



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

4601 N Monroe Street • Spokane, Washington 99205-1295 • (509)329-3400

July 2, 2014

Mr. Bruce Sheppard
BNSF Railway Company
2454 Occidental Avenue, Suite 1A
Seattle, WA 98134

Re: No Further Action at the following Site:

- **Site Name:** Northport City Park
- **Site Address:** Northport City Park, Northport, WA
- **Facility/Site No.:** 3833228
- **VCP Project No.:** EA0232

Dear Mr. Sheppard:

The Washington State Department of Ecology (Ecology) received your request for an opinion on your independent cleanup of the Northport City Park facility (Site). This letter provides our opinion. We are providing this opinion under the authority of the Model Toxics Control Act (MTCA), Chapter 70.105D RCW.

Issue Presented and Opinion

Is further remedial action necessary to clean up contamination at the Site?

NO. Ecology has determined no further remedial action is necessary to clean up contamination at the Site.

This opinion is dependent on the continued performance and effectiveness of the post-cleanup controls specified below.

This opinion is based on an analysis of whether the remedial action meets the substantive requirements of MTCA, Chapter 70.105D RCW, and its implementing regulations, Chapter 173-340 WAC (collectively “substantive requirements of MTCA”). The analysis is provided below.

Description of the Site

This opinion applies only to the Site described below. The Site is defined by the nature and extent of contamination associated with the following release:

- Lead and Arsenic into the soil.



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Enclosure A includes a detailed description and diagram of the Site, as currently known to Ecology.

Please note a parcel of real property can be affected by multiple sites. At this time, we have no information the parcel(s) associated with this Site are affected by other sites.

Basis for the Opinion

This opinion is based on the information contained in the following documents:

1. Site Remediation Report, BNSF – Northport Lead Site, Northport, Washington: GeoEngineers, Inc., October 28, 2005.
2. Site Assessment Report, Northport Lead Site, Northport, WA: GeoEngineers, Inc., July 1, 2004.

Those documents are kept in the Central Files of the Eastern Regional Office of Ecology (ERO) for review by appointment only. You can make an appointment by calling Kari Johnson at 509-329-3415.

This opinion is void if any of the information contained in those documents is materially false or misleading.

Analysis of the Cleanup

Ecology has concluded **no further remedial action** is necessary to clean up contamination at the Site. That conclusion is based on the following analysis:

1. Characterization of the Site.

Ecology has determined your characterization of the Site is sufficient to establish cleanup standards and select a cleanup action. The Site is described above and in **Enclosure A**.

The lateral and vertical extent of the metals contaminated soils was defined in the reports listed above.

2. Establishment of cleanup standards.

Ecology has determined the cleanup levels and points of compliance you established for the Site meet the substantive requirements of MTCA.

For soil, the cleanup levels were established using MTCA Method A and are based on protection of groundwater. The land use is classified as Unrestricted. The cleanup levels are as follows:

- Lead: 250 mg/kg
- Arsenic: 20 mg/kg

The point of compliance for soil is throughout the soils at the Site. This is the standard point of compliance.

3. Selection of cleanup action.

Ecology has determined the cleanup action you selected for the Site meets the substantive requirements of MTCA.

The selected cleanup includes the following:

SOIL

- Excavation and removal of contaminated soils.
- Institutional controls.

4. Cleanup.

Ecology has determined the cleanup you performed meets the cleanup standards established for the Site. This determination is dependent on the continued performance and effectiveness of the post-cleanup controls specified below.

The metals contaminated soils were excavated and removed from the Site. Some contaminated soil remains at isolated locations where further excavation would have damaged existing trees, buildings, or rail lines.

The areas within the Park where contaminated soil remains are capped to prevent infiltration and mobilization of contaminated soil.

An Environmental Covenant was required because the remedial actions resulted in residual concentrations of metals contaminated soil at the Site.

Post-Cleanup Controls

Post-cleanup are remedial actions performed after the cleanup to maintain compliance with cleanup standards. This opinion is dependent on the continued performance and effectiveness of the following:

1. Compliance with institutional controls.

Institutional controls prohibit or limit activities that may interfere with the integrity of engineered controls or result in exposure to hazardous substances. The following institutional control is necessary at the Site:

- Prohibition of activities that may interfere with the cleanup action or that may result in exposure of the hazardous substances at the Site.

To implement that control, an Environmental Covenant has been recorded on the following parcel of real property in Stevens County:

- 8002673

Ecology approved the recorded Covenant. A copy of the Covenant is included in **Enclosure B**.

2. Operation and maintenance of engineered controls.

Engineered controls prevent or limit movement of, or exposure to, hazardous substances. The following engineered control is necessary at the Site:

- A cap over the impacted areas.

The cap must be inspected annually and maintained to prevent infiltration and mobilization of contaminated soil. Annual inspection reports must be submitted to Ecology.

Periodic Review of Post-Cleanup Conditions

Ecology will conduct periodic reviews of post-cleanup conditions at the Site to ensure they remain protective of human health and the environment. If Ecology determines, based on a periodic review, further remedial action is necessary at the Site, then Ecology will withdraw this opinion.

Listing of the Site

Based on this opinion, Ecology will remove the Site from our Confirmed and Suspected Contaminated Sites List.

Limitations of the Opinion

1. Opinion does not settle liability with the state.

Liable persons are strictly liable, jointly and severally, for all remedial action costs and for all natural resource damages resulting from the release or releases of hazardous substances at the Site. This opinion **does not**:

- Resolve or alter a person's liability to the state.
- Protect liable persons from contribution claims by third parties.

To settle liability with the state and obtain protection from contribution claims, a person must enter into a consent decree with Ecology under RCW 70.105D.040(4).

2. Opinion does not constitute a determination of substantial equivalence.

To recover remedial action costs from other liable persons under MTCA, one must demonstrate the action is the substantial equivalent of an Ecology-conducted or Ecology-supervised action. This opinion does not determine whether the action you performed is substantially equivalent. Courts make that determination. *See* RCW 70.105D.080 and WAC 173-340-545.

3. State is immune from liability.

The state, Ecology, and its officers and employees are immune from all liability, and no cause of action of any nature may arise from any act or omission in providing this opinion. *See* RCW 70.105D.030(1)(i).

Termination of Agreement

Thank you for cleaning up the Site under the Voluntary Cleanup Program (VCP). This opinion terminates the VCP Agreement governing this project (#EA0232).

For more information about the VCP and the cleanup process, please visit our web site: www.ecy.wa.gov/programs/tcp/vcp/vcpmain.htm.

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If you have any questions about this opinion or the termination of the Agreement, please contact me by phone at 509-329-3522 or e-mail at patti.carter@ecy.wa.gov.

Sincerely,



Patti Carter
ERO Toxics Cleanup Program

PC:ew

Enclosures: Description and Diagrams of the Site
 Environmental Covenant for Institutional Controls

cc: Scott MacDonald, BNSF
 Dolores Mitchell, VCP Financial Manager (without enclosures)

Site Description

The Northport City Park site is located adjacent to the former LeRoi Smelter site in Northport, WA. The Site includes both the park and BNSF right-of-way between the park and the former LeRoi Smelter. Operations at the smelter impacted properties outside the smelter site, including the adjacent City Park and the BNSF right-of-way. Soils at and near the smelter were contaminated with lead, arsenic, and other metals.

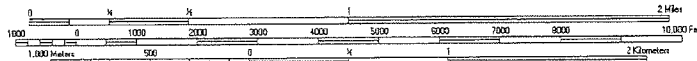
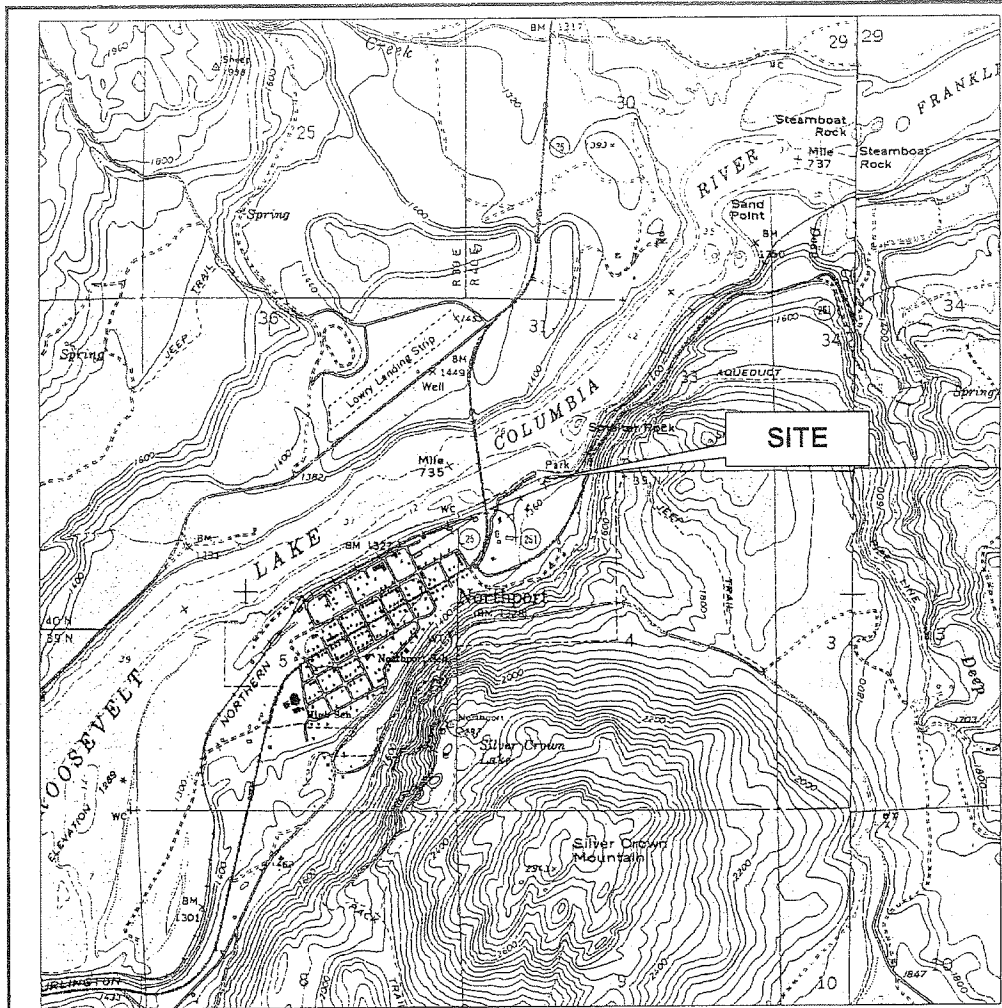
In 2003, EPA conducted a Removal Site Evaluation of the smelter site and residential and community properties in Northport. Remedial activities began in July 2004 and included excavation and consolidating mine-waste-contaminated materials at the smelter, constructing a containment area, and capping the area.

A subsurface evaluation was conducted at the Park in 2004. Lead and arsenic concentrations exceeded cleanup levels, primarily in shallow subsurface soils. Approximately 7,714 tons of contaminated soil was excavated from the Site and transported to an EPA constructed containment area located on the former LeRoi Smelter site.

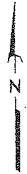
Confirmation soil samples at the Park indicted that contaminated soil was removed from the Site except at isolated locations where further excavation would have damaged existing trees, buildings, or rail lines. Areas within the Park where contaminated soil remains have been contained under a cap.

(GeoEngineers, 2004, 2005)

Site Diagrams



SCALE



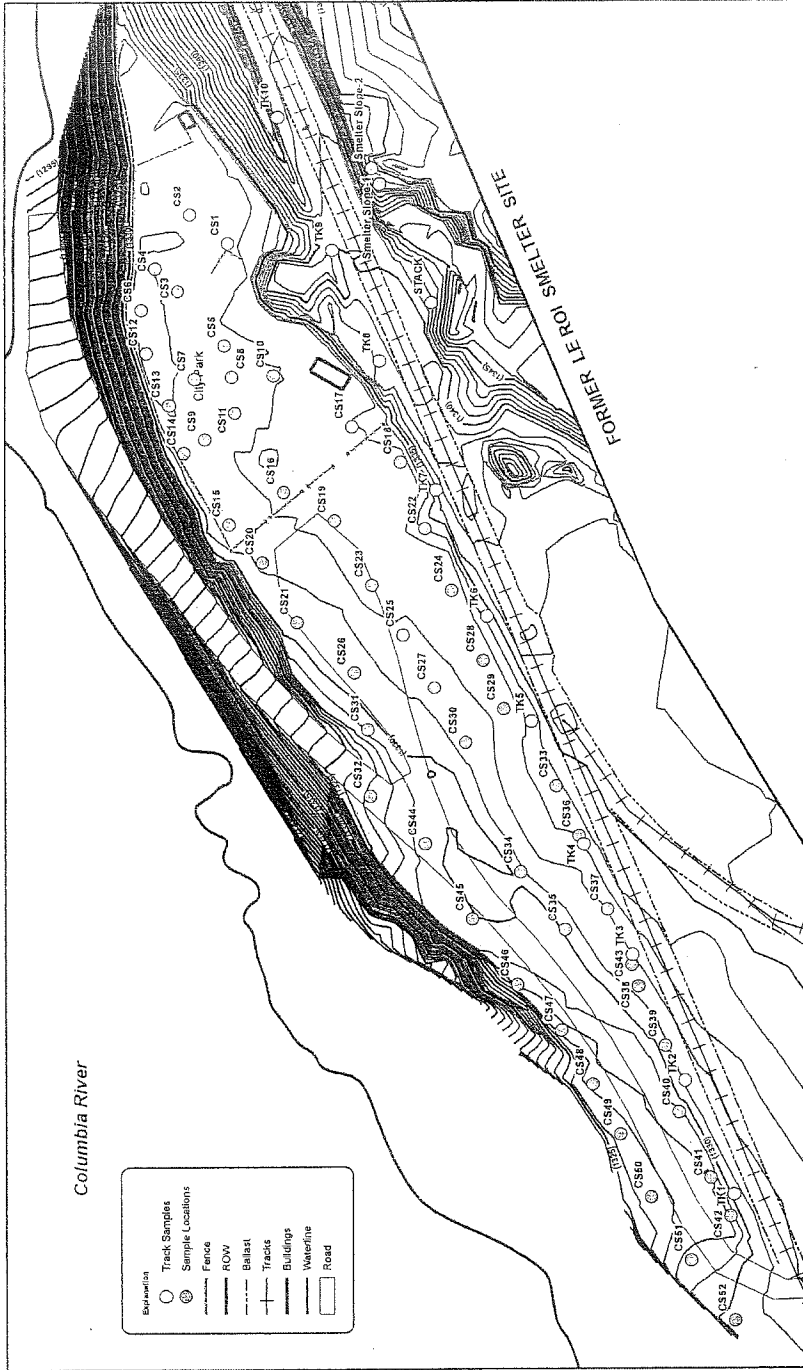
1927 North American Datum; 1,000-meter UTM grid Zone 11
 Generated by BigTopo
 Map compiled from USGS Quads: Northport and Boundary, WA

GEOENGINEERS 

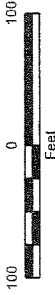
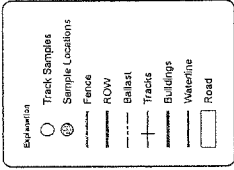
VICINITY MAP

FIGURE 1

0506-162-00-041404-MBE.BDW.dwg (050616200.m.ppt)



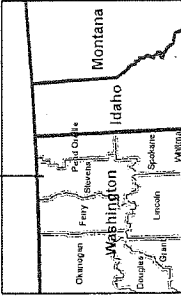
Columbia River



Notes:

- The locations of all features shown are approximate.
- This drawing is for information purposes. It is intended to assist in showing features discussed in an attached document. GeoEngineers, Inc. can not guarantee the accuracy and content of electronic files. The master file is stored by GeoEngineers, Inc. and will serve as the official record of this communication.
- It is unlawful to copy or reproduce all or any part thereof, whether for personal use or resale, without permission.

Data Sources: Interstates, state routes, and roads from TIGER 2000. County boundaries, cities, and waterbodies from Department of Ecology. Lambert Conformal Conic, Washington State Plane North, North American Datum 1983



BNSF - NORTHPORT

Sample Location Map

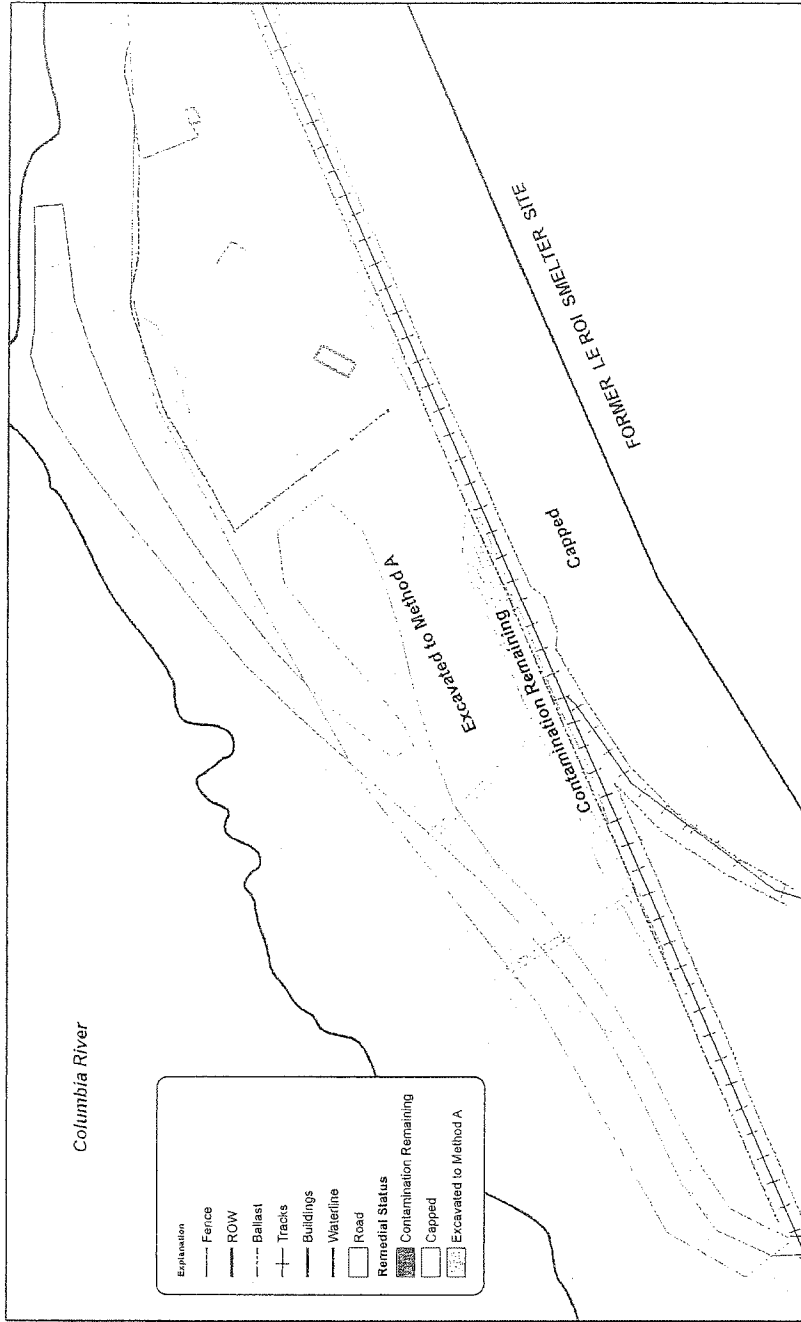


Figure

Map Revised: October 19, 2005

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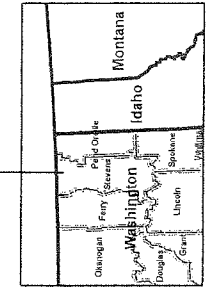


Map Revised: October 19, 2005

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Office: SPO

BNSF- NORTHPORT	
Residual Metal Contamination Map	
 GEOENGINEERS	Figure 5



- Notes:
1. The locations of all features shown are approximate.
 2. This drawing is for information purposes. It is intended to assist in showing features discussed in an attached document. GeoEngineers, Inc. does not warrant the accuracy and content of electronic files. The master file is stored by GeoEngineers, Inc. and will serve as the official record of this communication.
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- Data Sources: Interstates, state routes, and roads from TIGER 2000. County boundaries, cities, and waterbodies from Department of Ecology. Lambert Conformal Conic, Washington State Plane North, North American Datum, 1983

Auditor File #: 2014 0001818

Recorded at the request of:

K&L GATES

on 03/27/2014 at 10:45

Total of 7 page(s) Paid: \$ 78.00

STEVENS COUNTY, WASHINGTON

TIM GRAY, AUDITOR

AALLEN

Environmental Covenant

After Recording Return to:
Ms. Patti Carter
Department of Ecology
4601 N. Monroe Street
Spokane, WA 99205

Grantor: BNSF Railway Company

Grantee: State of Washington, Department of Ecology

Legal: A parcel of land located within the Northeast ¼ of Section 4, Township 39 North, Range 40 East, W.M., Stevens County, Washington; more particularly described in Exhibit A.

Tax Parcel Nos.: 8002673

Grantor, BNSF Railway Company, hereby binds Grantor, its successors and assigns to the land use restrictions identified herein and grants such other rights under this environmental covenant (hereafter "Covenant") made this 23rd day of January, 2014 in favor of the State of Washington Department of Ecology (Ecology). Ecology shall have full right of enforcement of the rights conveyed under this Covenant pursuant to the Model Toxics Control Act, RCW 70.105D.030(1)(g) and WAC 173-340-440, and the Uniform Environmental Covenants Act, 2007 Wash. Laws ch. 104, sec. 12.

This Declaration of Covenant is made pursuant to RCW 70.105D.030(1)(f) and (g) and WAC 173-340-440 by BNSF Railway Company, its successors and assigns, and the State of Washington Department of Ecology, its successors and assigns (hereafter "Ecology").

To: Stevens County Recorder's Office

I am requesting an emergency nonstandard recording for an additional fee as provided in RCW 36.18.010. I understand that the recording processing requirements may cover up or otherwise obscure some part of the text of the original document.

Anna Jumblood
Signature of Requestor

A remedial action (hereafter "Remedial Action") occurred at the property that is the subject of this Covenant. The Remedial Action conducted at the property is described in the following document: Site Remediation Report, BNSF – Northport Lead Site, Northport, WA (GeoEngineers, Inc., October 28, 2005).

This document is on file at Ecology's Eastern Regional Office.

This Covenant is required because the Remedial Action resulted in residual concentrations of lead and arsenic which exceed the Model Toxics Control Act Method A Cleanup Levels for SOIL established under WAC 173-340-740.

The undersigned, BNSF Railway Company, is the fee owner of real property (hereafter "Property") in the County of Stevens, State of Washington, that is subject to this Covenant. The Property is legally described in Attachment A.

BNSF Railway Company makes the following declaration as to limitations, restrictions, and uses to which the Property may be put and specifies that such declarations shall constitute covenants to run with the land, as provided by law and shall be binding on all parties and all persons claiming under them, including all current and future owners of any portion of or interest in the Property (hereafter "Owner").

Section 1. Any activity on the Property that may result in the release or exposure to the environment of the contaminated soil that was contained as part of the Remedial Action, or create a new exposure pathway, is prohibited. Some examples of activities that are prohibited in the capped areas include: drilling, digging, placement of any objects or use of any equipment which deforms or stresses the surface beyond its load bearing capability, piercing the surface with a rod, spike or similar item, bulldozing or earthwork.

Section 2. Any activity on the Property that may interfere with the integrity of the Remedial Action and continued protection of human health and the environment is prohibited.

Section 3. Any activity on the Property that may result in the release or exposure to the environment of a hazardous substance that remains on the Property as part of the Remedial Action, or create a new exposure pathway, is prohibited without prior written approval from Ecology.

Section 4. The Owner of the property must give thirty (30) day advance written notice to Ecology of the Owner's intent to convey any interest in the Property. No conveyance of title, easement, lease, or other interest in the Property shall be consummated by the Owner without adequate and complete provision for continued monitoring, operation, and maintenance of the Remedial Action.

Section 5. The Owner must restrict leases to uses and activities consistent with the Covenant and notify all lessees of the restrictions on the use of the Property.

Section 6. The Owner must notify and obtain approval from Ecology prior to any use of the Property that is inconsistent with the terms of this Covenant. Ecology may approve any inconsistent use only after public notice and comment.

Section 7. The Owner shall allow authorized representatives of Ecology the right to enter the Property at reasonable times for the purpose of evaluating the Remedial Action; to take samples, to inspect remedial actions conducted at the property, to determine compliance with this Covenant, and to inspect records that are related to the Remedial Action.

Section 8. The Owner of the Property reserves the right under WAC 173-340-440 to record an instrument that provides that this Covenant shall no longer limit use of the Property or be of any further force or effect. However, such an instrument may be recorded only if Ecology, after public notice and opportunity for comment, concurs.

Section 9. Neither Ecology nor the Owner intend to include any third party beneficiaries with enforcement rights under this Covenant.

Section 10. By signing this Covenant, the Owner does not intend to affect the scope of existing preemption under the Interstate Commerce Commission Termination Act, 49 U.S.C. § 100501.

BNSF Railway Company

Carrie Thompson

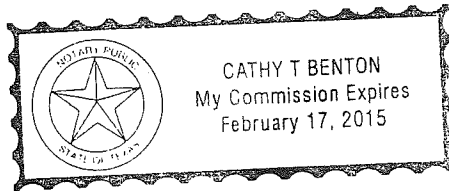
Carrie Thompson
Manager- Land Revenue Management

Dated: JANUARY 23rd 2014

STATE OF TEXAS

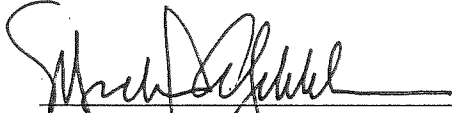
COUNTY OF TARRANT

On this 23rd day of January, 2014, I certify that Carrie Thompson personally appeared before me, acknowledged that she is the Manager- Land Revenue Management of the corporation that executed the within and foregoing instrument, and signed said instrument by free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that she was authorized to execute said instrument for said corporation.



Cathy T. Benton
Notary Public in and for the State of
CATHY T. BENTON,
residing at Weatherford, TX
My appointment expires Feb 17, 2015.

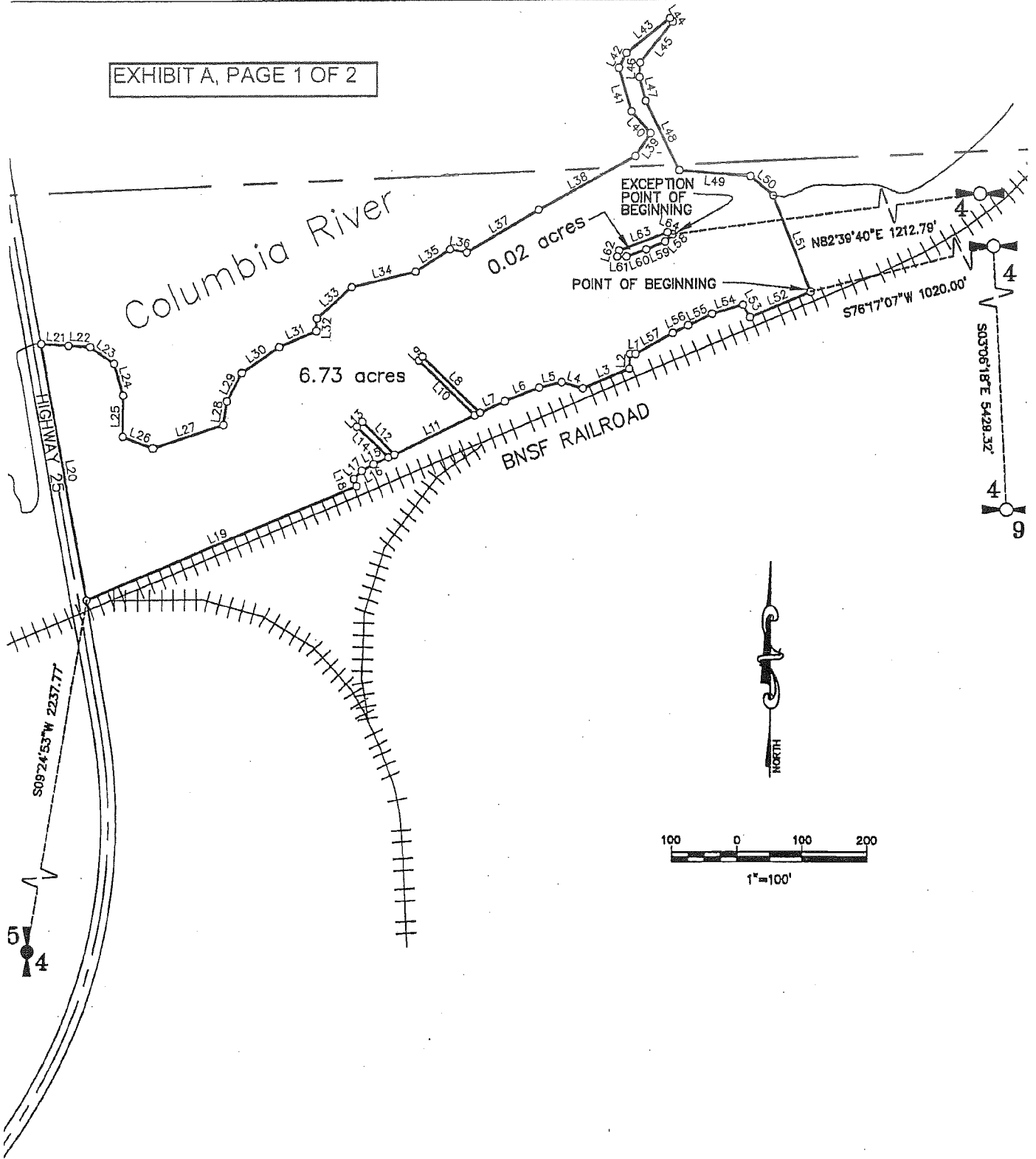
STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY



Michael A. Hibbler
Section Manager, Toxics Cleanup Program

Dated: February, 13, 2014

EXHIBIT A, PAGE 1 OF 2



LEGAL DESCRIPTION EXHIBIT FOR THE NORHTPORT CLEANUP SITE
 WITHIN THE NE1/4 OF SECTION 4, TOWNSHIP 39 NORTH, RANGE 40 EAST, W.M. STEVENS COUNTY, WASHINGTON


 MECKEL ENGINEERING & SURVEYING 3806 N. SCHREBER WAY, COEUR D'ALENE, IDAHO, 83815 (208)867-6638 fax (208)864-3347	SCALE: 1" = 200'	DRAWN BY: DBO	JOB NO.: GEO07078
	DATE: 7-30-07	CHECKED BY: SMR	DWG: GEO070079E
	REVISED:	CREW: EJR; DEG	SHEET: 1 OF 2

EXHIBIT A, PAGE 2 OF 2

LINE TABLE		
LINE	BEARING	DISTANCE
L1	N88°30'15"W	8.57
L2	S02°41'11"W	22.04
L3	S67°33'50"W	77.62
L4	N73°47'07"W	34.27
L5	S76°38'39"W	35.87
L6	S69°22'22"W	57.02
L7	S65°23'58"W	41.85
L8	N46°49'58"W	124.08
L9	S43°57'26"W	8.08
L10	S46°54'08"E	120.67
L11	S64°46'26"W	139.17
L12	N45°44'12"W	71.49
L13	S47°13'50"W	11.43
L14	S47°25'09"E	67.95
L15	S66°43'55"W	26.35
L16	S60°54'57"W	20.49
L17	S45°30'00"W	17.26
L18	S22°32'17"E	11.74
L19	S67°27'54"W	447.93
L20	N10°27'37"W	393.21
L21	S86°43'24"E	42.46
L22	S86°27'29"E	33.33
L23	S56°23'43"E	45.58
L24	S16°27'30"E	50.21
L25	S00°29'40"W	61.89
L26	S69°13'12"E	48.84
L27	N72°22'26"E	114.28
L28	N08°44'03"E	35.89

LINE TABLE		
LINE	BEARING	DISTANCE
L29	N27°12'33"E	47.69
L30	N55°20'51"E	68.93
L31	N66°56'44"E	61.16
L32	N02°23'18"E	19.01
L33	N48°26'23"E	71.63
L34	N77°03'03"E	103.14
L35	N58°00'04"E	63.80
L36	S79°56'02"E	26.48
L37	N60°13'11"E	128.24
L38	N61°40'17"E	169.52
L39	N34°25'10"E	41.88
L40	N41°49'21"W	44.62
L41	N16°34'30"W	68.62
L42	N27°19'19"E	24.85
L43	N52°06'40"E	85.58
L44	S36°46'00"E	7.21
L45	S39°33'01"W	79.67
L46	S02°08'27"W	21.71
L47	S15°10'52"E	37.27
L48	S28°30'03"E	117.06
L49	S85°13'34"E	109.42
L50	S50°23'17"E	45.83
L51	S21°41'50"E	156.34
L52	S67°22'06"W	101.05
L53	N29°45'15"W	21.88
L54	S74°07'06"W	49.10
L55	S64°30'07"W	40.61
L56	S63°31'21"W	25.76
L57	S61°15'45"W	65.92

LINE TABLE		
LINE	BEARING	DISTANCE
L58	S46°31'06"W	15.61
L59	S68°09'02"W	31.89
L60	S70°53'14"W	32.43
L61	S89°46'44"W	14.25
L62	N17°25'41"E	9.48
L63	N70°02'28"E	79.82
L64	S69°18'19"E	8.51

LEGAL DESCRIPTION EXHIBIT FOR THE NORHTPORT CLEANUP SITE
 WITHIN THE NE1/4 OF SECTION 4, TOWNSHIP 39 NORTH, RANGE 40 EAST, W.M. STEVENS COUNTY, WASHINGTON



**MECKEL ENGINEERING
& SURVEYING**

3306 N. SCHREIBER HWY, COEUR D'ALENE, IDAHO, 83815 (208)697-4638 fax: (208)694-3347

SCALE: 1" = 200'

DATE: 7-30-07

REVISED:

DRAWN BY: DBO

CHECKED BY: SMR

CREW: EJR; DEG

JOB NO.: GEO07079

DWG: GEO070079E

SHEET: 2 OF 2

