STATE OF COLORADO

Bill Ritter, Jr., Governor
Martha E. Rudolph, Executive Director

Dedicated to protecting and improving the health and environment of the people of Colorado

4300 Cherry Creek Dr. S.
Denver, Colorado 80246-1530
Phone (303) 692-2000
TDD Line (303) 691-7700
Located in Glendale, Colorado

Laboratory Services Division
8100 Lowry Blvd.
Denver, Colorado 80230-6928
(303) 692-3090

http://www.cdphe.state.co.us

Colorado Department
of Public Health
and Environment

March 5, 2010

Robert C. Bylsma
Union Pacific Railroad Company
Regional Environmental Counsel
10031 Foothills Blvd., Suite 200
Roseville, California 95747

Certified Mail Number: 7009 1680 0000 2094 4534

RE: Order for Civil Penalty, Number: SP-100305-1

Dear Mr. Bylsma:

Union Pacific Railroad Company is hereby served with the enclosed Order for Civil Penalty ("Penalty Order"). This Penalty Order is issued by the Colorado Department of Public Health and Environment's Water Quality Control Division (the "Division") pursuant to the authority given to the Division by §25-8-608(2) of the *Colorado Revised Statutes*. Payment of the imposed civil penalty should be made in accordance with the methods referenced in the Penalty Order and SC-100106-1.

If you have any questions regarding the Penalty Order or the payment method, please do not hesitate to contact Michael Harris of this office at (303) 692-3598 or by electronic mail at michael.harris@state.co.us.

Sincerely,

Russell Zigler

Russell Zigler, Legal Assistant
Compliance Assurance Section
Enforcement Unit
WATER QUALITY CONTROL DIVISION

Enclosure(s)

cc: Denver Environmental Health
Mark E. Ross, Manager, Environmental Field Operations (1400 W. 52nd Avenue, Denver, Colorado 80221)

ec: Aaron Urdiales, EPA Region VIII
Doug Camrud, Engineering Section, CDPHE
Nathan Moore, Permits Section. CDPHE
Dick Parachini, Watershed Program, CDPHE
Carolyn Schachterle, FSU, CDPHE

COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

DIVISION OF ADMINISTRATION

WATER QUALITY CONTROL DIVISION

ORDER FOR CIVIL PENALTY **NUMBER: SP-100305-1**

IN THE MATTER OF: **UNION PACIFIC RAILROAD COMPANY**
CDPS PERMIT NO. COR-010000
CERTIFICATION NOS. COR-010747 & COR-010748
DENVER COUNTY, COLORADO

This matter having come to my attention as the Designee of the Executive Director of the Colorado Department of Public Health and Environment upon petition for imposition of a civil penalty by the Water Quality Control Division's Compliance Assurance Section, and pursuant to §25-8-608 C.R.S., I hereby impose a civil penalty in the amount of One Hundred Six Thousand Eight Hundred Eight Dollars ($106,808.00) against Union Pacific Railroad Company for the violations cited in the January 6, 2010 Compliance Order on Consent (Number: SC-100106-1). A copy of the Compliance Order on Consent is attached hereto as Exhibit A and is incorporated herein by reference. The civil penalty shall be paid within thirty (30) calendar days of the date of this Order for Civil Penalty as set forth in the Compliance Order on Consent.

"Method of payment shall be by certified or cashier's check drawn to the order of the 'Colorado Department of Public Health and Environment,' and delivered to:

Michael Harris
Colorado Department of Public Health and Environment
Water Quality Control Division
Mail Code: WQCD-CADM-B2
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530"

Dated this _5th_ day of March, 2010.

Steven H. Gunderson, Director
Water Quality Control Division
DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Exhibit A

STATE OF COLORADO

Bill Ritter, Jr., Governor
Martha E. Rudolph, Executive Director

Dedicated to protecting and improving the health and environment of the people of Colorado

4300 Cherry Creek Dr. S.
Denver, Colorado 80246-1530
Phone (303) 692-2000
TDD Line (303) 691-7700
Located in Glendale, Colorado

http://www.cdphe.state.co.us

Laboratory Services Division
8100 Lowry Blvd.
Denver, Colorado 80230-6928
(303) 692-3090

Colorado Department
of Public Health
and Environment

January 7, 2010

Robert C. Bylsma
Regional Environmental Counsel
Union Pacific Railroad Company
10031 Foothills Blvd., Suite 200
Roseville, CA 95747

Certified Mail Number: 7005 1820 0000 3208 1005

RE: Final Compliance Order on Consent, Number: SC-100106-1

Dear Mr. Bylsma,

Enclosed for Union Pacific Railroad Company's records, you will find Union Pacific's copy, with original signatures, of the recently executed Compliance Order on Consent. Please remember that this agreement is subject to a thirty-day public comment period, as further described in paragraph 22 of the document. If the Division receives any comments during this period, we will contact your office to discuss. Also, please be advised that the first page of the Order was changed for the purpose of placing the assigned Order Number on the final document.

If you have any questions, please do not hesitate to contact me at (303) 692-3598 or by electronic mail at michael.harris@state.co.us.

Sincerely,

Michael Harris
Enforcement Unit
WATER QUALITY CONTROL DIVISION

Enclosure(s)

cc: Denver Environmental Health
Mark E. Ross, Union Pacific Railroad Company (1400 W. 52nd Avenue, Denver CO 80221)

ec: Aaron Urdiales, EPA Region VIII
Nathan Moore, Permits Section, CDPHE
Dick Parachini, Watershed Program, CDPHE
Carolyn Schachterle, OPA, CDPHE

COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

DIVISION OF ADMINISTRATION

WATER QUALITY CONTROL DIVISION

COMPLIANCE ORDER ON CONSENT **NUMBER: SC-100106-1**

IN THE MATTER OF: **UNION PACIFIC RAILROAD COMPANY**
CDPS PERMIT NO. COR-010000
CERTIFICATION NOS. COR-010747 & COR-010748
DENVER COUNTY, COLORADO

The Colorado Department of Public Health and Environment ("Department"), through the Water Quality Control Division ("Division"), issues this Compliance Order on Consent ("Consent Order"), pursuant to the Division's authority under §§25-8-602 and 605, C.R.S. of the Colorado Water Quality Control Act ("the Act"), §§25-8-101 to 703, C.R.S., and its implementing regulations, with the express consent of Union Pacific Railroad Company ("Union Pacific"). The Division and Union Pacific may be referred to collectively as "the Parties."

STATEMENT OF PURPOSE

1. The mutual objectives of the Parties in entering into this Consent Order are to resolve, without litigation, the civil penalties associated with alleged violations cited herein and in the Notice of Violation / Cease and Desist Order (Number: SO-070426-1) that the Division issued to Union Pacific on April 26, 2007.

DIVISION'S FINDINGS OF FACT AND DETERMINATION OF VIOLATIONS

2. Based upon the Division's investigation into and review of the compliance issues identified herein, and in accordance with §§25-8-602 and 605, C.R.S., the Division has made the following determinations regarding Union Pacific and Union Pacific's compliance with the Act and its stormwater permit certification.

3. At all times relevant to the alleged violations identified herein, Union Pacific was a Delaware corporation in good standing and registered to conduct business in the State of Colorado.

4. Union Pacific is a "person" as defined by the Water Quality Control Act, §25-8-103(13), C.R.S. and its implementing permit regulation, 5 CCR 1002-61, §61.2(73).

5. Union Pacific operates an industrial facility involved in the maintenance, fueling and cleaning of locomotives, located at 800 Seminole Road, in the City and County of Denver, Colorado (the "Burnham Shops Facility"). Union Pacific's Burnham Shops Facility is classified within the Standard Industrial Classification (SIC) code 4011 – Railroads, Line-Haul Operating.

6. A portion of Union Pacific's activities at the Burnham Shops Facility are covered under the Colorado Discharge Permit System General Permit, Number COR-010000, for Stormwater Discharges Associated with Light Industrial Activity (the "Permit"). During the times relevant to the alleged violations identified herein, a version of the Permit was in place that was effective from July 1, 2002 through June 30, 2007 (the "2002 Permit"). The current version of the Permit, which was signed on May 31, 2007, became effective on July 1, 2007 and remains in effect until June 30, 2012 (the "2007 Permit"). On August 12, 1995, the Division provided Union Pacific or its predecessor Certification Number COR-010747 authorizing Union Pacific to discharge stormwater from the industrial activities associated with the Burnham Shops Facility to the South Platte River under the terms and conditions of the Permit. Certification Number COR-010747 remains in effect until June 30, 2011 or until Union Pacific inactivates Permit coverage.

7. Union Pacific operates an industrial facility involved in the fueling of locomotives and maintenance and repair of railroad equipment, located at 901 W. 48th Avenue, in the City of Denver, Denver County, Colorado (the "North Yard Facility"). Union Pacific's North Yard Facility is classified within the Standard Industrial Classification (SIC) code 4011 – Railroads, Line-Haul Operating.

8. A portion of Union Pacific's activities at the North Yard Facility are covered under the Permit. On August 12, 1995, the Division issued Union Pacific or its predecessor Certification Number COR-010748 authorizing Union Pacific to discharge stormwater from the industrial activities associated with the North Yard Facility to the South Platte River under the terms and conditions of the Permit. Certification Number COR-010748 remains in effect until June 30, 2011 or until Union Pacific inactivates Permit coverage.

9. The South Platte River is "state waters" as defined by §25-8-103(19), C.R.S. and its implementing permit regulation, 5 CCR 1002-61, §61.2(101).

10. Pursuant to 5 CCR 1002-61, §61.8, a permittee must comply with all the terms and conditions of a permit and violators of the terms and conditions specified in a permit may be subject to civil and criminal liability pursuant to sections 25-8-601 through 612, C.R.S.

11. On June 23, 2006, a representative from the Denver Department of Environmental Health (the "Inspector") conducted onsite inspections of the Burnham Shops Facility and the North Yard Facility on behalf of the Division, pursuant to the Division's authority under §25-8-306, C.R.S., to determine Union Pacific's compliance with the Water Quality Control Act and the Permit. During each inspection, the Inspector interviewed a Union Pacific representative, conducted a review of each facility's stormwater management records, and conducted a physical inspection of each facility.

Failure to Implement and/or Maintain
Best Management Practices to Protect Stormwater Runoff

12. Pursuant to Part I. B. 3. b. of the 2002 Permit, Union Pacific was required to identify potential sources of pollutants and implement BMPs to reduce the potential of these sources to contribute pollutants to stormwater discharges. The 2002 Permit specified that where stormwater pollution potential exists, appropriate preventative measures must be taken and documented.

13. Pursuant to Part I. C. 1. b. of the 2002 Permit, Union Pacific was required to have protections in place to contain all spills from bulk storage structures for petroleum products and other chemicals and to prevent any spilled material from entering State waters.

14. The Division alleges that Union Pacific failed to implement and/or maintain functional BMPs at the Burnham Shops Facility as described in paragraphs 14(a-g) below:

    a. During the June 23, 2006 inspection, the Inspector observed railroad parts covered in oil and grease that were being stored north of the wheel shop at the Burnham Shops Facility. The parts were being stored outside, uncovered, with no BMPs in place to prevent stormwater from contacting the parts before discharging to a nearby storm sewer drain.

    b. During the June 23, 2006 inspection, the Inspector observed staining from oil that had spilled around the oil lift station at the Burnham Shops Facility with no BMPs in place to clean up the spilled oil or to prevent stormwater from intermingling with the spilled oil before discharging from the area.

    c. During the June 23, 2006 inspection, the Inspector observed a bucket of oil that was being stored outside the containment area of the oil lift station at the Burnham Shops Facility. The bucket of oil was uncovered and no secondary containment BMPs were observed in place.

    d. During the June 23, 2006 inspection, the Inspector observed staining from oil or other chemicals that had spilled between and adjacent to the railroad tracks located throughout the Burnham Shops Facility. No BMPs were observed in place to clean up the spilled material or to prevent stormwater from intermingling with the spilled material before discharging from the area.

    e. During the June 23, 2006 inspection, the Inspector observed batteries at the Burnham Shops Facility that were being stored outside, uncovered, with no BMPs in place to prevent stormwater from contacting the batteries before discharging from the area.

    f. During the June 23, 2006 inspection, the Inspector observed sediment in the Material Handling 3 area of the Burnham Shops Facility with no BMPs in place to prevent the sediment from discharging from the area during storm events.

    g. During the June 23, 2006 inspection, the Inspector observed a large pile of petroleum contaminated soil and ballast that was being stored outside, uncovered, with no BMPs in place to prevent stormwater from intermingling with the pollutant contaminated soil and ballast before discharging from the area.

15. The Division alleges that Union Pacific failed to implement and/or maintain functional BMPs at the North Yard Facility as described in paragraphs 15(a-b) below:

    a. During the June 23, 2006 inspection, the Inspector observed staining from oil or other chemicals that had spilled around the lube oil tank and along the toilet chemical tanks at the North Yard Facility. No BMPs were observed in place to clean up the spilled material or to prevent stormwater from intermingling with the spilled material before discharging from the area.

    b. During the June 23, 2006 inspection, the Inspector observed staining from oil or other chemicals that had spilled between and adjacent to the railroad tracks located throughout the North Yard Facility. No BMPs were observed in place to clean up the spilled material or to prevent stormwater from intermingling with the spilled material before discharging from the area.

16. Based upon the foregoing, the Division has determined that Union Pacific failed to implement and maintain functional BMPs to protect stormwater quality at the Burnham Shops Facility and the North Yard Facility, and that its failure to do so constitutes violation(s) of Part I. B. 3. b. and Part I. C. 1. b. of the 2002 Permit.

ORDER AND AGREEMENT

17. Based on the foregoing factual and legal determinations, pursuant to its authority under §§25-8-602 and 605, C.R.S., and in satisfaction of the civil penalties associated with the alleged violations cited herein and in the Notice of Violation / Cease and Desist Order (Number: SO-070426-1), the Division orders Union Pacific to comply with all provisions of this Consent Order, including all requirements set forth below.

18. Union Pacific agrees to the terms and conditions of this Consent Order. Union Pacific agrees that this Consent Order constitutes a notice of alleged violation and an order issued pursuant to §§25-8-602 and 605, C.R.S., and is an enforceable requirement of the Act. Union Pacific also agrees not to challenge directly or collaterally, in any judicial or administrative proceeding brought by the Division or by Union Pacific against the Division:

    a. The issuance of this Consent Order;
    b. The factual and legal determinations made by the Division herein; and
    c. The Division's authority to bring, or the court's jurisdiction to hear, any action to enforce the terms of this Consent Order under the Act.

19. Notwithstanding the above, Union Pacific does not admit to any of the factual or legal determinations made by the Division herein, and any action undertaken by Union Pacific pursuant to this Consent Order shall not constitute evidence of fault by Union Pacific with respect to the conditions of the facilities.

CIVIL PENALTY

20. Based upon the application of the Division's Stormwater Civil Penalty Policy (January 25, 2007), and consistent with Departmental policies for violations of the Act, Union Pacific shall pay One Hundred Six Thousand Eight Hundred Eight Dollars ($106,808.00) in civil penalties. The Division intends to petition the Executive Director, or his designee, to impose the One Hundred Six Thousand Eight Hundred Eight Dollar ($106,808.00) civil penalty for the above violation(s) and Union Pacific agrees to make the payment within thirty (30) calendar days of the issuance of a Penalty Order by the Executive Director or his designee. Method of payment shall be by certified or cashier's check drawn to the order of the "Colorado Department of Public Health and Environment," and delivered to:

    Michael Harris
    Colorado Department of Public Health and Environment
    Water Quality Control Division
    Mail Code: WQCD-CADM-B2
    4300 Cherry Creek Drive South
    Denver, Colorado 80246-1530

SCOPE AND EFFECT OF CONSENT ORDER

21. The Parties agree and acknowledge that this Consent Order constitutes a full and final settlement of the civil penalties associated with the violations alleged herein and in the April 26, 2007 Notice of Violation / Cease and Desist Order (Number: SO-070426-1).

22. This Consent Order is subject to the Division's "Public Notification of Administrative Enforcement Actions Policy," which includes a thirty-day public comment period. The Division and Union Pacific each reserve the right to withdraw consent to this Consent Order if comments received during the thirty-day period result in any proposed modification to the Consent Order.

23. This Consent Order constitutes a final agency order or action upon the date when the Executive Director or his designee imposes the civil penalty following the public comment period. Any violation of the provisions of this Consent Order by Union Pacific, including any false certifications, shall be a violation of a final order or action of the Division for the purpose of §25-8-608, C.R.S., and may result in the assessment of civil penalties of up to ten thousand dollars per day for each day during which such violation occurs.

24. Notwithstanding paragraph 19 above, the violations described in this Consent Order will constitute part of Union Pacific's compliance history for purposes where such history is relevant. This includes considering the violations described above in assessing a penalty for any subsequent violations against Union Pacific. Union Pacific agrees not to challenge the use of the cited violations for any such purpose.

LIMITATIONS, RELEASES AND RESERVATION OF RIGHTS AND LIABILITY

25. Upon the effective date of this Consent Order, and during its term, this Consent Order shall stand in lieu of any other enforcement action by the Division with respect to civil penalties for the specific instances of violations cited herein and in the April 26, 2007 Notice of Violation / Cease and Desist Order (Number: SO-070426-1). The Division reserves the right to bring any action to enforce this Consent Order, including actions for penalties or the collection thereof, and/or injunctive relief.

26. This Consent Order does not grant any release of liability for any violations not specifically cited herein.

27. Nothing in this Consent Order shall preclude the Division from imposing additional requirements in the event that new information is discovered that indicates such requirements are necessary to protect human health or the environment.

28. Upon the effective date of this Consent Order, Union Pacific releases and covenants not to sue the State of Colorado or its employees, agents or representatives as to all common law or statutory claims or counterclaims arising from, or relating to, the violations of the Act specifically addressed herein.

29. Nothing in this Consent Order shall constitute an express or implied waiver of immunity otherwise applicable to the State of Colorado, its employees, agents or representatives.

NOTICES

30. Unless otherwise specified, any report, notice or other communication required under the Consent Order shall be sent to:

For the Division:

Colorado Department of Public Health and Environment
Water Quality Control Division / WQCD-CADM-B2
Attention: Michael Harris
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530
Telephone: 303.692.3598
E-mail: michael.harris@state.co.us

For Union Pacific:

Mark E. Ross
Manager, Environmental Field Operations
1400 W. 52nd Avenue
Denver, CO 80221
Telephone: 303.405.5072

Robert C. Bylsma
Regional Environmental Counsel
Union Pacific Railroad Company
10031 Foothills Blvd., Suite 200
Roseville, CA 95747
Telephone: 916.789.6229

MODIFICATIONS

31. This Consent Order may be modified only upon mutual written agreement of the Parties.

NOTICE OF EFFECTIVE DATE

32. This Consent Order shall be fully effective, enforceable and constitute a final agency action upon the date when the Executive Director or his designee imposes the civil penalty. If the penalty as described in this Consent Order is not imposed, or an alternate penalty is imposed, this Consent Order becomes null and void.

BINDING EFFECT AND AUTHORIZATION TO SIGN

33. This Consent Order is binding upon Union Pacific and its corporate subsidiaries or parents, their officers, directors, employees, successors in interest, and assigns. The undersigned warrant that they are authorized to legally bind their respective principals to this Consent Order. In the event that a party does not sign this Consent Order within thirty (30) calendar days of the other party's signature, this Consent Order becomes null and void. This Consent Order may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same Consent Order.

FOR UNION PACIFIC RAILROAD COMPANY:

_____ Date: 12-18-09
David P. Young, General Solicitor

FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT:

_____ Date: 1/6/10
Lori M. Gerzina, Manager
Compliance Assurance Section
WATER QUALITY CONTROL DIVISION