



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

Central Region Office

1250 West Alder St., Union Gap, WA 98903-0009 • 509-575-2490

October 9, 2023

Sent via email and hard copy

Shane DeGross
BNSF Railway Company
605 Puyallup Avenue
Tacoma, WA 98421

RE: Ecology Response to Consent Decree Proposal for the Following Site:

- **Site Name:** BNSF Track Switching Facility a.k.a. Wishram Railyard
- **Site Address:** 500 Main Street, Wishram
- **Facility Site ID:** 1625461
- **Cleanup Site ID:** 230

Dear Shane DeGross:

The Washington State Department of Ecology (Ecology) received your letter dated August 14, 2023, petitioning to enter negotiations for a Consent Decree (CD) at the BNSF Track Switching Facility Site (Site).¹ At this time, Ecology does not accept your request to enter negotiation for a CD to implement a Cleanup Action Plan (CAP) at the Site.

Under WAC 173-340-520(1)(g)², Ecology denies the request based on the following reasons:

- (i) Ecology wishes to consider a proposal to enter into negotiation for an implementing agreement after the formal process for the in-water cleanup unit of the site has reached a proper stage, i.e., after the completion or very near completion of a Draft Cleanup Action Plan (DCAP) for that unit. We believe this arrangement is in the best interests of the public and other third parties, including the Yakama Nation as a sovereign entity, by closely integrating the cleanup actions of both cleanup units.
- (ii) The DCAP for the uplands unit remains to be finalized. Several items need to be resolved before it can be finalized by Ecology.

¹ <https://apps.ecology.wa.gov/cleanupsearch/site/230>

² <https://app.leg.wa.gov/wac/default.aspx?cite=173-340-520>

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Ecology does not wish to enter negotiation until the DCAP for that cleanup unit is completed and the entire work for the in-water cleanup unit is complete or very close to completion.

Some of the items to be discussed on the uplands DCAP include the open-ended Restoration Time Frame (RTF) for the proposed remedy, the lack of a contingent remedy to prevent extension of the RTF indefinitely, and the lack of measures to optimize the proposed remedial systems, primarily referring to the biosparge component.

- (iii) Based on comments received, Ecology agrees with the Yakama Nation that the Site should be seen as a whole. Proceed with the existing in-water portion of work consistent with the existing Agreed Order. However, Ecology will have to discuss the schedule for the remaining work to be completed and formalize that schedule since it is not fully captured in the existing Agreed Order.
- (iv) Ecology requires additional information related to the collection of representative groundwater samples in portions of the well network that are influenced by vertical gradient fluctuations related to groundwater/surface water interaction. Ecology expects that this discussion will result in measures to evaluate the influence of fluctuating vertical gradients and well screen lengths on the collection of representative samples required for compliance purposes.

When these items are sufficiently addressed, Ecology will then be able to reconsider entering negotiation for a Consent Decree. BNSF can reinitiate this petition at that time.

Please contact me at 509-731-9613 or John.Mefford@ecy.wa.gov if you have any questions.

Sincerely,



John Mefford
Ecology Cleanup Project Manager
Toxics Cleanup Program
Central Regional Office

cc: Allen Stegman, BNSF Railway Company
Brooke Kuhl, BNSF Railway Company
Matthew Wells, Tupper Mack Wells PLLC
John Level, Attorney General's Office, Ecology Division