

BNSF



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September 9, 2003

Mr. James J. Pendowski
Program Manager
Toxics Cleanup Program
Washington State Department of Ecology
P.O. Box 47600
Olympia, WA 98504-7600

Re: Former Maintenance and Fueling Facility, Skykomish, Washington (Site)
Request for Dispute Resolution

Dear Jim:

BNSF is requesting dispute resolution pursuant to Section V.9. of Agreed Order No. DE 91TC-N213. The Order indicates that this request be directed to the signatory of the Order, Michael J. Gallagher. We are directing this request to you because Mr. Gallagher is apparently no longer a manager in the Toxics Cleanup Program. BNSF has five issues for dispute resolution at this time.

1. Should the four-phase model be used to develop soil cleanup levels to protect groundwater at this Site?
2. Should groundwater cleanup levels be established to protect aquatic organisms in sediment at this Site?
3. Should soil cleanup levels be established to protect air quality at this Site?
4. Should Ecology's default residual saturation concentration be used to define "free product" at this Site?
5. Should the restoration time frame be fixed at 5 years for this Site?

As you may know, BNSF has been working with Ecology and the Skykomish community over the past 10 years to complete the RI/FS and to implement interim cleanup actions. The last 18 months in particular have been a very intensive effort by all parties to complete the FS and move toward a Cleanup Action Plan (CAP) that is acceptable to Ecology, the community, other regulatory agencies, affected tribes and BNSF. BNSF prepared an integrated Draft FS/EIS (08/14/03) and Ecology is currently scheduled to release that document (with the 1996 RI Report and 2002 Supplemental RI Report) for public, tribal and agency review and comment in early September. The Order currently anticipates that Ecology will release a Draft CAP and Consent Decree for public and agency review in March 2004.

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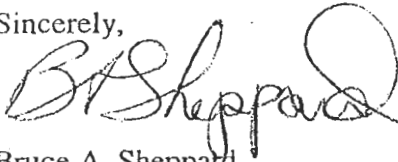
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The five issues noted above were identified by BNSF for dispute resolution based on discussions, letters and documents exchanged by BNSF and Ecology over the past few months. In order to maintain the current project schedule, BNSF revised the Draft FS/EIS so that it can be issued for review and comment in September. However, these five issues need to be resolved before a Draft CAP can be prepared. The Order, Section V.3., requires BNSF to prepare the Draft CAP once the FS is approved.

Please let me know how you wish to proceed. BNSF is prepared to submit detailed written materials and to meet with you and staff to discuss these issues at your convenience.

Sincerely,



Bruce A. Sheppard
Manager Environmental Remediation

cc: ✓ Louise Bardy, Ecology - NWRO
Halah Voges, Retec
Josh Whited, Attorney General's Office
Craig Trueblood, Preston Gates & Ellis