevant to this action, Respondent was the owner and operator of a railcar maintenance and refurbishing facility, Union Pacific Railroad DeSoto Car Shop ("Facility"), located at 491 North Main Street, DeSoto, Missouri 63020.

16. Stormwater, snow melt, surface drainage and runoff water leaves Respondent's facility and flows into Joachim Creek. Storm water runoff from the facility is discharged via 5 outfalls (Outfalls 001 to 005) into Joachim Creek, which runs along the side of the facility. The runoff and drainage from Respondent's facility is "stormwater" as defined by 40 C.F.R. § 22.26(b)(13).

17. Stormwater contains "pollutants" as defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

18. The Facility has "storm water discharge associated with industrial activity", specifically discharges associated with facilities classified under Standard Industrial Classification 40-45, as defined by 40 C.F.R. § 122.26(b)(14)(viii), and is a "point source" as defined by Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

19. Respondent discharged pollutants into Joachim Creek, which is a "navigable waters" as defined by CWA Section 502, 33 U.S.C § 1362.

20. Stormwater runoff from Respondent's industrial activity results in the addition of pollutants from a point source to navigable waters, and thus is the "discharge of a pollutant" as defined by CWA Section 502(12), 33 U.S.C. § 1362(12).

21. Respondent's discharge of pollutants associated with an industrial activity, as defined by 40 C.F.R. § 122.26(b)(14)(ii), requires a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

22. MDNR issued Respondent NPDES Permit No. MO-0116653 ("Permit") in 1994, with reissuance and/or modifications of the Permit in 1995, 2000, 2009 and 2014. The 2009 Permit reissuance was effective on April 10, 2009 ("2009 Permit"), and expired on April 9, 2014. The 2009 Permit was administratively continued until the issuance of a revised permit effective on November 1, 2014 ("2014 Permit"). Both the 2009 and 2014 permits govern stormwater discharges associated with industrial activity relevant to this Order on Consent.

23. Part A (“Effluent Limitations and Monitoring Requirements”) of the 2009 Permit continued limits from the previous 2000 Permit as interim limits through May 1, 2012, and then established new limits for Total Suspended Solids (“TSS”) (62 mg/l daily max/50 mg/l monthly avg.), chromium (2.671 mg/l daily max / 1.331 mg/l monthly avg.), lead (151 ug/l daily max / 75 ug/l monthly avg.), zinc (180 ug/l daily max / 87 ug/l monthly avg.). The 2009 Permit also established a limit on the pH of discharges to the range between 6.0 and 9.0 standard pH units.

24. Part B (“Standard Conditions”) of the 2009 Permit incorporates by reference, Missouri Clean Water Commission Effluent Regulation 10 Code of State Regulations 20-7015, the sampling requirements and methodology of 40 C.F.R. Part 136. The test method set forth in 40 C.F.R. Part 136 for measurement of pH requires measurement of pH within 15 minutes of sample collection.

25. In April 2011, September 2012 and February 2014, MDNR issued Respondent three separate Notices of Violation (“NOVs”) documenting Respondent’s violations of the 2009 Permit’s limits for lead, zinc, TSS and/or Chemical Oxygen Demand (“COD”).

26. On or about March 12, 2014, EPA performed an inspection of the Facility under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a). The purpose of the inspection was to evaluate the management of stormwater at the Facility and compliance with the Facility’s NPDES Permit, in accordance with the CWA.

### **EPA’s Specific Allegations**

#### **Count 1**

#### **Violation of Effluent Limits**

27. The facts stated in Paragraphs 1 through 26 above are herein incorporated.

28. As alleged in Paragraph 23, above, Part A of Respondent’s 2009 NPDES permit (“Effluent Limitations and Monitoring Requirements”) required Respondent to meet effluent limits for TSS, chromium, lead and zinc.

29. Between September 2009 and October 2014 (“Period of Violation”), discharges of stormwater from the Facility by Respondent violated the effluent limits of the 2009 Permit (See, Attachment 1).

30. Respondent’s failures to meet effluent limits are each a violation of the 2009 NPDES permit, and as such, are each a violation of Sections 301(a) and 402(p) of CWA, 33 U.S.C. §§ 1311(a), 1342(p), and implementing regulations.

**Count 2  
Failure to Properly Monitor for pH**

31. The facts stated in Paragraphs 1 through 30, above, are herein incorporated.
32. As alleged in Paragraph 24, above, Part B of Respondent's 2009 NPDES permit ("Effluent Limitations and Monitoring Requirements") required Respondent to perform pH measurement tests with 15 minutes of sample collection.
33. During the Period of Violation, Respondent sent samples to an off-site laboratory and violated the 2009 Permit's requirement to perform pH measurements within 15 minutes of sample collection.
34. Respondent's failures to properly perform the sampling and measurement of pH during the Period of Violation are each a violation of the 2009 NPDES permit, and as such, are each a violation of Section 402(p) of CWA, 33 U.S.C. § 1342(p), and implementing regulations.

**Reasonable Time to Achieve Compliance**

35. Pursuant to Section 309(a)(5)(A) of the CWA, 33 U.S.C. § 1319(a)(5)(A), and having taken into account the seriousness of the violations, the EPA finds that thirty (30) days is a reasonable time for Respondent to implement the terms and conditions of its NPDES Permit, MO-0116653. Further, due to Respondent's plans to upgrade its stormwater treatment system, EPA finds that a schedule until June 15, 2017 is a reasonable time for Respondent to take additional actions intended to maintain compliance with the terms and conditions of its NPDES permit.

**Order for Compliance**

36. Based on the Findings of Fact and Findings of Violation set forth above, and pursuant to Section 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3), the EPA hereby ORDERS, and Respondent hereby CONSENTS to take, the actions described below.
37. Respondent shall immediately cease the discharge of all non-stormwater pollutants except as specifically authorized by its Permit.
38. Within thirty (30) days of the Effective Date, as defined in Paragraph 52 herein, Respondent shall commence actions necessary to correct the deficiencies identified in this Order and to come into compliance with all of the applicable requirements of its 2014 Permit, including, but not limited to:
- a. fully implement the Stormwater Pollution Prevention Plan ("SWPPP") specific to the site conditions of the Facility that meets all applicable requirements of its 2014 NPDES Permit;

- b. conduct, document and retain copies of visual inspections in accordance with the Permit and as scheduled by the required SWPPP;
- c. properly conduct all sampling required by the 2014 permit; and
- d. install and maintain BMPs to prevent the discharge of pollutants and conduct proper operation and maintenance at the Facility as required by the Permit and the applicable SWPPP.

39. Within forty-five (45) days of the effective date of this Order, the Respondent shall submit a written report to provide the following:

- a. a copy of all facility inspection reports developed in accordance with the Permit and applicable SWPPP;
- b. a description of all actions taken through the Effective Date to achieve compliance with the current 2014 Permit (Effective November 1, 2014); and
- c. a description of work proposed by UPPR to maintain compliance with the 2014 Permit that includes a detailed description of each activity and milestone, an estimated timeline to complete each activity or milestone, and the completion of all proposed work by June 15, 2017.

40. The EPA will review the inspection reports, description of actions, and proposed work schedule submitted by the Respondent pursuant to Paragraph 39, and if appropriate, provide written comments and require modification and resubmission of a portion or all of such items pursuant to Paragraph 41, below. Review and comment on Respondent's submissions by the EPA does not relieve Respondents of the responsibility to comply with its Permit, the CWA, applicable State law, or this Order.

41. If required by the EPA pursuant to Paragraph 40, above, Respondents shall within 30 days of receipt of any written comments from EPA regarding the SWPPP or other submissions, make modifications and changes as directed by EPA, and resubmit such items to the EPA. Upon request, the EPA may grant, in writing, a longer period of time for resubmission of such documents.

42. Any decision by EPA regarding a request for an extension of time pursuant to Paragraph 41, above, will be made in writing, and if granted, will set forth the new compliance date for the item(s) in question. The decision by EPA regarding the extension shall not be subject to appeal; however, EPA will not unreasonably withhold approval.

43. After review of the information submitted by Respondent pursuant to the above Paragraphs, EPA may determine that additional information is needed and/or additional

corrective measures or deadlines are appropriate, and may modify this Order or initiate a separate enforcement action, as appropriate.

### Submissions

44. *Reporting to EPA and MDNR:* In addition to the actions and submissions required by Paragraphs 38 through 43, above, Respondent shall submit to EPA, with a copy to MDNR, semi-annual reports describing the actions it has taken to comply with the terms of this Order. These reports are due July 15 and January 15. These reports shall be submitted until the project has been completed. Each report shall include, at a minimum:

- a. a description of implementation and/or revision of the SWPPP during the previous six month period;
- b. a detailed description of all work and other actions taken to achieve the work and schedule proposed by Respondent pursuant to Paragraph 39.c (as modified by EPA, if applicable), including the identification of any milestones that have not been achieved; and
- c. copies of all relevant documentation regarding the activities described pursuant to subparagraphs a and b.

45. All submissions to EPA pursuant to the requirements of this Order shall contain the following certification signed by an authorized official, as described at 40 C.F.R. § 122.22:

*I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.*

46. All documents required to be submitted to EPA by this Order, shall be submitted by mail to:

Seth Draper, or his successor  
Compliance Officer (WENF)  
Water Wetlands and Pesticides Division  
U.S. Environmental Protection Agency - Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219.

47. A copy of documents required to be submitted to MDNR by this Order, shall be submitted by mail to:

Paul Dickerson, Chief  
Compliance and Enforcement Section  
Water Pollution Control Branch  
Missouri Department of Natural Resources  
P.O. Box 176  
Jefferson City, Missouri 65102.

### **General Provisions**

#### **Effect of Compliance with the Terms of this Order**

48. Compliance with the terms of this Order shall not relieve the Respondent of liability for, or preclude EPA from, initiating an administrative or judicial enforcement action to recover penalties for any violations of the CWA, or to seek additional injunctive relief, pursuant to Section 309 of the CWA, 33 U.S.C. § 1319.

49. This Order does not constitute a waiver or a modification of any requirements of the CWA, 33 U.S.C. § 1251 *et seq.*, all of which remain in full force and effect. EPA retains the right to seek any and all remedies available under Sections 309(b), (c), (d) or (g) of the CWA, 33 U.S.C. § 1319(b), (c), (d) or (g), for any violation cited in this Order. Issuance of this Order shall not be deemed an election by EPA to forgo any civil or criminal action to seek penalties, fines, or other appropriate relief under the CWA for any violation whatsoever.

#### **Access and Requests for Information**

50. Nothing in this Order shall limit EPA's right to obtain access to, and/or to inspect the Respondent's facility, and/or to request additional information from the Respondent, pursuant to the authority of Section 308 of the CWA, 33 U.S.C. § 1318 and/or any other authority.



**Severability**

51. If any provision or authority of this Order, or the application of this Order to the Respondent, is held by federal judicial authority to be invalid, the application to the Respondent of the remainder of this Order shall remain in full force and effect and shall not be affected by such a holding.

**Effective Date**

52. This Order shall be effective upon receipt by the Respondent of a fully executed copy hereof. All time periods herein shall be calculated therefrom unless otherwise provided in this Order.

**Termination**


53. This Order shall remain in effect until a written notice of termination is issued by an authorized representative of EPA. Such notice shall not be given until all of the requirements of this Order have been met.

**For the Complainant, United States Environmental Protection Agency, Region 7:**

Issued this 1st day of June, 2015.


  
\_\_\_\_\_  
Karen A. Flourney

Director  
Water, Wetlands and Pesticides Division

  
\_\_\_\_\_  
Howard Bunch

Senior Assistant Regional Counsel  
Office of Regional Counsel

For the Respondent, Union Pacific Railroad Company

  
Signature \_\_\_\_\_ Date 5/21/15

David P. Young  
Name \_\_\_\_\_

AVP - Law  
Title \_\_\_\_\_

CERTIFICATE OF SERVICE

I certify that on the date noted below I hand delivered the original and one true copy of this Findings of Violation and Administrative Order for Compliance on Consent to the Regional Docket Clerk, United States Environmental Protection Agency, 11201 Renner Blvd., Lenexa Kansas 66219.

I further certify that on the date noted below I sent a copy of the foregoing Order for Compliance on Consent by first class certified mail, return receipt requested, to:

Union Pacific Railroad Company  
c/o Rami S. Hanash, Senior Environmental Counsel  
1400 Douglas Street  
Omaha, Nebraska 68179

and by first class mail to:

Paul Dickerson, Chief  
Compliance and Enforcement Section  
Water Pollution Control Branch  
Missouri Department of Natural Resources  
P.O. Box 176  
Jefferson City, Missouri 65102.

6/4/2015  
Date

  
Signature

Attachment 1: Table of Violations

<u>Date</u>	<u>Parameter</u>	<u>Outfall</u>	<u>Monthly Avg./Daily Max (Concentration Unit)</u>	<u>Permit Limit</u>	<u>Monitored Exceedance</u>
September 2009	Oil petroleum, total recoverable	001	Monthly Avg./mg/L	10.00	378
September 2009	Oil petroleum, total recoverable	002	Monthly Avg./mg/L	10.00	425
September 2009	Oil petroleum, total recoverable	003	Monthly Avg./mg/L	10.00	336
September 2009	Oil petroleum, total recoverable	004	Monthly Avg./mg/L	10.00	300
September 2009	Oil petroleum, total recoverable	005	Monthly Avg./mg/L	10.00	518
September 2009	Oil petroleum, total recoverable	001	Daily Max./mg/L	10.00	378
September 2009	Oil petroleum, total recoverable	002	Daily Max./mg/L	10.00	425
September 2009	Oil petroleum, total recoverable	003	Daily Max./mg/L	10.00	336
September 2009	Oil petroleum, total recoverable	004	Daily Max./mg/L	10.00	300
September 2009	Oil petroleum, total recoverable	005	Daily Max./mg/L	10.00	518
January 2010	Lead (Pb), total recoverable	004	Monthly Avg./ug/L	150.00	327
January 2010	Lead (Pb), total recoverable	004	Daily Max./ug/L	150.00	327
March 2010	Chemical Oxygen Demand (COD)	004	Monthly Avg./mg/L	90.00	95.7
March 2010	Lead (Pb), total recoverable	004	Monthly Avg./ug/L	150.00	190
March 2010	Lead (Pb), total recoverable	004	Daily Max./ug/L	150.00	190
May 2010	Lead (Pb), total recoverable	004	Monthly Avg./ug/L	150.00	162
May 2010	Lead (Pb), total recoverable	004	Daily Max./ug/L	150.00	162
July 2010	Lead (Pb), total recoverable	004	Monthly Avg./ug/L	150.00	183
July 2010	Lead (Pb), total recoverable	004	Daily Max./ug/L	150.00	183
February 2011	Lead (Pb), total recoverable	004	Monthly Avg./ug/L	150.00	159
February 2011	Lead (Pb), total recoverable	004	Daily Max./ug/L	150.00	159
June 2012	Lead (Pb), total	004	Monthly Avg./ug/L	75.00	154

Attachment 1: Table of Violations

	recoverable				
June 2012	Total Suspended Solids (TSS)	004	Monthly Avg./mg/L	50.00	101
June 2012	Zinc (Zn), total recoverable	004	Monthly Avg./ug/L	87.00	228
June 2012	Lead (Pb), total recoverable	004	Daily Max./ug/L	151.00	154
June 2012	Total Suspended Solids (TSS)	004	Daily Max./mg/L	62.00	101
June 2012	Zinc (Zn), total recoverable	004	Daily Max./ug/L	180.00	228
September 2012	Lead (Pb), total recoverable	005	Monthly Avg./ug/L	75.00	100
March 2013	Zinc (Zn), total recoverable	004	Monthly Avg./ug/L	87.00	89.4
April 2013	Chemical Oxygen Demand (COD)	004	Monthly Avg./mg/L	90.00	105
April 2013	Lead (Pb), total recoverable	004	Monthly Avg./ug/L	75.00	112
April 2013	Total Suspended Solids (TSS)	004	Monthly Avg./mg/L	50.00	230
April 2013	Zinc (Zn), total recoverable	004	Monthly Avg./ug/L	87.00	462
April 2013	Total Suspended Solids (TSS)	004	Daily Max./mg/L	62.00	230
April 2013	Zinc (Zn), total recoverable	004	Daily Max./ug/L	180.00	462
June 2013	Zinc (Zn), total recoverable	004	Monthly Avg./ug/L	87.00	413
June 2013	Zinc (Zn), total recoverable	004	Daily Max./ug/L	180.00	413
July 2013	Zinc (Zn), total recoverable	004	Monthly Avg./ug/L	87.00	344
July 2013	Zinc (Zn), total recoverable	004	Daily Max./ug/L	180.00	344
August 2013	Zinc (Zn), total recoverable	004	Monthly Avg./ug/L	87.00	140
September 2013	Lead (Pb), total recoverable	004	Monthly Avg./ug/L	75.00	326
September 2013	Lead (Pb), total recoverable	004	Daily Max./ug/L	151.00	326
October 2013	Lead (Pb), total recoverable	004	Monthly Avg./ug/L	75.00	231.5
October 2013	Total Suspended Solids (TSS)	004	Monthly Avg./mg/L	50.00	245

Attachment 1: Table of Violations

October 2013	Zinc (Zn), total recoverable	004	Monthly Avg./ug/L	87.00	472
October 2013	Lead (Pb), total recoverable	004	Daily Max./ug/L	151.00	356
October 2013	pH	004	Maximum/Std. Units	9.00	9.1
October 2013	Total Suspended Solids (TSS)	004	Daily Max./mg/L	62.00	408
October 2013	Zinc (Zn), total recoverable	004	Daily Max./ug/L	180.00	776
April 2014	Lead (Pb), total recoverable	004	Monthly Avg./ug/L	75.00	84.8
April 2014	Total Suspended Solids (TSS)	004	Monthly Avg./mg/L	50.00	142.17
April 2014	Zinc (Zn), total recoverable	004	Monthly Avg./ug/L	87.00	145.35
April 2014	Total Suspended Solids (TSS)	004	Daily Max./mg/L	62.00	276
April 2014	Zinc (Zn), total recoverable	004	Daily Max./ug/L	180.00	198
May 2014	Zinc (Zn), total recoverable	004	Monthly Avg./ug/L	87.00	109
June 2014	Total Suspended Solids (TSS)	004	Monthly Avg./mg/L	50.00	61.5
June 2014	Zinc (Zn), total recoverable	004	Monthly Avg./ug/L	87.00	119
June 2014	Total Suspended Solids (TSS)	004	Daily Max./mg/L	62.00	118
August 2014	Zinc (Zn), total recoverable	004	Monthly Avg./ug/L	87.00	113
September 2014	Zinc (Zn), total recoverable	004	Monthly Avg./ug/L	87.00	145
October 2014	Oil petroleum, total recoverable	004	Monthly Avg./mg/L	10.00	500
October 2014	Zinc (Zn), total recoverable	004	Monthly Avg./ug/L	87.00	148
October 2014	Oil petroleum, total recoverable	004	Daily Max./mg/L	10.00	500