



**EPA in Kansas**

**Union Pacific Railroad Company - Clean Water Act Public Notice**

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In accordance with Section 311(b)(6)(C) of the Clean Water Act (“CWA”), 33 U.S.C. § 1321(b)(6)(C) and 40 C.F.R. Part 22 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (“Consolidated Rules”), the U.S. Environmental Protection Agency (“EPA”) is providing notice of a proposed Administrative Penalty Assessment against Union Pacific Railroad Company (“Respondent” or “Union Pacific”) for alleged violations of Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3), and regulations promulgated thereunder at 40 C.F.R. Part 112, prohibiting the discharge of hazardous substances in waters of the United States. The resolved violations occurred from a railcar switching yard owned and operated by Union Pacific known as the Herington Railyard (“Herington facility” or “facility”), addressed at 501 N. 5th Street, Herington, Kansas 67449.

Under Section 311(b)(6) of the CWA, 33 U.S.C. § 1321(b)(6), EPA is authorized to issue orders assessing civil penalties for various violations of the Clean Water Act. Class II proceedings are conducted under EPA’s Consolidated Rules, 40 C.F.R. Part 22. The EPA may issue such orders after commencing either a Class I or Class II penalty proceeding. Class II proceedings are conducted under EPA’s Consolidated Rules, 40 C.F.R. Part 22. This action is being simultaneously commenced and concluded in a Consent Agreement and Final Order pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules, 40 C.F.R. §§ 22.13(b) and 22.18(b)(2). The EPA provides notice of the proposed assessment of a Class II civil penalty pursuant to 33 U.S.C. § 1321(b)(6)(C).

In this case, EPA alleges on or about January 8, 2012, two railroad tank cars within the Herington facility collided, causing a rupture in the bottom of one tank car which contained sulfuric acid. This resulted in an estimated release of 11,000 gallons of sulfuric acid from the tank car. Approximately 1,500 gallons were contained in a ditch but the remainder flowed overland from the facility into an adjoining ditch and discharged into the adjacent Lime Creek. The discharge impacted an estimated two (2) miles of Lime Creek and resulted in a fish kill.

Respondent has reached agreement with EPA on the terms of a proposed Consent Agreement/Final Order which would resolve this matter. Under the proposed Consent Agreement/Final Order, Respondent will pay a civil penalty of \$24,000, and the remainder of the civil penalty will be mitigated through performance by Respondent of a Supplemental Environmental Project. The Supplemental Environmental Project requires Respondent to expend \$338,100 to install earthen berms and flow barriers (depending on locations), supplemented by manually operated drop gates and control structures designed and intended to minimize and prevent surface runoff and releases from the Herington facility from reaching the adjoining Lime Creek. Final approval of the proposed Consent Agreement/Final Order is subject to the requirements of 40 C.F.R. § 22.45.

The EPA will receive written comments on the proposed Administrative Penalty Assessment for a period of thirty (30) days from the date of publication of this notice. Persons wishing to obtain additional information on the proceeding, receive a copy of the EPA’s Consolidated Rules, review the proposed Consent Agreement/Final Order, comment upon the proposed penalty assessment, or otherwise participate in the proceeding should contact Kathy Robinson, Regional Hearing Clerk, U.S. Environmental Protection Agency, Region 7, 11201 Renner Blvd, Lenexa, KS 66219. Please reference Docket No. CWA-07-2016-0091. In order to provide opportunity for public comment, EPA will issue no final order assessing a penalty in this proceeding prior to forty (40) days from the date of this notice.

11/10/16 Date	/s/ Becky Weber Director Air and Waste Management Division U.S. Environmental Protection Agency Region 7
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## How to Comment

**Comments due date**  
12/15/2016

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### Summary

The EPA is providing notice of a proposed Administrative Penalty Assessment against Union Pacific Railroad Company ("Respondent" or "Union Pacific") for alleged violations of Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3), and regulations promulgated thereunder at 40 C.F.R. Part 112, prohibiting the discharge of hazardous substances in waters of the United States. The resolved violations occurred from a railcar switching yard owned and operated by Union Pacific known as the Herington Railyard ("Herington facility" or "facility"), addressed at 501 N. 5th Street, Herington, KS 67449.

**Program/Statute:** Clean Water Act (CWA)

**Applicant/Respondent(s):**

Union Pacific Railroad Company  
Herington, Kansas

**Proposed action:** Public Notice of Clean Water Act Administrative Penalty Settlement

**Docket ID:** CWA-07-2016-0091

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You will need Adobe Reader to view some of the files on this page. See EPA's About PDF page to learn more.

- Union Pacific Railroad Company proposed Consent Agreement Final Order (PDF) (16 pp, 6 MB)

Last updated on November 16, 2016