

File Name: Sem Materials LP Spokane

Sem Materials  
SIC 51828  
Project # 8793  
File # 16655424

STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

In the Matter of Remedial Action by:

**AGREED ORDER**

BNSF Railway Company  
Koch Materials, LLC  
SemMaterials, L.P.  
Marathon Oil Company

No: 5589

TO:

Mr. Randy Lair, Vice-President  
Koch Materials, LLC  
P.O. Box 2338  
Wichita, Kansas 67201

Mr. Brent Hansen  
SemMaterials, L.P.  
Two Warren Place, Suite 700  
6120 S Yale Avenue  
Tulsa, OK 74136

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

Mr. Ed Strenkowski  
Marathon Oil Company  
555 San Felipe Street  
P.O. Box 4813  
Houston, TX 77210

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## **I. INTRODUCTION**

The mutual objective of the State of Washington, Department of Ecology (Ecology) and BNSF Railway Company (BNSF), Koch Materials LLC (Koch Materials), SemMaterials L.P. (SemMaterials), and Marathon Oil Company (Marathon) 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 the Potentially Liable Persons (PLPs) to provide for remedial action at a facility where there has been a release or threatened release of hazardous substances. This Order requires the PLPs to conduct a remedial investigation/feasibility study (RI/FS) at the SemMaterials facility located at 4327 North Thor Street, Spokane, WA. 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 PLPs agree to undertake all actions required by the terms and conditions of this Order. No change in ownership or corporate status shall alter the PLPs' responsibility under this Order. The PLPs 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 SemMaterials Site and is generally located at 4327 North Thor Street, Spokane, WA. 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(4).

B. Parties: Refers to the State of Washington, Department of Ecology and the BNSF Railway Company (BNSF), Koch Materials LLC (Koch Materials), SemMaterials L.P. (SemMaterials), and Marathon Oil Company (Marathon).

C. Potentially Liable Person (PLP): Refers to BNSF, Koch Materials, SemMaterials, and Marathon.

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 PLPs:

A. BNSF owns the property currently leased and operated by SemMaterials at 4327 North Thor Street, Spokane, Washington. BNSF (including its predecessors) has owned the property since approximately the early 1900's.

B. In the 1950s, Blackline Asphalt ("Blackline") began operations at the Site. Husky Oil Company of Delaware, a predecessor of Marathon, operated at the Site from the 1970s until 1982. Intermountain Asphalt Company operated the Site from 1982 until 1983. Koch Materials operated the Site from 1983 to 2005.

C. In December 1992 three aboveground storage tanks (ASTs) at the Site were dismantled. Petroleum-contaminated soil was discovered under the ASTs (the "release") during or around the time of the dismantling work. Koch was the operator of the facility at the time.

D. Ecology was notified by Koch Materials on December 4, 1992, of the petroleum release at the facility.

E. Ecology conducted an initial investigation of the facility on January 20, 1993, and informed Koch Materials by letter dated February 23, 1993, that the facility would be listed on Ecology's hazardous sites database. Ecology met with Koch Materials on March 8, 1993, to discuss the investigation of the release area.

F. Spokane County Health District completed a Site Hazard Assessment of the facility in January 1995. The facility received a hazard ranking of three on a scale of one to five with one being considered the highest ranking.

G. Since the discovery of the release, there has been limited investigation of the contamination and some independent interim remedial measures.

H. SemMaterials L.P. currently operates the facility at 4327 North Thor Street, Spokane, Washington.

## VI. ECOLOGY DETERMINATIONS

A. BNSF is an "owner or operator" as defined in RCW 70.105D.020(12) of a "facility" as defined in RCW 70.105D.020(4).

B. Koch Materials is an "owner or operator" as defined in RCW 70.105D.020(12) of a "facility" as defined in RCW 70.105D.020(4).

C. Marathon, is a successor in interest to an "owner or operator" as defined in RCW 70.105D.020(12) of a "facility" as defined in RCW 70.105D.020(4).

D. SemMaterials is an "owner or operator" as defined in RCW 70.105D.020(12) of a "facility" as defined in RCW 70.105D.020(4).

E. Based upon all factors known to Ecology, a "release" or "threatened release" of "hazardous substance(s)" as defined in RCW 70.105D.020(20) and RCW 70.105D.020(7), respectively, has occurred at the Site.

F. Based upon credible evidence, Ecology issued a PLP status letter to BNSF dated May 12, 2006, pursuant to RCW 70.105D.040, -.020(16) 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 September 11, 2006. Ecology issued a PLP status letter to Koch Materials dated October 10, 2006. After providing for notice and opportunity for comment, reviewing any comments submitted, and concluding that credible evidence supported a finding of potential liability,

Ecology finalized Koch Material's PLP status in a letter dated November 27, 2006. Ecology sent Marathon Oil a PLP status letter on July 17, 2007. After providing for notice and opportunity for comment, reviewing any comments submitted, and concluding that credible evidence supported a finding of potential liability, Ecology finalized Marathon's PLP status in a letter dated September 21, 2007. Ecology sent SemMaterials a PLP status letter on May 12, 2006. After providing for notice and opportunity for comment, reviewing any comments submitted, and concluding that credible evidence supported a finding of potential liability, Ecology finalized SemMaterial's PLP status in a letter dated February 1, 2008.

G. 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 PLPs 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. Plan, implement, and report on the conduct of a Remedial Investigation and Feasibility Study (RI/FS) for the SemMaterials Facility. Attached hereto as Exhibit B is a Scope of Work for the completion of a RI/FS. Exhibit B is incorporated by reference as an integral and enforceable part of the Order.

B. Submit all necessary work plans to implement the Scope of Work (Exhibit B) to Ecology for review and approval according to the Schedule of Deliverables included in Exhibit B. Upon approval by Ecology, the PLPs will proceed with field implementation of the Work Plans in accordance with an agreed upon schedule.

C. 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 Plan including RI Work Plan, Sampling and Analysis Plan, Health and Safety Plan, and Public Participation Plan.
- b. TASK II. Conduct RI Field Investigations.
- c. TASK III. Remedial Investigation/Feasibility Study Report.

These work plans 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.

D. 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.

## VIII. TERMS AND CONDITIONS OF ORDER

### A. Public Notice

RCW 70.105D.030(2)(a) requires that, at a minimum, this Order be subject to concurrent public notice. Ecology shall be responsible for providing such public notice



and reserves the right to modify or withdraw any provisions of this Order should public comment disclose facts or considerations which indicate to Ecology that this Order is inadequate or improper in any respect.

**B. Remedial Action Costs**

The PLPs 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 PLPs 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 PLPs have failed without good cause to implement the remedial action, in whole or in part, Ecology may, after notice to the PLPs, 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 PLPs' failure to comply with its obligations under this Order, the PLPs shall reimburse Ecology for the costs of doing such work in accordance with Section VIII B. - Remedial Action Costs, provided that the PLPs are 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 PLPs 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:

William J. Fees  
4601 N. Monroe  
Spokane, WA 99203  
509/329-3589

The project coordinator for the PLPs is:

Will Ratliffe, P. Geol. (Alberta)  
Environmental Specialist  
Husky Oil Operations Limited  
707 8th Ave. S.W. Calgary, AB  
Box 6525, Stn. D, T2P 3G7  
Phone 403/750-1392 Cell 403/826-4612

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 PLPs, 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 PLPs shall notify Ecology in writing of the identity of any engineers and geologists, contractors and subcontractors, and others to be used in carrying out the terms of this Order, in advance of their involvement at the Site.

## **F. Access**

Ecology or any Ecology authorized representative shall have the full authority to enter and freely move about all property at the Site that the PLPs either own, control, or have 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 PLPs' 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 PLPs. The PLPs shall make all reasonable efforts to secure access rights for those properties within the Site not owned or controlled by the PLPs 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 PLPs unless an emergency prevents such notice. All persons who access the Site pursuant to this Section shall comply with any applicable Health and Safety Plans. 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 PLPs 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 PLPs shall allow Ecology and/or its authorized representative to take split or duplicate samples of any samples collected by the PLPs pursuant to implementation of this Order. The PLPs shall notify Ecology seven (7) days in advance of any sample collection or work activity at the Site. Ecology shall, upon request, allow the PLPs 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 PLPs prior to any sample collection activity unless an emergency prevents such notice.

In accordance with WAC 173-340-830(2)(a), all laboratory 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 PLPs.

Ecology shall maintain the responsibility for public participation at the Site and the PLPs will cooperate with Ecology.

1. Ecology will develop appropriate mailing lists with input from the PLPs, 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 PLPs will be provided an opportunity to review fact sheets and public notices prior to distribution.

2. The PLPs 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 PLPs 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 PLPs that do not receive prior Ecology approval, the PLPs 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 PLPs 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 PLPs shall arrange and/or continue information repositories to be located at the following locations:

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

WA Dept. of Ecology  
Eastern Regional Office  
4601 North Monroe Street  
Spokane, WA 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 PLPs 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 PLPs shall make all records available to Ecology and allow access for review within a reasonable time.

## **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 PLPs have thirty (30) days within which to notify Ecology's project coordinator in writing of its objection to the decision or itemized statement. The PLPs will verbally notify Ecology's project coordinator of its objection within fourteen (14) days:

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 PLPs 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 fourteen (14) 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 PLPs' 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 PLPs 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 PLPs 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 PLPs;
- b. Acts of God including fire, flood, blizzard, extreme temperatures, storm, or other unavoidable casualty; or
- c. Endangerment as described in Section VIII. Terms and Conditions, subsection M, 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 the PLPs.

3. Ecology shall act upon any written request for extension in a timely fashion. Ecology shall give the PLPs 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 timely manner;

- b. Other circumstances deemed exceptional or extraordinary by Ecology; 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 PLPs. The PLPs 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 PLPs to cease such activities for such period of time as it deems necessary to abate the danger. The PLPs shall immediately comply with such direction.

In the event the PLPs determine 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 PLPs may cease such activities. The PLPs 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 PLPs shall provide Ecology with documentation of the basis for the determination or cessation of such activities. If Ecology disagrees with the PLPs' cessation of activities, it may direct the PLPs to resume such activities.

If Ecology concurs with, or orders, a work stoppage pursuant to Section VIII Terms and Conditions, subsection M, Endangerment, the PLPs' 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 PLPs 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 PLPs regarding remedial actions required by this Order, provided the PLPs comply 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 PLPs 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 PLPs' transfer of any interest in all or any portion of the Site, and during the effective period of this Order, the PLPs 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 PLPs shall notify Ecology of said transfer. Upon transfer of any interest, the PLPs 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 PLPs 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, including permit requirements, have been identified as being applicable to the actions required by this Order.

2. Pursuant to RCW 70.105D.090(1), the PLPs are 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 PLPs 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 PLPs have 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 PLPs determine 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 PLPs shall be responsible to contact the appropriate state and/or local agencies. If Ecology so requires, the PLPs 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 PLPs and on how the PLPs must meet those requirements. Ecology shall inform the PLPs in writing of these requirements. Once established by Ecology, the additional requirements shall be enforceable requirements of this Order. The PLPs 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 PLPs 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 PLPs agree 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 PLPs, its officers, employees, agents, or contractors in entering into and implementing this Order. However, the PLPs 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.

**R. Notice**

Where Ecology is required to provide notice to the PLPs under provisions of this Section VIII, and specifically for notices required under Section VIII(C), (F), (G), (H), (J), (K), (M) and (P), such notice shall be given to the PLP project coordinator

Will Ratliffe  
Environmental Specialist  
Husky Oil Operations Limited  
707 8th Ave. S.W.  
Calgary, AB  
Box 6525, Stn. D, T2P 3G7

## **IX. SATISFACTION OF ORDER**

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

## **X. ENFORCEMENT**

Pursuant to RCW 70.105D.050, this Order may be enforced as follows:

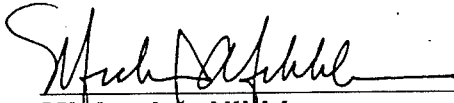
- A. The Attorney General may bring an action to enforce this Order in a state or federal court.
- B. The Attorney General may seek, by filing an action, if necessary, to recover amounts spent by Ecology for investigative and remedial actions and orders related to the Site.
- C. In the event the PLPs refuse, without sufficient cause, to comply with any term of this Order, the PLPs 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; and
  - 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 70.105D.060.

Effective date of this Order: \_\_\_\_\_

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**Bruce Sheppard**

BNSF Railway Co.  
Environmental Remediation Manger  
2454 Occidental Ave., Suite 1A  
Seattle, WA 98134



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**Michael A. Hibbler**

Section Manager  
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**Randy Lair**

Vice-President  
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**Mr. Ed Strenkowski**

Marathon Oil Company  
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**Mr. Brent Hanson**

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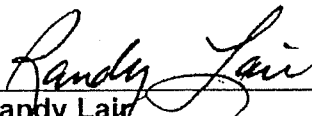
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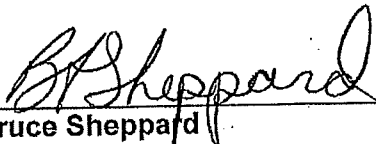
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APPROVED AS TO FORM  
  
SENIOR GENERAL ATTORNEY

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