

# STATE OF COLORADO

John W. Hickenlooper, Governor  
Christopher E. Urbina, MD, MPH  
Executive Director and Chief Medical Officer

Dedicated to protecting and improving the health and environment of the people of Colorado

4300 Cherry Creek Dr. S.      Laboratory Services Division  
Denver, Colorado 80246-1530      8100 Lowry Blvd.  
Phone (303) 692-2000      Denver, Colorado 80230-6928  
Located in Glendale, Colorado      (303) 692-3090

<http://www.cdphe.state.co.us>



Colorado Department  
of Public Health  
and Environment

## Covenant Information:

**Covenant ID**      RSNOT00005

**Covenant Date**      7/26/2013

**Self Reporting**     

### **Media of Concern:**

**Surface Water:**     

**Ground Water:**     

**Air:**     

**Soil:**     

**Other:**     

### **Site Contact Information:**

**Owner Corp:**      Union Pacific Railroad Company

**Contact Name:**      Gary Honeyman

**Contact Address:**      221 S Hedgeman St.

**Contact City:**      Laramie

**Contact State:**      WY

**Contact Zip:**      82072-3500

**Contact Phone:**      402-233-1007

## **Contaminants of Concern:**

Petroleum Hydrocarbons, Organic Compounds

## **Property Restrictions:**

- 1: No residential use
- 2: No public use, such as playgrounds, parks or recreational facilities
- 3: No agricultural use
- 4: Soil shall not be removed from the property without proper characterization
- 5:

## **Site Information:**

**ID:**      COD983774647

**Name:**      80TH Avenue Tank Farm

**Address:**      6401 East 80th Ave

**City:**      Commerce City

**State:**      CO

**Zip:**      80022

### **Legal Description:**

See Covenant

# 80TH AVENUE TANK FARM

104°54'45"W

Featured Institutional Control



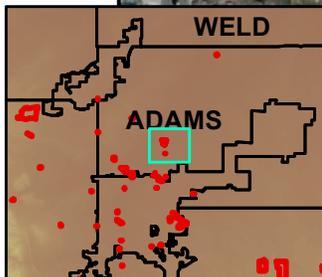
39°50'45"N

39°50'45"N

**RSNOT00005**

39°50'30"N

39°50'30"N



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104°54'45"W

## RSNOT00005

0 125 250 Meters





**This property is subject to a  
Notice of Environmental Use Restrictions  
imposed by the  
Colorado Department of Public Health and Environment  
pursuant to section 25-15-321.5, C.R.S.**

**Notice of Environmental Use Restrictions**

WHEREAS, Union Pacific Railroad Company is the owner of certain property commonly referred to as the 80<sup>th</sup> Avenue Tank Farm, located at 6401 E. 80<sup>th</sup> Avenue, Commerce City, Adams County, State of Colorado, more particularly described in Attachment A, attached hereto and incorporated herein by reference as though fully set forth (hereinafter referred to as "the Property"); and

WHEREAS, the Hazardous Materials and Waste Management Division of the Colorado Department of Public Health and the Environment ("the Department"), which is located at 4300 Cherry Creek Drive South, Denver, Colorado 80246-1530, is authorized to approve Notices of Environmental Use Restrictions pursuant to § 25-15-320(4)(a) of the Colorado Hazardous Waste Act, § 25-15-101, *et seq.* 4300 Cherry Creek Drive South, Denver, Colorado 80246-1530; and

WHEREAS, for purposes of indexing in the County Clerk and Recorder's office Grantor-Grantee index only, Union Pacific Railroad Company shall be considered the **Grantor**, and the Colorado Department of Public Health and Environment shall be considered the **Grantee**; nothing in the preceding clause shall be construed to create or transfer any right, title or interest in the Property; and

WHEREAS, pursuant to the 80<sup>th</sup> Avenue Tank Farm Work Plan, dated February 1, 2011, the Property is the subject of enforcement and remedial action pursuant to the Colorado Hazardous Waste Act, § 25-15-301, *et seq.* ("CHWA") and, pursuant to Administrative Settlement Agreement and Order on Consent for Removal Action CERCLA Docket No. 08-2011-0002, the Property is the subject of enforcement and remedial action pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § § 9601, *et seq.* ("CERCLA");

WHEREAS, upon completion of the enforcement and remediation action, contaminants of concern remain on the Property above levels that are protective of unrestricted use of the Property;

WHEREAS, the purpose of this Notice of Environmental Use Restrictions (hereinafter, "Restrictive Notice") is to ensure protection of human health and the environment by prohibiting activities that may result in unacceptable exposure to the residual

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contamination of hydrocarbon due to historical petroleum, storage, blending and distribution operations; and

WHEREAS, Union Pacific Railroad Company has requested that the Department approve this Restrictive Notice as provided in Article 15 of Title 25, Colorado Revised Statutes,

NOW, THEREFORE, the Department approves this Restrictive Notice pursuant to section 25-15-321.5. The Property described in Attachment A shall hereinafter be subject to the following requirements set forth in paragraphs 1 through 11 below, which shall be binding on Union Pacific Railroad Company and all persons now or subsequently having any right, title or interest in the Property, or any part thereof, and any persons using the land, as described herein. As used in this Restrictive Notice, the term OWNER means the then current record owner(s) of the Property and, if any, any other person or entity otherwise legally authorized to make decisions regarding the transfer of the Property or placement of encumbrances on the Property, other than by the exercise of eminent domain.

1) Use restrictions The following uses are prohibited on the Property:

- a) Residential use including, but not limited to, daycare or eldercare centers; any single family or multi-family residential dwelling or living unit, whether permanent or temporary;
- b) Public use such as playgrounds, parks or recreational facilities, schools, or community centers with outdoor uses;
- c) Agricultural use including, but not limited to, the cultivation or storage of crops; grazing, feeding or keeping of any animal for agricultural or commercial purposes; and
- d) Soil shall not be removed from the property until it has been properly tested and characterized in accordance with all applicable solid and hazardous waste regulations.

2) Modifications This Restrictive Notice runs with the land and is perpetual, unless modified or terminated pursuant to this paragraph. OWNER may request that the Department approve a modification or termination of the Restrictive Notice. The request shall contain information showing that the proposed modification or termination shall, if implemented, ensure protection of human health and the environment. The Department shall review any submitted information, and may request additional information. If the Department determines that the proposal to modify or terminate the Restrictive Notice will ensure protection of human health and the environment, it shall approve the proposal. No modification or termination of this Restrictive Notice shall be effective unless the Department 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:

- 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.
- 3) Conveyances OWNER shall notify the Department at least fifteen (15) days prior to any conveyance of any interest in any or all of the Property. Thirty (30) days after any conveyance, OWNER shall provide the Department with a copy of the recorded deed transferring any interest in any or all of the Property and provide the name, mailing address and telephone number of the new OWNER. If the entire interest is not conveyed, OWNER shall provide an improvement survey plat that shows the property being conveyed.
- 4) Notice to Lessees OWNER agrees to incorporate either in full or by reference the restrictions of this Restrictive Notice in any leases, licenses, or other instruments granting a right to use the Property.
- 5) Notification for proposed construction and land use OWNER shall notify the Department simultaneously when submitting any application to a local government for a building permit or change in land use.
- 6) Inspections The Department shall have the right of entry to the Property at reasonable times with prior notice for the purpose of determining compliance with the terms of this Restrictive Notice. Nothing in this Restrictive Notice shall impair any other authority the Department may otherwise have to enter and inspect the Property.
- 7) Third Party Beneficiary The OWNER of the Property is a third party beneficiary with the right to enforce the provisions of this Restrictive Notice as provided in § 25-15-322, C.R.S.
- 8) No Liability The Department does not acquire any liability under State law by virtue of approving this Restrictive Notice.
- 9) Enforcement The Department may enforce the terms of this Restrictive Notice pursuant to §25-15-322. C.R.S. Union Pacific Railroad Company may file suit in district court to enjoin actual or threatened violations of this Restrictive Notice.
- 10) Owner's Compliance Certification OWNER shall execute and return a certification form provided by the Department, on an annual basis, detailing OWNER's compliance, and any lack of compliance, with the terms of this Restrictive Notice.
- 11) Severability If any part of this Restrictive Notice shall be decreed to be invalid by any court of competent jurisdiction, all of the other provisions hereof shall not be affected thereby and shall remain in full force and effect.



By: Cary W. Baugher 8/29/13  
Title: Director, Hazardous Materials and Waste Management Division

STATE OF COLORADO )

) ss:

COUNTY OF ) Arapahoe

The foregoing instrument was acknowledged before me this 29<sup>th</sup> day of August,  
2013 by Cary Baugher, Director, Hazardous Materials and Waste  
Management Division of the Colorado Department of Public Health and Environment.

Notary Public Heenan L. Huber

Address 4300 Cherry Creek Rd South-Denver

My commission expires: 2-29-2016



**ATTACHMENT “A”**  
**to the**  
**Notice of Environmental Use Restrictions**

Legal Description of Property

A parcel of land located in the South ½ of Section 29, Township 2 South, Range 67 West of the 6Th Principal Meridian, Adams County, Colorado, said parcel being bounded, on the south by a line that is parallel with and 70 feet distant north of the South Line of said Section 29, on the southeast by a line that is parallel with and 25 feet distant northwesterly from the main track of the Greeley Subdivision of the Union Pacific Railroad Company, said southeast line being 1704 feet, more or less, in length from said south line to the northerly fence line, on northwest by a line that is parallel with and 200 feet distant northwesterly from said main track, said northwest line being 1801 feet, more or less, in length from said south line to the northerly fence line, on the north by said northerly fence line.

SEC. 29

FENCE

1801' +-

1704' +-

Telegraph Pole 43% from Fresh

8

26+71 Ret. Walls

85

200'

25'

8+42

Derail 18+28

Derail 14+47

Derail 13+68

Derail 13+00 H.S.

Derail 12+00 Dupont Site Sign

411+70 H.S.  
411+55 RAIL AGENCY SIGN

411+25.5 Semaphore  
411+10 SE-N7 T18  
410+85 King Sign

410+10 CG HP 777

COUNTY ROAD

ADDITION TO  
FIRST

534'

ROAD CROSSING

410+35.0

26.33% Grade

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