

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	)	
P.O. Box 907	)	CORRECTIVE ACTION
Fort Bragg, California 95437	)	CONSENT AGREEMENT
	)	
	)	
	)	
	)	Health and Safety Code
Respondent	)	Section 25187
_____	)	

INTRODUCTION

1. The Department of Toxic Substances Control (DTSC), California Western Railroad 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. California Western Railroad is the owner and operator of the Skunk Train which is stationed at Laurel Street in Fort Bragg, Mendicino County (Facility). California Western railroad is hereby referred to as the "Respondent".

1.4. Respondent engaged in railroad operation of the Skunk Train which is known as 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 agree 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, Mendicino County.

2.2. Respondent has not been a potentially Treatment, Storage or Disposal (TSD) facility, but has been generating hazardous waste such as used oil, paint, and batteries.

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. DTSC became involved in this project in September, 1998 when was notified by the Mendicino County Air Quality District that complained were filed with that agency regarding the Facility. The investigation started in September, 1998, and Mendicino County Department of Health and Air Pollution Control, along with California Department of Fish and Game participated in the investigation.

2.8. DTSC investigated areas along the railroad tracks of the Facility for potential contamination on September 23, 1998, and January 29, 1999. During the 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. The result showed apparent elevated levels of metals, polycyclic aromatic hydrocarbons and dioxin.

2.9. DTSC reviewed the sampling results and recommended an assessment for the subject area and the nearby river.

#### 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

Respondents 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. Within 60 days of the completion of the FA, Respondent and DTSC will enter into negotiations with the goal to entering into a separate Consent Agreement which specify activities necessary to address the areas identified in the FA, if necessary. Work to be performed pursuant to this Consent Agreement is specified below.

4.2. Within 60 days of the effective date of this Consent Agreement, DTSC will review documentation on file with DTSC, the Respondent, 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, within 75 days from the date of this Consent Agreement. Information gathered from the file review and site inspection will be used to prepare the FA.

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

#### 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 USEPA 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 propose 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 believe 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, Respondents 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 their 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 agree 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 Respondents 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, Chief  
Land Disposal Branch  
Department of Toxic Substances Control  
10151 Croydon Way, Suite 3  
Sacramento, California 95827

13.2. If Respondent retain or employ any agent, consultant, or contractor for the purpose of carrying out the terms of this Consent Agreement, Respondents 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 fail 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 disagree 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. Respondents' 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 Respondents' 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 Respondents 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.

15.3. 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 Respondents are 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 Respondents 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 Respondents with the terms of this Consent Agreement shall not relieve Respondents of their 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. Respondents 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 and reviewing closure certification related reports, 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 do 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 Respondents' names and addresses, 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: \_\_\_\_\_

/signed by/

Mr. John Mayfield

Chairman of the Board

California Western Railroad

DATE: 6/29/01

/signed by/

James M. Pappas, P.E., Chief

Land Disposal Branch

Department of Toxic Substances Control

Cost Estimate Worksheet

Project Title: California Western Railroad  
 Project Phase: Facility Assessment Oversight  
 Contact: Wendy Esquire  
 Billing Address: P.O. Box 907, Fort Bragg, California 95437  
 Contact Tel. #: (707) 964-6371

Code	Classification	Staff Hours	HWMP Hourly Rate + 191.68%	Staff Cost
AWP Event: Facility Assessment Oversight Billing Code: 22120 / 09 / 00 / 520041				
<b>PERMITTING</b>				
3564	Haz. Sub. Scientist	0.0	110	
3726	Haz. Sub. Engineer	60.0	122	7,320.00
3565	Sr. Haz. Sub. Sci.	4.0	126	504.00
3724	Sup. Haz. Sub. Eng. I	0.0	134	0.00
3723	Sup. Haz. Sub. Eng. II	0.0	147	0.00
1139	Office Technician (T)	2.0	62	124.00
<b>REGIONAL CHEMISTRY SUPPORT</b>				
3565	Sr. Haz. Sub. Sci.	0.0	126	0.00
<b>REGIONAL GEOLOGY SUPPORT</b>				
3728	Haz. Sub. Eng. Geo.	0.0	116	0.00
3730	Sup. Haz. Sub. Eng. Geo. I	0.0	134	0.00
<b>OFFICE OF SCIENTIFIC AFFAIRS</b>				
7978	Staff Toxicologist	1.0	149	149.00
7943	Senior Toxicologist	0.0	156	0.00
<b>OFFICE OF LEGAL COUNSEL</b>				
5778	Staff Counsel	1.0	152	152.00
<b>PUBLIC PARTICIPATION</b>				
5373	Public Part., Spec.	0.0	103	0.00
5372	Public Part., Sup.	0.0	118	0.00
1139	Office Technician (T)	0.0	62	0.00
<b>PROGRAM AUDITS &amp; ENVIRONMENTAL ANALYSIS</b>				
4711	Assoc. Env. Planner	0.0	108	0.00
4713	Sr. Env. Planner	0.0	133	0.00
<b>OTHER</b>				
	Contingency @ 10%			824.90
				.....
				\$ 9,073.90