

Glacier Park
07 2007

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

In the Matter of Remedial Action by:

The Burlington Northern and)	AGREED ORDER
Santa Fe Railway Company and)	Cleanup Action
Chevron U.S.A. Inc.)	No. DE 01TCPCR-3168
)	
(Known as Glacier Park-East))	

TO: The Burlington Northern and Santa Fe Railway Company
c/o Jennifer Anderson
2454 Occidental Avenue South, Suite 1A
Seattle, WA 98134

Chevron Products Company, a division of
Chevron U.S.A. Inc.
c/o Gerald O'Regan
6001 Bollinger Canyon Road
Building L, Room 1102
PO Box 6004
San Ramon, CA 94583-0804

I.

Jurisdiction

This Agreed Order ("Order") is issued pursuant to the authority of RCW 70.105D 050(1)

II.

Findings of Fact

Ecology makes the following Findings of Fact, without admission of such facts by The Burlington Northern and Santa Fe Railway Company (BNSF) and Chevron U.S.A. Inc. (Chevron), hereafter called "BNSF/Chevron" collectively

1. BNSF's subsidiary BN Leasing Corporation presently owns the Glacier Park-East property (the site), which is located east of the intersection of State Highway 2 and State Route 209

(also known as Chumstick Road), in Leavenworth, Washington. BNSF has assumed responsibility for matters related to this Agreed Order.

2. Chevron. Janet Motteler, Jack Wedeberg and Boyd Cascade Inc., were all owners or operators of businesses that retailed or wholesaled petroleum products at the site.
3. In 1991, Hart Crowser, an environmental consulting firm, conducted a Phase II investigation of the property. This investigation concluded that petroleum hydrocarbon contaminated soil was present near where the aboveground storage tanks and the fuel truck loading rack were formerly located.
4. Agreed Order No. 94TC-C441 was entered into by Ecology and the PLPs on January 1, 1995. This order was for a Remedial Investigation/Feasibility Study (RI/FS).
5. A site RI/FS report dated February 27, 1997 was submitted to Ecology from Burlington Northern Railroad (now BNSF) and Chevron.
6. The RI FS concluded that soil had been impacted by petroleum hydrocarbons.
7. A Feasibility Study – Supplemental Information Supporting Remedial Alternative Recommendation report dated May 27, 1999 was submitted to Ecology from BNSF and Chevron.
8. By execution of this Agreed Order, BNSF/Chevron does not admit (expressly or impliedly) any act, responsibility, fault or liability, or waive any right, claim, privilege or defense, and do not necessarily agree with Ecology's findings of fact or determinations.

III.

Ecology Determinations

1. BNSF and Chevron are or were an "owner or operator" of a "facility" as defined in RCW 70.105D.020(4).
2. The facility is known as Glacier Park-East and is located east of the intersection of State Highway 2 and State Route 209 (also known as Chumstick Road), in Leavenworth, Washington.
3. The substances found at the facility as described above are "hazardous substances" as defined at RCW 70.105D.020(7).

4. Based on the presence of these hazardous substances at the facility and all factors known to Ecology, there is a release or threatened release of hazardous substances from the facility, as defined at RCW 70.105D.020(20).
5. By letter dated September 3, 1992, Ecology notified Burlington Northern Railroad Company (now known as BNSF) of its status as a "potentially liable person" under RCW 70.105D.040 after notice and opportunity for comment.
6. By letter dated November 6, 1992, Ecology notified Chevron of its status as a "potentially liable person" under RCW 70.105D.040 after notice and opportunity for comment.
7. By letter dated July 26, 1993, Ecology notified Janet Motteler of her status as a "potentially liable person" under RCW 70.105D.040 after notice and opportunity for comment.
8. By letter dated July 26, 1993, Ecology notified Jack Wedeberg of his status as a "potentially liable person" under RCW 70.105D.040 after notice and opportunity for comment.
9. By letter dated September 3, 1993, Ecology notified Boyd Cascade, Inc., of its status as a "potentially liable person" under RCW 70.105D.040 after notice and opportunity for comment.
10. Pursuant to RCW 70.105D.030(1) and 70.105D.050, the Department may require potentially liable persons to investigate or conduct other remedial actions with respect to the release or threatened release of hazardous substances, whenever it believes such action to be in the public interest.
11. Based on the foregoing facts, Ecology believes the remedial action required by this Order is in the public interest.

IV

Work to be Performed

Based on the foregoing Facts and Determinations, it is hereby ordered that BNSF and Chevron take the following cleanup actions and that these actions be conducted in accordance with Chapter 173-340 WAC unless otherwise specifically provided for herein. The selected cleanup action is soil isolation and groundwater monitoring for a minimum of 5 years (longer if necessary), the initial two years will involve quarterly groundwater monitoring, results will be evaluated and monitoring frequency will be established for the next three years. In addition to soil isolation and monitoring, three (3) additional monitoring wells will be installed. Relevant details specific to the above mentioned actions will be further elaborated in the Cleanup Action

Plan (CAP). As provided in this Order, the CAP shall be submitted to Ecology for review, comment, and approval in accordance with WAC 173-340-400. The CAP shall be in accordance with the requirements of WAC 173-340-360. The cleanup action plan shall consist of:

- A general description of the proposed cleanup action including compliance monitoring.
- A brief summary of other alternative cleanup actions evaluated in the state remedial investigation/feasibility study.
- Site cleanup levels and points of compliance for each hazardous substance and for each media of concern.
- The schedule for implementation of the cleanup action plan including, if known, restoration time frame.
- Required institutional controls and site use restrictions.
- Justification for selecting a cleanup action that uses cleanup technologies that have a lower preference than higher representative cleanup technologies.
- Applicable state and federal laws for the proposed cleanup action.
- Specification of the types, levels, and amounts of hazardous substances remaining on site and the measures that will be used to prevent migration and contact with those substances.
- Sampling and Analysis Plan (SAP) including a quality assurance/quality control (QA/QC) plan summarizing ground water monitoring activities to be performed. The SAP will be prepared according to WAC 173-340-820. Ground water monitoring activities will include:
 - a) Installing and developing monitoring wells MW-3, MW-4, and MW-5 at the locations shown on Figure 1. Monitoring wells will be installed according to WAC 173-160.
 - b) Abandon monitoring well HC-2 according to WAC 173-160.
 - c) Survey the elevation of the top of the casing of each monitoring well, make a recommendation as to groundwater flow direction, and perform quarterly groundwater level measurements for two years as per schedule in Figure 2 attached.
 - d) Perform quarterly groundwater monitoring for two years and analyze samples for the following constituents. Sample analyses shall be performed according to WAC 173-340-830.

- i) Initial quarter—NWIPH-HCID, NWIPH-G/8021B and/or NWIPH-Dx (as determined by HCID)
 - ii) Remaining quarters—NWIPH-G/8021B and/or NWIPH-Dx (as determined by HCID)
- e) Prepare quarterly ground water summary reports and submit to Ecology within four weeks of receipt of final analytical results. These reports shall include (1) a summary of the analytical data collected for the current sampling event, (2) identification of data gaps, if any, and (3) recommendations for additional explorations and/or monitoring activities, if necessary. Each quarterly report shall reference all previous sampling results cumulatively and shall include a reference with respect to observed trends.
- List of applicable permits that may have to be obtained before beginning field activities.
 - Public Participation Plan.
 - Construction Plans and Specifications for implementation of the isolation and monitoring alternative consistent with WAC 173-340-400.
 - Associated Safety and Health Plans as applicable. All work performed at the site will be in accordance with WAC 173-340-810.
 - Engineering Design Report for implementation of the isolation and monitoring alternative presented in the RI/FS report (1997) and "Feasibility Study—Supplemental Information Supporting Remedial Alternative Recommendation" (May 27, 1999). The engineering design report shall be consistent with WAC 173-340-400.
 - Operation and Maintenance (O&M) Plan for implementation of the isolation and monitoring alternative consistent with WAC 173-340-400.
 - Schedule of activities.

A final cleanup action plan will be submitted to Ecology within 30 days of receipt of comments from Ecology. The tasks as identified in the final, approved cleanup action plan will be implemented according to the schedule presented in the plan.

O&M will be performed for five years following implementation of the cleanup action. The need for continued O&M will be evaluated within 60 days of completion of the initial O&M activities.

The work will be performed in general accordance with the schedule presented on Figure 2.

V.

Terms and Conditions of Order

1. Definitions. Unless otherwise specified, the definitions set forth in ch. 70.105D RCW and ch. 173-340 WAC shall control the meanings of the terms used in this Order
2. Public Notices. WAC 173-340-600(10)(c) requires a 30-day public comment period before this agreed order on a Cleanup Action Plan becomes effective. Ecology shall be responsible for providing such public notice. If Ecology decides that it is appropriate to modify or withdraw any provision of this Order because public comment discloses facts or considerations which indicate to Ecology that the Order is inadequate or improper in any respect, the PLPs may, in their sole discretion, withdraw from this Order and it shall become null, void and of no further effect.
3. Remedial Action Costs. BNSF and Chevron shall pay to Ecology costs incurred by Ecology pursuant to this Order. These costs shall include work performed by Ecology or its contractors for investigations, remedial actions, and Order preparation, oversight and administration activities related to the site. Ecology costs shall include costs of direct activities and support costs of direct activities as defined in WAC 173-340-550(2). Absent valid objections presented in writing to Ecology by the PLPs, BNSF and Chevron shall pay the required amount within 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 copy of the field logs of work performed will be provided upon request. Itemized statements shall be prepared quarterly. Failure to pay Ecology's costs within 90 days of receipt of the itemized statement of costs will result in interest charges; provided, however, that no such interest shall accrue during the time that the PLPs are disputing a charge or charges.
4. Designated Project Coordinators.

The project coordinator for Ecology is:

Antonio Valero
Toxics Cleanup Program
15 W Yakima Avenue, Suite 200
Yakima, WA 98902-3452
(509) 454-7840
e-mail: aval461@ecy.wa.gov

The project coordinator for BNSF/Chevron is:

Jennifer Anderson
Manager of Environmental Remediation
BNSF Ry. Co.
2454 Occidental Avenue S, Suite 1A
Seattle, WA 98134
(206) 625-6034

The project coordinator(s) shall be responsible for overseeing the implementation of this Order. To the maximum extent possible, communications between Ecology and BNSF and Chevron, 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). Should Ecology or BNSF/Chevron change project coordinator(s), written notification shall be provided to Ecology or BNSF/Chevron at least ten (10) calendar days prior to the change.

5. Performance. All work performed pursuant to this Order shall be under the direction and supervision, as necessary, of a professional engineer or hydrogeologist, or similar expert, with appropriate training, experience and expertise in hazardous waste site investigation and cleanup. BNSF/Chevron shall notify Ecology as to the identity of such engineer(s) or hydrogeologist(s), 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. BNSF/Chevron shall provide a copy of this Order to all contractors retained to perform work required by this Order and shall attempt to ensure that all work undertaken by such contractors will be in compliance with this Order.

Except where necessary to abate an emergency situation, BNSF/Chevron shall not perform any remedial actions at the site outside that required by this Order unless Ecology concurs, in writing, with such additional remedial actions.

WAC 173-340-400(7)(b)(i) requires that "construction" performed on the site must be under the supervision of a professional engineer registered in Washington.

6. Access. Ecology or any Ecology authorized representative shall have the authority to enter and freely move about the Site at all reasonable times for the purposes of, inter alia: inspecting records, operation logs, and contracts related to the work being performed pursuant to this Order; reviewing the progress in carrying out the terms of this Order; conducting such tests or collecting samples as Ecology or the project coordinator 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/Chevron. By signing this Agreed Order, BNSF/Chevron agrees that this Order

constitutes reasonable notice of access, and agrees to allow access to the site at all reasonable times for purposes of overseeing work performed under this Order, but Ecology will give at least twenty four (24) hours notice to BNSF prior to entry when possible. Ecology shall allow split or replicate samples to be taken by BNSF/Chevron during an inspection unless doing so interferes with Ecology's sampling. BNSF/Chevron shall allow split or replicate samples to be taken by Ecology and shall provide seven (7) days notice before any sampling activity

7. Public Participation. BNSF/Chevron shall prepare and update a public participation plan for the site. Ecology shall maintain the responsibility for public participation at the site. BNSF/Chevron shall help coordinate and implement public participation for the site.
8. Retention of Records. BNSF/Chevron shall preserve in a readily retrievable fashion, during the pendency of this Order and for ten (10) years from the date of completion of the work performed pursuant to this Order, all records, reports, documents, and underlying data in its possession relevant to this Order. Should any portion of the work performed hereunder be undertaken through contractors or agents of BNSF/Chevron, then BNSF/Chevron agrees to include in their contract with such contractors or agents a record retention requirement meeting the terms of this paragraph.
9. Reservation of Rights/No Settlement. This Agreed Order is not a settlement under ch. 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/Chevron to recover remedial action costs paid to and received by Ecology under this Agreed Order. In addition, Ecology will not take additional enforcement actions against BNSF/Chevron to require those remedial actions required by this Agreed Order, provided BNSF/Chevron complies with this Agreed Order.

Ecology reserves the right, however, to require additional remedial actions at the Site should it deem such actions necessary.

Ecology also reserves all rights regarding the injury to, destruction of, or loss of natural resources resulting from the releases or threatened releases of hazardous substances from Glacier Park-East.

In the event Ecology determines that conditions at the site are creating or have the potential to create a danger to the health or welfare of the people on the site or in the surrounding area or to the environment, Ecology may order BNSF/Chevron to stop further implementation of this Order for such period of time as needed to abate the danger.

10. Transference of Property. No voluntary or involuntary conveyance or relinquishment of title, easement, leasehold, or other interest in any portion of the Site shall be consummated

by BNSF/Chevron 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 transfer of any legal or equitable interest BNSF/Chevron may have in the site or any portions thereof, BNSF/Chevron shall serve a copy of this Order upon any prospective purchaser, lessee, transferee, assignee, or other successor in such interest. At least thirty (30) days prior to finalization of any transfer, BNSF/Chevron shall notify Ecology of the contemplated transfer.

11. Compliance with Other Applicable Laws.

- A. All actions carried out by BNSF/Chevron 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 paragraph B of this section.
- B. Pursuant to RCW 70.105D.090(1), the substantive requirements of chapters 70.94, 70.95, 70.105, 75.20, 90.48, and 90.58 RCW and of any laws requiring or authorizing local government permits or approvals for the remedial action under this Order that are known to be applicable at the time of issuance of the Order have been included in this Agreed Order and exhibits hereto and are binding and enforceable requirements of the Order.

BNSF/Chevron have a continuing obligation to determine whether additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial action under this Order. In the event BNSF/Chevron determine that additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial action under this Order, they shall promptly notify Ecology of this determination. Ecology shall determine whether Ecology or BNSF/Chevron shall be responsible to contact the appropriate state and/or local agencies. If Ecology so requires, BNSF/Chevron 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/Chevron and on how BNSF/Chevron must meet those requirements. Ecology shall inform BNSF/Chevron in writing of these requirements. Once established by Ecology, the additional requirements shall be enforceable requirements of this Order. BNSF/Chevron 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.

- C. 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/Chevron 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.

VI.

Satisfaction of this Order

The provisions of this Order shall be deemed satisfied upon BNSF/Chevron's receipt of written notification from Ecology that BNSF/Chevron has completed the remedial activity required by this Order, as amended by any modifications, and that all other provisions of this Agreed Order have been complied with. Such notice shall not be unreasonably delayed.

VII.

Enforcement

1. Pursuant to RCW 70.105D.050, in the event the PLPs refuse, without sufficient cause, to comply with any material term of this Order, this Order may be enforced as follows:
 - A. The Attorney General may bring an action to enforce this Order in a state court.
 - B. The Attorney General may seek, by filing an action, if necessary, to recover amounts spent by Ecology for investigative and remedial actions and orders related to the site.
 - C. In such action, BNSF/Chevron may be liable for:
 - (1) Up to three times the amount of any costs incurred by the state of Washington as a result of their refusal to comply; and
 - (2) Civil penalties of up to \$25,000 per day for each day they refuse to comply.
 - D. This Order is not appealable to the Washington Pollution Control Hearings Board. This Order may be reviewed only as provided under Section 6 of ch. 70.105D RCW.


Glacier Park-East
Agreed Order No. DE 01TCPCR-3168
Page 11

Effective date of this Order: September 25, 2001

THE BURLINGTON NORTHERN AND
SANTA FE RAILWAY COMPANY

By: _____

CHEVRON U.S.A. INC

By: 

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

By: _____
Donald W. Abbott
Section Manager
Toxics Cleanup Program
Central Regional Office

