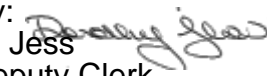


1 CHRISTIAN M. CURTIS, County Counsel, SBN 270918
2 County of Mendocino – Administration Center
3 501 Low Gap Road, Room 1030
4 Ukiah, CA 95482
5 Telephone: (707) 234-6885
6 Facsimile: (707) 463-4592
7 curtisc@mendocinocounty.org
8 cocosupport@mendocinocounty.org

ELECTRONICALLY FILED
2/22/2022 4:02 PM
Superior Court of California
County of Mendocino

By: 
D. Jess
Deputy Clerk

6 Attorney for County of Mendocino

8 **SUPERIOR COURT OF CALIFORNIA**

9 **COUNTY OF MENDOCINO**

10
11 CITY OF FORT BRAGG, a California) 21CV00850
12 municipal corporation,)
13) **REQUEST FOR JUDICIAL NOTICE**
14 Plaintiff,)
15 v.) Date: February 24, 2022
16) Time: 2:00 p.m.
17 MENDOCINO RAILWAY AND DOES 1-) Dept.: TM
18 10, inclusive,)
19)
20 Defendants.)
21)
22)
23)
24)
25)
26)
27)
28)

19 TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD HEREIN:

20 The County of Mendocino requests judicial notice of the following documents filed with
21 the Court pursuant to Evidence Code section 452, subsections (c). Subdivision (c) provides for
22 permissive notice of “[o]fficial acts of the legislative, executive, and judicial departments of the
23 United States and of any state of the United States.” CAL. EVID. CODE § 452.

24 Here, defendant properly seeks judicial notice of the following:

25 1. Complaint Report from Mendocino County Public Health, Environmental Health
26 Division regarding the Mendocino Railway/Skunk Train property at 100 W. Laurel Street, Fort
27 Bragg, dated December 1, 2021, attached as “Exhibit A.” This document has been redacted to
28 protect the identity of the complaining party and to remove cell phone numbers.

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2. Notice of Violation, dated December 6, 2021, issued to Mendocino Railway, d.b.a. Skunk Train, attached as “Exhibit B.”

3. Letter from Mike Buck, of the Mendocino Railway Board of Directors to Will Nalty, Hazardous Materials Operations Specialist, Mendocino County Environmental Health, dated December 19, 2021, attached as “Exhibit C.”

Judicial notice of the documents attached as Exhibits A, B, and C is proper because these documents are public records. *See People v. Long*, 7 Cal. App. 3d 586, 591, 86 Cal. Rptr. 590, 593 (1970) (citing *Love v. Wolf*, 226 Cal. App.2d 378, 403 (1964)); *Horne v. Dist. Council 16 Internat. Union of Painters & Allied Trades*, 234 Cal. App. 4th 524, 535 (2015).

Respectfully submitted,

Dated: February 22, 2022

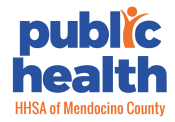
CHRISTIAN M. CURTIS, County Counsel

by _____
CHRISTIAN M. CURTIS, County Counsel
Attorneys for County of Mendocino

EXHIBIT A



Mendocino County Environmental Health
 860 North Bush Street, Ukiah, CA 95482
 120 West Fir Street, Fort Bragg, CA 95437
 www.mendocinocounty.org/eh
 enviroh@mendocinocounty.org
 (707) 234-6625 / (707) 961-2714



Complaint

Complaint Date: 12/01/2021 09:30 AM **Type:** Spill

Complainant: ██████████

Establishment: _____

Address: _____

Cause of Complaint:

On 01DEC21, at approximately 0930 hours I received a call from an unidentified person, whom I later learned was ██████████, who told me he was walking and located an oil spill located at the Mendocino Railway/Skunk Train property at 100 W. Laurel Street, Fort Bragg. ██████████ indicated the spill was on the tracks near or in the parking lot.

At approximately 0938 hours, I called our Fort Bragg Office and left a voice mail for Ben Hutter. At approximately 1145 hours, Ben Hutter, an Environmental Health Specialist (EHS) and a member of the Redwood Empire Hazardous Incident Team *REHIT), agreed to look into the matter. Please refer to Hutter's Supplemental Report.

At approximately 1149 hours, Hutter reported back to me. Hutter confirmed there was a small spill which was covered an area of approximately four feet by six feet, and had puddles of standing oil. Additionally, Hutter reported there were oil stains leaving the property. Finally, Hutter reported the manager, Tony Natareno, claimed the Skunk Train was under Federal Jurisdiction, and implied Mendocino Environmental Health did not have jurisdiction. Directed Hutter to order them to clean-up the spill and that we would refer it to the United States Environmental Protection Agency (US EPA).

At approximately 1259, I emailed Steve Calanog, On-Scene Coordinator/Emergency Response Section with the US EPA to inform him of the spill and the claim of federal jurisdiction. I also reported the facility has an unclaimed rail car full of oil they use at the facility, so they should have a Spill Prevention Control and Countermeasure (SPCC) plan. At approximately 1356 Hours, Calanog emailed me back which stated "I'm not aware of any railway company that is exempt from local, state, or federal environmental regulatory requirements." He later stated "Unfortunately, these small discharges/leaks are frequent and common along all rail lines and are rarely addressed by Agencies." However, he will refer the matter to his SPCC colleagues Pete Reich and Janice Witul for further evaluation and/or follow-up.

At approximately 1424 hours, I emailed Joshua Curtis, an administrator with the North Coast Regional Water Quality Control Board (NCRWQCB) to inform him of the Skunk Train claim of federal jurisdiction. At approximately 1447 hours Curtis responded to my email with an email. Curtis stated "I have heard statements similar to their claim of federal jurisdiction only but generally I don't think that argument holds water in such circumstances. I will pass this information on to my counterpart who this violation is likely to be handled by and ask them to reach back to you."

At approximately 1458 hours, Janice Witul, US EPA R9 Oil Program, stated "they would not be exempt" from SPCC regulations, but went on to state the California Environmental Reporting System (CERS) did not reflect the threshold for the SPCC program, 1,320 gallons. However, Witul stated the "EPA's Oil Program could participate in a joint inspection to make a determination – checking for any nexus to navigable water and verifying storage capacity."

At approximately 1554 hours, ██████████, emailed me stating he observed "one of the Skunk Train workers was trying to cover up the spill instead of remediating the situation."

I provided a courtesy call to the City of Fort Bragg to advise them of the situation in the event they were to get calls from the public. I was patched through to the City Manager, Tabatha Miller. I relayed what had been reported. I advised Miller Environmental Health is aware of the situation and will be following-up with the facility and other regulating agencies.

At approximately 1626 hours, I received an email from ██████████ who states he is concerned about the amount of soot the diesel exhaust is producing from the skunk train. ██████████ provided photos of his house, as well as an air quality monitor which according to ██████████ has peaks when the Skunk Train passes the area.

At approximately 1705, I emailed Phil Chou, Air Quality Specialist with Mendocino Air Quality Management District (MAQMD), relaying ██████████ concerns, and asking if they have had any interaction and/or issues with the Mendocino Railways/Skunk Train. I also relayed ██████████'s concerns.

On 03DEC21, Phil Chou emailed me back stating that he was out of the office and is unsure if they had contact with the said railway. On 06DEC21, Chou called me stating the MAQMD from time to time gets a complaint about the railway, but no violations have been issued to the Mendocino Railway/Skunk Train.

On 06DEC21, I was directed by the Mendocino County Public Health Director, Anne Molgaard, via Kirk Ford, my supervisor, to issue the Mendocino Railway/Skunk Train a Notice of Violation (NOV) for not reporting the spill, and not allowing the inspector to complete his inspection of the facility. The NOV quoted California Health and Safety Codes (H&S): 25510(b), 25510.2, 25511, 25515.4, 25185; as well as California Code of Regulations (CCR) sections: 19 CCR 2631(a)(1), and 22 CCR 66268.1. Said sections provide the Certified Unified Program Agency (CUPA) authorities to respond, enter, conduct inspections, and enforce laws and regulations. Further, the quotes sections also show it is a misdemeanor to willfully and

knowingly prevent, or attempts to impede the CUPA inspector from doing the aforementioned. The NOV went over the reporting requirements and that a person cannot, without permission, leave a hazardous waste applied to land. The NOV allowed the Mendocino Railway/Skunk Train to: 1. Contact this office or the state warning center to report a release immediately. 2. Schedule an inspection of the location of the release immediately. 3. Provide, in writing, your facility's plan for removing any, hazardous material that has been released to the ground, as well as any contractor's name and contract information to be used for cleanup. 4. Remove and replace any soils contaminated by crankcase (motor), hydraulic, or diesel oils and/or bunker fuels at the direction and satisfaction of Mendocino County Environmental Health, State of California agencies, and/or the government agencies of the United States. 5. Provide proof the contaminated soils have been characterized by a certified laboratory. Tests shall include Total petroleum Hydrocarbons (TPH) test, as well as tests for Benzene, Toluene, Ethylbenzene, and Xylene (TPEX). 6. Provide any invoices, hazardous waste manifests, or other record of waste disposal. 7. Provide any documentation showing that your facility has complied or attempted to comply with the above sections.

The incident response is now closed, however the remediation and Notice of Violation remains at this time.

DISPOSITION: Incident Response Closed: NOV and Remediation Open

SUPPLIMENTAL REPORT #1

Authored by Ben Hutter, EHS

Summary:

I conducted an on-site inspection of the Skunk Train Station. I observed an oil spill that was approximately 6 ft x 4 ft and I observed tracks of oil that run along the inside of the rails for as far as I could see. I discovered that the tracks of oil run along the entire track. I also discovered that there is an unknown amount of oil under absorbent. The facility states that they are federally regulated and that it isn't an issue. They did state that they would eventually clean up the oil spill but gave no indication that they intend to clean up all of the oil along the tracks.

Details:

12/01/2021

@ 0938 I received a voice message from William Nalty which asked that I investigate a report of oil being drained out between the tracks at the Skunk Train station.

@ ~1145 Phone call with William Nalty

I called William Nalty back to discuss the report with him and I told him that I would investigate.

@ ~1150 On-site Inspection

I arrived on site at the Skunk Train. While I was walking to the main office I observed that there were two large tracks of what appeared to be oil running along the inside of the tracks as far as I could see.

I went inside the main office and asked to speak with a manager. At first no one could find a manager but eventually they called one and said that he would be there in a few minutes. I asked if it was ok to take pictures while I waited and they said sure. While I was waiting I walked back along the tracks and discovered an approximately 6 foot by 4 foot spill of what appeared to be oil.

Eventually Tony Natareno, assistant general manager 707/964-6371 [REDACTED] tony@skunktrain.com, joined me. When I asked Tony Natareno if they knew about the spill and the tracks he stated that they did. He elaborated that their engine had an oil overflow and is designed to spill the oil out. I asked him how far the oil tracks went he stated that they went along the entire length of the track. Tony Natareno went on to explain that they were under Federal Jurisdiction and that they did not have to follow county regulations so it wasn't an issue. I told him that I was not sure how all of that worked and that I was here just to establish if there was a spill or not and that I would be reporting to my office to see what they wanted to do.

I called William Nalty. We discussed the situation and I sent him pictures of the incident. Eventually it was decided that I would document what I found and we would send the incident to the EPA.

I informed Tony Natareno of our decision and asked if he wanted to hang out while I took pictures. He said sure. We walked along the tracks while I took pictures. Eventually I discovered that there was absorbent underneath one of the passenger cars and I asked if there was more oil underneath it. He said that there was.

After I finished taking pictures we said our goodbyes and I left.

Supplimental Report #2

Authored by Ben Hutter, EHS

On December 1, 2021, at about 3:30, I was on my break and walking to the nearby coffee shop when I passed by the spill at the Skunk Train. I observed two rail crew members pouring a clear colorless liquid from a container (it looked like a fuel container but I'm not sure) onto the spill. I asked what they were doing and they said nothing.

End Report

Investigation Details:

Investigated:

Investigated By: William Nalty

Action Taken: Violation Issued

Investigation Notes: NOV issued 06DEC21. Cleared 15FEB22.

Investigated: 02/15/2022 3:00 PM

Investigated By: William Nalty

Action Taken:

Investigation Notes: Nicole Hartsell (EH) and I met with Mendocino Railway (Skunk Train) personnel to check the status of the NOV. The Skunk Train personnel provided me with: the names of every person who was involved with the clean-up; a lab analysis of the contaminants; and a hazardous waste manifest/receipt for the oily solids. The Skunk Train representatives did show us where the spill was located. I observed a small amount of oil on the track, and what appeared to be absorbent sweep and an absorbent mat within the tracks. I also observed this spill was located in an area that is several hundred feet from the parking lot access. Thus, it is not in an area of normal public access, and is relatively close to the

Skunk Train buildings. The remaining issue was the report to the OES Warning Center. The required amount to report "Release/threatened release that may harm person, property, or environment" is vague and subjective. I educated the Skunk Train Personnel any pooled oil is a hazard to wildlife and I would consider it a hazard to the environment. Based off of the education and the fact that a couple months have passed, I waived the OES reporting requirement in this case. Satisfied all other conditions on the NOV were met, I closed out the NOV with no further pending actions.

DISPOSITION: Closed

EXHIBIT B



Mendocino County Health & Human Services Agency

Healthy People, Healthy Communities



Environmental Health

Anne Molgaard - Transitional Public Health Director

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William Vally

EXHIBIT C

MENDOCINO RAILWAY

Foot of Laurel Street
Fort Bragg, California 95437

707 964 6371 TEL
707 964 6428 FAX

December 19, 2021

Via Email (naltyw@mendocinocounty.org)

Will Nalty
Hazardous Materials Operations Specialist
Mendocino County Environmental Health
860 N. Bush St.
Ukiah, CA 95482

Dear Mr. Nalty:

The Notice of Violation letter dated December 6, 2021 was forwarded to me by Robert Pinoli of Mendocino Railway for reply. Ordinarily, Mr. Pinoli would have responded directly, but given the nature of the allegations in the letter, the decision was made to have me prepare an initial reply as a Member of the Board of Directors.

First, I want to ensure there is no misunderstanding that Mendocino Railway recognizes the jurisdiction of Mendocino County Environmental Health, as the CUPA. We also do not believe that access was improperly denied to Mr. Hunter from Environmental Health. Unfortunately, Mr. Hunter never came to the clearly marked on-site company office/station to introduce himself, provide identification and request access to the property, as normal protocol would dictate. Instead, he went directly onto the property and over to an active rail line, where he began looking at some pooled oil on the ground between the active tracks.

Our employees are trained to address safety issues, such as an untrained person on active tracks. When questioned by one of the railroad's employees about what he was doing, Mr. Hunter did state who he was and his purpose for being on the property, and presented a business card. In his interaction with the employee, it was reported that Mr. Hunter became agitated and threatened that he was "one phone call away" from "having all this track torn up." This statement confused our employee, who reported that he then became concerned he did not understand the scope of Mr. Hunter's jurisdiction to tear up the railroad tracks, and requested that Mr. Hunter leave the property while he consulted with our management.

We regret how the situation developed, but feel this misunderstanding could have been avoided if normal protocols had been observed, with the inspector simply going to the office and requesting access to conduct an inspection, and stating what he was there to inspect. In an active rail facility, or any industrial setting, observing such protocols and being escorted is also for the inspector's own safety. We also want to be clear that Mr. Hunter, or any other CUPA representative, is welcome to inspect the railroad's facilities at any reasonable time. Finally, in your letter, you requested that the railroad reach out to schedule a CUPA inspection, and I have instructed Mr. Pinoli to do so.

With respect to the instruction in your letter to report the release of oil between the tracks, the release was not reported because there was not a reportable release. While our crews have been trained in proper reporting of hazardous materials spills, the circumstances surrounding this amount of oil pooled on the surface in the space between active tracks did not and does not require reporting. However, upon discovery, the area was cleaned up, with the media contained, and samples sent to a certified lab for characterization, prior to proper disposal at a permitted facility.

As I'm sure you are aware, reporting is not required for literally "any" amount of hazardous materials released, which would lead to absurd results of businesses reporting every drip, leak, and spill to governmental authorities. Rather, California Health & Safety Code 25510 gives OES the responsibility for defining what releases must be reported, and OES guidance currently defines the duty to report only "significant" releases. Continuing this theme, OES has current proposed regulations creating a new definition for "Incidental Releases" which don't pose an off-site threat and can be easily cleaned up onsite. In this case, the release of oil was contained onsite in an industrial facility between active railroad tracks, was not ongoing or near any sensitive receptors, and upon discovery was readily cleaned up by on-site personnel. In short, it is exactly the type of release that is exempt from immediate reporting under 25510. That said, we welcome the opportunity to demonstrate to the CUPA that this on-site release of oil has been properly addressed.

In addition to contacting your office to schedule an inspection, as you requested, we will be following up on the other items in your December 6th letter within the stated 30 day timeframe. In the meantime, please contact Robert Pinoli, President of Mendocino Railway, with any questions.

Best regards,

Mike Buck
Member, Board of Directors
Mendocino Railway