

Section 311/Clean Water Act Enforcement: U.S. Environmental Protection Agency and Union Pacific Railroad Company Enter into Consent Agreement



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The United States Environmental Protection Agency (“EPA”) and Union Pacific Railroad Company (“UP”) entered into a Consent Agreement (“CA”) addressing an alleged violation of Section 311 of the Clean Water Act. See Docket No. CWA-10-2021-0101.

The CA provides that on June 3, 2016, a UP train containing Bakken crude oil passed through Mosier, Oregon.

Sixteen tank cars of the train are stated to have derailed in Mosier on June 3rd. Three of the cars are stated to have breached, releasing Bakken crude oil. Some of the crude oil is stated to have caught fire and incinerated while some spilled to the ground.

Approximately 47,000 gallons of oil are stated to have been released as a result of the derailment. Further, approximately 30,000 gallons of oil is stated to have flowed into the adjacent wastewater treatment facility for the City of Mosier (“POTW”).

Some oil (approximately 10 gallons) is stated to have passed through the POTW and entered the Columbia River. Such oil is stated to have temporarily caused a visible sheen. However, no oil is stated to have been observed on the river after June 4, 2016, with no observable impacts to fish or wildlife. In addition, there were no injuries or fatalities as a result of the derailment and UP’s response.

The POTW is stated to have ceased operations and remained closed for approximately two weeks. As a result, the CA states that during the initial days of the closure residents and businesses were prevented from flushing toilets, draining sinks, etc., and putting any water down their drain.

UP diverted wastewater to tanks while cleaning, repairing, and replacing plant equipment. All diverted wastewater is stated to have been properly disposed.

The referenced three tank cars are stated to have constituted an “onshore facility” within the meaning of Section 311(a)(10) of the Clean Water Act. In addition, Bakken crude oil is stated to have been “oil” within the meaning of Section 311(a)(1) of the Clean Water Act. Also, the Columbia River is described as a “navigable water” of the United States within the meaning of Section 311(B)(3) of the Clean Water Act.

The alleged violations identified in the CA include:

- Discharge of Oil
- Operation in Violation of Pretreatment Regulations

UP is stated to neither admit nor deny certain factual allegations contained in the CA.

A civil penalty of \$52,500 is assessed.

A copy of the CA can be downloaded [here](#).