



MICHELLE LUJAN GRISHAM
GOVERNOR

JAMES C. KENNEY
CABINET SECRETARY

CERTIFIED MAIL - RETURN RECEIPT REQUIRED

May 10, 2024

Rick Comer
Environmental Compliance Manager
Union Pacific Railroad
631 S. 7th Street
Phoenix, AZ 85034

L.M. Fritz
Chief Executive Officer
Union Pacific Railroad
1400 Douglas Street, Stop 1810
Omaha, NE 68179

**RE: NOTICE OF VIOLATION WITH PROPOSED PENALTIES
UNION PACIFIC RAILROAD
EPA ID# NMR000028605**

Dear Messrs. Comer and Fritz:

Beginning on March 21, 2023, the New Mexico Environment Department (“NMED”) conducted a hazardous waste Compliance Evaluation Inspection (“Inspection”) at the Union Pacific Railroad (“UPRR”) terminal located at 9050 Strauss Road, Santa Teresa, New Mexico (“Terminal”). UPRR is rail transportation intermodal terminal providing loading and unloading of shipments of goods between rail transport and transport by truck. Minor repairs of rail cars and on-site equipment are performed at the facility, normally generating used oil, parts washer solvent, and universal waste aerosol cans. Operations at the site may generate quantities of hazardous waste from goods damaged during transport.

Based on observations and review of the information obtained, NMED has determined that your Facility is a Very Small Quantity Generator (“VSQG”) of hazardous waste as defined in 40 Code of Federal Regulations (“CFR”) 262.13. Furthermore, NMED has determined that UPRR has violated the New Mexico Hazardous Waste Management Regulations (“HWMR”) 20.4.1 New Mexico Administrative Code (“NMAC”) as specified below.

NMED inspectors observed the following violations:

- 1. Failure to label containers of used oil with the words “used oil”, or with other wording to identify contents. Specifically, NMED observed an unlabeled 225-gallon tote containing used oil at the ITS Maintenance Building. This is a violation of 20.4.1.1002 NMAC, incorporating 40 CFR 279.22(c)(1) and 20.4.1.1003(A) NMAC.**

SCIENCE | INNOVATION | COLLABORATION | COMPLIANCE

Hazardous Waste Bureau - 2905 Rodeo Park Drive East , Building 1 Santa Fe, New Mexico 87505-6313
Telephone (505) 476-6000 - www.env.nm.gov

Civil Penalty

As a result of Violation 1, NMED has assessed a civil penalty of \$500.00

Corrective Action

This violation was corrected at the time of inspection. No further action related to this violation is required.

- 2. Failure to keep containers of used oil being stored outdoors closed, except when adding or removing used oil. Specifically, NMED observed an open secondary containment pallet containing used oil at the crane maintenance area. This is a violation of 20.4.1.1003(B) NMAC.**

Civil Penalty

As a result of this violation, NMED has assessed a civil penalty of \$3,000.00

Corrective Action

UPRR submitted photos on April 26, 2023 demonstrating that this violation has been corrected. No further action related to this violation is required.

- 3. Failure to obtain an EPA Identification Number ("EPA ID#") for the storage of hazardous waste. Specifically, based on review of the information obtained, UPRR generated 4,455 lbs. of hazardous waste adhesives in May 2021. UPRR did not apply to obtain an EPA ID# for the site until October 28, 2021. This is a violation of 20.4.1.300 NMAC, incorporating 40 CFR 262.18(a).**

Civil Penalty

As a result of this violation, NMED has assessed a civil penalty of \$187,000.00.

Corrective Action

UPRR must provide NMED with appropriate documentation, such as updated policy documents, demonstrating that UPRR will properly notify NMED of episodic hazardous waste generation events and/or periods when UPRR must operate as a Large Quantity Generator.

- 4. Storage of hazardous waste for greater than 90 days. Specifically, based on a review of the information obtained, Union Pacific stored 4,455 lbs. of hazardous waste on-site generated in May 2021 through February 2, 2022, approximately 246 days. This is a violation of 20.4.1.300 NMAC, incorporating 40 CFR 262.17(a).**

Civil Penalty

As a result of this violation, NMED has assessed a civil penalty of \$94,500.00

Corrective Action

UPRR must provide NMED with appropriate documentation, such as updated policy documents, demonstrating that UPRR will properly track waste accumulation times during episodic hazardous waste generation events and/or periods when UPRR must operate as a Large Quantity Generator.

- 5. Failure to perform weekly inspections of hazardous waste storage areas. Specifically, based on review of the information obtained, UPRR did not perform weekly inspections of 4,455 lbs. of hazardous waste at the leaking container storage pad generated in May 2021 and disposed on February 2, 2022. This is a violation of 20.4.1.300 NMAC, incorporating 40 CFR 262.17(a)(1)(v).**

Civil Penalty

As a result of this violation, NMED has assessed a civil penalty of \$16,000.00

Corrective Action

UPRR must provide NMED with appropriate documentation, such as updated policy documents, demonstrating that UPRR will properly monitor hazardous waste storage areas for leaking or dangerous containers.

- 6. Failure to provide hazardous waste management training for appropriate personnel. Specifically, based on a review of the information obtained, 3 persons listed in the Contingency Plan as having the job duty of acting as an Emergency Coordinator were not provided hazardous waste management training. This is a violation of 20.4.1.300 NMAC, incorporating 40 CFR 262.17(a)(7)(i).**

Civil Penalty

As a result of this violation, NMED has assessed a civil penalty of \$88,750.00

Corrective Action

UPRR must provide NMED with appropriate documentation, such as training records, demonstrating that UPRR personnel have been provided training regarding hazardous waste management requirements in the event of an episodic or other large waste generation event.

- 7. Failure to pay hazardous waste fees for hazardous wastes generated in Calendar Year 2021 by the due date of August 1, 2022. Specifically, based on review of the information obtained, Union Pacific generated 4,455 lbs. of hazardous waste adhesives in May 2021. NMED has no record of Union Pacific paying hazardous waste fees for waste generation during Calendar Year 2021. This is a violation of 20.4.3.500(A) NMAC.**

Civil Penalty

The applicable civil penalty for this violation consists of the late fees that have been incurred as a result of this failure to pay hazardous waste generation fees in a timely manner. NMED will not impose any additional civil penalties related to this violation.

Corrective Action

UPRR must remit payment of past due hazardous waste fees by way of check or money order to the NMED Hazardous Waste Bureau Santa Fe office, accompanied by the Hazardous Waste Report Form attached completed with the applicable information.

Regarding the Corrective Actions described above, UPRR shall provide to NMED within **thirty (30) days** of receipt of this letter a written description of the actions taken by UPRR to address violations 3 through 7 described above or a schedule for implementation of corrective actions not yet completed.

In accordance with NMSA 1978, Section 74-4-10, NMED may: (1) issue a Compliance Order requiring compliance immediately or within a specified time period or assess a civil penalty for any past or current violations of up to \$10,000 per day of non-compliance for each violation, or both; or (2) commence a civil action in District Court for appropriate relief, including a temporary or permanent injunction. Any such order may include a suspension or revocation of any permit issued by NMED. Pursuant to the New Mexico Hazardous Waste Act ("HWA"), NMSA 1978, §§ 74-4-1 to 14, NMED is assessing a total civil penalty of \$389,750.00 to settle the violations of the HWA and the Hazardous Waste Management Regulations set forth in the NOV.

Please note that your facility will appear on the Department's Enforcement Watch as a result of this NOV (see: <https://www.env.nm.gov/enforcement-watch/>). Further, the Department will issue a press release to local media highlighting your facility as appearing on this webpage. Your facility will remain on the Enforcement Watch website as an active matter until this matter is fully resolved, including the payment of the assessed civil penalty.

Pursuant to the NMED Delegation Order dated February 19, 2024, the Cabinet Secretary has delegated the authority to issue Notices of Violation with Proposed Penalties under the Hazardous Waste Act and HWMRs to the Chief of the Hazardous Waste Bureau.

Messrs. Comer and Fritz

May 10, 2024

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If you have any questions regarding this letter or would like to discuss the civil penalty, please contact Aaron Coffman of my staff at 505-690-5211 or by email at aaron.coffman@env.nm.gov within 30 days of receipt of this notice to schedule an informal conference concerning resolution of this matter. **If no response is received from you within 30 days a Stipulated Final Order will be mailed for your signature.**

Sincerely,

Ricardo Maestas

Acting Chief

Hazardous Waste Bureau

RM: ac

cc: Aaron Coffman, NMED HWB
Michael Kesler, NMED District III Manager
Stephen Connolly, NMED HWB
Michael Prinz, NMED OGC

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