

STATE OF LOUISIANA

DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

UNION PACIFIC RAILROAD COMPANY

AI # 188324

PROCEEDINGS UNDER THE LOUISIANA
ENVIRONMENTAL QUALITY ACT
LA. R.S. 30:2001, ET SEQ.

* Settlement Tracking No.
* SA-WE-18-0030
*
* Enforcement Tracking No.
* WE-PP-13-00751
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SETTLEMENT

The following Settlement is hereby agreed to between Union Pacific Railroad Company (“Respondent”) and the Department of Environmental Quality (“DEQ” or “the Department”), under authority granted by the Louisiana Environmental Quality Act, La. R.S. 30:2001, et seq. (“the Act”).

I

Respondent is a corporation that owns and/or operates a railroad transportation system located in the state of Louisiana, including in St. Landry Parish, Louisiana.

II

On January 27, 2014, the Department issued to Respondent a Notice of Potential Penalty, Enforcement No. WE-PP-13-00751 (Exhibit 1).

III

Respondent denies it committed any violations or that it is liable for any fines, forfeitures and/or penalties.

IV

Nonetheless, Respondent, without making any admission of liability under state or federal statute or regulation, agrees to pay, and the Department agrees to accept, a payment in the amount

of FIVE THOUSAND AND NO/100 DOLLARS (\$5,000.00), of which One Thousand One Hundred Seven and No/100 Dollars (\$1,107.00) represents the Department's enforcement costs, in settlement of the claims and allegations made in the NOPP, as set forth in this agreement. The total amount of money expended by Respondent on cash payments to the Department as described above, shall be considered a civil penalty for tax purposes, as required by La. R.S. 30:2050.7(E)(1).

V

Respondent further agrees that the Department may consider the inspection report(s), the Notice of Potential Penalty and this Settlement for the purpose of determining compliance history in connection with any future enforcement or permitting action by the Department against Respondent, and in any such action Respondent shall be estopped from objecting to the above-referenced documents being considered as proving the violations alleged herein for the sole purpose of determining Respondent's compliance history.

VI

This agreement shall be considered a final order of the Secretary for all purposes, including, but not limited to, enforcement under La. R.S. 30:2025(G)(2), and Respondent hereby waives any right to administrative or judicial review of the terms of this agreement, except such review as may be required for interpretation of this agreement in any action by the Department to enforce this agreement.

VII

This settlement is being made in the interest of settling the state's claims and avoiding for both parties the expense and effort involved in litigation or an adjudicatory hearing. In agreeing to the compromise and settlement, the Department considered the factors for issuing civil penalties set forth in La. R. S. 30:2025(E) of the Act.

VIII

As required by law, the Department has submitted this Settlement Agreement to the

Louisiana Attorney General for approval or rejection. The Attorney General's concurrence is appended to this Settlement Agreement.

IX

The Respondent has caused a public notice advertisement to be placed in the official journal of the parish governing authority in St. Landry Parish, Louisiana. The advertisement, in form and wording approved by the Department, announced the availability of this settlement for public view and comment and the opportunity for a public hearing. Respondent has submitted an original proof-of-publication affidavit and an original public notice to the Department and, as of the date this Settlement is executed on behalf of the Department, more than forty-five (45) days have elapsed since publication of the notice.

X

Payment is to be made within ten (10) days from notice of the Secretary's signature. If payment is not received within that time, this Agreement is voidable at the option of the Department. Payments are to be made by check, payable to the Department of Environmental Quality, and mailed or delivered to the attention of Accountant Administrator, Financial Services Division, Department of Environmental Quality, Post Office Box 4303, Baton Rouge, Louisiana, 70821-4303. Each payment shall be accompanied by a completed Settlement Payment Form (Exhibit A).

XI

In consideration of the above, any claims for penalties are hereby compromised and settled in accordance with the terms of this Settlement.

XII

Each undersigned representative of the parties certifies that he or she is fully authorized to execute this Settlement Agreement on behalf of his or her respective party, and to legally bind such party to its terms and conditions.

UNION PACIFIC RAILROAD COMPANY

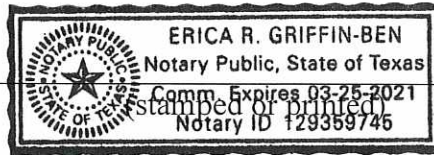
BY: [Signature]
(Signature)

Nicholas Bryan
(Printed)

TITLE: General Attorney

THUS DONE AND SIGNED in duplicate original before me this 26th day of July, 20 19, at 5:20 pm.

[Signature]
NOTARY PUBLIC (ID # 129359745)



LOUISIANA DEPARTMENT OF ENVIRONMENTAL QUALITY
Chuck Carr Brown, Ph.D., Secretary

BY: [Signature]
Lourdes Iturralde, Assistant Secretary
Office of Environmental Compliance

THUS DONE AND SIGNED in duplicate original before me this 10th day of Dec., 20 19, at Baton Rouge, Louisiana.

[Signature]
NOTARY PUBLIC (ID # 19181)

Perry Theriot
(stamped or printed)

Approved: [Signature]
Lourdes Iturralde, Assistant Secretary



BOBBY JINDAL
GOVERNOR

PEGGY M. HATCH
SECRETARY

State of Louisiana
DEPARTMENT OF ENVIRONMENTAL QUALITY
OFFICE OF ENVIRONMENTAL COMPLIANCE

January 27, 2014

CERTIFIED MAIL (7004 2510 0005 5768 1203)
RETURN RECEIPT REQUESTED

UNION PACIFIC RAILROAD COMPANY
c/o CT Corporation System
5615 Corporate Blvd. Suite 400B
Baton Rouge, LA 70808

RE: NOTICE OF POTENTIAL PENALTY
ENFORCEMENT TRACKING NO. WE-PP-13-00751
AGENCY INTEREST NO. 188324

Dear Sir:

The **UNION PACIFIC RAILROAD COMPANY (RESPONDENT)** owns and/or operates a railroad transportation system licensed to conduct business in the state of Louisiana. On or about August 4, 2013, a derailment of approximately twenty-three (23) tanker cars near Lawtell, St. Landry Parish, Louisiana, resulted in the unauthorized discharge of various chemicals and products into an unnamed tributary which flows into Bayou Mallet, waters of the state. This incident will be henceforth known as the Lawtell Train Derailment.

On or about August 4-16, 2013, inspections of the Lawtell Train Derailment were performed to determine the degree of compliance with the Louisiana Environmental Quality Act (the Act) and the Water Quality Regulations.

While the investigation by the Louisiana Department of Environmental Quality (the Department) is not yet complete, the following observations and/or violations were noted during the course of the inspections and a subsequent file review completed on August 29, 2013:

- A. The Respondent provided the verbal notification and submitted the written report regarding the Lawtell Train Derailment in a timely manner as required in LAC 33:I.3915 and LAC 33:I.3925.
- B. The Lawtell Train Derailment caused the unauthorized discharge of approximately 43,000 gallons of lube oil, 1-dodecanol, and sodium hydroxide into an unnamed tributary which flows into Bayou Mallet, waters of the state. The released chemicals and products extended approximately five (5) miles



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downstream from the site of the derailment. The unauthorized discharge of chemicals and products into waters of the state is in violation of La. R.S. 30:2075.

- C. The Lawtell Train Derailment did cause an adverse impact to aquatic biota as a result of the above-referenced unauthorized discharge. Specifically, inspections conducted by the Department at the time of the derailment noted an area of stressed/dead vegetation and approximately 100 moribund/dead fish from the location of the discharge extending down Bayou Mallet to the U.S. Hwy. 190 bridge crossing. The destruction of aquatic biota is a violation of La. R.S. 30:2076 (A)(3), LAC 33:IX.501.A, LAC 33:IX.1113.B.1.d, and LAC 33:IX.1113.B.5.
- D. The Respondent's unauthorized discharge into an unnamed tributary which flows into Bayou Mallet temporarily prevented the receiving stream(s) from meeting its designated use(s) as established in Table 3, Numerical Criteria and Designated Uses of LAC 33:IX.1123. Observations made by the Department during the investigations revealed that the unauthorized discharge and the resultant clean-up operations impaired these waters of the state and therefore could not meet their designated uses. The Respondent's discharges which have resulted in waters of the state not meeting their designated uses are a violation of LAC 33:IX.1123, LAC 33:IX.501.A and La. R.S. 30:2076 (A)(3).
- E. The Respondent constructed temporary berms and dikes within the tributary, removed contaminated debris, and excavated contaminated soil and vegetation to prevent the further spread of the unauthorized discharge of pollutants in Bayou Mallet. On-going remediation activities at the Lawtell Train Derailment are being monitored by the Underground Storage Tanks and Remediation Division within the Office of Environmental Compliance.

Pursuant to La. R.S. 30:2050.3(B), you are hereby notified that the issuance of a penalty assessment is being considered for the violation described herein. Written comments may be filed regarding the violation and the contemplated penalty. If you elect to submit comments, it is requested that they be submitted within ten (10) days of receipt of this notice.

Prior to the issuance of any additional appropriate enforcement action, you may request a meeting with the Department to present any mitigating circumstances concerning the violation(s). If you would like to have such a meeting, please contact Wayne R. Slater at (225) 219-3729 or at wayne.slater@la.gov within ten (10) days of receipt of this **NOTICE OF POTENTIAL PENALTY**.

The Department is required by La. R.S. 30:2025(E)(3)(a) to consider the gross revenues of the Respondent and the monetary benefits of noncompliance in order to determine whether a penalty will be assessed and the amount of such penalty. Please forward the Respondent's most current annual gross revenue statement along with a statement of the monetary benefits of noncompliance for the cited violations to the above named contact person within ten (10) days of receipt of this **NOTICE OF**

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POTENTIAL PENALTY. Include with your statement of monetary benefits the method(s) you utilized to arrive at the sum. If you assert that no monetary benefits have been gained, you are to fully justify this statement.

For each violation described herein, the Department reserves the right to seek civil penalties and the right to seek compliance with its rules and regulations in any manner allowed by law, and nothing herein shall be construed to preclude the right to seek such penalties and compliance.

To reduce document handling, please refer to the Enforcement Tracking Number and Agency Interest Number on the front of this document on all correspondence in response to this action.

Sincerely,



Cheryl Sonnier Nolan
Assistant Secretary

CSN/WRS/wrs
Alt ID No. LAU007447

c: Geoffrey Reeder
Environmental Remediation Manager, UPRR
24125 Aldine Westfield Rd
Spring, TX 77373