

**STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY**

In the Matter of Remedial Action by:

BNSF Railway Company

AGREED ORDER

No. DE 18042

TO: BNSF Railway Company
Attn: Mr. Shane DeGross
605 Puyallup Avenue
Tacoma, WA 98421

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I. INTRODUCTION

The mutual objective of the State of Washington, Department of Ecology (Ecology) and BNSF Railway Company (BNSF) under this Agreed Order (Order) is to provide for remedial action at a facility where there has been a release or threatened release of hazardous substances. This Order requires BNSF to complete a focused Remedial Investigation (RI) and a Feasibility Study (FS) for releases of hazardous substances that have come to be located on the BNSF Property, any necessary interim actions on the BNSF Property, and, if requested by Ecology, a preliminary Draft Cleanup Action Plan (DCAP) that addresses historic releases at the BNSF Property. Ecology believes the actions required by this Order are in the public interest.

II. JURISDICTION

This Order is issued pursuant to the Model Toxics Control Act (MTCA), RCW 70A.305.050(1).

III. PARTIES BOUND

This Order shall apply to and be binding upon the Parties to this Order, their successors and assigns. The undersigned representative of each party hereby certifies that they are fully authorized to enter into this Order and to execute and legally bind such party to comply with this Order. BNSF agrees to undertake all actions required by the terms and conditions of this Order. No change in ownership or corporate status shall alter BNSF's responsibility under this Order. BNSF shall provide a copy of this Order to all agents, contractors, and subcontractors retained to perform work required by this Order, and shall ensure that all work undertaken by such agents, contractors, and subcontractors complies with this Order.

IV. DEFINITIONS

Unless otherwise specified herein, the definitions set forth in RCW 70A.305, WAC 173-204, -340, shall control the meanings of the terms in this Order.

A. Site: The Site is referred to as Time Oil Bulk Terminal. The Site constitutes a facility under RCW 70A.305.020(8). The Site is defined by where a hazardous substance, other than a consumer product in consumer use, has been deposited, stored, disposed of, or placed, or

otherwise come to be located. Based upon factors currently known to Ecology, the Site includes multiple properties or areas in Seattle, including portions of Salmon Bay and City of Seattle rights of way, as shown on the Location Map (Exhibit A).

- B. Parties: Refers to Ecology and BNSF.
- C. Potentially Liable Persons (PLP(s)): Refers to BNSF.
- D. Agreed Order or Order: Refers to this Order and each of the exhibits to this Order.

All exhibits are integral and enforceable parts of this Order.

E. Time Oil Properties: Refers to the former Time Oil bulk fuel facility, generally located at 2701, 2737, 2750, 2752, 2801, and 2805 West Commodore Way, Seattle. The Time Oil Property includes the following parcels:

- 2701, 2737 West Commodore Way (“Bulk Terminal Parcel”)
- 2750, 2752 West Commodore Way (“East Waterfront Property,” “West Waterfront Property”)
- 2801 and 2805 West Commodore Way (“ASKO Hydraulic Parcel”)

F. BNSF Property: Refers to King County parcel #423790-0240, as shown on the Location Map (Exhibit A).

V. FINDINGS OF FACT

Ecology makes the following findings of fact, without any express or implied admissions of such facts by BNSF.

A. Based upon factors currently known to Ecology, the Site generally includes portions of the BNSF Property, the Time Oil Properties, the West Commodore Way right-of-way, and Salmon Bay, Seattle, Washington. The Site may be further defined as additional investigation and characterization is completed.

B. The BNSF Property (King County parcel #423790-0240) was owned by Great Northern Railway Company until it merged with Burlington Northern.

C. The Time Oil Properties are owned by TOC Seattle Terminal 1, LLC. TOC Seattle Terminal 1 acquired the Time Oil Property on or about November 30, 2020.

D. The prior owner of the Time Oil Properties, TOC Holdings Co., filed for Chapter 7 bankruptcy protection on April 24, 2017 (*In re: TOC Holdings Co., fka Time Oil Co.*, United States Bankruptcy Court, Western District of Washington at Seattle, Case No. 17-11872-CMA). Prior to filing for bankruptcy, TOC Holdings Co. (TOC) conducted several rounds of environmental investigations at the Site, including the BNSF Property, under Ecology's Voluntary Cleanup Program.

E. Cantera and Ecology coordinated on several rounds of environmental investigations at the Site in 2018 and 2019. The 2019 investigations included the BNSF Property. In September 2020, based on the RI/FS done for the Time Oil Properties by Cantera and public comments, Ecology issued a Final Cleanup Action Plan (CAP) for the remedy at the Time Oil Properties. A Prospective Purchaser Consent Decree (PPCD) requiring Cantera to implement the CAP was entered in King County Superior Court in October 2020.

F. The main railroad line on the BNSF Property was built sometime between 1893 and 1917. Between 1936 and 1944, five rail spurs were constructed to the north of the main line. Former Rail Spur #5 ran just north of, and parallel to, the main line on BNSF Property. Former Rail Spur #1 ran onto the south-central portion of the ASKO Hydraulic Parcel. Former Rail Spurs #2 through #4 ran along the southern boundary of the ASKO Hydraulic Parcel and onto the Bulk Terminal Parcel. Former Rail Spurs #2 and #3 crossed the ASKO Hydraulic Parcel at the southeastern corner before entering the Bulk Terminal Parcel. Former Rail Spurs #2 through #4 had piping connections with barreling sheds on the ASKO Hydraulic and Bulk Terminal Parcels for loading and unloading petroleum products from rail tanker cars. A Spur Track Agreement between Great Northern Railway Company and TOC in 1943 indicated that Great Northern Railway Company owned and maintained Former Rail Spurs #1 through #4. The spurs were removed sometime between 1953 and 1985. (SoundEarth, 2014; ASKO report)¹

¹ SoundEarth Strategies, 2014 (SoundEarth, 2014). Remedial Investigation Report, ASKO Hydraulic Property, May 23, 2014 (ASKO report).

G. The sources of contamination identified on the BNSF Property likely occurred during loading and unloading activities from rail cars.

H. Subsurface investigations on the BNSF Property were conducted in 2001, 2012, and 2013 by TOC Holdings Co. Three borings, four wells in the perched aquifer, and three wells in the shallow aquifer were completed as part of these investigations. A total of 30 soil samples were collected at depths ranging down to 22.5 feet below ground surface (bgs). A total of 16 groundwater samples were collected. (SoundEarth, 2014).

I. Diesel and oil range petroleum hydrocarbons (TPH-D and TPH-O, respectively) were detected in three soil sampling locations on the BNSF Property at total concentrations up to 5,200 mg/kg (01MW98/B266 at 6 feet bgs on May 7, 2013), which exceeds the MTCA Method A cleanup level (CUL) of 2,000 mg/kg for TPH-D and TPH-O combined. Gasoline range petroleum hydrocarbons (TPH-G) were detected in four locations on the BNSF Property at concentrations up to 240 mg/kg (01MW95/B261 at 5 feet bgs on Aug. 17, 2012), which exceeds the Method A CUL of 100 mg/kg where benzene is not detected. Trichloroethene (TCE) was detected at four locations on the BNSF Property at concentrations up to 7.9 mg/kg (01MW97/B265 at 11 feet bgs on May 7, 2013), which exceeds the Method A CUL of 0.03 mg/kg. Pentachlorophenol (PCP) was detected at two locations on the BNSF Property at concentrations up to 0.0572 mg/kg (SB-07 at 15 feet bgs in 2001), which exceeds the Method B CUL of 0.00088 mg/kg based on leaching to potable groundwater from the saturated zone. (SoundEarth, 2014).

J. TPH-D and TPH-O were detected in four groundwater sampling locations on BNSF Property at total concentrations up to 4,820 ug/L (01MW98 on May 10, 2013), which exceeds the Method A CUL of 500 ug/L for TPH-D and TPH-O combined. TPH-G was detected in three locations on the BNSF Property at concentrations up to 770 ug/L (01MW92 on May 10, 2013). TCE was detected in four locations on the BNSF Property at concentrations up to 6,700 ug/L (01MW92 on May 10, 2013), which exceeds the Method A CUL of 5 ug/L. Cis-1,2-Dichloroethene (cis-1,2-DCE) was detected in three locations on the BNSF Property at concentrations up to 420 ug/L (01MW92 on May 13, 2013), which exceeds the Method B CUL of

16 ug/L. Vinyl chloride was detected in three locations on the BNSF Property at concentrations up to 9.4 ug/L (01MW92 on Sept. 5, 2012), which exceeds the Method A CUL of 0.2 ug/L. (SoundEarth, 2014).

K. Groundwater monitoring data collected by SoundEarth Strategies and Floyd Snider indicate that groundwater in the uppermost perched water bearing zone (also termed “aquifer”) flows from the BNSF Property northward onto the ASKO Hydraulic Parcel (SoundEarth, 2014, Figure 14; Floyd Snider, 2020, Figure 5.3) and that groundwater in the shallow aquifer (beneath the perched zone) generally flows to the northwest and north across the Site (SoundEarth, 2014, Figures 15 and 17; Floyd Snider, 2020, Figure 5.4).

L. Subsurface investigations occurred along the southern boundary of the ASKO Hydraulic Parcel just north of the property line between ASKO and BNSF in 2001 and in each year between 2009 and 2013. Two soil borings, two wells in the perched aquifer, four wells in the shallow aquifer, and one well in the intermediate aquifer were completed. A total of 33 soil samples were collected at depths ranging down to 37.5 feet bgs. A total of 81 groundwater samples were collected. (SoundEarth, 2014).

M. TPH-D and TPH-O were detected in four locations in soil along the southern boundary of the ASKO Hydraulic Parcel at total concentrations up to 4,100 mg/kg (B116 at 3 feet bgs on Mar. 18, 2009). TPH-G was detected in five locations along the southern boundary of the ASKO Hydraulic Parcel at concentrations up to 1,600 mg/kg (01MW60/B83 at 7.5 feet bgs on Dec. 29, 2008). Benzene was detected in one location along the southern boundary of the ASKO Hydraulic Parcel at a concentration of 0.61 mg/kg (01MW60/B83 at 7.5 feet bgs on Dec. 29, 2008). TCE was detected in five locations along the southern boundary of the ASKO Hydraulic Parcel at concentrations up to 120 mg/kg (01MW71/01SVE03/B133 at 20 feet bgs on Feb. 11, 2010). Cis-1,2-DCE was detected in four locations along the southern boundary of the ASKO Hydraulic Parcel at concentrations up to 0.34 mg/kg (01MW71/01SVE03/B133 at 20 feet bgs on Feb. 11, 2010). PCP was detected in one location along the southern boundary of the ASKO Hydraulic Parcel at 0.0548 mg/kg (SB-06 at 10 and 15 feet bgs in 2001). (SoundEarth, 2014).

N. TPH-D and TPH-O were detected in five locations in groundwater along the southern boundary of the ASKO Hydraulic Parcel at total concentrations up to 2,900 ug/L (01MW71 on Apr. 2, 2013). TPH-G was detected in three locations in groundwater along the southern boundary of the ASKO Hydraulic Parcel at concentrations up to 900 ug/L (01MW71 on Apr. 13, 2011). TCE was detected in six locations in groundwater along the southern boundary of the ASKO Hydraulic Parcel at concentrations up to 3,900 ug/L (01MW62 on Apr. 7, 2009). Cis-1,2-DCE was detected in five locations in groundwater along the southern boundary of the ASKO Hydraulic Parcel at concentrations up to 110 ug/L (01MW71 on Apr. 2, 2013). Trans-1,2-DCE was detected in two locations in groundwater along the southern boundary of the ASKO Hydraulic Parcel at concentrations up to 180 ug/L (01MW70 on Aug. 25, 2011). Vinyl chloride was detected in five locations in groundwater along the southern boundary of the ASKO Hydraulic Parcel at concentrations up to 8.8 ug/L (01MW71 on Apr. 2, 2013). (SoundEarth, 2014).

VI. ECOLOGY DETERMINATIONS

Ecology makes the following determinations, without any express or implied admissions of such determinations (and underlying facts) by BNSF.

A. BNSF is an “owner or operator” as defined in RCW 70A.305.020(22) of a “facility” as defined in RCW 70A.305.020(8). BNSF owns the BNSF Property where hazardous substances have been detected in soil and groundwater. BNSF delivered rail cars to the Time Oil Properties at the Site for loading and unloading activities. Former Rail Spurs #1 through #5 on Time Oil Properties were used for transporting, loading, and unloading hazardous substances on the ASKO Hydraulic and Bulk Terminal Parcels. Portions of Former Rail Spurs #1 through #5 extended from the main rail line on BNSF Property onto the ASKO Hydraulic Parcel and some entered the Bulk Terminal Parcel.

B. Based upon all factors known to Ecology, a “release” or “threatened release” of “hazardous substance(s)” as defined in RCW 70A.305.020(32), (13), respectively, has occurred at the Site.

C. Based upon credible evidence, Ecology issued a PLP status letter to BNSF dated August 27, 2018, pursuant to RCW 70A.305.040, .020(26), and WAC 173-340-500. By letter dated September 28, 2018, BNSF did not contest its PLP status for the release at BNSF Property and ASKO Hydraulic Parcels, but did object to its PLP status for the remainder of the Time Oil Property based on the discrete activities and contamination associated with the different properties. After providing for notice and opportunity for comment, reviewing comments submitted, including BNSF's, and concluding that credible evidence supported a finding of potential liability, Ecology issued a determination that BNSF is a PLP at the Site under RCW 70A.305.040 and notified BNSF of this determination by letter dated March 5, 2019.

D. Pursuant to RCW 70A.305.030(1), .050(1), Ecology may require PLPs to investigate or conduct other remedial actions with respect to any release or threatened release of hazardous substances, whenever it believes such action to be in the public interest. Based on the foregoing facts, Ecology believes the remedial actions required by this Order are in the public interest.

E. Under WAC 173-340-430, an interim action is a remedial action that is technically necessary to reduce a threat to human health or the environment by eliminating or substantially reducing one or more pathways for exposure to a hazardous substance, that corrects a problem that may become substantially worse or cost substantially more to address if the remedial action is delayed, or that is needed to provide for completion of a site hazard assessment, RI/FS, or design of a cleanup action plan. Either party may propose an additional interim action under this Order. If the Parties are in agreement concerning the additional interim action, the Parties will follow the process in Section VII.D. If the Parties are not in agreement, Ecology reserves its authority to require additional interim action(s) under a separate order or other enforcement action under RCW 70A.305, or to undertake the interim action(s) itself.

VII. WORK TO BE PERFORMED

Based on the Findings of Fact and Ecology Determinations, it is hereby ordered that BNSF take the following remedial actions at the BNSF Property, which is a portion of the Site. These

remedial actions must be conducted in accordance with WAC 173-340, -204, and with the schedule and terms of the Scope of Work and Schedule (Exhibit B), and all other requirements of this Order.

A. As described in Exhibit B (Scope of Work and Schedule), BNSF will complete an RI/FS focused on the BNSF Property to determine the nature and extent of the releases on the BNSF Property and any interim actions at the BNSF Property to remediate those releases. If requested by Ecology, BNSF shall submit a preliminary draft Cleanup Action Plan for the BNSF Property for any remaining remediation.

B. If any due dates of deliverables outlined in this section and in Exhibit B (Scope of Work and Schedule) fall on a weekend or holiday, the deliverable must be submitted to Ecology no later than the next business day. BNSF will be deemed in substantial compliance with the schedule under this Order, as identified in Exhibit B, if an electronic copy or a FTP link or file-sharing link containing the deliverable, is transmitted by 5:30 p.m. on the date that a deliverable is due and hardcopies, to the extent required, are postmarked by the following business day.

C. If BNSF learns of a significant change in conditions at the Site, including but not limited to a statistically significant increase in contaminant and/or chemical concentrations in soil, groundwater, surface water, air, and/or sediments, BNSF, within seven (7) days of learning of the change in condition, shall notify Ecology in writing of said change and provide Ecology with any reports or records (including laboratory analyses, sampling results) relating to the change in conditions.

D. BNSF shall submit to Ecology written quarterly Progress Reports that describe the actions taken during the previous quarter to implement the requirements of this Order. All Progress Reports shall be submitted by the fifteenth (15th) day of the month in which they are due after the effective date of this Order. Progress Reports shall be sent to Ecology's project coordinator by e-mail and to the extent a copy is required by mail, delivered according to the procedures outlined in Section VII. B. The Progress Reports shall include the following:

1. A list of on-site activities that have taken place during the quarter.

2. Detailed description of any deviations from required tasks not otherwise documented in project plans or amendment requests.

3. Description of all deviations from the Scope of Work and Schedule (Exhibit B) during the current quarter and any planned deviations in the upcoming quarter.

4. For any deviations in schedule, a plan for recovering lost time and maintaining compliance with the schedule.

5. All raw laboratory data and other raw field data requested by Ecology, received during the previous quarter (if not previously submitted to Ecology) together with a description of the underlying samples collected.

6. A list of deliverables and activities for the upcoming quarter and the date for the next project deliverable.

E. All plans or other deliverables submitted by BNSF for Ecology's review and approval under the Scope of Work and Schedule (Exhibit B) shall, upon Ecology's approval, become integral and enforceable parts of this Order.

F. If the Parties agree on an interim action under Section VI.E (Ecology Determinations), BNSF shall prepare and submit to Ecology an Interim Action Work Plan, including a scope of work and schedule, by the date determined by Ecology. Ecology will provide public notice and opportunity to comment on the Interim Action Work Plan in accordance with WAC 173-340-600(16). BNSF shall not conduct the interim action until Ecology approves the Interim Action Work Plan. Upon approval by Ecology, the Interim Action Work Plan becomes an integral and enforceable part of this Order, and BNSF is required to conduct the interim action in accordance with the approved Interim Action Work Plan.

G. If Ecology determines that BNSF has failed to make sufficient progress or failed to implement the remedial action, in whole or in part, Ecology may, after notice to BNSF and allowing BNSF the opportunity to correct within a reasonable time as determined by Ecology, perform any or all portions of the remedial action that remain incomplete. In an emergency, Ecology is not required to provide notice to BNSF, or an opportunity for dispute resolution. BNSF

shall reimburse Ecology for the costs of doing such work in accordance with Section VIII.A (Remedial Action Costs). Ecology reserves the right to enforce requirements of this Order under Section X (Enforcement).

H. Except where necessary to abate an emergency situation or where required by law, BNSF shall not perform any remedial actions at the Site outside those remedial actions required by this Order to address the contamination that is the subject of this Order, unless Ecology concurs, in writing, with such additional remedial actions pursuant to Section VIII.J. (Amendment of Order). In the event of an emergency, or where actions are taken as required by law, BNSF must notify Ecology in writing of the event and remedial action(s) planned or taken as soon as practical but no later than within twenty-four (24) hours of the discovery of the event.

VIII. TERMS AND CONDITIONS

A. Payment of Remedial Action Costs

BNSF shall pay to Ecology costs incurred by Ecology pursuant to this Order and consistent with WAC 173-340-550(2). These costs shall include work performed by Ecology or its contractors for, or on, the BNSF Property or pursuant to this Order under RCW 70A.305, including remedial actions and Order preparation, negotiation, oversight, and administration. These costs shall include work performed since March 5, 2019. Ecology's costs shall include costs of direct activities and support costs of direct activities as defined in WAC 173-340-550(2). Ecology has accumulated \$9,404.34 in remedial action costs related to the BNSF Property as of June 30, 2021. For all Ecology costs incurred, BNSF shall pay the required amount within thirty (30) days of receiving from Ecology an itemized statement of costs that includes a summary of costs incurred, an identification of involved staff, and the amount of time spent by involved staff members on the project. A general statement of work performed will be provided upon request. Itemized statements shall be prepared quarterly. Pursuant to WAC 173-340-550(4), failure to pay Ecology's costs within ninety (90) days of receipt of the itemized statement of costs will result in interest charges at the rate of twelve percent (12%) per annum, compounded monthly.

In addition to other available relief, pursuant to RCW 19.16.500, Ecology may utilize a collection agency and/or, pursuant to RCW 70A.305.060, file a lien against real property subject to the remedial actions to recover unreimbursed remedial action costs.

B. Designated Project Coordinators

The project coordinator for Ecology is:

Tena Seeds
Department of Ecology, Northwest Regional Office
15700 Dayton Avenue North
Shoreline, WA 98133
206-594-0089
tena.seeds@ecy.wa.gov

The project coordinator for BNSF is:

Mr. Shane DeGross
Manager Environmental Remediation
BNSF Railway Company
605 Puyallup Avenue
Tacoma, WA 98421
253-591-2567
Shane.DeGross@BNSF.com

Each project coordinator shall be responsible for overseeing the implementation of this Order. Ecology's project coordinator will be Ecology's designated representative for the Site. To the maximum extent possible, communications between Ecology and BNSF, and all documents, including reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Order shall be directed through the project coordinators. The project coordinators may designate, in writing, working level staff contacts for all or portions of the implementation of the work to be performed required by this Order.

Any party may change its respective project coordinator. Written notification shall be given to the other party at least ten (10) calendar days prior to the change.

C. Performance

All geologic and hydrogeologic work performed pursuant to this Order shall be under the supervision and direction of a geologist or hydrogeologist licensed by the State of Washington or

under the direct supervision of an engineer registered by the State of Washington, except as otherwise provided for by RCW 18.43, .220.

All engineering work performed pursuant to this Order shall be under the direct supervision of a professional engineer registered by the State of Washington, except as otherwise provided for by RCW 18.43.130.

All construction work performed pursuant to this Order shall be under the direct supervision of a professional engineer or a qualified technician under the direct supervision of a professional engineer. The professional engineer must be registered by the State of Washington, except as otherwise provided for by RCW 18.43.130.

Any documents submitted containing geologic, hydrogeologic, or engineering work shall be under the seal of an appropriately licensed professional as required by RCW 18.43, .220.

BNSF shall notify Ecology in writing of the identity of any supervising engineer(s) and geologist(s), contractor(s) and subcontractor(s), and others to be used in carrying out the terms of this Order, in advance of their involvement at the Site.

D. Access

Ecology or any Ecology authorized representative shall have access to enter and freely move about all property at the Site that BNSF either owns, controls, or has access rights to at all reasonable times for the purposes of, *inter alia*: inspecting records, operation logs, and contracts related to the work being performed pursuant to this Order; reviewing BNSF's progress in carrying out the terms of this Order; conducting such tests or collecting such samples as Ecology may deem necessary; using a camera, sound recording, or other documentary type equipment to record work done pursuant to this Order; and verifying the data submitted to Ecology by BNSF. BNSF shall make all reasonable efforts to secure access rights for those properties within the Site not owned or controlled by BNSF where remedial activities or investigations will be performed pursuant to this Order. Ecology or any Ecology authorized representative shall give reasonable notice before entering any Site property owned or controlled by BNSF unless an emergency prevents such notice. For access to the BNSF Property necessary for any activity related to the terms of this

Order, BNSF agrees to facilitate such access. All persons who access the BNSF Property pursuant to this section shall be escorted by BNSF personnel (or their designees) and shall comply with any applicable health and safety plan(s). Ecology recognizes that the BNSF Property at the Site shall be used in such a manner as not to be a source of danger to or to unreasonably interfere with the existence or use of tracks, roadbed, or property of BNSF. If an emergent source of danger or unreasonable interference with railway operations occurs, Ecology will cease using the affected property at the Site when requested by BNSF's personnel. Ecology's agreement to temporarily cease using the BNSF Property shall not limit Ecology's authority to conduct further remedial actions pursuant to any applicable state law. Ecology employees and their representatives shall not be required to sign any liability release or waiver as a condition of Site property access.

E. Sampling, Data Submittal, and Availability

With respect to the implementation of this Order, BNSF shall make the results of all sampling, laboratory reports, and/or test results generated by it or on its behalf available to Ecology. Pursuant to WAC 173-340-840(5), all sampling data shall be submitted to Ecology in both printed and electronic formats in accordance with Section VII (Work to be Performed), Ecology's Toxics Cleanup Program Policy 840 (Data Submittal Requirements), and/or any subsequent procedures specified by Ecology for data submittal.

If requested by Ecology, BNSF shall allow Ecology and/or its authorized representative to take split or duplicate samples of any samples collected by BNSF pursuant to implementation of this Order, provided that doing so does not interfere with BNSF's sampling. BNSF shall notify Ecology seven (7) days in advance of any sample collection or work activity at the Site. Ecology shall, upon request, allow BNSF and/or its authorized representative to take split or duplicate samples of any samples collected by Ecology pursuant to the implementation of this Order, provided that doing so does not interfere with Ecology's sampling. Without limitation on Ecology's rights under Section VIII.D (Access), Ecology shall notify BNSF seven (7) days prior to any sample collection activity unless an emergency prevents such notice.

In accordance with WAC 173-340-830(2)(a), all hazardous substance analyses shall be conducted by a laboratory accredited under WAC 173-50 for the specific analyses to be conducted, unless otherwise approved by Ecology.

F. Public Participation

Ecology shall maintain the responsibility for public participation at the Site. However, BNSF shall cooperate with Ecology, and shall:

1. If agreed to by Ecology, develop appropriate mailing lists and prepare drafts of public notices and fact sheets at important stages of the remedial action, such as the submission of work plans, RI/FS reports, cleanup action plans, and engineering design reports. As appropriate, Ecology will edit, finalize, and distribute such fact sheets and prepare and distribute public notices of Ecology's presentations and meetings.

2. Notify Ecology's project coordinator at least one week prior to the preparation of all press releases and fact sheets, and before meetings related to remedial action work to be performed at the Site with the interested public and/or local governments. Likewise, Ecology shall notify BNSF at least one week prior to the issuance of all press releases and fact sheets related to the Site, and before meetings related to the Site with the interested public and local governments. For all press releases, fact sheets, meetings, and other outreach efforts by BNSF that do not receive prior Ecology approval, BNSF shall clearly indicate to its audience that the press release, fact sheet, meeting, or other outreach effort was not sponsored or endorsed by Ecology.

3. When requested by Ecology, participate in public presentations on the progress of the remedial action at the Site. Participation may be through attendance at public meetings to assist in answering questions or as a presenter.

4. When requested by Ecology, arrange and/or continue information repositories to be located at the following locations:

- a. Seattle Public Library, Ballard Branch
5614 22nd Avenue, NW
Seattle, WA 98107

- b. Ecology's Northwest Regional Office
15700 Dayton Avenue North
Shoreline, WA 98133

At a minimum, copies of all public notices, fact sheets, and documents relating to public comment periods shall be promptly placed in these repositories. A copy of all documents related to this Site shall be maintained in the repository at Ecology's Northwest Regional Office in Bellevue, Washington.

G. Retention of Records

During the pendency of this Order, and for ten (10) years from the date of completion of work performed pursuant to this Order, BNSF shall preserve all records, reports, documents, and underlying data in its possession relevant to the implementation of this Order and shall make copies of this Order available to their contractors and subcontractors and instruct them to retain documents as required by this Order. Upon request of Ecology, BNSF shall make all records available to Ecology and allow access for review within a reasonable time.

Nothing in this Order is intended to waive any right BNSF may have under applicable law to limit disclosure of documents protected by the attorney work-product privilege and/or the attorney-client privilege. If BNSF withholds any requested records based on an assertion of privilege, BNSF shall provide Ecology with a privilege log specifying the records withheld and the applicable privilege. No Site-related data collected pursuant to this Order shall be considered privileged.

H. Resolution of Disputes

1. In the event that BNSF elects to invoke dispute resolution BNSF must utilize the procedure set forth below.

- a. Upon the triggering event (receipt of Ecology's project coordinator's written decision or an itemized billing statement), BNSF has fourteen (14) calendar days within which to notify Ecology's project coordinator in writing of its dispute (Informal Dispute Notice).

b. The Parties' project coordinators shall then confer in an effort to resolve the dispute informally. The parties shall informally confer for up to fourteen (14) calendar days from receipt of the Informal Dispute Notice. If the project coordinators cannot resolve the dispute within those fourteen (14) calendar days, then within seven (7) calendar days Ecology's project coordinator shall issue a written decision (Informal Dispute Decision) stating: the nature of the dispute; BNSF's position with regards to the dispute; Ecology's position with regards to the dispute; and the extent of resolution reached by informal discussion.

c. BNSF may then request regional management review of the dispute. This request (Formal Dispute Notice) must be submitted in writing to the Northwest Region Toxics Cleanup Section Manager within seven (7) calendar days of receipt of Ecology's Informal Dispute Decision. The Formal Dispute Notice shall include a written statement of dispute setting forth: the nature of the dispute; the disputing Party's position with respect to the dispute; and the information relied upon to support its position.

d. The Section Manager shall conduct a review of the dispute and shall issue a written decision regarding the dispute (Decision on Dispute) within thirty (30) calendar days of receipt of the Formal Dispute Notice. The Decision on Dispute shall be Ecology's final decision on the disputed matter.

2. The Parties agree to only utilize the dispute resolution process in good faith and agree to expedite, to the extent possible, the dispute resolution process whenever it is used.

3. Implementation of these dispute resolution procedures shall not provide a basis for delay of any activities required in this Order, unless Ecology agrees in writing to a schedule extension.

4. In case of a dispute, failure to either proceed with the work required by this Order or timely invoke dispute resolution may result in Ecology's determination that insufficient progress is being made in preparation of a deliverable, and may result in Ecology undertaking the

work under Section VII.E (Work to be Performed) or initiating enforcement under Section X (Enforcement).

I. Extension of Schedule

1. BNSF's request for an extension of schedule shall be granted only when a request for an extension is submitted in a timely fashion, generally at least fifteen (15) days prior to expiration of the deadline for which the extension is requested, and good cause exists for granting the extension. All extensions shall be requested in writing. The request shall specify:

- a. The deadline that is sought to be extended.
- b. The length of the extension sought.
- c. The reason(s) for the extension.
- d. Any related deadline or schedule that would be affected if the extension were granted.

2. The burden shall be on BNSF to demonstrate to the satisfaction of Ecology that the request for such extension has been submitted in a timely fashion and that good cause exists for granting the extension. Good cause may include, but may not be limited to:

- a. Circumstances beyond the reasonable control and despite the due diligence of BNSF including delays caused by unrelated third parties or Ecology, such as (but not limited to) delays by Ecology in reviewing, approving, or modifying documents submitted by BNSF.
- b. Acts of God, including fire, flood, blizzard, extreme temperatures, storm, or other unavoidable casualty.
- c. Endangerment as described in Section VIII.K (Endangerment).

However, neither increased costs of performance of the terms of this Order nor changed economic circumstances shall be considered circumstances beyond the reasonable control of BNSF.

3. Ecology shall act upon any BNSF's written request for extension in a timely fashion. Ecology shall give BNSF written notification of any extensions granted pursuant to this Order. A requested extension shall not be effective until approved by Ecology. Unless the

extension is a substantial change, it shall not be necessary to amend this Order pursuant to Section VIII.J (Amendment of Order) when a schedule extension is granted.

4. At BNSF's request, an extension shall only be granted for such period of time as Ecology determines is reasonable under the circumstances. Ecology may grant schedule extensions exceeding ninety (90) days only as a result of one of the following:

- a. Delays in the issuance of a necessary permit which was applied for in a timely manner.
- b. Other circumstances deemed exceptional or extraordinary by Ecology.
- c. Endangerment as described in Section VIII.K (Endangerment).

J. Amendment of Order

The project coordinators may verbally agree to minor changes to the work to be performed without formally amending this Order. Minor changes will be documented in writing by Ecology within seven (7) days of verbal agreement.

Except as provided in Section VIII.L (Reservation of Rights), substantial changes to the work to be performed shall require formal amendment of this Order. This Order may only be formally amended by the written consent of both Ecology and BNSF. Ecology will provide its written consent to a formal amendment only after public notice and opportunity to comment on the formal amendment.

When requesting a change to the Order, BNSF shall submit a written request to Ecology for approval. Ecology shall indicate its approval or disapproval in writing and in a timely manner after the written request is received. If Ecology determines that the change is substantial, then the Order must be formally amended. Reasons for the disapproval of a proposed change to this Order shall be stated in writing. If Ecology does not agree to a proposed change, the disagreement may be addressed through the dispute resolution procedures described in Section VIII.H (Resolution of Disputes).

K. Endangerment

In the event Ecology determines that any activity being performed at the Site under this Order is creating or has the potential to create a danger to human health or the environment on or surrounding the Site, Ecology may direct BNSF to cease such activities for such period of time as it deems necessary to abate the danger. BNSF shall immediately comply with such direction.

In the event BNSF determines that any activity being performed at the Site under this Order is creating or has the potential to create a danger to human health or the environment, BNSF may cease such activities. BNSF shall notify Ecology's project coordinator as soon as possible, but no later than twenty-four (24) hours after making such determination or ceasing such activities. Upon Ecology's direction, BNSF shall provide Ecology with documentation of the basis for the determination or cessation of such activities. If Ecology disagrees with BNSF's cessation of activities, it may direct BNSF to resume such activities.

If Ecology concurs with or orders a work stoppage pursuant to this section, BNSF's obligations with respect to the ceased activities shall be suspended until Ecology determines the danger is abated, and the time for performance of such activities, as well as the time for any other work dependent upon such activities, shall be extended in accordance with Section VIII.I (Extension of Schedule) for such period of time as Ecology determines is reasonable under the circumstances.

Nothing in this Order shall limit the authority of Ecology, its employees, agents, or contractors to take or require appropriate action in the event of an emergency.

L. Reservation of Rights

This Order is not a settlement under RCW 70A.305. Ecology's signature on this Order in no way constitutes a covenant not to sue or a compromise of any of Ecology's rights or authority. Ecology will not, however, bring an action against BNSF to recover remedial action costs paid to and received by Ecology under this Order. In addition, Ecology will not take additional enforcement actions against BNSF regarding remedial actions required by this Order, provided BNSF complies with this Order.

Ecology nevertheless reserves its rights under RCW 70A.305, including the right to require additional or different remedial actions at the Site should it deem such actions necessary to protect human health or the environment, and to issue orders requiring such remedial actions. Ecology also reserves all rights regarding the injury to, destruction of, or loss of natural resources resulting from the release or threatened release of hazardous substances at the Site.

By entering into this Order, BNSF does not admit to any liability for the Site. Although BNSF is committing to conducting the work required by this Order under the terms of this Order, BNSF expressly reserves all rights available under law, including but not limited to the right to seek cost recovery or contribution against third parties, and the right to assert any defenses to liability in the event of enforcement.

M. Transfer of Interest in Property

No voluntary conveyance or relinquishment of title, easement, leasehold, or other interest in any portion of the Site shall be consummated by BNSF without provision for continued implementation of all requirements of this Order and implementation of any remedial actions found to be necessary as a result of this Order.

Prior to BNSF's transfer of any interest in all or any portion of the Site, and during the effective period of this Order, BNSF shall provide a copy of this Order to any prospective purchaser, lessee, transferee, assignee, or other successor in said interest; and, at least thirty (30) days prior to any transfer, BNSF shall notify Ecology of said transfer. Upon transfer of any interest, BNSF shall notify all transferees of the restrictions on the activities and uses of the property under this Order and incorporate any such use restrictions into the transfer documents.

N. Compliance with Applicable Laws

1. *Applicable Laws.* All actions carried out by BNSF pursuant to this Order shall be done in accordance with all applicable federal, state, and local requirements, including requirements to obtain necessary permits or approvals, except as provided in RCW 70A.305.090. At this time, no federal, state, or local requirements have been identified as being applicable to the actions required by this Order. BNSF has a continuing obligation to identify additional applicable

federal, state, and local requirements which apply to actions carried out pursuant to this Order, and to comply with those requirements. As additional federal, state, and local requirements are identified by Ecology or BNSF, Ecology will document in writing if they are applicable to actions carried out pursuant to this Order, and BNSF must implement those requirements.

2. *Relevant and Appropriate Requirements.* All actions carried out by BNSF pursuant to this Order shall be done in accordance with relevant and appropriate requirements identified by Ecology. At this time, no relevant and appropriate requirements have been identified as being applicable to the actions required by this Order. If additional relevant and appropriate requirements are identified by Ecology or BNSF, Ecology will document in writing if they are applicable to actions carried out pursuant to this Order and BNSF must implement those requirements.

3. Pursuant to RCW 70A.305.090(1), BNSF may be exempt from the procedural requirements of RCW 70A.15, 70A.205, 70A.305, 77.55, 90.48, and 90.58, and of any laws requiring or authorizing local government permits or approvals. However, BNSF shall comply with the substantive requirements of such permits or approvals. For permits and approvals covered under RCW 70A.305.090(1) that have been issued by local government, the Parties agree that Ecology has the non-exclusive ability under this Order to enforce those local government permits and/or approvals. At this time, no state or local permits or approvals have been identified as being applicable but procedurally exempt under this section.

4. BNSF has a continuing obligation to determine whether additional permits or approvals addressed in RCW 70A.305.090(1) would otherwise be required for the remedial action under this Order. In the event either Ecology or BNSF determines that additional permits or approvals addressed in RCW 70A.305.090(1) would otherwise be required for the remedial action under this Order, it shall promptly notify the other party of its determination. Ecology shall determine whether Ecology or BNSF shall be responsible to contact the appropriate state and/or local agencies. If Ecology so requires, BNSF shall promptly consult with the appropriate state and/or local agencies and provide Ecology with written documentation from those agencies of the substantive requirements those agencies believe are applicable to the remedial action. Ecology

shall make the final determination on the additional substantive requirements that must be met by BNSF and on how BNSF must meet those requirements. Ecology shall inform BNSF in writing of these requirements. Once established by Ecology, the additional requirements shall be enforceable requirements of this Order. BNSF shall not begin or continue the remedial action potentially subject to the additional requirements until Ecology makes its final determination.

Pursuant to RCW 70A.305.090(2), in the event Ecology determines that the exemption from complying with the procedural requirements of the laws referenced in RCW 70A.305.090(1) would result in the loss of approval from a federal agency that is necessary for the state to administer any federal law, the exemption shall not apply and BNSF shall comply with both the procedural and substantive requirements of the laws referenced in RCW 70A.305.090(1), including any requirements to obtain permits or approvals.

O. Indemnification

BNSF agrees to indemnify and save and hold the State of Washington, its employees, and agents harmless from any and all claims or causes of action (1) for death or injuries to persons, or (2) for loss or damage to property, to the extent arising from or on account of acts or omissions of BNSF, its officers, employees, agents, or contractors in entering into and implementing this Order. However, BNSF shall not indemnify the State of Washington nor save nor hold its employees and agents harmless from any claims or causes of action to the extent arising out of the negligent acts or omissions of the State of Washington, or the employees or agents of the State, in entering into or implementing this Order.

IX. SATISFACTION OF ORDER

The provisions of this Order shall be deemed satisfied upon BNSF's receipt of written notification from Ecology that BNSF has completed the remedial activity required by this Order, as amended by any modifications, and that BNSF has complied with all other provisions of this Order.

X. ENFORCEMENT

Pursuant to RCW 70A.305.050, this Order may be enforced as follows:

A. The Attorney General may bring an action to enforce this Order in a state or federal court.

B. The Attorney General may seek, by filing an action, if necessary, to recover amounts spent by Ecology for investigative and remedial actions and orders related to the BNSF Property.

C. A liable party who refuses, without sufficient cause, to comply with any term of this Order will be liable for:

1. Up to three (3) times the amount of any costs incurred by the State of Washington as a result of its refusal to comply.

2. Civil penalties of up to twenty-five thousand dollars (\$25,000) per day for each day it refuses to comply.

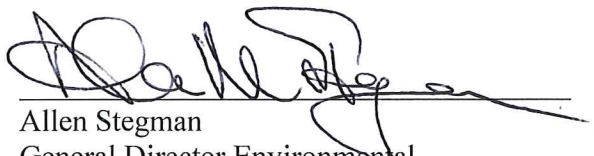
D. This Order is not appealable to the Washington Pollution Control Hearings Board.

This Order may be reviewed only as provided under RCW 70A.305.070.

Effective date of this Order: _____

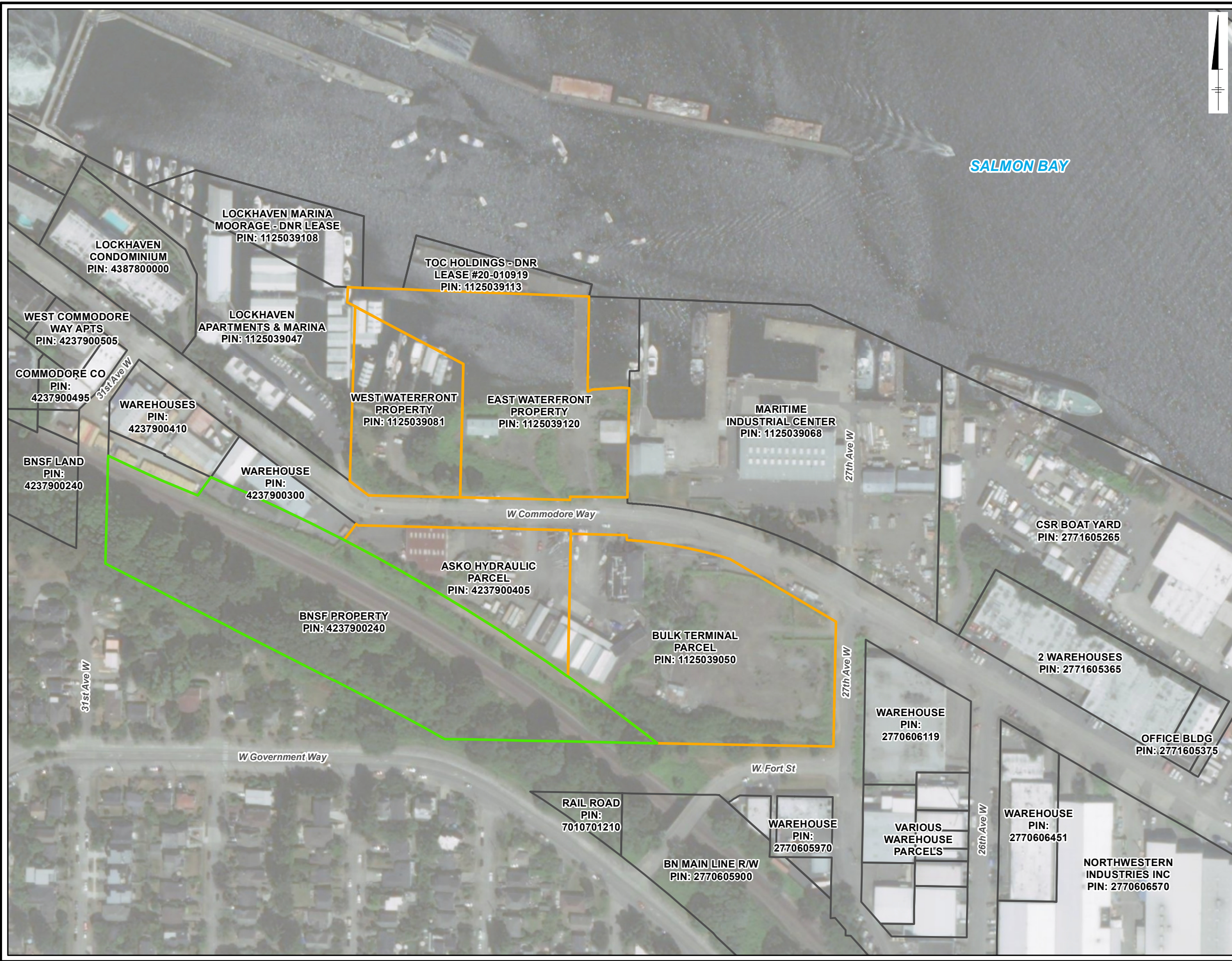
BNSF RAILWAY COMPANY

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY





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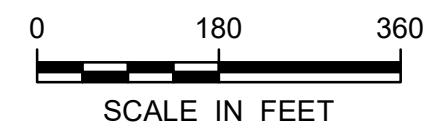
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LEGEND

-  TIME OIL PROPERTIES
-  BNSF PROPERTY
-  PARCEL BOUNDARY

PARCEL DATA OBTAINED FROM KING COUNTY GIS OPEN DATA, ACCESSED ON 6/21/2021.



BNSF RAILWAY COMPANY
FORMER TIME OIL SITE

EXHIBIT A - LOCATION DIAGRAM


 | EXHIBIT **A**

EXHIBIT B SCOPE OF WORK AND SCHEDULE

SCOPE OF WORK

PURPOSE

The work under this Agreed Order (AO) involves conducting a Remedial Investigation (RI) and Feasibility Study (FS). The work may also include Interim Actions, and, if requested by Ecology, preparation of a Draft Cleanup Action Plan (DCAP). The purpose of the RI/FS is to provide sufficient data, analysis, and evaluations to enable Ecology to select a cleanup alternative for the BNSF Property.

The BNSF Railway Company (BNSF) shall coordinate with Ecology throughout the development of the Interim Actions (if necessary), RI/FS, and preliminary DCAP (if requested by Ecology) and shall keep Ecology informed of changes to any Work Plan or other project plans, and of any issues or problems as they develop.

The Scope of Work (SOW) is divided into seven major tasks as follows:

- Task 1. RI Work Plan
- Task 2. Remedial Investigation
- Task 3. Interim Actions
- Task 4. Feasibility Study
- Task 5. Draft Cleanup Action Plan (if requested by Ecology)
- Task 6. SEPA Compliance
- Task 7. Public Participation

TASK 1. RI WORK PLAN

BNSF shall prepare a RI Work Plan (Work Plan) for the BNSF Property. The Work Plan shall include an overall description and schedule of all RI activities. The Work Plan shall clearly describe the project management strategy for implementing and reporting on RI activities. The responsibility and authority of all organizations and key personnel involved in conducting the RI will be outlined.

A Key Project Meeting will be held prior to submittal of the RI Work Plan. The purpose of the RI Planning Meeting is to review requirements for the Work Plan and plan RI field work, discuss the preliminary Conceptual Site Model, and identify project data needs and possible interim actions.

The Work Plan shall describe general facility information; site history and conditions; including previous operations; past field investigations, including any data collection and analysis of soils, air, and groundwater; a conceptual site model showing contaminants, migration pathways in all environmental media, and potential receptors; geology and groundwater system characteristics; past, current, and future land use; identification of natural resources and ecological receptors; hazardous substances and their sources, etc., and other information relevant to scoping the RI field work in compliance with WAC 173-340-350 and WAC 173-204-560.

As part of the project background, existing environmental data on site soil, groundwater, and air will be compiled and evaluated for data gaps. The data gaps will be used as the basis for conducting additional site investigations, if necessary. The Work Plan will also identify specific data collection procedures in a Sampling and Analysis Plan (SAP) and Quality Assurance Project Plan (QAPP) as part of the Work Plan in compliance with WAC 173-340-820 and WAC 173-204-600 for defining the nature and extent of contamination at the BNSF Property. BNSF will also submit a copy of the Health and Safety Plan (HASP) for the project.

The SAP will identify the proposed number and location of all environmental samples and methods, including soil borings, groundwater monitoring wells, soil, groundwater, air samples, approximate depths, and include a quality assurance project plan. The SAP will describe the sampling objectives, the rationale for the sampling approach (based upon the identified data gaps), and plans for data use, and shall provide a detailed description of sampling tasks. The SAP shall describe specifications for sample identifiers; sampling equipment; the type, number, and location of samples to be collected; the analyses to be performed; descriptions of sampling equipment and methods to be used; sample documentation; sample containers, collection and handling; data and records management; and schedule.

The Quality Assurance Project Plan (QAPP) will be prepared in accordance with the TCP SAP/QAPP, Data Validation, and EIM Data QA Fields memorandum (September 2019), Guidance for Preparation of Quality Assurance Project Plans, EPA Region 10, Quality Data Management Program, QA/G-5 requirements of the EPA Contract Laboratory Program, and Ecology's Guidelines for Preparing Quality Assurance Project Plans for Environmental Studies (July 2004).¹ Laboratories must meet the accreditation standards established in WAC 173-50. Data quality objectives will reflect the criteria or threshold values used for the data evaluation.

The SAP, including the QAPP, will be submitted to Ecology for review and approval. As with all environmental work at the site, work may not begin without written approval from Ecology. The plan shall provide seven (7) days' notice to Ecology prior to beginning sampling. Ecology may obtain split samples in accordance with paragraph VIII.E of the Agreed Order.

BNSF or their contractors shall submit all new sampling data generated under this SAP and any other recently collected data to Ecology for entry into the Environmental Information Management System (EIM) in accordance with WAC 173-340-840(5) and Ecology's Toxics Cleanup Program Policy 840: Data Submittal Requirements. Only validated data will be entered into the EIM database. Data will be entered into the EIM database within 45 days of completion of data validation.

RI Work Plan tasks and subtasks will include at least the following: a sampling and analysis of soil and groundwater.

BNSF will provide Ecology with an Agency Review Draft Work Plan. Once Ecology reviews

¹ Found at <https://fortress.wa.gov/ecy/publications/documents/0403030.pdf>

and approves the Work Plan, it will be considered the Final Work Plan. The Work Plan shall not be implemented until approved by Ecology. Once approved by Ecology, BNSF will implement the Final Work Plan according to the detailed schedule contained in the Work Plan.

BNSF shall prepare two (2) paper copies of the Agency Review Draft RI Work Plan and submit them, plus one electronic copy each in Word (.doc) and Adobe (.pdf) formats, to Ecology for review and comment. After addressing Ecology's comments on the Agency Review Draft Work Plan and after Ecology approval, BNSF shall prepare two (2) paper copies of the Final Work Plan and submit them, plus one electronic copy each in Word (.doc) and Adobe (.pdf) formats, to Ecology.

TASK 2. REMEDIAL INVESTIGATION

BNSF shall conduct an RI for the BNSF Property that meets the requirements of WAC 173-340-350(7) according to the Work Plan as approved by Ecology. The RI must sufficiently characterize the nature and extent of contamination from releases of hazardous substances from the railway operations at the BNSF Property.

Field sampling and analysis will be completed in general accordance with the SAP and QAPP. Deviation(s) from the approved SAP and QAPP must be communicated to Ecology immediately and documented as required by Ecology.

Prior to submittal of the Agency Review Draft RI Report, a Key Project Meeting will be held – RI Pre-Report Check-In. During this meeting, Ecology and BNSF will review available data and an updated conceptual site model and discuss the content and organization of the Draft RI Report.

BNSF shall compile the results of the investigation into an Agency Review Draft RI Report. BNSF shall prepare two (2) paper copies of the Agency Review Draft RI Report and submit them, plus one electronic copy each in Word (.doc) and Adobe (.pdf) formats, to Ecology for review and comment.

After addressing Ecology's comments on the Agency Review Draft RI Report to Ecology's satisfaction, BNSF shall prepare three (3) paper copies of a Public Review Draft RI Report and submit them, plus one electronic copy each in Word (.doc) and Adobe (.pdf) formats, to Ecology for distribution and public comment. Electronic survey data for monitoring locations and electronic lab data shall also be provided for both the Agency Review Draft RI Report and Public Review Draft RI Reports either in the report or as attachments.

BNSF will incorporate changes in the RI Report requested by Ecology after the public review and comment period, and will then prepare a Final RI Report after review and approval by Ecology. BNSF shall prepare two (2) paper copies of the Final RI Report and submit them, plus one electronic copy each in Word (.doc) and Adobe (.pdf) formats, to Ecology.

TASK 3. INTERIM ACTIONS

Remedial actions completed prior to implementation of the full remedy, including those that:

- Are technically necessary to reduce a threat to human health or the environment by eliminating or substantially reducing one or more pathways for exposure to a hazardous substance;
- Correct a problem that may become substantially worse or cost substantially more to address if the remedial action is delayed; or
- Are needed to provide for completion of the RI/FS study or design of the cleanup action

will be considered interim actions, will be implemented in accordance with WAC 173-340-430 and the AO, and will be designed in a manner that will not foreclose reasonable alternatives for any final cleanup action that may be required.

TASK 4. FEASIBILITY STUDY

BNSF shall use the information obtained in the RI and Interim Actions to prepare an Agency Review Draft FS for the BNSF Property that meets the applicable requirements of WAC 173-340-350(8) according to the Schedule in this exhibit. The Agency Review Draft FS will evaluate remedial alternatives for cleanup of the BNSF Property, including possible interim actions, consistent with MTCA requirements to ensure protection of human health and the environment by eliminating, reducing, or otherwise controlling risk posed through each exposure pathway and migration route.

Prior to beginning the FS, a Key Project Meeting will be held to review Applicable Relevant and Appropriate Requirements (ARARs), potential remedial alternatives, and establish points of compliance.

The Agency Review Draft FS will provide a detailed analysis of each remedial alternative according to the applicable requirements of WAC 173-340-350, MTCA RI/FS. The remedial alternatives will be evaluated for compliance with the applicable requirements of WAC 173-340-360, Selection of Cleanup Actions, including a detailed evaluation of remedial alternatives relative to at least the following criteria:

- Compliance with cleanup standards and applicable laws
- Protection of human health
- Protection of the environment
- Provision for a reasonable restoration time frame
- Use of permanent solutions to the maximum extent practicable
- The degree to which recycling, reuse, and waste minimization are employed
- Short-term effectiveness
- Long-term effectiveness
- Implement ability
- Provision for compliance monitoring
- Cost-effectiveness
- Prospective community acceptance

The remedial alternative that is judged to best satisfy the evaluation criteria will be identified.

Justification for the selection will be provided, and the recommended remedial alternative further developed, in the FS Report.

BNSF shall prepare two (2) paper copies of the Agency Review Draft FS and submit them, plus one electronic copy in Word (.doc) and Adobe (.pdf) formats, to Ecology for review. After addressing Ecology's comments on the Agency Review Draft FS, BNSF shall prepare three (3) paper copies of the Public Review Draft FS and submit them, plus one electronic copy each in Word (.doc) and Adobe (.pdf) formats, to Ecology for distribution and public comment.

After incorporating Ecology's comments on the Public Review Draft FS following public review and after Ecology approval, BNSF shall prepare two (2) paper copies of the Final FS and submit them, plus one electronic copy each in Word (.doc) and Adobe (.pdf) formats, to Ecology.

TASK 5. DRAFT CLEANUP ACTION PLAN (IF REQUESTED BY ECOLOGY)

If requested by Ecology, BNSF will submit a preliminary Draft Cleanup Action Plan (DCAP) for Ecology's review and use. The DCAP will conform to WAC 173-340-380(1) (Cleanup Action Plans). The Agency Review version of the preliminary DCAP shall include, but is not limited to, a summary of the work to be completed based on the selected remedy as determined in the FS.

BNSF shall prepare two (2) paper copies of the Agency Review Draft preliminary DCAP and submit them, plus one electronic copy in Word (.doc) and Adobe (.pdf) formats, to Ecology. BNSF shall provide figures, tables, or other production support services for the Public Review DCAP and Final CAP documents if requested by Ecology. After addressing Ecology's comments on the Agency Review Draft preliminary DCAP, BNSF shall prepare three (3) paper copies of the Revised Agency Review Draft preliminary DCAP and submit them, plus one electronic copy each in Word (.doc) and Adobe (.pdf) formats, to Ecology. Public comment on the RI Report, FS and DCAP (if requested by Ecology) will occur simultaneously, as provided in WAC 173-340-600(13)(c), if the three document deliverables were not previously issued for public comment.

TASK 6. SEPA COMPLIANCE

BNSF shall be responsible for assisting Ecology with its compliance with the State Environmental Policy Act (SEPA) Rules (WAC 197-11-250 through -290). This includes BNSF's preparation and submission of an environmental checklist, as necessary for any interim action or cleanup. If the result of the threshold determination is a determination of significance (DS), BNSF shall be responsible for the preparation of draft and final environmental impact statements. BNSF shall assist Ecology with coordinating SEPA public involvement requirements with MTCA public involvement requirements whenever possible, such that public comment periods and meetings or hearings can be held concurrently.

TASK 7. PUBLIC PARTICIPATION

BNSF shall support Ecology in presenting the Public Review Draft RI Report and the Public Review Draft FS Reports and SEPA evaluations at one public meeting or hearing. BNSF will

assist Ecology with presentations at any additional meetings or hearings that might be necessary for SEPA compliance or as part of the Public Participation Plan.

SCHEDULE OF DELIVERABLES

The schedule for deliverables described in the AO and the Scope of Work (SOW) is presented below. Pursuant to Paragraph VII.B of the Order, if the date for submission of any item or notification required by this Schedule of Deliverables occurs on a weekend, state or federal holiday, the date for submission of that item or notification is extended to the next business day following the weekend or holiday. Where a deliverable due date is triggered by Ecology notification, comments, or approval, the starting date for the period shown is the date BNSF received such notification, comments, or approval by certified mail, return receipt requested, unless otherwise noted below. Where triggered by Ecology receipt of a deliverable, the starting date for the period shown is the date the hard copy of the deliverable is received by Ecology through mail or parcel services.

Pursuant to Paragraph VII.B of the Order, BNSF will be deemed in substantial compliance with the Order if an electronic copy or a FTP link or file-sharing link containing the deliverable, is transmitted by 5:30 p.m. on the date that a deliverable is due and hardcopies, to the extent required, are postmarked by the following business day.

SOW Task #	Description	Due Date
1	RI Work Plan, including detailed schedule for implementation	Submit Agency Review Draft RI Work Plan within 90 days of effective date of the Agreed Order. Submit Final RI Work Plan within 45 days of receipt of comments from Ecology. Complete field work according to the detailed schedule in the Ecology-approved Final Work Plan.
1	EIM Data Submittal	Submit within 45 days from completion of data validation.
2	Remedial Investigation Report	Submit Agency Review Draft RI Report within 90 days of receiving validated laboratory data from the final round of RI sampling. Submit Public Review Draft RI Report and Final RI Report, each within 45 days of receipt of comments from Ecology.
3	Interim Actions (if any)	The schedule for Interim Actions, if any, to be established by agreement between BNSF and Ecology. Submit Draft Interim Action Work Plan (IAWP) for Ecology review in accordance with the established schedule.

		<p>Submit Final (IAWP) within 45 days of receiving Ecology's final review comments on the Draft IAWP.</p> <p>Submit Draft Interim Action Completion Reports for Interim Actions within 90 days of completing construction/excavation work.</p> <p>Submit Final Interim Action Reports for Interim Action within 45 days of receipt of final review comments from Ecology.</p>
4	Feasibility Study Report	<p>Submit Agency Review Draft FS Report within 90 days of completing Public Review Draft RI Report.</p> <p>Submit Public Review Draft FS Report and Final FS Report, each within 45 days of receipt of comments from Ecology.</p>
5	Agency Review Draft Cleanup Action Plan (DCAP)	If requested by Ecology, submit Agency Review DCAP within 90 days of request.
5	Revised DCAP	If requested by Ecology, submit revised DCAP within 45 days of receiving Ecology's comments on the Agency Review DCAP.
-	Progress Reports	Submit within 15 days of the end of the prior quarter.