

**COLUMBIA BASIN RAILROAD COMPANY, INC.
CENTRAL WASHINGTON RAILROAD**



**CBRW - CWA
GENERAL TARIFF 1000 - SECTION III**

**HAZARDOUS MATERIALS
AND
TOXIC INHALATION/POISON HAZARD MATERIAL (TIH/PIH)
PROVISIONS**

ISSUED: December 5, 2012

EFFECTIVE: January 1, 2013

ISSUED BY

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TARIFF 1000 - SECTION III

HAZARDOUS MATERIALS & TIH/PIH PROVISIONS	HAZARDOUS MATERIALS & TIH/PIH PROVISIONS
<p>ITEM 1000</p> <p align="center">HAZARDOUS MATERIALS</p> <p>1. The provisions of this Item 1000 apply to all cars containing hazardous materials, toxic materials, wastes, pollutants, contaminants or explosives, and any residue thereof, which shall include, without limitation, (i) materials identified as "hazardous wastes", "hazardous materials" and "hazardous substances" in the Hazardous Materials Regulations of the U.S. Department of Transportation in Title 40 of the Code of Federal Regulations (CFR) Parts 260 through 263 or 49 CFR 171.8 (or any successor provisions), (ii) explosives defined as Class A, B or C explosives, as named in Part 172, Commodity List, Tariff Bureau of Explosive (BOE) 6000-Series (or any successor provisions), and (iii) a "TIH/PIH commodity", which shall refer to a "material poisonous by inhalation" or "material toxic by inhalation", as defined in 49 C.F.R. § 171.8 (or any successor provisions), or as otherwise described as a toxic by inhalation hazardous commodity or a poisonous by inhalation hazardous commodity (such materials, wastes, pollutants, contaminants and explosives described in this paragraph 1 shall be referred to individually as a "Hazardous Material" and together as "Hazardous Materials").</p> <p>Except to the extent that a subject matter is expressly covered in this Item 1000, all provisions in Subscribing Carrier's tariffs that apply generally to other types of shipments shall equally apply to shipments of Hazardous Materials.</p> <p>2. Pursuant to 49 CFR 174.16, consignees are required to accept delivery of carload traffic of hazardous materials within 48 hours after notice of arrival has been sent or given to the consignee. Consignees and Shippers that anticipate the consignee will not routinely be able to accept delivery in a timely fashion should make alternative arrangements for storage of cars. (See Item 1005, paragraph 1 for requirements for receiving a TIH/PIH commodity).</p> <p>Subscribing Carrier does not hold itself out to provide storage of cars containing Hazardous Materials. Shipper shall comply with all applicable laws, rules, regulations, orders and industry standards governing Hazardous Materials, including without limitation those standards published by the Association of American Railroads. If Shipper shall arrange for delivery to a designated facility not operated by Shipper, Shipper shall be responsible for such facility being in compliance with all permit requirements, and all other applicable laws, rules, regulations, orders and industry standards governing Hazardous Materials.</p> <p align="center">(Continued in next column)</p>	<p>ITEM 1000 (Cont'd)</p> <p align="center">HAZARDOUS MATERIALS</p> <p>3. For the purpose of this Tariff, the term "Loss" (which also includes the term "Losses") shall mean any and all losses, injuries, damages, claims, demands, liabilities, lawsuits, fines or penalties, costs of environmental mitigations (including without limitation, containment, cleanup, response actions, removal actions, remedial actions, monitoring and health assessments), and fees (including, but not limited to, attorney, consultant, and expert witness fees, and costs of investigation), which arise out of or are related to transloading, unloading and loading, transportation or disposition (including treatment, storage, use, or disposal) of Hazardous Materials, or violation of applicable law governing Hazardous Materials, or violation of applicable provisions of this Tariff or any other applicable tariff covering Hazardous Materials. Without limiting the generality of the foregoing, the term "Loss" or "Losses" shall include any and all loss or damage to natural resources or property (including, without limitation, the property of either of the Subscribing Carrier or Shipper), and injury or death of any person or persons (including, without limitation, employees of Subscribing Carrier).</p> <p>4. Except to the extent otherwise required by applicable law, Shipper hereby agrees to indemnify and hold harmless Subscribing Carrier, its officers, agents and employees from and against any and all Losses, whether such Losses are incurred by Subscribing Carrier or asserted by or on behalf of a third party or governmental agency, caused or contributed by, or resulting from or arising out of, in whole or in part, Shipper's act or omission, or act or omission of Shipper's contractor, subcontractor, licensee or invitee, including without limitation the supplying of defective equipment to move Hazardous Materials, the violation of any law or regulation, and the breach of any tariff requirements; <u>provided, that</u>, Shipper shall not indemnify Subscribing Carrier to the extent such Losses were caused by or resulted from Subscribing Carrier's negligence.</p> <p>5. Notwithstanding any provisions in this Item 1000 to the contrary and except to the extent otherwise required by applicable law, Shipper hereby agrees to indemnify and hold harmless Subscribing Carrier, its officers, agents, and employees from and against any and all Losses arising out of or related to (i) an event that occurs subsequent to delivery to and acceptance of a Hazardous Material product by Shipper, another rail carrier, contractor, another transporter designated by Shipper, or an EPA licensed treatment, storage, or cleanup/disposal site operator designated by Shipper;</p> <p align="center">(Continued on next page)</p>
<p>For explanation of terms, abbreviations and reference marks now shown herein, see last page General Tariff 1000.</p>	

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SECTION III HAZARDOUS MATERIALS & TIH/PIH PROVISIONS	SECTION III HAZARDOUS MATERIALS & TIH/PIH PROVISIONS
<p>ITEM 1000 (Cont'd)</p> <p align="center">HAZARDOUS MATERIALS</p> <p>5. (Cont'd), (ii) the release or spill of a Hazardous Material which is not properly identified on the bill of lading or manifest; (iii) the future use of or exposure to the equipment where such Losses arise from Shipper's failure or negligence in inspecting and/or decontaminating equipment prior to release to Subscribing Carrier or delivering railroad or motor carrier; and (iv) the presence of any trace chemicals or contaminants in Hazardous Materials that is not described in the shipping name of such Hazardous Materials.</p> <p>6. To the extent the Loss (or portion thereof) is not within the scope of the indemnity in paragraph 4 or 5 of this Item 1000, then the Loss shall be allocated, as between Shipper and Subscribing Carrier, as determined by applicable law; <u>provided, that</u>, to the extent such Loss (or portion thereof) is caused by a third party, and the Shipper or Subscribing Carrier (each an "Interested Party") has a contractual remedy against such a third party that would limit the Loss borne by the other Interested Party, then the first Interested Party shall, in good faith, exercise such remedy for the benefit of the other Interested Party. Notwithstanding any provision to the contrary in this Item 1000, to the extent the Loss (or portion thereof) is covered by a separate agreement between the Shipper and Subscribing Carrier, the allocation of such Loss shall be governed by such separate agreement.</p> <p>7. In no event shall Subscribing Carrier be liable for any (i) special, punitive or consequential damages; and (ii) any Loss arising out of or related to a Force Majeure event, including without limitation, acts of God, acts of terrorism, labor disputes, AAR or governmental orders, or any other act reasonably beyond the Subscribing Carrier's control.</p> <p>8. Knowledge on the part of the Subscribing Carrier of any violation of any terms of this Tariff by the Shipper shall constitute neither negligence nor acquiescence in such violation, and shall in no event relieve Shipper of any of the responsibilities and indemnity obligations assumed in this Tariff.</p> <p>9. References to Subscribing Carrier and Shipper as used in this Tariff shall include the officers, agents, representatives and employees of Subscribing Carrier and Shipper. Shipper and Subscribing Carrier further agree that each and all of its indemnity commitments in this Tariff shall extend to and include the parent and all subsidiary and affiliated companies of Shipper and Subscribing Carrier and their respective officers, agents and employees.</p> <p align="center">(Continued in next column)</p>	<p>ITEM 1000 (Cont'd)</p> <p align="center">HAZARDOUS MATERIALS</p> <p>10. If any provision of this Tariff shall exceed the limit of validity prescribed by applicable law, then the obligation to be fulfilled or performed shall be reduced to the maximum limit of such validity, and if any provision in this Tariff operates or would operate prospectively to invalidate any portion of this Tariff, in whole or in part, then such provision only shall be held ineffective, as thought no herein contained, and the remainder of this Tariff shall remain operative and in full force and effect.</p> <p>11. In the event of any leakage, release, spillage, dumping or other discharge of a Hazardous Material while being transported by, or in the possession of, the Subscribing Carrier, the Shipper, upon notification thereof by the Subscribing Carrier or other parties, shall provide prompt advice as to the proper method of cleanup, disposal and other remedial actions to take with respect to such leakage, release, spillage, dumping or other discharge, and both Subscribing Carrier and Shipper shall cooperate fully to the extent reasonably necessary to expeditiously and prudently abate or eliminate any hazard. Nothing in this paragraph 11, however, shall alter the Shipper's or the Subscribing Carrier's responsibilities under this Item 1000.</p> <p>12. If actions by federal, state or local governments ban, preclude or otherwise restrict the transportation of Hazardous Materials through their jurisdictions under routings normally used for Shipper's traffic, and thereby require the re-routing of trains and/or cars carrying such materials in a way that causes the Subscribing Carrier to incur additional costs, the Shipper will be responsible for such costs. Such additional costs may include without limitation costs associated with added mileage, including labor and fuel costs, additional car and locomotive days, added intermediate car handlings, additional switching operations and increased terminal dwell time. The Subscribing Carrier will advise the Shipper of the anticipated (and/or occurrence of) additional costs that would give rise to Shipper's obligations under this paragraph 12. Such costs will be included in the calculation of total charges due from the Shipper.</p>
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SECTION III HAZARDOUS MATERIALS & TIH/PIH PROVISIONS	SECTION III HAZARDOUS MATERIALS & TIH/PIH PROVISIONS
<p>ITEM 1005</p> <p align="center">SPECIAL PROVISIONS APPLICABLE TO TIH/PIH COMMODITIES</p> <p>1. Shipper shall be prepared to receive a carload of a TIH/PIH commodity (as defined in Item 1000) immediately upon notification of availability at destination by carrier railroad. There will be no free time granted to Shipper once notification takes place. Charges will begin at 12:01 am the morning after Shipper tender/notification or the first day of deliverable service, whichever occurs first.</p> <p>If a receiver/Shipper or receiving location is unable to accept a TIH/PIH commodity carload when it is first tendered/notified and available for delivery, Subscribing Carrier reserves the right to pull car(s) to make room on the track to spot the TIH/PIH car(s). If Shipper advises that pulling cars cannot be accomplished and Subscribing Carrier must then hold the car(s) in its rail facilities, a charge of \$1,000 per car, per day or portion thereof will be assessed until the car(s) are placed at its billed destination. Subscribing Carrier does not hold itself out to provide storage of cars containing a TIH/PIH commodity.</p> <p>2. When a car is deemed unsafe based on the criteria bullet points below, the Subscribing Carrier has the right to assess a penalty of \$10,000 on the Shipper:</p> <ul style="list-style-type: none"> A. A car is overloaded, imbalanced or has a shifted load. B. A car is spilling, leaking, or dusting. C. A car containing a TIH/PIH commodity or residue is identified moving on the Subscribing Carrier's line for which shipping instructions were not regulatory compliant. D. Equipment or lading on a car is not properly closed, secured or tendered. <p>3. When Subscribing Carrier provides any of the following tasks to a car containing a TIH/PIH commodity, a charge equating to actual cost plus 25% (minimum \$1,000) will be assessed to the party requesting or requiring these services:</p> <ul style="list-style-type: none"> A. A car needs readjusting, reducing, loading, or unloading of a shipment. B. Repair or cleaning equipment, or clean-up of leaked/spilled materials. C. Applying sprays or suppressants to the shipment or contents. <p>Except to the extent legally required to do so, Subscribing Carrier shall have the right to refuse to provide any of the foregoing services.</p> <p align="center">(Continued in next column)</p>	<p>ITEM 1005 (Cont'd)</p> <p align="center">SPECIAL PROVISIONS APPLICABLE TO TIH/PIH COMMODITIES</p> <p>4. Where at Subscribing Carrier's sole discretion, safe railway operations are not possible because of an extreme condition such as but not limited to the conditions below, train service will be suspended until the condition is rectified to the satisfaction of Subscribing Carrier's safety/environmental staff:</p> <ul style="list-style-type: none"> A. Condition or practice likely to cause permanent disability, or loss of life or body part, B. Extensive loss of structure, equipment or material, and/or C. Repeated or multiple unresolved conditions or practices that pose a material risk of Loss.