Rocky Flats Industrial Park Environmental Covenant Summary

Covenant ID: HMCOV00026

Covenant Information:

Covenant Date: March 17, 2006
Self Reporting: Yes
Media of Concern:
- Surface Water: No
- Groundwater: Yes
- Air: No
- Soil: Yes
- Other: No

Contaminants of Concern: VOCs (volatile organic compounds)
Property Restrictions:
1. Prohibition on residential and public use
2. Prohibition on agricultural use
3. Restriction on excavation
4. Prohibition on use of water and well construction
5. Protection of remedy

Site Information:

ID: COD980807374
Name: Rocky Flats Industrial Park
Address: 17100-17400 W hwy 72
City: Arvada
State: CO
Zip Code: 80403
Legal Description:
County: Jefferson

Site Contact Information:

Union Pacific Railroad Company
Name: Law Department
Address: 1416 Dodge St.
City: Omaha
State: NE Zip Code: 68179

ROCKY FLATS INDUSTRIAL PARK

HMCOV00026

0 435 870
Meters

Colorado Department of Public Health and Environment

R $111.00
D $0.00
COVE
2006032792
03/17/2006 11:43:53 AM .22 Page(s)
Jefferson County, Colorado

Environmental Covenant

This Property Subject to an Environmental Covenant Held by the Colorado Department of Public Health and Environment Pursuant to Section 25-15-321, C.R.S.

Union Pacific Railroad Company (hereinafter "Union Pacific"), by this deed, grants this Environmental Covenant this 17th day of March, 2006, to the Hazardous Materials and Waste Management Division of the Colorado Department of Public Health and Environment ("CDPHE") pursuant to Section 25-15-321 of the Colorado Hazardous Waste Act, Sections 25-15-101 *et seq.*, C.R.S. and also provides this deed to CDPHE for the benefit of the United States Environmental Protection Agency ("EPA"), as a third party beneficiary.

DEFINITIONS

"**CERCLA**" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601, *et seq*.

"**CDPHE**" shall mean the Colorado Department of Public Health and Environment, Hazardous Materials and Waste Management Division and any successor division and department of the State of Colorado.

"**Corrective Action**" shall mean any action taken pursuant to the State approved "Revised Closure Plan and Post-Closure Plan" for facility EPA ID # COD 007065576, approved by CDPHE June 13, 2001, and any modifications made thereto. A copy of the "Revised Closure Plan and Post-Closure Plan is incorporated herein as if set forth in full, and is attached hereto as Exhibit A.

"**EPA**" shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities of the United States.

CLERK AND RECORDER OF JEFFERSON COUNTY CERTIFIED TO BE FULL TRUE AND CORRECT COPY OF THE ORIGINAL DOCUMENT IN MY CUSTODY. DATE 3-17-06
FAYE GRIFFIN, JEFFERSON COUNTY CLERK AND RECORDER
BY: _____ DEPUTY CLERK

PORTIONS OF THIS DOCUMENT ARE OF POOR QUALITY

"**Excavation**" shall mean any disturbance of or boring into the ground or other surface feature at a depth of more than three feet below the existing surface of the Union Pacific Property.

"**Removal Actions**" shall mean the CERCLA removal actions as described in the Removal Action Documents.

"**Removal Action Documents**" shall mean the September 25, 2000 Action Memoranda for the AERRCO and Thoro facilities and for the Great Western Inorganics, Inc. facility at the Rocky Flats Industrial Park Site ("Action Memoranda") and the Engineering Evaluation/ Cost Analysis for the Removal Actions ("EE/CA"), and any amendments thereto. The Action Memoranda and the EE/CA are available in the Administrative Record for the Site located at EPA's Superfund Record Center, 5th Floor, 999 18th Street, Denver, CO 80202.

"**Routine Track Maintenance**" shall mean regular, customary repairs and upkeep of the railroad track.

"**Site**" shall mean the Rocky Flats Industrial Park Site, encompassing approximately 20 acres located along Highway 72 approximately 15 miles from downtown Denver, Colorado, depicted more specifically on Exhibit B attached hereto, and the contiguous adjacent areas where hazardous substances have come to be located.

"**State**" shall mean the State of Colorado, Department of Public Health and Environment.

"**Union Pacific**" shall mean Union Pacific Railroad Company and its successors or assigns.

"**Union Pacific Property**" or "**Property**" shall mean the land, improvements, and appurtenances located on Lots A and B, Rocky Flats Industrial Park Filing in unincorporated Jefferson County, Colorado, more particularly described in Exhibit C attached hereto.

RECITALS

WHEREAS, Union Pacific represents and warrants that, at the time of execution of this Environmental Covenant, it is the current owner of the Union Pacific Property; and

WHEREAS, portions of the Union Pacific Property are affected by Corrective Action required by CDPHE to address the unpermitted release of hazardous wastes and by Removal Actions being performed pursuant to CERCLA to address the release and threatened release of

hazardous substances, including volatile organic compounds, arsenic and heavy metals in the soil, sediments, surface water and groundwater at and from the Site; and

B

WHEREAS, Union Pacific has voluntarily agreed to subject the Union Pacific Property, pursuant to Section 25-15-321, C.R.S., to this Environmental Covenant and the Environmental Use Restrictions enumerated herein, for the protection of human health and the environment, which Environmental Use Restrictions shall burden the Union Pacific Property and bind Union Pacific, its successors, assigns, and any subsequent grantees and users of the Union Pacific Property, for the benefit of Union Pacific, the Union Pacific Property, EPA and CDPHE.

NOW, THEREFORE, Union Pacific hereby grants this Environmental Covenant and agrees, covenants and declares that the Union Pacific Property shall hereinafter be bound by, held, sold, and conveyed subject to the following Environmental Use Restrictions which shall run with the Union Pacific Property in perpetuity, and be binding on all parties having any right, title or interest in the Union Pacific Property, or any part thereof, their successors and assigns, and any persons using the land, hereinafter collectively referred to as "Property Owner." Such environmental covenant and use restrictions shall inure to the benefit of Property Owner, the Union Pacific Property, EPA, and CDPHE.

ENVIRONMENTAL USE RESTRICTIONS

Unless modified in conformance with Paragraphs 7 through 13 below, the following Environmental Use Restrictions are hereby imposed upon, shall burden and run with the Union Pacific Property:

1. **Prohibition on Residential and Public Use**. No residential use, including, but not limited to, any single family or multi-family residential dwelling or living unit, whether permanent or temporary, and no playgrounds, parks, schools, daycare centers (whether independent or ancillary to a permitted use), recreational facilities of any type, community centers, hospitals, or adult care centers shall be permitted or allowed at the Union Pacific Property.

2. **Prohibition on Agricultural Use**. No agricultural use of the Union Pacific Property shall be permitted or allowed, including but not limited to, the cultivation or storage of any crop or the grazing, feeding or keeping of any animal for agricultural or commercial purposes.

3. **Restriction on Excavation**. No Excavation shall be made on the Union Pacific Property, except as provided in the Removal Action Documents, or as needed for Routine Track Maintenance.

4. **Prohibition on Use of Water**. Neither groundwater under nor surface water on the Union Pacific Property shall be used or developed for any purpose, except as provided in the Removal Action Documents.

5. **Prohibition on Well Construction**. No groundwater wells shall be constructed on the Property for any purpose, except as otherwise provided in the Removal Action Documents.

6. **Protection of the Integrity of Removal Actions and Corrective Action**. Use of the Union Pacific Property shall not in any way interfere with the operation and/or maintenance of the Removal Actions and Corrective Action, including, but not limited to, the groundwater monitoring wells, any equipment or infrastructure constructed or used for the Removal Actions or Corrective Action, or any cap or other covering to prevent contact with contaminated materials in the ground or at the surface.

BENEFITS

7 Union Pacific, EPA and CDPHE acknowledge that the EPA's Removal Actions and State required Corrective Action at the Union Pacific Property may leave residual soil and groundwater solvent and environmental contamination at levels that are safe for a specific use, but not all uses and that this Environmental Covenant and the use restrictions contained herein provide an effective and enforceable means of ensuring the conduct of any required maintenance, monitoring, or operation, and of restricting future uses of the land for as long as any residual contamination remains hazardous. The benefits to Union Pacific, the Union Pacific Property, EPA and CDPHE by reason of this Environmental Covenant may include, without limitation, the reduction or minimization of potential risk to human health and the environment on, or in the vicinity of, the Union Pacific Property from the release of hazardous materials or substances from the Union Pacific Property.

MODIFICATION OR TERMINATION OF ENVIRONMENTAL COVENANT

8. This Environmental Covenant runs with the land and is perpetual, unless so modified or terminated pursuant to Paragraphs 8 through 14 herein. The Property Owner may request that CDPHE approve a modification or termination of this Environmental Covenant. The request shall contain information showing that the proposed modification or termination shall, if implemented, ensure protection of human health and the environment. CDPHE shall review any submitted information and may request additional information. If CDPHE determines, after providing EPA an opportunity to review the information and provide timely comments, that the proposal to modify or terminate this Environmental Covenant will ensure protection of human health and the environment, then CDPHE shall approve the proposal. No modification or termination of this Environmental Covenant shall be effective unless CDPHE has approved such

modification or termination in writing. Information to support a request for modification or termination may include one or more of the following:

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a. a proposal to perform additional remedial work;

b. new information regarding the risks posed by the residual contamination;

c. information demonstrating that residual contamination has diminished;

d. information demonstrating that the proposed modification would not adversely impact the remedy and is protective of human health and the environment; and

e. other appropriate supporting information.

9. The Property Owner shall notify CDPHE and EPA simultaneously with submitting any application to a local government for a building permit or change in land use.

10. **Proposed Modifications or Termination**. Persons proposing to modify or terminate this Environmental Covenant shall provide written notice of such intention to all persons holding an interest of record in the Union Pacific Property, to all persons known to them to have an unrecorded interest in the Union Pacific Property, and to all affected persons in possession of the Union Pacific Property prior to such modification, and shall provide both EPA and CDPHE with:

a. A copy of said written notice;

b. A list of the persons to whom said written notice was given;

c. The address or other location to which said written notice was directed; and

d. Such title information as EPA and CDPHE may require.

11. **Required Approvals**. CDPHE shall review all applications for modifying or terminating this Environmental Covenant after receipt of an application. EPA may timely provide comments on any application. CDPHE, after receiving any timely submitted comments from EPA, shall make a determination regarding the proposed modification or termination. Any proposed modifications or a termination must be approved in writing executed by (a) CDPHE; and (b) the Property Owner of the parcel burdened by the proposed modification to this Environmental Covenant. Such written approval may be evidenced by execution of a written instrument created to amend this Environmental Covenant.

12. **Appeals**. Any determination by CDPHE, made after receiving any timely submitted EPA comments regarding a proposal to modify or terminate this Environmental Covenant, shall be subject to appeal in accordance with Section 25-15-305, C.R.S. (2001).

13. **Implementation of Modification(s) or Termination**. Any modification or termination of this Environmental Covenant must be (a) in writing, (b) dated after the date of this Environmental Covenant; and (c) duly recorded in the real property records of the county in which the Union Pacific Property is located.

14. **Effect of Modification or Termination**. Any modification or termination which complies with the foregoing requirements shall be deemed duly created and enforceable from and after the effective date thereof. For purposes of this Environmental Covenant, a modification may include, but is not limited to, (a) the imposition of new environmental use restrictions, (b) amendment or modification of an existing environmental use restriction, or (c) the termination of all or part of an existing environmental use restriction or all of the existing environmental use restrictions. A termination of the Environmental Covenant means an end to the Environmental Covenant and all its requirements as of the effective date of the termination.

ENFORCEMENT RIGHTS

15. Union Pacific, any Property Owner, EPA and CDPHE, individually or collectively, shall have the right, but not the obligation, to enforce this Environmental Covenant, or any term herein pursuant to Section 25-15-322 C.R.S. (2001).

CONVEYANCE/SUBSEQUENT OWNERS

16. **Notice of Conveyance**. At least fifteen (15) days prior to any grant, transfer or conveyance of any interest in all or any part of the Union Pacific Property, Union Pacific or any other Property Owner(s) intending to make the grant, transfer or conveyance shall notify EPA and CDPHE in writing by certified mail or personal delivery of such intent. The Property Owner agrees to include in any instrument conveying any interest in any portion of the Property, including but not limited to deeds, leases and mortgages, a notice which is in substantially the following form:

NOTICE:

THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL COVENANT, DATED 3-17, 2006, RECORDED IN THE PUBLIC LAND RECORDS ON 3-17, 2006, IN BOOK N/A, PAGE N/A, HELD BY AND IN FAVOR OF

Reception No. 2006032742

THE COLORADO DEPARTMENT OF PUBLIC HEALTH & ENVIRONMENT PURSUANT TO C.R.S. SECTION 25-15-321.

17 Within thirty (30) days of the date any such instrument of conveyance is executed, the Property Owner must provide CDPHE and EPA with a certified true copy of said instrument and with the recording reference in the public land records.

MISCELLANEOUS

18. No Admission of Liability. Neither this Environmental Covenant nor any of the terms, recitals, provisions or statements contained herein shall be construed as an admission of liability by Union Pacific in any proceeding, action or dispute under any federal, state or local law or regulation or under any common law theory. Neither CDPHE, by virtue of accepting this Environmental Covenant, nor EPA, by virtue of being a third party beneficiary, acquire any state liability.

19. Any document or communication required pursuant to this Environmental Covenant shall be sent or directed to:

Hazardous Waste Corrective Action Unit Leader
Hazardous Materials and Waste Management Leader
Colorado Department of Public Health and the Environment
4300 Cherry Creek Drive South
Denver, CO 80246-1530

and to:

Remedial Project Manager (8EPR-SR)
Rocky Flats Industrial Park Site
U.S. Environmental Protection Agency
999 18th Street
Suite 300
Denver, CO 80202-2466

and to:

Union Pacific Railroad Company
Attn: Law Department
1416 Dodge Street
Omaha, NE 68179

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IN WITNESS WHEREOF, UNION PACIFIC RAILROAD COMPANY, a Delaware corporation, has caused this instrument to be executed this 16th day of August, 2005.

UNION PACIFIC RAILROAD COMPANY

By: Lawrence E. Wzorek
Assistant Vice President - Law

STATE OF Nebraska)
) ss:
)

COUNTY OF Douglas

The foregoing instrument was acknowledged before me this 16th day of August, 2005, by Lawrence E. Wzorek on behalf of Union Pacific Railroad Company, a Delaware Corporation.

Mary R. Holewinski
Notary Public
Union Pacific Railroad Company
1400 Douglas Street, Mail Stop 1580
Address
Omaha, Nebraska 68179

GENERAL NOTARY - State of Nebraska
MARY R. HOLEWINSKI
My Comm. Exp. Oct. 15, 2008

My commission expires: October 15, 2008

Accepted by the Colorado Department of Public Health and Environment this 31st day of January ~~2005~~ 2006.

By: [signature]

Title: Division Director, HMWMD

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STATE OF Colorado)
) ss:
COUNTY OF Denver)

The foregoing instrument was acknowledged before me this 31 day of January, 2006 by Carolyn Berglund on behalf of the Colorado Department of Public Health and Environment

Claudia M. Faris
Notary Public

4300 Cherry Creek Dr. S.
Address

Denver, CO 80246

My commission expires: October 21, 2007

Exhibit A – Revised Closure Plan and Post-Closure Plan
Exhibit B – RFIP Site Map
Exhibit C – Union Pacific Property Map