

STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

IN THE MATTER OF:	)	Docket HWCA:P1-04/05-011
)	
Skunk Train Facility)	
100 East Laurel Street, Fort)	
Bragg and 299 East Commercial	)	CORRECTIVE ACTION
Street, Willits	)	CONSENT AGREEMENT
)	
Mendocino Railway)	
Foot of Laurel Street)	
Fort Bragg, CA 95437	)	Health and Safety Code
Respondent.	)	Section 25187
)	

INTRODUCTION

1. The Department of Toxic Substances Control (DTSC) and Mendocino Railway (Respondent) enter into this Corrective Action Consent Agreement (Consent Agreement) and agree as follows:

1.1. Jurisdiction exists pursuant to Health and Safety Code (HSC) section 25187, which authorizes DTSC to issue an order to require corrective action when DTSC determines that there is or has been a release of hazardous waste or hazardous constituents into the environment.

1.2. The parties enter into this Consent Agreement to avoid the expense of litigation and to carry out promptly the corrective actions needed in a timely manner.

1.3. Respondent is the owner and operator of the Skunk Train which is primarily stationed at 100 East Laurel Street, Fort Bragg and 299 East Commercial Street, Willits (Facility).

1.4. Respondent engages in railroad operation of the Skunk Train which is known to run the Redwood Route from Fort Bragg to Willits and back to Fort Bragg.

1.5. The terms used in this Consent Agreement are as defined in Section 66260.10 of Title 22 of the California Code of Regulations (Cal. Code Regs.), except as otherwise provided.

1.6. Respondent agrees to undertake all reasonable and necessary actions as determined by DTSC and as required by the terms and conditions of this Consent Agreement, including any portions of this Consent Agreement incorporated by reference. Respondents waive any right to request a hearing on this Consent Agreement pursuant to HSC section 25187.

FINDINGS OF FACT

2.1. Respondent is the owner and operator of the Facility which was obtained through a bankruptcy sale in 2003.

2.2. California Western Railroad, Respondent's predecessor, generated, stored, treated and/or disposed of hazardous waste without authorization from DTSC.

2.3. The environmental concerns addressed by this Consent Agreement were caused by California Western Railroad or its predecessor prior to the time Respondent became the owner or operator of the Facility, and were not caused by any actions or inactions of Respondent as of the effective date of this Consent Agreement.

2.4. The hazardous waste and hazardous constituents of concern at the Facility are ash, ash residues, unburned embers generated from burning of chemically treated ties, soils containing ash residues, used oil, paint, and leaking old batteries.

2.5. The Facility is located in the Mendocino Railroad right of way between Fort Bragg and Willits.

2.6. Releases from the Facility activities may have already migrated toward soil, air, surface water and off-site.

2.7. In September 1998, DTSC was notified by the Mendocino County Air Quality District that complaints were filed with that agency regarding the Facility. In September 1998, DTSC, Mendocino County Department of Health and Air Pollution Control, and the California Department of Fish and Game initiated investigation of potential hazardous waste contamination at the Facility.

2.8. During said investigation, piles of burned or unburned ties were found; surface soil samples along with ash and embers were collected and analyzed for the concentrations of inorganic and organic chemicals, and the sampling results showed apparent elevated levels of metals, polycyclic aromatic hydrocarbons and dioxin.

2.9. Pursuant to a Corrective Action Consent Agreement, Docket No. HWCA: P1-00/01-005, entered into between DTSC and California Western Railroad on or about June 26, 2001, California Western Railroad conducted a file review and a Facility Assessment under DTSC's oversight.

2.10. Based on DTSC's Facility Assessment Report dated March 7, 2002 and a site inspection conducted by DTSC on November 8 and 9, 2001, DTSC has determined that there are 36 Solid Waste Management Units (SWMUs), including the burn sites, at the Facility.

PROJECT COORDINATOR

3. Within fourteen (14) days of the effective date of this Consent Agreement, DTSC and Respondent shall each designate a Project Coordinator and shall notify each other in writing of the Project Coordinator selected. Each Project Coordinator shall be responsible for overseeing the implementation of this Consent Agreement and for designating a person to act in his/her absence. All communications between Respondent and DTSC, and all

documents, report approvals, and other correspondence concerning the activities performed pursuant to this Consent Agreement shall be directed through the Project Coordinators. Each party may change its Project Coordinator with at least seven (7) days prior written notice.

WORK TO BE PERFORMED

4. Respondent agrees to perform the corrective action work as described in this Consent Agreement in accordance with the applicable state and federal laws, their implementing regulations, and the applicable guidance contained in DTSC's and the United States Environmental Protection Agency's documents.

INTERIM MEASURES (IM)

5.1. Respondent shall evaluate available data and assess the need for interim measures in addition to those specifically required by this Consent Agreement. Interim measures shall be used if necessary to control or abate immediate threats to human health and/or the environment, and to prevent and/or minimize the spread of contaminants while long-term corrective action alternatives are being evaluated.

5.2. If at any time Respondent identifies an immediate or potential threat to human health and/or the environment, discovers new releases of hazardous waste and/or hazardous waste constituents, or discovers new solid waste management units not previously identified, Respondent shall notify DTSC Project Coordinator orally within 48 hours of discovery and notify DTSC in writing within 10 days of discovery summarizing the findings, including the immediacy and magnitude of the potential threat to human health and/or the environment. Within 30 days of receiving DTSC's written request, Respondent shall submit to DTSC an IM Workplan for approval. The IM Workplan shall include a schedule for submitting to DTSC an IM Operation and Maintenance Plan and IM Plans and Specifications. The IM Workplan, IM Operation and Maintenance Plan, and IM Plans and Specifications shall be developed in a manner consistent with the Scope of Work for Interim Measures Implementation contained in as Attachment 1. If DTSC determines that immediate action is required, DTSC Project Coordinator may orally authorize the Respondent to act prior to DTSC's receipt of the IM Workplan.

5.3. If DTSC identifies an immediate or potential threat to human health and/or the environment, discovers new releases of hazardous waste and/or hazardous waste constituents, or discovers new solid waste management units not previously identified, DTSC will notify Respondent in writing. Within 30 days of receiving DTSC's written notification, Respondent shall submit to DTSC for approval an IM Workplan that identifies Interim Measures that will mitigate the threat. The IM Workplan shall include a schedule for submitting to DTSC an IM Operation and Maintenance

Plan and IM Plans and Specifications. The IM Workplan, IM Operation and Maintenance Plan, and IM Plans and Specifications shall be developed in a manner consistent with the Scope of Work for Interim Measures Implementation contained in as Attachment 1. If DTSC determines that immediate action is required, DTSC Project Coordinator may orally authorize Respondent to act prior to receipt of the IM Workplan.

5.4 Previous site investigations have confirmed that Interim Measures are necessary for the burn sites. Within 45 days of the effective date of this Consent Agreement, Respondent will submit to DTSC an IM Workplan to address the burn sites as identified in the Facility Assessment Report dated March 7, 2002.

5.5 Respondent will implement the DTSC's approved IM Workplan for the burn sites in accordance with the schedule as approved by DTSC. Within 30 days of completing the implementation of the IM Workplan for the burn sites, Respondent will submit an IM Implementation Report to DTSC for approval.

5.6. If required, all IM Workplans shall ensure that the Interim Measures are designed to mitigate current or potential threats to human health and/or the environment, and should, to the extent practicable, be consistent with the objectives of, and contribute to the performance of, any remedy which may be required at the Facility.

5.7. Concurrent with the submission of any IM Workplan, Respondent shall submit to DTSC a Health and Safety Plan in accordance with the Scope of Work for a Health and Safety Plan contained in Attachment 2.

5.8. Concurrent with the submission of an IM Workplan, Respondent shall submit to DTSC for approval a Community Profile in accordance with Attachment 3. Based on the information provided in the Community Profile, if DTSC determines that there is a high level of community concern about the Facility, DTSC may require Respondent to prepare a Public Participation Plan.

RCRA FACILITY INVESTIGATION (RFI)

6.1. Within 60 days of the effective date of this Consent Agreement, Respondent shall submit to DTSC a Current Conditions Report and a Workplan for a RCRA Facility Investigation ("RFI Workplan") for SWMUs Nos. 1, 34, 35 and 36, as identified in DTSC's Facility Assessment Report. The Current Conditions Report and RFI Workplan are subject to approval by DTSC and shall be developed in a manner consistent with the Scope of Work for a RCRA Facility Investigation contained in Attachment 4. DTSC will review the Current Conditions Report and RFI Workplan and notify Respondent in writing of DTSC's approval or disapproval. If deemed necessary by DTSC following the implementation of the Interim Measures for the burn sites, DTSC may require Respondent to submit a Phase II RFI to address the burn sites. However, it is the intent of Respondent and DTSC that the Interim Measures implemented at the burn sites will be of such a nature and extent

that they may be considered acceptable as part of the final remedy required for the Facility.

6.2. The RFI Workplan shall detail, as necessary and to the extent applicable, the methodology to: (1) gather data needed to make decisions on interim measures/ stabilization during the early phases of the RCRA Facility Investigation; (2) identify and characterize all sources of contamination; (3) define the nature, degree and extent of contamination; (4) define the rate of movement and direction of contamination flow; (5) characterize the potential pathways of contaminant migration; (6) identify actual or potential human and/or ecological receptors; and (7) support development of alternatives from which a corrective measure will be selected by DTSC. A specific schedule for implementation of all activities shall be included in the RFI Workplan.

6.3. Respondent shall submit a RFI Report to DTSC for approval in accordance with DTSC-approved RFI Workplan schedule. The RFI Report shall be developed in a manner consistent with the Scope of Work for a RCRA Facility Investigation contained in Attachment 4. If there is a phased investigation, separate RFI Reports and a report that summarizes the findings from all phases of the RFI must be submitted to DTSC. DTSC will review the RFI Report(s) and notify Respondent in writing of DTSC's approval or disapproval.

6.4. Concurrent with the submission of a RFI Workplan, Respondent shall submit to DTSC a Health and Safety Plan in accordance with Attachment 2. If Workplans for both an IM and RFI are required by this Consent Agreement, Respondent may submit a single Health and Safety Plan that addresses the combined IM and RFI activities.

6.5. Respondent shall submit, if necessary, a RFI Summary Fact Sheet to DTSC that summarizes the findings from all phases of the RFI. The RFI Summary Fact Sheet shall be submitted to DTSC in accordance with the schedule contained in the approved RFI Workplan. DTSC will review the RFI Summary Fact Sheet and notify Respondent in writing of DTSC's approval or disapproval, including any comments and/or modifications. When DTSC approves the RFI Summary Fact Sheet, Respondent shall mail the approved RFI Summary Fact Sheet to all individuals on the Facility mailing list established pursuant to California Code Regulations, title 22, section 66271.9(c)(1)(D), within 15 calendar days of receipt of written approval.

6.6. Concurrent with the submission of a RFI Workplan, if necessary, Respondent shall submit to DTSC for approval a Community Profile in accordance with Attachment 3. Based on the information provided in the Community Profile and any Supplement to the Community Profile, if DTSC determines that there is a high level of community concern about the Facility, Respondent shall prepare a Public Participation Plan.

RISK ASSESSMENT

7. Based on the information available to DTSC, Respondent may be directed to conduct a Risk Assessment to evaluate potential human health risk and ecological risk and to establish site-specific action levels and cleanup standards. If DTSC determines that a Risk Assessment is necessary, Respondent shall submit to DTSC for approval a Risk Assessment Workplan within 60 days of receipt of DTSC's determination. Respondent shall submit to DTSC for approval a Risk Assessment Report in accordance with DTSC-approved Risk Assessment Workplan schedule.

CORRECTIVE MEASURES STUDY (CMS)

8.1. If deemed necessary by DTSC following the implementation of the Interim Measures for the burn sites or based on the findings of the RFI(s), Respondent may be required to prepare a Corrective Measures Study, if contaminant concentrations exceed human health-based or ecologically-based action levels established by the DTSC-approved Risk Assessment Report if one is required under this Consent Agreement, or if DTSC otherwise determines that the contaminant releases pose a potential threat to human health or the environment.

8.2. Within 45 days of DTSC's approval of the RFI Report (or Respondent's receipt of a written request from DTSC), or within 45 days of DTSC's approval of the Risk Assessment Report if one is required under this Consent Agreement, Respondent shall submit a CMS Workplan to DTSC. The CMS Workplan is subject to approval by DTSC and shall be developed in a manner consistent with the Scope of Work for a Corrective Measures Study contained in Attachment 5.

8.3. The CMS Workplan shall detail the methodology for developing and evaluating potential corrective measures to remedy any contamination at the Facility. The CMS Workplan shall identify the potential corrective measures, including any innovative technologies, that may be used for the containment, treatment, remediation, and/or disposal of contamination.

8.4. Respondent shall prepare treatability studies for all potential corrective measures that involve treatment except where Respondent can demonstrate to DTSC's satisfaction that they are not needed. The CMS Workplan shall include, at a minimum, a summary of the proposed treatability study including a conceptual design, a schedule for submitting a treatability study workplan, or Respondent's justification for not proposing a treatability study.

8.5. Respondent shall submit a CMS Report to DTSC for approval in accordance with DTSC-approved CMS Workplan schedule. The CMS Report shall be developed in a manner consistent with the Scope of Work for a Corrective Measures Study contained in Attachment 5. DTSC will review the CMS Report and notify Respondent in writing of DTSC's approval or disapproval.

REMEDY SELECTION

9.1. DTSC will provide the public with an opportunity to review and comment on the final draft of the CMS Report, DTSC's proposed corrective measures for the Facility, and DTSC's justification for selection of such corrective measures. Depending on the level of community concern, DTSC may conduct a public hearing to obtain comments.

9.2. Following the public comment period, DTSC may select final corrective measures or require Respondent to revise the CMS Report and/or perform additional corrective measures studies.

9.3. DTSC will notify Respondent of the final corrective measures selected by DTSC in the Final Decision and Response to Comments. The notification will include DTSC's reasons for selecting the corrective measures.

CORRECTIVE MEASURES IMPLEMENTATION (CMI)

10.1. Within 60 days of Respondent's receipt of notification of DTSC's selection of the corrective measures, Respondent shall submit to DTSC a Corrective Measures Implementation (CMI) Workplan. The CMI Workplan is subject to approval by DTSC and shall be developed in a manner consistent with the Scope of Work for Corrective Measures Implementation contained in Attachment 6

10.2. Concurrent with the submission of a CMI Workplan, Respondent shall submit to DTSC a Health and Safety Plan in accordance with Attachment 2.

10.3. Concurrent with the submission of a CMI Workplan, Respondent shall submit to DTSC for approval a Community Profile in accordance with Attachment 3. Based on the information provided in the Community Profile and any Supplement to the Community Profile, if DTSC determines that there is a high level of community concern about the Facility, DTSC may require Respondent to prepare a Public Participation Plan.

10.4. The CMI program shall be designed to facilitate the design, construction, operation, maintenance, and monitoring of corrective measures at the Facility. In accordance with the schedule contained in the approved CMI Workplan, Respondent shall submit to DTSC the documents listed below, to the extent applicable. These documents shall be developed in a manner consistent with the Scope of Work for Corrective Measures Implementation contained in Attachment 6.

- o Operation and Maintenance Plan
- o Draft Plans and Specifications
- o Final Plans and Specifications
- o Construction Workplan
- o Construction Completion Report
- o Corrective Measures Completion Report

10.5. DTSC will review all required CMI documents and notify Respondent in writing of DTSC's approval or disapproval.

10.6. As directed by DTSC, within 90 days of DTSC's approval of all required CMI documents, Respondent shall establish a financial assurance mechanism for Corrective Measures Implementation. The financial assurance mechanisms may include any mechanism as described in California Code of Regulations, title 22, section 66265.143. The mechanism shall be established to allow DTSC access to the funds to undertake Corrective Measures Implementation tasks if Respondent is unable or unwilling to undertake the required actions.

CALIFORNIA ENVIRONMENTAL QUALITY ACT

11. DTSC must comply with the California Environmental Quality Act (CEQA) insofar as activities required by this Consent Agreement are projects subject to CEQA. Respondent shall provide all information necessary to facilitate any CEQA analysis. DTSC will make an initial determination regarding the applicability of CEQA. If the activities are not exempt from CEQA, DTSC will conduct an Initial Study. Based on the results of the Initial Study, DTSC will determine if a Negative Declaration or an Environmental Impact Report (EIR) should be prepared. DTSC will prepare and process any such Negative Declaration. However, should DTSC determine that an EIR is necessary, such an EIR would be prepared under a separate agreement between DTSC and Respondent.

DTSC APPROVAL

12.1. Respondent shall revise any workplan, report, specification, or schedule in accordance with DTSC's written comments. Respondent shall submit to DTSC any revised documents by the due date specified by DTSC. Revised submittals are subject to DTSC's approval or disapproval.

12.2. Upon receipt of DTSC's written approval, Respondent shall commence work and implement any approved workplan in accordance with the schedule and provisions contained therein.

12.3. Any DTSC-approved workplan, report, specification, or schedule required under this Consent Agreement shall be deemed incorporated into this Consent Agreement.

12.4. Verbal advice, suggestions, or comments given by DTSC representatives will not constitute an official approval or decision.

SUBMITTALS

13.1. Beginning with the first full month following the effective date of this Consent Agreement, Respondent shall provide DTSC with quarterly progress reports of corrective action activities conducted pursuant to this Consent Agreement. Progress reports are due on the first day of the first month following the close of each reporting period. The progress

reports shall conform to the Scope of Work for Progress Reports contained in Attachment 7. DTSC may adjust the frequency of progress reporting to be consistent with site-specific activities.

13.2. Any report or other document submitted by Respondent pursuant to this Consent Agreement shall be signed and certified by the project coordinator, a responsible corporate officer, or a duly authorized representative.

13.3. The certification required by paragraph 13.2 above, shall be in the following form:

I certify that the information contained in or accompanying this submittal is true, accurate, and complete. As to those portions of this submittal for which I cannot personally verify the accuracy, I certify that this submittal and all attachments were prepared at my direction in accordance with procedures designed to assure that qualified personnel properly gathered and evaluated the information submitted.

Signature: _____
Name: _____
Title: _____
Date: _____

13.4. Respondent shall provide two copies of all documents, including but not limited to, workplans, reports, and correspondence. Submittals specifically exempted from this copy requirement are all progress reports and correspondence of less than 15 pages, of which one copy is required.

13.5. Unless otherwise specified, all reports, correspondence, approvals, disapprovals, notices, or other submissions relating to this Consent Agreement shall be in writing and shall be sent to the current Project Coordinators.

PROPOSED CONTRACTOR/CONSULTANT

14. All work performed pursuant to this Consent Agreement shall be under the direction and supervision of a professional engineer or registered geologist, registered in California, with expertise in hazardous waste site cleanup. Respondent's contractor or consultant shall have the technical expertise sufficient to fulfill his or her responsibilities. Within 14 days of the effective date of this Consent Agreement, Respondent shall notify DTSC Project Coordinator in writing of the name, title, and qualifications of the professional engineer or registered geologist and of any contractors or consultants and their personnel to be used in carrying out the terms of this Consent Agreement.

ADDITIONAL WORK

15. DTSC may determine or Respondent may propose that certain tasks, including investigatory work, engineering evaluation, or procedure/methodology modifications are necessary in addition to, or in lieu of, the tasks and deliverables included in any part of DTSC-approved workplans. DTSC shall request in writing that Respondent perform the additional work and shall specify the basis and reasons for DTSC's request that the additional work is necessary. Within 30 days after the receipt of DTSC's request, Respondent may confer with DTSC to discuss the additional work DTSC has requested. If required by DTSC, Respondent shall submit to DTSC a workplan for the additional work. Such workplan shall be submitted to DTSC within 30 days of receipt of DTSC's determination or according to an alternate schedule established by DTSC. Upon approval of a workplan, Respondent shall implement it in accordance with the provisions and schedule contained therein. The need for, and disputes concerning, additional work are subject to the dispute resolution procedures specified in this Consent Agreement.

QUALITY ASSURANCE

16.1. All sampling and analyses performed by Respondent under this Consent Agreement shall follow applicable DTSC and U.S. EPA guidance for sampling and analysis. Workplans shall contain quality assurance/quality control and chain of custody procedures for all sampling, monitoring, and analytical activities. Any deviations from the approved workplans must be approved by DTSC prior to implementation, must be documented, including reasons for the deviations, and must be reported in the applicable report.

16.2. The names, addresses, and telephone numbers of the California State certified analytical laboratories Respondent proposes to use must be specified in the applicable workplans.

SAMPLING AND DATA/DOCUMENT AVAILABILITY

17.1. Respondent shall submit to DTSC upon request the results of all sampling and/or tests or other data generated by its employees, agents, consultants, or contractors pursuant to this Consent Agreement.

17.2. Respondent shall notify DTSC in writing at least seven days prior to beginning each separate phase of field work approved under any workplan required by this Consent Agreement. If Respondent believes it must commence emergency field activities without delay, Respondent may seek emergency telephone authorization from DTSC Project Coordinator or, if the Project Coordinator is unavailable, his/her Branch Chief, to commence such activities immediately.

17.3. At the request of DTSC, Respondent shall provide or allow DTSC or its authorized representative to take split or duplicate samples of all samples collected by Respondent pursuant to this Consent Agreement. Similarly, at the request of Respondent, DTSC shall allow Respondent or its authorized representative to take split or duplicate samples of all samples collected by DTSC under this Consent Agreement.

ACCESS

18. Subject to the Facility's security and safety procedures, Respondent agrees to provide DTSC and its representatives access at all reasonable times to the Facility and any off-site property to which access is required for implementation of this Consent Agreement and shall permit such persons to inspect and copy all records, files, photographs, documents, including all sampling and monitoring data, that pertain to work undertaken pursuant to this Consent Agreement and that are within the possession or under the control of Respondent or its contractors or consultants.

RECORD PRESERVATION

19.1. Respondent shall retain, during the pendency of this Consent Agreement and for a minimum of four years after its termination, all data, records, and documents that relate in any way to the performance of this Consent Agreement or to hazardous waste management and/or disposal at the Facility. Respondent shall notify DTSC in writing 90 days prior to the destruction of any such records, and shall provide DTSC with the opportunity to take possession of any such records. Such written notification shall reference the effective date, caption, and docket number of this Consent Agreement and shall be addressed to:

Chief
Northern California Permitting
and Corrective Action Branch
Hazardous Waste Management Program
Department of Toxic Substances Control
8800 Cal Center Drive
Sacramento, California 95826-3200

19.2. If Respondent retains or employs any agent, consultant, or contractor for the purpose of carrying out the terms of this Consent Agreement, Respondent will require any such agents, consultants, or contractors to provide Respondent a copy of all documents produced pursuant to this Consent Agreement.

19.3. All documents pertaining to this Consent Agreement shall be stored in a central location at the Facility, Mendocino Railway's corporate headquarters, or at a location otherwise

agreed to by the parties, to afford easy access by DTSC and its representatives.

DISPUTE RESOLUTION

20.1. The parties agree to use their best efforts to resolve all disputes informally. The parties agree that the procedures contained in this section are the sole administrative procedures for resolving disputes arising under this Consent Agreement. If Respondent fails to follow the procedures contained in this section, it shall have waived its right to further consideration of the disputed issue. Respondent reserves its legal rights to contest or defend against any final decision rendered by DTSC under this Dispute Resolution provision.

20.2. If Respondent disagrees with any written decision by DTSC pursuant to this Consent Agreement, Respondent's Project Coordinator shall orally notify DTSC's Project Coordinator of the dispute. The Project Coordinators shall attempt to resolve the dispute informally.

20.3. If the Project Coordinators cannot resolve the dispute informally, Respondent may pursue the matter formally by placing its objection in writing. Respondent's written objection must be forwarded to Chief, Northern California Permitting and Corrective Action Branch, Hazardous Waste Management Program, Department of Toxic Substances Control, with a copy to DTSC's Project Coordinator. The written objection must be mailed to the Branch Chief within 30 days of Respondent's receipt of DTSC's written decision. Respondent's written objection must set forth the specific points of the dispute and the basis for Respondent's position.

20.4. DTSC and Respondent shall have 30 days from DTSC's receipt of Respondent's written objection to resolve the dispute through formal discussions. This period may be extended by DTSC for good cause. During such period, Respondent may meet or confer with DTSC to discuss the dispute.

20.5. After the formal discussion period, DTSC will provide Respondent with its written decision on the dispute. DTSC's written decision will reflect any agreements reached during the formal discussion period and be signed by the Branch Chief or his/her designee.

20.6. During the pendency of all dispute resolution procedures set forth above, the time periods for completion of work required under this Consent Agreement that are affected by such dispute shall be extended for a period of time not to exceed the actual time taken to resolve the dispute. The existence of a dispute shall not excuse, toll, or suspend any other compliance obligation or deadline required pursuant to this Consent Agreement.

RESERVATION OF RIGHTS

21.1. DTSC reserves all of its statutory and regulatory powers, authorities, rights, and remedies, which may pertain to Respondent's failure to comply with any of the requirements of this Consent Agreement. Respondent reserves all of its statutory and regulatory rights, defenses and remedies, as they may arise under this Consent Agreement. This Consent Agreement shall not be construed as a covenant not to sue, release, waiver, or limitation on any powers, authorities, rights, or remedies, civil or criminal, that DTSC or Respondent may have under any laws, regulations or common law.

21.2. DTSC reserves the right to disapprove of work performed by Respondent pursuant to this Consent Agreement and to request that Respondent perform additional tasks.

21.3. DTSC reserves the right to perform any portion of the work consented to herein or any additional site characterization, feasibility study, and/or remedial actions it deems necessary to protect human health and/or the environment. DTSC may exercise its authority under any applicable state or federal law or regulation to undertake response actions at any time. DTSC shall provide Respondent a written explanation of the work it seeks to perform and shall specify the basis and reasons such work is necessary. DTSC reserves its right to seek reimbursement from Respondent for costs incurred by the State of California with respect to such actions. DTSC will notify Respondent in writing as soon as practicable regarding the decision to perform any work described in this section. The need for, and disputes concerning, work performed by DTSC pursuant to this section is subject to the dispute resolution procedures specified in this Consent Agreement.

21.4. If DTSC determines that activities in compliance or noncompliance with this Consent Agreement have caused or may cause a release of hazardous waste and/or hazardous waste constituents, or a threat to human health and/or the environment, or that Respondent is not capable of undertaking any of the work required, DTSC may order Respondent to stop further implementation of this Consent Agreement for such period of time as DTSC determines may be needed to abate any such release or threat and/or to undertake any action which DTSC determines is necessary to abate such release or threat. The deadlines for any actions required of Respondent under this Consent Agreement affected by the order to stop work shall be extended to take into account DTSC's actions.

21.5. This Consent Agreement is not intended to be nor shall it be construed to be a permit. This Consent Agreement is not a substitute for, and does not preclude DTSC from requiring, any hazardous waste facility permit, post closure permit, closure plan or post closure plan. The parties acknowledge and agree that DTSC's approval of any workplan, plan, and/or specification does not constitute a warranty or representation that the

workplans, plans, and/or specifications will achieve the required cleanup or performance standards. Compliance by Respondent with the terms of this Consent Agreement shall not relieve Respondent of its obligations to comply with the Health and Safety Code or any other applicable local, state, or federal law or regulation.

OTHER CLAIMS

22. Except as provided in this Consent Agreement, nothing in this Consent Agreement shall constitute or be construed as a release by DTSC or Respondent from any claim, cause of action, or demand in law or equity against any person, firm, partnership, or corporation for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous constituents, hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken or migrating from the Facility.

COMPLIANCE WITH WASTE DISCHARGE REQUIREMENTS

23. Respondent shall comply with all applicable waste discharge requirements issued by the State Water Resources Control Board or a California regional water quality control board.

OTHER APPLICABLE LAWS

24. All actions required by this Consent Agreement shall be conducted in accordance with the requirements of all local, state, and federal laws and regulations. Respondent shall obtain or cause its representatives to obtain all permits and approvals necessary under such laws and regulations.

REIMBURSEMENT OF DTSC'S COSTS

25.1. Respondent shall pay DTSC's costs incurred in the implementation of this Consent Agreement.

25.2. An estimate of DTSC's costs incurred in overseeing the corrective action described in this Consent Agreement is attached as Exhibit A showing the amount of \$55,407 for the corrective action described in Exhibit A. It is understood by the parties that the amount shown on Exhibit A is an estimate only and may differ from the actual costs incurred by DTSC in implementing this Consent Agreement. DTSC will provide additional cost estimates to Respondent as the work progresses under the Consent Agreement.

25.3. Respondent shall make an advance payment to DTSC in the amount of \$5,000.00 in 30 days of the effective date of this Consent Agreement. If the advance payment exceeds DTSC's costs, DTSC will refund the balance within 120 days after the execution

of the Acknowledgment of Satisfaction pursuant to Section 20 of this Consent Agreement.

25.4. DTSC will provide Respondent with a billing statement at least quarterly, which will include the name of the employee, identification of the activity, the amount of time spent on each activity, and the hourly rate charged. DTSC will also provide additional cost documentation upon Respondent's request. If Respondent does not pay an invoice within 60 days, the amount is subject to interest as provided by HSC section 25360.1.

25.5. DTSC will retain all costs records associated with the work performed under this Consent Agreement as required by state law. DTSC will make all documents which support DTSC's cost determination available for inspection upon request, as provided by the Public Records Act.

25.6. Any dispute concerning costs pursuant to this Consent Agreement is subject to the Dispute Resolution provision of this Consent Agreement and the dispute resolution procedures as established pursuant to Health and Safety Code section 25269.2. DTSC reserves its right to recover unpaid costs under applicable state and federal laws.

25.7. All payments shall be made within 30 days of the date of the billing statement by check payable to the Department of Toxic Substances Control and shall be sent to:

Accounting Unit
Department of Toxic Substances Control
P. O. Box 806
Sacramento, California 95812-0806

All checks shall reference the name of the Facility, the Respondent's name and address, and the docket number of this Consent Agreement. Copies of all checks and letters transmitting such checks shall be sent simultaneously to DTSC's Project Coordinator.

MODIFICATION

26.1. This Consent Agreement may be modified by mutual agreement of the parties. Any agreed modifications shall be in writing, shall be signed by both parties, shall have as their effective date the date on which they are signed by DTSC, and shall be deemed incorporated into this Consent Agreement.

26.2. Any requests for revision of an approved workplan requirement must be in writing. Such requests must be timely and provide justification for any proposed workplan revision. DTSC has no obligation to approve such requests, but if it does so, such approval will be in writing and signed by James M. Pappas, Chief, Land Disposal Branch, Department of Toxic Substances Control, or his designee. Any approved workplan modification shall be incorporated by reference into this Consent Agreement.

TERMINATION AND SATISFACTION

27. The provisions of this Consent Agreement shall be deemed satisfied upon the execution by both parties of an Acknowledgment of Satisfaction (Acknowledgment). DTSC will prepare the Acknowledgment for Respondent's signatures. The Acknowledgment will specify that Respondents has demonstrated to the satisfaction of DTSC that the terms of this Consent Agreement including payment of DTSC's costs have been satisfactorily completed. The Acknowledgment will affirm Respondent's continuing obligation to preserve all records after the rest of the Consent Agreement is satisfactorily completed.

EFFECTIVE DATE

28. The effective date of this Consent Agreement shall be the date on which this Consent Agreement is signed by all the parties. Except as otherwise specified, "days" means calendar days.

SIGNATORIES

29. Each undersigned representative certifies that he or she is fully authorized to enter into this Consent Agreement.

DATE: 5-24-05

//Original signed by//

David N. Magaw, President
Mendocino Railway

DATE: 6/5/05

BY: //Original signed by//

James M. Pappas, P.E., Chief
Northern California Permitting and
Corrective Action Branch
Department of Toxic Substances Control

EXHIBIT A

Project Title: Mendocino Railway (Skunk Train)

April 14, 2005

Project Name: Corrective Action Consent Agreement (CACCA), RCRA Facility Investigation Workplan and Report
(non-burn sites SWMUs)

Contact: Michael Buck, Hanson Bridgett Marcus Vlahos Rudy LLP

Billing Address: 980 9th Street, Suite 1500 Sacramento, California 95814

Contact Person Telephone Number: (916) 551-2923

COST ESTIMATE FOR Facility Investigation Workplan, Oversight and Report Review

Code	Classification	Staff Hours	HWMP Hourly Rate + Indirect	Staff Cost	Totals
PERMITTING					
3564	Haz. Sub. Scientist	0.0	107	\$0	
3726	Haz. Sub. Engineer	100.0	122	12,200	
3566	Sup. Haz. Sub. Sci. I	10.0	126	1,260	
3723	Sup. Haz. Sub. Sci. II	0.0	142	0	
3724	Sup. Haz. Sub. Eng. I	0.0	131	0	
3723	Sup. Haz. Sub. Eng. II	2.0	147	294	
1139	Office Technician (T)	4.0	63	252	
	Total				\$14,006
REGIONAL CHEMISTRY SUPPORT					
3565	Sr. Haz. Sub. Scientist	20.0	124	2,480	
	Total				2,480
REGIONAL GEOLOGY SUPPORT					
3728	Haz. Sub. Eng. Geologist	60.0	120	7,200	
3730	Sr. Haz. Sub. Eng.	0.0	133	0	
	Total				7,200
OFFICE OF SCIENTIFIC AFFAIRS					
7978	Staff Toxicologist	0.0	149	0	
7984	Senior Toxicologist	30.0	156	4,680	
	Total				0
OFFICE OF LEGAL COUNSEL					
5778	Staff Counsel	5.0	152	760	
	Total				760
PUBLIC PARTICIPATION					
5373	Public Participation, Spec.	10.0	103	1,030	
5372	Public Participation, Sup.	3.0	119	357	
	Total				1,387
PROGRAM AUDITS & ENVIRONMENTAL ANALYSIS					
4711	Assoc. Env. Planner	0.0	106	0	
4713	Sr. Env. Planner	20.0	129	2,580	
	Total				2,580
OTHER					
3856	Assoc. Industrial Hygienist	8.0	115	920	
3887	Air Pollution Specialist	0.0	109	0	
3724	Sup. Haz. Sub. Eng. I (ESU)	0.0	132	0	
	Total				920

				\$34,013	\$34,013

Project Title: Mendocino Railway (Skunk Train)

April 14, 2005

Project Name: Corrective Action Consent Agreement (CACCA), Interim Measure

Contact: Michael Buck, Hanson Bridgett Marcus Vlahos Rudy LLP

Billing Address: 980 9th Street, Suite 1500 Sacramento, California 95814

Contact Person Telephone Number: (916) 551-2923

COST ESTIMATE FOR Interim Measure Workplan, Oversight and Report Review

Code	Classification	Staff Hours	HWMP		Staff Cost	Totals
			Hourly Rate + Indirect			
PERMITTING						
3564	Haz. Sub. Scientist	0.0	107		\$0	
3726	Haz. Sub. Engineer	50.0	122		6,100	
3566	Sup. Haz. Sub. Sci. I	5.0	126		630	
3723	Sup. Haz. Sub. Sci. II	0.0	142		0	
3724	Sup. Haz. Sub. Eng. I	0.0	131		0	
3723	Sup. Haz. Sub. Eng. II	2.0	147		294	
1139	Office Technician (T)	4.0	63		252	
	Total					\$7,276
REGIONAL CHEMISTRY SUPPORT						
3565	Sr. Haz. Sub. Scientist	0.0	124		0	
	Total					0
REGIONAL GEOLOGY SUPPORT						
3728	Haz. Sub. Eng. Geologist	30.0	120		3,600	
3730	Sr. Haz. Sub. Eng.	0.0	133		0	
	Total					3,600
OFFICE OF SCIENTIFIC AFFAIRS						
7978	Staff Toxicologist	0.0	149		0	
7984	Senior Toxicologist	5.0	156		780	
	Total					0
OFFICE OF LEGAL COUNSEL						
5778	Staff Counsel	0.0	152		0	
	Total					0
PUBLIC PARTICIPATION						
5373	Public Participation, Spec.	4.0	103		412	
5372	Public Participation, Sup.	0.0	119		0	
	Total					412
PROGRAM AUDITS & ENVIRONMENTAL ANALYSIS						
4711	Assoc. Env. Planner	0.0	106		0	
4713	Sr. Env. Planner	10.0	129		1,290	
	Total					1,290
OTHER						
3856	Assoc. Industrial Hygienist	8.0	115		920	
3887	Air Pollution Specialist	0.0	109		0	
3724	Sup. Haz. Sub. Eng. I (ESU)	0.0	132		0	
	Total					920
					\$14,278	\$14,278

FV 2.



Department of Toxic Substances Control



Edwin F. Lowry, Director
10151 Croydon Way, Suite 3
Sacramento, California 95827-2106

Winston H. Hickox
Agency Secretary
California Environmental
Protection Agency

Gray Davis
Governor

February 26, 2001

Ms. Wendy Esquire
California Western Railroad
P. O. Box 907
Fort Bragg, California 95437

**CORRECTIVE ACTION CONSENT AGREEMENT, CALIFORNIA WESTERN
RAILROAD, DOCKET NUMBER: P1-00/01-005**

Dear Ms. Esquire:

Pursuant to the meeting of December 18, 2000, between yourself and Mr. Farshad Vakili, I am forwarding the Corrective Action Consent Agreement (Consent Agreement), for the California Western Railroad facility.

Please advise Mr. John Mayfield to sign the Consent Agreement and return the original document to Mr. James M. Pappas, Chief, Land Disposal Branch, Department of Toxic Substances Control (DTSC), 10151 Croydon Way, Suite #3, Sacramento, California 95827, by March 31, 2001. A copy of the fully executed Consent Agreement will be sent to you.

Please note that pursuant to Paragraph 18.3 of the Consent Agreement, California Western Railroad needs to make a payment of \$5,000.00 to DTSC, within 30 days of the effective date of this Consent Agreement.

The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see our Web-site at www.dtsc.ca.gov.

Ms. Wendy Esquire
February 26, 2001
Page 2

If you have any questions about this Consent Agreement, please contact
Mr. Farshad Vakili at (916) 255-3612.

Sincerely,

//Original signed by//

Robert Crandall
Unit Chief
Land Disposal Branch

cc: Ms. Orchid Kwei
Legal Counsel
Department of Toxic Substances Control
P. O. Box 806
Sacramento, California 95812-0806

S20041 2.

STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

IN THE MATTER OF:	)	Docket HWCA: P1-00/01-005
)	
California Western Railroad)	
100 E. Laurel Street	)	CORRECTIVE ACTION
P.O. Box 907	)	CONSENT AGREEMENT
Fort Bragg, California 95437)	
)	
	)	Health and Safety Code
	)	Section 25187
Respondent)	
_____)		

INTRODUCTION

1. The Department of Toxic Substances Control (DTSC) and California Western Railroad (Respondent) enter into this Corrective Action Consent Agreement (Consent Agreement) and agree as follows:

1.1. Jurisdiction exists pursuant to Health and Safety Code (HSC) Section 25187, which authorizes DTSC to issue an order to require corrective action when DTSC determines that there is or has been a release of hazardous waste or hazardous constituents into the environment.

1.2. The parties enter into this Consent Agreement to avoid the expense of litigation and to carry out promptly the corrective action described below.

1.3. Respondent is the owner and operator of the Skunk Train which is stationed at Laurel Street in Fort Bragg, Mendicino County (Facility).

1.4. Respondent engages in railroad operation of the Skunk Train which is known to run the Redwood Route from Fort Bragg to Willits and back to Fort Bragg.

1.5. The terms used in this Consent Agreement are as defined in Section 66260.10 of Title 22 of the California Code of Regulations, except as otherwise provided.

1.6. Respondent agrees to undertake all actions required by the terms and conditions of this Consent Agreement, including any portions of this Consent Agreement incorporated by reference. Respondents waive any right to request a hearing on this Consent Agreement pursuant to HSC Section 25187.

FINDINGS OF FACT

2.1. Respondent is the owner and operator of the Skunk Train which is located at 100 East Laurel Street in Fort Bragg and 299 East Commercial Street in Willits, Mendocino County.

2.2. Respondent generated, stored, treated and/or disposed of hazardous waste without authorization from DTSC.

2.3. Hazardous waste or constituents have migrated from the Facility into the environment through the air, soil, groundwater, surface water and possibly subsurface gas.

2.4. The hazardous waste and hazardous constituents of concern at the Facility are used oil, paint, leaking old batteries, ties, and burned ties spots along the Noyo River.

2.5. The Facility is located in the fishing community of Fort Bragg and the farming community of Willits.

2.6. Releases from the Facility activities may have already migrated toward soil, air, surface water and off-site.

2.7. In September 1998, DTSC was notified by the Mendocino County Air Quality District that complaints were filed with that agency regarding the Facility. In September 1998, DTSC, Mendocino County Department of Health and Air Pollution Control, and the California Department of Fish and Game initiated investigation of potential hazardous waste contamination at the Facility.

2.8. During said investigation, piles of burned or unburned ties were found; surface soil samples along with ash and embers were collected and analyzed for the concentrations of inorganic and organic chemicals, and the sampling results showed apparent elevated levels of metals, polycyclic aromatic hydrocarbons and dioxin.

PROJECT COORDINATOR

3. Within fourteen (14) days of the effective date of this Consent Agreement, DTSC and Respondent shall each designate a Project Coordinator and shall notify each other in writing of the Project Coordinator selected. Each Project Coordinator shall be responsible for overseeing the implementation of this Consent Agreement and for designating a person to act in his/her absence. All communications between Respondent and DTSC, and all documents, report approvals, and other correspondence concerning the activities performed pursuant to this Consent Agreement shall be directed through the Project Coordinators. Each party may change its Project Coordinator with at least seven (7) days prior written notice.

WORK TO BE PERFORMED

4.1. DTSC, with cooperation from Respondent, will perform a Facility Assessment (FA) to identify areas which may require investigation and/or remediation.

4.2. Within 60 days of the effective date of this Consent Agreement, DTSC will review Facility-related files that are under the control or possession of Respondent, DTSC and other regulatory agencies to identify areas which may require investigation and/or remediation. Following DTSC's file review, DTSC will conduct a site inspection of the Facility within 75 days of the date of this Consent Agreement.

4.3. Within 45 days from the site inspection, DTSC will complete the FA.

4.4. If DTSC determines that investigation and/or remediation of hazardous waste releases at the Facility is necessary, DTSC and Respondent, within 30 days of the completion of the FA, will initiate negotiations for a separate consent agreement or an amendment to this Consent Agreement to address the necessary investigation and/or remediation activities. If another consent agreement or amendment to this Consent Agreement is not reached within 60 days of the completion of the FA, DTSC reserves its right to issue an order or take any other action provided for by law.

CALIFORNIA ENVIRONMENTAL QUALITY ACT

5. DTSC must comply with the California Environmental Quality Act (CEQA) insofar as activities required by this Consent Agreement are projects subject to CEQA. Respondents shall provide all information necessary to facilitate any CEQA analysis. DTSC will make an initial determination regarding the applicability of CEQA. If the activities are not exempt from CEQA, DTSC will conduct an Initial Study. Based on the

results of the Initial Study, DTSC will determine if a Negative Declaration or an Environmental Impact Report (EIR) should be prepared. DTSC will prepare and process any such Negative Declaration. However, should DTSC determine that an EIR is necessary, such an EIR would be prepared under a separate agreement between DTSC and Respondent.

DTSC APPROVAL

6.1. Respondent shall revise any workplan, report, specification, or schedule in accordance with DTSC's written comments. Respondent shall submit to DTSC any revised documents by the due date specified by DTSC. Revised submittals are subject to DTSC's approval or disapproval.

6.2. Upon receipt of DTSC's written approval, Respondent shall commence work and implement any approved reports in accordance with the schedule and provisions contained therein.

6.3. Any DTSC approved workplan, report, specification, or schedule required under this Consent Agreement shall be deemed incorporated into this Consent Agreement.

6.4. Verbal advice, suggestions, or comments given by DTSC representatives will not constitute an official approval or decision.

SUBMITTALS

7.1. Any report or other document submitted by Respondent pursuant to this Consent Agreement shall be signed and certified by the project coordinator, a responsible corporate officer, or a duly authorized representative.

7.2. The certification required by paragraph 7.1. above, shall be in the following form:

"I certify that the information contained in or accompanying this submittal is true, accurate, and complete. As to those portions of this submittal for which I cannot personally verify the accuracy, I certify that this submittal and all attachments were prepared at my direction in accordance with procedures designed to assure that qualified personnel properly gathered and evaluated the information submitted."

Signature: _____

Name: _____

Title: _____

Date: _____

7.3. Respondent shall provide two copies of all documents, including but not limited to, workplans, reports, and correspondence of fifteen (15) pages or longer. Submittals specifically exempted from this copy requirement are all progress reports and correspondence of less than 15 pages, of which one copy is required.

7.4. Unless otherwise specified, all reports, correspondence, approvals, disapprovals, notices, or other submissions relating to this Consent Agreement shall be in writing and shall be sent to the current Project Coordinators.

PROPOSED CONTRACTOR/CONSULTANT

8. All work performed pursuant to this Consent Agreement shall be under the direction and supervision of a professional engineer or registered geologist, registered in California, with expertise in hazardous waste site cleanup. Respondent's contractor or consultant shall have the technical expertise sufficient to fulfill his or her responsibilities. Within fourteen (14) days of the effective date of this Consent Agreement, Respondent shall notify DTSC Project Coordinator in writing of the name, title, and qualifications of the professional engineer or registered geologist and of any contractors or consultants and their personnel to be used in carrying out the terms of this Consent Agreement. DTSC may disapprove of Respondent's contractor and/or consultant.

ADDITIONAL WORK

9. DTSC may determine or Respondent may propose that certain tasks, including investigatory work, engineering evaluation, or procedure/methodology modifications are necessary in addition to, or in lieu of, the tasks and deliverables included in any part of DTSC-approved workplans. DTSC shall request in writing that Respondent perform the additional work and shall specify the basis and reasons for DTSC's determination that the additional work is necessary. Within fourteen (14) days

after the receipt of such determination, Respondent may confer with DTSC to discuss the additional work DTSC has requested. If required by DTSC, Respondent shall submit a workplan to DTSC for the additional work. Such workplan shall be submitted to DTSC within thirty (30) days of receipt of DTSC's determination or according to an alternate schedule established by DTSC. Upon approval of a workplan, Respondent shall implement it in accordance with the provisions and schedule contained therein. The need for, and disputes concerning, additional work are subject to the dispute resolution procedures specified in this Consent Agreement.

QUALITY ASSURANCE

10.1. All sampling and analyses performed by Respondent under this Consent Agreement shall follow applicable DTSC and United States Environmental Protection Agency guidance for sampling and analysis. Reports shall contain quality assurance/quality control and chain of custody procedures for all sampling, monitoring, and analytical activities. Any deviations from the approved reports must be approved by DTSC prior to implementation, must be documented, including reasons for the deviations, and must be reported in the applicable report (e.g., Closure Certification Report).

10.2. The names, addresses, and telephone numbers of the California State certified analytical laboratories Respondent proposes to use must be specified in the applicable reports.

SAMPLING AND DATA/DOCUMENT AVAILABILITY

11.1. Respondent shall submit to DTSC upon request the results of all sampling and/or tests or other data generated by its employees, agents, consultants, or contractors pursuant to this Consent Agreement.

11.2. Respondent shall notify DTSC in writing at least seven (7) days prior to beginning each separate phase of field work approved under any report required by this Consent Agreement. If Respondent believes it must commence emergency field activities without delay, Respondents may seek emergency telephone authorization from DTSC Project Coordinator or, if the Project Coordinator is unavailable, his/her Branch Chief, to commence such activities immediately.

11.3. At the request of DTSC, Respondent shall provide or allow DTSC or its authorized representative to take split or duplicate samples of all samples collected by Respondent pursuant to this Consent Agreement. Similarly, at the request of Respondent, DTSC shall allow Respondent or its authorized representative to take split or duplicate samples of all samples collected by DTSC under this Consent Agreement.

ACCESS

12. Subject to the Facility's security and safety procedures, Respondent agrees to provide DTSC and its representatives access at all reasonable times to the Facility and any other property to which access is required for implementation of this Consent Agreement and shall permit such persons to inspect and copy all records, files, photographs, documents, including all sampling and monitoring data, that pertain

to work undertaken pursuant to this Consent Agreement and that are within the possession or under the control of Respondent or its contractors or consultants.

RECORD PRESERVATION

13.1. Respondent shall retain, during the pendency of this Consent Agreement and for a minimum of six (6) years after its termination, all data, records, and documents that relate in any way to the performance of this Consent Agreement or to hazardous waste management and/or disposal at the Facility. Respondent shall notify DTSC in writing ninety (90) days prior to the destruction of any such records, and shall provide DTSC with the opportunity to take possession of any such records. Such written notification shall reference the effective date, caption, and docket number of this Consent Agreement and shall be addressed to:

James M. Pappas, P.E.
Chief
Land Disposal Branch
Department of Toxic Substances Control
10151 Croydon Way, Suite 3
Sacramento, California 95827

13.2. If Respondent retains or employs any agent, consultant, or contractor for the purpose of carrying out the terms of this Consent Agreement, Respondent will require any such agents, consultants, or contractors to provide Respondent a copy of all documents produced pursuant to this Consent Agreement.

13.3. All documents pertaining to this Consent Agreement shall be stored in a central location at the Facility [or at a location agreed to by the parties] to afford ease of access by DTSC and its representatives.

DISPUTE RESOLUTION

14.1. The parties agree to use their best efforts to resolve all disputes informally. The parties agree that the procedures contained in this section are the sole administrative procedures for resolving disputes arising under this Consent Agreement. If Respondent fails to follow the procedures contained in this section, they shall have waived its right to further consideration of the disputed issue.

14.2. If Respondent disagrees with any written decision by DTSC pursuant to this Consent Agreement, Respondent's Project Coordinator shall orally notify DTSC Project Coordinator of the dispute. The Project Coordinators shall attempt to resolve the dispute informally.

14.3. If the Project Coordinators cannot resolve the dispute informally, Respondent may pursue the matter formally by placing its objection in writing. Respondent's written objection must be forwarded to James M. Pappas, Chief, Land Disposal Branch, Department of Toxic Substances Control, with a copy to DTSC Project Coordinator. The written objection must be mailed to the Branch Chief within fourteen (14) days of Respondent's receipt of DTSC's written decision. Respondent's written objection must set forth the specific points of the dispute and the basis for Respondent's position.

14.4. DTSC and Respondent shall have fourteen (14) days from DTSC's receipt of Respondents' written objection to resolve the dispute through formal discussions. This period may be extended by DTSC for good cause. During such period, Respondent may meet or confer with DTSC to discuss the dispute.

14.5. After the formal discussion period, DTSC will provide the Respondent with its written decision on the dispute. DTSC's written decision will reflect any agreements reached during the formal discussion period and be signed by James M. Pappas, Chief, Land Disposal Branch, Department of Toxic Substances Control, or his/her designee.

14.6. During the pendency of all dispute resolution procedures set forth above, the time periods for completion of work to be performed under this Consent Agreement that are affected by such dispute shall be extended for a period of time not to exceed the actual time taken to resolve the dispute. The existence of a dispute shall not excuse, toll, or suspend any other compliance obligation or deadline required pursuant to this Consent Agreement.

RESERVATION OF RIGHTS

15.1. DTSC reserves all of its statutory and regulatory powers, authorities, rights, and remedies, both legal and equitable, which may pertain to Respondent's failure to comply with any of the requirements of this Consent Agreement. This Consent Agreement shall not be construed as a covenant not to sue, release, waiver, or limitation on any rights, remedies, powers, or authorities, civil or criminal, that DTSC has under any statutory, regulatory, or common law authority.

15.2. DTSC reserves the right to disapprove of work performed by Respondent pursuant to this Consent Agreement and to request that Respondent perform additional tasks.

5.3. DTSC reserves the right to perform any portion of the work consented to herein or any additional site characterization, feasibility study, and/or remedial actions it deems necessary to protect human health and/or the environment. DTSC may exercise its authority under any applicable state or federal law or regulation to undertake response actions at any time. DTSC reserves its right to seek reimbursement from Respondent for costs incurred by the State of California with respect to such actions. DTSC will notify Respondent in writing as soon as practicable regarding the decision to perform any work described in this section.

15.4. If DTSC determines that activities in compliance or noncompliance with this Consent Agreement have caused or may cause a release of hazardous waste and/or hazardous waste constituents, or a threat to human health and/or the environment, or that Respondent is not capable of undertaking any of the work required, DTSC may order Respondent to stop further implementation of this Consent Agreement for such period of time as DTSC determines may be needed to abate any such release or threat and/or to undertake any action which DTSC determines is necessary to abate such release or threat. The deadlines for any actions required of Respondent under this Consent Agreement affected by the order to stop work shall be extended to take into account DTSC's actions.

15.5. This Consent Agreement is not intended to be nor shall it be construed to be a permit. The parties acknowledge and agree that DTSC's approval of any report, plan, and/or specification does not constitute a warranty or representation that the workplans, plans, and/or specifications will achieve the required cleanup or performance standards. Compliance by Respondent with the terms of this Consent

Agreement shall not relieve Respondent of its obligations to comply with HSC or any other applicable local, state, or federal law or regulation.

OTHER CLAIMS

16. Except as provided in this Consent Agreement, nothing in this Consent Agreement shall constitute or be construed as a release from any claim, cause of action, or demand in law or equity against any person, firm, partnership, or corporation for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous constituents, hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken or migrating from the Facility.

OTHER APPLICABLE LAWS

17. All actions required to be taken pursuant to this Consent Agreement shall be undertaken in accordance with the requirements of all local, state, and federal laws and regulations. Respondent shall obtain or cause their representatives to obtain all permits and approvals necessary under such laws and regulations.

REIMBURSEMENT OF DTSC'S COSTS

18.1. Respondent shall pay DTSC's costs incurred in the implementation of this Consent Agreement.

18.2. An estimate of DTSC's costs for conducting FA is attached as Exhibit A, showing the amount of \$19,500.00. It is understood by the parties that the amount

shown on Exhibit A is an estimate only and may differ from the actual costs incurred by DTSC in implementing this Consent Agreement.

18.3. Respondent shall make an advance payment to DTSC in the amount of \$5,000.00 within 30 days of the effective date of this Consent Agreement. If the advance payment exceeds DTSC's costs, DTSC will refund the balance within 120 days after the execution of the Acknowledgment of Satisfaction pursuant to Section 20 of this Consent Agreement.

18.4. After the advance payment, DTSC will provide Respondent with a billing statement at least quarterly, which will include the name of the employee, identification of the activity, the amount of time spent on each activity, and the hourly rate charged. If Respondent does not pay an invoice within 60 days, the amount is subject to interest as provided by HSC Section 25360.1.

18.5. DTSC will retain all costs records associated with the work performed under this Consent Agreement as required by state law. DTSC will make all documents which support DTSC's cost determination available for inspection upon request, as provided by the Public Records Act.

18.6. Any dispute concerning costs pursuant to this Consent Agreement is subject to the Dispute Resolution provision of this Consent Agreement. DTSC reserves its right to recover unpaid costs under applicable state and federal laws.

18.7. All payments shall be made within 30 days of the date of the billing statement by check payable to the Department of Toxic Substances Control and shall be sent to:

Accounting Unit
Department of Toxic Substances Control
P. O. Box 806
Sacramento, California 95812-0806

All checks shall reference the name of the Facility, the Respondent's name and address, and the docket number of this Consent Agreement. Copies of all checks and letters transmitting such checks shall be sent simultaneously to DTSC's Project Coordinator.

MODIFICATION

19.1. This Consent Agreement may be modified by mutual agreement of the parties. Any agreed modifications shall be in writing, shall be signed by both parties, shall have as their effective date the date on which they are signed by DTSC, and shall be deemed incorporated into this Consent Agreement.

19.2. Any requests for revision of an approved workplan requirement must be in writing. Such requests must be timely and provide justification for any proposed workplan revision. DTSC has no obligation to approve such requests, but if it does so, such approval will be in writing and signed by James M. Pappas, Chief, Land Disposal Branch, Department of Toxic Substances Control, or his designee. Any approved workplan modification shall be incorporated by reference into this Consent Agreement.

TERMINATION AND SATISFACTION

20. The provisions of this Consent Agreement shall be deemed satisfied upon the execution by both parties of an Acknowledgment of Satisfaction (Acknowledgment). DTSC will prepare the Acknowledgment for Respondent's signatures. The Acknowledgment will specify that Respondents has demonstrated to the satisfaction of DTSC that the terms of this Consent Agreement including payment of DTSC's costs have been satisfactorily completed. The Acknowledgment will affirm Respondent's continuing obligation to preserve all records after the rest of the Consent Agreement is satisfactorily completed.

EFFECTIVE DATE

21. The effective date of this Consent Agreement shall be the date on which this Consent Agreement is signed by all the parties. Except as otherwise specified, "days" means calendar days.

SIGNATORIES

22. Each undersigned representative certifies that he or she is fully authorized to enter into this Consent Agreement.

DATE: June 5, 2005 BY: //Original signed by//

**Mr. John Mayfield
Chairman of the Board
California Western Railroad**

DATE: June 5, 2005 BY: //Original signed by//

**James M. Pappas, P.E.,
Chief
Land Disposal Branch
Department of Toxic Substances Control**

EXHIBIT A

skunk-estimate

ACTIVITY	Staff		Legal		PPS		Geologist		IH	Management		DTSC Total		
	Hours	\$	Hours	\$	Hours	\$	Hours	\$		Hours	\$	Hours	\$	
Site Assement														
Conducting Site-Assessment	120	\$15,600		\$ -		\$ -	30	\$ 3,900			12		162	19500
Review of sampling and analysis data		\$ -		\$ -				\$ -			\$ -		\$ -	
Hourly rate		\$ 119		\$ 149		\$ 101		\$ 130		\$ 130		\$ 143		
TOTALS	120	\$15,600	0	\$ -	0	\$ -	30	\$ 3,900			12	\$ -	162	\$ 19,500