

US EPA ARCHIVE DOCUMENT

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 9**

75 Hawthorne Street  
San Francisco, California 94105

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**IN THE MATTER OF:**

Union Pacific Railroad Company

East Los Angeles Intermodal Facility  
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Docket No. CWA 309(a)-11-031

**FINDINGS OF VIOLATION  
AND  
ORDER FOR COMPLIANCE**

Proceedings under Section 308(a) and 309(a)  
of the Clean Water Act, as amended, 33  
U.S.C. Sections 1318(a), and 1319(a)

**STATUTORY AUTHORITY**

The following Findings of Violation are made and Order for Compliance (Order) issued pursuant to the authority vested in the Administrator of the U.S. Environmental Protection Agency (EPA) by Sections 308(a) and 309(a)(3), (a)(4), and (a)(5)(A) of the Clean Water Act, as amended (the Act or CWA), 33 U.S.C. §§ 1318(a), and 1319(a)(3), (a)(4), and (a)(5)(A). This authority has been delegated to the Regional Administrator of EPA, Region 9 and re-delegated by the Regional Administrator to the Director of the Water Division of EPA, Region 9. Notice of this action has been given to the State of California.

**FINDINGS OF VIOLATION**

1. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants into waters of the United States, except in compliance with the Act, inter alia Section 402, 33 U.S.C. § 1342.
2. Section 402 of the Act, 33 U.S.C. § 1342, establishes the National Pollutant Discharge Elimination System (NPDES) program. Under Section 402, 33 U.S.C. § 1342, EPA and states with EPA-approved NPDES programs are authorized to issue permits governing the discharge of pollutants from regulated sources.
3. Section 402(p) of the Act, 33 U.S.C. § 1342(p), and EPA's implementing regulations at 40 C.F.R. § 122.26, require NPDES permit authorization for discharges of storm water associated with industrial activity. Facilities engaged in industrial activity, as defined by 40 C.F.R. § 122.26(b)(14), must obtain NPDES permit authorization if they discharge or propose to discharge storm water into waters of the United States. Pursuant to 40 C.F.R.

§§ 122.26(a)(1)(ii) and 122.26(c), dischargers of storm water associated with industrial activity are required to apply for an individual permit or to seek coverage under a promulgated storm water general permit.

4. Railroads, line-haul operating, Standard Industrial Classification (SIC) 4011, fall under SIC Industry Group 40, and pursuant to 40 C.F.R. § 122.26(b)(14)(viii), is an industrial activity subject to the discharge and permitting requirements under Section 402 of the Act, 33 U.S.C. § 1342.
5. Section 308(a) of the Act, 33 U.S.C. § 1318(a), and its implementing regulations authorize EPA to, inter alia, require the owner or operator of any point source to establish records, make reports, or submit other reasonably required information, including individual and general NPDES permit applications.
6. The State of California has an EPA-approved NPDES program and issues permits, including storm water permits, through its State Water Resources Control Board (State Board) and nine Regional Water Quality Control Boards (Regional Boards). The permit that is currently effective, General Permit No. CAS000001 for Discharges of Storm Water Associated with Industrial Activities Excluding Construction Activities, Water Quality Order No. 97-03-DWQ (General Permit), was adopted on April 17, 1997.
7. The General Permit requires facility operators to develop and implement a storm water pollution prevention plan (SWPPP) prior to commencing industrial operations. (General Permit, Section A.1 and 2, pgs. 11-12) The purpose of the SWPPP is to identify sources of industrial storm water pollution and to identify and implement site-specific best management practices (BMPs) to control discharges. Id.
8. The SWPPP must include, inter alia, a narrative description of the storm water BMPs to be implemented at the facility for each potential pollutant and its source (General Permit Section A(8), pg. 17) as well as a site map (or maps) that identifies: (a) facility boundaries and an outline of facility drainage areas, (b) the storm water collection and conveyance system, (c) an outline of impervious areas, (d) locations where materials are directly exposed to precipitation, and (e) areas of industrial activity. (General Permit, Section A.4, pgs. 12-14)
9. Facility operators must prevent or reduce pollutants associated with industrial activity in storm water discharges and authorized non-storm water discharges using best available technology economically achievable (BAT) for toxic pollutants and best conventional pollutant control technology (BCT) for conventional pollutants. (General Permit, Effluent Limitation B.3, pg. 4)
10. Facility operators must develop a written monitoring program and must conduct quarterly visual observations of non-storm water discharges, monthly visual observations of storm water events, and prescribed storm water sampling and analysis. (General Permit, Section

B.1, 3, 4, and 5, pgs. 24-27) In addition, facility operators must submit an annual report to the Regional Board that summarizes visual observations and sampling and provides a comprehensive site compliance evaluation. (General Permit, Section B.14, pg. 35) A copy of the written monitoring program as well as records of inspections, steps taken to prevent or reduce discharges, and the annual report must be maintained for at least five years and must be available at the facility for review by facility employees or inspectors. (General Permit, Section B.13, pg. 34)

11. Union Pacific Railroad Company (Respondent) is a Delaware Corporation and is thus a “person” under CWA Section 502(5), 33 U.S.C. § 1362(5). Respondent operates a facility located at 4341 East Washington Boulevard in Commerce, California known as the East Los Angeles Intermodal Facility (Facility). Respondent has operated this Facility since at least April 8, 1992. Respondent is engaged in railroad line-haul operations, activities classified under SIC 4011, and thus subject to the requirements of the General Permit. (General Permit, Attachment 1, ¶ 2 (“Facilities covered by this general permit”)) (Id.)
12. Respondent filed a Notice of Intent with the State Water Resources Control Board to comply with the terms of the General Permit. The Respondent’s WDID identification number is 4-19I005001.
13. The Los Angeles River is a “navigable water” within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7), and a “water of the United States,” as defined by EPA regulations at 40 C.F.R. § 122.2.
14. Storm water discharged from the Facility contains “pollutants,” including industrial waste, as defined by Section 502(6) of the Act, 33 U.S.C. § 1362(6), and is a storm water discharge associated with industrial activity as defined by EPA regulations at 40 C.F.R. § 122.26(b)(14).
15. The Los Angeles River Reach 2 (Carson Street to Figueroa Street) is listed under Section 303(d) of the Act, 33 U.S.C. § 1313(d) as an impaired water body for ammonia, coliform bacteria, copper, lead, nutrients (algae), oil, scum/foam-unnatural, taste and odor, and trash.
16. On August 12, 2011, representatives of EPA and the Los Angeles Regional Water Quality Control Board inspected the Facility to evaluate Respondent’s compliance with the General Permit. The inspection report is attached for reference. EPA also reviewed the Respondent’s SWPPP.
  - a. Based on the August 12, 2011 inspection and the review of the SWPPP, EPA noted that:
    - i. The SWPPP did not adequately identify the direction of the storm water flow of each drainage area at the Facility on the site map, for example, the drainage area contributing flow to the storm drain in the alley north of the

- Facility's locomotive maintenance shop (VM-1) (General Permit, Section A.4.a, pg. 13);
- ii. The SWPPP did not adequately identify all points of discharge at the Facility on the site map, for example, the point of discharge in the south east corner of the vehicle maintenance area (General Permit, Section A.4.b, pg. 14);
  - iii. The SWPPP did not adequately identify all structural control measures on the site map, for example, the berms constructed next to the crane maintenance pads (General Permit, Section A.4.b, pg. 14);
  - iv. The SWPPP did not adequately identify all locations on the site map where materials are directly exposed to precipitation, for example, the dumpster containing metal shavings near the locomotive wheel shop (General Permit, Section A.4.d, pg. 14);
  - v. The SWPPP did not adequately identify all areas of industrial activity on the site map, notably vehicle maintenance and equipment cleaning activity, for example, the vehicle maintenance area, the locomotive wheel shop and the third crane maintenance pad adjacent to VM-3 (General Permit, Section A.4.e, pg. 14);
  - vi. The SWPPP did not adequately identify the location(s) where significant spills or leaks have occurred at the Facility, for example, the area adjacent to the crane maintenance pads (VM-3) (General Permit, Section A.6.a.iv, pgs. 15-16);
  - vii. The SWPPP did not adequately identify all significant materials handled and stored at the site, for example, the identification and location of materials being utilized within the vehicle maintenance area, the locomotive wheel shop and the third crane maintenance pad adjacent to VM-3 (General Permit, Section A.5, pg. 14); and
  - viii. The SWPPP did not adequately identify potential pollutants sources and potential pollutants that could be discharged in storm water discharges, for example, potential pollutants that may be stored within the Facility's car and crane maintenance material storage areas (MSH-1 and MSH-3), the crane maintenance pads (VM-3 and VM-6), the uncovered dumpster northeast of the locomotive wheel shop and the vehicle maintenance area (General Permit, Sections A.6.a, b, pgs. 14-16).
- b. Based on the August 12, 2011 inspection and review of the SWPPP EPA observed that: Respondent had not adequately implemented BMPs at the Facility

to reduce or prevent pollutants in storm water discharges and authorized non-storm water discharges, for example, lack of good housekeeping practices in the area adjacent to the crane maintenance pads (VM-3) (General Permit, Section A.8.a.i, pgs. 17, 19).

- c. Based on the August 12, 2011 inspection and review of the SWPPP, EPA observed that Respondent had not adequately collected storm water samples from all storm water discharge locations to represent the quality and quantity of the Facility's storm water discharges. For example, EPA observed activities (i.e., equipment cleaning/painting, locomotive maintenance, rail car wheel service, crane maintenance, etc.) being performed in close proximity to storm drains across the Facility, indicating that a storm water sample from a single location would not be representative of storm water discharges from the entire Facility (General Permit, Section A.5.a, pg. 26).

### ORDER FOR COMPLIANCE

Considering the foregoing Findings of Violations and the potential environmental and human health effects of the violations, EPA has determined that compliance in accordance with the following requirements is reasonable. Pursuant to the authority of Sections 308(a) and 309(a)(3), (a)(4) and (a)(5)(A) of the Act, Respondent is hereby ordered to comply with the following requirements:

17. Immediately upon receipt of this Order, Respondent shall take all necessary measures to fully and properly comply with all terms and conditions of the General Permit.
18. Within 30 days of receipt of this Order, Respondent shall complete the following interim control measures (Interim Measures):
  - a. Clean all exposed areas of the Facility used for vehicle maintenance or equipment cleaning using dry methods to remove residual pollutants from previous leaks, spills or overflows of, among other pollutants, fuels, battery acid, and oil and grease;
  - b. Confine vehicle maintenance and equipment cleaning activities to dedicated areas of the Facility that are outside of drainage pathways and on impervious surfaces; and
  - c. Install appropriate BMPs for all exposed areas of the Facility used for vehicle maintenance or equipment cleaning to minimize exposure of potential pollutants to storm water.
19. Within 14 days of completion of the Interim Measures, Respondent shall submit a Notice of Completion to EPA, which shall include a list of the Interim Measures taken, the date each Interim Measure was completed, the person(s) responsible for overseeing completion of

each Interim Measure, the costs associated with developing and implementing the Interim Measures and copies of documents associated with the completion of the Interim Measures, such as contracts, permits, manifests, and photographs.

20. In performing the Interim Measures, Respondent shall not cause or contribute any unauthorized discharges to waters of the United States. Respondent shall comply with all applicable federal, state, and local requirements.
21. Within 30 days of receipt of this Order, Respondent shall submit a report detailing the circumstances surrounding the spill of an unknown liquid that occurred on or about July 30, 2007. The report shall, at a minimum, identify the material spilled, set forth the quantity of material spilled, explain the circumstances surrounding the spill, what actions were taken to address this spill and explain the Facility's procedures for handling spills or leaks.
22. Within 45 days of receipt of this Order, Respondent shall submit a revised SWPPP to EPA that fully complies with the General Permit. The SWPPP revisions shall include, among other required information:
  - a. An accurate site map of the Facility, identifying:
    - i. The direction of the storm water flow of each drainage area;
    - ii. All points of storm water discharge, including the south east corner of the vehicle maintenance area;
    - iii. All structural control measures affecting storm water discharges, including berms, diversion barriers, and secondary containment structures;
    - iv. All locations where materials are directly exposed to precipitation, including the dumpster containing metal shavings near the locomotive wheel shop; and
    - v. All areas of industrial activity, including all vehicle maintenance and equipment cleaning, such as the vehicle maintenance area, the locomotive wheel shop, and the third crane maintenance pad adjacent to VM-3.
  - b. A list of all significant materials handled and stored at the site, including materials utilized within the vehicle maintenance area, the locomotive wheel shop and the third crane maintenance pad adjacent to VM-3.
  - c. A narrative description of potential pollutants that could be discharged in storm water, including potential pollutants that may be stored within the Facility's car and crane maintenance material storage areas (MSH-1 and MSH-3), and vehicle maintenance area.

23. Within 45 days of receipt of this Order, Respondent shall identify and implement any necessary BMPs at the Facility in order to prevent or reduce pollutants associated with industrial activity in storm water discharges and authorized non-storm water discharges using best available technology economically achievable (BAT) for toxic pollutants and best conventional pollutant control technology (BCT) for conventional pollutants. The BMPs must be identified in the revised SWPPP submitted to EPA.
24. Within 45 days of receipt of this Order, Respondent shall submit a revised monitoring program to EPA that fully complies with the General Permit. Respondent's revised monitoring program shall identify all storm water discharge locations in order to properly represent the quality and quantity of the Facility's storm water discharges.
25. Respondent shall fully implement the SWPPP upon submission to EPA and shall make and fully implement modifications necessary to address any EPA comments within 30 days of receipt of such comments.
26. Within 60 days of the receipt of this Order, Respondent shall submit a report to EPA on the costs associated with:
  - a. Developing the SWPPP;
  - b. Implementing the BMPs documented in the SWPPP (projected incremental annual costs);
  - c. Implementing the Monitoring Program (projected incremental annual costs); and
  - d. Complying with this Order.
27. All reports submitted pursuant to this Order must be signed by a principal executive officer, ranking elected official, or duly authorized representative of Respondent (as specified by 40 C.F.R. § 122.22 (b)(2)) and shall include the following statement:

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, I certify that 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.

28. All submissions requested by this Order shall be mailed to the following address:



U. S. Environmental Protection Agency - Region 9  
Clean Water Act Compliance Office WTR-7  
75 Hawthorne Street  
San Francisco, CA 94105  
Attention: Greg Gholson

All telephone inquiries should be made to Greg Gholson, Environmental Scientist,  
at (415) 972-4209.

29. Respondent shall send a copy of all submissions required under this Order to:

Los Angeles Regional Water Quality Control Board  
320 West Fourth Street, Suite 200  
Los Angeles, CA 90013  
Attention: Enrique Loera

30. This Order shall be binding upon Respondent and its officers, directors, agents, employees, heirs, successors, and assigns.
31. This Order is not a permit under the CWA, and does not waive or modify Respondent's obligation and responsibility to ascertain and comply with all applicable federal, state, or local laws, regulations, ordinances, permits, or licenses.
32. This Order is not to be deemed an election by EPA to forgo any remedies available to it under the law, including without limitation, any administrative, civil, or criminal action to seek penalties, fines, or other appropriate relief under the Act. EPA reserves all rights and remedies, legal and equitable, available to enforce any violations cited in this Order and to enforce this Order.
33. Requests for information contained within this Order are not subject to review by the Office of Management and Budget under the Paperwork Reduction Act because it is not a "collection of information" within the meaning of 44 U.S.C. § 3502(3). It is directed to fewer than ten persons and is an exempt investigation under 44 U.S.C. § 3518(c)(1) and 5 C.F.R. § 1320.4(a)(2).
34. Respondent may not withhold from EPA any information on the grounds that it is confidential business information. However, EPA has promulgated, under 40 C.F.R. Part 2, Subpart B, regulations to protect confidential business information it receives. If legally supportable, a claim of business confidentiality may be asserted in the manner specified by 40 C.F.R. § 2.203(b) for all or part of the information requested by EPA. EPA will disclose business information covered by such claim only as authorized under 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies the information at the time EPA receives it, EPA may make it available to the public without further notice.

35. Section 309(a), (b), (d) and (g) of the Act, 33 U.S.C. § 1319(a), (b), (d) and (g), provides administrative and/or judicial relief for failure to comply with the CWA. In addition, Section 309(c) of the Act, 33 U.S.C. § 1319(c), provides criminal sanctions for negligent or knowing violations of the CWA and for knowingly making false statements.
36. This Order shall become effective upon the date of receipt by Respondent.

*Alexis Strauss*

Alexis Strauss, Director  
Water Division

*30 September 2011*

Date

