

CITY OF SACRAMENTO

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DEPARTMENT OF LAW

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April 26, 1985

Law and Legislation Committee
Sacramento, CA 95814

Re: Agreement Between Southern Pacific and
State Department of Health Services

Dear Committee Members:

On February 28, 1985, the Law and Legislation Committee asked me to obtain a copy of the settlement agreement between the Southern Pacific Transportation Company and the State Department of Health Services. The settlement agreement provides for the establishment of a new system for handling Southern Pacific's hazardous waste and the clean up of the old ponds used as Southern Pacific's waste disposal site. A copy of the agreement is attached. Also, we have prepared a brief summary of the agreement for your information. This material is submitted to you as an information item. No action is necessary.

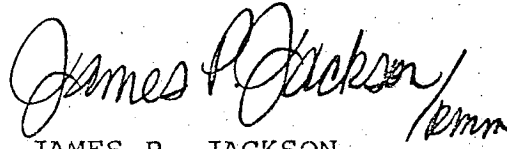
For many years Southern Pacific discharged waste water into settlement ponds located on the north side of its property. The oils and floatables were skimmed off the top and the remaining water was pumped to the sewer plant. The ponds were lined with compacted soil but were not lined as required by current law. The ponds were approved by government authorities in the 1960's.

In 1976, the law changed regarding hazardous waste and regulations were adopted in 1980. After 1980, a permit was required for storage of hazardous waste materials. Southern Pacific did not obtain a permit for its ponds and that is the reason for the proceeding against it. An inspection was conducted in July, 1983. It was subsequently decided, pursuant to the settlement agreement, that the ponds would be closed and Southern Pacific would develop a new system for the handling of hazardous waste materials. Under the new system, Southern Pacific will store their materials above ground and in tanks. Some form of pretreatment will be conducted prior to transporting the remaining liquids to the regional sanitation plant. The original ponds are not being used. Southern Pacific has hauled off between 2,000 and 3,000 cubic yards of sludge from the ponds to a hazardous disposal site. A plan is being developed for clean up of the remaining soil.

Law and Legislation Committee
Agreement Between Southern Pacific and
State Department of Health Services
April 26, 1985

At the present time, the parties are approximately two weeks behind the schedule listed in the agreement. Southern Pacific has submitted its "closure plan" to the state and federal agencies. These agencies are presently reviewing the plan and thereafter, will meet with the railroad to determine what must be done.

Sincerely,

A handwritten signature in cursive script that reads "James P. Jackson". To the right of the signature, there are initials "rmm" written in a smaller, less formal script.

JAMES P. JACKSON
City Attorney

JPJ:rmm

Attachment

Southern Pacific Transportation Company

RECEIVED
CITY ATTORNEY'S OFFICE

JOHN J. CORRIGAN
GENERAL SOLICITOR

Southern Pacific Building - One Market Plaza
San Francisco, California 94105
(415) 541-1000

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DAVID W. LONG
GENERAL ATTORNEYS

March 1, 1985

WRITER'S DIRECT DIAL NUMBER

(415) 541-1769

Jim Jackson, Esq.
City Attorney of Sacramento
812 Tenth Street
Sacramento, CA 95814

Dear Mr. Jackson:

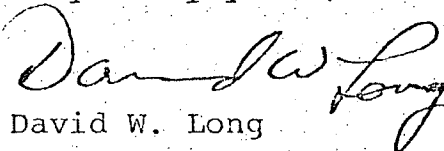
Reference is made to our telephone conversation of March 1, 1985, regarding cleanup measures being undertaken by Southern Pacific at its Sacramento Locomotive Works waste water pond.

Enclosed is a copy of the original agreement between the Southern Pacific and the Department of Health Services (DOHS). As I explained to you, due dates incorporated into the original agreement have been revised and a new agreement or addendum is being prepared which will incorporate the new due dates.

Currently, Southern Pacific, through its consultant, is on the mark under the new schedule and remedial action is progressing satisfactorily.

In due course we would like to have the opportunity to explain the technical aspects of our project with you.

Very truly yours,


David W. Long

BEFORE THE
DEPARTMENT OF HEALTH SERVICES
STATE OF CALIFORNIA

RECEIVED
CITY ATTORNEY'S OFFICE

In Re:) SETTLEMENT AGREEMENT
))
Southern Pacific Transportation) AND
Company, Sacramento Facility))

) SCHEDULE OF COMPLIANCE

I

On July 11 and 12, 1983, the State Department of Health Services (Department) and the United States Environmental Protection Agency (EPA) conducted a joint inspection of the Southern Pacific Transportation Company (SP) Sacramento Facility to determine SP's compliance with State Hazardous Waste Control Laws (Act) and the Resource Conservation and Recovery Act (RCRA) (42 USC 6901 et seq.). As a result of that inspection, the Department alleges that SP is in violation of specific provisions of the Act as set forth more fully in Paragraph VI.

II

The Settlement Agreement (Agreement) and Schedule of Compliance (Order) have been agreed to by SP and the Department to resolve the matters alleged in Paragraph VI without litigation and

to facilitate implementation of the measures described herein. Agreement and Order have been reviewed by the Central Valley Regional Water Quality Control Board (Board) in an effort to coordinate the state approach for the design and implementation of the water quality investigation and correction programs.

III

SP and the Department admit and agree that the Department has jurisdiction over these matters and the parties.

IV

This Agreement and Order apply to and are binding upon the parties and the officers, agents, successors, and assigns of the parties.

V

For the purposes of this Agreement and Order, SP neither admits nor denies the allegations in Paragraph VI and SP agrees to waive any right to a hearing prior to issuance of the Order or to the payment of the amounts agreed to in Paragraph VII of this Agreement. SP does not waive, for the purposes of any proceedings, except any proceeding brought to enforce the terms of this agreement, any defenses which it might have raised or which it might raise in any other

proceeding brought by the Department or any other person. Neither SP's consent to this agreement, nor anything in this document, shall constitute an admission by SP with respect to any factual or legal matter, except for paragraphs I through IV.

VI

The Department alleges that SP has violated, or is in violation, of the Act for the following reasons:

1. SP has treated hazardous waste and has disposed of that hazardous waste in surface impoundments (impoundments) on-site without a permit or an Interim Status Document (Health and Safety Code, Sections 25189, 25142, 25154, and 25201 and Title 22, California Administrative Code (CAC), Sections 66387 and 66490).
2. SP has not submitted a hazardous waste facility closure maintenance report as required by Health and Safety Code, Section 25246.
3. As a result of its treatment and disposal to the impoundments, SP has committed the additional following violations of regulations adopted pursuant to the Act:

- a. As a producer of hazardous waste, SP has not taken steps to ensure that its waste was taken to a facility permitted by the Department (22 CAC, Section 66505).
- b. SP has not complied with the facility personnel requirements in 22 CAC, Section 66520.
- c. SP has not complied with the facility equipment requirements in 22 CAC, Section 66525; with the facility operation requirements in 22 CAC, Sections 66530 and 66540; and with the recordkeeping and reporting requirements in 22 CAC, Section 66555.
- d. SP has not paid a fee for on-site disposal of hazardous waste as required in 22 CAC, Section 66672.

VII

SP agrees to reimburse the Department \$40,000 as full reimbursement for resources expended on this matter and to place \$10,000 in a trust fund in the Department's name for reimbursement of private laboratory costs incurred by the Department for analytical work on split samples provided to the Department by SP pursuant to Paragraph VIII. The number of split samples analyzed and the method of analysis shall be as included in the approved

sampling plan and plan of correction as referenced in Paragraph VIII. SP will make such payment and set up such trust fund within sixty (60) days after execution of this Agreement. Such payment shall in no way be construed as a fine or penalty. Any money remaining in the trust fund on September 15, 1985, shall revert to SP on that date.

VIII

SP agrees to perform the following actions to remedy the violations alleged in Paragraph VI:

1. By May 25, 1984, SP shall repipe the existing impoundments and provide a pipeline to replace the existing ditch. Wastewater and accumulated rainwater will be removed from the existing impoundment by pumping into existing oil/water separator. Removal of sludges from the impoundments will be accomplished by August 30, 1984, following dewatering of the impoundments and drying of sludge materials. Sludge removal will occur to a depth at which impoundment subsoils are observed. Changes in discharges to the sewer must be undertaken by SP pursuant to approval from the appropriate sanitation district.

2. Within thirty (30) calendar days from the date of this Agreement, SP shall submit to the Department all currently available information on the types, concentrations and quantities of wastes discharged to the surface impoundments and disposed of

off-site. This information shall include, but shall not be limited to, an update of the information on the facility map submitted to the Department by SP.

3. Within thirty (30) calendar days from the date of this Agreement, SP shall submit to the Department and the Board for approval a sampling plan to define the area and vertical extent of contamination in the area surrounding the surface impoundments and the drainage ditch leading to the discharge to the sewer. The sampling plan shall include, but shall not be limited to, the following.

a. A description of chemicals to be analyzed and the location and rationale for each proposed sample.

b. A systematic waste material and soil sampling/analysis program to define the surface dimensions and depth of hazardous waste deposits and soil contamination.

c. A quality control/safety element to assure that field sampling is representative, laboratory analysis is accurate, and procedures prevent human exposure to hazardous waste.

d. A groundwater sampling/analysis program around the impoundments to determine if groundwater contamination exists and a definition of any contaminated plume.

e. A schedule for initiation, implementation, and completion of all elements of the sampling, including the submittal of a sampling data report to the Department. The sampling data report shall include all data acquired through implementation of the Plan.

4. SP shall implement the sampling plan in compliance with the terms contained therein, including, but not limited to, the schedule for completion.

5. By October 1, 1984, SP shall submit to the Department and the Board for approval a detailed plan of correction for contamination of soil, groundwater and equipment in the impoundment area. The plan of correction shall be designed to ensure that contamination is managed in compliance with the Act and shall include a closure plan for the surface impoundments that complies with the requirements of 40 CFR 265.112.

6. SP shall implement the Plan of Correction in compliance with the terms and schedule contained therein and shall complete corrective measures pursuant thereto.

7. By June 15, 1985, SP shall submit to the Department a certification that it is in compliance with all of the foregoing applicable state hazardous waste management regulatory requirements, including closure requirements.

8. Within sixty (60) days after the date of this Agreement, SP shall submit to the Department either a complete Operations Plan for a hazardous waste facility permit for the wastewater pretreatment facility, documentation that the waste is not hazardous or an application for a variance with supporting documentation. The Operations Plan shall include detailed plans for the pretreatment facility.

9. SP shall construct and place in operations a wastewater pretreatment facility as permitted by the Department on a schedule to be agreed upon by the Department and SP.

10. Based upon the report submitted pursuant to Paragraphs 2 and 3 above and any other available information, SP shall submit to the Department and the Board for approval, within thirty (30) days of the report, a groundwater monitoring program and schedule.

11. SP shall implement the approved groundwater monitoring program in compliance with the terms therein.

12. If the Department and SP concur as a result of the Report submitted pursuant to Paragraph IX or the information submitted pursuant to Paragraph VIII(2), that it is feasible to remove additional waste for off-site disposal, SP shall immediately provide for off-site disposal of such wastes until adequate pre-treatment is available on-site.

IX

In addition, SP agrees to submit to the Department an overall site investigation report within 90 days from the date of this Agreement. This report shall describe the physical site and the hazardous materials/waste historically or currently handled, stored, treated, or disposed of on-site. The report shall include, but shall not be limited to the following:

1. Physical site description--describe and locate on maps or engineering drawings the following information on the source site and adjacent areas, to the extent such information is reasonably available or ascertainable:

- a. Site dimensions, acreage, and general location.
- b. Size and configuration of buildings and other structures.

- c. Surface drainage patterns and control systems.
- d. Existing contours to one-foot systems.
- e. General soil types and permeability.
- f. Groundwater depths and directions of flow.
- g. Subsurface drainage patterns.
- h. Past and present hazardous materials handling, storage, or disposal systems.
- i. Past and present hazardous waste handling, storage, or disposal systems.
- j. Past chemical spills, leaks, or fires.
- k. Past and present building floor drain systems.
- l. Past and present washdown and cleanup areas.
- m. Past and present sumps, tanks, and pipelines.

- n. Product storage areas.
 - o. Wastewater treatment and disposal systems.
2. Hazardous materials/waste description--provide the following for each hazardous materials/waste historically or currently handled, stored, spilled, or disposed on the site; to the extent such information is reasonably available or ascertainable:
- a. Material Safety Data Sheets (MSDS) available from manufacturers of the hazardous materials utilized at the Sacramento yard.
 - b. Past and present annual quantities handled, stored, or deposited on the site.
 - c. Description of past and present handling, collection, storage, and disposal procedures.
3. An analysis of the feasibility of removing and disposing of additional wastes off-site.

X

Whenever a plan is submitted to the Department or to the staff of the Board for their approval pursuant to this Agreement and Order, the Department and the staff of the Board shall review it and either approve it or specify modifications within 15 working days of its receipt. If the Department or the staff of the Board specified modifications which require SP to amend its plan and to resubmit it for approval, SP shall resubmit the required amendment(s) within 15 working days of receipt of the Department's modifications.

XI

SP and the Department agree that facts determined through implementation of the sampling plan or plan of correction or other factors may necessitate adjustment of the dates in Paragraph VIII for submittal of the sampling data report and the plan of correction and for completion of the plan of correction. The Department and SP agree therefore that within thirty (30) days before each of the following dates SP and the Department will meet to discuss the necessity for adjusting the corresponding compliance date:

1. The date on which the sampling data report must be submitted to the Department;
2. The date on which the correction plan must be submitted to the Department; and
3. The date on which the plan of correction must be completed.

If the Department and SP agree that such an adjustment is necessary, such adjustment shall be made in writing and incorporated as part of this Agreement. The Department's determination of the necessity for such an adjustment shall be subject to the provisions of the second paragraph in Paragraph XII.

If a compliance date is adjusted pursuant to this Paragraph, all subsequent related compliance dates shall be automatically adjusted by the same amount.

XII

If for any reason, SP is unable to perform any activity or submit any document in compliance with the schedule set forth herein or in compliance with any work schedule submitted pursuant to this Agreement and approved by the Department and the staff of the Board, SP may request, in writing, an extension of the time specified. The extension request shall include a justification for

the delay. SP shall request such an extension as soon as possible after becoming aware that it will be unable to meet a date for compliance.

If the Department is convinced that good cause exists for an extension, it will grant the request and specify in writing a new schedule. If a dispute arises concerning the validity of a claim for schedule extension, such disputes will be resolved through arbitration procedures acceptable to SP and the Department. No penalty shall be imposed or paid pursuant to paragraph XIII for any time period included within an extension granted under this paragraph.

XIII

In the event that SP fails to submit any document or perform any activity within the time specified in the Order and Schedule of Compliance or fails to obtain an extension as provided in paragraph XII, including any work schedule submitted under this Agreement and approved by the Department, SP shall pay to the Department a civil penalty of \$2,500 for each day of noncompliance pursuant to Health and Safety Code, Section 25188. SP agrees that any item of noncompliance constitutes a failure to take timely and proper action pursuant to Health and Safety Code, Section 25355(b). The provisions of this paragraph do not apply if SP can establish

that its failure to comply with a deadline is due solely to an Act of God.

XIV

Except as specifically provided in Paragraph XV, nothing in this Agreement or Order shall be construed to prevent or limit the Department or the Board from taking any additional action authorized by law, including, but not limited to, removal, remedial or cost recovery actions pursuant to the Hazardous Substances Act, Health and Safety Code, Section 25300, et seq.

XV

In consideration of SP's performance under this Agreement, and upon completion of that performance in compliance with this Agreement and Order, the Department hereby covenants not to take civil judicial action against SP on the matters alleged in Paragraph VI.

XVI

Wherever notification or submission of documents are required under this Agreement, they shall be addressed to Section Chief, Northern California Section, Toxic Substances Control

Division, Department of Health Services, 4250 Power Inn Road, Sacramento, CA 95826 and to the Central Valley Regional Water Quality Control Board, 3210 "S" Street, Sacramento, CA 95816-7090. If this person or address changes, SP will be immediately notified.

XVII

SP and the Department hereby consent to this Agreement and the issuance of the Order and Schedule of Compliance by their duly authorized representative and stipulate that without the necessity of a hearing or findings of fact and conclusions of law the Director of the Department of Health Services or his duly authorized representative may enter an order binding on the parties in accordance with this Settlement Agreement and Schedule of Compliance.

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XVIII

The Board staff has reviewed and concurs with this Settlement Agreement and Schedule of Compliance. SP shall submit copies of all sampling plans, implementation plans, plans of correction, ground water monitoring programs and site investigation reports to the Board simultaneously. All groundwater plans shall be reviewed and approved by staff of the Board.

Date

Department of Health Services
State of California

APR 06 1984

Date

DK M. Mca

Southern Pacific Transportation
Company