

**BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS**

PEOPLE OF THE STATE OF ILLINOIS)	
<i>ex rel.</i> LISA MADIGAN, Attorney General)	
of the State of Illinois)	
)	PCB 2008-007
Complainant,)	
)	
vs.)	<i>VIA ELECTRONIC FILING</i>
)	
UNION PACIFIC RAILROAD COMPANY,)	
a Delaware corporation,)	
)	
Respondent.)	

NOTICE OF FILING

John Therriault
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street, Suite 11-500
Chicago, IL 60601

Zemeheret Bereket-Ab
Assistant Attorney General
Environmental Bureau North
69 West Washington Street, Suite 1800
Chicago, IL 60602

Bradley P. Halloran
Hearing Officer
James R. Thompson Center
100 West Randolph Street, Suite 11-500
Chicago, IL 60601

W. Lee Hammond
Union Pacific Railroad Company
1400 Douglas Street, Stop 1080
Omaha, NE 68179

Please take notice that today, January 8, 2010, I have filed with the Office of the Clerk of the Illinois Pollution Control Board by electronic filing Union Pacific Railroad Company's Answer, along with Notice of Filing and Certificate of Service, a copy of which is attached hereto and served upon you.

Respectfully submitted,

SONNENSCHN NATH & ROSENTHAL LLP

By: /s/ Thomas A. Andreoli
Attorneys for Respondent
Union Pacific Railroad Company

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**UNION PACIFIC RAILROAD COMPANY'S
ANSWER AND AFFIRMATIVE AND ADDITIONAL DEFENSES**

ANSWER

Defendant, Union Pacific Railroad Company ("Union Pacific"), through its attorneys,
and for its Answer to plaintiff's Complaint states as follows:

COUNT I

CAUSING, THREATENING OR ALLOWING WATER POLLUTION

1. This count is brought on behalf of the People of the State of Illinois, *ex rel.* LISA MADIGAN, the Attorney General of the State of Illinois, on her own motion and at the request of the Illinois Environmental Protection Agency ("Illinois EPA"), pursuant to Section 31 of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31 (2004).

ANSWER:

Union Pacific admits the People filed a complaint on or about July 16, 2007. To the extent that the allegations in Paragraph 1 purport to describe or cite statutory provisions, such provisions speak for themselves and no response is required. Union Pacific is without knowledge sufficient to form a belief as to the truth of the remaining allegations of Paragraph 1 and, on that basis, denies the same.

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2. The Illinois EPA is an agency of the State of Illinois created pursuant to Section 4 of the Act, 415 ILCS 5/4 (2004), and charged, *inter alia*, with the duty of enforcing the Act. Additionally, pursuant to Section 402(b) of the federal Clean Water Act (“CWA”), 33 U.S.C. § 1342(b), the Illinois EPA administers and enforces the CWA’s National Pollutant Discharge Elimination System (“NPDES”) permit program within the State of Illinois.

ANSWER:

To the extent that the allegations in Paragraph 2 purport to describe or cite statutory provisions, such provisions speak for themselves and no response is required. To the extent that the allegations in Paragraph 2 consist of opinion, argument and/or legal conclusions, no response is required. Union Pacific is without knowledge sufficient to form a belief as to the truth of the remaining allegations of Paragraph 2 and, on that basis, denies the same.

3. At all times relevant to this Complaint, Union Pacific Railroad Company (“Respondent”), has been a Delaware corporation duly authorized to do business in Illinois.

ANSWER:

Union Pacific admits that it is a corporation organized and existing under the laws of the State of Delaware. Union Pacific admits that it is authorized to do business in the State of Illinois.

4. At all times relevant to this Complaint, Respondent has operated a rail yard and intermodal facility, located at 301 West Lake Street, City of Northlake, County of Cook, Illinois (“Facility”).

ANSWER:

Union Pacific admits that it operates a classification yard, the Proviso Yard, at 5050 W. Lake Street, Melrose Park, Ill. Union Pacific admits that it operates an intermodal facility, Global II, located at 301 W. Lake Street, Northlake, Ill. Union Pacific further responds that the Proviso Yard and Global II are different properties and denies that they are the same “Facility.” Union Pacific denies any remaining allegations of Paragraph 4.

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5. Stormwater and accumulated groundwater from the Facility are treated by passing through an oil/water separator (“Separator”), prior to being discharged into Mud Creek, which is a tributary of Addison Creek. The Separator consists of several weirs over which water flowing through the Separator passes, prior to being discharged. Respondent’s discharge of the treated stormwater and accumulated groundwater is authorized under the terms of its Illinois EPA-issued NPDES Permit No. IL0002127 (“NPDES Permit”).

ANSWER:

Union Pacific admits that NPDES Permit No. IL0002127 applies to a discharge point located at the Proviso Yard. Union Pacific further responds that the Proviso Yard is located at the downstream end of the regional storm water drainage basin and that the discharge point drains an area larger than the Proviso Yard including offsite sources. Union Pacific admits that Mud Creek receives the outflow from NPDES Permit No. IL0002127. Union Pacific admits that Mud Creek connects with Addison Creek. Union Pacific admits that the discharge point described in Paragraph 5 consisted of a weir structure in the past. Union Pacific further responds that portions of the Proviso Yard have been enrolled in the Illinois Environmental Protection Agency’s voluntary site remediation program since 2003 for storm water management improvements, which have included replacement of the weir structure with best available technology. In addition, Union Pacific responds that storm water discharge from the separate Global II intermodal property was governed under a different general NPDES permit (No. ILR003013) until approximately March 1, 2006. Union Pacific denies any remaining allegations of Paragraph 5.

6. On November 23, 2005, an employee of the Metropolitan Water Reclamation District of Greater Chicago (“MWRDC”) notified Illinois EPA that there had been a recent fuel oil release at the Facility.

ANSWER:

Union Pacific is without knowledge sufficient to form a belief as to the truth of the remaining allegations of Paragraph 6 and, on that basis, denies the same.

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7. On November 23, 2005 (“November 23rd Inspection”) the Illinois EPA inspected the Facility and observed a rainbow and silver colored sheen on the water extending from a storm culvert at the Facility’s Locomotive Fueling Pad, continuing on through a drainage ditch and ultimately flowing into the Separator and then proceeding over the final weir in the Separator, before being discharged into Mud Creek.

ANSWER:

Union Pacific is without knowledge sufficient to form a belief as to the truth of the remaining allegations of Paragraph 7 and, on that basis, denies the same.

8. During the November 23rd Inspection, the Illinois EPA observed the rainbow and silver colored sheen along the length of the oil/water separator structure, continuing past the final weir in the structure, and, ultimately, in Mud Creek.

ANSWER:

Union Pacific is without knowledge sufficient to form a belief as to the truth of the remaining allegations of Paragraph 8 and, on that basis, denies the same.

9. On February 19, 2006, or on a date better known to Respondent, a diesel fuel release occurred at the Facility.

ANSWER:

Union Pacific admits that on or about February 19, 2006 a non-railroad, third-party contractor spilled diesel fuel at Global II. Union Pacific denies any remaining allegations of Paragraph 9.

10. On February 21, 2006, representatives of the Illinois EPA and the MWRDC conducted an inspection of the Facility and confirmed that a diesel fuel release had indeed occurred.

ANSWER:

Union Pacific is without knowledge sufficient to form a belief as to the truth of the remaining allegations of Paragraph 10 and, on that basis, denies the same.

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11. On February 22, 2006 (“February 22nd Inspection”), representatives of the Illinois EPA and the MWRDC returned to the Facility and met with a representative for the Respondent.

ANSWER:

Union Pacific admits that on or about February 22, 2006 its employee, Lee Hammond, met with Allen Andersen and Donald Klopke of the Illinois Environmental Protection Agency and Joseph Salerno of the Metropolitan Water Reclamation District of Greater Chicago at Global II and the Proviso Yard. Union Pacific denies any remaining allegations of Paragraph 11.

12. During the February 22nd Inspection, Respondent’s representative informed the Illinois EPA and MWRDC representatives that one of Respondent’s contractors had caused the fuel release when a fuel line on one of the Respondent’s contractor’s trucks ruptured, discharging diesel fuel into a storm sewer inlet at the Facility.

ANSWER:

Union Pacific denies that its “representative informed Illinois EPA and MWRDC representatives that one of [its] contractors had caused the fuel release.” Union Pacific admits that its employee, Lee Hammond, informed certain representatives of the Illinois Environmental Protection Agency and the Metropolitan Water Reclamation District of Greater Chicago that a non-railroad, third-party contractor spilled diesel fuel at Global II on or about February 19, 2006. Union Pacific denies any remaining allegations of Paragraph 12.

13. During the February 22nd Inspection, the Illinois EPA and the MWRDC representatives determined that at least some of the diesel fuel which had been released as a result of the rupture to the fuel line had flowed through the Facility’s Separator and had subsequently been discharged into Mud Creek.

ANSWER:

Union Pacific is without knowledge sufficient to form a belief as to the truth of the remaining allegations of Paragraph 13 and, on that basis, denies the same.

14. Section 12(a) of the Act, 415 ILCS 5/12(a)(2006), provides as follows:

No person shall:

- (a) Cause or threaten or allow the discharge of any contaminants into the environment in any State so as to cause or tend to cause water pollution in Illinois, either alone or in combination with matter from other sources, or so as to violate regulations or standards adopted by the Pollution Control Board under this Act.

ANSWER:

To the extent that the allegations in Paragraph 14 purport to describe or cite statutory provisions, such provisions speak for themselves and no response is required.

15. Section 3.315 of the Act, 415 ILCS 5/3.315, (2006), provides the following definition:

“Person” is any individual, partnership, co-partnership, firm, company, limited liability company, corporation, association, joint stock company, trust, estate, political subdivision, state agency, or any other legal entity, or their legal representative, agent or assigns.

ANSWER:

To the extent that the allegations in Paragraph 15 purport to describe or cite statutory provisions, such provisions speak for themselves and no response is required.

16. Respondent, a Delaware corporation, is a “person,” as that term is defined in Section 3.315 of the Act.

ANSWER:

To the extent that the allegations in Paragraph 16 purport to describe or cite statutory provisions, such provisions speak for themselves and no response is required. To the extent that the allegations in Paragraph 16 consist of opinion, argument and/or legal conclusions, no response is required. To the extent that any response is required, Union Pacific admits that it is a Delaware corporation.

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17. Section 3.165 of the Act, 415 ILCS 5/3.165 (2006), provides the following definition:

“Contaminant” is any solid, liquid, or gaseous matter, any odor, or any form of energy, from whatever source.

ANSWER:

To the extent that the allegations in Paragraph 17 purport to describe or cite statutory provisions, such provisions speak for themselves and no response is required.

18. The rainbow and silver colored fuel oil sheen that was observed on the water discharging into Mud Creek is a “contaminant,” as that term is defined by Section 3.165 of the Act.

ANSWER:

To the extent that the allegations in Paragraph 18 purport to describe or cite statutory provisions, such provisions speak for themselves and no response is required. To the extent that the allegations in Paragraph 18 consist of opinion, argument and/or legal conclusions, no response is required. To the extent that any response is required, Union Pacific denies any remaining allegations of Paragraph 18.

19. Section 3.545 of the Act, 415 ILCS 5/3.545 (2006), provides the following definition:

“Water pollution” is such alteration of the physical, thermal, chemical, biological or radioactive properties of any waters of the State, or such discharge of any contaminant into any waters of the State, as will or likely to create a nuisance or render such waters harmful or detrimental or injurious to public health, safety, or welfare, or domestic, commercial, industrial, agricultural, recreational, or other legitimate uses, or to livestock, wild animals, birds, fish, or other aquatic life.

ANSWER:

To the extent that the allegations in Paragraph 19 purport to describe or cite statutory provisions, such provisions speak for themselves and no response is required.

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20. The rainbow and silver colored fuel oil release observed in Mud Creek during the November 23, 2005 Inspection constitutes “water pollution,” as that term is defined by Section 3.545 of the Act, 415 ILCS 5/3.545 (2006).

ANSWER:

To the extent that the allegations in Paragraph 20 purport to describe or cite statutory provisions, such provisions speak for themselves and no response is required. To the extent that the allegations in Paragraph 20 consist of opinion, argument and/or legal conclusions, no response is required. To the extent that any response is required, Union Pacific denies any remaining allegations of Paragraph 20.

21. The diesel fuel released on or about February 19, 2006 constitutes “water pollution,” as that term is defined by Section 3.545 of the Act, 415 ILCS 5/3.545 (2006).

ANSWER:

To the extent that the allegations in Paragraph 21 purport to describe or cite statutory provisions, such provisions speak for themselves and no response is required. To the extent that the allegations in Paragraph 21 consist of opinion, argument and/or legal conclusions, no response is required. To the extent that any response is required, Union Pacific denies any remaining allegations of Paragraph 21.

22. Section 3.550 of the Act, 415 ILCS 5/3.550 (2006), provides the following definition:

“Waters” means all accumulations of water, surface and underground, natural, and artificial, public and private, or parts thereof, which are wholly or partially within, flow through, or border upon the State.

ANSWER:

To the extent that the allegations in Paragraph 22 purport to describe or cite statutory provisions, such provisions speak for themselves and no response is required.

23. The water in the Separator at the Facility, as well as in Mud Creek, constitute “waters,” as that term is defined in Section 3.550 of the Act.

ANSWER:

To the extent that the allegations in Paragraph 23 purport to describe or cite statutory provisions, such provisions speak for themselves and no response is required. To the extent that the allegations in Paragraph 23 consist of opinion, argument and/or legal conclusions, no response is required.

24. By causing, threatening or allowing the rainbow and silver colored fuel oil sheen to discharge from the Separator into Mud Creek, as well as by allowing the diesel fuel release at the Facility into Mud Creek, Respondent caused, threatened or allowed the discharge of a contaminant into the environment.

ANSWER:

Deny.

25. By causing, threatening or allowing the discharge of the rainbow and silver colored fuel oil sheen and the diesel fuel, both of which are “contaminants,” to discharge into Mud Creek, a water of the State, Respondent caused, threatened or allowed water pollution in Illinois, in violation of Section 12(a) of the Act, 415 ILCS 5/12(a)(2006).

ANSWER:

Deny.

COUNT II

CAUSING, THREATENING OR ALLOWING WATER POLLUTION

1-13. Complainant realleges and incorporates by reference herein paragraphs 1 through 13 of Count I as paragraphs 1 through 13 of this Count II.

ANSWER:

Paragraphs 1-13 of Count II incorporate and re-allege preceding paragraphs; no response is required. Union Pacific affirmatively incorporates and re-alleges its answers to paragraphs 1-13 of Count I.

14. Section 12(d) of the Act, 415 ILCS 5/12(d)(2006), provides as follows:

No person shall:

* * * *

(d) Deposit any contaminants upon the land in such place and manner so as to create a water pollution hazard.

ANSWER:

To the extent that the allegations in Paragraph 14 purport to describe or cite statutory provisions, such provisions speak for themselves and no response is required.

15. On at least two occasions, Respondent deposited petroleum products, which are contaminants, onto the land in such place and manner as to create a water pollution hazard, in violation of Section 12(d) of the Act, 415 ILCS 5/12(d)(2006).

ANSWER:

Deny.

COUNT III

**FAILURE TO COMPLY WITH THE TERMS
AND CONDITIONS OF THE NPDES PERMIT**

1-13. Complainant realleges and incorporates by reference herein paragraphs 1 through 13 of Count I as paragraphs 1 through 13 of this Count III.

ANSWER:

Paragraphs 1-13 of Count III incorporate and re-allege preceding paragraphs; no response is required. Union Pacific affirmatively incorporates and re-alleges its answers to paragraphs 1-13 of Count I.

14. Section 12(f) of the Act, 415 ILCS 5/12(f)(2006), provides as follows:

No person shall:

* * * *

(f) Cause, threaten, or allow the discharge of any contaminant into the waters of the State, as defined herein, including but not limited to, any waters to any sewage works, or into any well or from any point source within the State, without an

NPDES permit for point source discharges issued by the Agency under section 39(b) of this Act, or in violation of any NPDES permit filing requirement established under Section 39(b), or in violation of any regulations adopted by the Board with respect to the NPDES program.

ANSWER:

To the extent that the allegations in Paragraph 14 purport to describe or cite statutory provisions, such provisions speak for themselves and no response is required.

15. Section 309.102(a) of the Illinois Pollution Control Board Water Pollution regulations (“Board Water Pollution Regulations”), 35 Ill. Adm. Code 309.102(a), provides as follows:

- a. Except as in compliance with the provisions of the Act, Board regulations and the CWA, and the provisions and conditions of the NPDES permit issued to the discharger, the discharge of any contaminant or pollutant by any person into the waters of the State from a point source or into a well shall be unlawful.

ANSWER:

To the extent that the allegations in Paragraph 15 purport to describe or cite statutory provisions, such provisions speak for themselves and no response is required.

16. The discharge of petroleum products from the Separator into Mud Creek is a violation of Respondent’s NPDES Permit and is therefore a violation of Section 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a).

ANSWER:

Deny.

17. By violating Section 309.102(a) of the Board Water Pollution regulations, 35 Ill. Adm. Code 309.102(a), Respondent thereby, also violated Section 12(f) of the Act, 415 ILCS 5/12(f)(2006).

ANSWER:

Deny.

COUNT IV

VIOLATION OF WATER QUALITY AND EFFLUENT STANDARDS

1-14. Complainant realleges and incorporates by reference herein paragraphs 1 through 14 of Count I as paragraphs 1 through 14 of this Count IV.

ANSWER:

Paragraphs 1-14 of Count IV incorporate and re-allege preceding paragraphs; no response is required. Union Pacific affirmatively incorporates and re-alleges its answers to paragraphs 1-14 of Count I.

15. Section 302.203 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 302.203, provides as follows:

Waters of the State shall be free from sludge or bottom deposits, floating debris, visible oil, odor, plant or algal growth, color or turbidity of other than natural origin ...

ANSWER:

To the extent that the allegations in Paragraph 15 purport to describe or cite statutory provisions, such provisions speak for themselves and no response is required.

16. Section 304.105 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 304.105, provides as follows:

In addition to the other requirements of this Part, no effluent shall, alone or in combination with other sources, cause a violation of any applicable water quality standard . . .

ANSWER:

To the extent that the allegations in Paragraph 16 purport to describe or cite statutory provisions, such provisions speak for themselves and no response is required.

17. On November 23, 2005, and on February 19, 2006, or on dates better known to the Respondent, Respondent caused or allowed petroleum products to leave the Separator at the Facility and to enter Mud Creek.

ANSWER:

Deny.

18. By allowing the petroleum products to enter Mud Creek, Respondent thereby violated the water quality standard found in Sections 302.203 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 302.203.

ANSWER:

Deny.

19. Through its violation of Section 302.203 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 302.203, Respondent thereby violated Section 304.105 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 304.105.

ANSWER:

Deny.

20. By violating Sections 302.203 and 304.105 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 302.203 and 304.105, Respondent thereby, also violated Section 12(a) of the Act, 415 ILCS 5/12(a)(2006).

ANSWER:

Deny.

AFFIRMATIVE AND ADDITIONAL DEFENSES

In addition to the foregoing denials, Union Pacific asserts the following Affirmative and Additional Defenses.

FIRST DEFENSE

1. Plaintiff's claims for injunctive relief are moot.

SECOND DEFENSE

2. Union Pacific lacked the capability to control the alleged releases that are the subject matter of plaintiff's complaint and, therefore, did not cause or allow or threaten the alleged releases in violation of the Illinois Environmental Protection Act or other law.

THIRD DEFENSE

3. Union Pacific undertook extensive precautions to prevent the intervening causes of the alleged releases that are the subject matter of plaintiff's complaint and, therefore, did not

cause or allow or threaten the alleged release of diesel fuel in violation of the Illinois Environmental Protection Act or other law.

WHEREFORE, Union Pacific Railroad Company, prays for judgment as follows:

1. That the Complaint be dismissed with prejudice;
2. That judgment be entered in Union Pacific's favor;
3. That Union Pacific be awarded costs incurred in this action; and
4. For such other and further relief as is just and proper.

Dated: January 8, 2010

Respectfully submitted,

SONNENSCHN NATH & ROSENTHAL LLP

By: /s/ Thomas A. Andreoli
Attorneys for Respondent
Union Pacific Railroad Company


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STATE OF NEBRASKA)
) SS
COUNTY OF DOUGLAS)

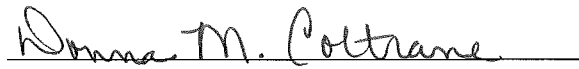
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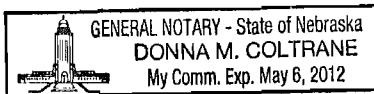
I, Rami S. Hanash, on oath, depose and state that I am the Regional Environmental Counsel for the Union Pacific Railroad Company, and that I have read the foregoing Answer and believe that the statements contained therein, which allege that Union Pacific has no knowledge sufficient to form a belief as to particular allegations in the Complaint at Law, are true.

FURTHER AFFIANT SAYETH NOT.


Rami S. Hanash

SUBSCRIBED AND SWORN TO
Before me this 8th day of January, 2010.


Notary Public



CERTIFICATE OF SERVICE

I, Thomas A. Andreoli, an attorney, hereby certify that I caused a copy of Union Pacific Railroad Company's Answer, along with Notice of Filing and Certificate of Service, to be served upon the service list on January 8, 2010, by regular mail.

/s/ Thomas A. Andreoli

Thomas A. Andreoli