Executive Summary – Enforcement Matter – Case No. 42201
Union Pacific Railroad Company
RN106172166
Docket No. 2011-1433-WQ-E

Order Type:
Findings Agreed Order
Findings Order Justification:
People or environmental receptors have been exposed to pollutants which exceed levels that are protective.
Media:
WQ
Small Business:
No
Location(s) Where Violation(s) Occurred:
200 North Riverfront Boulevard, Dallas, Dallas County
Type of Operation:
Train
Other Significant Matters:
Additional Pending Enforcement Actions: No
Past-Due Penalties: No
Other: N/A
Interested Third-Parties: None
Texas Register Publication Date: November 4, 2011
Comments Received: No

Penalty Information

Total Penalty Assessed: $11,250
Amount Deferred for Expedited Settlement: $0
Amount Deferred for Financial Inability to Pay: $0
Total Paid to General Revenue: $11,250
Total Due to General Revenue: $0
Payment Plan: N/A
SEP Conditional Offset: $0
Name of SEP: N/A
Compliance History Classifications:
Person/CN - Average
Site/RN - N/A
Major Source: No
Statutory Limit Adjustment: N/A
Applicable Penalty Policy: September 2002

Investigation Information

Complaint Date(s): N/A
Complaint Information: N/A
Date(s) of Investigation: November 24, 2010
Date(s) of NOE(s): July 16, 2011

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Violation Information

Failed to prevent the unauthorized discharge of a pollutant into or adjacent to water in the state [TEX. WATER CODE § 26.121(a)(1)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Site:

a. By November 27, 2010, cleaned the affected area and disposed of the dead fish; and

b. By December 13, 2010, collected and analyzed samples from the area affected by the November 24, 2010, discharge, and confirmed that pollutant levels in the affected area had been reduced to levels protective of the environment.

Technical Requirements:

N/A

Litigation Information

Date Petition(s) Filed: N/A
Date Answer(s) Filed: N/A
SOAH Referral Date: N/A
Hearing Date(s): N/A
Settlement Date: N/A

Contact Information

TCEQ Attorney: N/A
TCEQ Enforcement Coordinator: Lanae Foard, Enforcement Division, Enforcement Team 1, MC 169, (512) 239-2554; Debra Barber, Enforcement Division, MC 219, (512) 239-0412
TCEQ SEP Coordinator: N/A
Respondent: J.R. Young, President, Union Pacific Railroad Company, 1400 Douglas Street, Omaha, Nebraska 68179
Leland F. Willis, Regional Counsel, Union Pacific Railroad Company, 1400 Douglas Street, Omaha, Nebraska 68179
Respondent's Attorney: N/A

Penalty Calculation Worksheet (PCW)

TCEQ

Policy Revision 2 (September 2002) — *PCW Revision October 30, 2008*

DATES					
Assigned	25-Jul-2011				
PCW	17-Aug-2011	Screening	2-Aug-2011	EPA Due	

RESPONDENT/FACILITY INFORMATION

Respondent	Union Pacific Railroad Company		
Reg. Ent. Ref. No.	RN106172166		
Facility/Site Region	4-Dallas/Fort Worth	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	42201	No. of Violations	1
Docket No.	2011-1433-WQ-E	Order Type	Findings
Media Program(s)	Water Quality	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Lanae Foard
		EC's Team	Enforcement Team 1

Admin. Penalty $ Limit Minimum $0 Maximum $10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) — *Subtotal 1* **$15,000**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History — **0.0%** Enhancement — *Subtotals 2, 3, & 7* **$0**

Notes: No adjustment for compliance history.

Culpability No — **0.0%** Enhancement — *Subtotal 4* **$0**

Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments — *Subtotal 5* **$3,750**

Economic Benefit — **0.0%** Enhancement* — *Subtotal 6* **$0**

Total EB Amounts $22
Approx. Cost of Compliance $50,500

**Capped at the Total EB $ Amount*

SUM OF SUBTOTALS 1-7 — *Final Subtotal* **$11,250**

OTHER FACTORS AS JUSTICE MAY REQUIRE — **0.0%** — *Adjustment* **$0**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount **$11,250**

STATUTORY LIMIT ADJUSTMENT — *Final Assessed Penalty* **$11,250**

DEFERRAL — **0.0%** Reduction — *Adjustment* **$0**

Reduces the Final Assessed Penalty by the indicted percentage. *(Enter number only; e.g. 20 for 20% reduction.)*

Notes: No deferral is recommended for Findings Orders.

PAYABLE PENALTY **$11,250**

Screening Date 2-Aug-2011 **Docket No.** 2011-1433-WQ-E **PCW**

Respondent Union Pacific Railroad Company

Policy Revision 2 (September 2002)

Case ID No. 42201

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN106172166

Media [Statute] Water Quality

Enf. Coordinator Lanae Foard

Compliance History Worksheet

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

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action (*number of NOVs meeting criteria*)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (*number of orders meeting criteria*)	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 (*number of judgements or consent decrees meeting criteria*)	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 (*number of counts*)	0	0%
Emissions	Chronic excessive emissions events (*number of events*)	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 *(number of audits for which notices were submitted)*	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (*number of audits for which violations were disclosed*)	0	0%

		Please Enter Yes or No	
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) 0%

>> Repeat Violator (Subtotal 3)

N/A

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

No adjustment for compliance history.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 0%

Screening Date 2-Aug-2011 **Docket No.** 2011-1433-WQ-E **PCW**

Respondent Union Pacific Railroad Company *Policy Revision 2 (September 2002)*

Case ID No. 42201 *PCW Revision October 30, 2008*

Reg. Ent. Reference No. RN106172166

Media [Statute] Water Quality

Enf. Coordinator Lanae Foard

Violation Number 1

Rule Cite(s) Tex. Water Code § 26.121(a)(1)

Violation Description Failed to prevent the unauthorized discharge of a pollutant into or adjacent to water in the state. Specifically, a train derailment on November 24, 2010, at 200 North Riverfront Boulevard, Dallas, Texas, discharged approximately 7,000 gallons of urea ammonium nitrate solution into a storm drain that is adjacent to the Trinity River killing approximately 238 sunfish, 500 mosquito fish, and one red swamp crawfish.

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm: Major	Moderate	Minor
Actual	x		
Potential			

Percent 50%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes: Human health or the environment has been exposed to pollutants which exceed protective levels as a result of this violation.

Adjustment $5,000

$5,000

Violation Events

Number of Violation Events 3 | 3 Number of violation days

mark only one with an x

daily	x
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty $15,000

Three daily events are recommended from the date of the discharge (November 24, 2010) to the date the affected area was cleaned and disinfected (November 27, 2010).

Good Faith Efforts to Comply

25.0% Reduction $3,750

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary	x	
N/A		(mark with x)

Notes: The Respondent achieved compliance on December 13, 2010.

Violation Subtotal $11,250

Economic Benefit (EB) for this violation

Estimated EB Amount $22

Statutory Limit Test

Violation Final Penalty Total $11,250

This violation Final Assessed Penalty (adjusted for limits) $11,250

Economic Benefit Worksheet

Respondent Union Pacific Railroad Company
Case ID No. 42201
Reg. Ent. Reference No. RN106172166
Media Water Quality
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost (No commas or $)	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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	$500	24-Nov-2010	13-Dec-2010	0.05	$1	n/a	$1
Remediation/Disposal	$50,000	24-Nov-2010	27-Nov-2010	0.01	$21	n/a	$21
Permit Costs				0.00	$0	n/a	$0
Other (as needed)				0.00	$0	n/a	$0

Notes for DELAYED costs: Estimated costs to monitor stream quality in the affected area and to clean the affected area and dispose of the dead fish. Date required is the date the discharge occurred. Final dates are the date the affected area was cleaned and disinfected and the date that pollutant levels in the impacted area had been reduced to levels protective of the environment.

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 $50,500

TOTAL $22

Compliance History

Customer/Respondent/Owner-Operator:	CN600131098	Union Pacific Railroad Company	Classification: AVERAGE	Rating: 4.00
Regulated Entity:	RN106172166	200 N RIVERFRONT BLVD DALLAS	Classification:	Site Rating:

ID Number(s):

Location: 200 N RIVERFRONT BLVD IN DALLAS, DALLAS COUNTY, TEXAS

TCEQ Region: REGION 04 - DFW METROPLEX

Date Compliance History Prepared: July 27, 2011

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: July 27, 2006 to July 27, 2011

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History

Name: Lanae Foard Phone: (512) 239-2554

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/operator of the site during the compliance period? No
3. If Yes, who is the current owner/operator? N/A
4. If Yes, who was/were the prior owner(s)/operator(s)? N/A
5. When did the change(s) in owner or operator occur? N/A

Components (Multimedia) for the Site :

A. Final Enforcement Orders, court judgments, 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 7/19/2011 (933374)

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

N/A

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	§	**BEFORE THE**
ENFORCEMENT ACTION	§	
CONCERNING	§	**TEXAS COMMISSION ON**
UNION PACIFIC RAILROAD	§	
COMPANY	§	
RN106172166	§	**ENVIRONMENTAL QUALITY**

AGREED ORDER
DOCKET NO. 2011-1433-WQ-E

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Union Pacific Railroad 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 presented this agreement to the Commission.

The Respondent understands that it has certain procedural rights at certain points in the enforcement process, including, but not limited to, the right to formal notice of violations, notice of an evidentiary hearing, the right to an evidentiary hearing, and a right to appeal. By entering into this Agreed Order, the Respondent agrees to waive all notice and procedural rights.

It is further understood and agreed that this Order represents the complete and fully-integrated settlement of the parties. 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. The duties and responsibilities imposed by this Agreed Order are binding upon the Respondent.

The Commission makes the following Findings of Fact and Conclusions of Law:

I. FINDINGS OF FACT

1. The Respondent owns and operates a train and is the responsible party for the derailment that occurred at 200 North Riverfront Boulevard in Dallas, Dallas County, Texas (the "Site").

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. During an investigation on November 24, 2010, TCEQ staff documented that a train derailment on November 24, 2010, at 200 North Riverfront Boulevard, Dallas, Texas, discharged approximately 7,000 gallons of urea ammonium nitrate solution into a storm drain that is adjacent to the Trinity River killing approximately 238 sunfish, 500 mosquito fish, and one red swamp crawfish.

4. The Respondent received notice of the violations on July 21, 2011.

5. The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Site:

   a. By November 27, 2010, cleaned the affected area and disposed of the dead fish; and

   b. By December 13, 2010, collected and analyzed samples from the area affected by the November 24, 2010, discharge, and confirmed that pollutant levels in the affected area had been reduced to levels protective of the environment.

II. CONCLUSIONS OF LAW

1. The Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE chs. 7 and 26 and the rules of the Commission.

2. As evidenced by Findings of Fact No. 3, the Respondent failed to prevent the unauthorized discharge of a pollutant into or adjacent to water in the state, in violation of TEX. WATER CODE § 26.121(a)(1).

3. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against the Respondent for violations of the Texas Water Code and the Texas Health and Safety Code within the Commission's jurisdiction; for violations of rules adopted under such statutes; or for violations of orders or permits issued under such statutes.

4. An administrative penalty in the amount of Eleven Thousand Two Hundred Fifty Dollars ($11,250) is justified by the facts recited in this Agreed Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053. The Respondent has paid the Eleven Thousand Two Hundred Fifty Dollar ($11,250) administrative penalty.

III. ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. The Respondent is assessed an administrative penalty in the amount of Eleven Thousand Two Hundred Fifty Dollars ($11,250) as set forth in Section II, Paragraph 4 above, for violations of TCEQ rules and state statutes. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order completely resolve the violations set forth by this Agreed Order in this action. However, the Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations that are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Union Pacific Railroad Company, Docket No. 2011-1433-WQ-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. 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 Site operations referenced in this Agreed Order.

3. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to the Respondent if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.

4. 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.

5. 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.

6. This Agreed Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Agreed Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Agreed Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature

could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms "electronic transmission", "owner", "person", "writing", and "written" shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.

7. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties. By law, the effective date of this Agreed Order is the third day after the mailing date, as provided by 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

_____
For the Commission

_____ for R. Hyde
For the Executive Director

12-20-11
Date

I, the undersigned, have read and understand the attached Agreed Order in the matter of Union Pacific Railroad Company. I am authorized to agree to the attached Agreed Order on behalf of Union Pacific Railroad Company, and do agree to the specified terms and conditions. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I understand that by entering into this Agreed Order, Union Pacific Railroad Company waives certain procedural rights, including, but not limited to, the right to formal notice of violations addressed by this Agreed Order, notice of an evidentiary hearing, the right to an evidentiary hearing, and the right to appeal. I agree to the terms of the Agreed Order in lieu of an evidentiary hearing. This Agreed Order constitutes full and final adjudication by the Commission of the violations set forth in this Agreed Order.

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.

Leland F. Willis
Signature

9/21/2011
Date

Leland F. Willis
Name (Printed or typed)
Authorized Representative of
Union Pacific Railroad Company

Regional Counsel
Title

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