

BNSF Parkwater Railyard
Mgr. Zach Hedgpeth
FSID # 676
SIC # J1B4A

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

In the Matter of Remedial Action at the BNSF
Parkwater Railyard, Spokane, WA by:

BNSF Railway Company

AGREED ORDER

No. 6453

TO:

Mr. Bruce Sheppard
Environmental Remediation Manager
BNSF Railway Company
2454 Occidental Ave., Suite 1A
Seattle, WA 98134

RECEIVED

OCT 23 2008

DEPARTMENT OF ECOLOGY
EASTERN REGIONAL OFFICE

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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. The facility is the BNSF Parkwater Railyard (formerly known as Yardley) facility (Site) located at 5302 East Trent Avenue, Spokane, WA 99212. This Order requires BNSF Railway Company (BNSF) also referred to as the “PLP” (potentially liable person), to conduct a remedial investigation/feasibility study (RI/FS) for the Site, to submit a report detailing certain independent remedial action(s) taken to date at the Site to treat petroleum-contaminated groundwater plus a work plan for continuing these interim action(s) under Ecology oversight, and to implement the work plan for continued interim action(s) under this Order once that plan is approved by Ecology. Ecology believes the actions required by this Order are in the public interest.

II. JURISDICTION

This Agreed Order is issued pursuant to the Model Toxics Control Act (MTCA), RCW 70.105D.050 (1).

III. PARTIES BOUND

This Agreed 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 he or she is fully authorized to enter into this Order and to execute and legally bind such party to comply with this Order. The PLP agrees to undertake all actions required by the terms and conditions of this Order. No change in ownership or corporate status shall alter the PLP’s responsibility under this Order. The PLP 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 Chapter 70.105D RCW and Chapter 173-340 WAC shall control the meanings of the terms in this Order.

A. Site: The Site is referred to as the BNSF Parkwater Railyard (formerly known as Yardley) facility and is generally located at 5302 East Trent Ave., Spokane, WA 99212. The Site is defined by the extent of contamination caused by the release of hazardous substances at the Site. The Site is more particularly described in the Site Diagram (Exhibit A). The Site constitutes a Facility under RCW 70.105D.020(5).

B. Parties: Refers to the State of Washington, Department of Ecology and BNSF Railway Company (BNSF)

C. Potentially Liable Person (PLP): 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. The terms “Agreed Order” or “Order” shall include all exhibits to this Order.

V. FINDINGS OF FACT

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

A. BNSF Railway Company (BNSF) owns the property at 5302 East Trent Avenue, Spokane, Washington, and has operated the property as a railyard for many years.

B. An underground storage tank (UST) incident report was filed with Ecology on January 11, 1991 regarding a petroleum release at the facility.

C. Ecology conducted an Initial Investigation regarding the UST incident report on January 16, 1991.

D. An Early Notice Letter regarding the UST report was issued by Ecology on April 1, 1991.

E. On May 22, 1991, Ecology was contacted by the Spokane Fire Department regarding petroleum contaminated soil encountered during excavation activities at the facility.

F. Ecology conducted a second Initial Investigation at the facility on May 23, 1991.

G. A second Early Notice Letter was issued by Ecology on June 3, 1991.

H. Spokane County Health District completed a Site Hazard Assessment of the facility in January 1996. The facility received a hazard ranking of three on a scale of one to five with one being considered the highest ranking.

I. Since the discovery of the release, there has been limited investigation of the contamination and some independent interim remedial measures undertaken by BNSF.

J. BNSF has undertaken an independent remedial action to address groundwater contamination by installing a groundwater treatment system at the Site.

VI. ECOLOGY DETERMINATIONS

A. BNSF is an "owner or operator" as defined in RCW 70.105D.020(17) of a "facility" as defined in RCW 70.105D.020(5).

B. Based upon all factors known to Ecology, a "release" or "threatened release" of "hazardous substance(s)" as defined in RCW 70.105D.020(25) and RCW 70.105D.020(10), respectively, has occurred at the Site.

C. Based upon credible evidence, Ecology issued a PLP status letter to BNSF dated April 9, 2008, pursuant to RCW 70.105D.040, -.020(21) and WAC 173-340-500. After providing for notice and opportunity for comment, reviewing any comments submitted, and concluding that credible evidence supported a finding of potential liability, Ecology issued a determination that BNSF is a PLP under RCW 70.105D.040 and notified BNSF of this determination by letter dated May 15, 2008.

D. Pursuant to RCW 70.105D.030(1) and -.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.

VII. WORK TO BE PERFORMED

Based on the Findings of Fact and Ecology Determinations, it is hereby ordered that the PLP take the following remedial actions at the Site and that these actions be conducted in accordance with Chapter 173-340 WAC unless otherwise specifically provided for herein:

A. The work to be performed includes the planning, implementation, and reporting on the conduct of a Remedial Investigation and Feasibility Study (RI/FS) for the Site. A Scope of Work is attached hereto as Exhibit B for the completion and approval of the RI/FS.

B. BNSF will prepare and submit to Ecology for review and approval an Interim Action Work Plan that documents completed and ongoing independent remedial measures related to the remediation of petroleum-contaminated groundwater at the Site. The Work Plan will also provide a detailed technical proposal for the continued operation of any interim groundwater treatment systems under Ecology oversight, plus a proposed schedule for implementation. Upon approval by Ecology, this Work Plan will become an integral and enforceable part of this Order, and BNSF will implement the Work Plan as approved by Ecology. The Scope of Work attached hereto as Exhibit B provides additional detail regarding completion of the Work Plan.

C. The PLP shall submit all necessary work plans or other deliverables to implement the Scope of Work (Exhibit B) to Ecology for review and approval according to the Schedule of Deliverables in Exhibit B. Upon approval by Ecology, such deliverables become integral and enforceable parts of this Order. The PLP will then proceed with field implementation of the Work Plans in accordance with the schedule approved in the Work Plans.

D. Work Plans shall consist of a detailed description of site conditions, work to be performed, personnel requirements, and schedules for implementation and deliverables for the following:

- a. TASK I. Project Planning including RI Work Plan, Interim Action Work Plan, Sampling and Analysis Plan, Health and Safety Plan, and Public Participation Plan.
- b. TASK II. Conduct RI Field Investigations.
- c. TASK III. Conduct Feasibility Study.
- d. TASK IV. Remedial Investigation/Feasibility Study Report.

These work plans and other deliverables and each element thereof shall be designed, implemented, and completed in accordance with the Model Toxics Control Act (Chapter 70.105D RCW) and its implementing regulation (Chapter 173-340 WAC) as amended, and all applicable federal, state, and local laws and regulations.

E. If, at any time after the first exchange of comments on drafts, Ecology determines that insufficient progress is being made in the preparation of any of the deliverables required by this section, Ecology may complete and issue the final deliverable. Ecology will provide advance written notice to BNSF of its decision to complete the final deliverable.

VIII. TERMS AND CONDITIONS OF ORDER

A. Public Notice

This Order will be subject to public notice and comment under WAC 173-340-600 before becoming effective. Ecology shall be responsible for providing such public notice.

B. Remedial Action Costs

The PLP 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 Site under Chapter 70.105D RCW, including remedial actions and Order preparation, negotiation, oversight, and administration. These costs shall include work performed both prior to and subsequent to the issuance of this Order. Ecology's costs shall include costs of direct activities and support costs of direct activities as defined in WAC 173-340-550(2). The PLP shall pay the required amount within ninety (90) 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. Pursuant to RCW 70.105D.055, Ecology has authority to recover unreimbursed remedial action costs by filing a lien against real property subject to the remedial actions.

C. Implementation of Remedial Action

If Ecology determines that the PLP has failed without good cause to implement the remedial action, in whole or in part, Ecology may, after notice to the PLP, perform any or all portions of the remedial action that remain incomplete. If Ecology performs all or portions of the remedial action because of the PLP's failure to comply with its obligations under this Order, the PLP shall reimburse Ecology for the costs of doing such work in accordance with Section VIII Remedial Action Costs, provided that the PLP is not obligated under this Section to reimburse Ecology for costs incurred for work inconsistent with or beyond the scope of this Order.

Except where necessary to abate an emergency situation, the PLP shall not perform any remedial actions at the Site outside those remedial actions required by this Order, unless Ecology concurs, in writing, with such additional remedial actions.

D. Designated Project Coordinators

The project coordinator for Ecology is:

Zachary T. Hedgpeth
4601 N. Monroe
Spokane, WA 99203
Telephone: 509/329-3484
E-mail: zahe461@ecy.wa.gov

The project coordinator for the PLP is:

Bruce Sheppard
BNSF Railway Company
2454 Occidental Avenue South
Suite 1A
Seattle, WA 98134
Telephone: 206/625-6035
E-Mail: bruce.sheppard@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 the PLP, 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.

E. Performance

All geologic and hydrogeologic work performed pursuant to this Order shall be under the supervision and direction of a geologist licensed in the State of Washington or under the direct supervision of an engineer registered in the State of Washington, except as otherwise provided for by Chapters 18.220 and 18.43 RCW.

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

Any documents submitted containing geologic, hydrologic or engineering work shall be under the seal of an appropriately licensed professional as required by Chapter 18.220 RCW or RCW 18.43.130.

The PLP shall notify Ecology in writing of the identity of any 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. BNSF has notified Ecology that GeoEngineers, Inc. and Test America or Pace Laboratories may be used by BNSF in carrying out the terms of this Order.

F. Access

Ecology or any Ecology authorized representative shall have full authority to enter and freely move about all property at the Site that the PLP 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 the PLP'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 the PLP. The PLP shall make all reasonable efforts to secure access rights for those properties within the Site not owned or controlled by the PLP 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 the PLP unless an emergency prevents such notice. All persons who access the Site pursuant to this Section shall comply with any applicable Health and Safety Plan(s). All parties who access BNSF's railyard property will be required to complete BNSF's Contractor Safety Training Program (www.contractororientation.com), unless they are personally escorted by someone who has completed the Program. Ecology employees and their representatives shall not be required to sign any liability release or waiver as a condition of Site property access.

G. Sampling, Data Submittal, and Availability

With respect to the implementation of this Order, the PLP 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, the PLP shall allow Ecology and/or its authorized representative to take split or duplicate samples of any samples collected by the PLP pursuant to implementation of this Order. The PLP shall notify Ecology seven (7) days in advance of any sample collection or work activity at the Site. Ecology shall, upon request, allow the PLP 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, Terms and Conditions, subsection F, Access, Ecology shall notify the PLP 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 Chapter 173-50 WAC for the specific analyses to be conducted, unless otherwise approved by Ecology.

H. Public Participation

A public participation plan is required for this Site. Ecology shall review any existing public participation plan to determine its continued appropriateness and whether it requires amendment. If no plan exists, Ecology shall develop a public participation plan alone or in conjunction with the PLP.

Ecology shall maintain the responsibility for public participation at the Site, and the PLP shall cooperate with Ecology.

1. Ecology will develop appropriate mailing lists with input from the PLP, prepare drafts of public notices and fact sheets at important stages of the remedial action, such as the submission of work plans, remedial investigation/feasibility study reports, interim actions and cleanup action plans. Ecology will edit, finalize and distribute such fact sheets and prepare and distribute public notices of Ecology's presentations and meetings. The PLP will be provided an opportunity to review fact sheets and public notices prior to distribution.

2. The PLP shall notify Ecology's project coordinator prior to any of the following regarding the site: the issuance of all press releases; distribution of fact sheets; performance of other outreach activities; meetings with the interested public and/or local governments. Likewise, Ecology shall notify the PLP prior to the issuance of all press releases and fact sheets, and before meetings with the interested public and local governments. For all press releases, fact sheets, meetings, and other outreach efforts by the PLP that do not receive prior Ecology approval, the PLP 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, the PLP shall 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, the PLP shall arrange and/or continue information repositories to be located at the following locations:

- (a) Spokane Valley Library
12004 East Main
Spokane Valley, Washington 99206
- (b) Argonne County Library
4322 North Argonne Road
Spokane, Washington 99206
- (c) Ecology's Eastern Regional Office
4601 North Monroe
Spokane, Washington 99205

At a minimum, copies of public notices, including fact sheets and documents associated with the public comment period shall be promptly placed in these repositories.

I. 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, the PLP shall preserve all records, reports, documents,

and underlying data in its possession relevant to the implementation of this Order and shall insert a similar record retention requirement into all contracts with project contractors and subcontractors. Upon request of Ecology, the PLP shall make all records available to Ecology and allow access for review within a reasonable time. Nothing in this Order is intended by BNSF to waive any right it may have under applicable law to limit disclosure of documents protected by the attorney work-product and/or attorney-client privilege. If BNSF withholds any requested records based on an assertion of privilege, it shall provide Ecology with a privilege log specifying the records withheld and the applicable privilege. No actual data collected on Site pursuant to this Decree shall be considered privileged.

J. Resolution of Disputes

1. In the event a dispute arises as to an approval, disapproval, proposed change, or other decision or action by Ecology's project coordinator, or an itemized billing statement under Section VIII. Terms and Conditions, subsection B, Remedial Action Costs, the Parties shall utilize the dispute resolution procedure set forth below.

a. Upon receipt of Ecology's project coordinator's written decision or the itemized billing statement, the PLP has fourteen (14) days within which to notify Ecology's project coordinator in writing of its objection to the decision or itemized statement.

b. The Parties' project coordinators shall then confer in an effort to resolve the dispute. If the project coordinators cannot resolve the dispute within fourteen (14) days, Ecology's project coordinator shall issue a written decision.

c. The PLP may then request regional management review of the decision. This request shall be submitted in writing to the Eastern Region Toxics Cleanup Section Manager within seven (7) days of receipt of Ecology's project coordinator's written decision.

d. The Section Manager shall conduct a review of the dispute and shall endeavor to issue a written decision regarding the dispute within thirty (30) days of the

PLP's request for review. The Section Manager's decision 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.

K. Extension of Schedule

1. An extension of schedule shall be granted only when a request for an extension is submitted in a timely fashion, generally at least thirty (30) 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; and
- d. Any related deadline or schedule that would be affected if the extension were granted.

2. The burden shall be on the PLP 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 the PLP 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 the PLP;
- b. Acts of God, including fire, flood, blizzard, extreme temperatures, storm, or other unavoidable casualty;
- c. Endangerment as described in Section VIII. Terms and Conditions, subsection M, Endangerment; or

d. Unanticipated circumstances that would cause scheduled cleanup actions, if not rescheduled, to unduly restrict mainline operations or to unreasonably burden interstate commerce.

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 the PLP.

3. Ecology shall act upon any written request for extension in a timely fashion. Ecology shall give the PLP 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. Terms and Conditions, subsection L, Amendment of Order when a schedule extension is granted.

4. 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:

- 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, including circumstances arising under Subsection K.2.d. above; or
- c. Endangerment as described in Section VIII. Terms and Conditions, subsection M, Endangerment.

L. 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 Terms and Conditions, subsection N, 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 the PLP. The PLP shall submit a written request for amendment to Ecology for approval.

Ecology shall indicate its approval or disapproval in writing and in a timely manner after the written request for amendment is received. If the amendment to this Order represents a substantial change, Ecology will provide public notice and opportunity to comment. Reasons for the disapproval of a proposed amendment to this Order shall be stated in writing. If Ecology does not agree to a proposed amendment, the disagreement may be addressed through the dispute resolution procedures described in Section VIII. Terms and Conditions, subsection J, Resolution of Disputes.

M. Endangerment

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

In the event the PLP determines that any activity being performed at the Site is creating or has the potential to create a danger to human health or the environment, the PLP may cease such activities. The PLP 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 the PLP shall provide Ecology with documentation of the basis for the determination or cessation of such activities. If Ecology disagrees with the PLP's cessation of activities, it may direct the PLP to resume such activities.

If Ecology concurs with or orders a work stoppage pursuant to Section VIII Terms and Conditions, subsection M, Endangerment, the PLP'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. Terms and Conditions, subsection K, 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.

N. Reservation of Rights

This Order is not a settlement under Chapter 70.105D RCW. 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 the PLP to recover remedial action costs paid to and received by Ecology under this Order. In addition, Ecology will not take additional enforcement actions against the PLP regarding remedial actions required by this Order, provided the PLP complies with this Order.

Ecology nevertheless reserves its rights under Chapter 70.105D RCW, including the right to require additional or different remedial actions at the Site should it deem such actions necessary to protect human health and 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.

O. 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 the PLP 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 the PLP's transfer of any interest in all or any portion of the Site, and during the effective period of this Order, the PLP 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, the PLP shall notify Ecology of said transfer. Upon transfer of any interest, the PLP shall restrict uses and activities to those consistent with this Order and notify all transferees of the restrictions on the use of the property.

P. Compliance with Applicable Laws

1. All actions carried out by the PLP pursuant to this Order shall be done in accordance with all applicable federal, state, and local requirements, including requirements to obtain necessary permits, except as provided in RCW 70.105D.090. At this time, no federal,

state or local requirements have been identified as being applicable to the actions required by this Order.

2. Pursuant to RCW 70.105D.090(1), the PLP is exempt from the procedural requirements of Chapters 70.94, 70.95, 70.105, 77.55, 90.48, and 90.58 RCW and of any laws requiring or authorizing local government permits or approvals. However, the PLP shall comply with the substantive requirements of such permits or approvals. At this time, no state or local permits or approvals have been identified as being applicable but procedurally exempt under this Section.

The PLP has a continuing obligation to determine whether additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial action under this Order. In the event either Ecology or the PLP determines that additional permits or approvals addressed in RCW 70.105D.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 the PLP shall be responsible to contact the appropriate state and/or local agencies. If Ecology so requires, the PLP 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 the PLP and on how the PLP must meet those requirements. Ecology shall inform the PLP in writing of these requirements. Once established by Ecology, the additional requirements shall be enforceable requirements of this Order. The PLP shall not begin or continue the remedial action potentially subject to the additional requirements until Ecology makes its final determination.

3. Pursuant to RCW 70.105D.090(2), in the event Ecology determines that the exemption from complying with the procedural requirements of the laws referenced in RCW 70.105D.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 the PLP

shall comply with both the procedural and substantive requirements of the laws referenced in RCW 70.105D.090(1), including any requirements to obtain permits.

Q. Indemnification

The PLP 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 for death or injuries to persons or for loss or damage to property to the extent arising from or on account of acts or omissions of the PLP, its officers, employees, agents, or contractors in entering into and implementing this Order. However, the PLP 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 the PLP's receipt of written notification from Ecology that the PLP has completed the remedial activity required by this Order, as amended by any modifications, and that the PLP has complied with all other provisions of this Agreed Order.

X. ENFORCEMENT

Pursuant to RCW 70.105D.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 Site.
- C. In the event the PLP refuses, without sufficient cause, to comply with any term of this Order, the PLP will be liable for:
 - a. Up to three (3) times the amount of any costs incurred by the State of Washington as a result of its refusal to comply; and

b. 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 70.105D.060.

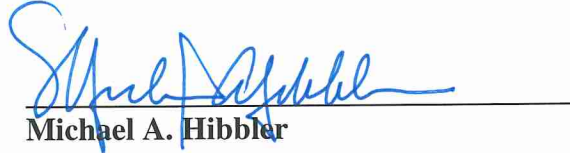
Effective date of this Order: February 20, 2009

BNSF RAILWAY COMPANY



Mark P. Stehly
AVP Technical Research, Development &
Environmental
2500 Lou Menk Drive
Fort Worth, TX 76131
Telephone 817/ 352-1907

**STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY**



Michael A. Hibbler
Toxics Cleanup Program
Eastern Regional Office
Telephone 509/ 329-3568

EXHIBIT A

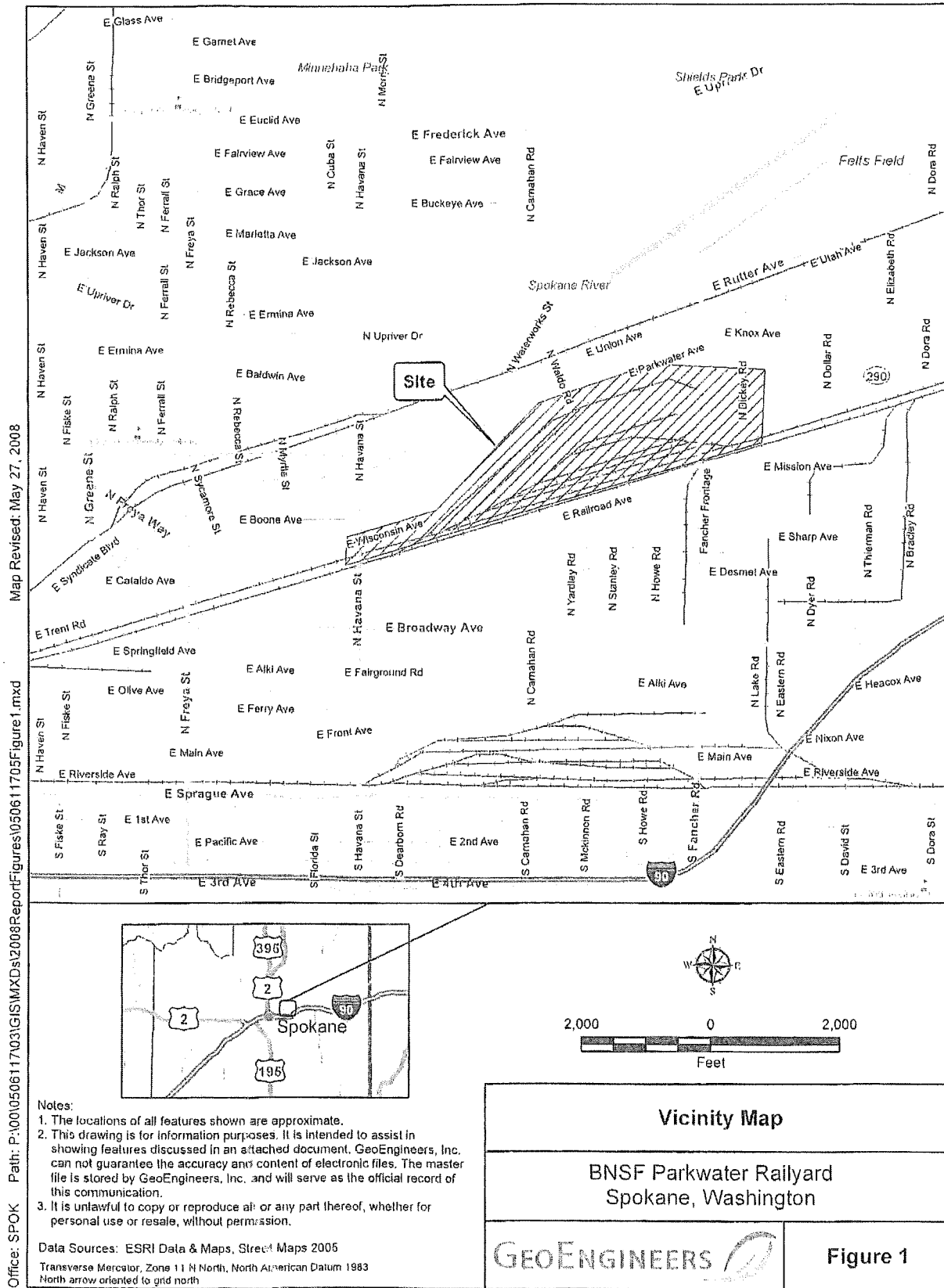


EXHIBIT B

BNSF Parkwater Railyard Site Scope of Work Remedial Investigation/Feasibility Study And Interim Action

This Scope of Work is to investigate contamination at the Parkwater Railyard Site (Site) located at 5302 East Trent Ave., Spokane, WA 99212. This Scope of Work is to be used by BNSF Railway Company (BNSF), the potentially liable person (PLP), to develop Work Plans in order to complete a Remedial Investigation/Feasibility Study (RI/FS) at the Site that meets the requirements of the Model Toxics Control Act Cleanup Regulation (Chapter 173-340 WAC), to prepare and submit a report on independent interim action(s) taken to address groundwater contamination and to develop a work plan for continuing certain interim action(s) under Ecology oversight.

The RI is to supplement existing data and determine the nature and extent of contamination at the Site. The FS will evaluate remedial alternatives that are applicable for the Site. The information and data gathered during the RI/FS will be used to identify if additional data need to be collected and determine an appropriate remedial action. BNSF will furnish all personnel, materials, and services necessary for, or incidental to, performing the Remedial Investigation and Feasibility Study at the Site.

The RI/FS work must include the following tasks:

Task I: RI/FS and Interim Action Project Planning

A. RI/FS Work Plan

A Work Plan is to be prepared outlining procedures for the Remedial Investigation and Feasibility Study (RI/FS). The Work Plan shall include the following information:

1. Collection, evaluation and presentation of existing data to establish the state of knowledge regarding known or suspected contamination at the facility. Submittals will include all available information regarding the following subjects at a minimum. Previously submitted data may be excluded to reduce redundancy. Excluded data must be identified, including a discussion that cites the date the data were submitted, identifies the relevance of the data to the overall understanding of the site condition and provides the rationale for exclusion.
 - a. Identification of facility areas where hazardous substances may have been, or currently are being, used or stored, and a listing of each hazardous substance used in each area.

- b. Historical information on the Parkwater facility, including historical maps, photographs, operational diagrams, depictions, or descriptions and interviews with existing or former BNSF employees. Information regarding specific activities that occurred at the facility during various operational periods during the facility's history.
 - c. Well logs and any other well construction information as well as groundwater monitoring data for monitoring wells (MW) MW-1 through MW-12, installed between 2001 and 2003.
 - d. The following report cited within the 01/16/07 GeoEngineers report: *Remedial Investigation Work Plan, RETEC, August 27, 2001*, and any other reports not previously submitted to Ecology.
 - e. Information regarding the typical usage patterns, locations, and water quality information for any existing or formerly active water supply wells at the facility.
 - f. Information regarding the likely waste content and dates of waste placement into known waste repository areas at the facility.
 - g. General information maps of the facility, including but not limited to topographical, property lines, underground tank locations, (including size and content), surface water bodies near the vicinity of the Site and previous Site investigations. All maps will be consistent with the requirement set forth in WAC 173-340-840(4) and be of sufficient detail and accuracy to locate and report all current and future work performed at the Site.
2. Conceptual Site Model
- a. To be prepared using existing local and regional information, considering known site conditions, hazardous substance fate and transport, and potential exposure pathways and receptors.
 - b. Developed consistent with the requirements of 173-340 WAC.
3. Planning for monitoring wells, soil borings, test pits, and any additional data gathering activities; based on the evaluation of existing data and facility information.
4. Description of Tasks II and III RI/FS implementation, including:
- a. Sampling and Analysis Plan
 - b. Quality Assurance Project Plan

- c. Health and Safety Plan
- d. Public Participation Support
5. Project Management - Project team, roles, and responsibilities.
6. Deliverables and schedule for Tasks II - IV.

B. Interim Action Work Plan

BNSF will prepare and submit to Ecology for review and approval a Work Plan containing a detailed technical proposal for the operation of interim groundwater treatment systems under Ecology oversight, plus a proposed schedule for implementation. As part of this plan, BNSF will describe the independent remedial measures taken at the Site previously to treat petroleum-contaminated groundwater. In doing so, BNSF must present sufficient pertinent technical information to adequately describe past remedial measures and document their status with respect to the RI/FS process.

Following submittal of this report, Ecology will:

- Evaluate ongoing remedial activities at the Site.
- Determine the status of any treatment systems in operation.
- Evaluate the appropriateness of continued treatment system operation, including identification of any necessary modifications.

C. Sampling and Analysis Plan

BNSF must prepare a Sampling and Analysis Plan (SAP) that guides and directs the implementation of all Site characterization activities. Additional investigative plans may be required by Ecology. All SAP's prepared for the Site must contain:

1. Field Sampling Plan – The field sampling and testing component of the SAP will describe in detail the rationale for data collection, including sampling, testing, and data gathering methods, locations, frequency and other field study procedures that will be used for obtaining data required to complete the RI/FS. This component will include but not be limited to the following:
 - a. Proposed number and location of monitoring wells, soil borings, test pits and other investigative activities.
 - b. Types of media to be sampled and the number of samples of each.
 - c. Sampling locations and designations, including access considerations.

- d. Discussion of data objectives and linkage to preliminary conceptual site model.
 - e. Specific sampling methods, including number and type of Quality Assurance/Quality Control (QA/QC) samples.
 - f. Schedule and task assignments.
 - g. Supplies and equipment.
 - h. Monitoring well construction requirements.
 - i. Analytical procedures, methods, and detection limits.
 - j. Shipping and handling arrangements
2. Preliminary analysis and presentation of Applicable, Relevant and Appropriate Requirements (ARARs) in support of data quality objectives determination (e.g., analytical detection limits).
 3. Quality Assurance Project Plan (QAPP)
 - a. Field QA/QC methods.
 - b. Chain of custody procedures.
 - c. Decontamination procedures.
 - d. Laboratory analyses and QA/QC methods.
 - e. Sample custody procedures, including holding times, containers, and preservation.
 4. Health and Safety Plan
 - a. Level of protection.
 - b. Hazard evaluation.
 - c. Waste characteristics.
 - d. Special considerations and emergency information.

Task II: Remedial Investigation

The purpose of the Remedial Investigation (RI) is to obtain the information necessary to understand site conditions in relationship to known or suspected releases of contaminants. Specifically, new and existing information will be used to characterize the Site, identify known and potential contaminant sources, and establish the nature and extent of contamination present

to sufficiently complete a Feasibility Study and select an appropriate remedial action. The RI data must meet the criteria set out in the QAPP and be of sufficient quality to support the development of an appropriate remedial action for the Site. The investigation will meet the requirements stated in WAC 173-340-350 and, more specifically, must include the following elements:

A. Site Characterization

Collect analytical data on groundwater and soils contamination in the vicinity of the Site. Considering information on historical operations and hydrogeology, the data must be sufficient to delineate the type, depth, concentration and areal extent of contaminants, along with information that addresses the rate and direction of contaminant movement.

1. Collect background information from previous environmental investigations, other Ecology information, and any other historical data.

2. Hydrogeology

An investigation of the regional and Site-specific geologic and hydrogeologic characteristics affecting groundwater flow through the Site:

- a. Evaluate and monitor all known existing groundwater monitoring wells that comply with the resource protection well requirements of 173-160 WAC.
- b. Install new groundwater monitoring wells where needed.
- c. Drill additional soil borings and/or excavate test pits where needed.
- d. Characterize site-specific stratigraphy and lithology based on well logs, maps, and any other information available, including identification of major aquifer and aquitard units.
- e. Estimate hydraulic conductivity and porosity based on well logs, samples, aquifer tests, and other general information available.
- f. Evaluate typical season fluctuation in groundwater levels beneath the Site.
- g. Prepare maps showing water levels and regional/Site hydrogeology, and inferred direction of groundwater flow, including any recharge/discharge relationship with nearby surface water bodies.

3. Soils

- a. Drill soil borings and/or excavate test pits, where needed. Collect and analyze surface and subsurface soil samples, as appropriate, to support characterization of vadose zone conditions and support contaminant fate and transport analyses.
- b. Characterize soil samples using the Unified Soil Classification System (USCS).
- c. Prepare logs for each boring or test pit.

B. Source and Contamination Characterization

1. Identify known or potential sources of contamination based on past facility practices, reported spills or releases. Evaluate possible facility areas where hazardous substance use, storage or release may have occurred using appropriate intrusive or non-intrusive methods of investigation.
2. Sampling locations will be selected to characterize the contamination, along with fate & transport.
3. Analytical data collected must help describe the nature, extent, and potential sources of contamination.

C. Potential Receptor Information

Collect data to permit the evaluation of appropriate human and ecological cleanup standards (WAC 173-340-700 through 760). This may include:

1. Public Use/Site Access – Potential uses of the affected properties, including zoning and land use. The presence or absence of controls on Site access.
2. Potential Groundwater/Surface Water Uses – Any consumptive, recreational, or other use of groundwater and surface water in the area, and used by which populations
3. Potential air and soil-gas pathways – Any basements or other spaces that are below grade.
4. Environmental Receptors – Information on ecological environments at the site, including the presence of endangered or threatened species.

Task III: Feasibility Study

The purpose of the Feasibility Study is to evaluate potential remedial technologies and approaches to enable selection of an appropriate remedial action for the Site. The selected

remedy will be established by Ecology with the Draft Cleanup Action Plan (DCAP), to be developed following completion and approval of the final RI/FS Report. Ecology will provide an evaluation of preliminary cleanup standards for the Site, as appropriate, to guide cleanup alternatives development. The Feasibility Study must meet the requirements stated in WAC 173-340-350(8).

Task IV: RI/FS Report

BNSF will complete a report documenting the Remedial Investigation/Feasibility Study as required by WAC 173-340-350(7) and (8). This report will include the following elements:

A. Remedial Investigation

1. Background Information

- a. Site History.
- b. Previous Studies.

2. Nature and Extent of Contamination

BNSF will prepare an assessment and description of the degree and extent of contamination. This should include:

- a. Data Analysis – Analyze all data collected during previous Tasks and prepare supporting maps, figures and tables.
- b. Lab reports, previous investigations, well and boring logs, and any other documentation of characterization activities must be included.
- c. Presentation of conceptual site models.

3. Applicable Relevant and Appropriate Requirements (ARARs) Analysis

Identify Applicable State and Federal Laws for cleanup of the Site in accordance with WAC 173-340-710.

4. Cleanup Levels/Risk Assessment Analysis

Perform a baseline Model Toxics Cleanup Act (MTCA) cleanup levels analysis/baseline risk assessment characterizing the current and potential threats to public health and the environment that may be posed by hazardous substances at the facility. The assessment will integrate cleanup standards and risk assessment as required by WAC 173-340-357 and WAC 173-340-708.

5. Discussion and Recommendations

- a. Interpret and discuss data to determine the nature and extent of the contamination and to support final recommendations for the Site.
- b. A summary of all possible and suspected source areas of contamination based on the data collected will be included.
- c. Any known or potential risks to the public health, welfare, and the environment should be discussed.
- d. Recommendations should be provided identifying additional data requirements.

B. Feasibility Study

- a. Identification of contamination to be remediated.
- b. Identification and initial screening of treatment technologies.
- c. Proposed remedial alternatives and evaluation with respect to MTCA criteria.
- d. Recommended alternative.

EXHIBIT C

**BNSF RAILWAY COMPANY
(BNSF)
PARKWATER RAILYARD SITE**

Draft Public Participation Plan

**Agreed Order
for a
Remedial Investigation/
Feasibility Study**

Prepared by:
Washington State Department of Ecology

Para asistencia en Español Sr. Gregorio Bohn 509/454-4174
Если вам нужно помощь по русский, звоните
Tatyana Bistrevsky 509/477-3881

September 2008

Getting Involved in the Cleanup at the BNSF Parkwater Railyard Site

Ecology encourages the public to learn about and get involved in decision-making opportunities at the BNSF Parkwater Railyard site. Opportunities are available during specific stages of the investigation and cleanup of petroleum products and other contaminants that may be identified in soil and groundwater at the site. The site is located at 5302 East Trent Avenue and straddles the boundary between the cities of Spokane and Spokane Valley in Spokane County, Washington.

The Public Participation Plan (Plan) provides an overview of the Model Toxics Control Act (MTCA) that guides the formal cleanup process at sites in Washington State. The document also outlines the purpose of the Plan, when public notice will occur, the amount of time the public has to comment, where the potentially affected area is located and ways the public may get involved in providing feedback. It also provides site background, a community profile, and community concerns.

Purpose of the Plan

The Public Participation Plan has three main purposes:

- To promote public understanding of the Washington Department of Ecology's (Ecology) responsibilities, planning, and cleanup activities at the site.
- To serve as a way of gathering information from the public. This information will assist Ecology and the potentially liable persons (PLPs) to conduct the investigation and plan for cleanup in a manner that is protective of human health and the environment.
- To inform the community living near the site, as well as the general public about cleanup activities and how to contribute to the decision-making process.

Overview of the Public Participation Plan and Model Toxics Control Act (MTCA)

The Plan is required under authority of the Model Toxics Control Act. MTCA is a "citizen-mandated" law that became effective in 1989 to provide guidelines for the cleanup of contaminated sites in Washington State. This law sets standards to make sure the cleanup of sites is protective of human health and the environment. A glossary of MTCA terms is included as Appendix C of this Plan.

Ecology's Toxic Cleanup Program investigates reports of contamination that may threaten human health and the environment. If contaminants are confirmed during an investigation, the site is generally ranked and placed on a Hazardous Sites List (HSL).

The BNSF Parkwater Railyard site ranked a three on the Hazardous Sites List. A rank of one represents the highest level of concern and five the lowest. Current and former owners or operators, as well as any other PLPs of a site, may be held responsible for cleanup of contamination based on MTCA. The PLPs identified by Ecology for this site is the BNSF Railway Company (BNSF).

Public participation is an important part of cleanup under the MTCA process. The participation needs are assessed at each site according to the level of public interest and degree of risk posed by contaminants. Individuals who live near the site, community groups, businesses, government, other organizations and interested parties are provided an opportunity to become involved in commenting on the cleanup process.

The Plan includes requirements for public notice such as: identifying reports about the site and the repositories where reports may be read; providing public comment periods; and holding public meetings or hearings. Other forms of participation may be interviews, citizen advisory groups, questionnaires, or workshops.

Public Participation Grants and Technical Assistance

Additionally, citizen groups living near contaminated sites may apply for public participation grants (during open application periods). These grants help citizens receive technical assistance in understanding the cleanup process and create additional public participation avenues.

NOTE: Ecology currently does not have a citizen technical advisor for providing technical assistance to citizens on issues related to the investigation and cleanup of the site.

Amendments

The Plan was developed by Ecology and complies with the Model Toxics Control Act regulations (Chapter 173-340-600 WAC). It will be reviewed as cleanup progresses and may be amended if necessary. Amendment requests may be submitted to Ecology's site manager, Zach Hedgpeth, for review and consideration. Ecology will determine final approval of the Plan as well as any amendments.

Review of Documents and Project Contacts

Documents relating to the cleanup may be reviewed at the repositories listed on pages 7 of this Plan. If individuals are interested in knowing more about the Site or have comments regarding the Public Participation Plan, please contact one of the individuals listed on page 4.

<p>WA Department of Ecology Contacts: Mr. Zachary T. Hedgpeth, P.E., Site Manager WA State Department of Ecology Toxics Cleanup Program 4601 N. Monroe Spokane, WA 99205 509-329-3484 zahe461@ecy.wa.gov</p> <p>Ms. Carol Bergin, Public Involvement WA State Department of Ecology Toxics Cleanup Program 4601 N. Monroe Spokane, WA 99205 509-329-3546 cabe461@ecy.wa.gov</p> <p>Mr. Roger Johnson, Public Disclosure WA State Department of Ecology 4601 N. Monroe Spokane, WA 99205 509/454-7658 rjoh461@ecy.wa.gov</p>	<p>Para asistencia Espanol Sr. Gregorio Bohn WA State Department of Ecology Toxics Cleanup Program 15 W. Yakima Avenue, Suite 200 Yakima, WA 98902-3401 509-454-4174 gboh461@ecy.wa.gov</p> <p>Если вам нужно помощь по русский, звоните Tatyana Bistresky 509-477-3881</p> <p>-----</p> <p>BNSF Company Contact: Mr. Bruce Sheppard BNSF Railway Company 2454 Occidental Avenue South, Suite 1A Seattle, WA 98134 Telephone: 206/625-6035 bruce.sheppard@bnsf.com</p>
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SITE BACKGROUND

The Washington State Department of Ecology is proposing to enter into an Agreed Order with the BNSF Railway Company (BNSF) to clean up contamination at the Parkwater Railyard site. The site is located at 5302 East Trent Avenue, Spokane, Spokane County, Washington 99212 (See Appendix A – Site Map Figure 1).

The Agreed Order is a legal document issued by Ecology. It formalizes the agreement between Ecology and BNSF for the cleanup actions needed at the site. The purpose of the Remedial Investigation is to gather more information to determine where and how much contamination may be in site-related soil and groundwater. The Feasibility Study will evaluate cleanup alternatives in preparation for a cleanup action. BNSF has begun certain limited independent cleanup work at the site. The report and work plan required under the Agreed Order are necessary for Ecology to evaluate any actions taken to date and decide whether to include them in the approved cleanup plan when it is developed.

The Order requires BNSF to complete the following tasks for the Parkwater Railyard site:

- Conduct a Remedial Investigation and Feasibility Study (RI/FS).

- Submit a report detailing independent cleanup actions previously taken at the site to treat petroleum-contaminated groundwater. Include a work plan outlining proposed plans to continue previous cleanup actions in the future under Ecology's oversight.
- Implement the work plan after Ecology approval.

History

The BNSF Parkwater facility, formerly known as Yardley, is one half mile south of the Spokane River and lies over the Spokane Valley Rathdrum Prairie Aquifer in the Spokane Valley. The property covers 130 acres and has been used as a railyard for nearly 100 years. BNSF Parkwater was the main facility for the Northern Pacific Railroad in the early 1900s until the roadhouse was torn down in 1959. Operations included fueling, maintenance, and switching of rail cars. Fuel tanks containing diesel, waste oil, gasoline and cleaning solvent were housed on-site to support the daily operations. In 2004 many of the operations at BNSF Parkwater were switched to a new facility in Hauser, Idaho. Currently, BNSF Parkwater serves as a support to the Hauser facility when there are periods of high demand.

In 1991 an underground storage tank containing petroleum was being removed and a petroleum release was discovered. Ecology conducted an initial investigation in January of 1991 to evaluate the reported release. Additional petroleum contamination was discovered during soil excavation in another area at the site. Since the discovery of the release, BNSF conducted limited investigation and independently cleaned up some of the contamination.

In January 1996, Spokane County Health District completed a Site Hazard Assessment of the BNSF Parkwater Railyard. The site ranked a three on the Hazardous Sites List. The Hazardous Sites List is a record of contaminated sites throughout the state that are ranked on a scale of one to five. One represents the greatest potential threat to human health and the environment; five represents the least potential threat. The site ranked a three because of the amount of petroleum contamination in soil and the potential for groundwater and aquifer contamination.

Companies responsible for contamination at a site have an opportunity to pursue cleanup through Ecology's Voluntary Cleanup Program (VCP). If Ecology determines the VCP program is not an appropriate avenue for the cleanup it becomes part of Ecology's formal cleanup process. The Agreed Order between BNSF and Ecology at this site begins the formal cleanup process.

Contaminants of Concern

Petroleum product in soil and groundwater is the primary contaminant of concern at this time. The Remedial Investigation will provide additional information about where, how much and what type of contamination is at the BNSF Parkwater Railyard site.

COMMUNITY BACKGROUND

Community Profile

The site is surrounded by industrial and commercial businesses. There has been recent growth in the residential homes found north of the site from Trent to the Spokane River. Homes are also found along the railroad tracks near the south boundaries of the site and some are interspersed between industrial and commercial businesses in the neighborhood.

The neighborhood population, although predominantly Caucasian is becoming more diverse as the area grows. There are individuals of Slavic descent who speak Russian/Ukrainian and some Spanish-speaking Latinos who help make up the culture of this neighborhood.

According to the 2000 census, the majority of people living in the area have incomes below the county poverty level. There are new families who have recently become homeowners and others who have lived in the area since close to the time Parkwater was established.

Businesses vary from fast-food, plumbing and landscape services to travel, machine and fabrication, asphalt and cement product companies and many more. There are several new small businesses emerging along the Trent corridor.

Community Concerns

A few community interviews were conducted on September 15, 2008. Some could not be conducted due to language barriers. Efforts are being made to have a translator participate in some additional interviews.

Most people were unaware of any contamination issues at the site and indicated BNSF was a “good neighbor.” Some of the concerns expressed were as follows:

- “The tap water tastes and smells bad – it has an iron-like taste to it.”
- Are there any contaminants in the drinking water that we should be worried about? Should I be worried about my children drinking the water? Should we be on bottled water?
- One person wanted to be sure that BNSF was not shut down during the cleanup process.
- There has been a “horrible, dead body like smell” in the area about three weeks ago. A few of the interviewees reported they had smelled something really bad about three weeks ago. Some thought it might be the rendering plant, but others said it was different than what they had smelled before.

These questions and concerns were answered, based on current knowledge, during the interviews. Additional information will be shared with the neighborhood as it becomes available. Questions and concerns will also be addressed through the activities listed in the Public Participation Activities and Timeline section below.

Public Participation Activities and Timeline

The following is a list of some of the public participation efforts that will occur until the cleanup actions are completed:

- ❖ A **mailing list** is being developed for individuals who live near the site. The potentially affected vicinity covers any adjacent properties and homes and businesses within close proximity to the site, and areas to be investigated. These persons, along with BNSF, will receive copies of all fact sheets developed regarding the cleanup process via first class mail. Additionally, individuals, organizations, local, state, and federal governments, and any other interested parties will be added to the mailing list as requested. Other interested persons may request to be on the mailing list at any time by contacting Carol Bergin at the Department of Ecology (see page 4 for details).
- ❖ **Public Repositories** are locations where documents may be reviewed. Due to reduced hours at many libraries throughout the county, three repositories have been established. The following locations will contain copies of any documents that go through the public review process related to this site:

WA Department of Ecology
4601 North Monroe
Spokane, WA 99205-1295
Contact: Mrs. Johnnie Landis
Public Disclosure Coordinator
509-329-3415

Spokane Public Library
Hillyard Branch 4005
4005 North Cook Street
Spokane, WA 99207

Spokane Public Library
Argonne Public Library
4322 North Argonne Road
Spokane, WA 99206

Ecology's Web Site at

- ❖ **Opportunity to Comment**
 - During each stage of cleanup **fact sheets** are created by Ecology, then distributed to individuals on the mailing list. These fact sheets explain the stage of cleanup, the site background, what happens next in the cleanup process and asks for comments from the public.
 - A **30-day comment period** allows interested parties time to comment on the process. The fact sheet contains contact information about where to submit comments and where and when public meetings or hearings will be held if requested.
 - The information from these fact sheets is also published in a statewide **Site Register** which is sent to those who request to be on that mailing list. Persons interested in receiving the Site Register should contact Linda Thompson of Ecology at 360-407-6069 or e-mail Ltho461@ecy.wa.gov. The fact sheets are

also posted on Ecology's web page under the Toxics Cleanup Program at
[website insert]

- ❖ **Display ads or legal notices** are published in the Spokesman Review, ethnic newspapers when available, and on Ecology's Public Events Calendar <http://www.ecy.wa.gov> to inform the general public. These notices are published at the beginning of the 30-day comment period for the public notices. They are also used to announce public meetings and workshops or public hearings.
- ❖ **Public meetings, workshops, open houses, and public hearings** are held based on the level of community interest. If ten or more persons request a public meeting or hearing based on the subject of the public notice, Ecology will hold a meeting or hearing and gather comments. These meetings, workshops, or hearings will be held at a location that meets ADA standards and is close to the site. They may be held away from the site if it is necessary to accommodate large numbers of interested persons. These events are announced using the same methods as display ads or legal notices.
- ❖ **Flyers** may also be made available in various locations throughout the community (e.g., postings at local businesses, schools, libraries, etc.) to announce public comment periods, meetings, workshops, etc.

Answering Questions from the Public

Individuals in the community may want to ask questions to better understand the cleanup process. Page 4 lists the contacts for Ecology and the project manager for the BNSF Parkwater Railyard site. Interested persons are encouraged to contact these persons by phone or e-mail to obtain information about the site, the process and potential decisions.

Public Notice and Comment Periods- Timeline

ACTION TAKEN	DATE
Negotiations began for an Agreed Order	June 26, 2008
Agreed Order for a Remedial Investigation and Feasibility Study	
Fact Sheet about the Agreed Order and Remedial Investigation and Feasibility Study – 30 day public comment period	

APPENDIX A

SITE MAP - FIGURE 1

APPENDIX B

BNSF PARKWATER RAILYARD SITE

CURRENT MAILING LIST

(included in the final hard copy of the Agreed Order)

APPENDIX C GLOSSARY

Agreed Order: A legal document issued by Ecology which formalizes an agreement between the department and potentially liable persons (PLPs) for the actions needed at a site. An agreed order is subject to public comment. If an order is substantially changed, an additional comment period is provided.

Applicable State and Federal Law: All legally applicable requirements and those requirements that Ecology determines are relevant and appropriate requirements.

Area Background: The concentrations of hazardous substances that are consistently present in the environment in the vicinity of a site which are the result of human activities unrelated to releases from that site.

Carcinogen: Any substance or agent that produces or tends to produce cancer in humans.

Chronic Toxicity: The ability of a hazardous substance to cause injury or death to an organism resulting from repeated or constant exposure to the hazardous substance over an extended period of time.

Cleanup: The implementation of a cleanup action or interim action.

Cleanup Action: Any remedial action, except interim actions, taken at a site to eliminate, render less toxic, stabilize, contain, immobilize, isolate, treat, destroy, or remove a hazardous substance that complies with cleanup levels; utilizes permanent solutions to the maximum extent practicable; and includes adequate monitoring to ensure the effectiveness of the cleanup action.

Cleanup Action Plan: A document which identifies the cleanup action and specifies cleanup standards and other requirements for a particular site. After completion of a comment period on a Draft Cleanup Action Plan, Ecology will issue a final Cleanup Action Plan.

Cleanup Level: The concentration of a hazardous substance in soil, water, air or sediment that is determined to be protective of human health and the environment under specified exposure conditions.

Cleanup Process: The process for identifying, investigating, and cleaning up hazardous waste sites.

Consent Decree: A legal document approved and issued by a court which formalizes an agreement reached between the state and potentially liable persons (PLPs) on the actions needed at a site. A decree is subject to public comment. If a decree is substantially changed, an additional comment period is provided.

Containment: A container, vessel, barrier, or structure, whether natural or constructed, which confines a hazardous substance within a defined boundary and prevents or minimizes its release into the environment.

Contaminant: Any hazardous substance that does not occur naturally or occurs at greater than natural background levels.

Enforcement Order: A legal document, issued by Ecology, requiring remedial action. Failure to comply with an enforcement order may result in substantial liability for costs and penalties. An enforcement order is subject to public comment. If an enforcement order is substantially changed, an additional comment period is provided.

Environment: Any plant, animal, natural resource, surface water (including underlying sediments), ground water, drinking water supply, land surface (including tidelands and shorelands) or subsurface strata, or ambient air within the state of Washington.

Exposure: Subjection of an organism to the action, influence or effect of a hazardous substance (chemical agent) or physical agent.

Exposure Pathways: The path a hazardous substance takes or could take from a source to an exposed organism. An exposure pathway describes the mechanism by which an individual or population is exposed or has the potential to be exposed to hazardous substances at or originating from the site. Each exposure pathway includes an actual or potential source or release from a source, an exposure point, and an exposure route. If the source exposure point differs from the source of the hazardous substance, exposure pathway also includes a transport/exposure medium.

Facility: Any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly-owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, vessel, or aircraft; or any site or area where a hazardous substance, other than a consumer product in consumer use, has been deposited, stored, disposed or, placed, or otherwise come to be located.

Feasibility Study (FS): A study to evaluate alternative cleanup actions for a site. A comment period on the draft report is required. Ecology selects the preferred alternative after reviewing those documents.

Free Product: A hazardous substance that is present as a nonaqueous phase liquid (that is, liquid not dissolved in water).

Groundwater: Water found beneath the earth's surface that fills pores between materials such as sand, soil, or gravel. In aquifers, groundwater occurs in sufficient quantities that it can be used for drinking water, irrigation, and other purposes.

Hazardous Sites List: A list of sites identified by Ecology that requires further remedial action. The sites are ranked from 1 to 5 to indicate their relative priority for further action.

Hazardous Substance: Any dangerous or extremely hazardous waste as defined in RCW 70.105.010 (5) (any discarded, useless, unwanted, or abandoned substances including, but not limited to, certain pesticides, or any residues or containers of such substances which are disposed of in such quantity or concentration as to pose a substantial present or potential hazard to human health, wildlife, or the environment because such wastes or constituents or combinations of such wastes; (a) have short-lived, toxic properties that may cause death, injury, or illness or have mutagenic, teratogenic, or carcinogenic properties; or (b) are corrosive, explosive, flammable, or may generate pressure through decomposition or other means,) and (6) (any dangerous waste which (a) will persist in a hazardous form for several years or more at a disposal site and which in its persistent form presents a significant environmental hazard and may affect the genetic makeup of man or wildlife; and is highly toxic to man or wildlife; (b) if disposed of at a disposal site in such quantities as would present an extreme hazard to man or the environment), or any dangerous or extremely dangerous waste as designated by rule under Chapter 70.105 RCW: any hazardous substance as defined in RCW 70.105.010 (14) (any liquid, solid, gas, or sludge, including any material, substance, product, commodity, or waste, regardless of quantity, that exhibits any of the characteristics or criteria of hazardous waste as described in rules adopted under this chapter,) or any hazardous substance as defined by rule under Chapter 70.105 RCW; petroleum products.

Hazardous Waste Site: Any facility where there has been a confirmation of a release or threatened release of a hazardous substance that requires remedial action.

Independent Cleanup Action: Any remedial action conducted without Ecology oversight or approval, and not under an order or decree.

Initial Investigation: An investigation to determine that a release or threatened release may have occurred that warrants further action.

Interim Action: Any remedial action that partially addresses the cleanup of a site.

Mixed Funding: Any funding, either in the form of a loan or a contribution, provided to potentially liable persons from the state toxics control account.

Model Toxics Control Act (MTCA): Washington State's law that governs the investigation, evaluation and cleanup of hazardous waste sites. Refers to RCW 70.105D. It was approved by voters at the November 1988 general election and known is as Initiative 97. The implementing regulation is WAC 173-340.

Monitoring Wells: Special wells drilled at specific locations on or off a hazardous waste site where groundwater can be sampled at selected depths and studied to determine the direction of groundwater flow and the types and amounts of contaminants present.

Natural Background: The concentration of hazardous substance consistently present in the environment which has not been influenced by localized human activities.

National Priorities List (NPL): EPA's list of hazardous waste sites identified for possible long-term remedial response with funding from the federal Superfund trust fund.

Owner or Operator: Any person with any ownership interest in the facility or who exercises any control over the facility; or in the case of an abandoned facility, any person who had owned or operated or exercised control over the facility any time before its abandonment.

Polynuclear Aromatic Hydrocarbon (PAH): A class of organic compounds, some of which are long-lasting and carcinogenic. These compounds are formed from the combustion of organic material and are ubiquitous in the environment. PAHs are commonly formed by forest fires and by the combustion of fossil fuels.

Potentially Liable Person (PLP): Any person whom Ecology finds, based on credible evidence, to be liable under authority of RCW 70.105D.040.

Public Notice: At a minimum, adequate notice mailed to all persons who have made a timely request of Ecology and to persons residing in the potentially affected vicinity of the proposed action; mailed to appropriate news media; published in the local (city or county) newspaper of largest circulation; and opportunity for interested persons to comment.

Public Participation Plan: A plan prepared under the authority of WAC 173-340-600 to encourage coordinated and effective public involvement tailored to the public's needs at a particular site.

Recovery By-Products: Any hazardous substance, water, sludge, or other materials collected in the free product removal process in response to a release from an underground storage tank.

Release: Any intentional or unintentional entry of any hazardous substance into the environment, including, but not limited to, the abandonment or disposal of containers of hazardous substances.

Remedial Action: Any action to identify, eliminate, or minimize any threat posed by hazardous substances to human health or the environment, including any investigative and monitoring activities of any release or threatened release of a hazardous substance and any health assessments or health effects studies.

Remedial Investigation (RI): A study to define the extent of problems at a site. When combined with a study to evaluate alternative cleanup actions it is referred to as a Remedial Investigation/Feasibility Study (RI/FS). In both cases, a comment period on the draft report is required.

Responsiveness Summary: A compilation of all questions and comments to a document open for public comment and their respective answers/replies by Ecology. The Responsiveness Summary is mailed, at a minimum, to those who provided comments and its availability is published in the Site Register.

Risk Assessment: The determination of the probability that a hazardous substance, when released into the environment, will cause an adverse effect in exposed humans or other living organisms.

Sensitive Environment: An area of particular environmental value, where a release could pose a greater threat than in other areas including: wetlands; critical habitat for endangered or threatened species; national or state wildlife refuge; critical habitat, breeding or feeding area for fish or shellfish; wild or scenic river; rookery; riparian area; big game winter range.

Site: See Facility.

Site Characterization Report: A written report describing the site and nature of a release from an underground storage tank, as described in WAC 173-340-450 (4) (b).

Site Hazard Assessment (SHA): An assessment to gather information about a site to confirm whether a release has occurred and to enable Ecology to evaluate the relative potential hazard posed by the release. If further action is needed, an RI/FS is undertaken.

Site Register: Publication issued every two weeks of major activities conducted statewide related to the study and cleanup of hazardous waste sites under the Model Toxics Control Act. To receive this publication, please call (360) 407-7200.

Surface Water: Lakes, rivers, ponds, streams, inland waters, salt waters, and all other surface waters and water courses within the state of Washington or under the jurisdiction of the state of Washington.

TCP: Toxics Cleanup Program at Ecology

Total Petroleum Hydrocarbons (TPH): A scientific measure of the sum of all petroleum hydrocarbons in a sample (without distinguishing one hydrocarbon from another). The "petroleum hydrocarbons" include compounds of carbon and hydrogen that are derived from naturally occurring petroleum sources or from manufactured petroleum products (such as refined oil, coal, and asphalt).

Toxicity: The degree to which a substance at a particular concentration is capable of causing harm to living organisms, including people, plants and animals.

Underground Storage Tank (UST): An underground storage tank and connected underground piping as defined in the rules adopted under Chapter 90.76 RCW.

Washington Ranking Method (WARM): Method used to rank sites placed on the hazardous sites list. A report describing this method is available from Ecology.