

**STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY**

In the Matter of Remedial Action by:  
  
BNSF Railway Company  
Former Maintenance and Fueling Facility  
Skykomish, Washington

AGREED ORDER

No. DE 3279

TO: BNSF Railway Company  
Law Department  
P.O. Box 961039  
2500 Lou Menke Drive, 3<sup>rd</sup> Floor  
Fort Worth, Texas 76131-2828

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- Exhibit A: General Extent of Contamination
- Exhibit B: Area to be Remediated under this Order
- Exhibit C: Engineering Design Report – Levee Remedial Action
- Exhibit D: Guidelines for Temporary Relocation of Residents
- Exhibit E: Construction Schedule

Exhibit F: Public Participation Plan  
Exhibit G: List of Required Permits  
Exhibit H: Substantive Requirements

## **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 Former Maintenance and Fueling Facility (Site) in Skykomish, Washington. This Order requires BNSF to perform an interim action to remediate the soils, groundwater, surface water and sediments at specific areas of the South Fork Skykomish River, the flood levee on the south bank of the river, and adjacent upland properties. The adjacent upland properties include 5 residences, West River Road and Sixth Avenue, and a limited area under property owned by the Skykomish School District. Exhibit A shows the general extent of contamination at the Site. Exhibit B shows the area to be remediated under this Order. Ecology believes the actions required by this Order are in the public interest.

Agreed Order Nos. DE91TC-N213 and DE01TCPNR2800 are hereby deemed satisfied by Ecology, except for payment of outstanding oversight costs, as required by these orders and which Ecology has incurred before the effective date of this Order. All other outstanding obligations under Agreed Orders DE91TC-N213 and DE01TCPNR2800 are incorporated by reference into this Order pursuant to Section VII.5 (Work to Be Performed).

## **II. JURISDICTION**

This Agreed Order is issued pursuant to the authority of 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 the Order. BNSF agrees to undertake all actions required by the terms and conditions of this Order. No change in ownership or corporate status shall alter BNSF's responsibility under this Order. BNSF shall provide a copy of this Order to all agents, contractors, and subcontractors retained to perform work required by this Order, and shall ensure that all work undertaken by such agents, contractors, and subcontractors complies with this Order.

#### **IV. DEFINITIONS**

Unless otherwise specified herein, the definitions set forth in Chapter 70.105D RCW and Chapter 173-340 WAC shall control the meanings of the terms used in this Order.

1. Site: The Site is generally located in Skykomish, Washington, and is referred to as the BNSF Former Maintenance and Fueling Facility or the BNSF Skykomish Site. 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 Exhibit A to this Order, which includes a detailed Site diagram. The Site constitutes a Facility under RCW 70.105D.020(4).
2. Parties: Refers to the State of Washington, Department of Ecology and the BNSF Railway Company (BNSF).
3. Potentially Liable Person (PLP): Refers to the BNSF Railway Company (BNSF).
4. Agreed Order or Order: Refers to this Order and each of the exhibits to the Order. All exhibits are integral and enforceable parts of this Order. The terms "Agreed Order" or "Order" shall include all exhibits to the Order.

#### **V. FINDINGS OF FACT**

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

1. BNSF is the current owner and operator of approximately 30 acres of real property located south of and adjacent to railroad Avenue in Skykomish, WA. BNSF owned and operated a maintenance and refueling facility on this property that was at various times referred to as "the BNSF Skykomish Former Maintenance and Fueling Facility," "the Burlington

Northern Rail Yard” or “the Burlington Northern Railway Company Former Maintenance and Fueling Facility.” The property owned and operated by BNSF in Skykomish will be referred to as “the railroad facility” in the Facts section of this Order to avoid confusing the term with the Site, which includes properties not owned by BNSF.

2. Great Northern Railroad owned and operated the railroad facility until 1970 when Great Northern Railroad merged with four other railroad companies to become the Burlington Northern Railroad.

3. In 1996 The Burlington Northern Railroad purchased the Atchison, Topeka and Santa Fe Railroad and changed its corporate name to The Burlington Northern and Santa Fe Railway Company.

4. In 2005, The Burlington Northern and Santa Fe Railway Company changed its corporate name to BNSF Railway Company.

5. The railroad facility was used to refuel and maintain locomotives from the late 1800s until those operations were discontinued in 1974. During different periods of the 75 years of operation, coal, bunker oil, electricity and diesel fuel were used to power locomotives. Final Feasibility Study Former Maintenance and Fueling Facility Skykomish, Washington, The RETEC Group, March 15, 2005.

6. From 1974 to the present, the railroad facility has been used as a base of operations for track maintenance and snow removal crews. Id.

7. Petroleum products have been detected in the soil, sediments, air, surface water and groundwater at the Site. PCBs, lead, petroleum products and arsenic have been detected in isolated areas of the Site surface soils. The presence of petroleum and petroleum products, lead, arsenic and PCBs was documented in reports prepared by BNSF’s contractors, including: Remedial Investigation for the Former Maintenance and Fueling Facility in Skykomish, Washington, January 1996; Supplemental Remedial Investigation Volumes 1 and 2 BNSF Former Maintenance and Fueling Facility, Skykomish, Washington, July 2002; and, Final Feasibility Study Former Maintenance and Fueling Facility Skykomish, Washington, March 15, 2005. BNSF developed the Remedial Investigation, Supplemental Remedial Investigation and



Feasibility Study under Agreed Order DE 91TC-N213 to characterize the nature and extent of contamination and to develop remedial alternatives for conducting a Site cleanup. These documents were accepted by Ecology on August 11, 2005 as containing information adequate to develop a cleanup action plan for the Site.

8. Free petroleum product (also known as Light Non-aqueous Phase Liquid or “LNAPL,” as defined in WAC 173-340-200 under the term “NAPL”) is present in soil and in groundwater across most of the Site. Dissolved petroleum product is present in groundwater. Free petroleum product and petroleum dissolved in groundwater are seeping into the Skykomish River. See Exhibit A.

9. Lab results and modeling indicate that free petroleum product and dissolved petroleum have caused adverse impacts, including mortality in sediment benthic organisms (forming the basis of the aquatic food chain), living in the South Fork Skykomish River.

10. BNSF is currently performing interim actions aimed at limiting the potential for inhalation of dust that may contain heavy metals such as lead or arsenic. Under Agreed Order DE91TC-N213, BNSF annually applies dust suppression chemicals on portions of the railroad facility.

11. BNSF is currently performing interim actions aimed at reducing the seepage of petroleum into the Skykomish River. Under Agreed Order DE91TC-N213 BNSF has installed and maintained oil recovery booms in the Skykomish River and oil recovery wells south of the levee on the south bank of the river. Under Agreed Order DE 01TCPNR-2800, BNSF has installed a barrier wall and enhanced the recovery well system to intercept and recover petroleum upgradient from the barrier wall on the south bank of the Skykomish River. Despite these efforts to reduce or eliminate seepage, petroleum free product and contaminated groundwater continue to seep into the Skykomish River.

12. The Site includes a number of residential, commercial and municipal properties that are impacted by contamination that has migrated, and continues to migrate, through groundwater and subsurface soils from the railyard facility to the Skykomish River. Some of these properties

are also impacted on the surface by lead and/or arsenic. Five of the impacted properties are included in the area to be remediated under this Order, as described in Exhibit C.

13. Ecology is the Lead Agency for purposes of complying with the State Environmental Policy Act (SEPA), Chapter 43.21C RCW. Ecology issued a Determination of Significance for the interim action proposed under this Order on January 12, 2006 and accepted public and agency comment through February 3, 2006. The RETEC Group, working for BNSF, prepared a draft Environmental Impact Statement (DEIS) for the Lead Agency evaluating the proposed interim action. The DEIS was issued for public and agency review and comment concurrent with the public review draft of this Order. Ecology issued a Final EIS (FEIS) for this interim action on April 27, 2006. Ecology will publish additional environmental documents pursuant to SEPA prior to selecting any other cleanup actions for this Site.

## **VI. ECOLOGY DETERMINATIONS**

1. 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) because BNSF is the owner of real property located in Skykomish, Washington, and BNSF owned and operated a railyard facility on this property as described above.

2. 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.

3. Based upon credible evidence, Ecology issued a potentially liable person status letter to BNSF dated May 29, 1989, 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 potentially liable person (PLP) under RCW 70.105D.040 and notified BNSF of this determination by letter dated July 11, 1989.

4. 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.

5. Under WAC 173-340-430, an interim action is a remedial action that is technically necessary to reduce a threat to human health or the environment by eliminating or substantially reducing one or more pathways for exposure to a hazardous substance, that corrects a problem that may become substantially worse or cost substantially more to address if the remedial action is delayed, or that is needed to provide for completion of a site hazard assessment, remedial investigation/feasibility study or design of a cleanup action. Petroleum, both as free product and dissolved in groundwater, is discharging into the South Fork of the Skykomish River underneath and through a flood levee on the south bank of the river. Despite interim actions already conducted that were intended to reduce or eliminate seepage, continuing seepage and associated impacts still continue. The impacted area of the South Fork of the Skykomish River is a critical habitat for endangered fish species including salmonids and bull trout. Warning signs are currently posted to alert people to avoid the area where petroleum seeps occur along the river bank. Such circumstances warrant interim action consistent with WAC 173-340-430.

## **VII. WORK TO BE PERFORMED**

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

1. BNSF shall perform an interim action to remediate the soils, groundwater, surface water and sediments at specific areas of the South Fork Skykomish River, the flood levee on the south bank of the river, and adjacent upland properties, by implementing the actions outlined in the “Engineering Design Report – Levee Zone Interim Action for Cleanup” (EDR), Exhibit C. As outlined in the EDR, the adjacent upland properties include all or portions of the following King County tax parcels: 7807800705 and 7807800706 (Michael P. Moore); 7807800750 (Richard and Roberta Mitchell); 7807800707 (Robert and Charlotte Mackner); 7807800720,

7807800740 and 2626119018 (Town of Skykomish); and, 5060800005 (Skykomish School District No. 404).

2. The temporary relocation of some residents will be necessary for BNSF to fully implement the interim action as described in the EDR. Exhibit D outlines the guidelines that BNSF will follow in conducting any resident relocations. Consistent with Section VIII.F. of this Order (Access), BNSF shall use best efforts to negotiate in good faith with property owners for access necessary to complete the work required by this Order, including the temporary relocation of residents as necessary. BNSF will confer and cooperate with Ecology on its efforts to negotiate with property owners for access, and shall submit to Ecology copies of the access and temporary relocation provisions of any access agreements obtained. If all access agreements necessary to fully implement the interim action have not been obtained by BNSF by May 15, 2006, BNSF will submit to Ecology by May 15, 2006, for Ecology's review and approval, a work plan for implementing the interim action to the degree possible without access to the property(ies) in question. Upon Ecology's approval, the work plan will become an integral and enforceable part of this Order and BNSF shall implement the work plan pursuant to this Order.

3. The work described in the EDR will be implemented according to the schedule contained in Exhibit E, Construction Schedule. The Construction Schedule indicates when work must begin, specifies deliverables which must be submitted to Ecology and their due dates, and when work must be completed.

4. Weekly Progress Reports - Written weekly progress reports shall be submitted to Ecology that describe the remedial actions taken by BNSF under this Order during the previous week to implement the actions described in Exhibit C, Engineering Design Report. All progress reports shall be delivered by the first business day of each week until the remedial actions set forth in Exhibit C have been constructed and residents have been returned to their homes.

Thereafter, BNSF will submit monthly progress reports on the 15<sup>th</sup> day of each month until this

Order is terminated or deemed satisfied by Ecology pursuant to Section IX. The reports shall include but not be limited to the following items:

- a.) A list of activities that have taken place during the reporting period;
- b.) Detailed description of any deviations from the Order and project plans;  
and
- c.) Description of all deviations from the schedule and any planned deviations in the upcoming reporting period, and plans for recovering lost time and maintaining compliance with the schedule.

5. BNSF shall continue groundwater monitoring as described in the *Groundwater Monitoring Plan* dated May 12, 2005 (GW Plan), as a requirement of this Order. Some of the wells that BNSF is currently monitoring will be removed as part of the work described in the EDR. No later than January 15, 2007, BNSF will submit to Ecology for review and approval proposed revisions to the GW Plan, which include groundwater compliance monitoring consistent with WAC 173-340-410. If after review and comment on one draft Ecology determines that insufficient progress is being made in the preparation of revisions to the GW Plan, then Ecology may complete and issue the final revised GW Plan. If observations subsequent to performing the interim action indicate seeps are occurring, oil recovery booms shall be installed in the river and maintained as described in the *Boom Maintenance Technical Memorandum* dated August 30, 2002, as a requirement of this Order. BNSF will continue to apply dust suppression chemicals on portions of the railroad facility each Spring, and as necessary in summer, as a requirement of this Order.

## VIII. TERMS AND CONDITIONS OF ORDER

### A. Public Notices

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 withdraw this Order should public or agency comment disclose facts or considerations

which indicate to Ecology that the Order is inadequate or improper in any respect. In the event Ecology withdraws this Order, Ecology and BNSF agree to negotiate in good faith to modify this Order and submit it for additional public and agency review and comment.

**B. Remedial Action Costs**

BNSF shall pay to Ecology costs incurred by Ecology pursuant to this Order and consistent with WAC 173-340-550(2). These costs shall include work performed by Ecology or its contractors for, or on, the Site under Chapter 70.105D RCW, including Order preparation, negotiation, oversight, and administration related to this Order. These costs shall include work performed both prior to and subsequent to the issuance of the Order. BNSF 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 description 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.

**C. Implementation of Remedial Action**

Except where necessary to abate an emergency situation, BNSF 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:

Louise Bardy  
Washington State Department of Ecology  
3190 160<sup>th</sup> Avenue Southeast  
Bellevue, WA 98008-5452  
Telephone: (425) 649-7209  
E-Mail: LBAR461@ECY.WA.GOV

The project coordinator for BNSF is:

Bruce Sheppard

BNSF Railway Company  
2454 Occidental Avenue South  
Suite 1A  
Seattle, WA 98134  
Telephone: (206) 625-6053  
E-Mail: Bruce.Sheppard@BNSF.COM

The project coordinator(s) shall be responsible for overseeing the implementation of this Order. The Ecology project coordinator will be Ecology's designated representative for the Site. To the maximum extent possible, communications between Ecology and BNSF, and all documents, including reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Order shall be directed through the project coordinator(s).

Ecology and BNSF may change their respective project coordinator, but must provide ten (10) days advance written notification of the change to the other party.

**E. Performance**

All work performed pursuant to this Order shall be under the direction and supervision, as necessary, of a licensed professional engineer or licensed hydrogeologist, or equivalent as approved by Ecology, with experience and expertise in hazardous waste site investigation and cleanup. BNSF shall notify Ecology in writing of the identity of such engineer(s), or hydrogeologist(s), or others, and of any contractors and subcontractors to be used in carrying out the terms of this Order, in advance of their involvement at the Site.

Any construction work performed pursuant to the Order shall be under the 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 provided in RCW 18.43.130.

**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 BNSF either owns, controls, or has access rights to at all reasonable times for the purposes of, *inter alia*: inspecting records, operation logs,

and contracts related to the work being performed pursuant to this Order; reviewing BNSF's progress in carrying out the terms of this Order; conducting such tests or collecting such samples as Ecology may deem necessary; using a camera, sound recording, or other documentary type equipment to record work done pursuant to this Order; and verifying the data submitted to Ecology by BNSF. BNSF shall make all reasonable efforts to secure access rights for those properties within the Site not owned or controlled by BNSF where remedial activities or investigations will be performed pursuant to this Order. Ecology or any Ecology authorized representative shall give reasonable notice before entering any Site property owned or controlled by BNSF unless an emergency prevents such notice. All persons who access the Site pursuant to this paragraph shall comply with the approved health and safety plan, if any. Ecology employees and their representative shall not be required to sign any release or waiver as a condition of Site property access.

**G. Sampling, Data Submittal, and Availability**

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

If requested by Ecology, BNSF shall allow split or duplicate samples to be taken by Ecology and/or its authorized representative of any samples collected by BNSF pursuant to implementation of this Order. BNSF shall notify Ecology seven (7) days in advance of any sample collection or work activity at the Site. Ecology shall, upon request, allow split or duplicate samples of any samples collected by Ecology pursuant to the implementation of this Order to be taken by BNSF or its authorized representative provided it does not interfere with Ecology's sampling. Without limitation on Ecology's rights under Section VIII.F. of this Order, Ecology shall notify BNSF 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**

The Public Participation Plan for this Interim Action is attached as Exhibit F. Ecology shall maintain the responsibility for public participation at the Site. However, BNSF shall cooperate with Ecology to implement the public participation plan, including:

1. If agreed to by Ecology, develop appropriate mailing list, 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, cleanup action plans, and engineering design reports. As appropriate, Ecology will edit, finalize, and distribute such fact sheets and prepare and distribute public notices of Ecology's presentations and meetings;

2. Notify Ecology prior to any of the following: 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 BNSF 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 BNSF that do not receive prior Ecology approval, BNSF shall clearly indicate to its audience that the press release, fact sheet, meeting, or other outreach effort was not sponsored or endorsed by Ecology;

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

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

- (a) Skykomish Library  
100 Fifth Street  
Skykomish, Washington 98288

(360) 677-2660

(b) Ecology's Northwest Regional Office

3190 160<sup>th</sup> Avenue SE

Bellevue, Washington 98008

(425) 649-7000

At a minimum, copies of all public notices, fact sheets, and press releases; all quality assured monitoring data; remedial action plans and reports, supplemental remedial planning documents, and all other similar documents relating to performance of the remedial action required by this Order 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, BNSF 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, BNSF 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 privilege and/or attorney-client privilege.

**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.B (Remedial Action Costs), the Parties shall utilize the dispute resolution procedure set forth below.

(a) Upon receipt of the Ecology project coordinator's decision or the itemized billing statement, BNSF has fourteen (14) days within which to notify Ecology's project coordinator 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) BNSF may then request Ecology management review of the decision. This request shall be submitted in writing to the Manager of the Land and Aquatics Cleanup Section (Section Manager) at Ecology's Headquarters Office within seven (7) days of receipt of Ecology's project coordinator's 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 BNSF'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 the reason(s) the extension is needed. 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 BNSF to demonstrate to the satisfaction of Ecology that the request for such extension has been submitted in a timely fashion and that good cause exists for granting the extension. Good cause includes, but is not limited to:

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

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

3. Ecology shall act upon any written request for extension in a timely fashion. Ecology shall give BNSF written notification in a timely fashion of any extensions granted pursuant to the 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.L 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;
- (c) Acts of God, including fire, flood, blizzard, extreme temperatures, storm, or other unavoidable casualty; or
- (d) Endangerment as described in Section VIII.M of this Order.

**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.N of this Order, substantial changes to the work to be performed shall require formal amendment of this Order. This Order may only be formally amended by the written consent of both Ecology and BNSF. BNSF 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 the Order represents a substantial change, Ecology will provide additional public notice and opportunity to comment. If Ecology does not agree to a proposed amendment, the disagreement may be addressed through the dispute resolution procedures described in Section VIII.J. of this Order.

**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 BNSF to cease such activities for such period of time as it deems necessary to abate the danger. BNSF shall immediately comply with such direction.

If, for any reason, BNSF 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, BNSF may cease such activities. BNSF shall notify Ecology's project coordinator as soon as possible, but no later than twenty-four (24) hours after making such determination or ceasing such activities. Upon Ecology's direction BNSF shall provide Ecology with documentation of the basis for the determination or cessation of such activities. If Ecology disagrees with BNSF's cessation of activities, it may direct BNSF to resume such activities.

If Ecology concurs with or orders a work stoppage pursuant to this section, BNSF's obligations with respect to the ceased activities shall be suspended until Ecology determines the danger is abated, and the time for performance of such activities, as well as the time for any other

work dependent upon such activities, shall be extended 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 Ecology rights or authority. Ecology will not, however, bring an action against BNSF to recover remedial action costs paid to and received by Ecology under this Order. In addition, Ecology will not take additional enforcement actions against BNSF regarding remedial actions required by this Order, provided BNSF complies with this Order.

Ecology nevertheless reserves its rights under 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 BNSF without provision for continued implementation of all requirements of this Order and implementation of any remedial actions found to be necessary as a result of this Order.

Prior to BNSF's transfer of any interest in all or any portion of the Site, and during the effective period of this Order, BNSF shall provide a copy of this Order to any prospective purchaser, lessee, transferee, assignee, or other successor in said interest; and, at least thirty (30) days prior to any transfer, BNSF shall notify Ecology of said transfer. Upon transfer of any interest, BNSF shall 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 BNSF 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. A list of the required permits known at the time of entry of this Order have been included in Exhibit G.

2. Pursuant to RCW 70.105D.090(1), BNSF 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, through this Order BNSF shall comply with the substantive requirements of such permits or approvals. A list of such permits and approvals and/or the substantive requirements of those permits and approvals as they are known to be applicable at the time of entry of this Order, have been included in Exhibit G.

BNSF 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 BNSF 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 BNSF shall be responsible to contact the appropriate state and/or local agencies. If Ecology so requires, BNSF shall promptly consult with the appropriate state and/or local agencies and provide Ecology with written documentation from those agencies of the substantive requirements those agencies believe are applicable to the remedial action. Ecology shall make the final determination on the additional substantive requirements that must be met by BNSF and on how BNSF must meet those requirements. Ecology shall inform BNSF in writing of these requirements. Once established by Ecology, the additional requirements shall be enforceable requirements of this Order. BNSF shall not begin or continue the remedial action potentially subject to the additional requirements until Ecology makes its final determination.

Ecology shall ensure that notice and opportunity for comment is provided to the public and appropriate agencies prior to establishing the substantive requirements under this section.

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 which is necessary for the state to administer any federal law, the exemption shall not apply and BNSF shall comply with both the procedural and substantive requirements of the laws referenced in RCW 70.105D.090(1), including any requirements to obtain permits.

**Q. Indemnification**

BNSF agrees to indemnify and save and hold the State of Washington, its employees, and agents harmless from any and all claims or causes of action 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 BNSF, its officers, employees, agents, or contractors in entering into and implementing this Order. However, BNSF shall not indemnify the State of Washington nor save nor hold its employees and agents harmless from any claims or causes of action to the extent arising out of the negligent acts or omissions of the State of Washington, or the employees or agents of the State, in entering into or implementing the activities pursuant to this Order.

**IX. SATISFACTION OF ORDER**

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

1. The Attorney General may bring an action to enforce this Order in a state or federal court.
2. The Attorney General may seek, by filing an action, if necessary, to recover amounts spent by Ecology for remedial actions and orders related to the Site.
3. In the event BNSF refuses, without sufficient cause, to comply with any term of this Order, BNSF 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

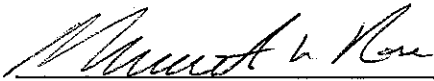
(b) Civil penalties of up to \$25,000 per day for each day it refuses to comply.

4. 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.

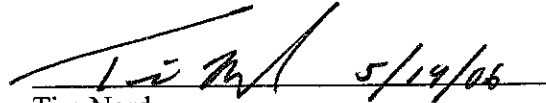
Effective date of this Order:

BNSF RAILWAY COMPANY




Matthew K. Rose  
Chief Executive Officer

DEPARTMENT OF ECOLOGY



Tim Nord  
Manager  
Land and Aquatics Cleanup Section  
Headquarters Office  
(360) 407-7226

APPROVED AS TO FORM

  
SENIOR GENERAL ATTORNEY

**Exhibit A**  
**General Extent of Contamination**



**LEGEND**

- >208µg/L (NMTPH-Dx)
- HIGHEST MEASURED SOIL CONCENTRATION
- ESTIMATED EXTENT OF KNOWN FREE PRODUCT
- HISTORICAL FACILITY, NO LONGER EXISTING

1:1000  
5:4

**EXTENT OF TPH THROUGHOUT SITE**

BNSF RAILWAY - SKYKOMISH, WA  
FEASIBILITY STUDY  
BN050-16423-253  
DATE: 02/19/05  
DRAWN: A.S./SEA



**Exhibit B**  
**Area to be Remediated under this Order**



**Exhibit C**  
**Engineering Design Report – Levee Removal Action**  
*(See separate volume)*

## **Exhibit D**

### **Guidelines for Temporary Relocation of Residents**

These guidelines are meant to serve as general principles for BNSF to follow for communication, reimbursement, and assistance for residents who agree to temporarily relocate.

- Identify and provide comparable temporary housing for affected residents for the duration of the project.
- Reimburse eligible affected residents of reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporary housing, the monthly rent and utility costs of the temporary housing, and storage of residents' personal property for the duration of the project.
- In conjunction with providing for the temporary relocation of residential dwellings as outlined in Exhibit C, Engineering Design Report – Levee Remedial Action, determine appropriate and agreeable options for returning residential dwellings to real estate property, including landscaping plans to return properties to as close their original condition as possible.
- Provide adequate and timely communications to temporarily displaced residents. Develop a process for reporting and addressing complaints and concerns.
- Payment for eligible claims will be made as soon as possible following a move or receipt of documentation to support the claim. Advance payments will be considered for residents who demonstrate a need.

Refer to the Public Participation Plan (Exhibit F) for a more detailed description of procedures for temporary relocation of residents.

## **Exhibit E**

### **Construction Schedule**

May 15, 2006	Notify Ecology whether all relocation/access agreements signed.
May 15, 2006	Submit revised work plan for Ecology review and approval if all relocation/access agreements have not been obtained.
May 15, 2006	Begin temporarily relocating houses.
September 15, 2006	Work completed to a point and site conditions such that school can start on this date.
December 1, 2006	Temporarily relocated homes ready for occupancy.
December 15, 2006	Complete moving residents back into houses.
December 31, 2006	All material to be sent off-site for disposal has been sent off-site OR a contingency plan, which provides for all material to be sent offsite for disposal by a contingent date of March 30, 2007, has been submitted to Ecology for review and approval.
March 30, 2007	Contingent date by which all material to be sent off-site for disposal has been sent off-site.
March 30, 2007	Submit Draft As-Built Report to Ecology for all work completed prior to December 31, 2006. This report will note work which remains to be completed.
June 30, 2007	All work completed, including infrastructure replacement; all construction equipment demobilized.
July 31, 2007	Submit Draft As-built Report to Ecology for all work completed between January 1, 2007 and June 30, 2007.



**Exhibit F**  
**Public Participation Plan**



# **Final Public Participation Plan: Interim Action for Cleanup of the Levee Zone - February 2006 to December 2006**

## **BNSF Skykomish Site (Former Fueling and Maintenance Facility) Skykomish, Washington**

**Prepared by:**

**Washington State Department of Ecology**

**With BNSF Railway Company,  
Skykomish Environmental Coalition, and  
The Town of Skykomish**

**April 28, 2006**

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# Public Participation Plan: Interim Action for Cleanup of the Levee Zone - February 2006 to December 2006

## 1. Introduction

### Overview

The former railway maintenance and fueling facility in the east King County town of Skykomish is owned and operated by the BNSF Railway Company (BNSF). Historical activities since the facility opened in the late 1890s included refueling and maintaining locomotives and operating an electrical substation for electric engines. These activities resulted in the release of petroleum and heavy metals to the surrounding environment. BNSF is conducting a cleanup of the contamination at the site under the oversight of Washington State Department of Ecology (Ecology).

During the spring of 2006, BNSF and Ecology will work together to finalize cleanup plans for the Levee Zone, which includes the levee, river sediments, and nearby upland areas. A number of documents detailing the plans will be submitted for public comment in March 2006. After public comment the documents will be finalized and cleanup will take place during the summer of 2006. Concurrent with finalizing cleanup for the Levee Zone as an Interim Action, Ecology and BNSF are preparing documents for cleanup of the site as a whole. Public comment on the overall site cleanup plans is scheduled for fall of 2006.

This public participation plan covers the activities that Ecology, BNSF, the Skykomish Environmental Council (SEC), and the Town of Skykomish (Town) will use to engage the Skykomish community during planning and construction phases of the Levee Zone cleanup. It describes the ways community members can stay informed about cleanup activities and details options for residents who will be impacted directly and indirectly by relocation activities. Ecology has developed this plan with BNSF, the SEC and the Town. The SEC is engaged with the cleanup through a public participation grant from Ecology. The Town is working with both BNSF and Ecology to participate in the decision-making process for cleanup and to ensure that whenever possible that its vision is implemented through cleanup as described in Vision 2010.

This public participation plan is intended to be a guiding document for the participants. It describes activities that will take place during planning and construction of the Levee Zone cleanup, from February 2006 through December 2006.

## **Roles and responsibilities**

Public participation activities for the cleanup are coordinated among Ecology, BNSF, SEC, and the Town. In general, each participant has a unique mission and role. Ecology provides regulatory oversight and conducts public involvement activities. BNSF pays for and conducts the cleanup and public involvement activities. SEC is funded by a public participation grant from Ecology to educate the community so that people can comment effectively on cleanup plans during the public comment periods. The Town provides regulatory oversight and participates in cleanup planning and decisions with technical review of design plans and in incorporating the Town's vision into cleanup.

## **Goals**

Even though the participants to this plan have differing roles and responsibilities, they hold some common goals.

- Provide information and engage in dialogue for the purpose of educating people so that they can contribute to the cleanup decisions in a meaningful and timely way.
- Receive comments on cleanup issues and respond to the needs and concerns of the affected community as related to the cleanup.
- Facilitate communication among participants to this plan and coordination of activities under this plan.
- Respond quickly to public concerns during construction activities.

## **Audience**

Following is a list of the groups of people considered in the preparation of this plan. This plan focuses on the people who are most affected by the outcome of cleanup decisions. Information regarding the cleanup is provided to the broader public through the same mailings and media releases intended for the following groups.

- Property owners of land to be cleaned up
- Residents to be relocated
- Other landowners, residents and businesses in the cleanup area
- Skykomish businesses
- Skykomish School
- Skykomish community not directly affected by cleanup activities
- County, state and federal agencies
- Civic groups
- Visitors and tourists

## **Organization of the plan**

This plan provides the required activities for the formal public comment period for this Interim Action, an overview of the status of the cleanup and a general process and timeline for the remainder of the cleanup planning process and construction. Roles, responsibilities, and goals of the participants are summarized.

The participants to this plan are committed to an open dialogue with the community to ensure that interested people can receive information and provide opinions while cleanup decisions are being made, and that the community is kept informed of upcoming activities and milestones during construction. This plan identifies ways in which that dialogue can take place. This plan describes activities and tools to reach the goals listed above, during different phases of the project. This plan provides a schedule of the planned activities from February 2006 through December 2006.

## **Contacts**

Participants to this plan are available to talk with community members regarding activities they are conducting.

- **Ecology**  
Louise Bardy, 425-649-7209 or Susan Lee, 425-649-4486
- **BNSF Railway Company**  
Bruce Sheppard, 206-625-6035 or Angie Thomson, EnviroIssues, 206-269-5041
- **Skykomish Environmental Coalition (SEC)**  
Michael Moore, 360-677-2410
- **Town of Skykomish**  
Chris Yates, 360-677-2388

## 2. Public Comment Requirements

The law that governs cleanups, the Model Toxics Control Act (MTCA) Chapter 173-340-600 WAC, details the requirements for public review and comment of documents at specific steps in the cleanup process.

This cleanup action for the Levee Zone in an Interim Action conducted under an Agreed Order with BNSF Railway Company. This action is intended to be the final cleanup action for this portion of the site.

### Public Comment Period

A 30-day public comment period is required at specific times and for specific documents in the cleanup process before final decisions are made. This Agreed Order for an Interim Action for the Levee Zone has public comment from **March 3 through April 3, 2006**.

Comments are accepted in writing any time during the public comment period and orally at a public meeting.

- **Documents for review**

The following documents guide this Interim Action and are available for public comment.

- Agreed Order
- Engineering Design Report
- NPDES Permit
- Public Participation Plan
- Environmental Impact Statement

- **Information repositories**

These documents may be found in the information repositories for the site at:

- Department of Ecology, Northwest Regional Office, 3190 160<sup>th</sup> Avenue SE, Bellevue, WA 98008, 425-649-7190 (Please call for an appointment)
- Skykomish Library, 100 5<sup>th</sup> Street, Skykomish, 360-677-2660
- Ecology's website at [www.ecy.wa.gov/programs/tcp/sites/bnsf\\_sky/bnsf\\_sky.html](http://www.ecy.wa.gov/programs/tcp/sites/bnsf_sky/bnsf_sky.html)

- **Public Notice**

- **Fact sheet**

A fact sheet is mailed to persons and organizations interested in the cleanup of this site. The fact sheet will inform people of the cleanup action being considered, the public comment opportunities, and the public meeting. The fact sheet will be mailed within a week of the beginning of the public comment period.

- **Mailing list**

A mailing list of about 500 addressees has been compiled for this site. The list includes individuals, groups, public agencies, elected officials, private businesses, potentially affected parties, and other known interested parties. The list is maintained at Ecology's Northwest Regional Office and will be updated as needed.

Please contact **Susan Lee at 425-649-4486 or [slee461@ecy.wa.gov](mailto:slee461@ecy.wa.gov)** if you would like to have your address added to or deleted from the mailing list.

- **Newspaper Display ads**

Newspaper display ads are placed in the newspapers of largest circulation in the site area at the beginning of the comment period to announce the public comment opportunities for proposed cleanup actions. Newspaper display ads for this cleanup action will be placed in:

- The Seattle Times
- The Everett Herald
- The Monroe Monitor

- **Site Register**

Ecology's also uses its Toxics Cleanup Program *Site Register* to provide information about cleanup efforts to the wider public. The *Site Register* is published every two weeks to inform people of public meetings and comment periods, discussions or negotiations of legal agreements, and other cleanup activities.

A notice regarding this action will be published in the *Site Register* closest to the beginning of the comment period.

The *Site Register* is available on the Internet at:  
[www.ecy.wa.gov/programs/tcp/pub\\_inv/pub\\_inv2.html](http://www.ecy.wa.gov/programs/tcp/pub_inv/pub_inv2.html)

- **Website**

Ecology maintains a website for the BNSF Skykomish Cleanup Site. Documents for this proposed action, historical information, and site updates are available at:  
[www.ecy.wa.gov/programs/tcp/sites/bnsf\\_sky/bnsf\\_sky.html](http://www.ecy.wa.gov/programs/tcp/sites/bnsf_sky/bnsf_sky.html).

- **Media release**

Ecology will send a release to major media in the site area at the beginning of the comment period. The release and follow-up with media are coordinated by the Public Information Officer in the Ecology's Northwest Regional Office, Larry Altose.



- **Public Meeting**  
A public meeting to talk about the cleanup plans and to listen to oral comments will be:  
**Tuesday, March 14, 2006**  
**6:00 pm**  
**Skykomish Community Center**  
**208 Railroad Avenue, Skykomish**
- **Availability Meeting**  
Ecology will host an availability meeting toward the end of the comment period to receive written comments and to answer questions about the plans for the Interim Action as people finalize their comments.  
**Saturday, April 1, 2006**  
**10:00 am to 1:00 pm**  
**Skykomish Community Center**  
**208 Railroad Avenue, Skykomish**
- **SEC Meeting**  
The SEC will have a meeting with the community during the public comment period. Their consultant, Daryl Petrarca, will present his review of the cleanup plans and answer questions to prepare the community for submitting comments to Ecology.  
**Wednesday, March 22, 2006**  
**7:00 pm**  
**Skykomish Community Center**  
**208 Railroad Avenue, Skykomish**

## **Response to comments**

After this formal comment period has concluded, all comments received will be reviewed and incorporated into the documents where appropriate and possible. A Responsiveness Summary may be prepared to track how the comments were incorporated.

### 3. Pre-Construction Planning

Throughout the construction planning process, BNSF and Ecology will engage the community to provide information about construction plans, staging, mitigation measures, timelines, and other activities.

#### Activities

During construction planning, the following activities will occur:

- **Community meetings**  
Ecology and BNSF will host community meetings to discuss key issues and critical decision points in construction planning. These meetings will help the community anticipate future construction impacts, as well as provide input on construction planning decisions.
- **Access coordination**  
During construction planning, periodic access to private property will be required to complete sampling work, surveying, or other planning activities. Residents will be contacted prior to such work and their verbal approval to access the site will be requested. The nature of the work and the approximate times the site will be accessed will be described to them.

#### Tools

- **Newsletter**  
Ecology and BNSF will develop a newsletter to distribute to the community during construction planning. This newsletter will inform residents and interested stakeholders of cleanup plans and progress, answer residents' questions and announce upcoming community meetings or activities. This newsletter will be published monthly during the pre-construction phase.
- **Update letters**  
Ecology will continue periodic direct communication by letter to the Skykomish community and other interested parties and agencies with updates on the progress of cleanup.
- **Posted notices**  
Notices will be posted in Skykomish for visitors, tourists and residents who do not receive mail. These notices will include invitations to meetings, updates on cleanup activities and planning, notification of sampling activities, and other items of interest to the general community. Notices will be posted at the Skykomish

Community Center bulletin board, library, post office, Town Hall, and the bulletin boards next to the Whistling Post Tavern and inside the Cascadia Hotel.

- **Media releases**

Media releases may be issued to newspapers and radio and TV stations in King and Snohomish counties as necessary to inform the general public regarding the progress of cleanup.

## 4. Relocation of Residents

Several residents are being asked to relocate during cleanup of the Levee Zone. These residents will be placed into alternate housing while their house is temporarily relocated. BNSF and Ecology will work with residents throughout the relocation planning to ensure a fair and equitable process. A variety of activities and tools will be used to inform property owners of their choices regarding relocation, as well as ensure a smooth transition whenever possible.

Ecology and BNSF will also work with property owners neighboring the construction site to address their concerns about construction impacts.

### Activities

BNSF and Ecology will meet individually with property owners as well as with groups of residents to address relocation issues. The process for relocation planning includes:

- **Informal property owner visits**  
BNSF and Ecology will meet individually with property owners to provide a general explanation of the relocation process. This meeting will also help BNSF and Ecology to understand each resident's unique situation and concerns regarding relocation.
- **Small group relocation meeting**  
Relocated residents will be invited to a public meeting where BNSF and Ecology provide information on the guidelines for relocation. The meeting will also provide information about relocation options, where available, including location and housing options.
- **Meeting with contractor**  
Residents will be provided the opportunity to meet with the house-moving contractor to discuss their concerns prior to relocation.
- **Individual property owner meetings**  
BNSF and Ecology will meet with residents to develop individual agreements for relocation within the established guidelines. The agreements will contain details regarding the following:
  - Individual arrangements for alternative housing.
  - Moving of personal property by professional movers.
  - Transportation of personal property to temporary housing.
  - Storage of remaining personal property in a secure location.
  - Provisions for security of relocated residences.
  - Replacement of residence on existing footprint.
  - Return of personal property to residence.
  - Restoration of existing landscaping wherever possible.

- Rebuilding of outbuildings, driveways, patios, etc. to pre-relocation condition.

Residents who wish to have different arrangements regarding relocation may discuss options with BNSF.

## Tools

A number of tools will be used to ensure effective communication between BNSF, Ecology and relocated residents.

- **Access agreements**  
Residents will sign an access agreement to their property that will include: access for cleanup and monitoring following cleanup, relocation agreements for house and residents, and restoration agreements for the property.
- **Resident check-ins**  
Ecology and BNSF will establish regular communications with residents during relocation to provide updates on construction status, changes in schedules for relocation, or other issues.
- **Frequently Asked Questions (FAQ) sheet**  
BNSF has written a question-answer sheet of frequently asked questions regarding relocation to inform people being relocated and the community how the relocation will take place. The fact sheet will be updated as new issues arise.
- **Addressing concerns**  
BNSF and Ecology are available to address any concerns regarding relocation and will work together with the residents to resolve any problems.

Contact: For Ecology: Louise Bardy at 425-649-7209 or Susan Lee at 425-649-4486 or cell 360-790-9959. For BNSF: Bruce Sheppard at 206-625-6035 or Angie Thomson at 206-269-5041.

- **Closeout checklist**  
When relocation is complete, residents will be provided with a final checklist to ensure the process has been completed satisfactorily. This checklist will allow BNSF and Ecology to determine where additional work is required to restore homes and properties to their pre-construction condition.

## 5. Construction

During construction, BNSF and Ecology will work together to provide on-site construction communications support for the community.

### Activities

- **Daily on-site construction staffing**  
BNSF and Ecology will work together to provide on-site staffing during construction activities. This will provide a consistent, responsive point of contact for residents, community members and visitors who have questions about construction activities.
- **Construction update meetings**  
BNSF and/or Ecology will attend construction team meetings to gather activity and schedule updates on a daily or weekly basis. These updates will be provided to the community in a variety of ways, including a construction newsletter, weekly activity update, website update, and posted notices.
- **Media outreach**  
Ecology will host an event at the beginning of the construction work to give media the opportunity to see the site, receive a packet of information regarding the site, and photograph the site at the beginning of the work.

### Tools

- **Newsletter**  
BNSF and Ecology will distribute a community update newsletter during construction activities. The newsletter will highlight construction progress and milestones, and notify the community of upcoming activities and meetings. The newsletter will be published as frequently as bi-weekly as construction activities warrants.
- **Posted notices**  
Each week, BNSF and Ecology will post weekly construction updates to provide up-to-the-week updates of planned activities, road closure and detours.
- **Sign for visitors and tourists about cleanup**  
Large signs will be posted at strategic locations near the construction site to provide general information about cleanup activities to visitors and tourists. This

sign will also provide contact information for people who have additional questions or concerns about the work underway.

- **Call Line**

BNSF and Ecology will provide a call line, staffed 24-hours each day. Project staff will address the reported concern as quickly as possible.

- **Website**

A project website will be established to facilitate communication between BNSF, Ecology, Town leaders and the community. This website will include the weekly activity updates, the construction newsletter, posted notices, activity calendar, contact information, and links to both the Ecology project website and the Town of Skykomish website. The website address is: [www.SkykomishCleanup.com](http://www.SkykomishCleanup.com)

A number of the plans that are required for the levee cleanup will be developed as the work proceeds (for example; Cultural Resources Monitoring and Discovery Plan, Site Specific Health and Safety Plan, Air Monitoring Plan, Traffic Plan). Notice of the availability of these plans will be given through the cleanup website and sent as a newsletter or posted in Town.

This website will also be used to host an internal contact log, which will facilitate internal communication between BNSF and Ecology during construction activities.

## 6. On-going communications

### Activities

- **Updates to Town Council and School Board**  
Ecology and/or BNSF will provide an update to the Town Council or School Board at their monthly meeting. These updates will include cleanup planning updates and/or construction activity updates. These meetings will also be an opportunity to address key issues in a timely way, as well as highlight key action areas or decisions required from either group.
- **Town technical coordinator**  
After the Town has hired a technical coordinator, there may be activities the Town, through that position, would like to provide for the community that will be coordinated with these public involvement activities.

### Tools

- **Walk Through Town**  
Members of the SEC will walk through Town and informally talk with people for the purpose of advertising events, gathering information, and keeping in contact with people who are not able to participate in other cleanup-related activities. Staff of Ecology or BNSF may be invited to join SEC depending on the current issue being addressed.
- **Information repositories**  
The King County Library in Skykomish currently contains the community information repository for the BNSF Skykomish Cleanup Site. However, the library has limited space for document storage and for people to sit while reviewing lengthy documents, and the hours of operation in the library are limited. For these reasons, information repositories can also be found in the Skykomish Town Hall and in the home of Michael Moore for the SEC.

Complete site files are kept at Ecology's regional office in Bellevue and available for public review by appointment.

Information repository locations, contacts, and hours of operation are listed below.



<p>King County Library Skykomish Branch 100 5th Avenue N. Skykomish, WA 98288 360-677-2660</p> <p>Hours: Monday and Thursday, 1 – 7 PM, Friday, 1 – 5 PM Saturday, 10 AM – 2 PM</p>	<p>Washington State Department of Ecology 3190 160th Ave., S.E. Bellevue, WA 98008 Call for an appointment: Sally Perkins 425-649-7190 (425) 649-4450 FAX E-mail: <a href="mailto:perk461@ecy.wa.gov">perk461@ecy.wa.gov</a></p> <p>Hours: Monday – Thursday, 8 AM to 12 PM and 1 - 4 PM</p>
<p>On weekends, call for an appointment at the Skykomish Environmental Coalition in Skykomish, WA Michael Moore Phone: 360-677-2410 Lorna Goebel Phone: 360-677-2812</p>	<p>Skykomish Town Hall 4<sup>th</sup> Avenue N Skykomish, WA 98288 360-677-2388</p> <p>Hours: Monday – Friday, 8:00 AM to 3:30 PM</p>

## 7. Schedule

The following is a list of the activities and schedule to meet public participation goals for February 2006 to December 2006.

<b>Date</b>	<b>Time</b>	<b>Activity</b>	<b>Lead</b>	<b>Audience</b>
On-going		Cleanup - Community group briefings	BNSF/Ecology	Community groups
On-going		Cleanup - Sampling and surveying notifications	BNSF	Skykomish community
February 21	10-12	Septic Summit	Ecology	Agencies
February 28	10-12	Septic Summit Meeting	Town	Septic summit committee
March 3 – April 3		Public Comment Period	Ecology	Skykomish community, Skykomish valley, agencies, elected officials, other interested parties and the general public
March 14	6 pm	Public Meeting	Ecology	Skykomish community, Skykomish valley, agencies, elected officials, interested parties and the general public
March 22	7 pm	Community Meeting	SEC	Skykomish community

<b>Date</b>	<b>Time</b>	<b>Activity</b>	<b>Lead</b>	<b>Audience</b>
April 1	10:00 - 1:00 pm	Availability Meeting	Ecology	Skykomish community, Skykomish valley, agencies, elected officials, interested parties and the general public

This schedule will be updated on an ongoing basis as activities are developed for the purpose of informing people and coordinating with cleanup plans.

## 8. Glossary

**Agreed Order:** An order issued by Ecology under WAC 173-340-530 with which the potentially liable person receiving the order agrees to comply.

**All Relevant and Appropriate Requirements (ARAR):** All cleanup standards, standards of control, and other human health and environment requirements, criteria, or limitations established under state and federal law that, while not legally applicable to the hazardous substance, cleanup action, location, or other circumstance at a site, Ecology determines address problems or situations sufficiently similar to those encountered at the site that their use is well suited to the particular site.

**Bunker C:** Heavy fuel oil mixture that predominantly contains diesel and lubricating-oil range petroleum hydrocarbons.

**Cleanup:** Actions taken to deal with a release, or threatened release of hazardous substances that could affect public health and/or the environment. The term "cleanup" is often used broadly to describe various response actions or phases of remedial responses such as the remedial investigation/feasibility study.

**Cleanup Action Plan (CAP):** A document that explains which cleanup alternative(s) will be used at sites for the cleanup. The cleanup action plan is based on information and technical analysis generated during the remedial investigation/feasibility study and consideration of public comments and community concerns.

**Cleanup Level (CUL):** 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.

**Comment Period:** A time period during which the public can review and comment on various documents and proposed actions. For example, a comment period may be provided to allow community members to review and comment on proposed cleanup action alternatives and proposed plans.

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

**Diesel:** A mid-range petroleum product that is composed of hydrocarbons that are distilled between 200-325 degrees C.

**Feasibility Study:** This study develops and evaluates cleanup options for a given site.

**Free Product:** A nonaqueous phase liquid that is present in soil, bedrock, groundwater or surface water as a distinct separate layer. Under the right conditions, if sufficient free

product is present, free product is capable of migrating independent of the direction of flow of the groundwater or surface water.

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

**Hazardous Substance:** Any material that poses a threat to public health and/or the environment. Typical hazardous substances are materials that are toxic, corrosive, ignitable, explosive, or chemically reactive.

**Information Repository:** A file containing current information, technical reports, and reference documents available for public review. The information repository is usually located in a public building that is convenient for local residents such as a public school, city hall, or library.

**LNAPL:** A light **NAPL** which floats.

**Model Toxics Control Act (MTCA):** Legislation passed by citizens of the State of Washington through an initiative in 1988. Its purpose is to identify, investigate, and clean up facilities where hazardous substances have been released. It defines the role of Ecology and encourages public involvement in the decision making process. MTCA regulations are administered by the Washington State Department of Ecology.

**NAPL "Nonaqueous phase liquid":** A hazardous substance that is present in the soil, bedrock, groundwater or surface water as a liquid not dissolved in water.

**PAH or Polycyclic Aromatic Hydrocarbons:** Hydrocarbon molecules composed of two or more fused benzene rings. PAHs (carcinogenic) or cPAH are polycyclic aromatic hydrocarbon molecules identified as known or probable human carcinogens.

**PCBs:** A group of toxic, persistent chemicals (poly chlorinated biphenyls). Due to their non-flammability, chemical stability, high boiling point and electrical insulating properties, PCBs were used in hundreds of industrial and commercial applications including transformers and capacitors for insulating purposes, and in gas pipeline systems as a lubricant. PCBs are a serious threat to public health because they have been proven to cause cancer in animals. In 1977 they were made illegal to produce, yet large amounts still remain in the environment.

**Petroleum Hydrocarbons:** Hydrocarbons are chemicals in petroleum that contain only carbon and hydrogen atoms. Hydrocarbons are refined from petroleum because they combust easily and cleanly.

**Potentially Liable Person:** Any individual(s) or company(s) potentially responsible for, or contributing to, the contamination problems at a site. Whenever possible, Ecology requires these PLPs, through administrative and legal actions, to clean up sites.

**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 and county ) newspaper of largest circulation; and the opportunity for the interested persons to comment.

**Public Participation Plan:** A plan prepared to encourage coordinated and effective public involvement designed to the public's needs at a particular site.

**Remedial Action:** Any action or expenditure consistent with the purposes of chapter 70.105D RCW to identify, eliminate or minimize any threat posed by hazardous substances to human health or the environment including any investigative and monitoring activities with respect to any release or threatened release of a hazardous substance and health assessments or health effects studies conducted in order to determine the risk or potential risk to human health.

**Remedial Investigation:** A study that characterizes the site and defines the extent of contamination.

**Remedial Investigation/Feasibility Study:** Two distinct but related studies. They are usually performed at the same time, and together referred to as the "RI/FS." They are intended to:

- Gather the data necessary to determine the type and extent of contamination;
- Establish criteria for cleaning up the site;
- Identify and screen cleanup alternatives for remedial action; and
- Analyze in detail the technology and costs of the alternatives.

**Remediation Level (REL or RL):** A concentration (or other method of identification) of a hazardous substance in soil, water, air, or sediment above which a particular cleanup action component will be required as part of a cleanup action at a site. Other methods of identification include physical appearance or location.

**Responsiveness Summary:** A summary of oral and/or written public comments received by Ecology during a comment period on key documents, and Ecology's responses to those comments. The responsiveness summary is especially valuable during the Cleanup Action Plan phase at a site when it highlights community concerns.

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

**Sediments:** Settled particles located at the bottom of a lake, river or in wetlands. Sediment(s) also includes settled particulate matter exposed by human activity (e.g., dredging) to the biologically active aquatic zone or to the water column.

**Site:** 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 of, or placed, or otherwise come to be located.

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

## **Exhibit G**

### **List of Required Permits**

- National Pollutant Discharge Elimination System Waste Discharge Permit No. WA-003212-3
- Permit for Discharges of Material into Navigable Waters pursuant to Sections 401 and 404 of the CWA (33 USC Sections 1341 and 1344), 40 CFR Part 230 [Section 404(b)(1) guidelines], 33 CFR Parts 320 (general policies), 323 and 325 (permit requirements), and 328 (definition of waters of the United States).



## **Exhibit H**

### **Substantive Requirements**

- King County Special Use Permit for Septic Drainfield (to be provided by King County)
- King County Special Use Permit for Levee Cleanup Project (to be provided by King County)
- Hydraulic Project Application (To be provided by Washington Department of Fish and Wildlife prior to start of work)
- Water Quality Protection Requirements – See Exhibit H.1, attached
- Town of Skykomish Requirements – See Exhibit H.2, attached

## **Exhibit H.1**

### **Substantive Water Quality Requirements**

#### **A. No Impairment of Water Quality:**

- A1. The South Fork of the Skykomish River is classified as Class AA waters of the state. Turbidity in Class AA waters shall not exceed 5 NTU over background when the background turbidity is 50 NTU or less, or has more than a 10 percent increase in turbidity when the background turbidity is more than 50 NTU.
- A.2 The discharge or release of oil or petroleum hydrocarbons into or on the surface of state waters is prohibited. If a visible oil sheen is observed beyond the limits of the oil boom containment system as described Engineering Design Report- Levee Remedial Action, Former Maintenance and Fueling Facility, Skykomish, Washington prepared by the RETEC Group, dated 03 March 2006 then all appropriate actions to stop, contain, and cleanup the oil shall be taken.

#### **B. Notification**

- B1. BNSF shall provide notice to Ecology's Louise Bardy at least 3 days prior to the start of construction. Notification can take place by e-mail to [Lbar461@ecy.wa.gov](mailto:Lbar461@ecy.wa.gov), telephone to (425) 649-7209, fax to (425) 649-7098, or in writing.

#### **C. Upland Construction, Excavation, and Grading**

- C1. Cleanup of the upland soils shall be remediated such that the soil and groundwater at the site shall meet the provisions of the Model Toxics Control Act (Chapter 173-340 WAC) before final grading is completed.
- C2. Dewatering water both from upland and in-water excavation shall not be discharged to surface water unless testing indicates that it meets all water quality standards at the point of discharge as authorized by National Pollutant Discharge Elimination System Waste Discharge Permit No. WA-003212-3 issued for this project.
- C3. Wash water containing oils, grease, or other hazardous materials resulting from wash down of equipment or working areas shall be contained for proper disposal or treatment as authorized by National Pollutant Discharge Elimination System Waste Discharge Permit No. WA-003212-3 issued for this project and shall not be directly discharged into state waters or storm drains.
- C4. Fuel hoses, oil drums, oil or fuel transfer valves and fittings, and all other equipment, etc., shall be checked daily for drips or leaks, and shall be maintained and stored properly to prevent spills into state waters. No refueling of equipment shall occur over, or within 50 feet of the river.

- C5. Equipment used for in-water construction prior to or after removal of the cofferdam, as defined in D5, shall be free of external petroleum-based products..
- C6. A qualified Engineer shall be on site to oversee project construction. A qualified ecologist or equivalent shall be on site to oversee riparian planting.
- C7. With seven calendar days of completion of project grading work, all disturbed riparian areas shall be protected from erosion using vegetation or other means.

**D. In-water Construction**

- D1. This document authorizes a mixing zone of 300 feet as described in WAC 173-201A-110(3) for necessary in-water construction activities that disturb in-place sediments during installation and removal of the cofferdam. No discharges or mixing zone is authorized for release or leakages from within the cofferdam into the Skykomish River once it is installed. During cofferdam installation, BNSF or its contractors shall fully apply all known, available, and reasonable methods of prevention, control, and treatment (AKART).
- D2. Timing Limitations: Excavation of the contaminated sediments and soils within the in-water portion of the project area shall occur tentatively between July 1 and August 31. These dates are subject to change by Washington Department of Fish and Wildlife. A qualified fisheries biologist shall be on site during cofferdam placement, cofferdam removal, and any fish removal activities from the work area. The fisheries biologist will be on-call during the excavation of soil or sediments and subsequent back filling of the excavation. The designated fisheries biologist shall be approved by the Department of Fish and Wildlife Area Habitat Biologist prior to cofferdam placement.
- D3. If at any time as a result of project activities fish are observed in distress, a fish kill occurs, or water quality problems develop (including equipment leaks or spills) operations shall cease and the following agencies shall be contacted: Department of Ecology at (425) 649-7000 and Washington Department of Fish and Wildlife (WDFW) at (360) 534-8233. Work shall not resume until further approval is given by WDFW and the Department of Ecology.
- D4. Fish habitat components and bank protection material shall be installed to the standards required by the US Army Corps of Engineers permit issued for this project and as described in the Engineering Design Report Levee Remedial Action.
- D5. **Water Quality Monitoring:**  
An in-water construction Water Quality Monitoring Plan shall be developed and implemented. "In-water construction" is defined as all work below the ordinary high water mark of the South Fork of the Skykomish River during installation of a cofferdam, the removal of contaminated soils and sediments within the confines of a cofferdam, and the removal of the cofferdam. The Water Quality Monitoring Plan shall be submitted to Ecology for review and approval prior to at least 14 days before in-water construction is

scheduled to begin. Ecology may require changes and modifications to the plans. The plan shall include the following minimum requirements:

Sampling during installation and removal of the cofferdam:

- a. Location of samples: Background samples shall be collected upstream or up gradient of the area of activity, and 300 feet downstream or down current from the construction or activity. Performance monitoring samples shall be taken 300ft downstream from the coffer dam.
- b. Number and timing of samples: Background samples will be taken prior to the start of daily in water construction activities. Samples shall be collected a minimum of every two (2) hours throughout the first day of in-water construction activity. Subsequent sampling is dependent on monitoring results, but shall be a minimum of three (3) times per day simultaneous with in-water activity. Sampling shall increase if turbidity exceedances are observed or measured.
- c. Parameters to be sampled: Turbidity shall be sampled for this project.
- d. Equipment: Sampling for turbidity is to be accomplished using a turbidometer properly calibrated according to the operator's manual.
- e. Detection of exceedances: Water quality standards for turbidity in Class AA waters are as follows: turbidity shall not exceed 5 NTU over background turbidity when the background turbidity is 50 NTU or less, or have more than a 10 percent increase in turbidity when the background turbidity is more than 50 NTU. The water quality standard for oil is no visible sheen. If exceedances of these standards are detected, as a result of water quality sampling and monitoring, BNSF Railroad, or its contractors shall immediately take action to stop, contain, and prevent unauthorized discharges or otherwise stop the violation and correct the problem. After such an event, BNSF shall assess the efficacy of the site Best Management Practices (BMPs) and update or improve the BMPs used at the work site in an effort to prevent recurrence of the turbidity.

Sampling during in-water excavation behind the cofferdam:

- a. Location of samples: Background samples shall be collected upstream or up gradient of the area of activity, and 300 feet downstream or down current from the oil containment boom. Performance monitoring samples shall be taken 300ft downstream from the oil containment boom.
- b. Number and timing of samples: Background samples will be taken prior to the start of daily in water construction activities. Samples shall be collected a minimum of three (3) times per day simultaneous with in-water activity. Sampling shall increase if turbidity exceedances are observed or measured.
- c. Parameters to be sampled: Turbidity shall be sampled for this project. Visual observations for an oil sheen between the confines of the two cofferdams and downstream of the oil containment boom shall be conducted at the same time.
- d. Equipment: Sampling for turbidity is to be accomplished using a turbidometer properly calibrated according to the operator's manual.

- e. Detection of exceedances: Water quality standards for turbidity in Class AA waters are as follows: turbidity shall not exceed 5 NTU over background turbidity when the background turbidity is 50 NTU or less, or have more than a 10 percent increase in turbidity when the background turbidity is more than 50 NTU. The water quality standard for oil is no visible sheen. If exceedances of these standards are detected, as a result of water quality sampling and monitoring, BNSF shall immediately take action to stop, contain, and prevent unauthorized discharges or otherwise stop the violation and correct the problem. After such an event, BNSF shall assess the efficacy of the site Best Management Practices (BMPs) and update or improve the BMPs used at the work site in an effort to prevent recurrence of the turbidity or oil exceedance.

**D6. Reporting of results:**

Results of water quality monitoring shall be submitted to Department of Ecology BNSF SKYKOMISH Project Manager, Toxics Cleanup Program, 3190 – 160<sup>th</sup> Avenue SE, Bellevue, WA, 98008-5452, fax 425-649-7098 or as directed. If no exceedances are detected, results shall be submitted once a week. If exceedances are detected, results shall be submitted daily and contingency measures and reporting shall be taken as required.

**E. Stormwater Management:**

- E1. BNSF shall comply with the Stormwater Management Manual for Western Washington, February 2005 and the “Construction Stormwater Pollution Prevention and Sediment and Erosion Control Plan, Engineering Design Report- Levee Remedial Action, Former Maintenance and Fueling Facility, Skykomish, Washington prepared by the RETEC Group, dated 01 March 2006
- E2. During construction, BNSF shall comply with all stormwater requirements within the National Pollutant Discharge Elimination System Waste Discharge Permit No. WA-003212-3 issued for this project.
- E3. Work in or near waters of the state shall be done so as to minimize turbidity, erosion, and other water quality impacts. Construction stormwater, sediment and erosion control Best Management Practices suitable to prevent exceedances of state water quality standards (*e.g.*, detention and/or infiltration areas, silt fences, etc.), shall be in place before starting clearing, excavating, and grading work at the impact site.

**F. Reporting and Monitoring:**

- F1. Maintenance and monitoring shall occur as specified in the “Engineering Design Report- Levee Remedial Action, Former Maintenance, and Fueling Facility, Skykomish, Washington prepared by the RETEC Group, dated 01 March 2006
- F2. Installation of the project plantings shall be completed prior to the start of the first growing season (March 1) subsequent to project clearing or grading.

- F3. Project plantings shall be maintained and irrigated as necessary to ensure 80 percent or greater survival at the end of five years.
- F4. Spring and fall inventories for invasive species shall be taken annually for the first five years post-construction.
- F5. Invasive species shall be controlled such that they do not exceed more than 10% total cover at any time.

**G. Emergency/Contingency Measures:**

G1. In the event the BNSF Railroad or its contractors are unable to comply with any of these conditions due to any cause, they shall:

- Immediately take action to stop, contain, and clean up unauthorized discharges or otherwise stop the violation and correct the problem.
- Notify Ecology of the failure to comply. Spill events shall be reported immediately to Ecology's 24-Hour Spill Response Team at (425) 649-7000, and within 24 hours to Ecology's Louise Bardy at (425) 649-7209.
- Submit a detailed written report to Ecology within five days that describes the nature of the violation, corrective action taken and/or planned, steps to be taken to prevent a recurrence, results of any samples taken, and any other pertinent information.

**H. General Conditions:**

- H1. For purposes of this document, the term "BNSF" shall mean the BNSF Railway Co. and its agents, assigns, and contractors.
- H2. This document does not exempt and is provisional upon compliance with other statutes and codes administered by federal, state, and local agencies.
- H3. BNSF will be out of compliance with this document if the project is constructed and/or operated in a manner not consistent with the project description contained in the Engineering Design Report- Levee Remedial Action, Former Maintenance, and Fueling Facility, Skykomish, Washington prepared by the RETEC Group, dated 01 March 2006, or the National Pollutant Discharge Elimination System Waste Discharge Permit No. WA-003212-3, or plans otherwise required and approved by Ecology. Additional mitigation measures may be required through other local, state, or federal requirements.
- H4. Copies of this document shall be kept on the job site and readily available for reference by Ecology personnel, the construction superintendent, construction managers and foremen, and state and local government inspectors. To avoid violations or non-compliance with this Order, the applicant shall ensure that project managers, construction superintendents, and other responsible parties have read and understand relevant aspects

of this Order, the NPDES permit, and any subsequent revision or Ecology-approved plans.

- H5. BNSF shall provide to Ecology a signed statement from each project manager and construction superintendent working at the project site that they have read and understand the conditions of the above-referenced documents, plans, and approvals. These statements shall be provided to Ecology no less than seven (7) days before construction begins at the site.
- H6. The applicant shall provide access to the project site by Ecology personnel for site inspections, monitoring, necessary data collection, or to ensure that conditions of this document are being met.
- H7. Nothing in this document waives Ecology's authority to issue additional orders if Ecology determines further actions are necessary to implement the water quality laws of the state. Further, Ecology retains continuing jurisdiction to make modifications hereto through supplemental order, if additional impacts due to project construction or operation are identified (*e.g.*, violations of water quality standards, downstream erosion, etc.), or if additional conditions are necessary to further protect the public health or the environment.

## Exhibit H.2

### Town of Skykomish Requirements

Town municipal codes and permit requirements that apply to the remedial actions performed by Burlington Northern Santa Fe during the cleanup process are listed below. Included are a sampling of appropriate excerpts from the code and descriptions of requirements.

#### **Chapter 8.05 Noise Regulations**

**8.05.020** The town of Skykomish hereby adopts the most current King County Noise Ordinance, KCC Title 12, Chapters 12.86 through 12.99 KCC by reference, a copy of which will be kept on file at Skykomish Town Hall.

**8.05.030(3)** The following sounds may, depending upon location, be public disturbance noises in violation of this chapter:

(h) Sounds originating from construction sites, including but not limited to sounds from construction equipment, power tools and hammering between the hours of 9:00 p.m. and 7:00 a.m. on weekdays and 9:00 p.m. and 9:00 a.m. on weekends;

(i) Sounds originating from residential property relating to temporary projects for the maintenance or repair of homes, grounds and appurtenances, including but not limited to sounds from lawnmowers, power hand tools, snow removal equipment and composters between the hours of 9:00 p.m. and 7:00 a.m. on weekdays and 9:00 p.m. and 9:00 a.m. on weekends.

(4) Exclusion. This chapter shall not apply to the following:

(b) Construction or maintenance activities in the town's right-of-way that have been approved by the mayor or mayor's designee to minimize the impact on adjacent property owners

#### **8.05.050 Variance.**

The mayor or mayor's designee, may, upon written application filed with the town clerk, grant a variance from the provisions of this chapter and authorize the issuance of a special permit for an activity when it finds that such a variance is in the public interest, or when it finds the activity will have substantial public participation.

#### **Chapter 12.10 Protection and Preservation of Public Rights-of-Way**

**12.10.030(2)** The town council of Skykomish hereby adopts the most current road standards of King County published by King County department of public works.

#### **12.10.040 Applicability.**

(2)(b) Any land development abutting and impacting existing roads shall improve the frontage of those roads in accordance with these standards. The extent of improvements shall be based on an assessment of the impacts of the proposed land development.

(2)(e) Any major disruption of the current road surfaces and right-of-way facilities shall be repaired to the current King County road standards. (Ord. 332 § 4, 2003)

#### **12.10.050 Application, permit and fees.**

(1) Any construction, repair, installation or use within, upon, above or below any public rights-of-way within the town of Skykomish shall be covered by a street use agreement issued by the town of Skykomish. This agreement is valid for 60 days from date of issue, unless otherwise specified.



(4) All fees shall be paid in advance of the commencement of work. For a fee schedule see the latest town of Skykomish resolution relating to such fees. (Ord. 332 § 5, 2003)

**15.05 Codes adopted.**

The following codes are adopted by reference:

(1) The International Building Code, 2003 Edition, published by the International Code Council, and as amended as set forth in Chapter 51-50 WAC, and adopted by the State Building Code Council;

(2) The International Residential Code, 2003 Edition, published by the International Code Council, and as amended as set forth in Chapter 51-51 WAC, and adopted by the State Building Code Council;

(3) The 2003 Edition of the Uniform Plumbing Code, as published by the International Association of Plumbing and Mechanical Officials, as amended and adopted by the State Building Code Council;

(4) The International Mechanical Code, 2003 Edition, published by the International Code Council, and as amended as set forth in Chapter 51-52 WAC, and adopted by the State Building Code Council, except that the standards for handling liquefied petroleum gas installations shall be NFPA 58, "Storage and Handling of Liquefied Petroleum Gases" and ANSI Z223.1/NFPA 54, "National Fuel Gas Code," and excluding Chapter 1, "Administration";

(5) The International Fire Code, 2003 Edition, published by the International Code Council, and as amended as set forth in Chapter 51-54 WAC, and adopted by the State Building Code Council;

(6) The 1997 Edition of the Uniform Code for the Abatement of Dangerous Buildings, as published by the International Conference of Building Officials;

(7) The 2003 Washington State Energy Code, as amended as set forth in Chapter 51-11 WAC, and adopted by the State Building Code Council;

(8) The 2003 Washington State Ventilation and Indoor Air Quality Code, as amended as set forth in Chapter 51-13 WAC, and as adopted by the State Building Code Council;

(9) The 1997 Edition of the Uniform Administrative Code, as published by the International Conference of Building Officials;

(10) The 2003 International Fuel Gas Code as published by the International Code Council;

(11) The 1997 Uniform Building Code, Table I-A only, as published by the International Conference of Building Officials.

**Chapter 15.10 Regulation of Mobile Homes, Trailers, and Motor Homes**

**15.10.040 Permit required.**

All mobile homes must obtain a permit before being placed on property within the town.

**15.10.050 Compliance.**

All owners of said mobile homes shall comply with the town code regarding septic tanks, electrical and other building or fire codes. No cesspools or dry wells will be permitted. (Ord. 128 § 5, 1977)

**15.10.060 Water and garbage accounts.**

There shall be a water shutoff provided for each mobile home and the occupants must pay residential rates for water and garbage, and further, that the property and owner shall be responsible for all water and garbage accounts. (Ord. 128 § 6, 1977)

**Chapter 15.15 Landmarks Protection and Perpetuation**

**15.15.020 Design review board.**

(1) There is created a town of Skykomish design review board which shall advise town council and operate within the framework of the design guidelines for Skykomish, Washington, Chapter 18.90 SMC

**Chapter 18.90 Design Guidelines**

**18.90.010 Preface.**

(3) A formal design review is mandatory for all exterior projects in the historic commercial district, and for all projects affecting landmark properties. For properties in residential use, compliance with the findings of the design review board is voluntary on the part of the applicant. For properties in commercial or public use, and for all landmarks compliance is required.

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**Clearing and Grading Permits**

*Clearing and Grading Permits* are required for vegetation clearing and earthwork activities including, but not limited to: contouring, excavation, filling, or creation of impervious surfaces that are proposed apart from similar activities included in building permits. (chapter 15.20)

**Conditional Use Permits**

The Skykomish zoning ordinance identifies allowed *Conditional Uses* in each zoning district if such uses do not introduce incompatible, detrimental, or hazardous conditions at their proposed locations. Conditional Uses are deemed unique due to factors such as size, technological processes, equipment, or location with respect to surroundings, streets, existing improvements, or demands on public facilities.

Conditional Uses will be subject to review by the Town resulting in approval of *Conditional Use Permits*. Conditional Use Permit requirements are described in Chapter 18.70 of the Skykomish Municipal Code.

**Critical Area Reasonable Use Exceptions**

*Reasonable Use Exceptions* may be granted in cases where strict application of the critical area regulations would deprive a property of privileges enjoyed by other properties with similar characteristics because of special features or constraints unique to the property involved. They are intended only to relieve hardship in special cases and not to avoid compliance with the intent of the regulations. A reasonable use exception may relax the applicable critical regulation requirements with respect to the use of the property. Exceptions address the physical aspects of site improvements and are not intended to circumvent restrictions on land use. Reasonable use exceptions are described in Chapter 16.15 of the Skykomish Municipal Code.

**Flood Damage Prevention Permits**

*Flood Damage Prevention Permits* may be granted in cases where development is proposed on property within a flood hazard area as identified in Chapter 16.10 of the Skykomish Municipal Code. These permits may be consolidated with building permits or clearing and grading permits, depending upon the type of development proposed.

**Shoreline Conditional Use Permits**

*Shoreline Conditional Use Permits* are required for projects which propose uses that are designated by the SMP as Conditional for the Shoreline Environment in which they are proposed. Conditional uses are

those which, due to their nature and potential impacts, could not be allowed outright but may be found to be appropriate on a case by case basis. **Only uses designated as conditional uses for a given Shoreline Environment may be so permitted.**

Shorelines within the Town of Skykomish are designated as either Suburban Environment or Rural Environment. The boundaries of these Environments are described and mapped in Chapter 7 of the SMP.

The SMP designates the following as **permitted uses**:

Suburban Environment

Agriculture  
Water Dependent Recreation  
Water Related Recreation  
Single Family Residential  
Transportation  
Utilities - Primary

Rural Environment

Agriculture  
Water Dependent Recreation  
Single Family Residential  
Utilities - Primary

The SMP designates the following as **conditional uses**:

Suburban Environment

Aquaculture in Man-Made Ponds  
Flood Hazard Management  
Mining  
Non-Water Related Recreation

Rural Environment

Aquaculture in Man-Made Ponds  
Flood Hazard Management  
Mining

Definitions, policies, and regulations for each use are listed in Chapters 1, 2, and 5 of the SMP.

**Shoreline Substantial Development Permits**

*Shoreline Substantial Development Permits are* required for any project or activity within the Town's shoreline management jurisdiction including:

**Any use or activity consisting of:**

- Construction or exterior alteration of structures
- Dredging
- Drilling
- Dumping or filling
- Removal of sand, gravel, or minerals
- Bulkheading
- Driving of piles
- Placing of obstructions

**Or:**

Any project of a permanent or temporary nature which interferes with the normal public use of the surface of the waters overlaying lands subject to the Shoreline Master Program at any state of water level.

**Which:**

Has a total cost or fair market value in excess of two thousand five hundred dollars (\$2500).

**Or:**

Materially interferes with the normal public use of the waters or shorelines of the Town.

**Shoreline Variances**

*Shoreline Variances* are required for any project which proposes to deviate from the performance standards set forth in the SMP. **Variances are granted only in extraordinary cases where strict implementation of the SMP would impose unnecessary hardships on the applicant.** Variances apply

only to deviations from performance standards -- requests for types of use other than those permitted outright in the SMP require Conditional Use Permits.

**Zoning Variances**

*Zoning Variances* may be granted in cases where strict application of the zoning code would deprive a property of privileges enjoyed by other properties in the same zone because of special features or constraints unique to the property involved. They are intended only to relieve hardship in special cases and not to avoid compliance with the intent of the zoning ordinance. A variance may relax the zoning code's requirements with respect to size, location, height, coverage or other performance standards which regulate structures or signs. Variances address the physical aspects of structures or site improvements and are not intended to circumvent restrictions on use. Zoning variances are described in Chapter 18.65 of the Skykomish Municipal Code.