California Regional Water Quality Control Board
Santa Ana Region

Terry Tamminen
Secretary for Environmental Protection

Internet Address: http://www.swrcb.ca.gov/rwqcb8
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Arnold Schwarzenegger
Governor

December 12, 2003

CERTIFIED MAIL
RETURN RECIPT REQUESTED

Mr. Lanny A. Schmid
Union Pacific Railroad
1416 Dodge Street, Room 930
Omaha, NE 68179

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R8-2003-0124, UNION PACIFIC RAILROAD, BLOOMINGTON, CALIFORNIA, WDID NO. 8 36I004573

Dear Mr. Schmid:

We are enclosing a certified copy of Complaint No. R8-2003-0124, proposing administrative civil liability of $3,000 for failure to submit the annual report pursuant to the State's General Permit for Storm Water Discharges Associated with Industrial Activity (Order No. 97-03-DWQ, NPDES Permit No. CAS000001, General Permit). Of this amount, $1,000 will be suspended if the annual report is received by this office by January 5, 2004. This is for the Union Pacific Railroad facility located at 19100 Slover Street, Bloomington, San Bernardino County (WDID No. 8 36S004573). An invoice and a preprinted envelope are also enclosed.

If necessary, a public hearing on this matter will be scheduled for the Regional Board meeting on January 22, 2004. The staff report regarding this complaint and the meeting agenda will be mailed to you not less than ten days prior to the Board meeting.

You have the option to waive your right to a hearing. Should you waive your right to a hearing and pay the proposed assessment, the Regional Board may not hold a public hearing on this matter. If you choose to waive your right to a hearing, please sign the enclosed Waiver Form and return it with a check for $3,000 and the bottom portion of the invoice in the enclosed preprinted envelope. The check should be made payable to the State Water Resources Control Board.

If you do not wish to waive your right to a hearing, you may wish to schedule a pre-hearing meeting with the Board staff. Should you wish to schedule a meeting, please call us prior to January 6, 2004. At that time, you may submit information that may not have been previously available to staff regarding this incident. The information should address the following:

1. Nature, circumstances, extent, and gravity of the violation;

2. Your ability to pay the proposed assessment;

3. Your degree of culpability;

4. Any prior history of violations;

5. Economic benefit or savings; and,

6. Such other matters as justice may require.

If you have any questions regarding this complaint, you may contact Mr. Muhammad Bashir at (909) 320-6396 or Ms. Milasol Gaslan at (909) 782-4419. All legal questions should be referred to our legal counsel, Mr. Jorge Leon, at (916) 341-5180.

Sincerely,

Gerard J. Thibeault
Executive Officer

Enclosures: Complaint No. R8-2003-0124, Waiver Form, Invoice, Preprinted Envelope

Cc: Regional Board
Bruce Fujimoto, State Water Resources Control Board, Division of Water Quality
Jorge Leon, State Water Resources Control Board, Office of the Chief Counsel
Kathi Moore, US-EPA, Region 9 (WTR-7)
Naresh Varma, San Bernardino County Public Works Department
Duffy Exon, Union Pacific Railroad, 2015 Willow Street, Bloomington, CA 92316
Lanny A. Schmid, Union Pacific Railroad, 19100 Slover St., Bloomington, CA 92316

STATE OF CALIFORNIA
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SANTA ANA REGION

In the matter of:	)	**Complaint No. R8-2003-0124**
	)	**for**
Union Pacific Railroad	)	**Administrative Civil Liability**
1416 Dodge Street, Room 930	)	
Omaha, NE 68179	)	
	)	
Attention: Lanny A. Schmid	)	

YOU ARE HEREBY GIVEN NOTICE THAT:

1. You are alleged to have violated provisions of law for which the California Regional Water Quality Control Board, Santa Ana Region (hereinafter Board), may impose liability under Sections 13385 and 13399.33 of the California Water Code.

2. A hearing in this matter has been scheduled for the Board's regular meeting on January 22, 2004, at 25541 Barton Road, Loma Linda. You or your representative will have an opportunity to appear and be heard, and to contest the allegations in this Complaint and the imposition of civil liability by the Board. An agenda for the meeting will be mailed to you not less than 10 days prior to the hearing date.

3. At the hearing, the Board will consider whether to affirm, reject or modify the proposed administrative civil liability or whether to refer the matter to the Attorney General for recovery of judicial civil liability.

4. The Union Pacific Railroad (UPR) facility, located at 19100 Slover Street, Bloomington, is currently regulated under the State's General Permit for Storm Water Discharges Associated with Industrial Activities, Water Quality Order No. 97-03-DWQ, NPDES No. CAS000001 (General Permit). The facility's WDID Number is 836I004573. The General Permit requires UPR to submit an annual report by July 1 of each year.

5. Prior to the July 1, 2003 deadline, a notice from the State Water Resources Control Board (SWRCB) was mailed to UPR, indicating that a copy of the blank 2002-2003 Annual Report could be accessed via the internet, and that a hard copy would only be mailed if requested. Because the annual report was not submitted, a Notice of Noncompliance (NNC) was issued to UPR on August 1, 2003 by certified mail, requesting that the annual report be submitted within 30 days of the date of the letter. The return receipt shows that it was received at the UPR facility on August 8, 2003. A second NNC was issued on September 17, 2003, again by certified mail, requesting submittal of the annual report by October 18, 2003. The return receipt showed it was received on September 18,

October 18, 2003. The return receipt showed it was received on September 18, 2003. Both NNCs requested submittal of the completed annual report to the Board office by a specified date, a statement explaining why the annual report was not submitted by the July 1 deadline, and a description of measures that will be taken to ensure that future annual reports are submitted on time. The NNCs also warned UPR of the mandatory fines for failure to submit the annual report.

6. Since the annual report was not submitted by the specified date, Board staff contacted Mr. Duffy Exon, Environmental Manager at UPR, by telephone on October 21, 2003 and October 27, 2003. Mr. Exon was told about the mandatory penalty provisions of the Water Code for non-submittal of the annual report. Mr. Exon indicated that the delay was due to shortage of staff and that the report would be submitted in the near future. To date, the Annual Report has not been received. This facility violated the General Permit, the Federal Clean Water Act and the California Water Code by failing to submit the annual report by July 1, 2003.

7. Section 13399.33(c) of the California Water Code provides that the Regional Board shall impose a minimum penalty of $1,000 for any person who fails to submit an annual report in accordance with Section 13399.31 of the Water Code.

8. Section 13385(a)(2) of the California Water Code provides that any person who violates waste discharge requirements issued pursuant to the Federal Clean Water Act shall be civilly liable. Section 13385(c) provides that civil liability may be administratively imposed by a regional board in an amount not to exceed ten thousand dollars ($10,000) for each day the violation occurs. .

9. Based on non-submittal of the 2002-2003 annual report, the facility is alleged to have violated the General Permit for 163 days (from July 2, 2003 to December 12, 2003). The maximum liability for this violation is $1,630,000.

10. Section 13385(e) specifies factors that the Board shall consider in establishing the amount of civil liability. After consideration of those factors, the Executive Officer proposes that civil liability be imposed on Union Pacific Railroad in the amount of $3,000 ($1,000 of this amount will be suspended if the annual report is received by this office by January 5, 2004) for the violations cited above.

WAIVER OF HEARING

You may waive your right to a hearing. If you choose to do so, please sign the attached waiver form and mail it, together with a check or money order payable to the State Water Resources Control Board, for the amount of the penalty proposed under Paragraph 10. The bottom portion of the invoice, waiver form, and the check or money order should be mailed to Sacramento in the enclosed envelope.

If you have any questions, please contact Muhammad Bashir at (909) 320-6396 or Milasol Gaslan at (909) 782-4419. For legal questions, please contact the Regional Board's staff counsel, Jorge Leon, at (916) 341-5180.

12/12/03
Date

Gerard J. Thibeault
Executive Officer

In the matter of:	)	**Complaint No. R8-2003-0124**
	)	**for**
	)	**Administrative Civil Liability**
Union Pacific Railroad	)	
1416 Dodge Street, Room 930	)	
Omaha, NE 68179	)	
	)	
Attention: Lanny A. Schmid	)	

WAIVER OF HEARING

I agree to waive the right of Union Pacific Railroad to a hearing before the Santa Ana Regional Water Quality Control Board with regard to the violations alleged in Complaint No. R8-2003-0124. I have enclosed a check or money order, made payable to the State Water Resources Control Board, in the amount of $ 3,000 ($2,000 if the Annual Report is received by the January 5, 2004 deadline). I understand that I am giving up the right of Union Pacific Railroad to be heard and to argue against allegations made by the Executive Officer in this complaint, and against the imposition of, and the amount of, the liability proposed.

_____ _____

Date for Union Pacific Railroad