ADMINISTRATIVE RECORD

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VIII

999 18th STREET - SUITE 500

DENVER, COLORADO 80202-2466

1769048 - R8 SDMS

MAR 04 1992

SPECIAL NOTICE LETTER
FOR REMEDIAL INVESTIGATION/FEASIBILITY STUDY (RI/FS)
URGENT LEGAL MATTER -- PROMPT REPLY NECESSARY
CERTIFIED MAIL: RETURN RECEIPT REQUESTED

Union Pacific Railroad Company/
Oregon Shortline Railroad Company
Attn: W.E. Wimmer, AVP Environmental Management
1416 Dodge Street
Room 930
Omaha, NE 68179

Re: Silver Bow Creek/Butte Area Superfund Site - Priority Soils Operable Unit - Remedial Investigation Feasibility Study

Dear Mr. Wimmer:

The United States Environmental Protection Agency (EPA) hereby issues this Special Notice to Union Pacific Railroad Co./ Oregon Shortline Railroad Co. for response actions to be taken in connection with the Silver Bow Creek/Butte Area (SBC/BA) Superfund Site - Butte Priority Soils Operable Unit (BPSOU) in Butte and Walkerville Montana under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C §§ 9601-9675, as amended (CERCLA).

This letter serves two basic functions. First, it notifies you that 60-day period of formal negotiations with EPA begins on the date of your receipt of this letter. Second, it provides general and site-specific information to assist you in preparing your response.

NOTICE OF POTENTIAL LIABILITY

EPA has previously notified you that it has information indicating that Union Pacific Railroad Co./Oregon Shortline Railroad Co. may be a Potentially Responsible Party (PRP), as defined in Section 107(a) of CERCLA, with respect to this Site.

SITE RESPONSE ACTIONS

In accordance with CERCLA and other authorities, EPA has already undertaken certain actions and incurred certain costs in response to conditions at the Site. These response actions include:

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* Conduct of scoping activities for the BPSOU of the SBC/BA Superfund Site

* Conduct of community relations activities for the BPSOU of the SBC/BA Superfund Site

* Conduct of several removal actions within the BPSOU of the SBC/BA Superfund Site including the Walkerville Removal, Timber Butte Removal, the Priority Soils Time Critical Removal Action (TCRA), and the Colorado Smelter Removal

* Preparation of an initial Statement of Work (SOW) for the BPSOU RI/FS Work Plan

At this time, EPA plans to conduct the following response actions at the BPSOU:

1. A remedial investigation (RI) consisting of (i) an initial historical data summary and evaluation phase, to further define data collection needs; and (ii) a data collection phase to collect further data necessary to adequately define the nature and extent of soils, air, surface water, and groundwater contamination and actual or potential risks associated with this contamination at the BPSOU for the purpose of developing and evaluating effective remedial alternatuves for the BPSOU.

2. A feasibility study (FS) to evaluate alternative remedial actions to remove, treat, or contain hazardous substances, pollutants, and contaminants at the BPSOU.

SPECIAL NOTICE AND NEGOTIATION MORATORIUM

EPA has determined that use of the Section 122(e) special notice procedures specified in CERCLA would facilitate a settlement under which the PRPs would conduct the RI/FS, with EPA oversight, and would expedite remedial action for this Site. Therefore, under CERCLA Section 122, this letter triggers a 60-day moratorium on certain EPA response activities at the Site. You are invited to participate in formal negotiations with EPA during this 60-day period. You are also encouraged to negotiate voluntarily a settlement under which the PRPs would conduct or finance the RI/FS for the Site. The 60-day negotiation moratorium will be extended for an additional 30 days if EPA determines that a PRP has submitted a good faith offer to conduct or finance the RI/FS. If settlement with a PRP is reached within the 90-day negotiation period, the settlement will be embodied in an administrative order on consent.

PROJECT OUTLINE AND DRAFT ADMINISTRATIVE ORDER ON CONSENT

Copies of the Project Outline for the RI/FS and a draft Administrative Order on Consent are enclosed. These are provided to assist you in developing a good faith offer for conducting the RI/FS. Any offer to conduct the RI/FS must be in substantial compliance with the the Project Outline and draft Administrative Order on Consent provided.

GOOD FAITH OFFER

You have a maximum of 60 days from your receipt of this letter to coordinate with other PRPs and to present to EPA a "good faith offer" to conduct the RI/FS and reimburse EPA for its oversight costs. A "good faith offer" is a written proposal that demonstrates the PRPs' qualifications and willingness to conduct or finance the RI/FS and includes the following elements:

1. A statement of willingness to conduct or finance the RI/FS which is consistent with the Project Outline and the draft Administrative Order on Consent and provides a sufficient basis for further negotiations.

2. A paragraph-by-paragraph response to the Project Outline and the draft Administrative Order on Consent, including a response to any other enclosed documents.

4. A demonstration of the PRPs' technical ability to carry out the RI/FS, including the identification of the firm(s) that may actually conduct the work or a description of the process that will use to select the firm(s), as well as an identification of the management of these firm(s).

5. A demonstration of financial ability to finance the RI/FS.

6. A statement of willingness to reimburse the United States of America for its costs in overseeing the PRPs' conduct of the RI/FS.

7. The name, address, and telephone number of the party or steering committee representative who will represent the PRPs in negotiations.

INFORMATION RELEASE

EPA is providing a list of names and addresses (Attachment A) of the PRPs to whom this notification is being sent. Inclusion on, or exclusion from, the list does not constitute a final determination by EPA concerning the liability of any party for the release or threatened release of hazardous substances at

the BPSOU.

PRP STEERING COMMITTEE

EPA recommends that all PRPs meet to form a steering committee responsible for representing the group's interests. Establishing a manageable group is critical for successful negotiations with EPA.

ADMINISTRATIVE RECORD

Pursuant to CERCLA Section 113(k), EPA must establish an administrative record (AR) that contains documents that serve as the basis for EPA's decision on the selection of a response action for a site. The AR documents and AR indexes for the BPSOU are physically maintained and are available to the public for inspection at the Records Center of the EPA Montana Office at the Federal Building, 301 South Park, Helena, MT. The AR indexes and microfilmed copies of the AR documents will eventually be placed at the Montana Tech Library in Butte.

PRP RESPONSE AND EPA CONTACT PERSON

You are encouraged to contact EPA within 7 days of receipt of this notice letter to indicate your willingness to participate in negotiations for the conduct of the RI/FS. Otherwise, you have 60 days from the date of this letter to provide EPA in writing with a good faith offer demonstrating your willingness to perform the RI/FS. The PRPs may respond through a steering committee if such a committee has been formed.

If EPA does not receive a timely response, EPA will assume that you have declined any involvement in performing the response activities. You may be held liable by EPA under Section 107 of CERCLA for the cost of the response activities EPA performs at the Site and for any damages to natural resources.

Your response to this notice letter should be sent to:

Russ Forba, RPM
U.S. EPA, Montana Office
Federal Building
301 South Park
Drawer 10096
Helena, MT 59626
(406-449-5414)

The factual and legal discussions contained in this letter are intended solely for notification and information purposes. They are not intended to be and cannot be relied upon as final EPA positions on any matter set forth herein.

If you or your attorney have any questions pertaining to this matter, please direct them to Joe Santarella, Assistant Regional Counsel, at (303) 294-1147.

Sincerely,

Robert L. Duprey, Director
Hazardous Waste Management Division

Enclosures

cc: John Wardell, 8MO
Don Pizzini, 8MO
Dennis Iverson, MDHES
James Madden, MDHES-SHWB
Dick Peterson, MDHES
Robert Stewart, U.S. Dept. of Interior
Joe Santarella, 8RC
Ben Fisherow, DOJ

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RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED
NOT FOR INTERNATIONAL MAIL
(See Reverse)

☆U.S.G.P.O. 1989-234-555

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Street and No. WE Wimmer	
P.O., State and ZIP Code 14116 Dodge St.	
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PS Form 3800, June 1985