

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**

**DOCKET NO.: 2009-0365-IWD-E TCEQ ID: RN102863537 CASE NO.: 37311**

**RESPONDENT NAME: BNSF Railway Company**

<b>ORDER TYPE:</b>		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
<b>CASE TYPE:</b>		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input checked="" type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p><b>SITE WHERE VIOLATION(S) OCCURRED:</b> Milby Street Yard, located at the intersection of McKinney Avenue and Milby Street, Houston, Harris County</p> <p><b>TYPE OF OPERATION:</b> Locomotive maintenance and washing facility</p> <p><b>SMALL BUSINESS:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>OTHER SIGNIFICANT MATTERS:</b> There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p><b>INTERESTED PARTIES:</b> No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired on August 10, 2009. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b>  <b>TCEQ Attorney/SEP Coordinator:</b> None  <b>TCEQ Enforcement Coordinator:</b> Ms. Cheryl Thompson, Enforcement Division, Enforcement Team 3, MC R-04, (817) 588-5886; Ms. Cari-Michel La Caille, Enforcement Division, MC 219, (512) 239-1387  <b>Respondent:</b> CT Corporation, Registered Agent, BNSF Railway Company, 350 North St. Paul Street, Dallas, Texas 75201                      Mr. Michael E. Clift, Manager Environmental Operations, 4200 Deen Road, Fort Worth, Texas 76106-3099  <b>Respondent's Attorney:</b> Not represented by counsel on this enforcement matter</p>		

**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b>  <input type="checkbox"/> Complaint  <input type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input checked="" type="checkbox"/> Records Review</p> <p><b>Date(s) of Complaints Relating to this Case:</b> None</p> <p><b>Date of Investigation Relating to this Case:</b> January 8, 2009</p> <p><b>Date of NOV/NOE Relating to this Case:</b> February 26, 2009 (NOE)</p> <p><b>Background Facts:</b> This was a record review.</p> <p><b>WATER</b></p> <p>Failure to comply with permitted effluent limits for chemical oxygen demand, oil and grease, flow, and biochemical oxygen demand [Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0002039000, Effluent Limitations and Monitoring Requirements No. 1, 30 TEX. ADMIN. CODE § 305.125(1), and TEX. WATER CODE § 26.121(a)].</p>	<p><b>Total Assessed:</b> \$9,020</p> <p><b>Total Deferred:</b> \$1,804  <input checked="" type="checkbox"/> Expedited Settlement  <input type="checkbox"/> Financial Inability to Pay</p> <p><b>SEP Conditional Offset:</b> \$0</p> <p><b>Total Paid to General Revenue:</b> \$7,216</p> <p><b>Site Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p><b>Ordering Provisions:</b></p> <p>The Order will require the Respondent to, within 90 days after the effective date of this Agreed Order, submit certification of compliance with the permitted effluent limitations of TPDES Permit No. WQ0002039000, including specific corrective actions that were implemented at the Facility to achieve compliance and copies of the most current self-reported discharge monitoring reports demonstrating at least three consecutive months of compliance with all permitted limitations.</p>

Additional ID No(s): WQ0002039000



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

<b>DATES</b>	Assigned	3-Mar-2009			
	PCW	16-Mar-2009	Screening	12-Mar-2009	EPA Due

<b>RESPONDENT/FACILITY INFORMATION</b>					
Respondent	BNSF Railway Company				
Reg. Ent. Ref. No.	RN102863537				
Facility/Site Region	12-Houston	Major/Minor Source	Minor		

<b>CASE INFORMATION</b>					
Enf./Case ID No.	37311	No. of Violations	2		
Docket No.	2009-0365-IWD-E	Order Type	1660		
Media Program(s)	Water Quality	Government/Non-Profit	No		
Multi-Media		Enf. Coordinator	Cheryl Thompson		
		EC's Team	Enforcement Team 3		
Admin. Penalty \$ Limit	Minimum	\$0	Maximum	\$10,000	

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<i>Subtotal 1</i>	\$5,500
<b>ADJUSTMENTS (+/-) TO SUBTOTAL 1</b>		
Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.		
<b>Compliance History</b>	64.0% Enhancement	<i>Subtotals 2, 3, &amp; 7</i> \$3,520
Notes	The Respondent has self-reported eleven months of effluent violations, received two previous NOV's for non-similar violations and one NOV for same or similar violations.	
<b>Culpability</b>	No 0.0% Enhancement	<i>Subtotal 4</i> \$0
Notes	The Respondent does not meet the culpability criteria.	
<b>Good Faith Effort to Comply Total Adjustments</b>		<i>Subtotal 5</i> \$0
<b>Economic Benefit</b>	0.0% Enhancement*	<i>Subtotal 6</i> \$0
Total EB Amounts	\$668	
Approx. Cost of Compliance	\$10,000	*Capped at the Total EB \$ Amount
<b>SUM OF SUBTOTALS 1-7</b>	<i>Final Subtotal</i>	\$9,020
<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	0.0%	<i>Adjustment</i> \$0
Notes	Reduces or enhances the Final Subtotal by the indicated percentage.	
		<i>Final Penalty Amount</i> \$9,020
<b>STATUTORY LIMIT ADJUSTMENT</b>		<i>Final Assessed Penalty</i> \$9,020
<b>DEFERRAL</b>	20.0% Reduction	<i>Adjustment</i> -\$1,804
Notes	Reduces the Final Assessed Penalty by the indicted percentage. (Enter number only; e.g. 20 for 20% reduction.)	
		Deferral is offered for expedited settlement
<b>PAYABLE PENALTY</b>		\$7,216

<b>Screening Date</b>	12-Mar-2009	<b>Docket No.</b>	2009-0365-IWD-E	<b>PCW</b>
<b>Respondent</b>	BNSF Railway Company			<i>Policy Revision 2 (September 2002)</i>
<b>Case ID No.</b>	37311			<i>PCW Revision October 30, 2008</i>
<b>Reg. Ent. Reference No.</b>	RN102863537			
<b>Media [Statute]</b>	Water Quality			
<b>Enf. Coordinator</b>	Cheryl Thompson			

### Compliance History Worksheet

>> **Compliance History Site Enhancement (Subtotal 2)**

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action <i>(number of NOVs meeting criteria)</i>	12	60%
	Other written NOVs	2	4%
Orders	Any agreed final enforcement orders containing a denial of liability <i>(number of orders meeting criteria)</i>	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government <i>(number of judgements or consent decrees meeting criteria)</i>	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government <i>(number of counts)</i>	0	0%
Emissions	Chronic excessive emissions events <i>(number of events)</i>	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 <i>(number of audits for which notices were submitted)</i>	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 <i>(number of audits for which violations were disclosed)</i>	0	0%
<i>Please Enter Yes or No</i>			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

**Adjustment Percentage (Subtotal 2)** 64%

>> **Repeat Violator (Subtotal 3)**

No

**Adjustment Percentage (Subtotal 3)** 0%

>> **Compliance History Person Classification (Subtotal 7)**

Average Performer

**Adjustment Percentage (Subtotal 7)** 0%

>> **Compliance History Summary**

**Compliance History Notes**

The Respondent has self-reported eleven months of effluent violations, received two previous NOV's for non-similar violations and one NOV for same or similar violations.

**Total Adjustment Percentage (Subtotals 2, 3, & 7)** 64%

<b>Screening Date</b> 12-Mar-2009	<b>Docket No.</b> 2009-0365-IWD-E	<b>PCW</b>	
<b>Respondent</b> BNSF Railway Company	<small>Policy Revision 2 (September 2002)</small>		
<b>Case ID No.</b> 37311	<small>PCW Revision October 30, 2008</small>		
<b>Reg. Ent. Reference No.</b> RN102863537			
<b>Media [Statute]</b> Water Quality			
<b>Enf. Coordinator</b> Cheryl Thompson			
<b>Violation Number</b> <input type="text" value="1"/>			
<b>Rule Cite(s)</b>	Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0002039000, Effluent Limitations and Monitoring Requirements No. 1, 30 Tex. Admin. Code § 305.125(1) and Tex. Water Code § 26.121(a)		
<b>Violation Description</b>	Failed to comply with permitted effluent limits, as documented during a record review conducted on January 8, 2009. See attached table.		
<b>Base Penalty</b>		<input type="text" value="\$10,000"/>	
<b>&gt;&gt; Environmental, Property and Human Health Matrix</b>			
OR	<b>Harm</b>		
	Major	Moderate	Minor
<b>Actual</b>	<input type="text"/>	<input checked="" type="checkbox"/>	<input type="text"/>
<b>Potential</b>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<b>Percent</b>			<input type="text" value="25%"/>
<b>&gt;&gt; Programmatic Matrix</b>			
<b>Falsification</b>			
Major      Moderate      Minor			
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<b>Percent</b>			<input type="text" value="0%"/>
<b>Matrix Notes</b>	Human health or the environment has been exposed to significant amounts of pollutants which do not exceed levels that are protective of human health or the environment.		
<b>Adjustment</b>			<input type="text" value="\$7,500"/>
			<input type="text" value="\$2,500"/>
<b>Violation Events</b>			
<b>Number of Violation Events</b>	<input type="text" value="1"/>	<input type="text" value="31"/>	<b>Number of violation days</b>
<small>mark only one with an x</small>	daily	<input type="text"/>	<b>Violation Base Penalty</b>
	weekly	<input type="text"/>	
	monthly	<input checked="" type="checkbox"/>	
	quarterly	<input type="text"/>	
	semiannual	<input type="text"/>	
	annual	<input type="text"/>	
	single event	<input type="text"/>	
<input type="text" value="One monthly event is recommended for the month of October 2008."/>			<input type="text" value="\$2,500"/>
<b>Good Faith Efforts to Comply</b>			<input type="text" value="0.0%"/>
<b>Reduction</b>			<input type="text" value="\$0"/>
Before NOV      NOV to EDPRP/Settlement Offer			
Extraordinary	<input type="text"/>	<input type="text"/>	
Ordinary	<input type="text"/>	<input type="text"/>	
N/A	<input checked="" type="checkbox"/>	<input type="checkbox"/> (mark with x)	
<b>Notes</b>	The Respondent does not meet the good faith criteria for this violation.		
<b>Violation Subtotal</b>			<input type="text" value="\$2,500"/>
<b>Economic Benefit (EB) for this violation</b>			<b>Statutory Limit Test</b>
<b>Estimated EB Amount</b>	<input type="text" value="\$668"/>	<b>Violation Final Penalty Total</b>	<input type="text" value="\$4,100"/>
<b>This violation Final Assessed Penalty (adjusted for limits)</b>			<input type="text" value="\$4,100"/>

## Economic Benefit Worksheet

**Respondent:** BNSF Railway Company  
**Case ID No.:** 37311  
**Reg. Ent. Reference No.:** RN102863537  
**Media:** Water Quality  
**Violation No.:** 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
<small>No commas or \$</small>							

### Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$10,000	30-Jun-2008	31-Oct-2009	1.34	\$668	n/a	\$668

**Notes for DELAYED costs:** Estimated cost to provide additional oversight and sampling which may have alleviated or prevented the noncompliance. Date required is the month the first non-compliant excursion was documented. Final date is the expected date of compliance.

### Avoided Costs

**ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)**

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

**Notes for AVOIDED costs:**

Approx. Cost of Compliance \$10,000

**TOTAL** \$668

<p><b>Screening Date</b> 12-Mar-2009</p> <p><b>Respondent</b> BNSF Railway Company</p> <p><b>Case ID No.</b> 37311</p> <p><b>Reg. Ent. Reference No.</b> RN102863537</p> <p><b>Media [Statute]</b> Water Quality</p> <p><b>Enf. Coordinator</b> Cheryl Thompson</p> <p><b>Violation Number</b> 2</p> <p><b>Rule Cite(s)</b> Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0002039000, Effluent Limitations and Monitoring Requirements No. 1, 30 Tex. Admin. Code § 305.125(1) and Tex. Water Code § 26.121(a)</p> <p><b>Violation Description</b> Failed to comply with permitted effluent limits, as documented during a record review conducted on January 8, 2009. See attached table.</p>	<p><b>Docket No.</b> 2009-0365-IWD-E</p> <p style="text-align: right;"><b>PCW</b></p> <p style="text-align: right;"><small>Policy Revision 2 (September 2002) PCW Revision October 30, 2008</small></p>																							
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<p>mark only one with an x</p> <table border="1" style="width:100%; border-collapse: collapse;"> <tr><td>daily</td><td><input type="text"/></td></tr> <tr><td>weekly</td><td><input type="text"/></td></tr> <tr><td>monthly</td><td><input type="text"/></td></tr> <tr><td>quarterly</td><td style="text-align: center;">x</td></tr> <tr><td>semiannual</td><td><input type="text"/></td></tr> <tr><td>annual</td><td><input type="text"/></td></tr> <tr><td>single event</td><td><input type="text"/></td></tr> </table>	daily	<input type="text"/>	weekly	<input type="text"/>	monthly	<input type="text"/>	quarterly	x	semiannual	<input type="text"/>	annual	<input type="text"/>	single event	<input type="text"/>	<b>Violation Base Penalty</b> \$3,000									
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quarterly	x																							
semiannual	<input type="text"/>																							
annual	<input type="text"/>																							
single event	<input type="text"/>																							
<p>Three quarterly events are recommended for the quarters with the months of June 2008, September 2008, November 2008, December 2008 and January 2009</p>																								
<b>Good Faith Efforts to Comply</b> <input type="text" value="0.0%"/> Reduction <b>\$0</b>																								
<p>Before NOV      NOV to EDPRP/Settlement Offer</p>																								
<p>Extraordinary <input type="text"/></p>	<input type="text"/>																							
Ordinary <input type="text"/>	<input type="text"/>																							
N/A <input type="text" value="x"/>	(mark with x) <input type="text"/>																							
Notes	<p>The Respondent does not meet the good faith criteria for this violation.</p>																							
<b>Violation Subtotal</b> \$3,000																								
<b>Economic Benefit (EB) for this violation</b> <input type="text" value="\$0"/>																								
<b>Statutory Limit Test</b>																								
<b>Estimated EB Amount</b> <input type="text" value="\$0"/>	<b>Violation Final Penalty Total</b> <input type="text" value="\$4,920"/>																							
<b>This violation Final Assessed Penalty (adjusted for limits)</b> <input type="text" value="\$4,920"/>																								

## Economic Benefit Worksheet

**Respondent:** BNSF Railway Company  
**Case ID No.:** 37311  
**Reg. Ent. Reference No.:** RN102863537  
**Media:** Water Quality  
**Violation No.:** 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

### Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

See violation #1

### Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance \$0

TOTAL \$0





# Compliance History Report

Customer/Respondent/Owner-Operator:	CN600276901    BNSF Railway Company	Classification: AVERAGE	Rating: 4.50
Regulated Entity:	RN102863537    MILBY STREET YARD	Classification: AVERAGE	Site Rating: 0.47
ID Number(s):	WASTEWATER	PERMIT	WQ0002039000
	WASTEWATER	EPA ID	TPDES0070530
	WASTEWATER	PERMIT	TPDES0070530
	WASTEWATER	PERMIT	TX0070530
	WASTEWATER	EPA ID	TX0070530
Location:	located at the intersection of McKinney Ave and Milby Street Houston, Harris County, Texas		
TCEQ Region:	REGION 12 - HOUSTON		
Date Compliance History Prepared:	March 13, 2009		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	March 13, 2004 to March 13, 2009		
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History			
Name:	<u>Cheryl Thompson</u>	Phone:	<u>(817) 588-5886</u>

## Site Compliance History Components

- |  |     |
|--|-----|
| 1. Has the site been in existence and/or operation for the full five year compliance period? | No  |
| 2. Has there been a (known) change in ownership of the site during the compliance period?    | No  |
| 3. If Yes, who is the current owner?   | N/A |
| 4. If Yes, who was/were the prior owner(s)?  | N/A |
| 5. When did the change(s) in ownership occur?  | N/A |
| 6. Rating Date: 9/1/2008 Repeat Violator: NO   |     |

### Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.  
N/A
- B. Any criminal convictions of the state of Texas and the federal government.  
N/A
- C. Chronic excessive emissions events.  
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)
- |    |            |          |
|----|------------|----------|
| 1  | 03/18/2004 | (311766) |
| 2  | 04/19/2004 | (311767) |
| 3  | 05/19/2004 | (358714) |
| 4  | 06/16/2004 | (311772) |
| 5  | 07/20/2004 | (358715) |
| 6  | 08/13/2004 | (358716) |
| 7  | 09/17/2004 | (358717) |
| 8  | 10/20/2004 | (358718) |
| 9  | 11/08/2004 | (335867) |
| 10 | 11/22/2004 | (358719) |
| 11 | 12/15/2004 | (343834) |
| 12 | 12/20/2004 | (423538) |
| 13 | 01/18/2005 | (385517) |
| 14 | 02/18/2005 | (423533) |
| 15 | 03/18/2005 | (423534) |
| 16 | 04/22/2005 | (423535) |
| 17 | 05/17/2005 | (423536) |
| 18 | 06/20/2005 | (423537) |
| 19 | 07/19/2005 | (430014) |
| 20 | 07/19/2005 | (444349) |
| 21 | 08/19/2005 | (444350) |
| 22 | 09/19/2005 | (444351) |
| 23 | 10/19/2005 | (474880) |
| 24 | 11/15/2005 | (474881) |
| 25 | 12/19/2005 | (474882) |

26 01/17/2006 (474883)  
 27 02/21/2006 (474878)  
 28 03/17/2006 (474879)  
 29 04/24/2006 (502553)  
 30 05/19/2006 (502554)  
 31 06/20/2006 (502555)  
 32 07/18/2006 (524872)  
 33 08/16/2006 (524873)  
 34 09/20/2006 (524874)  
 35 10/16/2006 (549779)  
 36 11/22/2006 (549780)  
 37 12/19/2006 (549781)  
 38 01/22/2007 (583989)  
 39 02/21/2007 (583984)  
 40 03/13/2007 (583985)  
 41 04/16/2007 (583986)  
 42 05/21/2007 (583987)  
 43 06/20/2007 (583988)  
 44 06/21/2007 (558607)  
 45 07/17/2007 (604116)  
 46 08/14/2007 (604117)  
 47 09/19/2007 (604118)  
 48 10/17/2007 (623031)  
 49 11/19/2007 (623032)  
 50 12/14/2007 (623033)  
 51 01/15/2008 (674452)  
 52 02/20/2008 (674449)  
 53 03/14/2008 (674450)  
 54 04/14/2008 (674451)  
 55 05/13/2008 (692790)  
 56 06/13/2008 (692791)  
 57 07/18/2008 (692792)  
 58 08/14/2008 (713947)  
 59 09/17/2008 (713948)  
 60 10/15/2008 (713949)  
 61 11/17/2008 (729935)  
 62 12/15/2008 (729936)  
 63 01/21/2009 (729937)  
 64 02/26/2009 (723113)

E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date: 10/31/2004 (358719) CN600276901  
 Self YES Classification Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
 TWC Chapter 26 26.121(a)

Description: Failure to meet the limit for one or more permit parameter

Date: 11/05/2004 (335867) CN600276901  
 Self NO Classification Moderate

Citation: TWC Chapter 26 26.121(a)(1)

Description: Failure to store oil properly and prevent leakage onto the ground. In addition, two other oil spills were noted on the ground.

Self Report? NO Classification Minor

Citation: 30 TAC Chapter 319, SubChapter A 319.11(b)

Description: Failure to record sample temperatures on chain of custody.

Date: 07/19/2005 (430014) CN600276901

Self Report? NO Classification Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)

Description: NON-RPT VIOS FOR MONIT PER OR PIPE

Self Report? NO Classification Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)

Description: NON-RPT VIOS FOR MONIT PER OR PIPE

Date: 07/31/2005 (444350) CN600276901

Self Report? YES Classification Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)

Description: TWC Chapter 26 26.121(a)

Description: Failure to meet the limit for one or more permit parameter

Date: 05/31/2006 (502555) CN600276901

Self Report?	YES	Classification	Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1) TWC Chapter 26 26.121(a)		
Description:	Failure to meet the limit for one or more permit parameter		
Date:	01/31/2007 (583984)	CN600276901	
Self Report?	YES	Classification	Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1) TWC Chapter 26 26.121(a)		
Description:	Failure to meet the limit for one or more permit parameter		
Date:	06/19/2007 (558607)	CN600276901	
Self Report?	NO	Classification	Minor
Citation:	30 TAC Chapter 319, SubChapter A 319.11(d)		
Description:	Failure to accurately measure flow.		
Self Report?	NO	Classification	Minor
Citation:	30 TAC Chapter 305, SubChapter F 305.125(5)		
Description:	Failure to completely secure the onsite lift station.		
Date:	08/31/2007 (604118)	CN600276901	
Self Report?	YES	Classification	Moderate
Citation:	2D TWC Chapter 26, SubChapter A 26.121(a) 30 TAC Chapter 305, SubChapter F 305.125(1)		
Description:	Failure to meet the limit for one or more permit parameter		
Date:	06/30/2008 (692792)	CN600276901	
Self Report?	YES	Classification	Moderate
Citation:	2D TWC Chapter 26, SubChapter A 26.121(a) 30 TAC Chapter 305, SubChapter F 305.125(1)		
Description:	Failure to meet the limit for one or more permit parameter		
Date:	09/30/2008 (713949)	CN600276901	
Self Report?	YES	Classification	Moderate
Citation:	2D TWC Chapter 26, SubChapter A 26.121(a) 30 TAC Chapter 305, SubChapter F 305.125(1)		
Description:	Failure to meet the limit for one or more permit parameter		
Date:	10/31/2008 (729935)	CN600276901	
Self Report?	YES	Classification	Moderate
Citation:	2D TWC Chapter 26, SubChapter A 26.121(a) 30 TAC Chapter 305, SubChapter F 305.125(1)		
Description:	Failure to meet the limit for one or more permit parameter		
Date:	11/30/2008 (729936)	CN600276901	
Self Report?	YES	Classification	Moderate
Citation:	2D TWC Chapter 26, SubChapter A 26.121(a) 30 TAC Chapter 305, SubChapter F 305.125(1)		
Description:	Failure to meet the limit for one or more permit parameter		
Date:	12/31/2008 (729937)	CN600276901	
Self Report?	YES	Classification	Moderate
Citation:	2D TWC Chapter 26, SubChapter A 26.121(a) 30 TAC Chapter 305, SubChapter F 305.125(1)		
Description:	Failure to meet the limit for one or more permit parameter		
Date:	01/31/2009	CN600276901	
Self Report?	YES	Classification:	Moderate
Citation:	2D TWC Chapter 26, SubChapter A 26.121(a) 30 TAC Chapter 305, SubChapter F 305.125(1)		
Description:	Failure to meet the limit for one or more permit parameter		

F. Environmental audits.

N/A

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
BNSF RAILWAY COMPANY  
RN102863537

§  
§  
§  
§  
§

BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

AGREED ORDER  
DOCKET NO. 2009-0365-IWD-E

I. JURISDICTION AND STIPULATIONS

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding BNSF Railway Company ("the Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division and the Respondent appear before the Commission and together stipulate that:

1. The Respondent owns and operates a locomotive maintenance and washing facility located at the intersection of McKinney Avenue and Milby Street in Houston, Harris County, Texas (the "Facility").
2. The Respondent has caused, suffered, allowed or permitted the discharge of any waste or the performance of any activity in violation of TEX. WATER CODE ch. 26 or any rule, permit, or order of the Commission.
3. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about March 3, 2009.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Nine Thousand Twenty Dollars (\$9,020) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The

Respondent has paid Seven Thousand Two Hundred Sixteen Dollars (\$7,216) of the administrative penalty and One Thousand Eight Hundred Four Dollars (\$1,804) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and the Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
10. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
11. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

## II. ALLEGATIONS

As owner and operator of the Facility, the Respondent is alleged to have failed to comply with permitted effluent limits, in violation of Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0002039000, Effluent Limitations and Monitoring Requirements No. 1, 30 TEX. ADMIN. CODE § 305.125(1) and TEX. WATER CODE § 26.121(a), as documented during a record review conducted on January 8, 2009 and as depicted in the table below:

<i>Month/Year</i>	Chemical Oxygen Demand (COD) Daily Average Concentration	Chemical Oxygen Demand (COD) Daily Maximum Concentration	Oil and Grease Daily Average Concentration	Oil and Grease Daily Maximum Concentration	Flow Daily Average	Flow Daily Maximum	5- Day Bio-Chemical Demand (BOD) Daily Maximum
	200 mg/L	300 mg/L	10 mg/L	19 mg/L	0.004 MGD	0.005 MGD	45 mg/L
Jun-08	335	346	14	c	0.0057	0.011	c
Sep-08	c	c	16	c	c	c	c
Oct-08	617	920	25	33	c	c	c
Nov-08	407	407	c	c	c	c	c
Dec-08	c	c	c	c	c	c	88
Jan-09	318	318	c	c	c	c	c

milligrams per liter = mg/L    compliant (no excursions) = c    MGD = million gallons per day

### III. DENIALS

The Respondent generally denies each allegation in Section II ("Allegations").

### IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: BNSF Railway Company, Docket No. 2009-0365-IWD-E" to:

Financial Administration Division, Revenues Section  
Attention: Cashier's Office, MC 214  
Texas Commission on Environmental Quality  
P.O. Box 13088  
Austin, Texas 78711-3088

2. It is further ordered that the Respondent shall, within 90 days after the effective date of this Agreed Order, submit certification of compliance with the permitted effluent limitations of TPDES Permit No. WQ0002039000, including specific corrective actions that were implemented at the Facility to achieve compliance and copies of the most current self-reported discharge monitoring reports, demonstrating at least three consecutive months of compliance with all permitted limitations. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations."

The certification shall be submitted to:

Order Compliance Team  
Enforcement Division, MC 149A  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

with a copy to:

Water Section, Manager  
Houston Regional Office  
Texas Commission on Environmental Quality  
5425 Polk Avenue, Suite H  
Houston, Texas 77023-1486

3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
4. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
7. This Agreed Order may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreed Order may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes under this Agreed Order.
8. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

## SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

\_\_\_\_\_  
For the Commission

*John Szelen*  
For the Executive Director

8/21/2009  
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

*Michael E. Clift*  
Signature

6-8-09  
Date

Michael E. Clift  
Name (Printed or typed)  
Authorized Representative of  
BNSF Railway Company

Manager Env. Operations  
Title

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.

