

UTAH DIVISION OF WATER QUALITY

IN THE MATTER OF UNION PACIFIC RAILROAD COMPANY	CONSENT AGREEMENT AND ORDER Docket No. I18-08
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This Consent Agreement and Order (hereinafter "Settlement Agreement") is between Union Pacific Railroad Company (hereinafter "UPRR") and the Director of the Utah Division of Water Quality (hereinafter the "Director"), concerning violations of the *Utah Water Quality Act* (the *Act*), *Utah Code Annotated*, and the *Utah Administrative Code*.

1. The Director has authority to administer the *Utah Water Quality Act, as amended 1953*, as specified in *UCA 19-5-106(2)(d)* (hereinafter the "*Act*").
2. The Director has been delegated authority by the U.S. Environmental Protection Agency (EPA) to administer the *National Pollutant Discharge Elimination System (NPDES)* permit program under the *Federal Clean Water Act (CWA)*.
3. UPRR is a Delaware corporation operating under the laws of the State of Utah and headquartered in Omaha, Nebraska.
4. This Settlement Agreement incorporates by reference the Findings of Fact and Violations alleged in Notice of Violation and Compliance Order, Docket No. I18-08 ("NOV I18-08") issued against UPRR on October 26, 2018.
5. The Parties have entered into this Settlement Agreement to address issued NOV I18-08. The Parties now desire to resolve this matter without additional administrative proceedings except to the extent provided herein by entering into this Settlement Agreement.
6. The Parties agree that the resolution of NOV I18-08 has been negotiated in good faith and that any enforcement action associated therewith is in the public interest, and that entry of this Settlement Agreement is an appropriate means to resolve the matters covered herein and allows for immediate assurance in protecting waters of the State in the affected areas.
7. Entering into this Settlement Agreement is not an admission of liability nor an admission to the truthfulness of any factual allegations and violations alleged in NOV I18-08, nor is it an admission of or an agreement to any disputed facts or disputed legal theories, nor is it an admission of any violation of any law, rule, regulation or permit by UPRR.
8. In resolution of NOV I18-08 in Paragraph 4 of this Settlement Agreement:
 - A. UPRR agrees to pay a civil penalty in the amount of \$4,000, together with a payment to the Division for the Division's investigative response costs associated with events

described in NOV I18-08 in the amount of \$5,900.40. The civil penalty is based upon a Penalty Calculation prepared by the Division in accordance with the Penalty Criteria for Civil Settlement Negotiations, Utah Admin. Code R317-1-8. The Division's response costs have been calculated and are recoverable pursuant to the Division's Fee Schedule for Fiscal Year 2019.

Payment is to be made within thirty (30) days of the effective date of this Settlement Agreement by online payment, or check made payable to the State of Utah delivered or mailed to:

Department of Environmental Quality
Division of Water Quality
PO Box 144870
Salt Lake City, Utah 84114-4870

- B. UPRR shall complete all necessary environmental cleanup and remediation work related to the events described in NOV I18-08 in conformity with a work plan including a wetlands restoration plan with a compliance schedule approved by the Division.

UPRR shall submit updates, every three months, on the cleanup and remediation of the impacted waters of the State for the Division to be able to evaluate compliance. The updates shall include how the project is progressing and any known setbacks that may impact the progress of the mitigation and recovery. The cleanup will be considered done when the final report is submitted by UPRR and there are no significant environmental issues left, verified by a final inspection by the Division. In this case, "significant environmental issues" means that UPRR has not left anything undone on the cleanup. Small de minimis residues of pollutants left behind would not be counted under this.

9. Nothing contained in this Settlement Agreement shall preclude the Director from taking additional actions against UPRR for violations not resolved by this Settlement Agreement.
10. This Settlement Agreement shall become effective (the "Effective Date") when signed by the Director.
11. As of the Effective Date, this Settlement Agreement will be a final administrative order subject to the civil enforcement provisions of Utah Code Ann. § 63G-4-501 and other applicable law including Utah Code Ann. § 19-5-115.
12. By entering into this Settlement Agreement, UPRR waives any right to contest the allegations and its right to appeal this final order.
13. Nothing in this Settlement Agreement shall constitute a waiver by UPRR to raise in defense any legal or factual contention for future allegations of noncompliance.
14. Except as specifically provided in this Settlement Agreement, this Settlement Agreement resolves NOV I18-08, and releases UPRR from any and all liability and claims under the authority of the Director for civil penalties, or past administrative or other response costs, arising from the Facts

alleged in NOV I18-08.

15. Nothing in this Settlement Agreement shall limit the power and authority of the Division or the State of Utah to take, direct, or order all actions necessary, in connection with future violations, to protect public health, welfare, or the environment, or to prevent, abate, or minimize an actual, potential, or threatened release of pollutants or contaminants to waters of the State. Further, nothing in this Settlement Agreement shall prevent the Director or the Board from seeking equitable relief to enforce the terms of this Settlement Agreement, from taking other legal or equitable action as they deem appropriate and necessary in connection with future violations, or from requiring UPRR in the future to perform additional activities pursuant to the Act or any other applicable law in connection with future violations.
16. The Parties acknowledge that neither the Director nor the Board has jurisdiction regarding natural resource damage claims, causes of action, or demands. Therefore, such matters are outside the scope of this Settlement Agreement.
17. Each undersigned representative of the Parties certifies that he or she is fully authorized to enter into the terms and conditions of the Settlement Agreement and to execute and legally bind the Parties to the same.
18. This Settlement Agreement may be amended in writing if signed by both Parties.
19. The Director will administer the terms and provisions of this Settlement Agreement.

[SIGNATURE PAGE FOLLOWS]

IT IS SO AGREED AND ORDERED:

FOR UTAH DIVISION OF WATER QUALITY

By _____
Erica Brown Gaddis, PhD
Director

Date: _____

**FOR UNION PACIFIC
RAILROAD COMPANY**

By _____

Title: _____

Date: _____

DWQ-2019-001662