

July 17, 2008

Carolyn L. McIntosh
303-894-6127
CMcIntosh@PattonBoggs.com

Sandra K. Allen
Assistant Attorney General
Office of the Attorney General, State of Utah
168 North 1950 West
1st Floor
Salt Lake City, Utah 84116

Re: Union Pacific Ogden Yard
Environmental Covenant

RECEIVED

JUL 21 2008

DEQ
Environmental Response & Remediation

Dear Sandra:

Per the electronic message I sent last week, enclosed please find the original environmental covenant executed by the new owner of the A-One Salvage property, S-C Ogden, LLC. There was additional delay in obtaining this agreement due to the sale of the property by A-One to S-C Ogden, LLC. We would like to get the covenant in place before anything else happens in terms of property sales or redevelopment.

Can you please arrange for this covenant to be signed by Mr. Sprott, the Executive Director of Utah Department of Environmental Quality?

I have also enclosed a self-addressed Federal Express envelope for your convenience. Will you please return the document once it has been properly executed and I will make arrangements to file it with the Weber County Clerk and Recorder's office.

Please do not hesitate to call me if you have any questions. Thank you in advance for your assistance.

Sincerely,



Carolyn L. McIntosh

Sandra K. Allen
July 17, 2008
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Enclosure: Original Environmental Covenant for S-C Ogden, LLC property adjacent to Union Pacific Ogden Yard

cc: Gary L. Honeyman
Robert C. Bylsma
Andrea Madigan
Erna Waterman
Michael Storck

**To be recorded with Weber County
Recorder – Utah Code Ann § 57-25-108**

WHEN RECORDED MAIL TO:

S-C Ogden LLC
5113 Alpine Place
Las Vegas, Nevada 89107

With copies to:

Executive Director
Utah Department of Environmental Quality
168 North 1950 West
P.O. Box 144840
Salt Lake City, UT 84114-4840

And:

Union Pacific Railroad Company
1400 Douglas Street, STOP 1690
Omaha, Nebraska 68179
ATTN: Tony K. Love
Assistant Vice President – Real Estate

And:

Carolyn L. McIntosh
Patton Boggs LLP
1801 California Street, Suite 4900
Denver, CO 80202

RECEIVED

JUL 21 2008

DEQ
Environmental Response & Remediation

ENVIRONMENTAL COVENANT

This Environmental Covenant is entered into by S-C Ogden LLC ("Owner"), and the Utah Department of Environmental Quality, ("UDEQ") pursuant to the Uniform Environmental Covenants Act (Utah Code Ann. §§ 57-25-101 *et seq.*) for the purpose of

subjecting the Property described in paragraph 2, below, to the activity and use limitations set forth herein.

Notice ("Notice") is hereby given to all potential and subsequent owners, operators, and any person or entity that may hereafter acquire an interest in the Property, that the Property is or may be contaminated with hazardous materials as described below, that the Property is subject to remediation under: 1) the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. §§ 9601, *et seq.*) ("CERCLA"), pursuant to a Consent Decree for Remedial Design/Remedial Action ("Consent Decree") between the United States of America and Union Pacific Railroad Company ("Union Pacific"), Civil Action No. 1:06CV00115 BSJ (D. Utah); and 2) Utah State laws. Institutional Controls must be imposed to mitigate the risk to the public health, safety and/or the environment from the following contamination:

Dense nonaqueous phase hydrocarbon liquids ("DNAPL") have been identified in soils and below groundwater beneath a portion of Owner's property. The zone of DNAPL has been identified below groundwater in subsurface soils at general depths ranging from 17 to 25 feet below ground surface. Following a remedial investigation conducted by Union Pacific and overseen by the U.S. Environmental Protection Agency ("EPA") and the UDEQ under CERCLA protocol, a baseline risk assessment was conducted by the EPA (Region 8). The risk assessment concluded that impacted groundwater would pose a substantial risk from direct ingestion of water and/or inhalation of volatile organic compounds ("VOCs") released from water, if it were ever used for drinking or other indoor purposes. Direct human contact with the DNAPL contamination in subsurface soils may also present an adverse exposure risk.

The risk is driven mainly by the following contaminants found in the subsurface soil and groundwater: benzene, ethylbenzene, benzo(a)pyrene, and naphthalene.

Additional information regarding contamination on the Property is available for review at the public document repository for the Property, CERCLA-8-99-12, at (i) Weber County Library, 2464 Jefferson Ave., Ogden, UT 84401; (ii) the EPA Superfund Record Center, located at 1595 Wynkoop St, Denver, CO 80202-1129; and (iii) the UDEQ, Division of Environmental Response and Remediation, 168 North 1950 West, Salt Lake City, UT 84114-4840.

Now therefore, Owner and UDEQ agree to the following:

1. **ENVIRONMENTAL COVENANT.** This instrument is an environmental covenant developed and executed pursuant to Utah Code Ann. §§ 57-25-101 et seq.

2. **PROPERTY.** This Environmental Covenant concerns real property, owned by S-C Ogden LLC, located at 555 W. 17th Street, Ogden City, in Weber County, Utah 84404, and more particularly described in **Attachment A** and shown in **Figure B**, both of which are attached hereto and hereby incorporated by reference herein ("Property").

3. **OWNER.** S-C Ogden LLC, located at 5113 Alpine Place, Las Vegas, Nevada 89107, is the owner of the Property.

4. **HOLDER.** Owner, whose address is listed above, is also the holder of this Environmental Covenant.

5. **ACTIVITY AND USE LIMITATIONS.** As part of the Consent Decree, Owner hereby imposes and agrees to comply with the following activity and use limitations on the Property:

- a. **Prohibition on Use of Groundwater.** Use of groundwater for any purpose, including the installation of wells, except as consistent with the Consent Decree for implementation or monitoring of remediation activities, as provided herein, is prohibited.
- b. **Health and Safety Plan Required.** Excavations to depths below fifteen (15) feet below ground surface and production or de-watering of any groundwater must be conducted under an appropriate Health and Safety Plan that includes provisions for worker protection, work area monitoring, appropriate testing, and appropriate disposal of contaminated soil and groundwater removed from the excavation. Any such excavations must not directly or indirectly impact the engineered remedial controls implemented by Union Pacific as required under the Consent Decree by EPA. All excavations shall comply fully with 29 CFR Part 1926 OSHA Subpart P Excavations and Trenches requirements.
- c. **Produced Water Management Plan.** Any use of the Property that will or may result in dewatering, pumping or other production of groundwater is prohibited unless Owner or its successor in interest ("Transferee") has first submitted a Produced Water Management Plan to UDEQ and Union Pacific and obtained **approval from UDEQ**. UDEQ may charge the applicant - Owner or Transferee - a fee for this review. Produced water must be managed consistent with the approved Produced Water Management Plan and in compliance with all pertinent federal and state environmental laws.

Management of produced water in a manner that expands the area of contamination on, under or near the Property is also prohibited.

- d. Soil Management Plan. Any use of the Property that will or may result in drill cuttings, excavation or other production of soil from depths below fifteen (15) below ground surface is prohibited unless the Owner or Transferee has first submitted a Soil Management Plan to UDEQ and Union Pacific and obtained **approval from UDEQ**. UDEQ may charge the applicant - Owner or Transferee - a fee for this review. Soil must be managed consistent with the approved Soil Management Plan and in compliance with all pertinent federal and state environmental laws. Management of soil in a manner that expands the area of contamination on, under or near the Property is also prohibited.
- e. Interference with Remedy Prohibited. Any use of the Property, including management or disposal of produced water or soil, in any manner that may interfere with or adversely affect the implementation, integrity, or protectiveness of remediation activities required under CERCLA and the Consent Decree by the EPA is prohibited.
- f. Restrictions Do Not Apply to Remediation. The use restrictions do not apply to excavation, drilling, or other activities performed to implement remediation activities required under CERCLA and the Consent Decree by the EPA.

6. **SUBSEQUENT PROPERTY INTEREST OWNER OBLIGATIONS.** In addition to the above restrictions, any person or entity that may hereafter acquire an interest in the Property has the following continuous, affirmative obligations to EPA, UDEQ, and Union Pacific:

- a. To provide EPA, UDEQ, Union Pacific, and their representatives, and contractors, irrevocable, permanent, and continuing right of access at all reasonable times to the Property, subject to advance notice to Owner or Transferee, as necessary for implementation or enforcement of this Environmental Covenant and for any purpose related to the Consent Decree including but not limited to:
 - i. Monitoring the Work;
 - ii. Verifying any data or information submitted to the United States or the UDEQ;
 - iii. Conducting investigations relating to contamination at or near the Remedial Action Area, as identified in the Consent Decree;
 - iv. Obtaining samples;

- v. Assessing the need for, planning, or implementing additional response actions at or near the Property;
- vi. Assessing implementation of quality assurance and quality control practices as defined in the approved Quality Assurance Project Plan;
- vii. Implementing the Work pursuant to the conditions set forth in Paragraph 89 of the Consent Decree;
- viii. Assessing Union Pacific's compliance with the Consent Decree;
- ix. Determining whether the Remedial Action Area, Property, or other property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted, by or pursuant to the Consent Decree; and
- x. Conducting remediation activities required under CERCLA and the Consent Decree by the EPA or under Utah law by UDEQ.

b. To comply with the activity and use limitations set forth in Paragraph 5.

7. FACILITATION OF REMEDIAL ACTIONS. EPA, UDEQ, and Union Pacific shall have an irrevocable, permanent and continuing right of access at all reasonable times to the Property, subject to advance notice to Owner or Transferee, for purposes of:

- a. Conducting remediation activities required under CERCLA and the Consent Decree by the EPA or under Utah law by UDEQ;
- b. Constructing, inspecting, maintaining, repairing, operating, closing, or removing any remediation component or equipment including but not limited to monitoring wells or treatment equipment on the Property required under CERCLA and the Consent Decree by the EPA or under Utah law by UDEQ;
- c. Verifying any data or information obtained from monitoring on the Property;
- d. Verifying that no action is being taken on the Property in violation of the terms of this Environmental Covenant, any approved Produced Water Management Plan or Soil Management Plan, or any federal or state environmental laws or regulations;
- e. Monitoring remediation and post-remediation activities under CERCLA and the Consent Decree or Utah law, on the Property and conducting investigations relating to contamination on or near the Property, including, without limitation,

sampling of air, water, sediments, soils, as authorized or required by any federal or state environmental laws or regulations and specifically, without limitation, obtaining split or duplicate samples; and

f. Conducting the activities set forth in Paragraph 6 above.

8. RUNNING WITH THE LAND. This Environmental Covenant shall be binding upon the Owner and all assigns and successors in interest, including any Transferee, and shall run with the land and the Institutional Controls described herein shall be maintained in perpetuity, pursuant to Utah Code Ann. § 57-25-105, subject to amendment or termination as set forth herein. The term "Transferee," as used in this Environmental Covenant, shall mean any future owner of any interest in the Property or any portion thereof, including, but not limited to, owners of an interest in fee simple, mortgagees, easement holders, and/or lessees.

9. COMPLIANCE ENFORCEMENT. Compliance with this Environmental Covenant may be enforced by Owner, UDEQ, EPA, Union Pacific, or any entity entitled to enforce compliance under Utah Code Ann. § 57-25-111. Failure to timely enforce compliance with this Environmental Covenant or the activity and use limitations contained herein by any party shall not bar subsequent enforcement by such party and shall not be deemed a waiver of the party's right to take action to enforce any non-compliance. Nothing in this Environmental Covenant shall restrict Owner, the UDEQ, EPA, or Union Pacific from exercising any authority under applicable law.

10. RIGHTS OF ACCESS. Owner hereby grants to the EPA, its agents, contractors, and employees, UDEQ, its agents, contractors, and employees, and Union Pacific, its agents, contractors, and employees, the right of access at all reasonable times to the Property for implementation or enforcement of activities related to the Consent Decree including but not limited to the activities set forth in paragraphs 6 and 7 above and implementation or enforcement of this Environmental Covenant.

11. NOTICE UPON CONVEYANCE. Each instrument hereafter conveying any interest in the Property or any portion of the Property shall contain a notice of the activity and use limitations set forth in this Environmental Covenant, and provide the recorded location of this Environmental Covenant. The notice shall be substantially in the following form:

THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL COVENANT, DATED_____, 200____, RECORDED IN THE DEED OR OFFICIAL RECORDS OF THE WEBER COUNTY RECORDER ON _____, 200____, IN [DOCUMENT _____, or BOOK____, PAGE _____]. THE ENVIRONMENTAL COVENANT CONTAINS THE FOLLOWING ACTIVITY AND USE LIMITATIONS: *[Insert the language from Paragraph 5, herein, exactly as it appears in the Environmental Covenant.]*

Owner shall notify the UDEQ, EPA and Union Pacific within thirty (30) days after each conveyance of an interest in any portion of the Property. Owner's notice shall include the name and address of the Transferee, a copy of the deed or other documentation evidencing the conveyance, and an unsurveyed plat that shows the boundaries of the property being transferred.

12. REPRESENTATIONS AND WARRANTIES. Owner hereby represents and warrants to the UDEQ:

- A. that the Owner is the sole owner of the Property;
- B. that the Owner holds fee simple title to the Property;
- C. that the Owner has the power and authority to enter into this Environmental Covenant, to grant the rights and interests herein provided and to carry out all obligations hereunder; and
- D. that this Environmental Covenant will not materially violate or contravene or constitute a material default under any other agreement, document or instrument to which Owner is a party or by which Owner may be bound or affected.

13. AMENDMENT OR TERMINATION. This Environmental Covenant may only be amended or terminated by consent of all of the following: the Owner or a Transferee, EPA, Union Pacific, and the UDEQ,¹ pursuant to Utah Code Ann. § 57-25-110 and other applicable law. The term, "Amendment," as used in this Environmental Covenant, shall mean any changes to the Environmental Covenant, including the activity and use limitations set forth herein, or the elimination of one or more activity and use limitations when there is at least one limitation remaining. The term, "Termination," as used in this Environmental Covenant, shall mean the elimination of all activity and use limitations set forth herein and all other obligations under this Environmental Covenant.

This Environmental Covenant may be amended or terminated only by a written instrument duly executed by the Executive Director of the UDEQ, the EPA, Union Pacific, and the Owner or Transferee of the Property or portion thereof, as applicable. Within thirty (30) days of signature by all requisite parties on any amendment or termination of this Environmental Covenant, the Owner or Transferee shall file such instrument for recording with the Weber County Recorder's Office, and shall provide a file- and date-stamped copy of the recorded instrument to UDEQ, EPA, and Union Pacific.

14. SEVERABILITY. If any provision of this Environmental Covenant is found to be unenforceable in any respect, the validity, legality, and enforceability of the remaining

¹ See Utah Code Ann § 57-35-104 (2) (e), which allow for "limitations on amendment or termination."

provisions shall not in any way be affected or impaired.

15. GOVERNING LAW. This Environmental Covenant shall be governed by and interpreted in accordance with the laws of the State of Utah.

16. RECORDATION. Within thirty (30) days after the date of the final required signature on the Environmental Covenant, Owner shall file this Environmental Covenant for recording, in the same manner as a deed to the Property, with the Weber County Recorder's Office, except that if Owner forwards the original to Union Pacific's representative, Union Pacific will complete the recording and return the original recorded document to Owner.

17. EFFECTIVE DATE. The effective date of this Environmental Covenant shall be the date upon which the fully executed Environmental Covenant has been recorded as a document of record for the Property with the Weber County Recorder.

18. DISTRIBUTION OF ENVIRONMENTAL COVENANT. The Owner shall distribute a file- and date-stamped copy of the recorded Environmental Covenant to: the EPA; the UDEQ; Union Pacific; and the City of Ogden, except that if Owner forwards the original fully executed Environmental Covenant to Union Pacific's representative, as provided in paragraph 16, above, Union Pacific will distribute the copies pursuant to this paragraph.

19. NOTICE. Unless otherwise notified in writing by or on behalf of the Owner or UDEQ, any document or communication required by this Environmental Covenant shall be submitted to:

Owner:

Mr. David Christensen
S-C Ogden LLC
5113 Alpine Place
Las Vegas, Nevada 89107
Phone: 702-732-7811
Fax: 702-732-7911
David@thewebco.com

Union Pacific Railroad Company:

Mr. Gary L. Honeyman
Manager of Environmental Site Remediation
221 Hodgeman
Laramie, WY 82072
Phone: 307-745-6532
Mobile Phone: 307-760-0117
Fax: 307-745-3042

glhoneym@up.com

Utah Department of Environmental Quality:

Michael Storck

Ogden Rail Yard Superfund Site Project Manager

Division of Environmental Response and Remediation

168 North 1950 West

P.O. Box 144840

Salt Lake City, Utah 84114-4840

MStorck@utah.gov

And

U.S. Environmental Protection Agency:

Erna Waterman

Remedial Project Manager

U. S. EPA Region 8

Mail Code 8EPR-SA

999 18th Street, Suite 300

Denver, CO 80202

Waterman.Erna@epa.gov

The undersigned representative of Owner represents and certifies that he is authorized to execute this Environmental Covenant.

IT IS SO AGREED:

S-C Ogden LLC

By: David J. Christensen
David J. Christensen
Title: President

STATE OF NEVADA)
County of Clark)

Subscribed and sworn to and acknowledged before me this 3rd day of
July, 2008, by David Christensen, President of S-C Ogden LLC, or
his/her designated representative.

Shari High
Notary Public

My Commission expires: June 6, 2009



UTAH DEPARTMENT OF ENVIRONMENTAL QUALITY

_____, Executive Director of the Utah Department of Environmental Quality, or his/her designated representative, hereby approves the foregoing Institutional Controls pursuant to Utah Code Section 19-10-103.

By: _____
Rick Sprott
Title: Executive Director,
Utah Department of Environmental Quality

STATE OF UTAH)
) ss.
County of Salt Lake)

Subscribed and sworn to and acknowledged before me this ____ day of _____, 20__, by _____, Executive Director of the Utah Department of Environmental Quality, or her designated representative.

Notary Public

My Commission expires: _____

This instrument prepared by:

Carolyn L. McIntosh
Patton Boggs LLP
1801 California Street
Suite 4900
Denver, CO 80202
Ph: 303-894-6127
cmcintosh@pattonboggs.com

ATTACHMENT A

Legal Description of the Property Subject to the Environmental Covenant

BEING A PART OF THE NORTHEAST QUARTER OF SECTION 30 , TOWNSHIP 6 NORTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN. BEGINNING AT A POINT ON THE WEST LINE OF THE LARRY & BRENDA TAYLOR (SERIAL NUMBER 12-101-0016) PROPERTY, SAID POINT BEING N.89°32'42"W. 932.58 FEET AND S.1°01'29"E. 269.00 FEET FROM THE NORTHEAST CORNER OF SAID SECTION 30, AND RUNNING: THENCE S.1°01'29"E., ALONG SAID WESTERLY LINE, 91.37 FEET; THENCE S.0°45'18"W. 93.49 FEET; THENCE S.78°56'39"E. 107.00 FEET; THENCE N.71°25'21"E. 65.00 FEET; THENCE S.70°19'39"E. 190.00 FEET; THENCE S.65°29'39"E. 134.00 FEET; THENCE S.50°15'39"E. 24.51 FEET; THENCE N.0°20'21"E. 343.36 FEET, TO A CURVE TO THE LEFT HAVING A RADIUS OF 3729.75 FEET; THENCE ALONG SAID CURVE A DISTANCE OF 185.02 FEET (LONG CHORD BEARS N.23°32'18"W. 185 FEET); THENCE S.65°02'26"W. 457.60 FEET, TO THE POINT OF BEGINNING. CONTAINS 3.65 ACRES, MORE OR LESS.

FIGURE B
Map of the Property Subject to the Environmental Covenant