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November 1, 2004

Bill Lockyer, Attorney General  
Edward Weil, Deputy Attorney General  
1515 Clay Street, Suite 2000  
Oakland, CA 94612-1413

Brad Fenocchio, District Attorney  
Placer County District Attorney  
11562 B Avenue  
Auburn, CA 95603

Jan Scully, District Attorney  
Sacramento County District Attorney  
P.O. Box 749  
Sacramento, CA 95812

Re: Notice of Violation

Dear Prosecutors:

I represent As You Sow, a non-profit foundation organized under the laws of the State of California's Non-Profit Public Benefit Corporation Law. As You Sow is dedicated to, among other causes, the protection of the environment, the promotion of human health, the improvement of worker and consumer safety, and environmental education.

This letter constitutes notification that Union Pacific Railroad Company, has violated the warning requirement of Proposition 65, the Safe Drinking Water and Toxic Enforcement Act (commencing with section 25249.5 of the Health and Safety Code). The source of the violation stems from airborne particulate emissions from diesel-fueled locomotives at Union Pacific's J.R. Davis Yard located in Roseville, California. Approximately 50 percent of diesel PM emissions come from moving locomotives, 45 percent of diesel PM emissions come from idling locomotives and 5 percent of diesel PM emissions come from locomotive testing.

In particular, this company has exposed and continues to expose numerous individuals within the surrounding area to the following chemical subject to Proposition 65: diesel engine exhaust, listed as a carcinogen on October 1, 1990. The time period of this violation commenced one year after the listed date above. The route of exposure has been primarily through inhalation of these chemicals; however additional exposures may arise through dermal contact with, or ingestion of, these chemicals. The general

geographic location of the unlawful exposure to the residential and business community covers a 46,000 to 56,000 acre area surrounding the railroad yard as more particularly described in Figure 1, Figure 2a and Figure 2b from the Air Resources Board Roseville Rail Yard Study and attached herein.

Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to certain listed chemicals. Union Pacific Railroad Company is in violation of Proposition 65 because it failed to provide an adequate warning to numerous persons residing and working in the area surrounding the J.R. Davis Yard that they have been and continue to be exposed to diesel engine exhaust. (22 C.C.R. section 12601.) While in the course of doing business, the company is knowingly and intentionally exposing people to these chemicals, without first providing clear and reasonable warning. (Health and Safety Code section 25249.6.) Moreover, based on the exposure involved, we believe the method of warning should be "... a notice mailed or otherwise delivered to each occupant in the affected area. Such notice shall be provided at least once in any three-month period." (22 C.C.R. section 12601 (d) (1) (B)).

Proposition 65 requires that notice and intent to sue be given to a violator 60-days before the suit is filed. With this letter, As You Sow gives notice of the alleged violation to the noticed party and the appropriate governmental authorities. This notice covers all violations of Proposition 65 that are currently known to As You Sow from information now available to us. As You Sow is continuing its investigation that may reveal further violations. A summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, and referenced as Appendix A, has been provided to the noticed party.

If you have any questions, please contact my office at your earliest convenience.

cc: Larry Fahn, Executive Director, As You Sow

## CERTIFICATE OF MERIT

### Health and Safety Code Section 25249.7 (d)

I, Michael Freund hereby declare:

1. This Certificate of Merit accompanies the attached Notice of Violation in which it is alleged that Union Pacific Railroad Company has violated Health and Safety Code Section 25249.6 by failing to provide clear and reasonable warnings to numerous persons exposed to diesel engine exhaust from diesel-fueled locomotives in and around Union Pacific's J.R. Davis Yard in Roseville, California.
2. I am the attorney for the noticing party As You Sow.
3. As You Sow is a 501 (c) (3) non-profit corporation that acts as a foundation using restitution and penalty monies recovered in Proposition 65 actions to make grants to other California non-profit organizations working on toxics prevention, remediation, cleanup and education. Over the last ten years, As You Sow has made more than \$1.5 million of such grants to more than 50 non-profit organizations.
4. The Notice of Violation alleges that Union Pacific Railroad Company emits diesel engine exhaust into the atmosphere such that numerous residences and workers are exposed to the chemical at levels that require a warning pursuant to Proposition 65. Diesel engine exhaust was listed as a chemical known to the State of California to cause cancer on October 1, 1990. Please refer to the Notice of Violation for additional details regarding the alleged violations.
5. I have consulted with a scientist with more than 20 years experience in air quality permitting, analysis of toxic emissions and impact analysis, emission calculations, dispersion modeling, and preparation of EIR's and health risk assessments. The

consultant has the appropriate experience and expertise regarding the exposure issues involving diesel engine exhaust in this case. The consultant has reviewed facts, studies or other data regarding the exposure to the listed chemical that is the subject of this action. These facts, studies or other data overwhelmingly demonstrate that the party identified in the Notice of Violation exposes numerous residents and workers in and around the facility to a chemical known to the State of California to cause cancer.

6. Based on my consultation with an experienced consultant in this field, including but not limited to the review of the Air Resources Board Roseville Rail Yard Study and the documented health effects of exposure to diesel engine exhaust, I have concluded that there is sufficient evidence that human exposures exist from the emission of diesel engine exhaust from diesel-fueled locomotives from the Union Pacific's J.R. Davis Yard.

Furthermore, as a result of the above, I have concluded that there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiff's case can be established and the information did not prove that the alleged violator will be able to establish any of the affirmative defenses set forth in the statute.

7. The copy of this Certificate of Merit served on the California Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including the information identified in Health & Safety Code Section 25249.7 (h) (2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the

facts, studies or other data reviewed by those persons.

Dated: November 1, 2004

CERTIFICATE OF SERVICE

I am a citizen of the United States and a resident of the County of Alameda. I am over the age of eighteen years and not a party to the within entitled action; my business address is 1915 Addison Street, Berkeley, California 94704. On November 1, 2004 I served the within:

Notice of Violation and Certificate of Merit (Supporting documentation pursuant to 11 CCR section 3102 sent to Attorney General only)

on the parties in said action, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Post Office mail box in Berkeley, California and/or by hand delivery to said parties addressed as follows:

Attorney General's Office  
Attn: Prop 65 Coordinator  
1515 Clay Street, Suite 2000  
Oakland, CA 94612

Jan Scully, District Attorney  
Sacramento County District Attorney  
P.O. Box 749  
Sacramento, CA 95812

Brad Fenocchio, District Attorney  
Placer County District Attorney  
11562 B Ave.  
Auburn, CA 95603

Richard K. Davidson, Chairman & CEO  
Union Pacific Railroad Company  
1416 Dodge Street  
Omaha, NE 68179

I, Michael Freund, declare under penalty of perjury that the foregoing is true and correct.

Executed on November 1, 2004 at Berkeley, California.