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File Number: 88151-00117

March 25, 2013

By Certified Mail
Return Receipt Requested

Jayne Williams, City Attorney
City of San Leandro
Meyers Nave
555 12th Street, Suite 1500
Oakland, CA 94607

Re: ***Stege Pistol Range, Richmond, California***

Dear Ms. Williams:

We represent Union Pacific Railroad Company (“UP”) in connection with the former Stege Pistol Range site located in Richmond, California (the “Property”). UP, as successor to Southern Pacific Transportation Company (“SPTC”), is the current owner of the Property. UP has discovered significant lead contamination in the soil from the ammunition used in target practice activities at the Property. We are informed and believe that the target practice activities of the San Leandro Police Department (“Agency”) and other law enforcement agencies caused and/or contributed to the lead contamination in the soil at the Property. The cleanup of the Property is currently under the direction of the California Department of Toxic Substances Control (“DTSC”).

SPTC recognized, and UP continues to recognize, the importance of assuring that law enforcement agencies such as yours have access to shooting ranges. To that end, SPTC permitted your agency, and other agencies, to use the Stege Pistol Range. Moreover, SPTC and UP have long-enjoyed the cooperative relationship between its Police Department and the law enforcement agencies in the communities surrounding the Stege Pistol Range.

UP now faces significant costs for remediating the lead contamination that resulted from the use of the range by your agency and others. We trust that you will understand that it is not fair for UP to bear these costs alone and UP must ask those that contributed to the contamination to share in the costs of cleaning it up.

UP has already incurred in excess of approximately \$512,000 in costs to investigate, assess and develop a plan for remediation of the contaminants at and in the vicinity of the Property. A draft Removal Action Work Plan for the Property, recommending a remedy of excavation, offsite disposal, and institutional controls, has been submitted for public review and

is attached hereto. UP anticipates that it will spend in excess of \$2.6 million to complete the work under the Remedial Action Work Plan. The presence of contaminants has also caused monetary damages to UP as it has interfered with and continues to interfere with UP's economic use of the Property.

In order to reach an expeditious resolution, UP is asking the Agency to contribute \$80,000 towards the cleanup of the Property. This sum will help UP defray its costs in remediating a problem caused by many. This sum represents only a small fraction of the more than \$3 million that UP will incur. The total of all sums that UP is requesting from all the agencies that used the range is far less than the amount UP will spend. In return for the payment of \$80,000, UP will release and indemnify the Agency from claims related to the contamination at the Property, including claims by DTSC or other governmental agencies as more specifically set forth in the attached settlement agreement ("Settlement Agreement").

We have enclosed the Settlement Agreement for your execution. As UP is offering this settlement amount in an effort to reach a prompt resolution and to avoid incurring attorneys' fees, we ask that you respond with a signed agreement by May 9, 2013.

It may be helpful for you to understand more about the basis for UP's request:

During the period from approximately the early 1980s to 1997, certain law enforcement agencies used the Property for target practice pursuant to written use agreements entered into with SPTC. I am enclosing a copy of the use agreement between SPTC and the Agency (the "Use Agreement") that we have located thus far. The Use Agreement contains the following indemnity provision that runs in favor of UP:

"Permittee agrees to and shall indemnify and hold harmless SPT, its officers, agents, and employees from and against any and all claims, demands, losses, damages, causes of action, suits, and liabilities of every kind (including reasonable attorneys' fees, court costs, and other expenses related thereto) for injury to or death of a person or for loss of or damage to any property arising out of the use of said Facilities by Permittee and for any action taken or permitted by Permittee, its agents or employees under this Agreement. It is the express intention of the parties hereto, both Permittee and SPT, that the indemnity provided for in this paragraph indemnifies SPT for its own negligence, whether that negligence is active or passive, or is a concurring cause of the injury, death or damage; provided that said indemnity shall not protect SPT from liability for death, injury or damage arising from the sole negligence of SPT, its officers, agents or employees."

Jayne Williams, City Attorney
March 25, 2013
Page 3

UP is not making a demand for defense or indemnity at this time. Rather, in exchange for the Agency's participation in the sharing of costs as described above, UP will release and indemnify the Agency.

Importantly, under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§ 9601-9675, law enforcement agencies who use shooting ranges are parties responsible for their remediation both as "operators" and "arrangers." *See, e.g., Kamb v. U.S. Coast Guard*, 869 F.Supp. 793 (N.D.Cal. 1994). Again, UP will release and indemnify the Agency against such liability as is set forth in the Settlement Agreement.

We may need further information about the Agency's activities at the Property and therefore a Public Records Act Request accompanies this letter. You may disregard the request if you sign and return the Settlement Agreement by May 9, 2013. If you have any questions, please feel free to contact my associate Sedina Banks at 310.201.7436.

Sincerely,



David E. Cranston

DEC:sl
Enclosure

cc: Robert C. Bylsma, Esq.