

STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

STAFF SUMMARY REPORT (Mark Johnson)
MEETING DATE: April 9, 2008

ITEM: 4. D

SUBJECT: **Union Pacific Railroad Company, for the property located at the former Southern Pacific Rail Spur, Ravenswood Industrial Area, East Palo Alto, San Mateo County** – Adoption of Final Site Cleanup Requirements

CHRONOLOGY: The Board has not previously considered this item.

DISCUSSION: This item was continued from the March Board agenda, in order to allow for an extended public comment period.

The Southern Pacific Rail Spur was built in the early 1900s and served the Ravenswood Industrial Area of East Palo Alto until the late 1980s, when the tracks were removed. The Spur area is bounded to the west by single family homes and to the east by the Ravenswood Industrial Area and wetlands (see site location map in Appendix C).

Environmental investigations have determined that soil along portions of the Spur has been impacted with arsenic above health-based criteria. Union Pacific Railroad (UP), the successor to Southern Pacific Transportation Company, has been working with Board staff, the adjacent homeowners and the City of East Palo Alto to develop an appropriate cleanup plan for the Spur. Several community meetings have been held to discuss the project. UP proposes to remove impacted soil and dispose of it offsite. To accomplish this, significant coordination with the homeowners (about 70 homes) and adjacent industrial properties will be necessary.

The Revised Tentative Order (Appendix A) approves UP's proposed cleanup plan, sets cleanup standards for arsenic in soil, and sets a schedule for cleanup plan implementation. It requires UP to submit a final design for the cleanup by May 31, 2008, and to complete cleanup activities by the end of 2008.

We circulated the original tentative order for a 60-day public comment period. During this time we also held a community meeting to discuss the order, take comments, and answer questions. UP has submitted written comments, included in Appendix B. Many of UP's comments have been incorporated into the Revised Tentative Order. The City of East Palo also submitted one after

the end of the public comment period. This comment is not significant and was not incorporated into the Revised Tentative Order.

While no written comments were received from the community, several verbal comments were received and documented at the community meeting. These comments addressed future use of the land, replacement of fences along the Spur, security and maintenance issues on the Spur during and after remediation, and maintaining privacy during cleanup activities. Most of the community's comments focus on issues that are outside of the Board's jurisdiction. Nonetheless, we have conveyed these comments to UP and asked UP to consider them in the final design report.

We expect this item to remain uncontested.

**RECOMMEN-
DATION:**

Adoption of the Revised Tentative Order

File No.:

41S0153 (MEJ)

Appendices:

- A. Revised Tentative Order
- B. Correspondence
- C. Location Map

Appendix A

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION**

REVISED TENTATIVE ORDER
ADOPTION OF FINAL SITE CLEANUP REQUIREMENTS

UNION PACIFIC RAILROAD COMPANY

for the property located at:

**SOUTHERN PACIFIC RAIL SPUR
RAVENSWOOD INDUSTRIAL AREA
EAST PALO ALTO, SAN MATEO COUNTY**

The California Regional Water Quality Control Board, San Francisco Bay Region (hereinafter Board), finds that:

1. **Site Location:** The former Southern Pacific Transportation Company, which has now been succeeded by Union Pacific Railroad Company (SP and UP, respectively), operated a rail spur (Spur) in East Palo Alto that is approximately 4,233 feet long and 20 feet wide. It is bounded to the west by single family homes and to the east by the Ravenswood Industrial Area on its southern portion and wetlands on the northern (see Figure 1, Site Location Map). The Spur elevation is approximately 10 feet above mean sea level.
2. **Site History:** The Spur was built in the early 1900's and served to connect the Ravenswood Industrial Area (RIA) to the main line which crosses the Bay immediately south of the Dumbarton Bridge. The Spur serviced several businesses in the RIA, including the former Chipman Chemical facility. The land to the west of the Spur was used for farming until about 1950, when it was subdivided and developed into the current residential use. The Spur continued in operation into the 1980's. The tracks were removed in the early 1990s. Since the tracks were removed, several homeowners have moved their fences to incorporate the Spur into their backyards. The remainder of the Spur remains vacant and is often used for illegal dumping of garbage.

In 1996, the U.S. Environmental Protection Agency (USEPA) along with the Board conducted an area-wide screening level soil and groundwater investigation of the RIA, including the Spur as part of a USEPA Regional Brownfield Pilot Project. The purpose of this investigation was to determine, in a very general sense, the magnitude of environmental impacts to the RIA from its past industrial uses. This program included collection of soil samples from several locations along the Spur. Analytical results indicated elevated levels of arsenic at some locations along the Spur, warranting further investigation.

3. **Property Ownership:** The property rights and history are as follows:

a. **Easement:** SP was granted an easement from the landowner(s) for the Spur in the early 1900s. SP operated the Spur until sometime in the 1980s. The tracks were removed a short time after operations ceased. In November 1991, SP quit-claimed its interest in the Spur to the City of East Palo Alto (City) under the federal Rails to Trails statute. Such a conveyance, if valid, would have preserved the railroad easement and reserved the railroad's right to reinstitute rail use on the property. The federal Surface Transportation Board determined that the Spur was not subject to the Rails to Trails Act. As a result, the City and UP continue to dispute the validity of the quit-claim.

b. **Property Ownership:** When the Spur easement was granted, the land it occupied was likely a portion of the farmland located to the west. When the farmland was sub-divided and developed into homes in the early 1950s, new parcels were established, which included the Spur as a portion of the individual lots, recognizing the existing rail easement. This being the case, each of the residential homeowners owned the land upon which the Spur rests, but continued to grant the easement to SP. There are about 75 parcels located along the Spur.

4. **Named Dischargers:** Union Pacific Railroad Company is named as a discharger, because it is the successor in interest to Southern Pacific Transportation Company, which operated the Spur during the time of the activities that resulted in the discharge of arsenic. SP had control of the Spur during the time of the discharge and conducted operations on the Spur that allowed for the discharge of arsenic.

The Board does not intend to name the underlying homeowners, provided they allow reasonable access to the Spur for remedial purposes.

5. **Remedial Investigation/Soil Pollution:** UP has worked with the City, homeowners, and Board staff to define the nature and extent of the impacts along the Spur. Concentrations of arsenic in excess of 100 mg/kg were found in surface or near surface soil along portions of the Spur, exceeding health based cleanup goals for arsenic in soil within both residential and industrial settings. These investigations have been completed and the extent of pollution on the Spur defined.
6. **Site Hydrogeology:** The hydrogeology is reasonably well understood from the many investigations that have taken place in the RIA. This being the case, groundwater does not need further investigation. Shallow groundwater is first encountered between 5 and 10 feet below surface in area of the Spur. This zone is generally high in total dissolved solids and is not suitable for drinking water purposes, due to the proximity of the Bay. Within the RIA, two to three shallow groundwater zones have been encountered. These are underlain by a thick clay layer, which effectively protects the deeper groundwater zones that have been used for drinking water purposes.
7. **Remedial Design:** UP submitted a Remedial Design report, dated November 2004, to the Board setting forth a final remedy for the Spur. This remedy assumed that the Spur

would be turned over to the City, who would eventually turn it over to the adjacent homeowners, allowing it to be incorporated into backyards. To accomplish this, the remedy calls for the removal of soil which exceeds the residential remediation cleanup standard for arsenic of 20 mg/kg. The report also contained a drainage plan. Additional discussions of surface grading and drainage were discussed at community meetings. After presenting this remedy to the community and receiving public comments, Board staff approved the November 2004 Remedial Design report, as well as the conceptual grading and drainage plans discussed.

Since the approval of the November 2004 Remedial Design report, UP and the City have determined that UP will retain its easement and the land will not be transferred to either the City or homeowners. In a December 21, 2007, letter submitted to the Board on UP's behalf by Camp Dresser & McKee, Inc., UP has proposed to move forward with a modified version of its previously-approved Remedial Design. This modified remedial design would differ from that previously approved in that homeowner fences will not be dismantled nor will UP occupy backyards during remediation; however, those fences which have significantly encroached upon the Spur will still need to be removed to allow for remedial actions. Additionally, a recent survey along the Spur has determined that there are several mature trees that exist either on or immediately adjacent to the Spur. There are also jurisdictional wetlands adjacent to and possibly on the Spur. Lastly, at least one building is slightly encroaching on the edge of the Spur. Given these conditions, flexibility in remedy implementation is warranted: (i) to preserve mature trees within and adjacent to the Spur easement, (ii) to avoid impacts to jurisdictional wetlands on or immediately adjacent to the Spur, and (iii) in situations where encroaching buildings or other substantial structures restrict or prevent implementation of the remedy.

As previously stated, the easement would be retained by UP after remediation has been completed.

8. **Threats to Human Health, Ecological Receptors, and Water Quality:** The concentrations of arsenic in shallow soil along portions of the Spur exceed health-based goals for human exposure in a residential setting (see paragraph 13, Soil Cleanup Standard). Some homeowners have extended their backyards onto the Spur. At least one homeowner has used the Spur to plant vegetables; these vegetables have a potential to uptake arsenic from the soil, completing a pathway of exposure for possible human health risk.

In addition to human health risk posed by the impacted soil on the Spur, the northern portion of the Spur is adjacent to wetlands of San Francisco Bay. Stormwater runoff in this area of the Spur has the potential to carry arsenic-impacted soil into the adjacent wetlands. The potential for this to occur is further increased due to portions of this area being within the flood zone. The potential for migration of impacted soil into the wetlands threatens water quality and ecological receptors in these wetlands and must be abated. Wetlands in the area are known habitat to the Salt Marsh Harvest Mouse and

California Clapper Rail, both of which are endangered species, as well as other avian and terrestrial species.

9. **Regulatory Status:** This Site is not currently subject to Board Order.
10. **Adjacent Sites:** The Spur serviced the former Chipman Chemical (now Rhone-Poulenc) 1990 Bay Road facility, which produced arsenic-based pesticides and herbicides from 1926 to 1970. Arsenical raw materials were supplied to the facility via the rail spur. These materials were unloaded from hopper cars into an underground formulation tank located beneath the spur on the 1990 Bay Road facility. As a result of these and other operations at the facility, significant quantities of arsenic have been released to the environment, impacting both soil and groundwater in the area. The 1990 Bay Road site is the subject of several Site Cleanup Requirement Orders adopted by the Board and significant investigations and cleanups have occurred. Cleanup activity at the 1990 Bay Road site has been completed; however, ongoing risk management is needed on a large portion of the site.
11. **Basin Plan:** The Water Quality Control Plan for the San Francisco Bay Basin (Basin Plan) is the Board's master water quality control planning document. It designates beneficial uses and water quality objectives for waters of the State, including surface waters and groundwater. It also includes programs of implementation to achieve water quality objectives. The Basin Plan was duly adopted by the Board and approved by the State Water Resources Control Board (State Board), USEPA, and the Office of Administrative Law where required.

The Basin Plan for the area identifies the following potential beneficial uses of groundwater underlying and adjacent to the site include:

- a. Municipal and Domestic water supply
- b. Industrial process water supply
- c. Industrial service water supply
- d. Agricultural water supply

The shallow groundwater in the vicinity of the spur has no potential beneficial use as a municipal and domestic supply due to elevated concentrations of total dissolved solids (TDS) in excess of the exception criteria of State Board Resolution 88-63, "Sources of Drinking Water".

The existing and potential beneficial uses of nearby surface waters (San Francisco Bay and San Francisquito Creek) include:

- a. Industrial service supply
- b. Commercial and Sport Fishing
- c. Water contact and non-contact recreation
- d. Wildlife habitat

- e. Cold freshwater and warm freshwater habitat
- f. Fish migration and spawning
- g. Navigation
- h. Estuarine habitat
- i. Shellfish harvesting
- j. Preservation of rare and endangered species

12. **State Board Policies:** State Board Resolution No. 68-16, "Statement of Policy with Respect to Maintaining High Quality of Waters in California," applies to this discharge and requires attainment of background levels of water quality, or the highest level of water quality which is reasonable if background levels of water quality cannot be restored. Cleanup levels other than background must be consistent with the maximum benefit to the people of the State, not unreasonably affect present and anticipated beneficial uses of such water, and not result in exceedance of applicable water quality objectives. This order and its requirements are consistent with Resolution No. 68-16. State Board Resolution No. 92-49, "Policies and Procedures for Investigation and Cleanup and Abatement of Discharges under Water Code Section 13304," applies to this discharge. This order and its requirements are consistent with the provisions of Resolution No. 92-49, as amended.

13. **Soil Cleanup Standard:** The land along the Spur is a portion of each of the residential lots which abut it. While the land will remain as a spur (industrial use), the immediate proximity of the adjacent homes needs to be considered in determining an appropriate cleanup standard for the Spur. Due to the immediate proximity of the homes, a residential cleanup standard is appropriate. In order to expedite remediation and remain consistent with the soil cleanup standards adopted by the Board for the 1990 Bay Road Site, the residential health-based goal (HBG) of 20 mg/kg arsenic is an appropriate cleanup standard for the Spur. This HBG is based on an evaluation conducted in 1991 and documented in a technical memorandum titled "Derivation of Health-Based Goals for Arsenic in Soil", dated August 27, 1991 (prepared for USEPA by its contractor PRC Environmental Management, Inc). In the 1991 technical memorandum, HBGs were calculated for several scenarios including commercial/industrial and residential uses.

The HBGs, as set forth in the 1991 memorandum, for a residential scenario ranged from 20 mg/kg to 70 mg/kg depending on exposure pathways. It is appropriate to apply the more protective HBG of 20 mg/kg for arsenic impacted soil on the Spur in most cases along the Spur. It is appropriate to apply an HBG of 70 mg/kg in locations where applying the more stringent goal would have other adverse effects (e.g., loss of mature trees within or adjacent to the Spur, impacts to jurisdictional wetlands on or immediately adjacent to the Spur, or encroachment of buildings or other substantial structures onto the Spur). This HBG of 20 mg/kg to 70 mg/kg is based on residential exposure pathways that include ingestion of soil, inhalation of fugitive dust, and consumption of homegrown produce, and is based on potential cancer effects.

14. **Basis for 13304 Order:** The discharger has caused or permitted waste to be discharged or deposited where it is or probably will be discharged into waters of the State and creates or threatens to create a condition of pollution or nuisance, pursuant to the California Water Code.
15. **Cost Recovery:** Pursuant to California Water Code Section 13304, the discharger is hereby notified that the Board is entitled to, and may seek reimbursement for, all reasonable costs actually incurred by the Board to investigate unauthorized discharges of waste and to oversee cleanup of such waste, abatement of the effects thereof, or other remedial action, required by this order.
16. **CEQA:** This action is an order to enforce the laws and regulations administered by the Board. As such, this action is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to Section 15321 of the Resources Agency Guidelines.
17. **Notification and Outreach:** UP, the City, and the Board have conducted significant public outreach activities with respect to the Spur. Several fact sheets have been distributed and community meetings held to discuss site status, investigation and cleanup options. Both fact sheets and community meetings have had Spanish translation in order to engage the entire community.

The Board has notified the discharger and all interested agencies and persons of its intent under California Water Code Section 13304 to prescribe site cleanup requirements for the discharge, and has provided them with an opportunity to submit their comments via a 60-day public comment period. During the public comment period, a community meeting was held to present to both a draft of this Order and the modified version of the Remedial Design for the Spur. Comments received during the public comment period have been considered and addressed.

18. **Public Hearing:** The Board, at a public meeting, heard and considered all comments pertaining to this discharge.

IT IS HEREBY ORDERED, pursuant to Section 13304 of the California Water Code, that the discharger (or its agents, successors, or assigns) shall cleanup and abate the effects described in the above findings as follows:

A. PROHIBITIONS

1. The discharge of wastes or hazardous substances in a manner which will degrade water quality or adversely affect beneficial uses of waters of the State is prohibited.
2. Further significant migration of wastes or hazardous substances through surface or subsurface transport to waters of the State is prohibited.
3. Activities associated with the surface or subsurface investigation and cleanup which will cause significant adverse migration of wastes or hazardous substances are prohibited.

B. REMEDIAL DESIGN AND CLEANUP STANDARDS

1. **Implement Remedial Design Report:** The discharger shall implement the Remedial Design report described in finding 7.
2. **Soil Cleanup Standards:** The following soil cleanup standards shall be met in all on-site soils, except for inaccessible areas beneath substantial structures. These areas are excluded from the remedial actions described herein.

Constituent	Standard (mg/kg)	Basis
Arsenic	20 – 70 mg/kg*	USEPA HRA

* A cleanup standard of 20 mg/kg arsenic shall be met in most areas along the Spur. A cleanup standard of 70 mg/kg arsenic shall be met in cases where remediation to this level is not feasible due to mature trees within and adjacent to the Spur, jurisdictional wetlands on or immediately adjacent to the Spur, or encroachment of buildings or other substantial structures onto the Spur.

C. TASKS

1. **FINAL REMEDIAL DESIGN**
COMPLIANCE DATE: May 31, 2008

The discharger shall submit a report acceptable to the Executive Officer, containing the excavation, grading and drainage designs to be implemented on the

Spur. The Executive Officer will acknowledge implementation constraints and allow flexibility in three situations: (i) to preserve mature trees within and adjacent to the Spur easement, (ii) to avoid impacts to jurisdictional wetlands on or immediately adjacent to the Spur, and (iii) in situations where encroaching buildings or other substantial structures on or adjacent to the Spur restrict or prevent implementation of the remedy.

2. **SCHEDULE FOR IMPLEMENTATION OF REMEDIAL MEASURES**
COMPLIANCE DATE: May 31, 2008

The discharger shall submit a technical report acceptable to the Executive Officer containing a schedule for implementation of remedial measures described in the November 2004 Remedial Design report, as modified. Remedial measures shall be completed by December 31, 2008.

3. **COMPLETION REPORT**
COMPLIANCE DATE: 60 days after completion of remedial actions, but no later than March 1, 2009.

The discharger shall submit a report acceptable to the Executive Officer documenting completion of remedial measures.

4. **EVALUATION OF NEW HEALTH CRITERIA**
COMPLIANCE DATE: 90 days after requested
by Executive Officer

Submit a technical report acceptable to the Executive Officer evaluating the effect on the approved remedial action plan of revising the cleanup standard in response to revision of health-based criteria.

5. **EVALUATION OF NEW TECHNICAL INFORMATION**
COMPLIANCE DATE: 90 days after requested
by Executive Officer

Submit a technical report acceptable to the Executive Officer evaluating new technical information which bears on the approved remedial action plan and cleanup standard for this site. In the case of a new cleanup technology, the report should evaluate the technology using the same criteria used in the feasibility study. Such technical reports shall not be requested unless the Executive Officer determines that the new information is reasonably likely to warrant a revision in the approved remedial action plan or cleanup standard.

6. **DELAYED COMPLIANCE:** If the discharger is delayed, interrupted, or prevented from meeting one or more of the completion dates specified for the

above tasks, the discharger shall promptly notify the Executive Officer and the Board may consider revision to this Order.

D. PROVISIONS

1. **No Nuisance:** The storage, handling, treatment, or disposal of polluted soil or groundwater shall not create a nuisance as defined in California Water Code Section 13050(m).
2. **Good Operation and Maintenance (O&M):** The discharger shall maintain in good working order and operate as efficiently as possible any facility or control system installed to achieve compliance with the requirements of this Order.
3. **Access to Site and Records:** In accordance with California Water Code Section 13267(c), the discharger shall permit the Board or its authorized representatives:
 - a. Entry upon premises in which any pollution source exists, or may potentially exist, or in which any required records are kept, which are relevant to this Order.
 - b. Access to copy any records required to be kept under the requirements of this Order.
 - c. Inspection of any monitoring or remediation facilities installed in response to this Order.
 - d. Sampling of any groundwater or soil which is accessible, or may become accessible, as part of any investigation or remedial action program undertaken by the discharger.
4. **Contractor / Consultant Qualifications:** All technical documents shall be signed by and stamped with the seal of a California registered geologist, a California certified engineering geologist, or a California registered civil engineer.
5. **Lab Qualifications:** All samples shall be analyzed by State-certified laboratories or laboratories accepted by the Board using approved EPA methods for the type of analysis to be performed. All laboratories shall maintain quality assurance/quality control (QA/QC) records for Board review. This provision does not apply to analyses that can only reasonably be performed on-site (e.g. temperature).
6. **Document Distribution:** Copies of all correspondence, technical reports, and other documents pertaining to compliance with this Order shall be provided to the following agencies:

- a. City of East Palo Alto
- b. San Mateo County, Health Services Agency
- c. USEPA

The Executive Officer may modify this distribution list as needed.

- 7. **Reporting of Changed Owner or Operator:** The discharger shall file a technical report on any changes in site occupancy or ownership associated with the property described in this Order.
- 8. **Reporting of Hazardous Substance Release:** If any hazardous substance is discharged in or on any waters of the State, or discharged or deposited where it is, or probably will be, discharged in or on any waters of the State, the discharger shall report such discharge to the Board by calling (510) 622-2369 during regular office hours (Monday through Friday, 8:00 to 5:00).

A written report shall be filed with the Board within five working days. The report shall describe: the nature of the hazardous substance, estimated quantity involved, duration of incident, cause of release, estimated size of affected area, nature of effect, corrective actions taken or planned, schedule of corrective actions planned, and persons/agencies notified.

This reporting is in addition to reporting to the Office of Emergency Services required pursuant to the Health and Safety Code.

- 9. **Periodic SCR Review:** The Board will review this Order periodically and may revise it when necessary. The discharger may request revisions and upon review the Executive Officer may recommend that the Board revise these requirements.

I, Bruce H. Wolfe, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, San Francisco Bay Region, on _____.

 Bruce H. Wolfe
 Executive Officer

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FAILURE TO COMPLY WITH THE REQUIREMENTS OF THIS ORDER MAY SUBJECT YOU TO ENFORCEMENT ACTION, INCLUDING BUT NOT LIMITED TO: IMPOSITION OF ADMINISTRATIVE CIVIL LIABILITY UNDER WATER CODE SECTIONS 13268 OR

13350, OR REFERRAL TO THE ATTORNEY GENERAL FOR INJUNCTIVE RELIEF OR
CIVIL OR CRIMINAL LIABILITY

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Attachments: Figure 1, Site Location Map

Appendix B



Union Pacific Railroad

Environmental Management Group

9451 Atkinson Street, Suite 100 • Roseville, California 95747

James E. Diel
Manager of Site Remediation

(916) 789-5184
Facsimile (402) 501-2396

March 13, 2008

Mr. Stephen A. Hill
San Francisco Bay Regional Water Quality Control Board
1515 Clay St., Suite 1400
Oakland, CA 94612

SUBJECT: Comments on Tentative Order
Adoption of Final Site Cleanup Requirements
Former Southern Pacific Rail Spur
Ravenswood Industrial Area
East Palo Alto, California

Dear Mr. Hill:

Union Pacific Railroad (UPRR) appreciates the opportunities to meet with you and your staff, and to submit these written comments regarding the subject project and related Tentative Order.

Enclosed with this letter is a "track changes" version of your Tentative Order that incorporates UPRR's suggested revisions to the text. This letter provides context for the suggested text changes.

2. Site History

Paragraph 1 of this section states that "Since the Spur was abandoned . . ."

This is inaccurate. A railroad easement is not abandoned by non-use.

There must also be clear evidence of intent on the railroad's part to abandon the easement. See, *Cash v. Southern Pacific Railroad Company*, 123 Cal. App. 3d 974, 978 (1981) Southern Pacific's purported conveyance to the City of East Palo Alto plainly reflects an intention on the railroad's part to retain the easement. That conveyance clearly contemplated the possibility of future railroad use of the spur, and reserved to

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the railroad the right to such a use. Thus, this paragraph should be revised to eliminate the reference to abandonment, and should state "since the tracks were removed, several . . ."

Similarly, the paragraph refers to the property as a "former" Spur. For the reasons stated above, the property remains a rail spur, whether or not it is currently in use. Thus, the word "former" should be removed.

3a. Property Ownership/Easement

To expand on the explanation of ownership and easement, the following text should be added to the end of the single paragraph in section 3a:

"In November, 1991, SP quit-claimed its interest in the spur to the City of East Palo Alto (City) under the federal Rails to Trails statute. Such a conveyance, if valid, would have preserved the railroad easement and reserved the railroad's right to reinstitute rail use on the property. The Surface Transportation Board determined that the spur was not subject to the Rails to Trails Act. As a result, the City disputes the validity of the quit-claim which granted the easement to it."

4. Named Dischargers

UPRR is concerned about the statements in this section that infer factual conditions and/or factual knowledge. For example, in the second paragraph your text indicates that the homeowners "...have never had legal possession or control of the Spur..." The facts are that several adjacent property owners have indeed had control of portions of the Spur through encroachment, and their activities on the easement are outside the knowledge and control of UPRR. In addition, clear title does not exist along much of the easement.

UPRR suggests deleting the entire second paragraph in this section.

5. Remedial Investigation/Soil Pollution

UPRR suggests revising the second sentence as follows:
"Concentrations of arsenic in excess of 100 mg/kg were found in surface or near surface soil along portions of the Spur..."

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7. Remedial Design

Given the existence of mature trees within the easement, and the acknowledgement that the easement will not be turned over to the City or adjacent homeowners, UPRR recommends flexibility in the field implementation of the remedial design. A requirement to achieve a residential cleanup standard is no longer applicable. UPRR is willing to proceed with the basic concepts of the 2004 remedial design as modified, along with an option to leave mature trees in place as long as underlying soil arsenic concentrations do not exceed industrial standards and/or do not represent a potential impairment to storm water quality draining to the adjacent Bay fringe.

UPRR appreciates the opportunity to discuss this modification to the remedial design with Waterboard staff and UPRR understands that the language of the Order will be modified to provide such flexibility.

8. Threats to Human Health, Ecological Receptors, and Water Quality

This paragraph raises the potential concern that storm water runoff from the Spur "... has the potential to carry arsenic impacted soil into the adjacent wetlands." There are no empirical data to support this statement. The easement is heavily vegetated, and only a short length of the easement not currently vegetated is covered with rounded gravel/ballast. There are no visible signs of any distress to vegetation.

The paragraph also includes statements that homeowners may be exposed to potential vegetation uptake of arsenic. Such potential exposure would be due to deliberate encroachment of homeowners onto the Spur. UPRR will eliminate this potential exposure risk by enforcing the industrial designation and enforcing legal access restrictions to the easement. UPRR appreciates the Waterboard's intent (communication March 4, 2008) to support removal of homeowner encroachments or support an indemnification to UPRR.

UPRR suggests deleting reference to potential human health risks due to vegetable ingestion.

13. Soil Cleanup Standard

This section concludes that "Due to the immediate proximity of the homes a residential cleanup standard is appropriate." UPRR believes this conclusion is neither warranted nor appropriate. The existing easement remains industrial property, albeit industrial property adjoining residential property. This setting is hardly unique.

While this situation may warrant institutional controls on the easement, it does not warrant a requirement that UPRR remediate its industrial property to a residential standard.

To keep the process moving forward, however, UPRR agrees to implement the modified 2004 remedial design that is based upon achieving a soil cleanup standard consistent with residential occupancy.

Section B.2. Soil Cleanup Standards

Consistent with prior statements in this communication, UPRR recommends flexibility in the cleanup standard, at minimum to show a target range consistent with residential exposure of 20 to 70 mg/kg.

Section C. Tasks

The following comments address UPRR questions and/or concerns regarding the scope and schedule of work under Section C. Tasks.

In general, the deadlines for completing specific elements of the remedy are within reasonable work periods and would be acceptable to UPRR except for critical project -related activities that are outside of UPRR's control. Such activities include the following:

- ***Encroachment agreements with all adjacent, encroaching property owners.*** Due to the number of individual parcels, and the related issues that involve personal property, UPRR has limited control over the timing and or the success of these discussions. Clearly, construction crews cannot mobilize and work along the easement cannot proceed until all agreements are executed.

- **Obtaining appropriate permits for tree removal.** The City of East Palo Alto requires a land clearing permit for the removal of vegetation when:

- o The land area to be cleared is five thousand (5,000) square feet or greater, within any two-year period, except in city scenic corridors where any vegetation removal is greater than one thousand (1,000) square feet.
- o Existing slopes are greater than twenty (20) percent.
- o The land area to be cleared is in any sensitive habitat or buffer zone as identified in the general plan of the city (Prior code § 7-2. 103) (East Palo Alto Municipal Code Title 15 Chapter 15.48 Section 15.48.030).

Land Clearing Application Requirements include:

- o A land clearing permit application form;
- o An erosion control plan; and,
- o A vegetation removal plan.

Additionally, City of East Palo Alto Zoning Ordinance Article 4 describes tree regulations associated with tree protection. As pertains to this project, a protected tree shall consist of: Any tree having a main stem or trunk which measures 40 inches or greater in circumference at a height of 24 inches above natural grade.

In order to remove a protected tree a tree removal permit must be obtained. The tree removal permit application should include the number and location of each tree to be removed, the type and approximate size of the tree, the reason for removal, and such additional information as the Director of Planning may require.

Development and submission of the land clearing and tree removal permits may affect scheduling and/or may require protection in place affecting remedial design.

UPRR proposes that mature trees be allowed to remain on and within the Spur, thereby providing a natural barrier to potentially impacted soil as well as continuing benefits to adjacent homeowners.

- **Use of adjacent open land for construction staging and/or haul roads.** If Army Corp permits are required (e.g. nationwide permits including a preconstruction notification) UPRR anticipates a two to six month review and approval process, the outcome of which could dictate construction scheduling constraints. It is UPRR's intent to design the final remedy to avoid any and all Army Corps permitting triggers, recognizing that such design elements may significantly slow down daily excavation progress due to highly constrained working conditions.

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UPRR remains committed to implementing the previously approved removal action, as modified and as described in the subject tentative Order. Due to the uncertainties mentioned above that are outside of UPRR's control, UPRR recommends modifying the task descriptions and stated deadlines in Section C as follows:

1. Final Remedial Design.

UPRR requests extending this date to May 31, 2008, to allow for an updated land survey, to factor in any tree ordinance constraints on vegetation removal/protection that could impact drainage plans, and to update encroachment issues and solutions.

2. Schedule for Implementation of Remedial Measures.

UPRR requests extending this date to May 31, 2008. The schedule to indicate that certain activities within UPRR's control (e.g. mobilization and excavation) will begin within a specified number of days following completion of certain activities outside of UPRR's control (e.g. permit approval, completion of all encroachment agreements) and will include target "not to exceed" calendar deadlines.

3. Completion Report.

The submittal of a completion report within 60 days of completion of field work is acceptable, however UPRR requests extending the October 1, 2008 deadline to March 1, 2009. UPRR intends to complete soil excavation work prior to the start of the rainy season,

4. Evaluation of New Health Criteria

Based on our discussions March 4, 2008, UPRR understands that this section is a standard requirement within Waterboard orders. The Remedial Design Report is approved, based on a soil excavation program targeting soils with arsenic concentrations exceeding an established concentration threshold of 20 mg/kg. The 20 mg/kg threshold represents the low end of the range presented in the tentative Order. If the Waterboard is suggesting a possible re-evaluation of the Waterboard approval of the Remedial Design Report, then UPRR expects all aspects of the remedial design are subject to re-evaluation and revision.

5. Evaluation of New Technical Information

UPRR's recommendation to this numbered task is similar to the recommendation for task 4 - any re-evaluation voids any other commitments by UPRR to project-related deadlines.

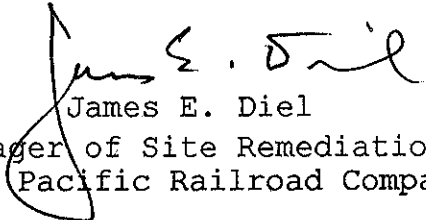
6. Delayed Compliance

UPRR recommends no changes to this task item.

Mr. Stephen Hill
March 13, 2008
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UPRR appreciates your consideration of these comments and suggested revisions to the Tentative Order. Please contact me at 916 789-5184 to discuss any questions or concerns you may have regarding these comments.

Sincerely,


James E. Diel
Manager of Site Remediation
Union Pacific Railroad Company

Cc: Randy Smith - CDM

Appendix C

