



## FINDINGS OF FACT

1. Union Pacific Railroad Company is a trusted company in the western two-thirds of the United States covering 23 states as one of America's leading transportation companies. The primary products transported by the company are agricultural, automotive, chemicals, coal, industrial products and intermodal. The company is located at 1400 Douglas Street, Omaha, NE 68179.

2. At 1423 hours on June 9, 2015, the Department of Natural Resources' Environmental Emergency Response (EER) received a report of a train derailment which occurred at 1354 hours. The train was carrying grain near the Lewis and Allen road intersection in Eureka Missouri at railroad mile post 25.443 when the incident took place. The derailment caused an unknown amount of soy bean meal to spill near an unnamed tributary of the Meramec River. According to EER, Incident No. 1506091423BLK, 27 railcars carrying soy bean meal "jumped the track" due to unknown reasons.

3. On June 10, 2015, a company representative contacted the spill line at 1939 hours to report that grain had entered an unnamed tributary of the Meramec River. The caller reported that the grain would be addressed on June 11, 2015, and water quality samples would be collected at the request of department staff. The responsible party excavated soybean meal from the creek and railroad right of way. Silt fence, straw waddle, and hay bales were set out to inhibit runoff to the creek of topsoil and residual meal.

4. On June 11, 2015, department staff discovered two to three dead chubs in the tributary approximately  $\frac{3}{4}$  of a mile downstream of the accident location. The water in the receiving stream on June 10 had a cloudy appearance and in some areas the water had foam

giving it a frothy appearance; however, the stream at the mouth where it enters the Meramec River appeared to be normal. Department staff notified the Missouri Department of Conservation (MDC) of the possible fish kill. Upon investigation, it was determined that the decaying soy bean meal caused Dissolved Oxygen levels to drop to 0.7 milligrams/Liter (mg/L), resulting in a fish kill in the tributary downstream of the incident. Based upon MDC's Report of Pollution Investigations and Fish Kills dated June 22, 2015, the grain which entered into the tributary resulted in a 0.96 mile stretch of the tributary being affected by the spill, killing 238 fish worth \$51.52.

5. Department staff visited the site later in September and documented the water in the tributary was clear and the water in the tributary was blanketed with a "cream-colored moss".

6. The MCWL and Section 644.096, RSMo, authorize the state, or any political subdivision or agency to recover actual damages, including all costs and expenses necessary to establish or collect any sums under Sections 644.006 to 644.141, RSMo, and the costs and expenses of restoring any waters of the state to their condition as they existed before violation, sustained by it because of any violation.

7. The department dispatched employees to investigate the June 11, 2015, fish kill. In doing so, the department incurred costs and damages in the amount of \$1,621.63. In addition, MDC incurred similar costs and expenses in the amount of \$525.00, which includes the value of the aquatic life killed in the amount of \$51.52.

#### **STATEMENT OF VIOLATIONS**

The company has violated the MCWL and its implementing regulations as follows:

8. Discharged water contaminants into waters of the state which reduced the quality of such waters below the Water Quality Standards established by the Missouri Clean Water Commission in violation of Sections 644.051.1(2) and 644.076.1, RSMo, and 10CSR 20-7.031 or applicable subsection of 10 CSR 20-7.031;

9. Caused pollution of an unnamed tributary of the Meramec River, waters of the state, or placed or caused or permitted to be placed water contaminants (soybean meal) in a location where it is reasonably certain to cause pollution of waters of the state, in violation of Sections 644.051.1(1) and 644.076.1, RSMo

#### **AGREEMENT**

10. The department and the company desire to amicably resolve all claims that may be brought against the company for violations alleged above in Statement of Violations.

11. The provisions of this AOC shall apply to and be binding upon the parties executing this AOC, their successors, assigns, agents, subsidiaries, affiliates, and lessees, including the officers, agents, servants, corporations, and any persons acting under; through; or for the parties. Any changes in ownership or corporate status, including but not limited to any transfer of assets or real or personal property, shall not affect the responsibilities as the Respondent under this AOC.

12. The company, in compromise and satisfaction of the department's claims relating to the above referenced violations, agree, without admitting liability or fault, to pay a penalty in the amount of \$2,500.00. The payment in the amount of \$2,500.00 shall be in the form of a check made payable to the "St. Louis County Treasurer, as custodian of the St. Louis County

School Fund” and is due and payable upon execution of this AOC by the company. The check and the signed copy of this AOC shall be delivered to:

Accounting Program  
Department of Natural Resources  
P.O. Box 477  
Jefferson City, MO 65102-0477

13. The company agrees and is ordered to pay the state’s investigative costs and damages in the amount of \$2,146.63 in the form of a separate check made payable to the “State of Missouri”. The check in the amount of \$2,146.63 is due and payable upon execution of this AOC by the company. The check shall be delivered as provided in Paragraph 12 of this AOC.

14. The company is ordered and agrees to comply with the MCWL, Chapter 644, RSMo, and its implementing regulations at all times in the future.

#### **SUBMISSIONS**

15. All other documentation submitted to the department for compliance with this Order shall be submitted within the timeframes specified to:

Mr. Travis Lyon  
Department of Natural Resources  
Water Protection Program  
Compliance and Enforcement Section  
P.O. Box 176  
Jefferson City, Missouri 65102-0176

#### **OTHER PROVISIONS**

16. Compliance with this AOC resolves only the specific violations described herein, and this AOC shall not be construed as a waiver or modification of any other requirements of the MCWL and regulations, or any other source of law. Nor does this Order resolve any future violations of this Order or any law or regulation. Consistent with 10 CSR 20-3.010(5), this

Order shall not be construed as satisfying any claim by the state or federal government for natural resource damages.

17. Nothing in this AOC forgives the company from future non-compliance with the laws of the state of Missouri, nor requires the department or state of Missouri to forego pursuing by any legal means any non-compliance with the laws of the state of Missouri. The terms stated herein constitute the entire and exclusive agreement of the parties. There are no other obligations of the parties, be they express or implied, oral or written, except those which are expressly set forth herein. The terms of this AOC supersede all previous memoranda of understanding, notes, conversations, and agreements, express or implied. This AOC may not be modified orally.

18. By signing this AOC, all signatories assert that they have read and understood the terms of this AOC, and that they have the authority to sign this AOC on behalf of their respective party.

19. The effective date of the AOC shall be the date the department signs the AOC. The department shall send a fully executed copy of this AOC to the company for its records.

#### **NOTICE OF APPEAL RIGHTS**

By signing this AOC, the company consents to its terms and waives any right to appeal, seek judicial review, or otherwise challenge the terms and conditions of this AOC pursuant to Sections 621.250, 640.010, 640.013, 644.056.3, 644.079.2, Chapter 536 RSMo, 644.145, RSMo, 10 CSR 20-1.020, 10 CSR 20-3.010, 10 CSR 20-6.020(5), the Missouri Constitution, or any other source of law.

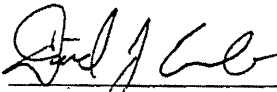
**SIGNATURE AUTHORITY**

Agreed to and Ordered this 14<sup>th</sup> day of September, 2016



David P. Young  
Assistant Vice-President - Law  
Union Pacific Railroad Company

Agreed to and Ordered this 6 day of March, 2016 2017



David J. Lamb, Acting Director  
Water Protection Program  
Missouri Department of Natural Resources

Copies of the foregoing served by certified mail to:

Mr. David P. Young  
Assistant Vice-President - Law  
Union Pacific Railroad Company  
Law Department- MS 1580  
1400 Douglas Street  
Omaha, Nebraska 68179

CERTIFIED MAIL # 7012 2920 0002 0662 9923

c: Ms. Diane Huffman, Environmental Protection Agency  
Ms. Dorothy Franklin, St. Louis Regional Office  
Missouri Clean Water Commission  
Accounting Program