

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

In the Matter of Remedial Action by:)	
Burlington Northern Railroad Company)	
J. H. Ritchie)	
Budget Fuel Service Company)	AGREED ORDER
Shell Oil Company)	No. DE 95TC-C166
)	

TO: Burlington Northern Railroad Company
 c/o David Smith
 2100 First Interstate Center
 999 Third Avenue
 Seattle, WA 98104

AC? J. H. Ritchie
 609 Park Place
 Yakima, WA 98908

AC Budget Fuel Service Company
 c/o Wayne Johnson
 P.O. Box 40
 Rock Island, WA 98850

AD Shell Oil Company
 c/o Frank Fossati
 P.O. Box 4846
 Anaheim, CA 92803

I.
Jurisdiction

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

II.
Findings of Fact

1. The Department of Ecology (Ecology) makes the following Findings of Fact, without admission of such facts by, Burlington Northern Railroad Company ("BNRR"), J. H. Ritchie ("Ritchie"), Budget Fuel Service Company ("Budget Fuel"), and Shell Oil Company ("Shell"), hereafter known as the "PLPs".

2. Burlington Northern Railroad Company presently owns the Glacier Park West property, here after known as the "Site", which is located west of the intersection of State Highway 2 and State Route 209, which is also known as the Chumstick Road in Leavenworth, Washington.

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3. Ritchie, Budget Fuel and Shell were either owners or operators of businesses which retailed or wholesaled petroleum products at the Glacier Park Site.

4. From July 30, 1938 to September 1969, Shell leased the property located at 201 Highway 209 in Leavenworth, Washington from Great Northern Railroad Company, later to become Burlington Northern Railroad company, for the purpose of establishing and maintaining a bulk petroleum products distribution business.

5. Ecology believes petroleum releases from the petroleum handling business at the Site have contaminated the soils, and potentially the groundwater, at the Glacier Park West Site. In 1991 Hart Crowser, an environmental consulting firm, conducted a Phase II investigation of the property. The results of the investigation were submitted to Ecology, and are on file at the Department of Ecology in Yakima Washington, in the report titled Subsurface Exploration and Testing, Glacier Park Company Property, Property Sequence No. 99, Leavenworth, Washington, April 17, 1991, J-2923. The report discusses two parcels; one located east of State Highway 209, and the other west of State Highway 209. This Agreed Order is addressed to the four current and former Owners and/or Operators of the Site which is located west of State Highway 209. The Site is referred to as the Budget Fuel Company Bulk Facility in the report.

6. The Hart Crowser Report concluded that petroleum hydrocarbon contaminated soil was present near the aboveground storage tanks and that petroleum contaminated groundwater was present under the Site.

7. The Site where petroleum-contaminated soils and groundwater have come to be found is located within the SE 1/4, Section 1, Township 24 North, Range 17 East, Willamette Meridian. The property is located west of State Highway 209, north of State Highway 2, and south of the Burlington Northern Railway right of way. The Site address is 201 Highway 209 Leavenworth, Washington. The Site is outlined on the plat attached hereto as Exhibit 4.

8. By execution of this Agreed Order the PLPs do not admit (expressed or implied) 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.

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III.
ECOLOGY DETERMINATIONS

1. The Glacier Park West Site located in Leavenworth, Washington is a "facility," as defined in RCW 70.105D.020(3).
2. BNRR, Budget Fuel, Shell and J.H. Ritchie are or were "owners and/or operators," as defined in RCW 70.105D.020(6), of the Site.
3. The substances found in the soils and groundwater at the Glacier Park West Site as described above are "hazardous substances," as defined in RCW 70.105D.020(5).
4. Based on the presence of these hazardous substances at the Site and all factors known to the Department, there is a release or threatened release of hazardous substances from the Site, as defined in RCW 70.105D.020(10).
5. By letter dated September 3, 1992, Ecology notified Burlington Northern Company of its status as a "potentially liable person" under RCW 70.105D.040 after notice and opportunity for comment.
6. By letter dated November 17, 1993, Ecology notified J. H. Ritchie of his status as a "potentially liable person" under RCW 70.105D.040 after notice and opportunity for comment.
7. By letter dated September 16, 1992, Ecology notified Budget Fuel Service Company of its status as a "potentially liable person" under RCW 70.105D.040 after notice and opportunity for comment.
8. By letter dated July 6, 1994, Ecology notified Shell Oil Company of its status as a "potentially liable person" under RCW 70.105D.040 after notice and opportunity for comment.
9. Pursuant to RCW 70.105D.030(1) and .050, Ecology may require potentially liable parties to investigate or conduct remedial actions with respect to the release or threatened release of hazardous substances.

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10. Based on the foregoing facts, and in the best interests of the public, Ecology has determined that the PLPs must take actions, at the Site, as set forth below.

IV.
WORK TO BE PERFORMED

Based on the foregoing Facts and Determinations, it is hereby Ordered and Agreed that the PLPs perform the following actions and that these actions be conducted in accordance with Chapter 173-340 WAC, unless otherwise specifically provided for herein.

1. The PLPs shall furnish all personnel, materials and services necessary for, or incidental to, the planning, initiation, completion, and reporting of a remedial investigation/feasibility study ("RI/FS") for the Site. The Work Plan and Sampling and Analysis Plan (Attached as Exhibit 1) specifically describes the work to be conducted and is hereby incorporated by reference as an integral and enforceable part of this Agreed Order.

2. The planning documents and each element of the tasks of the RI/FS shall be consistent with Chapter 173-340 WAC.

3. All planning documents, proposals, reports and other documents submitted to Ecology shall be subject to Ecology approval. Ecology shall be given up to thirty (30) days after receipt of draft deliverable documents to review, comment and approve/disapprove each document. Ecology will notify the Project coordinator for the PLPs in writing, along with comments, of the approvals or disapprovals.

Within sixty (60) days of receiving final approval for the planning and reporting documents, the PLPs shall commence work on the next task scheduled. If the PLPs request an extension or adjustment to the schedule, in writing, because of (1) unpredictable complexities or difficulties in the hydrologic investigations or other fuel tasks or (2) other justifiable reasons, Ecology may grant the PLPs' request.

Progress reports, consisting of one to two pages, shall be completed by the Project coordinator on behalf to the PLPs on a bi-monthly basis. The progress reports shall include an estimate of percent completion for each task, progress made during the

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period, work in progress, and a list of deliverables submitted. The RI/FS shall be structured to collect, develop, and evaluate sufficient information regarding the site to enable the selection of a cleanup action. To collect sufficient information, the Work Plan shall consist of general facility information, including the location of utility corridors, field investigations of surface water and sediments, soils geology and groundwater system characteristics, air quality considerations, land use, natural resources and ecology, as well as work plans. The RI/FS shall be implemented to meet the requirements of WAC 173-340-350 (State Remedial Investigation and Feasibility Study).

5. All work shall be accomplished in accordance with the Work Schedule for Glacier Park West attached as Exhibit 2. Exhibit 2 is hereby incorporated by reference as an integral and enforceable part of this Agreed Order.

6. Results from the sampling shall be provided to Ecology's project coordinator within ten (10) days of receipt from the laboratory.

7. The PLPs shall immediately notify Ecology by telephone of any unexpected delays in construction.

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 state RI/FS becomes effective. Ecology shall be responsible for providing such public notice and reserves the right to modify or withdraw any provisions of this Order should public comment disclose facts or considerations which indicate to Ecology that the Order is inadequate or improper in any respect; provided, however, the PLPs have the right to withdraw from this Agreed Order should Ecology do so.

3. Remedial Action Costs. The PLPs shall pay to Ecology costs incurred by Ecology pursuant to this Agreed Order. These costs shall include work performed by Ecology or its

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contractors for investigations, remedial actions, and Order preparation, oversight and administration. Ecology costs shall include costs of direct activities and support costs of direct activities as defined in WAC 173-340-550(2). The PLPs shall pay the required amount within 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 ninety (90) days of receipt of an itemized statement of costs will result in interest charges.

4. Designated Project Coordinators. The project coordinator for Ecology is:

Donald W. Abbott
Washington Department of Ecology
106 South 6th Avenue
Yakima, Washington 98902-3387
(509) 454-7834

The project coordinator for the PLPs is:

David Smith
Environmental Engineering
Burlington Northern Railroad Company
2100 First Interstate Center
999 Third Avenue
Seattle, Washington 98104
Telephone (206) 467-3400
Telecopy (206) 467-3315

The project coordinators shall be responsible for overseeing the implementation of this Order. To the maximum extent possible, all communications between Ecology and the PLPs, and all documents, including reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Order, shall be directed through the project coordinators. Should Ecology or the PLPs change project coordinators, written notification shall be provided to Ecology or the PLPs 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,

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of a professional engineer or hydrogeologist, or similar expert, with appropriate training, experience and expertise in hazardous waste site investigation and cleanup.

The PLPs shall notify Ecology of the name of the contractor which will be conducting the remedial investigation and their on site supervisor and as to any change in the identity of any contractors and subcontractors to be used in carrying out the terms of this Agreed Order, in advance of their involvement at the Site.

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 Agreed Order; reviewing the progress in carrying out the terms of this Agreed 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 Agreed Order; and verifying the data submitted to Ecology by the PLPs. The PLPs agree to allow access to the Site at all reasonable times for purposes of overseeing work performed under this Agreed Order. Ecology agrees to provide at least 24 hours notice to access the Site for the purposes of overseeing work performed under this Agreed Order. Ecology shall provide the PLPs an opportunity to split any samples taken during an inspection unless doing so interferes with Ecology's sampling. The PLPs shall allow split or replicate samples to be taken by Ecology and shall, insofar as practicable, provide seven (7) days notice before any sampling activity.

7. Public participation. the PLPs shall prepare a public participation plan for the Site according to the Work Schedule included as Exhibit 2. The Public Participation Plan shall be developed consistent with the outline attached to this Agreed Order as Exhibit 3 . Ecology will retain final responsibility for approval of the public participation plan and implementation of public participation responsibilities at the Site. The PLPs shall help coordinate and implement public participation for the Site.

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8. Retention of Records. The PLPs 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 their possession relevant to this Order. Should any portion of the work performed hereunder be undertaken through contractors or agents of the PLPs, then the PLPs agree to include in their contract(s) 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 the PLPs 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 the PLPs to require those remedial actions required by this Agreed Order, provided the PLPs comply 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 West.

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 the PLPs to stop further implementation of this Order for such period of time as needed to abate the danger.

10. Modification. Ecology and the PLPs may modify this Order by mutual written agreement.

11. 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 the PLPs without provision for continued

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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 the PLPs may have in the site or any portions thereof, the PLPs 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, the PLPs shall notify Ecology of the contemplated transfer.

12. Compliance with Other Applicable Laws. All actions carried out by the PLPs pursuant to this Order shall be done in accordance with all applicable federal, state, and local requirements.

VI.

SATISFACTION OF THIS ORDER

1. The provisions of this Order shall be deemed satisfied upon the PLPs receipt of written notice from Ecology that they have 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

In the event the PLPs refuse, without sufficient cause, to comply with any term of this Order, this Order may be enforced as follows:

1. The Attorney General may bring an action to enforce this Order in state court.

2. In any such action, the PLPs may be liable for up to three times the amount of any costs incurred by the State of Washington as a result of the refusal to comply.

3. Additionally, in any such action, the PLPs may be liable for civil penalties of up to \$25,000 per day for each day they refuse to comply.

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4. Should Ecology conduct or provide for conducting the remedial action, the Attorney General will bring an action to recover all costs incurred by the state for such action.

5. This Order is not appealable to the Pollution Control Hearings Board. This Order may be reviewed only as provided under Section 6 of ch. 70.105D RCW

Effective date of this Order: APR 10 1995

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

By: *Anthony W. Grover*
Anthony W. Grover
Section Manager
Toxics Cleanup Program
Central Regional Office

BURLINGTON NORTHERN RAILROAD COMPANY
2100 First interstate Building
900 Third Avenue
Seattle, WA 98104-1105

J. H. RITCHIE
609 Park Place
Yakima, WA 98908

By: *David M. Smith*
David Smith *for BNR*

By: _____
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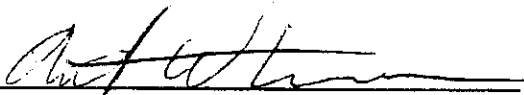
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By: _____
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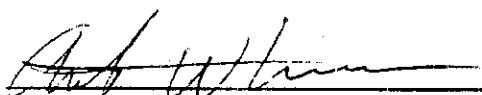
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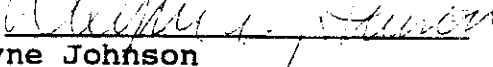
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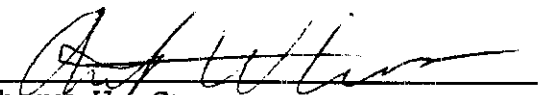
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